

# **Review of the Burundian Artisanal Gold Mining Sector**

**April 2015**

***By the International Peace Information Service (IPIS)***



## **Editorial**

### **Review of the Burundian Artisanal Gold Mining Sector**

April 2015

### **Authorship**

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### **Acknowledgement**

This report was prepared by IPIS as a Contractor of Partnership Africa Canada (PAC). PAC was commissioned by the German Federal Institute for Geosciences and Natural Resources (BGR) within the German support program to the ICGLR implemented by BGR (and GIZ) funded by the Federal Ministry for Economic Cooperation and Development, BMZ.

### **About this Report**

The present report reviews the governance framework and baseline characteristics of the Burundian artisanal gold mining sector on the background of promoting responsible engagement and management in the context of the ICGLR Regional Initiative on Natural Resources and the OECD Due Diligence Guidance.

### **About the BGR Module of the German Support Program to the ICGLR**

BGR and GIZ were jointly commissioned by BMZ to implement a support program to the ICGLR, focusing on the ICGLR secretariat and associated regional bodies as well as national stakeholders in several ICGLR member states including Burundi. The BGR module runs from 2011-2016 and includes two components, namely introduction of the Analytical Fingerprint (AFP) method in the Great Lakes Region (Component I) and supporting artisanal mining sector formalization as well as the implementation of the Regional Certification Mechanism in Burundi and Rwanda (Component II) within the Regional Initiative against the Illegal Exploitation of Natural Resources. This report represents a contribution from Component II in the context of BGR capacity building efforts in partnership with the ICGLR and the Burundian Ministry of Energy and Mines. More information on the project can be found at [www.bgr.bund.de/mineral-certification](http://www.bgr.bund.de/mineral-certification).

### **Disclaimer**

This report does not necessarily represent the views of PAC, BGR or its project partners.

## **Executive Summary**

Burundi is located in the centre of Africa's Great Lakes Region, a region that has seen a gold rush during the last decade, with both artisanal and industrial mining operations expanding substantially in neighbouring Tanzania and the DR Congo (DRC). At the same time, the illegal taxation and trade of artisanal gold in the eastern DRC forms an increasingly important contribution to financing the prevailing conflict. Burundi hosts a small artisanal gold mining sector of its own while also playing an important role as a transit hub for smuggled artisanal gold of DRC origin, underlining the importance of due diligence in its national gold supply chains.

This report forms part of wider assignment by Partnership Africa Canada (PAC), commissioned by the German Federal Institute for Geosciences and Natural Resources (BGR) within the overall German support program to the International Conference on the Great Lakes Region (ICGLR). The assignment's overarching objective has been to constructively engage relevant stakeholders associated with the Burundian mining sector including, in particular, the gold sector, in discussions on the subject of due diligence, and responsible mining and sourcing practices in line with the OECD Due Diligence Guidance and the ICGLR Regional Initiative against the Illegal Exploitation of Natural Resources (RINR). As a contribution to this process, the present report reviews the context of the artisanal gold sector (mines and supply chains) in Burundi.

The scale of the Burundian mining sector is minor compared to that of its neighbours. Burundi is home to an estimated 10,000 artisanal miners (with ca. two thirds of these engaged in gold mining). In 2012, mining accounted for less than 1% of the country's Gross Domestic Product (GDP), whilst subsistence agriculture accounted for more than 40%. Fiscal revenues from the mining sector represent a mere 0.3% of national fiscal revenues, despite gold representing Burundi's largest national export with a 2013 official export volume of 2.8 tons worth more than USD 100 million (practically all of which is exported to Dubai in the United Arab Emirates). As shown in this report, despite its relatively small size, the artisanal mining sector holds significant local development potential for Burundi.

### **Artisanal Gold Mining**

Artisanal gold mining has become a significant part of the livelihood strategy for many rural Burundian households. However, the sector has not boomed as it has in some neighbouring countries, and artisanal mining does not seem to be associated with large-scale migrations. Most miners are young males from neighbouring communities, and therefore local community problems related to mining are rather uncommon. Women are engaged in mining as well, mostly in support services such as transporting water.

Significant gold exploitation takes place at a very local level, often undertaken in an informal setting by individuals, small groups or family members. Larger-scale, formal exploitation is carried out by associations, now transformed into cooperatives as part of the government's sector formalisation attempts. Within these organisational structures, many diggers perceive their income to be

insufficient for the hard labour they do. Whist their remuneration does not seem to be lower than that in neighbouring countries, this dissatisfaction demonstrates a lack of transparency with regards to revenue-sharing. When further developing the recently introduced cooperative model in Burundi, focussing on transparent and fair profit-sharing seems to be essential in order to incentivise miners to work in the formal sector.

### **Artisanal Mining Governance**

Recognising the potential benefits of (gold) artisanal and small-scale mining (ASM) for the national economy and local development, the Burundian government has undertaken several initiatives to improve its oversight of the mining sector. After several years in the making, it finally adopted a new Mining Code in late 2013 that introduced several regulatory changes. One important accomplishment refers to the creation of a clearer framework for ASM. For the moment, however, delayed promulgation of an associated Mining Regulation to implement the new Mining Code has caused a legal void, generating concerns about a potential lack of political commitment to developing a well-managed and transparent mining sector. Moreover, there are concerns that the government is giving priority to provisions concerning taxation at the cost of neglecting the development of inclusive adequate procedures and modalities for the implementation of the new Mining Code. Indeed, an overemphasis on taxation has proved hazardous for ASM formalisation efforts in other countries.

So far, the government has implemented ASM formalisation mainly through regrouping artisanal miners into cooperatives. In several cases, introducing these cooperatives seems to have had a positive impact on the environment, working conditions, and extraction and processing techniques at a given site. However, many miners are not yet familiar with the concept of a cooperative and are rather suspicious of the potential benefits. Indeed, in practice, the creation of cooperatives has often been subject to elite capture, and transparency regarding revenue sharing remains a significant issue. Experiences from other countries show that formalisation efforts have little chance of resulting in a truly formalised artisanal mining sector if they fail to offer true incentives to ASM actors themselves.

### **Mineral Taxation and Legality**

Burundi's fiscal revenues from its mining sector are relatively limited compared to its total fiscal revenues. Revenues from the mining sector (comprising artisanal gold and 3T mining) amounted to USD 1.2 million in 2012 and USD 976,000 in 2013, representing 0.33% and 0.27% of total fiscal revenues, respectively, despite mineral export values of more than USD 100 million in each year (80-90% of which are derived from gold).

New tax provisions have been developed in the context of the 2013 Mining Code. These do not focus on individual miners but rather on bigger, less mobile production units, that is, cooperatives and *comptoirs*. However, there have been some complaints along the mineral supply chain about rising tax levels, especially as far as registration and permit fees are concerned. An important aspect will be using fiscal mining revenues for local development through

'community taxes'. The present lack of clarity surrounding such taxes represents a significant challenge.

Corruption and illegal taxes paid to local state agents continue to represent a deeply-rooted problem in the Burundian mining sector. A change in mind set seems to be required given that unofficial or illegal payments to state security forces (to provide improved security) are perceived as perfectly legitimate by many mining sector stakeholders. The high-corruption framework drives the artisanal gold sector into informality where mining companies/cooperatives are regularly underreporting their production to the government to avoid taxes or lower their risks for extortion (through officials demanding bribes). Mineral theft within the supply chain is common in that individual miners disguise part of their production from the cooperative holding the mining permit, preferring to sell it to illicit traders offering higher prices and quicker cash.

### **Transparency, Due Diligence, and Mineral Traceability**

The high level of corruption and illegality within Burundi's artisanal gold mining sector is one of the main obstacles to establish supply chain due diligence and chain of custody tracking. Chain of custody documentation is lacking along Burundi's gold supply chains, Certificates of Origin are issued but provide little assurance, and (possibly with the exception of few potential pilot supply chains) it currently seems almost impossible to source gold from the country at a broader scale in compliance with the OECD due diligence recommendations.

While the Burundian government has incorporated the ICGLR's Regional Certification Mechanism into the country's mining regulatory framework, it is not enforcing the latter as far as the country's gold sector is concerned. In fact, the above framework is inconsistent with credible implementation of the Regional Certification Mechanism; issuing of ICGLR certificates would be premature without providing any assurance at this stage. It has been questioned to what extent the government is truly committed to increasing traceability and transparency in the gold sector. Several stakeholders note the lack of clarity on application procedures for several types of mining and export permits, which generates considerable suspicion and rumours of clientelism.

A number of international private actors engaged in gold exploration in Burundi have disengaged from the country. A wide range of push factors have been cited, including geological prospects, political considerations, and tensions with local artisanal miners. On the other hand, several other actors have started or increased their activities, via agreements with the government that have been criticised for lacking any transparency. The number of gold export *comptoirs* has decreased considerably in 2014 compared to previous years. It has been alleged that only those who have connections to powerful individuals stand a chance of obtaining an authorisation to trade gold. Burundi's recently documented intention to implement the Extractive Industries Transparency Initiative (EITI) is welcome, and it will be critical for its credibility to ensure full involvement of the country's artisanal gold mining and trading sector in the process.

## **Abbreviations and Acronyms**

3T	tin, tungsten, tantalum ores
ASM	Artisanal and Small-scale Mining
BGR	German Federal Institute for Geosciences and Natural Resources
CAR	Central African Republic
CIAAMS	<i>Consortium International d'Affaires de l'Alliance Mondiale des Sports</i>
CSLP	<i>Cadre Stratégique de Croissance et de Lutte contre la Pauvreté</i>
DGGM	<i>Direction Générale de la Géologie et des Mines</i>
DRC	Democratic Republic of Congo
EITI	Extractive Industries Transparency Initiative
FBU	<i>Franc burundais</i> (1 USD = ca. 1540 FBU)
GDP	Gross Domestic Product
ICGLR	International Conference on the Great Lakes Region
IPIS	International Peace Information Service
LACA	<i>Laboratoire de Contrôle et d'Analyse Chimique</i>
LBMA	London Bullion Market Association
MEEATU	<i>Ministère de l'Eau, de l'Environnement, de l'Aménagement du Territoire et de l'Urbanisme</i>
MEM	Ministry of Energy and Mines
OBR	<i>Office Burundais des Recettes</i>
OECD	Organization for Economic Cooperation and Development
OLUCOME	<i>Observatoire de la Lutte contre la Corruption et les Malversations Économiques</i>
PAC	Partnership Africa Canada
PAFE	<i>Police de l'Air, des Frontières et des Etrangers</i>
PFN	<i>Plate-Forme Nationale contre l'exploitation illégale des ressources naturelles</i>
RCM	Regional Certification Mechanism
RINR	Regional Initiative against the Illegal Exploitation of Natural Resources
SAESSCAM	<i>Service d'Assistance et d'Encadrement du Small Scale Mining</i>
SME	small and medium-sized enterprises
UN GoE	UN Group of Experts on the DRC

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## 1 Introduction

BGR commissioned PAC in partnership with IPIS to implement the assignment 'Outreach & Research on Responsible Engagement in the Burundian Gold Sector'. The assignment's overarching objective was to constructively engage relevant stakeholders associated with the Burundian mining sector including, in particular, the gold sector, as well as the International Conference on the Great Lakes Region (ICGLR) on the subject of due diligence and responsible mining and sourcing practices in support of the implementation of the Regional Initiative against the Illegal Exploitation of Natural Resources (RINR) and the recommendations of the OECD Due Diligence Guidance.

To meet the overall project objectives, three sets of services were rendered from July 2014 to April 2015: The facilitation and organization of training and discussion workshops on supply chain due diligence as applicable in the Burundian context and including a national stakeholder analysis<sup>1</sup>; research and analysis of the Burundian gold sector; and, research on contraband gold (in-region cross-border and out-region); this report has been developed as the second deliverable listed above. It aims to review the context of the gold sector (mines and supply chains) in Burundi with a special focus on the artisanal nature of the sector.

While it is known to host significant undeveloped Nickel resources possibly amenable to industrial mining, Burundi does not hold a deeply rooted tradition of mining, as opposed to its neighbours. Nevertheless, already during colonial times artisanal mining was practised in the country, supported by small Belgian mining enterprises. Gold, cassiterite, coltan and rare earths were the main products of these mining activities.

The magnitude of Burundi's mining sector is minor compared to that of neighbouring countries. Just a simple comparison of the estimated number of artisanal miners illustrates the difference: While Burundi holds an estimated 10,000 artisanal miners working in gold and the 3T sector, there are an estimated 35,000 Rwandan 3T miners, and in the Democratic Republic of Congo (DRC) and Tanzania hundreds of thousands of people are digging for various minerals, in particular gold, 3Ts and diamonds. Nevertheless, Burundi's geographical position does allocate it an important role with regards to regional gold trade and smuggling, and it is located in a geologically favourable metallogenic zone.

In 2013, the country officially exported 2.8 tons of gold, which are believed to originate to a large extent from eastern DRC, but include a subordinate national production component of ca. 0.5 tons. Corresponding gold export values at USD 106 million in 2012 and USD 120 million in 2013 make gold the most significant

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<sup>1</sup> PAC, *Outreach & Research on Responsible Engagement in the Burundian Gold Sector Report on the Process and Outcomes of National Outreach Efforts (August 2014 – January 2015)*, commissioned by BGR, March 2015.

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Burundian export for these years.<sup>2</sup> However, the relevance of the mining sector to the national economy is still rather limited. Mining accounted for less than 1% of Burundi's Gross Domestic Product (GDP) in 2012,<sup>3</sup> while subsistence agriculture accounts for more than 40% of the country's GDP and employs more than 90% of its population.<sup>4</sup> On top of that, despite the considerable export values, fiscal revenues from the mining sector represent a mere 0.3% of the country's fiscal revenues.<sup>5</sup>

Nevertheless, over the last decade, Burundi's government has recognised that the artisanal mining sector is an important employer to many people and offers alternative livelihood options. It therefore considers the sector as a potentially important instrument for economic growth, poverty reduction and local development. As such, Burundi's artisanal mining and trading sector, dominated by gold, represents both a national development opportunity as well as a regionally relevant area to employ adequate supply chain due diligence in order to mitigate conflict risks through artisanal gold supply chains originating in the eastern DRC.

This report represents a baseline review of the sector and its governance, largely based on literature research, including reports from international organisations, Burundian government sources, national and international civil society actors, and academics. A detailed list of all the sources used for the development of this report can be found in the bibliography at the end of this paper. Furthermore, a range of interviews were carried out in September 2014 in Bujumbura. To contextualize this review, the report draws on the experience of IPIS in neighbouring countries of the region, notably its multi-year efforts in mapping the eastern DRC's artisanal mining sector.

Following on the introduction, Chapter 2 analyses the regulatory framework that is currently in place to manage Burundi's (gold) mining sector. Next, Chapter 3 analyses artisanal mining governance in the country. Several aspects will be discussed, including the institutional framework, the issue of decentralisation, formalisation efforts, taxation and mineral traceability efforts, and these are put into the regional perspective as well.

Chapter 4 discusses the private actors that are involved in Burundi's gold mining sector. Subsequently, Chapter 5 deals with Burundi's artisanal gold supply chain in more detail. It will discuss, in turn, artisanal gold exploitation, selected environmental and socio-economic issues, and the gold trade. Finally, Chapter 6 provides concluding remarks based on the findings of the previous four chapters.

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<sup>2</sup> EITI, *Étude de faisabilité de l'ITIE : Phase de pré-candidature, Burundi (Rapport final)*, 20 April 2014, p. 33.

<sup>3</sup> Yager T.R., *The mineral industry of Burundi*, 2012 Minerals Yearbook, USGS, July 2014.

<sup>4</sup> CIA, The World Factbook: Burundi, consulted at 17 April 2015 (website: <https://www.cia.gov/library/publications/the-world-factbook/geos/by.html>)

<sup>5</sup> EITI (April 2014), op. cit., pp. 21, 33-34.

## **2 Regulatory Framework applicable to Burundi's Mining Sector**

Artisanal and small-scale mining (ASM) employs 20 to 30 million people worldwide, and an estimated 15 to 20% of the world's gold is produced by artisanal and small-scale miners. These miners often work outside of the formal economy. Despite the importance of the ASM sector to millions of people's livelihood strategies, its informality – the fact that most production and trading activities occur outside of the official economy – and illegality – the fact that these activities are not effectively regulated by a Mining Code – give rise to several problems, including environmental and socio-economic issues.<sup>6</sup> The call for the inclusion of ASM in a state's legal framework first became common in the 1990s. Other countries in Africa's Great Lakes region have included the regulation of the ASM sector in the development of new or revised Mining Codes, including for example the DRC in 2002 and the Central African Republic (CAR) in 2004. ASM formalisation efforts have been implemented for a variety of reasons, including (tax) revenue generation, and concerns about working conditions and environmental effects. Legalising ASM could potentially increase control over, and improve governance of, the sector. As such, it is more amenable to the enforcement of regulations and standards, and makes it easier for numerous agencies to engage with actors within the sector.

Up to October 2013, the Mining and Petroleum Code of 1976<sup>7</sup> regulated Burundi's mining sector. Several additional decrees, containing some provisions relevant to mining, were promulgated over the next decades, including an implementing order (1982), the Land Code (1986) and the Environmental Code (2000).

In the Mining Code of 1976, there were no provisions for the trade of artisanally produced minerals. Only since August 11 2000 with the introduction of Law 1/015 have *comptoirs* in Burundi been recognized by law, and ministerial order 760/540/936 from 4 December 2000 defined mining royalties for these *comptoirs*.<sup>8</sup> Some other legal provisions with regards to artisanal mining were to be found in the Environmental Code, the Land Code and decree 1/40 (18 December 1991) regarding the technical and administrative management of quarries. As the regulation of artisanal mining was fragmented over different pieces of legislation, there were several loopholes that hampered their implementation, including the absence of: a definition of artisanal mining; clarity of process related to the granting of artisanal mining permits; legal recognition of artisanal miners' groups; definition of the roles, duties and responsibilities of

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<sup>6</sup> Geenen S., *'Qui cherche, trouve': The political economy of access to gold mining and trade in South Kivu*, IOB, May 2014, pp. 30-35.

