

Third Party Review of the Bisie Security Report

International Peace Information Service (IPIS)



Editorial

Third Party Review of the Bisie Security Report

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Front Cover Image: Picture at Bisie, IPIS, 2016

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Acronyms

ABM	Alphamin Bisie Mining SA
ANEMNKI	<i>Association des Négociants de Minerais du Nord-Kivu</i> (Mineral traders association)
BAWA	<i>Base militaire de Walikale</i>
CFSI	Conflict-Free Sourcing Initiative
DDG	OECD Due Diligence Guidance of Responsible Supply Chains of Minerals from Conflict-affected and High-risk areas
DRC	Democratic Republic of Congo
FARDC	<i>Forces Armées de la République démocratique du Congo</i> (Congoese national army)
FDLR	<i>Forces démocratiques de libération du Rwanda</i>
EICC	Electronic Industry Citizenship Coalition
ICGLR	International Conference on the Great Lakes Region
IPIS	International Peace Information Service
iTSCi	ITRI Tin Supply Chain Initiative
MPC	Mining and Processing Congo sprl
NDC	Nduma Defence of Congo
OECD	Organisation for Economic Co-operation and Development
PDG	<i>Président-directeur général</i> , mine manager
RCD-Goma	<i>Rassemblement Congolais pour la Démocratie -Goma</i>
RCM	Regional Certification Mecanism

Introduction

Background

This report reviews information regarding approximately a thousand tonnes of cassiterite from the Bisie mines located in Walikale territory, North Kivu – the so-called ‘Bisie Mineral Stock’ (see textbox). This stock pre-dates the April 2015 establishment of ITRI’s Supply Chain Initiative (iTSCi) in Walikale territory.

Bisie Mineral Stock

The Bisie Mineral Stock encompasses about a thousand tons of cassiterite extracted by artisanal miners at Bisie mines, located on Alphamin Bisie Mining SA’s (ABM) exploitation permit no 13155, between November 2010 and June 2015. A number of bans on mining and the trade of minerals in this region, as well as some hesitance further down the supply chain to buy untagged minerals, have meant that, until late 2015, mineral production from this area has not been marketed. Instead, it has been stored in warehouses in Bisie, as well as in the trading towns of Ndjingala and Mubi (Walikale territory) and North Kivu’s provincial capital, Goma.

In June 2015, an iTSCi mission estimated the volume of the stock at 1,351,350 kg. However, by the end of the stock evacuation process, in December 2015, no more than a total of 980,650 kg had been evacuated. More detail on the Bisie Mineral Stock is provided in Chapter 2 of this report.

At the 8th OECD-ICGLR-UN Group of Experts Forum on Responsible Minerals Sourcing in November 2014 (Kinshasa), the Organisation for Economic Co-operation and Development (OECD) organised a side event to facilitate discussion between different stakeholders on the issue of the mineral stocks. This event was a response to the desire of the Congolese authorities to move the stocks through an official ‘stock clearance process.’ At the meeting, a number of potential solutions were discussed and a stock evacuation process suggested.

The process involved labelling the minerals with unique tags to inform potential buyers about the associated risks¹, as well as the clear identification of stakeholders in the process to ensure compliance with tax requirements. Furthermore, participants highlighted the need to ensure that these minerals be exported using a traditional certificate of origin issued by the Congolese authorities rather than an International Conference on the Great Lakes Region (ICGLR) certificate, for which these minerals could not qualify. Additional conditions included a “clear public commitment whereby after this one-time only exemption, the Government will not provide any further exemptions for stocks, and that any trader or exporter will, at any point, have to demonstrate a minimum due diligence in line with the OECD Guidance on minerals and the ICGLR RCM in possession, or else the material it holds will be confiscated/seized by the government” and a “process could be considered whereby if any direct evidence is found that actually links the so-called ‘stocks’ to a non-state armed group or [to] serious abuses of human rights, it would be seized by the government.” This process was to make possible the potential sale of these minerals at fair prices.²

As part of Pact’s on-the-ground monitoring activities, Pact developed a Security Report³ that documents the security situation prevailing at the Bisie mine, on the transport route and in Walikale territory from 2010 to the end of September 2015. The Security Report is intended as a reference for potential purchasers of the materials to contribute towards their decision-making process and reasonable due diligence and risk mitigation measures. Considering the complexity of the situation, the Conflict Free Sourcing Ini-

1 Side meeting at the 8th ICGLR-OECD-UN Group of Experts Multi-stakeholder Forum, *Minutes of the Meeting of Exchange views on Minerals stocks that are not eligible to the ICGLR Certificate*, 6th of November 2014.