<sup>7</sup> Decree 1/138 from 17 July 1976 established the *Code Minier et Pétrolier de la République du Burundi* into law.

<sup>8</sup> Nzohabonimana D., *L'impact socio-environnemental de l'exploitation minière artisanale au Burundi*, thesis at CESAM, June 2012, p. 21.; Midende G., *Exploitations minières artisanales du Burundi sur la période 2009-2013*, 15 March 2014, pp. 16-17.; Channel Research, *iTSCI Governance Assessment Burundi*, ITRI, August 2013, p 19.

different actors (including state agents, concession holders, local authorities, and miners); and, clarity regarding the relationship between concession holders and landowners.<sup>9</sup>

Since 2010, the old Mining Code had been under revision. A first draft of the new code was ready in 2012. It was the result of a lengthy process financed by the World Bank, which included consultation with various governmental, non-governmental and private actors. In 2013, however, yet another commission reviewed the draft.<sup>10</sup> It took quite some time to develop the final version of the Mining Code, as several contentious issues surfaced. Mining companies, for example, denounced the original provision that Burundi had to hold at least 35% of each future project.<sup>11</sup>

On 15 October 2013, the government of Burundi finally adopted a new mining code (law 1/21), for which it received technical assistance from various international partners.<sup>12</sup> As of late 2013, two implementing ministerial ordinances were adopted: 760/540/1758/2013 and 760/540/770/1757. These deal with the granting of mining permits and contributions to the rehabilitation of mining sites respectively.<sup>13</sup>

The new code has introduced several changes in the mining sector's regulatory regime. An important accomplishment is the creation of a clearer framework for the artisanal mining sector.

Despite these positive notes, several stakeholders are doubtful of the government's capacity to implement these changes and enforce governance reform of the sector on the ground.<sup>14</sup> In mining areas, many stakeholders have witnessed that in practice 'the law does not exist'.<sup>15</sup>

## 2.1 Provisions of the 2013 Mining Code

In addition to questions related to the extent to which authorities will manage to enforce new legislation, it is also worth examining some of the provisions of the new Mining Code. Some new provisions have been welcomed, while others have been criticised.

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<sup>9</sup> Midende G., *Les exploitations minières artisanales du Burundi*, L'Afrique des Grands Lacs, Annuaire 2009–2010, Le Groupe Harmattan, pp. 49-50, 61.

<sup>10</sup> Channel Research (August 2013) op. cit., p 20.

<sup>11</sup> Africa Mining Intelligence, *New mining code a better deal for Burundi*, 9 July 2013.

<sup>12</sup> Africa Mining Intelligence, *Bujumbura to act as industry watchdog*, 5 November 2013.

<sup>13</sup> *Ordonnance Ministérielle n°760/540/1758/2013 portant conditions administratives et fiscales d'octroi et de renouvellement des autorisations de prospection, des permis de recherche, des permis d'exploitation des mines et des carrières ,des permis d'exploitations artisanales et d'agrément des comptoirs d'achat et de vente des substances minérales extraites artisanale au Burundi; Ordonnance Ministérielle n°760/540/770/1757 du 26/A2/2013 fixant la contribution annuelle pour la réhabilitation des sites d'exploitation artisanale des minerais, des carrières ainsi que des comptoirs d'achat et de vente des minerais d'exploitation artisanale.* (Source: Midende G. (March 2014), op. cit., p. 16.)

<sup>14</sup> IPIS interviews with civil society representatives, Bujumbura, September 2014.

<sup>15</sup> Bamvuginyumvira F., *Analyse de la transparence et de la responsabilité dans la gestion de l'industrie extractive au Burundi : défis et suggestions*, OLUCOME, August 2014, p. 27.

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Under the new code, the government aims to increase its control over the artisanal mining sector, making it obligatory to establish a cooperative before starting up artisanal mining operations.<sup>16</sup>

In its assessment of the new legislation, the World Bank (2014) regretted that neither the Mining Code, nor the draft Regulation (which was still under discussion in late 2014) provide the opportunity to acquire a small-scale mining permit (*petites mines*). Such a permit is intended to stimulate the transformation of artisanal mining operators into semi-industrial enterprises.<sup>17</sup> This is remarkable when one considers the fact that Burundi's Development and Poverty Reduction Strategy (*Cadre Stratégique de Croissance et de Lutte contre la Pauvreté*, CSLP II) attaches significant importance to supporting artisanal miners and their development into small and medium-sized enterprises (SME).<sup>18</sup>

Furthermore, the World Bank (2014) expressed concern about the lack of clarity regarding where artisanal mines can be established,<sup>19</sup> and about the inadequacy of security of tenure. For example, an artisanal mining permit can be rescinded for a minor infraction and without any provision for recourse or opportunity to correct the issue.<sup>20</sup>

The new mining legislation has removed the differentiation between transit and export *comptoirs*, which seems to be closer to reality and increases clarity of the law.<sup>21</sup> (More information on this differentiation is available under subtitle 'Export *comptoirs*' under section 5.8) Furthermore, *comptoirs'* operating permits are now valid for two years instead of one,<sup>22</sup> which decreases the administrative burden.

The tax on the declared export value of precious metals has increased from 0.3 to 2 per cent. This levels the tax rate up to the Democratic Republic of the Congo's rate, which had been lowered from 3.5% in 2012. Other countries in the region, however still apply different tax rates. Tanzania, for example, has levied a gold royalty of 4% since 2010.<sup>23</sup> These regional royalty differences provide smuggling incentives and, indeed, mineral smuggling in Burundi is a well-documented risk; theoretically, it can carry a prison sentence of up to 20 years and a fine up to USD 13,000.<sup>24</sup>

Article 92 of the new mining code forbids the interference of state agents in the artisanal mining sector. This prohibition addresses a traditional issue. Midende

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<sup>16</sup> World Bank, *Commentaires sur le Projet de Règlement Minier du Burundi*, Draft version, 1 July 2014, p. 29; Midende G. (March 2014), op. cit., p. 52.; Nzohabonimana D. (June 2012), op. cit., pp. 21-22.

<sup>17</sup> World Bank (1 July 2014), op. cit., pp. 3, 29.

<sup>18</sup> Republic of Burundi, *Rapport des progrès réalisés au cours de la première année de mise en oeuvre du CSLP II*, December 2013, p. 45.

<sup>19</sup> World Bank (1 July 2014), op. cit., pp. 3, 29.

<sup>20</sup> Ibid., pp. 2, 30.

<sup>21</sup> Nzohabonimana D. (June 2012), op. cit., p. 21.

<sup>22</sup> Ibid., p. 22.

<sup>23</sup> Partnership Africa Canada (PAC), *Contraband gold in the Africa's Great Lakes Region: In-region cross border gold flows and out-region smuggling*, commissioned by BGR, April 2015.; UN Group of Experts on DRC (UN GoE) report S/2014/42, January 2014, §193.

<sup>24</sup> UN GoE (January 2014), S/2014/42, §193.

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(2014) questions the extent to which this article is enforceable when many important state agents are actually vested in the mineral supply chain.<sup>25</sup>

Currently, there is a legal void as the *Règlement Minier*, or Mining Regulation that should implement the new Mining Code is still under development. The process to develop this regulation has allegedly been slowed down as previous drafts were considered rather poor, and inconsistent with the Mining Code. A lack of government capacity and commitment has been blamed for this poor performance. Some international donors have now stepped in to usher this process along, which raises some questions about Burundian ownership.

Either way, this legal void has had some detrimental effects.<sup>26</sup> For example, this Mining Regulation should define the conditions to register as a *comptoir* or a cooperative. In the absence of this regulation, the approval of several *comptoires* and cooperatives has allegedly been granted arbitrarily and without any transparency. This creates a lot of suspicion,<sup>27</sup> and some sources even claim this delay may have been deliberate so as to benefit those who have connections to powerful individuals. It strengthens the belief among many local stakeholders that the law only serves the rich and the powerful.<sup>28</sup>

While the two ministerial orders that have been promulgated so far could have gone some way to filling this legal void by creating appropriate administrative procedures, this has not happened in actual fact. Instead, these ministerial orders have focused on the introduction of new fiscal requirements, asking for a contribution to rehabilitate mining sites and setting the tax levels for all kinds of permits. This raises the criticism that the focus on taxation and the neglect of administration might affect formalisation efforts.<sup>29</sup>

Indeed, narrowing down formalisation efforts to strengthening the taxing system has proven to be inefficient in other contexts. One of the (various) reasons for the limited impact of the *Service d'Assistance et d'Encadrement du Small Scale Mining* (SAESSCAM), a Congolese state service established to support ASM, for example, has been its ambiguous and sometimes adversarial roles of offering technical assistance and collecting taxes.<sup>30</sup>

As mentioned above, the draft Mining Regulation, which implements the 2013 Mining Code, is still under development. Some World Bank experts, however, have already reviewed a draft version in July 2014. In their view, the regulation does not provide sufficient detail regarding procedures and modalities to implement the new legislation. Furthermore, the World Bank commented that institutional support to the mining sector was insufficient.<sup>31</sup>

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<sup>25</sup> Midende G. (March 2014), op.cit., p. 53.

<sup>26</sup> EITI, *Étude de faisabilité en phase de pré-candidature à l'ITIE: Burundi (Rapport provisoire)*, 30 March 2014, p. 36.

<sup>27</sup> Midende G. (March 2014), op.cit., pp. 52-53.

<sup>28</sup> Bamvuginyumvira F. (August 2014), op. cit., p. 27.

<sup>29</sup> Midende G. (March 2014), op.cit., p. 54.

<sup>30</sup> Pact, *PROMINES study: Artisanal mining in the Democratic Republic of Congo*, June 2010, pp. 36-39.

<sup>31</sup> World Bank (1 July 2014), op. cit., p.2.

## **Review of the Burundian Artisanal Gold Mining Sector**

April 2015

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By the time of publication of this paper, a new draft regulation was developed in response to this World Bank assessment and other development partners' input, coordinated through the national sectorial group on mining established recently. This draft has been written in late 2014 and early 2015, and involved an iterative consultation process in the framework of the above sectorial group.

### **3 Artisanal Mining Governance in Burundi**

#### **3.1 Institutional Framework**

The Directorate General of Geology and Mines (DGGM, *Direction Générale de la Géologie et des Mines*) within the Ministry of Energy and Mines (MEM) holds the responsibility to manage the Burundian mining sector under the supervision of the MEM. Within the DGGM there are two departments, one for geology and one for mines and quarries (*Direction des Mines et Carrières*).<sup>32</sup> Furthermore, there is the laboratory LACA (*Laboratoire de Contrôle et d'Analyse Chimique*) that is supposed to carry out controls and chemical analyses on minerals that are to be commercialised, but is lacking the technical capacity and material to do the required analyses.<sup>33</sup>

Burundi's Revenue Authority, *Office Burundais des Recettes* (OBR), was created in 2009 within the framework of a reform of Burundi's fiscal system. Its mandate is to collect taxes, combat fraud, offer fiscal advice to improve the government's policies, publish statistics with regards to tax revenues, etc..<sup>34</sup> To date, tax revenues from the mining sector remain limited however, representing less than 0.3% of the country's total fiscal revenues in 2013.<sup>35</sup>

MEM and DGGM are often described as weak institutions with a restricted budget (that is controlled by the Ministry of Finance). There have for example been complaints about the limited number of functioning vehicles at DGGM.<sup>36</sup> However, at the same time, some relatively new vehicles are available at the MEM. In part, this situation seems to reflect the issue of elite-capture, and possibly general mismanagement within state institutions.

MEM and DGGM reportedly struggle with serious internal management and communication challenges. These institutions seem to have difficulty to coordinate the wide range of (partly) donor supported activities, which also raises the issues of a lack of local ownership, and the high expectations for externally ready-made solutions.<sup>37</sup>

The management of the mining sector has allegedly been overly centralised at the Minister's office, and more recently with the president. With regards to this, several stakeholders mentioned the granting of licences for important private actors, referring to Jean Jbeli and CIAAMS<sup>38</sup> (see text box 1).<sup>39</sup> Those files are

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<sup>32</sup> Channel Research (August 2013) op. cit., p 18.; Bacinoni V., *La transparence dans la gouvernance minière, moteur du développement durable*, X, p. 12.

<sup>33</sup> PFN (Plate-Forme Nationale contre l'exploitation illégale des ressources naturelles), *Enquête pilote sur le processus d'exploitation minière et la mise en oeuvre de l'initiative régionale sur la lutte contre l'exploitation illégale des ressources naturelles au Burundi*, January 2013, pp. 9, 27-28; Bacinoni V. (X), op. cit., p. 12.

<sup>34</sup> EITI (30 March 2014), op. cit., p. 39.

<sup>35</sup> EITI (April 2014), op. cit., pp. 11, 33-34.

<sup>36</sup> Channel Research (August 2013) op. cit., pp. 18-19.

<sup>37</sup> PAC (March 2015), op. cit.

<sup>38</sup> Iwacu, *Nouveau Code Minier : il y a loin de la coupe aux lèvres*, 19 November 2013; Iwacu, *Un Nickel pas très sportif*, 28 May 2014.

<sup>39</sup> IPIS interview with international organisation, Bujumbura, September 2014.

allegedly dealt with by the President's office without transparency and without consultation with technicians of the mining services. The mining administration seems to be side-lined when it comes to decisions of financial consequence.<sup>40</sup> The highly centralised nature of the mining policy, combined with a lack of transparency contributes to an environment of suspicion in Burundi. The Burundian civil society organisation OLUCOME has denounced the lack of transparency with regards to contract negotiations, the application for work permits, and the collection and management of mining sector revenues.<sup>41</sup>

#### **Text box 1: CIAAMS and *Etablissement Jean Jbeili*'s contracts**

Over the last few years, several authorisations have been granted within the Burundian mining sector that have 'surprised' many stakeholders.

The monopoly position that Etablissement Jean Jbeili acquired to process and refine gold ores and tailings will be discussed in detail in text box 6, under Chapter 4.

Another granting procedure that raised a lot of criticism, concerned the exploitation permit for the nickel deposits in Waga and Nyabikere to the *Consortium International d'Affaires de l'Alliance Mondiale des Sports* (CIAAMS). It was granted just a few days after the promulgation of the new Mining Code, and is a good illustration of a contract that has been negotiated and signed without any transparency.

Information management and information sharing between different government departments and ministries represents another substantial challenge.<sup>42</sup> The lack of coordination between different authorities has been denounced by several sources.<sup>43</sup> The management of artisanal mining is fragmented over a wide range of ministries, departments and services, (i.e. the MEM, Ministry of Environment (MEEATU), the Ministry of Interior, and local and provincial authorities).<sup>44</sup>

Before the revision of the 1976 Mining Code, Midende (2009-2010) suggested that the creation of an entity within DGGM specifically responsible for artisanal mining could help to upgrade the sector. It was thought that it could, for example, grant artisanal exploitation permits, offer administrative and technical support, training, follow-up of environmental management, etc.<sup>45</sup> The draft Mining Regulation, however, does not include this consideration. World Bank

<sup>40</sup> IPIS interview with international organisation, Bujumbura, September 2014.

<sup>41</sup> Africa Mining Intelligence, *Mining governance under fire*, 4 March 2014.; French.china.org.cn, *Burundi : la société civile exige un système credible dans la gestion des revenus du secteur minier*, 27 February 2014.

<sup>42</sup> Channel Research (August 2013) op. cit., pp. 18-19.

<sup>43</sup> Interministerial Commission, *Rapport de mission d'une équipe des experts chargée de dresser l'état des lieux de la problématique de la gestion des exploitations artisanales des substances minérales provinces Kirundo et Muyinga*, June 2012, pp. 19-20.

<sup>44</sup> Midende G. (2009-2010), op. cit., pp. 50, 61.

<sup>45</sup> Ibid. 50, 61.

experts denounced the fact that a service to support artisanal and small-scale exploitation was not foreseen in the draft Regulation. They also proposed that this ASM entity could be dependent on DGGM.<sup>46</sup> Such an approach was adopted in the DRC, where the entity is called SAESSCAM. The Congolese case study, however, reveals that the bare creation of such service is not sufficient to upgrade the ASM sector. Ambiguous responsibilities, corruption, miners' distrust of state agents and a lack of capacity are some of the issues that affect its efficiency.<sup>47</sup> Most of these challenges also apply in the context of Burundi's mining governance, and they need to be addressed before such a service could fully assume its responsibility.

The World Bank assessment also deemed that the draft Mining Regulation assigned too many responsibilities to a proposed Mining Cadastre entity (*Bureau de Cadastre Minier*), including responsibilities that normally fall within the competence of other services. These include checking on *comptoirs'* exports, and the calculation and levying of taxes.<sup>48</sup>

### 3.2 Sector Decentralisation

Several actors have suggested that decentralisation of the mining administration might improve management of the sector and provide for a closer monitoring of mineral trade.<sup>49</sup> Ostensibly, empowering local community administrators should help them to secure mining sector benefits and invest these in local development. One of the measures that should be further developed is the Mining Code's provision that local authorities get a portion from the ad valorem tax (see section 3.4 on taxation).<sup>50</sup>

To date, provincial authorities have largely been side-lined with regards to the management of the artisanal mining sector. The Governor of the province of Kirundo expressed this frustration, explaining how he does not know where these exploitations take place and complaining about central state agents that carry out mine site visits without consulting him.<sup>51</sup>

In fact, local administrators are purportedly more involved in the management of the artisanal mining sector than the provincial authorities, albeit often in a more informal way. Local administrators - and local landowners - often lease out the subsoil for mineral exploitation. Seeing as they do not actually hold the right to do so, they perpetuate the informal sector.<sup>52</sup> These local state agents are present around mining sites to maintain order, but are often rather waiting for some gratuity.<sup>53</sup>

<sup>46</sup> World Bank (1 July 2014), op. cit., pp. 8-9, 16.

<sup>47</sup> Pact (June 2010), op. cit., pp. 36-39.

<sup>48</sup> World Bank (1 July 2014), op. cit., pp. 30, 32-33.

<sup>49</sup> EITI (April 2014), op. cit.

<sup>50</sup> Bamvuginyumvira F. (August 2014), op. cit., p. 63.; Bacinoni V. (X), op. cit., p. 12.; EITI (30 March 2014), op. cit., p. 38..

<sup>51</sup> Interministerial commission (June 2012), op. cit., pp. 3-4, 19.

<sup>52</sup> Interministerial commission (June 2012), op. cit., pp. 3, 19.

<sup>53</sup> Midende G. (March 2014), op.cit., p. 26.

The above shows that a decentralisation process should be a well-considered, long-term exercise. Otherwise, it risks increasing corruption.<sup>54</sup> Responsibilities have to be clearly delineated, and both local and provincial capacities as well as their respective sense of responsibility need to be developed and monitored. The DRC's decentralisation process has shown that when decentralisation is rashly executed (as was for example the case in the Congolese agricultural sector)<sup>55</sup>, there is a risk that provincial governments will be unable to develop their own policies for lack of capacity. Moreover, as was also the case in DRC, they may not yield sufficient leverage over technical services that are still rather dependent on their superiors in the capital.

Furthermore, it is unclear the extent to which decentralisation can realistically improve the management of Burundi's mining sector, which is relatively small. In the DRC, for example, provincial authorities do hold some responsibilities with regards to the management of ASM, such as issuing miners' cards, but its ASM sector is more than twenty times the scale of the Burundian ASM sector. On top of that decentralisation can sometimes lead to different and competing policies (e.g. in the DRC penalties have been installed for exports via other provinces), which does not seem to be advisable in Burundi's small ASM sector.

It therefore seems to be advisable that the central government remains in charge of the country's artisanal mining policy, provided that the administration and technical mining services are empowered to manage the sector responsibly. In addition, local authorities should be empowered to ensure that ASM revenues result in the local community's development (via a process of participatory governance).

### 3.3 ASM Formalisation

As described above, the Burundian government considers the mining sector to be an important instrument to fight poverty. Its Development and Poverty Reduction Strategy Papers (CSLP) of 2006 and 2012, describe how the country perceives the mining sector as a potential motor for economic growth and poverty reduction. The strategy suggests supporting research and exploration activities, supporting artisanal miners and their development into small and medium-sized enterprises (SME), and the transformation/refining of minerals within the country.<sup>56</sup> As such, the ASM sector is considered to be highly relevant to the social and economic development of the country.

The 2013 CSLP II progress report describes the efforts that the government has made to formalise artisanal mining and the technical support that it has offered. The government organised missions to sensitise, inspect and offer training to artisanal miners; it has regrouped miners into associations; and it has tried to fight fraud.<sup>57</sup> There have been reports about the MEM's commitment to formalise the ASM sector.<sup>58</sup> Other sources, however, deplored the fact that despite the

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<sup>54</sup> IPIS interviews with academics, Bujumbura, September 2014.

<sup>55</sup> Van Laer T. & Matthysen K., *Coopération belge au développement et les états fragiles: un écart entre politique et pratique*, 11.11.11 & IPIS, May 2014.

<sup>56</sup> Republic of Burundi (December 2013), op. cit., p. 45.

<sup>57</sup> Ibid., p. 45.

<sup>58</sup> Channel Research (August 2013) op. cit., pp. 18-19.

government's statements about the ASM sector being a priority with regards to poverty reduction, little progress has been made other than the revision of the mining code.<sup>59</sup>

While Burundian authorities, at the administrative level, seem to have an understanding of the need to bring control and formalisation to the country's artisanal gold mining sector,<sup>60</sup> it could be questioned whether this results into a higher political commitment. Several cases of political elites' implication in the illicit gold trade have been reported.

Furthermore, experiences from other countries, including the DRC, have shown that formalisation efforts have little chance succeeding as long as the issues of corruption and the lack of trust in state agents/the government are not addressed.<sup>61</sup> On top of that, the Congolese case has demonstrated that a formalisation process is doomed to fail if it does not offer true incentives to ASM actors. These incentives should be determined through consultative processes. Experience suggests this to be a more efficient strategy than opting for repressive measures. (See text box 2)

#### **Text box 2: Presidential suspension of ASM**

Another concrete 'formalisation initiative' has been the Burundian President's decision to suspend artisanal mining activities for two months (March and April 2013) in order to stimulate all stakeholders to formalise the sector. Some other reasons that have been mentioned for this move were the environmental and health issues related to artisanal mining. The suspension seems to have had very limited impact, and several local stakeholders were suspicious about the actual motivations for this decision. Such repressive measures have proven to be quite inefficient as was the case in eastern DRC, where the president installed a mining ban late 2010, and in Zimbabwe as well. Often, formalisation efforts include such repressive methods when it is clear that the provision of positive incentives are required for miners to start working within a formal framework.

Sources:

- UN GoE report S/2013/433, July 2014, §163
- MEM et al (April 2013), op. cit., p. 2.
- Iwacu, *Muyinga : l'extraction de l'or a repris. Mais ...*, 14 July 2013.
- IPIS/CIFOR, *The formalisation of artisanal mining in the Democratic Republic of the Congo and Rwanda*, December 2012, pp. 19, 30; Matthysen K. & Zaragoza Montejano A. (November 2013), op. cit.; Geenen S., *A dangerous bet: The challenges of formalizing artisanal mining in the Democratic Republic of Congo*, Resources Policy, 37, 3, September 2012, pp. 322–330.
- Spiegel S. J., *Formalisation policies, informal resource sectors and the de-/re-centralisation of power: Geographies of inequality in Africa and Asia*, CIFOR, December 2012.

<sup>59</sup> EITI (30 March 2014), op. cit., p. 5.

<sup>60</sup> PAC (March 2015), op. cit.

<sup>61</sup> Matthysen K. & Zaragoza Montejano A., *'Conflict Minerals' initiatives in DR Congo: Perceptions of local mining communities*, IPIS & EurAc, November 2013, p. 39.

MEM and DGGM are required to perform field visits (e.g. mine inspections) in order to ensure that their efforts to formalise the ASM sector have an impact. Yet, the MEM has complained that they can only commission such field visits very irregularly, due to a lack of means and finances for fieldwork.<sup>62</sup> It has however been raised that the Burundian mining sector is relatively small (somewhere around 100 mine sites). Therefore, DGGM should ostensibly be able to visit many mine sites at a considerable frequency within the available budget, especially when taking into account the available support from various donors.

Furthermore, DGGM's existing mining site visits seem to lack an integrated strategy. There are 'sensitizing missions' to educate miners on different topics (e.g. regulations), but limited management capacity seems to hamper the coordination of the various activities and the benefits that could arise from their coordination and related synergies (e.g. with mine site inspections). Moreover, there have been complaints that personal beneficiation and political considerations are privileged over employees' qualifications and expertise when composing field visit teams.<sup>63</sup>

### Mining Cooperatives

Another important formalisation effort in Burundi has been the regrouping of artisanal miners into cooperatives or associations, and the accompanying support to reinforce their technical capacity.<sup>64</sup> The intention is to improve respect for the regulatory framework and for the environment, and to provide for a fairer distribution of profits.<sup>65</sup> The government has supported the creation of cooperatives since 2009,<sup>66</sup> and the new Mining Code states that only registered cooperatives can apply for artisanal exploitation permits.

Midende (2014) reports that where cooperatives are operational a positive impact can be observed: these exploitations are often more respectful of the environment and are often carried out in fenced-off permit areas. Furthermore, they may apply more advanced techniques regarding the construction and maintenance of pits, shafts and tunnels, and they use small ventilation and processing equipment such as compressors, crushing machines, water pumps and sluices. These changes contribute to improved labour conditions and productivity including by decreasing the loss of minerals in residuals (tailings). Midende (2014) estimates this loss to be as high as 50% or even more (albeit without providing precise quantitative figures).<sup>67</sup>

Many stakeholders in Burundi, however, seem to support a narrow view when it comes to formalisation. Formalising the artisanal mining sector requires more than just organizing miners into cooperatives. As a matter of fact, in general, it can be questioned whether the creation of a cooperative model is appropriate for

<sup>62</sup> Bacinoni V. (X), op. cit., p. 13.

<sup>63</sup> PAC (March 2015), op. cit.

<sup>64</sup> PFN (January 2013), op. cit., p. 13.

<sup>65</sup> Xinhua, *Burundi : L'Assemblée Nationale adopte un nouveau code minier*, 8 October 2013.

<sup>66</sup> Midende G. (March 2014), op.cit., p. 57.

<sup>67</sup> Ibid., pp. 27-28.

artisanal gold mining.<sup>68</sup> Many Burundian local actors, and particularly miners, are not yet familiar with the notion of a cooperative; they seem to be rather suspicious about the potential benefits, and believe it will mainly serve the wealthier stakeholders to increase their profits.<sup>69</sup> Actually, this perception is not entirely unjustified. In practise, efforts to transform the artisanal mining sector into an economic activity controlled by cooperatives have often been subject to elite capture.<sup>70</sup>

At the Rutanganika cassiterite mine in Makebuko, Gitenga province, miners claim that only the pit bosses (associates from Dukorerehamwe) are gathered in the cooperative, and that miners continue to be employed as day labourers.<sup>71</sup> As such the cooperative is no longer a vehicle to stimulate social mobility. In some cases, however, where a cooperative was already functional, e.g. Kazoza Keza in Muyinga, reactions were more positive. Nevertheless, even there miners complained about profits, and ask for a more transparent and fair sharing of revenues within the cooperative.<sup>72</sup> Indeed, transparent revenue-sharing should be one of the basic characteristics of a cooperative.

#### **Text box 3: The CAR's effort to facilitate cooperatives access to foreign mineral buyers**

The Central African Republic (CAR) has developed an interesting provision to empower mining cooperatives, by facilitating their direct engagement with foreign mineral buyers. While *comptoirs* had to pay a 12% tax on diamond exports, the government decided to lower the export tax for cooperatives to 9%. The objective was to free artisanal miners, over time, from their dependency on local traders' pre-financing.

In practice, however, very few cooperatives managed to export diamonds themselves. Those local actors seem to lack the networks to get in touch with potential international mineral buyers. Furthermore, it could be questioned whether such policies do not run counter to recommendations to keep value-added activities in country.

Source: Matthysen K. and Clarkson I., *Gold and diamonds in the Central African Republic: The country's mining sector, and related social, economic and environmental issues*, IPIS, February 2013.

The above considerations show that not only is there a need for more sensitization about cooperatives, their functioning and related advantages, but the model's benefits and challenges should also be given due consideration by

<sup>68</sup> Fisher E. and Childs J., *An ethical turn in African mining: Voluntary regulation through Fair Trade*, in: Bryceson D.F., Fisher E., Bosse Jonsson J. and Mwaipopo R. (eds.), 'Mining and social transformation in Africa: Mineralizing and democratising trends in artisanal production', Routledge: London and New York, 2014, pp. 142-143.

<sup>69</sup> Bamvuginyumvira F. (August 2014), op. cit., pp. 45-46.

<sup>70</sup> Channel Research (August 2013) op. cit., p. 16.

<sup>71</sup> Iwacu, *Makebuko : une mine qui ne profite qu'au boss*, 27 September 2014.

<sup>72</sup> Bamvuginyumvira F. (August 2014), op. cit., p. 45.

the government and other stakeholders. Furthermore, a more comprehensive strategy needs to be developed that integrates artisanal mining into a wider development strategy. Such a strategy should take into account poverty reduction, environmental issues and vulnerable groups, such as children and women.<sup>73</sup> The promotion of artisanal mining as an important driver of local development will require a wide range of efforts including technical support and training, facilitating access to the market (see for example Text box 3), access to finances (e.g. micro finances), and protection of the environment, linking up with other development programs.<sup>74</sup> These aspects of ASM formalisation are poorly covered (if at all) in the CSLP II document, and development partners should start reflecting on the need for more differentiated strategies in this regard.

### 3.4 Taxation

The fiscal revenues that Burundi derives from its mining sector are relatively limited, compared to its total fiscal revenues. Revenues from the mining sector amounted to USD 1.2 million in 2012 and USD 976,000 in 2013, which represented 0.33% and 0.27% respectively of the total fiscal revenues.<sup>75</sup>

A considerable part of the national mining sector's fiscal revenues should originate from gold mining. In 2012, the gold export tax rendered more than USD 500,000 to the Burundian treasury.<sup>76</sup> It should however be noted that those taxes were levied under the old tax regime, which applied a gold export tax of 0.5%. Given the value of gold exports in 2012 and 2013 of more than US\$ 100 million p.a., the fiscal contribution is actually quite meagre. While the tax rate on ASM gold exports has been raised to 2% at the end of 2013, significantly reduced officially reported gold exports in 2014 offset any potential gains in absolute terms.

The new tax provisions will be discussed below; in general, these provisions do not focus on individual miners but rather on bigger production and trade units (cooperatives, exporters) that are less mobile than individual miners. Along the mineral supply chain there have been some complaints, however, about rising tax levels. While higher tax levels often risk pushing actors into the informal economy, many other factors are also determining miners' and traders' decision to work outside of the formal sector. One of the prevailing perceptions said to motivate the informal economy is the view that the payment of taxes does not translate into beneficiation at the local community level. Indeed, using tax revenues generated from the mining sector to invest in local communities seems to be key to the creation of an inclusive ASM sector that truly contributes to local development. While Burundian legislation does provide for community taxes (as discussed below), to date there remains little clarity about these taxes.

<sup>73</sup> Midende G. (2009-2010), op. cit., p. 61.

<sup>74</sup> IPIS interview international organisation, Bujumbura, September 2014.; Midende G. (2009-2010), op. cit., pp. 63-64.

<sup>75</sup> EITI (April 2014), op. cit., pp. 21, 33-34.

<sup>76</sup> Confidential Burundi gold export documents.

#### Revised Tax Rates

Burundi's tax regime as applicable to the mining sector has been subject to considerable changes over the last years. As described above, Burundi reformed its fiscal system in 2009, which included the establishment of a revenue authority, OBR. It intended to improve the collection of taxes, increase transparency and fight fraud. It has also reduced some administrative burden as all taxes are now paid to OBR's account at the Central Bank.<sup>77</sup>

The promulgation of the new Mining Code, in October 2013, and especially the adoption of two ministerial ordinances, i.e. 760/540/1758/2013 and 760/540/770/1757, have also contributed to changes to Burundi's fiscal regime as applicable to the mining sector<sup>78</sup> and more changes are likely to occur with the imminent adoption of the new *Règlement Minier*.

In the past, associations had to pay 8 million Burundian Franc (FBU, *Franc burundais*) annually for their artisanal gold mining permit, roughly equivalent to USD 5000.<sup>79</sup> However under the new law, they have to pay FBU 20 million every two years. Furthermore, for the acquisition or renewal of an artisanal mining permit one has to pay FBU 2 million per hectare, a tax that did not exist prior to 2013.<sup>80</sup> Note that these tax rates are under discussion due to the pending nature of the *Règlement Minier* and may hence still be adjusted.

Defining tax rates is a sovereign responsibility. However, countries need to apply reasonable care for a balanced and competitive tax regime. In the industrial mining sector, elevating royalty rates (in conjunction with other taxes such as corporate income tax or windfall taxes) beyond a certain level risks triggering disengagement by industrial mining companies, as recently observed in Zambia (Barrick Gold, operator of one of the country's largest copper mines, decided to suspend mining operations in the wake of disproportional royalty rate increases, but later reconsidered after the government agreed to re-adjust royalty rates back to more manageable levels). In the artisanal sector, on the other hand, increasing tax rates will not stop mining activities but discourages relevant supply chain actors from engaging in the formal sector. A regionally balanced and harmonized approach is important to minimize smuggling incentives.

Equally important is the basis for taxation. It is interesting to note that the Burundian Mining Regulation draft does not require individual miners to

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<sup>77</sup> Midende G. (March 2014), op.cit., p. 34.

<sup>78</sup> *Ordonnance Ministérielle n°760/540/1758/2013 portant conditions administratives et fiscales d'octroi et de renouvellement des autorisations de prospection, des permis de recherche, des permis d'exploitation des mines et des carrières ,des permis d'exploitations artisanales et d'agrément des comptoirs d'achat et de vente des substances minérales extraites artisanale au Burundi; Ordonnance Ministérielle n°760/540/770/1757 du 26/A2/2013 fixant la contribution annuelle pour la réhabilitation des sites d'exploitation artisanale des minerais, des carrières ainsi que des comptoirs d'achat et de vente des minerais d'exploitation artisanale.* (Source: Midende G. (March 2014), op. cit., p. 16.)

<sup>79</sup> Ibid.; Nkurunziza P., *L'exploitation minière artisanale au Burundi: Evaluation de base*, University of Burundi, commissioned by BGR, November 2013, op. cit., pp. 11, 38.

<sup>80</sup> EITI (30 March 2014), op. cit., pp. 71-72.

purchase a permit to start digging.<sup>81</sup> Brazilian and Guyanese formalisation efforts, for example, only became successful once they stopped focussing on the individual miner for registration, and shifted to larger production units.<sup>82</sup> Taking into account the limited number of mining sites in Burundi, taxing mining permits (which are immobile) might indeed be a viable road. Another option is taxing local processing machines, as already happens in practice with community taxes (see below).

It is however important to realise that ASM will never deliver massive tax revenues, especially compared with the costs of formalising it. Therefore, potential tax incomes should not be the prime motivation to start up a formalisation process (see Text box 4).

As a result of the above ministerial ordonnances, the combined exit tax and tax on the value of precious metals (*ad valorem* tax) for gold increased from 0.5%<sup>83</sup> to 2% by the end of 2013. This tax is levied on *comptoirs* when they want to export their gold parcels. On top of that, gold *comptoirs* have to pay FBU 100 million every 2 years at present to obtain their export license, while they only paid FBU 16 million per year before.<sup>84</sup>

#### Text box 4: Potential gold tax incomes from the DRC's Orientale province

It is estimated that 150,000 artisanal gold miners and dozens of semi-industrial *dragues* (river dredges) might produce up to 16 tonnes of gold per year in the DRC's Orientale province alone. If the province's gold supply chain were entirely formalised, the Congolese government might theoretically earn about USD 25 million in tax revenues under the tax regime that was applicable in 2010. While this represents a considerable amount, the government should balance it with the costs associated with formalising and controlling a minimum of 150,000 artisanal producers.