2 Ibid.

3 Pact Institute, *Bisie Third Party Security Report for the Period 2010-September 2015*, commissioned by ITRI, on behalf of the iTSCi programme, March 2016. The report will be published on the iTSCi website.

tiative (CFSI) contracted a third party to review the Security Report. The International Peace Information Service (IPIS) was chosen to undertake this third party review.

Key Points of the Pact Bisie Security Report

The following constitute the key findings of Pact's security assessment concerning the exploitation of the Bisie mineral stock, as contained in the Bisie Security Report:

The period up to February 2012 is defined as "expected to be prior to mining of stock." This period was found to involve:

- Interferences in mining and mineral trade, extortion of the population and the violation of human rights by rogue FARDC elements, as well as by the armed groups, NDC Sheka and FDLR. In providing more detail about interferences and extortion by each actor, the Bisie Security Report refers to different intervals during this overall period.

The period February 2012 to March 2015 is considered to be "relevant to mining of stock at the mine." The Bisie Security Report refers to reports developed by international organisations in 2012 and 2013 on indirect and illegal taxation by FARDC, but states that no information was obtained from local stakeholders to confirm this taxation. At the end it summarises that this period was found to involve:

- At Bisie, looting, and some injuries resulting from a visit by non-state armed group Simba in August 2013 with no evidence of tampering with minerals.
- On the 'transport route' payments have been made "to state security agents, as agreed by all stakeholders and possibly to customary authorities," and there were "reports of attacks by unidentified bandits".

IPIS was informed by iTSCi that another report is being developed, a Mine Description Report, that includes information about the mine location, production, and plausibility (production capacity) which serves as a reference for exporters. Lastly, iTSCi commissioned Synergy Global Consulting to conduct an independent evaluation of the minerals evacuation process from Bisie to Goma. In its report, Synergy Global Consulting assesses the circumstances in which the process is being conducted against the OECD Due Diligence Guidance of Responsible Supply Chains of Minerals from Conflict-affected and High-risk areas (DDG) and includes a list of open and closed incidents related to the stock clearance process.⁴

Objectives

This Third Party Report has two main objectives:

1. To review and assess the process and sources used to develop Pact's Bisie Security Report, and whether they have reasonably informed the report.
2. To review the accuracy of the Bisie Security Report conclusions, based on all available sources of information.

In the course of conducting this review, some additional issues were raised as relevant to understanding the security context of mining at Bisie generally, and in particular over the latter period of the stockpile's extraction. These issues include:

1. The risk of the mixing of minerals from other mining sites with the Bisie mineral stock;
2. The risks associated with the evacuation/non-evacuation of the mineral stock;
3. The risk of creating a precedent for 'stock-concerns' elsewhere in the DRC; and
4. Local stakeholder relations (historic and current).

⁴ Synergy Global Consulting, *Independent assessment of the minerals evacuation process in Bisié*, North Kivu, commissioned by ITRI, on behalf of the iTSCi programme, December 2015. The report will be published on the iTSCi website.

Methodology

This report was developed by IPIS on the basis of both desk- and field-based analysis and research, including interviews with multiple stakeholders.

IPIS first analysed the Bisie Security Report to assess the methodology used, the list of relevant sources and the list of interviewees. To make an informed and credible assessment of the Report's conclusions, IPIS then proceeded to conduct independent research.

First, IPIS carried out an extensive desktop study of the security situation in and around Bisie, including the actors involved. A complete bibliography at the end of this report specifies all references used in the literature review. In January 2016, IPIS also conducted a series of telephone interviews with experts on the Congolese conflict and natural resources. Interviewees included Global Witness, an iTSCi independent evaluator from Synergy Global Consulting who performed the iTSCi independent field assessment,⁵ the authors of the Bisie Security Report, and the OECD.