Also in 2010, Tenke Fungurume Mining (TFM), the biggest industrial mining company in the country, excluding oil companies, paid well above US\$100 million to the Congolese Treasury. At the same time, it employed ca. 4000 permanent and contract employees. This illustrates the reverse relationship between local employment benefits and fiscal revenues of artisanal and industrial mining, respectively.

Source: Matthysen K., Hilgert F., Schouten P. & Mabolia A., A detailed analysis of Orientale Province's gold sector, IPIS/GIZ/ICGLR, December 2011, unpublished, pp. 42-48; EITI. DRC report 2010. December 2012.

<sup>81</sup> The Mining Code did not require individual miners to acquire a miner's card. A first draft of the Mining Regulation, however, did require this. In the end, this has been revised in the latest draft version of the Regulation, after World Bank experts pointed at this inconsistency.

<sup>82</sup> Blorre S., *Trading tenure for formalisation: A new approach to the licensing of artisanal diamond mining in the DRC*, in: Van Bockstael S. & Vlassenroot K. (eds.), *A farmer's best friend? Artisanal diamond mining and rural change in West and Central Africa*, Egmont Institute, Gent, Academia Press, 2012, pp. 34-36.

<sup>83</sup> The rates are established in law 1/050 of 11 August 2000. Source: Nkurunziza P. (November 2013), op. cit., p. 11.

<sup>84</sup> EITI (30 March 2014), op. cit., pp. 71-72.

Furthermore, the Burundian government charges a yearly contribution for the rehabilitation of mining sites to all commercial actors within the mining sector.<sup>85</sup> *Comptoirs* and cooperatives have to pay FBU 2 million and FBU 1 million, respectively. Previously, under the old mining regulation, both sets of stakeholders were charged FBU 1 million, according to a study commissioned by EITI,<sup>86</sup> while Nkurunziza (2013) states this was FBU 1 million for enterprises and FBU 500,000 for associations, referring to ministerial ordinance 540/760/770 of June 2006.<sup>87</sup> It has been questioned what the government is doing with these contributions, as it does not seem take any responsibility with regards to site rehabilitation. (See section 5.5 on environmental effects of ASM.)

Another change with regards to the new tax legislation has been the removal of the differentiation between two types of mineral export *comptoirs*, i.e. those that imported and then re-exported minerals and those that were authorised to buy and export minerals produced in Burundi. In the previous iteration of the legislation transit *comptoirs*, were exempted from several financial obligations (i.e. the '*obligation de rapatriement de devises*' and the ad valorem tax) whereas the new one does not make this distinction any more.<sup>88</sup> This seems to be an improvement as it simplifies the regulation, and reflects reality. In practice both *comptoir* types would buy minerals irrespective of their origin.<sup>89</sup> Only registered transit *comptoirs* would benefit from reduced tax rates, however, such that they completely dominated the mineral market. Interestingly, gold exported by transit *comptoirs* would still receive Burundian Certificates of Origin upon export.

### Reactions to Higher Mineral Tax Rates

A variety of reactions have been expressed with regards to the new tax levels. The combined gold export tax has been increased and now matches the DRC's export tax for ASM gold recently lowered to 2%.<sup>90</sup> This is a positive development with regards to reducing incentives for regional smuggling. It is therefore important to monitor attempts at the national level to again reduce Burundian mineral export taxes, as such changes would negatively affect harmonisation efforts. Furthermore, substantial differences still exist with other regional actors' tax rates. Tanzania, for example, applies an ASM gold export tax rate of 4%.<sup>91</sup> However, it should also be noted that fiscal harmonisation of ASM gold should extend beyond export taxes in order to be a meaningful exercise. The DRC, for example, levies substantial additional taxes at the mine and provincial level.<sup>92</sup>

Many operators within the sector, including miners, cooperatives as well as traders and *comptoirs*, have considered the increase of tax levels excessive.<sup>93</sup>

<sup>85</sup> Ministerial ordinance 760/540/770/1757 of 26 December 2013.

<sup>86</sup> EITI (30 March 2014), op. cit., p. 73.

<sup>87</sup> Nkurunziza P. (November 2013), op. cit., p. 24.

<sup>88</sup> Midende G. (March 2014), op.cit., p. 49.; Midende G. (2009-2010), op. cit., p. 58.

<sup>89</sup> Nzohabonimana D. (June 2012), op. cit., p. 21.

<sup>90</sup> UN GoE (January 2014), S/2014/42, §193

<sup>91</sup> More information on this differences in taks rates and its effects can be found in: PAC (April 2015), op. cit.

<sup>92</sup> PAC, Internal report, September 2014.

<sup>93</sup> Bamvuginyumvira F. (August 2014), op. cit., pp. 32-33, 66-67.

Some have allegedly interpreted this as a way to eliminate competition, and to secure the financial and political interests of national elites. Furthermore, excessive tax rates might increase fraud and undermine formalisation efforts.<sup>94</sup> OBR has reportedly witnessed a decrease of mineral export tax revenues since the promulgation of the new code and the accompanying ministerial ordinances.<sup>95</sup> However, this observation dates from March 2014, no more than a few months after the promulgation of the new law and new tax rates (late December 2013). It seems necessary to investigate more systematically whether this decrease was a temporary aberration or a long-term trend.

Taking into account the regional situation, it is also possible that the observed decrease in combined (3Ts and gold) mineral export revenues in 2014 (compared to previous years) reflects (1) a reduction of Burundian Certificates of Origin issued for DRC gold smuggled out to Dubai via Burundi (thus removing a layer of pseudo-legitimacy by obtaining certificates for such smuggled gold but also moving the latter completely into the informal circuit), and (2) difficult market access for national 3T mineral exports as a result of international smelter due diligence requirements not met by Burundi. Traditionally, the artisanal 3T sector has contributed more taxes to the Burundian treasury than the artisanal gold sector in relative terms, primarily because export taxes for 3Ts are twice as high (such that gold and the 3Ts each contribute ~half in total terms).

### Community Taxes

In order to contribute to local development, mining operations are expected to pay a community tax. The former Burundian mining legislation, however, did not provide any details on this contribution, which created a lot of uncertainty.

First of all, there was a lack of clarity with regards to the tax level and the basis for taxation. Local authorities have developed a wide variety of systems for these community taxes. In several gold mines in Cibitoke and Muyinga provinces, associations pay between FBU 5,000 and FBU 7,000 per miner annually.<sup>96</sup> In Kirundo province, there have been reports of a tax of FBU 200 per kilogram of wolframite, while in other cases they might pay FBU 100 or 150 per kilogram. While, at some gold mines in Butihinda, Muyinga province, operators pay a community tax of 5% to 15% on their gold production. Furthermore, there have been reports of mine operators paying a negotiable monthly lump sum for their exploitation activities.<sup>97</sup> Conversely, an administrator in Butihinda, Muyinga province, said that in several cases they charged a lump sum of FBU 200,000 per crushing machine per year, regardless of the actual production.<sup>98</sup>

The junior gold exploration company Flemish Gold, intermittently operating in Burundi until 2014, has also been subjected to a community tax. The agreement with the government over its exploration permit mentions a total contribution of

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<sup>94</sup> Midende G. (March 2014), op.cit., pp. 54-55.

<sup>95</sup> EITI (30 March 2014), op. cit., p. 36.

<sup>96</sup> Nkurunziza P. (November 2013), op. cit., p. 38.; Midende G. (2009-2010), op. cit., p. 58.

<sup>97</sup> Interministerial commission (June 2012), op. cit., pp. 9, 16, 17, 19.

<sup>98</sup> Ibid., p. 15.

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USD 200,000 for social and community development projects within its concession.<sup>99</sup>

It is not entirely clear to which extent these community taxes are actually levied. In several cases, mining site operators declare that they have paid this tax on a regular basis, while local authorities deny this.<sup>100</sup> A survey carried out by a civil society coalition, PFN,<sup>101</sup> reported that 30% of the miners declared they paid some kind of community tax or contribution.<sup>102</sup>

Another issue is the lack of transparency with regards to the management of these contributions. The problem starts at the earliest stage of revenue collection, as the local administration often does not register these incomes in the community's budget.<sup>103</sup>

Under the new Mining Code it has been decided that part of the ad valorem tax should be redistributed to local authorities, to the *commune*.<sup>104</sup> However, so far, no implementing orders have been adopted to define this distribution.<sup>105</sup>

### Illegal Taxation and Corruption

Burundi's artisanal mining sector is characterised by fraud, corruption and illegal taxation, in which administrators and state security forces are often implicated. The MEM has recognised this problem officially, and stated that this reality poses an important barrier to a more 'rational' artisanal exploitation of mineral resources.<sup>106</sup>

Local state agents are present in mining areas in order to supervise the sector and to maintain order. However, in reality, they are often involved in mineral fraud or just waiting for some gratuity, in exchange for a favour. For a small bribe, some police officers and local administrations are willing to turn a blind eye to illegal mineral exploitation (not licensed under a MEM permit). In other cases, mine operators have for example paid police officers to guarantee security at their site.<sup>107</sup>

Channel Research's (2013) governance assessment of the 3T sector describes how it is particularly the national police that is involved in guarding mining sites. Larger mine operators often have an arrangement with the police to secure their site 24 hours a day, reportedly paying each police officer between FBU 50,000 and 100,000 per month. Cooperatives offer smaller motivational payments to

<sup>99</sup> EITI (30 March 2014), op. cit., p. 74.

<sup>100</sup> Interministerial commission (June 2012), op. cit., p. 19.

<sup>101</sup> The *Plate-Forme Nationale contre l'exploitation illégale des ressources naturelles* (PFN) includes OLUCOME (*Observatoire de Lutte contre la Corruption et les Malversations Economiques*), ABUCO (*Association Burundaise des Consommateurs*) and CEJP Burundi (*Commission Episcopale Justice et Paix Burundi*).

<sup>102</sup> PFN (January 2013), op. cit., p. 30.

<sup>103</sup> Ibid., pp. 26-27.; Midende G. (2009-2010), op. cit., p. 58.; EITI (30 March 2014), op. cit., p. 38.

<sup>104</sup> Article 147 of the 2013 Mining Code.

<sup>105</sup> Bamvuginyumvira F. (August 2014), op. cit., p. 33.

<sup>106</sup> MEM et al (April 2013), op. cit., p. 17.

<sup>107</sup> Midende G. (March 2014), op.cit., p. 26.; PFN (January 2013), op. cit., pp. 26-27.; Interministerial commission (June 2012), op. cit., p. 10.

police for patrolling their sites during the day. It is likely that the situation in the ASM gold sector is similar.

Even though such payments to (public) security forces are illegal, and present a risk of corruption and extortion, many stakeholders allegedly claimed that these security arrangements help to improve security around mining sites, and tackle mineral thefts.<sup>108</sup> PFN (2013) showed the extent of the problem of illegal taxation by state agents: 55% of the respondent confirmed the existence of extortions committed by both police officers and local administrators.<sup>109</sup>

Many administrators, police, military people and politicians indirectly participate in the exploration, extraction and trade of minerals. Many hold for, example, an indirect membership (e.g., through their spouses) in associations - which may or may not be officially registered – that exploit or trade minerals. As this might pose a conflict of interest, the law prohibits this interference. Under the new legislation this is clearly described under articles 92 (with regards to cooperatives) and 98 (with regards to *comptoirs*).<sup>110</sup> However, the interference of this elite in the mining sector is a deep-seated tradition in Burundi. Many important state agents actually have an economic interest, and have made considerable investments at all points along the mineral chain from the mine to export.<sup>111</sup> Consequently, many of those same stakeholders try circumventing the law, for example by paying the police to protect their interests; as such it is questionable whether these legal provisions are enforceable in practice.<sup>112</sup> Moreover, the endemic corruption in Burundi's gold mining sector reinforces informality among miners and cooperatives: production is under-reported and financial management and transactions are preferably done in cash, rather than through bank accounts, in order to disguise mining sector income from corrupt state agents. The resulting semi-informal framework not only impacts on corruption and tax evasion risks, but further significantly reduces sectorial growth perspectives.

### 3.5 Due diligence, Chain of Custody and Mineral Traceability

Based on exemplary gold mine references from Muyinga and Cibitoke provinces, Nkurunziza (2013) describes how chain of custody documentation is lacking along Burundi's gold supply chains.<sup>113</sup> Pre-concentrated gold is stored at the mine site until a sufficient quantity, often ca. 1-2 kg (local value up to ca. USD 100,000), has been accumulated for selling it. No official documents accompany the pre-concentrate gold (of typically ca. 90% purity) - after crushing, sluicing and panning – when it is transported to the *comptoirs* in Bujumbura. For security reasons the transporter is selected secretly, and the transport is carried out in secret as well.<sup>114</sup>

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<sup>108</sup> Channel Research (August 2013) op. cit., pp. 6-7.

<sup>109</sup> PFN (January 2013), op. cit., p. 26.

<sup>110</sup> MEM et al (April 2013), op. cit., p. 17.; PFN (January 2013), op. cit., pp. 26-27.; Law 1/21 of 15 October 2013, *Portant Code Minier du Burundi*.

<sup>111</sup> Midende G. (March 2014), op.cit., p. 53.

<sup>112</sup> Ibid., p. 26.

<sup>113</sup> Nkurunziza P. (November 2013), op. cit., pp. 11-12.

<sup>114</sup> Ibid., pp. 11-12.

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In Bujumbura, the *comptoir* purchases the gold and issues an invoice to the seller once gold purity has been assessed. To do so, the *comptoir* takes the gold through an acid-based refining stage producing ca. 90-95% pure gold. After weighing the gold once more, and defining the value, the seller gets paid. The invoice mentions the names of the *comptoir* and the seller, as well as the date and the value of the gold. There is no mention of the specific mine of origin for the gold traded.<sup>115</sup>

To officially export gold, *comptoirs* typically declare gold lots of 8±5 kg weight (with a value of USD 100,000-500,000) for which it draws up a document to be signed by the Mining Services, OBR and the border police PAFE (*Police de l'Air, des Frontières et des Etrangers*). It mentions the name of the exporter, weight, level of purity, London price of the day, export value, export tax, destination, point of export, the means of transport and the name of the transporter (airline carrier).<sup>116</sup>

Subsequently, the export is sealed and a certificate of origin is delivered to the exporter. This certificate is not related to the 'ICGLR certification'; there is no mechanism operational in Burundi as of yet to issue the latter type of certificate, as the basic components of the Regional Certification Mechanism (inspections and chain of custody schemes) are not in place.<sup>117</sup> Currently, gold sourced from Burundi cannot be considered to comply with the due diligence provisions as laid out by the OECD.<sup>118</sup>

In April 2013, the Minister of Mines promulgated a decree that revised the 2011 certification procedures (decree 760/214/1/3/2011), and incorporated the ICGLR's Regional Certification Mechanism into the national Mining Regulation. While this implies that gold and 3T minerals within Burundi's mineral chain are to be accompanied by documentation that indicate the mine of origin and all intermediaries,<sup>119</sup> this regulation is not enforced. The absence of traceability in Burundi's gold sector has also been noted by the UN Group of Experts (UN GoE).<sup>120</sup> The implementation of certification and traceability systems to enable due diligence is still in its infancy with limited progress in the 3T sector and complete lack of progress as far as gold is concerned.

Several issues hamper the implementation of mineral traceability and certification. Above, it has been discussed how MEM and DGGM reportedly struggle with serious internal management and communication challenges. The Burundian authorities seem to be unaware about or ignorant of their role and responsibility with regards to RINR and the Regional Certification Mechanism (RCM). A lack of local ownership and high expectations for externally ready-made solutions have reportedly been observed.<sup>121</sup>

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<sup>115</sup> Ibid.

<sup>116</sup> Ibid.

<sup>117</sup> Ibid.

<sup>118</sup> OECD, *Gold Supplement to the OECD Due Diligence Guidance*, July 2012.

<sup>119</sup> Ordinance Ministérielle 760/413/584/2013 portant révision de l'ordonnance ministérielle 760/214/1/3/2011 portant procédures de certification des substances minérales en République de Burundi.

<sup>120</sup> S/2013/433, §163.

<sup>121</sup> PAC (March 2015), op. cit.

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The main challenge, with regards to due diligence and traceability in Burundi's gold sector, is the long-standing high level of illegality within the sector and the associated risks of the implication of national elites as well as corruption at the level of mining and security services. The long-standing involvement of local administrators and police in mineral fraud and illegal exploitation has been discussed above.<sup>122</sup> Furthermore, the trade and exploitation of gold tailings, creates a traceability issue as well. This will be discussed in more detail below.

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<sup>122</sup> Africa Mining Intelligence, *Certification: turning up heat on Bujumbura*, 9 May 2012.

## 4 Private Actors in Burundi's Gold Sector

For several years, **Flemish Investments Burundi** has been present in Burundi. The company is a subsidiary of the Canadian junior exploration company Flemish Gold Corp. (nowadays called Murchison Minerals Ltd). It acquired four exploration permits in 2010-2011, i.e. Muhwazi, Giteranyi, Gakere and Tora Kibezi. The first three concessions are located in the northeast of Burundi, the latter in the centre-west.<sup>123</sup>

Flemish began exploration activities in 2010,<sup>124</sup> and has invested in infrastructure, including in social infrastructure such as schools, water reticulation, bridges, roads, and clinics. The company has mobilised some support within the international community and embassies to reword the revision of Burundi's Mining Code to enhance the country's investor friendliness,<sup>125</sup> as the government's initial revision was allegedly carried out without any stakeholder consultation.

The company has since then left the country for reasons, which have been the subject of a wide range of speculation in the press. Some sources claim the company was unsatisfied that the government did not help the company to deal with illegal and 'legal' artisanal miners on its concession.<sup>126</sup> Furthermore, it has been raised that the significant increase of tax levels for exploration permits, at the end of 2013, was the decisive factor for Flemish's choice not to cooperate with the Burundian government anymore. Recently, an article has been published stating that some strongmen of Burundian politics opposed Flemish and blocked the renewal of one of Flemish permits for over a year.<sup>127</sup> The above resulted in the loss of Flemish Investments' investor confidence in the Burundian mining sector.