As IPIS' Third Party Review Report aims to provide the most up-to-date and accurate information on security and risk, a field visit was also necessary. One Belgian IPIS staff member and a Congolese IPIS consultant conducted a three-week mission to North Kivu between the 28 January and 17 February 2016. The team visited Goma (8 days), the towns of Walikale, Mubi and Ndjingala (4 days), and walked the Ndjingala-Bisie path to spend some time in Bisie (5 days).

The IPIS team conducted interviews with a large number of stakeholders involved in the cassiterite supply chain, as well as with knowledgeable actors on the situation in Bisie. Interviewees included:

- **In Goma:** the North Kivu Provincial Minister of Mines; the Mining Division; the Police Division, SAESSCAM; NGOs (Save Act Mine, BEDEWA, CREDDHO); international organisations (IOM, JMAC); Alphamin Bisie Mining SA (ABM) representatives; Metachem (exporter).
- **In Walikale centre and territory:** Coordination of the Civil Society of Walikale, BEDEWA; a member of the Local Committee for Development (*Comité Local de Développement*) and one of the *Comité Local de Suivi*; ABM representatives, including staff in charge of community development; an OCHA representative; the North Kivu Association of the Mineral Traders (*Association des Négociants de Minerais du Nord-Kivu*, ANEMNKI); the Association of Porters; a former Mai-Mai Sheka officer; the Territorial Administrator; the Mining Division, SAESSCAM; a Cooperative member of COCABI, the Mining Police; and representatives of the Bangandula clan, which is the customary owner of the Bisie land area.
- **In Bisie:** ABM staff, including those in charge of security; SAESSCAM; *Antenne des Mines* of Bisie; the Mining Police; Cooperative Platform (COCABI-COMIDER-COMIMPA); the Association of Bangandula; porters; diggers.

Content

This report is divided into four substantive chapters:

Chapter 1: Assesses the Pact Bisie Security Report, and compares their findings, sources and conclusions with those of IPIS. The subsequent chapters provide more detail on IPIS' findings.

Chapter 2: Provides a brief introduction to artisanal mining at Bisie, and discusses the development of the Bisie mineral stock since 2010. It outlines when the estimated 1,300 tonnes of cassiterite were extracted, who the owners are and who might benefit from a potential stock sale. It then goes on to briefly discuss international dialogue on the 'stock clearance process,' including concerns about the risk that production from other sites has been mixed with the Bisie stock.

Chapter 3: Describes the security context at Bisie, including armed actors' interference in mining. It assesses the extent to which there is a risk that state security forces or non-state armed groups have profited from the production of the minerals constituting the Bisie stock, as well as the risk of human rights violations related to the stock's production.

5 Ibid.

Chapter 4: Outlines items pertinent to understanding historic and current stakeholder relations, including mining cooperatives, civil society, and Bisie's exploitation permit holder, Alphamin Bisie Mining SA (ABM).⁶



Picture at the Bisie site, IPIS, 2015

⁶ Alphamin Bisie Mining société anonyme is a private company that is publicly listed through its primary shareholder, Alphamin Resources Corporation. More information on Alphamin Resources Corporation and their Bisie Tin Project can be found on their website: <http://alphaminresources.com/>

1. Summary Assessment of the Bisie Security Report

The current report constitutes a third party review of the Bisie Security Report, developed by Pact in late 2015/early 2016. The Bisie Security Report is organized into two major parts: the first contains general information on Bisie as well as the armed state actors and non-state armed groups that have operated in the region. The second constitutes a security assessment of conditions in and around Bisie, including an exhaustive chronology of security incidents.

To complement and assess the Pact report, IPIS focused its attention on an in-depth analysis of the security situation in Bisie and the Bisie mineral stocks.

Bisie Security Report Methodology

IPIS can confirm that a wide range of literature sources were consulted in the drafting of Pact's Bisie Security Report, including documents produced by the UN Group of Experts, the joint validation mission and several other international (non-governmental) organisations such as Global Witness, the OECD, and IPIS. It is also clear that the authors of the report interviewed many stakeholders in North Kivu (Goma and Walikale territory, more specifically), and that these interviews have substantially contributed to the report. ABM representatives however noted that they had not been consulted by Pact with regard to the research for the Bisie Security Report until the end of the editing process.⁷ As the holder of the legal mining title to Bisie, and given the company's presence in Bisie for several years, ABM is a relevant and key stakeholder for consultation purposes. That said, the Bisie Security Report states that "ABM/MPC were engaged via local staff and stakeholder meetings in discussion of the stock clearance process, and were requested to provide information, some of which was provided following the first draft of this report in early April 2016." ABM was consulted during IPIS's field work and had provided further input after a first draft of the Bisie Security Report.

With regard to some specific statements on the role of the military in the period after 2011, IPIS believes that references to interviews in the Bisie Security Report could have been documented in more detail. Such detail might have included the type of stakeholder spoken to, and the place and the date of the interview.⁸ Clearer references would increase the ability of the reader to assess the credibility of these statements. The authors of the Bisie Security Report, however, note that they are hesitant to refer to exact sources, or indications that will enable assumptions on the identity of the source, in order to avoid endangering these sources.

On a final point, IPIS considers that the Bisie Security Report could have benefitted from wider consultation with local civil society organisations in Walikale territory and Goma, or at least, could have outlined their analysis more extensively. Civil society can provide invaluable information on the local context of mining in Bisie. More detailed references to civil society organisations could have enhanced clarity surrounding the extent of civil society consultation, as it currently seems that only one group was extensively questioned for the Bisie Security Report. Furthermore, this group claims to have been misquoted on the role of FARDC (see subtitle 'Post-2011 period' in chapter 1).

7 That said, the Bisie Security Report states that "ABM/MPC were engaged via local staff and stakeholder meetings in discussion of the stock clearance process, and were requested to provide information, some of which was provided following the first draft of this report in early April 2016."

8 The Bisie Security Report says it can not confirm Global Witness' reports as well as IPIS' reports on FARDC interference in mining and mineral trade at Bisie saying that "None of this information could be confirmed during Pact missions and interviews in 2015." To confirm this statement it refers to "Testimonies collected by iTSCi from representatives of the civil society of Bisie, November 2015. Also, according to CREDDHO, between February 2012 and March 2015, FARDC was not involved in any mining activities and did not collect or receive any taxes or fees at Bisie site." (Source: Pact Institute, Bisie Third Party Security Report for the Period 2010-September 2015, commissioned by ITRI, on behalf of the iTSCi programme, March 2016, p. 18.) It however does not give any details on the number of people denying this, where they have been interviewed, or how they have refuted this. Only with regards to CREDDHO they give more detailed information. As explained in the report text, CREDDHO however claims to have been misquoted.

Objective: ‘Review and assess the process and sources used to develop the Bisie Security Report, and whether they have reasonably informed the report.’

Summary: The Bisie Security Report used relevant and credible literature sources to assess the security situation during the time of production of the Bisie stock.

Furthermore, the researchers interviewed a wide range of relevant local stakeholders. IPIS considers that the Bisie Security Report could, however, have benefited from more consultations with ABM, civil society organisations and from clearer referencing with regard to the post-2011 period. This would increase the ability of the reader to assess the credibility of certain statements.

Accuracy of the Bisie Security Report’s Conclusions

The Bisie Security Report rightly notes that non-state armed group involvement in Bisie mining has been limited since February 2012, when the majority (96%) of Bisie’s mineral stock was accumulated. As discussed in chapter 1, a few armed group attacks occurred between 2012 and July 2014. These entailed looting and several injuries (on one case even the killing of an FARDC lieutenant)⁹, and have allegedly been linked to efforts to undermine the titleholder ABM’s activities and plans on the ground. However, these attacks did not involve direct interference in mineral mining and trade, such as frequent taxation or (indirect) control over production. The Bisie Security Report provides an exhaustive overview of these incidents. Furthermore, since July 2014 no additional rebel attacks have been reported in Bisie.