### Text box 5: International companies deserting Burundi's gold mining sector

In 2008, **International Gold Exploration AB** obtained a gold research permit for the Mabayi-Butara region of Cibitoke province. Meanwhile, the American company **Caracal Gold Llc** secured a gold research permit for the areas of Butahana (Cibitoke) and Matongo-Bandaga (Kayanza). Both companies have since ceased their research activities, the latter allegedly due to the difficult co-existence with artisanal miners.

Sources:

- Africa Mining Intelligence, *Gold Permit for Flemish as IGE Pulls Out*, 24 March 2010.
- Midende G. (March 2014), op.cit., pp. 10, 25.

<sup>123</sup> Flemish Gold Corporation, *London December 2012 Update*, presentation, December 2012.

<sup>124</sup> Flemish Gold Corporation, *London December 2012 Update*, presentation, December 2012.; Bloomberg, *Manicouagan Minerals Inc. and Flemish Gold Corp. Provide Update*, 8 May 2013.

<sup>125</sup> Bujumbura News, *Les raisons profondes derrière le départ précipité de la société FLEMISH Investments du Burundi*, 6 February 2015.

<sup>126</sup> Midende G. (March 2014), op.cit., p. 25.

<sup>127</sup> Bujumbura News, *Les raisons profondes derrière le départ précipité de la société FLEMISH Investments du Burundi*, 6 February 2015.

Besides these political considerations, it is also possible that geological evaluations of the Flemish concessions, combined with the poor global economic climate that reduced the cash flow of junior exploration companies, and to a lesser degree the decreasing gold prices during the last two years, simply made it uneconomical to continue to invest in its Burundian concessions. The disengagement of international companies such as Flemish from Burundi seems to have reduced the leverage and opportunities to disseminate due diligence and good governance in the national gold mining sector. In other countries (e.g. Rwanda or the DRC), the presence of such international actors increases scrutiny (from national as well as international actors), which often translates into heightened calls for the introduction transparency and anti-corruption policies. The pressures felt and exerted by such private sector actors can therefore serve to build and to scale up good governance in the mineral sector.

#### Text box 6: Etablissement Jean Jbeili

The Lebanese-financed company holds the Mabayi concession in the northwestern corner of the country, in Cibitoke province, to extract gold and associated minerals. It also operates as a gold *comptoir* in Bujumbura. In 2013 it exported 46.5 kg of gold worth more than USD 1.9 million, which is relatively small compared to Burundi's official gold exports valued at more than USD 100 million per year.

In March 2013, a Presidential Decree was issued to Jean Jbeili giving it a 10-year monopoly to process and refine gold ores and tailings, from both artisanal and industrial operations, in order to produce gold ingots of 24 carats. The company has also been granted the authorisation to tag these gold ingots with a bar code in order to guarantee the 'good management of traceability of exports'.

The 10-year-term starts as soon as the refinery that Jean Jbeili has yet to build is operational. The construction had been foreseen to take one year. Burundian authorities informed the UN GoE that the gold refinery was going to be built in Cibitoke province, and would refine all Burundian gold before exportation. However in early 2014, the UN GoE reported that Jean Jbeili had yet to start activities at its refinery. By March 2014, Midende reported that it seemed that Jbeili had altogether suspended its refining activities in Burundi.

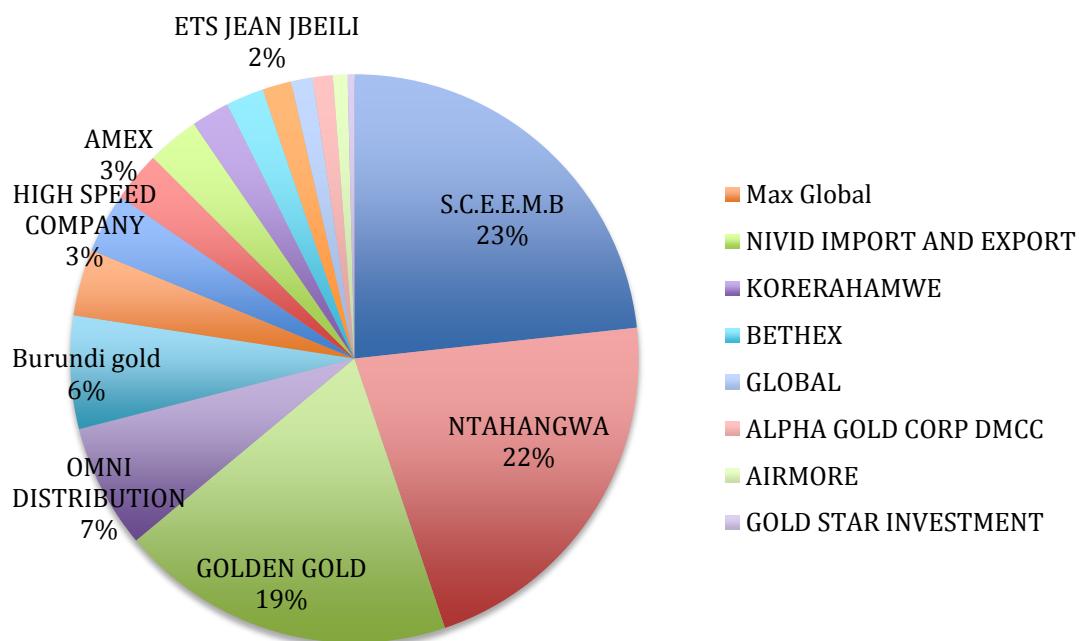
Sources:

- Africa Mining Intelligence, *Jbeili the new mining kingpin*, 14 May 2013;
- Confidential Burundi gold export documents;
- Décret 100/71 du 8 mars 2013 portant autorisation de concession pour le raffinage et le marquage par code barré de l'or au Burundi à la société "Ets Jean Jbeili";
- MEM, *Contrat de concession pour le raffinage et le marquage par code barré de l'or au Burundi*, January 2013;
- S/2013/433, §163;
- S/2014/42, § 192;
- Midende G. (March 2014), op.cit., pp. 10-11.

Currently, another relatively more opaque actor within Burundi's gold mining sector is **Etablissement Jean Jbeili**. It holds a gold concession in the country and operates as a gold *comptoir*. The President has also granted the company exclusive rights to refine gold ores in-country. This privileged position that Jean

Jbeili seems to have acquired, if only temporarily, has raised concern among many stakeholders in Burundi's mining sector, including civil society organisations and foreign diplomats. It is yet another illustration of the centralised and secret nature of contract negotiations in the country.<sup>128</sup>

In addition to Jean Jbeili, there are several other *comptoirs* operational in Burundi's gold sector. In 2013, 16 *comptoirs* exported a total of 2.8 tons of gold, worth almost USD 116 million. Three of them were responsible for 64% of the total export volume. Ntahangwa Mining alone exported 609 kg.<sup>129</sup> The latter is the successor of Berkenrode, who has dominated Burundian gold exports for many years. The UN GoE has accused Berkenrode of illegally sourcing gold from the DRC, i.e. from ASM gold supply chains linked to the FDLR rebels. Golden Gold has allegedly exported from Bujumbura on behalf of AR Gold in Goma. In 2013 it exported 539 kg of gold. And finally S.C.E.E.M.B. exported 657 kg of gold. In addition to these, smaller *comptoirs* such as AMEX, Burundi Gold and High Speed Company exported 80 kg, 182 kg and 96 kg respectively in 2013.<sup>130</sup>



**Figure 1:** Market share of Burundian gold exports per *comptoir*, 2013 (source: internal Burundian gold export statistics). Total value of these exports was US\$ 116 million (2.8 t). Note that market share has shifted significantly in 2014 with only three registered and active export houses.

<sup>128</sup> Africa Mining Intelligence, *Jbeili the new mining kingpin*, 14 May 2013.

<sup>129</sup> Confidential Burundi gold export documents.

<sup>130</sup> PAC (May 2014), pp. 11-12.; Confidential Burundi gold export documents.

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However, since early 2014, very few gold *comptoirs* have survived. By July 2014 only 3 had successfully registered: Burundi Gold Export, High Speed Company and AMEX (Amigo Minerals Exploration). By October 2014, these three *comptoirs* had officially exported 538 kg of gold, a mere quarter of the 2013 exports; eleven other *comptoirs'* applications were still pending as of July 2014.<sup>131</sup> It is entirely plausible that the total number of *comptoirs* registered in 2013 was exaggerated when one considers the limited scale of Burundi's gold production and the risks for smuggling DRC ASM gold. However, the new registration of *comptoirs* has been achieved without any transparency and raised suspicions that only those who have connections to powerful individuals stand a chance of obtaining authorisation to trade gold.<sup>132</sup> It has also created a limited market, resembling a monopoly, for local legitimate gold producers.

Artisanal gold exploitation in Burundi is being carried out both illegally and legally. There are several **associations/cooperatives** that are working within the legal framework, although it is likely that they are under-reporting their actual production (e.g., to avoid being subject to excessive bribes to officials). In 2013, 23 gold associations and 18 gold cooperatives had formally registered with the Government,<sup>133</sup> which is a considerable increase compared to five years previously, when only 5 were registered in 2009. In early 2014, under the re-organized permit regime, the total number of cooperatives declined<sup>134</sup> and by October 2014, only 11 gold cooperatives had been aggregated and authorized for mining activities (while 20 cooperatives had been registered).

**Table 1: Registered artisanal gold cooperatives (mid-2014)**

Cooperative	Permit location
Abahuza Bikorwa	Cibitoke (Ruhororo)
Twikenure	Muyinga (Bukurira2)
Kazoza Keza	Muyinga (Bukurira)
Dushire Inguvu HamweTuronke Ibantu	Cibitoke (Rugogo KP)
Dukorere Hamwe Dusoze Ikivi	Cibitoke (Butare)
Twiyungunganye	Ruyigi (Munazi)
Exploitations minières de Moso	Ruyigi (Munyinya)
Komezakazi	Cankuzo (Gakerekwa)
MOTRACO	Cankuzo (Rutoke)
Data Mining	Bujumbura (Nyaruyaga)
C.T.E.E.A.O.	Ruyigi (Manazi Gifunzo)

Source: Bamvuginyumvira F. (August 2014), op. cit., p. 44.

<sup>131</sup> Bamvuginyumvira F. (August 2014), op. cit., p. 50 - 51.

<sup>132</sup> IPIS interviews with civil society representatives, Bujumbura, September 2014; Private sector stakeholders have confirmed this observation.

<sup>133</sup> EITI has published a list of 19 gold associations and cooperatives in Burundi for the year 2013. (Source: EITI (30 March 2014), op. cit., p. 67.)

<sup>134</sup> Midende G. (March 2014), op.cit., p. 21.

## **5 Burundi's Gold Supply Chain**

Burundi is located in the middle of Africa's Great Lakes Region that is studded with rich gold deposits. The country's western neighbour, DRC, is increasingly attracting the attention of industrial gold miners, and its artisanal mining workforce produces a steady supply of gold with an estimated 8 to 10 tonnes of gold per year.<sup>135</sup> Burundi's eastern neighbour, Tanzania is also an important industrial and artisanal gold producer with hundreds of thousands artisanal gold miners. With Burundi being sandwiched between these two richly endowed countries in an overall similar geological setting, it is therefore plausible that Burundi should also host some gold deposits. It further plays an important role in the region's illicit gold trade as a transit hub for DRC ASM gold en route to Dubai.

### **5.1 Gold Exploitation**

The previous section showed that despite limited exploration activities, no industrial miners are currently exploiting gold in Burundi. Artisanal and small-scale gold exploitation, on the other hand, has been widespread for many years in several parts of the country (temporarily interrupted through the bloody civil war and internal conflict from 1993-2005). Gold has already been extracted in Burundi since the 1930s. These exploitations involved artisanal miners under the supervision of colonial authorities and/or small Belgian mining enterprises who commercialised this production.<sup>136</sup> Nowadays, however, artisanal gold exploitation is no longer controlled by a few large companies, but in the hands of a wide range of local actors. Nevertheless, gold mining activity is rampant in several areas in Burundi.

In north-western Burundi, there is considerable gold exploitation in the alluvial deposits along tributaries of Rusizi river such as Kaburantwa, Muhira and Nyamagana, located in Cibitoke province.<sup>137</sup> The Mabayi region is for example well-known for its gold deposits,<sup>138</sup> and currently falls within a concession held by Jean Jbeili.<sup>139</sup> Extensive primary gold mineralization associated with ferruginous breccias and quartz veins has been documented in the province as well<sup>140</sup>.

The rise of artisanal gold mining in Cibitoke can be visualized on Google Earth satellite images. Figure 2 illustrates this through satellite photographs of the

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<sup>135</sup> IPIS, *Analysis of the interactive map of artisanal mining areas in Eastern DR Congo: May 2014 update*, May 2014.

<sup>136</sup> Ntiharirizwa S., *Le potentiel en ressources minérales du Burundi, nord-est de la ceinture orogénique Kibarienne, Afrique centre-orientale*, Mémoire, Laval University, 2013.

<sup>137</sup> Nzohabonimana D. (June 2012), op. cit., p. 15.

<sup>138</sup> Midende G. (March 2014), op.cit., p. 9.

<sup>139</sup> AG News, *Un nouveau code minier remplace celui de 1976*, 12 October 2013.

<sup>140</sup> Brinkmann, J. et al. (2001), *La Géologie et la Minéralisation Primaire de l'Or de la Chaîne Kibarienne, Nord-ouest du Burundi, Afrique Orientale*. Geologisches Jahrbuch Reihe D, Bundesanstalt für Geowissenschaften und Rohstoffe (BGR).

river Kaburantwa, the first taken in 2005 and the second in 2009. This is just one of the many examples that can be found on Google Earth.



Figure 2: satellite photograph (Google Earth) of Kaburantwa river in northern Burundi showing expansion of illegal ASM gold mining activities along the river bed between 2005 (left) to 2009 (right).

Although the provinces South of Cibitoke, namely Kayanza, Bubanza, Bujumbura Rural and Bururi, have traditionally not been subject to extensive gold exploitation, several interviewees claim that artisanal mining is now on the rise in these areas.<sup>141</sup> The Tora-Kibezi permit is located immediately South of this area, bordering Lake Tanganyika and including parts of Bujumbura Rural and Bururi. Flemish Investments, the concession holder, reported on the existence of several artisanal alluvial gold exploitations on its concession.<sup>142</sup>

There have also been reports of an artisanal gold mining boom in the North-Eastern part of the country, and particularly in Muyinga province. Gold in this province is found in-situ hosted by quartz veins,<sup>143</sup> many of which crop out in Flemish's former concession areas.<sup>144</sup> Artisanal gold exploitation does not stop at the province's border either, but also occurs, albeit less intensively, in the neighbouring provinces of Kirundo and Cankuzo, and further south in Ruyigi. Mining authorities refer to this resurgence of artisanal to explain, in part, increasing gold export figures after the 2009-2010 slowdown.<sup>145</sup> However, given the overall relatively small scale of Burundi's ASM gold sector, it is implausible to

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<sup>141</sup> Interviews with civil society representatives, Bujumbura, September 2014.

<sup>142</sup> Flemish Gold Corporation, *London December 2012 Update*, presentation, December 2012.

<sup>143</sup> Nzohabonimana D. (June 2012), op. cit., p. 15.

<sup>144</sup> Flemish Gold Corporation, *London December 2012 Update*, presentation, December 2012.

<sup>145</sup> PAC (May 2014), pp. 11-12.

account for the observed export figures over the past 10 years, varying by a factor of 10, through fluctuating in-country production patterns. As indicated above and further explained below, the Burundian gold production capacity at present (with a total of ca. 4000-6500 legal and illegal gold miners) is estimated at ca. 0.5 tons. Higher national production levels might theoretically be possible to achieve, but would require substantial improvement of and investment in productivity (from artisanal to semi-mechanised) and expansion of mining activities.

### 5.2 Official Gold Production Figures vs. Informality

As described above, artisanal gold production has steadily increased over the course of several years both in terms of the scale of activities and associated employment. Some sources report that Burundi's mining sector in general indirectly supports an estimated 200,000 people, and directly employs about 20,000 artisanal mine workers. Half of these workers are mining construction materials, while the other half is digging for gold and 3T minerals. Among the 10,000 artisanal miners that are digging for minerals, Midende (2014) recently estimated that more than two thirds are digging for gold,<sup>146</sup> while he estimated this figure to be roughly 4,000 in 2010.<sup>147</sup> (When talking about artisanal miners within this report, we only refer to those miners digging for minerals, not those digging for construction materials.)

When considering the cases studied by Nkurunziza (2013) and Midende (2014), which provide more detailed estimates of numbers of miners, the total of 10,000 artisanal miners is hard to verify. In part, this is due to the fact that ASM activities are seasonal. At the same time, in Muyinga province, mining associations report larger employment numbers at certain sites (though these should also be verified in more detail). When analysing these numbers, it is important to refer to the rotation of miners at these sites (with some miners only working one or two days per week) and infrastructural constraints as well (e.g. small tunnels cannot accommodate too many miners working at the same time). Therefore, such figures need to be evaluated in more detail in order to obtain a comparable base, in order to neither under- nor overestimate the sector's actual employment capacity.

In any case, it is clear that ASM activities do represent a significant opportunity for off-farm employment in rural areas. The high number of illegal artisanal miners needs to be considered as well. Compared to its neighbours, the Burundian mining sector is relatively small: in the eastern DRC alone, there are more than 200,000 active artisanal mine workers.<sup>148</sup> In Tanzania, estimates range up to several hundreds of thousands of artisanal miners. In Rwanda, where the ASM sector is relatively formalized, 35,000 miners are active in the 3T sector. In both Tanzania and the DRC, an overwhelming majority of gold miners are working illegally.

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<sup>146</sup> Midende G. (March 2014), op.cit., pp. 4, 21.

<sup>147</sup> Midende G. (2009-2010), op. cit., p. 65.

<sup>148</sup> IPIS (May 2014), op. cit.