However, IPIS notes an area of difference between the Bisie Security Report and IPIS’s assessment. While in 2012 and 2013, both Global Witness and IPIS reported in detail about indirect illegal taxation by FARDC elements at the Bisie mine,¹⁰ (See subheading ‘Armed actor interference after February 2012’ in chapter 3), Pact’s missions and interviews in 2015 did not confirm FARDC interference at the Bisie mine.¹² Nevertheless, it is acknowledged that this involvement cannot be compared in scope or scale to the pre-2011 practices and interference engaged in by the 85th and 212th brigades of the FARDC, which involved human rights violations, such as arbitrary arrest, child labour and forced labour. The latest FARDC interferences, on which Global Witness and IPIS reported in 2013, did not impact the perception of general improved security at Bisie, which has been acknowledged by multiple international observers, including the UN Group of Experts.¹³ Furthermore, since the identification of FARDC’s indirect illegal taxation at Bisie by IPIS field teams in August 2013, there have been no further reports of FARDC interference highlighted at the level of the mine. More recently, IPIS field team’s conducting visits to Bisie in June 2015 did not report the identification of interference by the FARDC. Forced labour and child labour were not observed during the field visit.¹⁴

Pact’s Bisie Security Report and the present IPIS review report both discuss payments at roadblocks along the Bisie-Ndjingala axis. Findings in the two reports differ slightly with regard to taxation levels and the recipient of taxes at each roadblock. Nevertheless, both refer to payments to the FARDC as well as to other state services, such as the intelligence agency, DGM, territorial administration. IPIS can confirm that the payments at the roadblocks were not an issue for most stakeholders, as they agreed that these roadblocks improved security – a fact underlined multiple times in Pact’s Bisie Security Report

9 Pact’s Bisie Security Report has discussed these raids and their timing: Pact Institute (March 2016), op. cit., pp. 17-23.

10 Some stakeholders raised that besides FARDC several other non-armed state services are also involved in illegal taxation of Bisie minerals, see chapter three. These illegal interferences by state agents should be analysed in more detail, in order to mitigate this illegal activity.

11 *Global Witness, Putting principles into practice: Risks and opportunities for conflict-free sourcing in eastern Congo*, May 2013, p. 6; IPIS 2013/2014 mapping data. Consult the interactive map at: <http://ipisresearch.be/publication/analysis-interactive-map-artisanal-mining-areas-eastern-drc-may-2014-update/>

12 *Ibid.*, pp. 18, 19, 21.

13 UN Group of Experts, *Final report, S/2012/843*, November 2012, §241.

14 The Synergy Global Consulting’s report rightly notes that it is difficult to assess whether child labour is on-going, it states: “The evaluation team did not obtain any evidence of worst forms of child labour on-site, although some of the artisanal miners were young. It is therefore difficult, without an appropriate census of age and type of activity, to assuredly confirm that no youths working on-site were not under 18 years’ old.” (Source: Synergy Global Consulting (December 2015), op. cit., p. 8.)

and in Synergy Global Consulting's report. It should still be noted that these taxes cannot be accounted for in the relevant legislation and would therefore be considered illegal. Illegal taxation by state mining services and involvement of FARDC and several state agents in illegal trade at the level of Ndjingala, still pose an issue for Walikale's mineral supply chains.

In December 2015, an iTSCi incident was opened to identify and mitigate the risks regarding illegal taxation.¹⁵

Under the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, these conditions might warrant a risk management plan. With regards to interference of public security services, the guidance details that a risk management plan needs to entail a strategy "... to prevent or mitigate the risk of direct or indirect support to public or private security forces ... In such cases, we will suspend or discontinue engagement with upstream suppliers after failed attempts at mitigation within six months from the adoption of the risk management plan."¹⁶ Implementation of the guidance has become mandatory in the DRC since the adoption of a ministerial decree in 2011.¹⁷

The ICGLR's Regional Certification Mechanism advises a similar strategy. The conditions described above are covered by the manual's criteria "*Government officials (mines officials, secret service, municipal or provincial governments, military units etc.) extract significant taxation or other payments that are disproportionate to any service provided from the workers or production of a Mine Site, in a manner not authorized by the Member State's mineral code or mineral regulations,*"¹⁸ which provokes the 'yellow flagging' of the site, meaning that "*a short grace period (of six months) is permitted to correct the non-compliance.*"¹⁹

On a final point, local tensions in and around Bisie between the industrial miner ABM and artisanal miners' cooperatives over the mining title held by ABM previously led to violent confrontations between protesting miners and policemen guarding the ABM infrastructure in 2013, 2014 and 2015. These involved destruction of material and homes, and mutual accusations of physical harassment. The Bisie Security Report briefly describes the aforementioned tensions, but did not observe a link with the accumulation of the stock or aftermath of the stock evacuation. Security has improved in and around Bisie at the time of the author's visit as tensions seem to have eased. While currently stable, this risk may warrant ongoing monitoring and mitigation to continue to improve the current general security situation.