In addition to the absence of reliable estimates of the number of artisanal miners, gold production volumes are also unknown. According to official figures, Burundi exported more than 2 tonnes of gold (worth more than US\$ 100 million) in both 2012 and 2013. A large part of this production has likely been smuggled illegally from the DRC.<sup>149</sup> In its 2011 Burundi report, the US Geological Survey estimated the country's gold production capacity to be 750kg per year,<sup>150</sup> but later revised this figure to 300kg.<sup>151</sup> Midende (2014) estimates, on the basis of his (albeit restricted) research, that Burundi produces ca. 1 tonne of gold per year<sup>152</sup> while he previously estimated national production capacity to be ca. 0.5 tons. Assuming an average productivity per miner of 0.2-0.25 g of gold per day (a typical range in several mining areas of the eastern DRC with similar mineralisation styles) for a total of 6500 artisanal miners yields an annual productive capacity of ca. 400-500 kg gold in Burundi as an order-of-magnitude estimate.

The lack of systematically collected baseline data and the high level of informality within the artisanal gold mining sector make it currently impossible to develop better-founded estimates of numbers of miners and production figures. Although, the government has attempted to formalise the artisanal mining sector – efforts that have been hampered by a number of issues previously explored above (section 3.3) – most exploitation continues to be informal or semi-informal. Mining authorities in Bujumbura do not have any reliable production figures at their disposal, and even at the local level, no administrator has reliable figures on actual production within their municipality.<sup>153</sup> Most actors in the artisanal mining sector tend to conceal relevant data including production/trade volumes and the number of workers in order to evade taxation, reduce their exposure to pay bribes, or (at the individual miner level) sell for better prices than what is officially offered by a given cooperative.<sup>154</sup> According to anecdotal evidence from mining officials, the MEM internally estimates that actual national mine site production (as opposed to exports) is underreported by a factor of 10. One could question why it is that the government is not more active in controlling and enforcing the reporting of gold production, especially for formal sites.

### 5.3 Artisanal Mining Practices

#### Organisational Structures

While artisanal gold mining often operates within the informal economy, which is frequently described as being chaotic or anarchic, its non-rigid nature renders it extremely suitable as a complementary livelihood strategy for many households in developing countries. At family or individual level, farmers may engage in mining as a secondary activity in order to complement their agricultural revenues. During the rainy season, however, many of those artisanal

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<sup>149</sup> Confidential Burundi gold export documents.

<sup>150</sup> PAC (May 2014), pp. 11-12.

<sup>151</sup> Yager T.R. (July 2014) op. cit.

<sup>152</sup> Midende G. (March 2014), op.cit., p. 37.

<sup>153</sup> Interministerial commission (June 2012), op. cit., p. 19.

<sup>154</sup> Nzohabonimana D. (June 2012), op. cit., p. 15.

miners reportedly leave the mines to pursue agricultural activities. Furthermore, the high level of flexibility allows miners to move opportunistically from one mine to another depending on prospects, production volumes and difficulties with a view to maximising their day-to-day income.<sup>155</sup>

Even though many miners move between sites, to date, artisanal mining does not seem to be associated with significant patterns of systematic migration in Burundi. Most of the miners are young males<sup>156</sup> that live in the communities neighbouring the exploitation zones.<sup>157</sup> Consequently, there are fewer local community problems related to mining, as is traditionally the case in some neighbouring countries, such as the DRC.<sup>158</sup> Furthermore, large migrations associated with mining often lead to rushes of artisanal miners to certain sites, which regularly have detrimental effects on local communities, as the revenues generated are not used to promote sustainable development. The absence of these large migrations increases the likelihood that local communities can benefit directly from mining activities. An exception has been noted by several interviewees, noting that people from Kayanza do seem to appear to be working in mining sites all over the country, as the province is more densely populated. These migrants have been characterized as hard-working people.<sup>159</sup>

Generally, local (illegal) artisanal operations can be characterised as either undertaken by individuals or by small groups. Some of these are organised at the family level, whereby the head of the family consequently manages the revenues generated. Other operations may be carried out by small groups of miners. The latter groups jointly own the sites and divide the production at the end of the day. Both forms of exploitation are often seasonal, and informally organised.<sup>160</sup>

Associations tend to mine year-round (although many miners still work on a seasonal basis). This type of organisation generally groups together 40 to 50 workers from one *colline* or from a few neighbouring *collines*, and is well organised with the clear divisions of tasks. Such associations and their associates cover the expenses linked to the exploitation and in some cases provide food to the workers.<sup>161</sup> Associates need to invest capital in the association to pay for the expenses of the exploitation. In the Musito gold mine, in Kirundo province's Bwambarangwe *commune*, for example, each associate had to contribute FBU one million as a membership fee to the association Twisuganye.<sup>162</sup> The artisanal miners dig for the association, while others transport the minerals from the mining site to the site where the minerals are crushed and washed. These exploitations sometimes use more developed techniques and some machinery, although in other cases they still use very rudimentary tools.<sup>163</sup>

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<sup>155</sup> Midende G. (2009-2010), op. cit., p. 51.; Nzohabonimana D. (June 2012), op. cit., p. 22.

<sup>156</sup> Allegedly often including demobilised soldiers.

<sup>157</sup> Nzohabonimana D. (June 2012), op. cit., pp. 6, 22.

<sup>158</sup> Pact (June 2010), op. cit., pp. 61-62.

<sup>159</sup> Interviews with academics and civil society representatives, Bujumbura, September 2014.

<sup>160</sup> Midende G. (March 2014), op.cit., p. 23.; Midende G. (2009-2010), op. cit., p. 47.; Nzohabonimana D. (June 2012), op. cit., p. 23.

<sup>161</sup> Nzohabonimana D. (June 2012), op. cit., p. 23.

<sup>162</sup> Interministerial commission (June 2012), op. cit., p. 13.

<sup>163</sup> Nzohabonimana D. (June 2012), op. cit., p. 23.

Even though this exploitation is quite well organised, there is some informal trade involved. Miners often hide some of the production, in order to sell no more than a small part to the *comptoir* linked to the concessionaire. The rest of the production is sold at better prices to informal *négociants*.<sup>164</sup>

Further, while associations are required by law to be registered, this is definitely not always the case. The total number of official associations and cooperatives (since promulgation of the new mining code in late 2013, only cooperatives can legitimately practise artisanal mining) is still rather limited. Most of the artisanal mining sites are still not operated by these formal structures.<sup>165</sup>

There is a wide variety of reasons that prevents artisanal miners from working in the formal sector, including a lack of information on the advantages of the formal sector; high levels of illiteracy among miners; a lack of means, as they judge the procedure to register and to apply for official permits complicated and expensive; ignorance about the legislation and other mechanisms; and a lack of information on the procedures to obtain an agreement.<sup>166</sup> Many miners also have a feeling of being left on their own. They claim that the law only supports the more powerful and wealthy stakeholders in the mining sector.<sup>167</sup> Moreover, the new draft versions of the Mining Regulation add to the existing confusion of local miners. While the 2013 Mining Code does not require from artisanal miners to obtain a miner's card, the draft Regulation on the other hand does require it, but does not describe any procedures.<sup>168</sup> By early 2015, this obligation had been removed from the latest draft version of the Mining Regulation.

If a cooperative takes the legal route, it first needs to file a demand to the local administrator, who in consultation with the communal council grants a certificate that confirms the availability of the land. Next, the cooperative registers and applies for an authorisation of its activities with the mining services. Then the mining administration and services of the Ministry of Environment send a mission to the site, in order to observe the situation on the ground and to register the future permit's geographical coordinates. Finally, once all taxes have been paid to OBR, the Ministry of Mines delivers the permit for artisanal exploitation.<sup>169</sup>

In a country with a strongly elevated population density, optimized planning of land use becomes a national priority and related conflicts need to be minimized. This may also refer to competing activities such as mining and agriculture. Before exploitation can start, be it formal or informal, an agreement has to be concluded between the owner of the land and the mining association/cooperative. Sometimes, groups of miners work on their own land, or they purchase a parcel. In case the landowner does not sell his land, a deal has to be made. Often, the landowner becomes a stakeholder within the association

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<sup>164</sup> Nzohabonimana D. (June 2012), op. cit., p. 23.

<sup>165</sup> Midende G. (March 2014), op.cit., p. 29.

<sup>166</sup> PFN (January 2013), op. cit., p. 14.

<sup>167</sup> Bamvuginyumvira F. (August 2014), op. cit., p. 27.

<sup>168</sup> World Bank (1 July 2014), op. cit., p. 30

<sup>169</sup> Midende G. (March 2014), op.cit., pp. 24-25.

and takes a share of the profits of the exploitation, together with the other financiers of the operation.<sup>170</sup>

#### Relationship between Mine Workers and Pit Bosses

Those who have invested their capital and/or the landowners of the mining site are usually the managers of the mine operations.<sup>171</sup> These ‘financiers’ are sometimes not officially known, but use an association as their representative. The members of the association are no more than day-labourers and the exploitation itself is still rather anarchic.<sup>172</sup> The relation between mine workers and pit bosses can be characterised as being quite asymmetric. Miners are often employed via a verbal contract<sup>173</sup> which gives them very little ‘security’.

Miners are paid by the pit boss according to their production. In general, however, miners deem their revenues too low,<sup>174</sup> as they are ‘price takers’. The PFN research (2013) claimed that 80% of the miners reported that the pit bosses (or association’s leaders) gather the production at the end of the day, and offer them a price that is non-negotiable. Miners often get about one third of the gold price paid by the *comptoires*.<sup>175</sup> The other two third is used to reimburse expenses and to remunerate the landowner and associates/financers who have invested in the operation (e.g., cooperative members).<sup>176</sup> This divide varies. In other cases miners are reported to get 50% of the declared export price.<sup>177</sup>

Seventy-five percent of the miners said they don’t have access to information on actual mineral prices, and can only compare with prices that are offered at other nearby mining sites. Furthermore, 64% do not believe that the price they receive is fair, particularly when taking into account the hard labour involved.<sup>178</sup> While these complaints are understandable at a personal level, the overall remuneration of artisanal miners in Burundi does not seem altogether different from that of other countries in the region. For example, in the DRC, miners seem to earn between one-third and one-half of the price paid for their mineral production at the mining site.<sup>179</sup> In Rwanda, artisanal miners active in the 3T sector earn, on average, at least 40% of the product value at export, with relatively wide variations.<sup>180</sup>

As a consequence of their perceived or actual under-payment, many miners hide important quantities of minerals and sell them to informal middlemen who offer

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<sup>170</sup> Nzohabonimana D. (June 2012), op. cit., p. 23.; Midende G. (March 2014), op.cit., pp. 24-25.

<sup>171</sup> PFN (January 2013), op. cit., pp. 14-15.

<sup>172</sup> Midende G. (March 2014), op.cit., pp. 21-23.

<sup>173</sup> Nkurunziza P. (November 2013), op. cit., p. 14.

<sup>174</sup> Bamvuginyumvira F. (August 2014), op. cit., p. 28.

<sup>175</sup> PFN (January 2013), op. cit., p. 22.

<sup>176</sup> For example in Bukurira B (Source: Nkurunziza P. (November 2013), op. cit., pp. 5-6, 11.)

<sup>177</sup> Nkurunziza P. (November 2013), op. cit., p. 37.

<sup>178</sup> PFN (January 2013), op. cit., pp. 15, 22.

<sup>179</sup> Geenen S., ‘Qui cherche, trouve’: *The political economy of access to gold mining and trade in South Kivu, DRC*, IOB, University of Antwerp, May 2014, p. 173.; Pact (June 2010), op. cit., pp. 98-99.

<sup>180</sup> Cook R. and Mitchell P., *Evaluation of mining revenue streams and due diligence implementation costs along mineral supply chains in Rwanda*, commissioned by the Federal Institute for Geosciences and Natural Resources (BGR), November 2014, p. 38

better prices. These price differences can reportedly be extremely high. A survey carried out by a civil society coalition quoted an example where pit bosses offered between FBU 9,000 and 10,000 for 1g of unrefined gold while the informal buyers offered between FBU 30,000 and 50,000 (the associated export value at that time being ca. FBU 60,000 or USD 40). Anecdotal evidence obtained from miners by Nkurunziza (2013) in the framework of a pilot baseline evaluation indicates that typical prices miners receive are FBU 15,000-30,000 per gram (ca. one third to one half of the amount a given cooperative receives when selling its gold to a *comptoir*; note that data in this case refers to 2012 and early 2013 when gold prices were higher). In any case, there is a significant difference between gold purchasing prices offered to artisanal diggers by informal traders and cooperatives, respectively. This price difference (incentivising illegal transactions) is inevitable, given that illicit traders avoid paying taxes, do not invest in the exploitation, and thus essentially operate without overhead costs (except for securing sufficient cash flow to allow pre-financing, where necessary). Another reason for diggers to sell to illicit traders is that they immediately offer cash. Many diggers who have financial difficulties don't like to be paid at the end of the week, when the pit boss has received payments from the *comptoir*.<sup>181</sup> This observation also mirrors the situation in neighbouring countries (e.g., DRC, Rwanda and Tanzania) and is quite common for the ASM sector.

The new mining legislation stipulates that only cooperatives can legally practise artisanal mining. Besides facilitating the recovery of taxes, this approach also aims to work as an instrument of social development and economic emancipation. However, in practice, the principles informing a well-functioning cooperative are not very well known,<sup>182</sup> and the effort to transform the artisanal mining sector into an economic activity controlled by cooperatives, is subject to elite capture. It is alleged that the same individuals who owned mining sites/operations previously are now reinventing themselves via cooperatives and associations and their funds continue to be needed to pre-finance exploitations.<sup>183</sup> Although several stakeholders that were already familiar with working in a cooperative were quite positive about the concept in general, they did claim that the sharing of revenues did not seem to be very transparent and fair.<sup>184</sup>

#### 5.4 Techniques to Exploit and Process Gold Ore

Burundi's artisanal mining exploitations are generally not very efficient. Prospection is very opportunistic, based on rumours and luck. Finding mineral deposits is done by trial-and-error.<sup>185</sup> Furthermore, extraction is often carried out with rudimentary techniques and tools, such as pickaxes, hammers, chisels, shovels and pans.<sup>186</sup> It all limits the productivity and production of artisanal

<sup>181</sup> PFN (January 2013), op. cit., pp. 15, 22.

<sup>182</sup> Bamvuginyumvira F. (August 2014), op. cit., pp. 45-46.

<sup>183</sup> Channel Research (August 2013) op. cit., p. 16.

<sup>184</sup> Bamvuginyumvira F. (August 2014), op. cit., p. 45.

<sup>185</sup> PFN (January 2013), op. cit., p. 21.

<sup>186</sup> Midende G. (2009-2010), op. cit., p. 47.; Nzohabonimana D. (June 2012), op. cit., p. 7.

miners, especially where mineralized portions of a given deposit cannot be efficiently penetrated, for example, due to a layer of hard rocks blocking access, or encountered deposit types are not considered sufficiently rich for current artisanal mining techniques.<sup>187</sup> Artisanal miners are said to limit themselves to creaming off the richest parts of the deposit.

Also, techniques used to treat the gold ores are often very antiquated, e.g. manual crushing, washing the minerals in pits or dishes filled with water, and gravimetric treatment in basins. This is, however, rather typical in an ASM environment and reflects labour-intensive exploitation techniques without sufficient capital (and time) to invest in mine productivity.<sup>188</sup> These rudimentary mining and refining techniques lead to major losses of minerals, because of low recovery rates and limited mine productivity.<sup>189</sup> Efficiency can already be increased considerably with the introduction of quite simple techniques, such as water pumps, compressors and automatic crushing machines.<sup>190</sup> Basic recovery rates can typically be improved by 25-30% simply through installation of low-cost sluice boxes and optimization of sequential washing cycles. Unfortunately, the new mining legislation does not stimulate such kind of transformation of artisanal mining into small-scale mining operations.<sup>191</sup>

It has been reported that some cooperatives have started to invest in better techniques, though. The case studies in Nkurunziza's (2013) report are interesting illustrations in this regard, with some fixed installations at the mining sites, including aeration compressors, crushing machinery, concrete sluice boxes etc.<sup>192</sup> At these sites, the mined gold (hard rock) ore is first dried in the sun, and the biggest rocks are crushed with a hammer. Next, the dried ore is processed in automatic ball mills, which can generally process between 125 and 500kg/hour, depending on the hardness of the rocks. Then, the crushed mineral ores are treated in concrete sluice boxes, after which they are panned to obtain gold concentrates (flitters or dust) that can be sold to the *comptoirs* in Bujumbura.

Within the informal gold supply chain, gold amalgamation (using mercury) and leaching through cyanidation may be applied. Several reports have referred to this issue in Muyinga province.<sup>193</sup> However, it remains unclear the extent to which these (illegal) techniques are used today. Such kind of chemical processing may either be used for primary ore, or to reprocess tailings that still include valuable gold concentrations. Gold cyanidation and amalgamation might allow capturing a finer fraction of gold remaining in the tailings after hydro-mechanical processing.<sup>194</sup> Residuals from artisanal mining allegedly still hold 50% of the original gold content in some situations. In some mines, these tailings are reportedly sold at 10% of the value of the gold that has already been extracted from it. It remains unclear, however, where the buyers are taking these

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<sup>187</sup> PFN (January 2013), op. cit., p. 21.

<sup>188</sup> Midende G. (2009-2010), op. cit., p. 52.

<sup>189</sup> Midende G. (March 2014), op.cit., p. 28.

<sup>190</sup> Midende G. (2009-2010), op. cit., p. 52.

<sup>191</sup> World Bank (1 July 2014), op. cit., pp. 3, 29.

<sup>192</sup> Nkurunziza P. (November 2013), op. cit.

<sup>193</sup> Nzohabonimana D. (June 2012), op. cit., p. 30.; Midende G. (2009-2010), op. cit., p. 56.

<sup>194</sup> Nzohabonimana D. (June 2012), op. cit., p. 30.

tailings, and how they treat them.<sup>195</sup> This demonstrates that where such harmful environmental practices are applied, there are also further implicit risks in that the supply chain becomes completely opaque and untraceable.

## 5.5 Environmental Effects

Artisanal mining is often associated with harmful environmental practices. As detailed above, many people suspect that the chemical treatment of gold ores is not only happening at the level of the *comptoir*, but also locally in the provinces. There is, however, also a range of other environmental issues that is raised. For example, mining sites are often not rehabilitated after their resources have been depleted<sup>196</sup> and, there have been reports of deforestation, soil degradation, erosion, water pollution, and deviation of rivers.<sup>197</sup> Another issue that has been raised is the illegal exploitation of gold inside Kibira National Park as a sensitive protected ecosystem.<sup>198</sup>

However, the biggest determinant of environmental mismanagement, is probably the high level of ignorance. A survey carried out by a civil society coalition found that 58% of the artisanal miners did not believe that artisanal mining has an important impact on the environment. The only concern raised tends to be the large number of highly visible adits, shafts and pits that are abandoned, which consequently pose risks of serious accidents.<sup>199</sup>

In principle, the Burundian government should have a budget line to address these environmental issues, as it charges a yearly contribution for the rehabilitation of mining sites to all commercial actors within the mining sector<sup>200</sup> (see subtitle 'Revised tax rates' under section 3.4) Several mine operators have however observed the lack of any substantial action by the government with regards to site rehabilitation.<sup>201</sup> Allegedly, the collected fees are simply absorbed into the budget of the Ministry of Finance, which poses an important issue with regards to accountability and good governance in the mining sector.

In 2013, MEM and MEEATU advised local authorities and miners to address environmental and labour issues, and commissioned field visits to assess compliance at the time of the presidential suspension of artisanal mining. Although these field teams also reported on some environmental issues and their work resulted in marginal improvements at several sites, it remains questionable whether the temporary presidential suspension of artisanal mining followed altruistic motives of good environmental governance, as discussed elsewhere in this report.<sup>202</sup>

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<sup>195</sup> Nkurunziza P. (November 2013), op. cit., p. 10.

<sup>196</sup> Ibid., pp. 92-93.

<sup>197</sup> Interministerial commission (June 2012), op. cit., p. 19.; Nzohabonimana D. (June 2012), op. cit., p. 31.; Midende G. (March 2014), op.cit., p. 28.

<sup>198</sup> Nzohabonimana D. (June 2012), op. cit., p. 6.

<sup>199</sup> PFN (January 2013), op. cit., p. 37.

<sup>200</sup> Ministerial ordinance 760/540/770/1757 of 26 December 2013.

<sup>201</sup> Ministerial Order 540/760/770 of 23 June 2006. Source: Nkurunziza P. (November 2013), op. cit., p. 24.

<sup>202</sup> MEM et al (April 2013), op. cit., p. 2.

A positive sign in terms of environmental management has been the functioning of some cooperatives. In general, exploitations in the hands of cooperatives are reportedly more respectful of the environment, and are often carried out in fenced-off mining areas, with an internal site organisation in place. Often, miners commit to refill pits, and some investment in reforestation can even be observed<sup>203</sup>e.g. in Muyinga province.<sup>204</sup> Overall, however, such kind of measures have a rather ad-hoc character and are not systematically implemented throughout the country.

## 5.6 Socio-economic Effects

In its Poverty Reduction Strategy Papers, the Burundian government describes how it considers the mining sector as an important instrument for economic growth and poverty reduction.<sup>205</sup> However, a differentiated sectorial assessment is missing to date.

### Community Development

Artisanal miners<sup>206</sup> as well as local administrators<sup>207</sup> are convinced that ASM has a positive impact on the local economy and local development. Local economies in rural areas are often hardly monetised, which limits the rural economy to a survival economy. The incomes derived from mining contribute to the circulation of money within local communities.<sup>208</sup> ASM increases commercial activity and in some cases urbanisation.<sup>209</sup>

Moreover, some stakeholders claim that theft has decreased in mining areas as more people have an income.<sup>210</sup>

Furthermore, 30% of the miners in Burundi declared they have to pay some kind of a community tax.<sup>211</sup> There is however a lack of transparency with regards to the management of these contributions. (See subtitle 'Community taxes', under

### Text box 7: Comparative figures with regards to miners' earnings

Even though most miners in Burundi claim to be earning too little money for the perceived hard work they are doing, their earnings are reportedly quite satisfying compared with what one can earn in other professions. A Burundian primary school teacher, for example, earns FBU 80,000 per month, while a 3T miner can earn FBU 100,000. In the gold sector, Nkurunziza (2013) calculates that miners earn between FBU 2,000 and 7,000 per day. Bamvuginyumvira's survey (2014) showed that artisanal miners can earn between FBU 50,000 and 200,000 per month.

Sources:

- Bamvuginyumvira F. (August 2014), op. cit., p. 28.
- Nkurunziza P. (November 2013), op. cit., p. 93.

<sup>203</sup> Midende G. (March 2014), op.cit., pp. 27-28.

<sup>204</sup> Nkurunziza P. (November 2013), op. cit., pp. 10, 23-24.

<sup>205</sup> Republic of Burundi, *Rapport des progrès réalisés au cours de la première année de mise en oeuvre du CSLP II*, December 2013, p. 45.

<sup>206</sup> PFN (January 2013), op. cit., pp. 30-32.

<sup>207</sup> Interministerial commission (June 2012), op. cit., pp. 13-18.

<sup>208</sup> Midende G. (2009-2010), op. cit., p. 45.; Nkurunziza P. (November 2013), op. cit., p. 11.

<sup>209</sup> PFN (January 2013), op. cit., pp. 30-32.; Midende G. (March 2014), op.cit., p. 43.

<sup>210</sup> PFN (January 2013), op. cit., pp. 30-32..

<sup>211</sup> Ibid., p. 30.

section 3.4) Also, several local administrators complain about legislation's lack of clarity as pertains to this tax.<sup>212</sup>

The new Mining Code stipulates that the ad valorem tax should be divided between the central government and local authorities (*commune*)<sup>213</sup> but so far there are no implementing orders available to further describe this distribution.<sup>214</sup>

### Livelihood Strategies

The incomes from mining are also an important contribution to many households' budgets, complementing their income from agricultural activities. As such it increases and diversifies their incomes and hence improves their standard of living.<sup>215</sup> Eighty-six percent of the miners surveyed by PFN (2013) confirmed that mining had a positive impact on their revenues. It helps them to build housing, buy food, pay for healthcare, school, etc.<sup>216</sup> On average miner's earnings are very competitive (See text box 7).

Also for women, working in and around mining sites is often an important livelihood strategy. They prepare food for the miners, take care of retail trade and supply water to wash the minerals.<sup>217</sup> Without presenting actual quantitative data, Midende (2014) observed a qualitative increase in the number of women at mining sites in 2014, compared to a previous assessment he made in 2008.<sup>218</sup>

Furthermore, the number of women digging for minerals (which is a physically demanding job), compared to women performing mining support services, has reportedly been decreasing. More detailed research would be useful to reveal the reasons for this. Women still transport water to the mining site, however, which can also be a heavy task, marching sometimes for several kilometres through

#### **Text box 8: Burundians' motives to start working in the ASM sector**

There are pull- as well as push -factors that drive people to start working in Burundi's artisanal mining sector. According to the PFN survey (2013), more than 60% reported being especially attracted by the prospect of gaining more money. Other reasons mentioned are the 'complementing of agricultural incomes', 'lack of land to cultivate' and 'poverty'.

Only 18% of the miners stated that they had been digging for less than a year. 43% and 29% have been working as a miner for more than 6 and 10 years respectively. This suggests that mining in Burundi is not just a boom activity, but a well-developed livelihood strategy.

Sources:

- PFN (January 2013), op. cit., p. 29.

<sup>212</sup> Interministerial commission (June 2012), op. cit., pp. 13-15.

<sup>213</sup> Article 147 of the 2013 Mining Code.

<sup>214</sup> Bamvuginyumvira F. (August 2014), op. cit., p. 33.

<sup>215</sup> Midende G. (March 2014), op.cit., p. 43.

<sup>216</sup> PFN (January 2013), op. cit., p. 28.

<sup>217</sup> Nzohabonimana D. (June 2012), op. cit., p. 25.

<sup>218</sup> Midende G. (March 2014), op.cit., pp. 26-27.

difficult terrain.<sup>219</sup> An important issue is the poor remuneration that women often get for this demanding job. At certain sites in Muyinga province, for example, women get FBU 200 to carry 50 litres of water over 2 kilometres. Even though this revenue is poor for the work they do, it is sufficiently alluring to abandon their agricultural activities.<sup>220</sup>

#### Socio-economic Issues

Despite its economic attractiveness, miners identified reasons for their plans to exit the sector one day. The work is physically demanding and dangerous. Consequently, older people tend to quit mining. Furthermore, some miners deplored that money is not always flowing in as hoped or planned, and therefore their incomes are fluctuating and economic stability is vulnerable. Others have already left the sector because they managed to save sufficient capital to invest in trading activities.<sup>221</sup>

In addition to the hard labour and unstable revenues, other socio-economic issues prevail. For example, reliance on ASM incomes often puts many households under pressure, as several miners court with other women around the mining site. In case of serious accidents, the lack of an insurance system can translate into economic hardship for miners and their families.<sup>222</sup> Furthermore, there are complaints of the degradation of social norms and moral standards.<sup>223</sup> It has also been claimed the artisanal mining sector affects traditional power and destabilises existing social structures.<sup>224</sup> It should be noted, however, that these issues might be linked to the relatively strong representation of young people in the sector, rather than being a characteristic of ASM itself.

Another characteristic of the artisanal mining sector is the poverty-trap, which renders miners vulnerable,<sup>225</sup> in spite of the fact that many justify their working in the sector because it gives them the opportunity to earn more money. As noted above (see Section 5.3), 64% of miners do not believe that they can get fair remuneration. This is linked to the fact that the relation between pit bosses and mine workers is asymmetric, and that the latter are price takers. Consequently, higher revenues do not seem to be in everyone's reach.

Finally, the presence of children at mining sites also raises a series of complex issues. When an inter-ministerial commission carried out some field visits in 2012, it observed minors working in the mines (e.g. in Baziro) and washing minerals (e.g. in at the treatment site in Kabuyenge valley).<sup>226</sup> Also the PFN survey observed children, as young as 10 years old, at mining sites.<sup>227</sup> It is

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<sup>219</sup> Ibid.

<sup>220</sup> Ibid.

<sup>221</sup> PFN (January 2013), op. cit., pp. 29-30.

<sup>222</sup> Ibid.

<sup>223</sup> Interministerial commission (June 2012), op. cit., pp. 13-14.

<sup>224</sup> Bamvuginyumvira F. (August 2014), op. cit., pp. 40-41.; Nzohabonimana D. (June 2012), op. cit., pp. 36 - 38.

<sup>225</sup> Midende G. (March 2014), op.cit., pp.58-59.

<sup>226</sup> Interministerial commission (June 2012), op. cit., pp. 9, 12.

<sup>227</sup> Nzohabonimana D. (June 2012), op. cit., p. 6.

difficult to assess the extent of the problem, as they often hide themselves, knowing they are not allowed to work in the mines.<sup>228</sup>

Children take on a wide variety of tasks. They often have to transport water, watch over the smaller children, transport soil from the bottom of the pit up to the surface,<sup>229</sup> and wash mineral - e.g. at treatment sites in the Bwambarangwe commune, Kirundo province.<sup>230</sup> Furthermore they are also involved in retail trade, selling cigarettes, drinks and *beignets*.<sup>231</sup> Finally, children can also be observed independently looking for minerals in alluvial deposits, or sifting through tailings.<sup>232</sup>

Even though many children work the mines after school-time or during holidays,<sup>233</sup> it has also been blamed for the rise in school drop-out rates.<sup>234</sup>

Child labour at mining sites seems to be far less frequent within the operations of official associations and cooperatives. They seem to be working more often in 'family operations' or in 'isolated groups', which makes it all the more difficult to address this issue.<sup>235</sup>

## 5.7 Conflict Risks and Security at Gold Mining Sites and along its Supply Chain

Several types of local conflicts can be observed with regards to artisanal mining in Burundi. There have been reports about conflicts over boundaries of sites,<sup>236</sup> the division of production,<sup>237</sup> customary conflicts or conflicts over access to land. The occurrence of these local conflicts is rather limited compared to the country's eastern neighbour DR Congo, and often do not take on ethnic dimensions as they sometimes do in the DRC.<sup>238</sup> Nevertheless, the International Crisis Group has reported extensively on the issue of conflicts over land, which mostly involves long-time neighbours and occasionally (returning) refugees.<sup>239</sup> The new Mining Code has been criticised for not providing sufficient support to conflict resolution related to property rights, e.g. between miners and the landowner.<sup>240</sup> Furthermore, the government seems to lack an effective strategy to deal with conflicts over land, generally.

Traditionally, a council of elderly, the so-called *bashingantahé*, dealt with various local conflicts, and tried to reach an amicable solution. During colonial times

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<sup>228</sup> Midende G. (2009-2010), op. cit., p. 52.

<sup>229</sup> Midende G. (March 2014), op.cit., p. 27.

<sup>230</sup> PFN (January 2013), op. cit., p. 25.

<sup>231</sup> Midende G. (March 2014), op.cit., p. 27.

<sup>232</sup> Nzohabonimana D. (June 2012), op. cit., p. 25.; Midende G. (March 2014), op.cit., p. 27.

<sup>233</sup> PFN (January 2013), op. cit., pp. 25-26.

<sup>234</sup> Interministerial commission (June 2012), op. cit., pp. 13-14, 19.; Bamvuginyumvira F. (August 2014), op. cit., pp. 40-41.

<sup>235</sup> Midende G. (March 2014), op.cit., p. 27.; PFN (January 2013), op. cit., pp. 25-26.

<sup>236</sup> Interministerial commission (June 2012), op. cit., pp. 17-18.

<sup>237</sup> PFN (January 2013), op. cit., pp. 18-19.

<sup>238</sup> Midende G. (March 2014), op.cit., pp. 57-58.

<sup>239</sup> International Crisis Group, *Les terres de la discorde (I): la réforme foncière au Burundi*, 12 February 2014, p. 4.

<sup>240</sup> Bamvuginyumvira F. (August 2014), op. cit., p. 27.

these structures have been pushed aside, but over the last decades policymakers have tried to restore these authorities and traditional practices. Recently, however, these efforts to restore these forms of traditional authority have been frozen.<sup>241</sup> Several interviewees deplored the decrease of this system of traditional conflict resolution as it was expected to address conflicts linked to artisanal mining as well.

Conflicts do sometimes arise between artisanal miners and the surrounding population. This is often about dissatisfaction with the compensation offered to them. Miners might also run into a conflict with local administrators about the violation of a commitment. These issues are frequently settled by an amicable arrangement, often at the disadvantage of the public interest.<sup>242</sup>

The coexistence between artisanal miners and the mining companies that hold official (research) permits, has also lead to tensions on several occasions. Several artisanal mining exploitations take place on concessions of industrial actors, who hold research permits, such as Flemish, Caracal and AMMG.<sup>243</sup> According to the law, artisanal mining is not permitted on concessions of mining companies. Those companies, however, often do not feel sufficiently supported by the government when such conflicts arise. Such issues have reportedly contributed to both Caracal and Flemish's decision to abandon their activities in Burundi.<sup>244</sup> It has also been determined that conflicts of interest, involving administrative, political and police authorities often obstruct an adequate arbitration by the government.<sup>245</sup>

In some cases, however, it has been possible to strike a deal between small-scale mining associations/cooperatives and a formal company exploring the concession. For example, the mining operations of several artisanal associations are located within an exploration permit of Flemish Investments Burundi in Muyinga province. As part of its support to the government's poverty elevation efforts, Flemish was prepared to have artisanal exploitations on parts of its concession that it had already explored, or where it did not have plans to operate. Flemish provided 'no objection letters' to support these associations' formal applications to the MEM, for an authorised artisanal exploitation permit of a limited area (1 ha) within the Flemish concession. On granting by the MEM, this enabled the associations to mine within the Flemish Exploration Permit.<sup>246</sup>

Flemish reportedly had a few provisions in this 'no objection letter': the artisanal miners had to be registered in a formal association, they were only to mine with artisanal tools and methods (i.e. no explosives, no mechanisation, no water pumps, etc.), the mining must remain within the limits agreed, and Flemish held reasonable access to the areas to carry out mapping and inspections. Furthermore, as the artisanal mining permit was only valid for one year (under the old Mining Code, nowadays it is two years), Flemish demanded that these

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<sup>241</sup> International Crisis Group (12 February 2014), op. cit., p. 16.

<sup>242</sup> PFN (January 2013), op. cit., p. 32.

<sup>243</sup> Nzohabonimana D. (June 2012), op. cit., p. 7.

<sup>244</sup> Midende G. (March 2014), op.cit., p. 25.

<sup>245</sup> Ibid., pp. 57-58.

<sup>246</sup> Nkurunziza P. (November 2013), op. cit., pp. 4-5, 15; IPIS telephone interview with a Flemish Investments representative, April 2015.

associations requested a new ‘no objection letter’ when re-applying to the MEM.<sup>247</sup>

Large security incidents around mining sites have seriously decreased since the end of the war in 2005, when extortions by armed groups and banditry were frequent. No more than 7% of the miners judge that there is a potential risk of such security incidents today.<sup>248</sup> It remains to be seen how this situation develops with the recent insecurity and fragility re-introduced into Burundi through the operations of the *Imbonerakura* youth militias in rural areas in the context of the controversial third term sought by the Burundian president.

Several strategies to manage security have been developed. Within the PFN research, 64% of the miners said that security was guaranteed by the national police or the army, stationed near the mining site. Police agents are also present at mining sites, in order to guarantee security. In some cases, however, their primary commitment seems to be to guard the interests of financers,<sup>249</sup> or they may just be waiting for some gratuity in exchange for a favour and for the provision of security. (See ‘Illegal taxation and corruption’ in section 3.4 above.) Even though these payments are illegal, these security arrangements are perceived to be quite efficient by many stakeholders.<sup>250</sup>

Furthermore, Midende (2014) reports on the presence of local youth groups, or the so-called ‘police du site’ at several mining sites to maintain order. These are in no way linked to state security agents. These youngsters are mostly recruited locally by the owners of the mining site. They originate from the surrounding communities and often include demobilised rebel fighters. Generally, some carry weapons and as such pose a real potential security risk.<sup>251</sup>

Beyond Burundi’s own security, as observed repeatedly by the UN Group of Experts on the DRC, gold smuggling through Burundi indirectly contributes to sustaining the conflict in the eastern DRC. Assuming an original Burundian gold production capacity of ca. 500 kg/year (see above), ca. 2 tons of illicit DRC gold worth ca. USD 80 million were exported via Burundi in 2013. It is not known whether additional DRC gold was smuggled through Burundi without being officially declared as export.