Objective: *'Review the accuracy of the report's conclusions, based on all available sources of information'*

Summary: IPIS agrees with the Bisie Security Report's observation that rebel involvement in Bisie mining has been limited over the last years, since the start of the stock accumulation from Bisie in 2012, despite some violent attacks on ABM's activities. Furthermore, the Bisie Security Report gives a detailed description of the illegal payments to FARDC and some other state services along the transport route between Bisie and Ndjingala.

The Bisie Security Report references both the Global Witness and IPIS reports of indirect illegal taxation by FARDC at the mine, but notes that this information was not confirmed by information collected by Pact. As a result, the indirect illegal taxation by FARDC at the mine is not included in the summary of types of violations from February 2012 – March 2015. IPIS however believes that Global Witness and IPIS reports from 2012 and 2013 present clear and detailed accounts of indirect illegal taxation by FARDC at the Bisie mine.

15 iTSCi incident number NK/2015/0123.

16 Ibid., pp.22-23.

17 Note circulaire n°002/CAB.MIN/MINES/01/2011 du 06 septembre 2011 relative à l'Application obligatoire des directives et recommandations du Guide du Devoir de diligence de l'OCDE et de la résolution 1952 (2010) du Conseil de Sécurité de l'ONU dans le secteur minier Congolais.

18 ICGLR, *ICGLR Regional Certification Mechanism (RCM): Certification Manual*, Appendices p. 17, <http://www.icglr.org/index.php/en/natural-resources> (consulted at 15 June 2016).

19 Ibid., p.15.

Additional Considerations

In preparing the current assessment it became apparent that additional issues may have the potential to contribute to security and supply chain transparency situation going forward. These are, namely:

1. The risk of minerals from other mining sites being mixed with the Bisie mineral stock seems to be minimal. However, there are some discrepancies in government agencies' reporting on the mineral stock volume, and allegations that the initially registered volume represents a 30% overestimation of the actual stock.
2. Bisie's mineral stock has created a vast web of creditors and lenders in the region. A decision to prohibit the marketing of the stock would likely generate much dissatisfaction, and allegedly even anger on the ground, as many would lose their savings. However, there still seems to be a lack of transparency with regards to the financial backers of some of the stock owners.
3. Several international stakeholders have expressed concern about the potential risk of creating a precedent for Congolese mineral stocks to appear in the same or new locations.
4. The link between 'artisanal mining governance' and 'mining policy decisions' on the one hand, and 'armed group activity' (Nduma Defence of Congo (NDC) in particular), on the other hand, has been demonstrated in the past. Synergy Global Consulting's report evaluates the minerals evacuation process from Bisie in a manner that encompasses these issues, and related security risks.²⁰



Picture Kalay Boeing – Mont Agoma, IPIS, 2015

²⁰ Synergy Global Consulting (December 2015), op. cit., pp. 27-30.

2. Bisie Stock History and Context

Bisie is located in the Wassa *groupement* in Walikale territory, Wanianga *secteur*. It comprises a significant number of cassiterite mines around the Mpama hill, including *Golgotha*, *Marouge*, *5 minutes*, *10 minutes*, *15 minutes* and *45 minutes*. ABM has renamed the latter two mines, Mpama North and Mpama South. The original names refer to the distance to Manoire, a settlement at the foothills of Mpama, which quickly grew to become a small town. At the time, other settlements such as Marouge and *45 minutes* appeared. By 2010, Bisie was home to about 13,000 people,²¹ including an estimated 2,500 artisanal miners.²²

With the arrival of a few thousand miners, cassiterite production at the Bisie mines had peaked by 2009/2010 to an estimated 7,000 tonnes a year.²³ At that time, Bisie's production reportedly accounted for most of Congo's reported cassiterite exports.²⁴ In June 2015, the IPIS field team reported about an estimated 500 miners working at the site.²⁵

In 2006 Mining and Processing Congo (MPC) obtained an exploration permit (No. 5266) for the Bisie area. Several years later, after MPC's full acquisition by Alphamin Resources Corp. in 2013,²⁶ the Congolese government granted the company an exploitation permit for the area for gold and tin in February 2015.²⁷ As of March 2015, MPC changed its name into Alphamin Bisie Mining SA (*Société Anonyme avec Conseil d'Administration*) (ABM).