## 5.8 Legal and Illegal Gold Trade

### In-country Trade

While artisanal gold supply chains in Burundi are significantly less complex than in the neighbouring DRC, few intermediate stages before arriving at the point of export may still be distinguished. As described above, minerals are washed and processed locally within the provinces. This might happen directly at the mining site, but often it also takes place at sites specifically equipped for the processing of mineral ores of surrounding mining sites.

<sup>247</sup> IPIS telephone interview with a Flemish Investments representative, April 2015.

<sup>248</sup> PFN (January 2013), op. cit., pp. 18-19.

<sup>249</sup> Midende G. (March 2014), op.cit., p. 26.

<sup>250</sup> Channel Research (August 2013) op. cit., pp. 6-7.

<sup>251</sup> Midende G. (March 2014), op.cit., p. 25.

The ‘processing site’ in Kabuyenge valley, in the west of Kirundo province, for example, uses semi-industrial machinery to crush rocks, after which the mined ore is washed in sluices. The site reportedly attracts minerals from the Busoni *commune* in particular, which has several 3T mines.<sup>252</sup> The gold production of the Baziro mine, in Kirundo’s Gitobe *commune*, is then transported to the neighbouring *commune* of Bwambarangwe to be treated there.<sup>253</sup>

After the crushing, the sluicing and the panning, the mineral ores are said to be transported to Bujumbura. The Mining Code (article 88) stipulates that cooperatives can only sell their production to officially registered *comptoirs*. As explained earlier, for security reasons the gold transporter is selected secretly, and chain of custody documentation is lacking along Burundi’s gold chain. In Bujumbura, the *comptoir* refines the gold ores up to a purity of about 90-95%, using a chemical process. When the *comptoir* has defined the value of the gold, the association gets paid.<sup>254</sup> Frequently, associations have an established agreement with a *comptoir* regarding the delivery of minerals, which might involve some pre-financing by the *comptoir*. Allegedly, it has recently become obligatory for cooperatives to have an established relationship and buying agreement with a *comptoir*. This has not been laid down in legislation or an ordinance, but is reportedly an unwritten measure.<sup>255</sup> It seems to have weakened the position of cooperatives vis-à-vis *comptoirs*. An undesired side effect has been that some *comptoirs*, e.g. Burundi Gold Export and AMEX, have started to buy minerals on credit.<sup>256</sup>

A certain proportion of Burundian gold concentrates is allegedly smuggled out of the country clandestinely, especially to the East. For local traders operating in Muyinga province, for example, the town of Kabanga in Tanzania is much closer than going all the way to Bujumbura.<sup>257</sup><sup>258</sup> Another reason, mentioned by the artisanal miners, are the low prices offered by the *comptoirs* in Bujumbura (see further discussion below).<sup>259</sup> Minerals are commercialised via a complex trading network, involving local traders and middlemen that also import other commodities. These local traders have often developed strong ties with artisanal miners - e.g. via loans that have been granted in the past - and consequently

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<sup>252</sup> Interministerial commission (June 2012), op. cit., p. 12.

<sup>253</sup> Ibid., p. 9.

<sup>254</sup> Nkurunziza P. (November 2013), op. cit., p. 12.

<sup>255</sup> IPIS interview with civil society representative, Bujumbura, September 2014.; Channel Research (August 2013) op. cit., pp. 16.

<sup>256</sup> ADPEM (Association d’appui au développement pour la protection de l’environnement et la lutte contre l’exploitation illégale des minerais au Burundi), *Rapport semestriel d’activités de février à juillet 2014*, 12 August 2014, p. 3.

<sup>257</sup> Bamvuginyumvira F. (August 2014), op. cit., p. 7.

<sup>258</sup> Surprisingly, Tanzania’s royalty rate (4% since 2010, before 3%) is considerably higher than Burundi’s rate (2% since 2013, 0,5% before). This would subject smugglers to higher taxes. (Source: PAC (April 2015), op. cit.) ICGLR member states’ total export figures are however also declining. This might indicate that gold is not smuggled into Tanzania to be officially declared in the country, but to enter out-region smuggling networks. It is for example possible that these minerals are illegally conveyed to Kenya, as a revival of Kenyan smuggling networks has been observed in 2010-2011. (Source: Cuvelier J., *Kenya’s role in the trade of gold from eastern DRC*, IPIS, August 2011)

<sup>259</sup> PFN (January 2013), op. cit., pp. 22-23.

prices paid for the mineral production are not always straightforward and can be difficult to assess.<sup>260</sup>

As mentioned previously, miners are often dissatisfied with their revenues and further may have financial problems requiring frequent access to money, which motivates them to sell (part of) their mineral production to illegal traders (rather than to the mining cooperative) who offer higher prices and quicker cash.<sup>261</sup> It angers financiers who have pre-financed expenses for the exploitation, be it cooperative associates or *comptoirs*, when other traders profit from their investments and “steal” minerals by offering better prices to individual miners.<sup>262</sup> Miners, and mine operators, on the other hand often denounce that *comptoirs* in Bujumbura hide themselves behind taxes to explain their relatively low prices, while they allegedly often avoid taxes and under-declare export quantities or value.<sup>263</sup>

These reciprocal frustrations illustrate that many local stakeholders would profit from a more transparent artisanal mining sector. For the moment, however, artisanal miners have limited leverage (see explanation on miners as price takers under sections 5.3 and 5.6) and insight into the way mineral prices get fixed. Prices depend on the purity of the mineral. As good equipment is often lacking to assess this, it is often a negotiating game, including fraud and conflict. As artisanal miners often do not take their minerals themselves to the *comptoir*, they generally have to accept the price that is offered to them. Local traders and *comptoirs*, on the other hand, regularly inform themselves about the world market prices (London).<sup>264</sup>

There is a wide variety of actual prices paid along the gold supply chain. For example, *comptoirs* allegedly pay 25% more for gold originating from Muyinga and Cibitoke provinces, than for Ruyigi’s gold.<sup>265</sup> It would therefore be useful to carry out a survey including a wide range of gold mining sites over several provinces in order to improve understanding of the price variations, and the extent to which these can be explained by difference in gold purity or trading networks or possibly other factors to be determined.

As shown in Figure 3, national prices paid out to gold miners in Burundi are further subject to serious price fluctuations due to external factors, as the spot market price for gold has first increased and then decreased considerably over the last years.

<sup>260</sup> Midende G. (March 2014), op.cit., pp. 26, 50.

<sup>261</sup> Nzohabonimana D. (June 2012), op. cit., p. 23.

<sup>262</sup> PFN (January 2013), op. cit., pp. 15, 22.

<sup>263</sup> PFN (January 2013), op. cit., pp. 22-23.

<sup>264</sup> Midende G. (March 2014), op.cit., pp. 44-45.

<sup>265</sup> Midende G. (March 2014), op.cit., pp. 44-48.

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**Figure 3:** LBMA gold prices from January 2010 to April 2015, USD/oz. Source: The London Bullion Market Association website (<http://www.lbma.org.uk/pricing-and-statistics>)

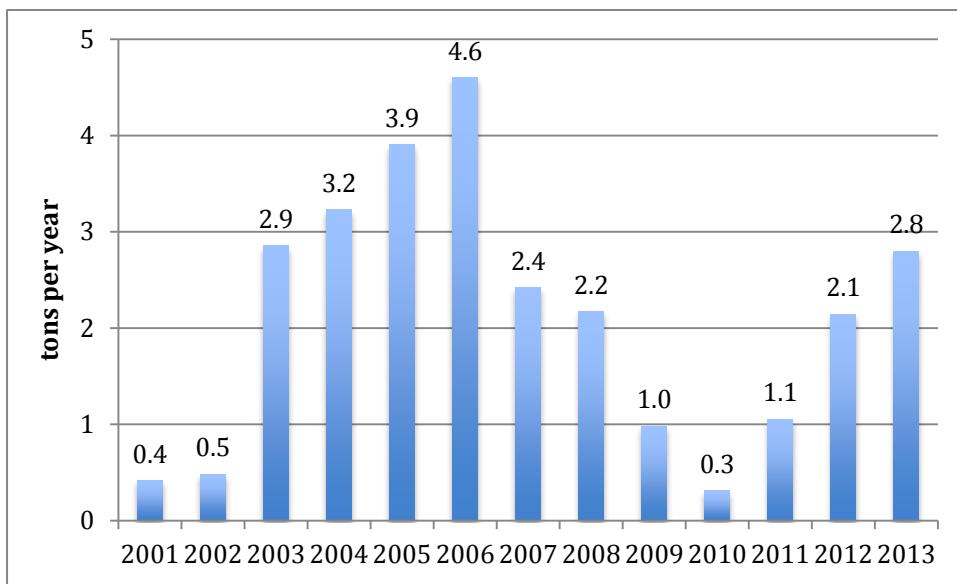
### *Export Comptoirs*

At the end of the national gold supply chain there are several *comptoirs*, which are authorised to export mineral products (either gold or 3T minerals) from Burundi. As described above (under Section 3.4), it has been explained how the new Mining Code has removed the differentiation between 'transit *comptoirs*' and 'Burundian *comptoirs*'.<sup>266</sup> In Bujumbura, the *comptoirs* refine the gold, pour it into (doré) ingots and export it to Dubai,<sup>267</sup> where it is sold and refined up to commercial quality.<sup>268</sup> Dubai (United Arab Emirates) represents the destination of 99% of all Burundian ASM gold exports. Following the concept of due diligence, these gold buyers and refiners would be expected to perform checks on their Burundian suppliers (e.g., through know your customer procedures, to evaluate the gold's origin, legality and associated conflict risks). However, the commitment to such procedures by many Dubai-based gold buyers has often been characterised as rather weak, such that Burundian gold export *comptoirs*, unlike 3T comptoirs, have to date not been significantly exposed to supply chain due diligence concepts.

<sup>266</sup> Midende G. (2009-2010), op. cit., p. 50.; Midende G. (March 2014), op.cit., pp. 31-34.; Nzohabonimana D. (June 2012), op. cit., p. 21.

<sup>267</sup> UN GoE (January 2014), S/2014/42, §190

<sup>268</sup> More detail on export destinations can be found in PAC (April 2015), op. cit.



**Figure 4:** Burundian gold exports from 2001 to 2013 (tons/year). Note that Burundian gold production capacity is estimated at ca. 0.5 tons/year with the export difference representing ASM gold from the DRC. Sources: Internal Burundian gold export statistics

Chapter 4 discussed how the number of *comptoires* increased considerably in the last few years, only to be restricted and to decline again through new registration requirements since early 2014. Several sources have criticised the way in which this restriction has been implemented. Transparency is lacking and it has been alleged that only those who have connections to powerful individuals stand a chance of obtaining authorisation to trade gold.<sup>269</sup> The civil society organisation ADPEM points out that some *comptoires* have met all requirements and yet were not granted an authorisation to buy and export gold.<sup>270</sup> Consequently, by July 2014, the only registered gold *comptoires* were Burundi Gold, High Speed Company and AMEX.<sup>271</sup>

In addition to the illegal gold exports carried out by small clandestine traders, there have been reports of *comptoires'* illegal sales. The Burundian NGO ADPEM, for example, expressed its concern in early 2014 about Burundi Gold Export and Jean Jbeili's gold sales. Furthermore, ADPEM raised several other issues with regards to some *comptoires'* operations, demanding that MEM investigates the activities of the non-registered gold *comptoires* Ntahangwa and AMEX (although, by April 2014 AMEX had obtained a permit). These were alleged to buy gold and subsequently export it via the registered *comptoir* Burundi Gold Export. ADPEM also complained that several of the gold export declaration forms did not contain dates, names of couriers, export numbers, dates of the flights or the signature of the declarant.<sup>272</sup>

<sup>269</sup> IPIS interviews with civil society representatives, Bujumbura, September 2014.

<sup>270</sup> ADPEM (August 2014), op. cit., p. 2.

<sup>271</sup> Bamvuginyumvira F. (August 2014), op. cit., pp. 50-51.

<sup>272</sup> ADPEM (August 2014), op. cit., pp. 2-3.

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The World Bank pointed out that there should be a bigger effort to 'clean up' the gold sector, which should involve close monitoring of *comptoirs* in Bujumbura and the other towns where the administration is present.<sup>273</sup> In January 2014, the Group of Experts on the DRC reported that the Government of Burundi had launched a new programme to combat smuggling through Bujumbura's airport. It involves weighing gold exports, sealing packages in the presence of numerous government agents and the *comptoir*, and weighing the packages again at the airport.<sup>274</sup> The extent to which this programme has been implemented in practice remains unclear, however, and new questions arise from the observed significant (ca. 80%) drop of official gold exports in 2014 (concomitant with an export tax increase from 0.5% to 2%). Another report written within the framework of the present project offers more recommendations with regards to addressing smuggling at airports in the ICGLR member states.<sup>275</sup>

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<sup>273</sup> EITI (30 March 2014), op. cit., p. 38.

<sup>274</sup> UN GoE (January 2014), S/2014/42, §189

<sup>275</sup> PAC (April 2015), op. cit.

## **6 Concluding Remarks**

While its ASM sector is of relatively limited importance for Burundi's national economy to date (with the significant exception of representing its most important foreign exchange earner) its development potential for local communities should not be underestimated. This review report has described how women and men working in the sector value it as an important alternative livelihood strategy. The government has recognised ASM's potential role with regard to economic growth and poverty reduction in Burundi, one of the world's poorest countries. Nevertheless, numerous challenges will need to be addressed before local development can truly benefit from Burundi's artisanal mining sector, particularly gold exploitation.

At the national level, the government has taken some initial steps to improve their oversight of artisanal mining, with the potential to enhance developmental benefits and tax revenues from the sector. The inclusion of ASM in Burundi's new Mining Code has been a critical accomplishment, but the latter's implementation is at least equally challenging. All actors await the promulgation of the Mining Regulation, which will need to provide greater clarity surrounding procedures and modalities to implement the new Mining Code.

Despite the establishment of a new Mining Code, the formalisation of Burundi's artisanal gold mining sector remains extremely difficult. Like in several other countries of the region, there is a lack of incentives for many actors to move from the informal to the formal part of the sector. On top of that, most actors distrust the formalisation initiatives that the government is trying to implement, and the government's own ownership in and understanding of the process is unclear. For example, miners are not yet familiar with the notion of a cooperative and are suspicious of its potential benefits. This perception is not entirely unjustified. The benefits and challenges of the cooperative model should be given due consideration.

Formalisation requires a strategy that goes beyond including artisanal mining in the Mining Code and obliging all miners to start working in cooperatives. A wider and more integrated development approach should be applied in formalising the sector. Such an approach entails addressing the issues that concern local stakeholders, including poverty reduction, gender issues, sustainable development (in particular at the community level), sustainable livelihood strategies, reasonable decentralisation, corruption risks, etc. Determining further incentives should happen through consultative processes. Furthermore, experiences from other countries teach that formalisation efforts have little chance of resulting in a truly formalised artisanal mining sector as long as the issues of corruption and the lack of trust in individual state agents, and the government in general, are not addressed as a priority.

The lack of trust in state entities in Burundi can partly be explained by the narrowing of political space in the country, and especially by a lack of transparency regarding mining sector management. While Burundi's government recently committed to implementing the EITI, in order to promote

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revenue transparency and accountability, it remains unclear to what extent the government actually took ownership over this decision and hence truly committed to respecting EITI principles at all levels. It will therefore be key to strengthen credible tripartite monitoring of the national EITI process and make an effort to specifically include the artisanal gold mining and trading sector in the exercise.

Beyond revenue transparency, there is lack of clarity surrounding the application procedures for all kinds of mining and mineral export permits (including both the distant-future industrial mining-related contracts, as well as the ASM sector-specific registration procedures). These issues generate much suspicion and rumours of clientelism, accentuated through the continuing problematic involvement of several influential strongmen, security agents and administrators in the gold mining sector.

Several international observers have expressed their concern with regards to Burundi's role in the illegal trade of gold originating from the DR Congo. Furthermore, many have denounced the involvement of Burundian strongmen in these illegal gold circuits, at the national as well as the regional level. The scale of these risks is reflected in Burundi's official gold export statistics whose strong fluctuations are inconsistent with the country's actual production capacity. Bearing this regional dimension in mind, the relevance of the ICGLR's Regional Initiative against the Illegal Exploitation of Natural Resources (RINR) is immediately apparent. RINR's six tools not only address regional trade, but also some of the other Burundian issues mentioned above, such as formalisation and transparency (EITI).

With regards to the RINR 'Harmonisation of National Legislations' tool, Burundi's new mining legislation has shown some positive developments. An increase in Burundi's artisanal gold export tax to 2%, now matching the (recently reduced) DRC rate, addresses the obstacle of setting fiscal smuggling incentives as highlighted by many observers in the past. However, export tax differences with other ICGLR member states continue to exist and the DRC also levies other taxes. As such, the issue of tax differences remains yet to be fully resolved.

In addition, the levelling of regional tax rates alone will not be sufficient to prevent smuggling. Existing informal cross border trading networks are not simply the product of regional tax differences. Borders in Central Africa exist only on paper and do not in reality curtail trade. Recognition of this feature of the region's (mineral) trade would aid the search for alternative solutions.

Taking all of the above factors into account, it seems that Burundi's artisanal gold mining sector (similar to the DRC's ASM gold sector) is not yet ready for the operation of a credible certification system that controls the gold supply chain from mining site to export (except, perhaps, at a pilot scale through a closed-pipe approach). This does not imply that current investments within the framework of implementing the six tools of the RINR are questionable - on the contrary, as all of these six tools are interdependent, it is necessary that Burundian ownership and progress on all six be ensured.

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