2010 Suspension and *de facto* Embargo

By 2010, the link between the minerals trade and illegal armed conflict²⁸ was gaining increasing international attention. International NGOs highlighted how armed groups profited from the mining sector in eastern DRC²⁹ and Bisie became a notorious illustration of a mine at which men, women and children

21 Pole Institute, *Blood Minerals. The criminalisation of the mining industry in eastern DRC*. November 2010, p. 14.

22 IPIS 2014 data from the project 'Mapping Conflict Minerals: Eastern DRC', to be consulted at: <http://ipisresearch.be/publication/analysis-interactive-map-artisanal-mining-areas-eastern-drc-may-2014-update/>

23 The U.S Geological Survey reported that "Before the 6-month ban on mining operations in Maniema, Nord-Kivu, and Sud-Kivu Provinces, (from September 2010 to March 2011) the Bisie Mines in Nord-Kivu Province produced between 6,000 and 7,200 t/yr of cassiterite." Source: USGS, *2011 Minerals Yearbook: Congo-K*, May 2013, p 11.4.

24 The US Geological Survey recognised that in the first six months of 2010, production at Bisie accounted for about two-thirds of the reported Congolese cassiterite exports, making it the largest site of this mineral in the country. (Source: USGS, *2010 Minerals Yearbook: Congo-K*, August 2012, p 11.4); The UN Group of Experts reported that Bisie produced 70% of North Kivu's cassiterite output. (Source: UN Group of Experts, *Final report, S/2009/603*, November 2009, § 201.)

25 IPIS 2015 data from the project 'Mapping Conflict Minerals: Eastern DRC', to be published in July 2016.

26 Alphamin Resources Corp., *Alphamin acquires final 30% of the Bisie Tin Project, Democratic Republic of the Congo, and announces new Director*, 10 September 2012.

27 DRC Mining Cadastre Portal, <http://portals.flexicadastre.com/drc/en/>, consulted on 4 May 2016.

28 In the Congolese context, the term 'conflict minerals' is widely understood to encompass primarily coltan, cassiterite, wolframite, or their derivatives (respectively tantalum, tin and tungsten, called the 3T), and gold, of which the production and/or trade are considered to have contributed to human rights violations, conflict financing, and/or armed actor activity. The OECD Due Diligence Guidance utilizes a wider frame of reference by addressing 'minerals from conflict-affected and high-risk areas', identifying these areas by reference to 'the presence of armed conflict, widespread violence or other risks of harm to people.' It further explains that '*high-risk areas may include areas of political instability or repression, institutional weakness, insecurity, collapse of civil infrastructure and widespread violence. Such areas are often characterised by widespread human rights abuses and violations of national or international law.*' (Source: OECD, *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*, Second Edition, 2013, p. 13.) In 2011, the Government of the DRC has made implementation of the guidance mandatory by the adoption of a ministerial decree. The decree also specifically refers to the 3T minerals and gold. (Source: Note circulaire n°002/CAB.MIN/MINES/01/2011 du 06 septembre 2011 relative à l'Application obligatoire des directives et recommandations du Guide du Devoir de diligence de l'OCDE et de la résolution 1952 (2010) du Conseil de Sécurité de l'ONU dans le secteur minier Congolais.) Furthermore, another ministerial decree implements ICGLR's certification mechanism, which also concerns 3T and gold. The RCM Manual also addresses the issue of illegal taxes and bribes paid to any government officials. (Arrêté ministériel n°0057/CAB.MIN/MINES/01/2012 du 29 février 2012 portant mise en œuvre du mécanisme régional de certification de la Conférence Internationale sur la Région des Grands Lacs « CIRGL », en République Démocratique du Congo).

29 Among others: Global Witness ("*Faced with a gun, what can you do?*") *War and militarisation of mining in Eastern Congo, June 2009*, and Enough Project (*From Mine to Mobile Phone: The Conflict Minerals Supply Chain*, November 2009). For a critical analysis on the history of the advocacy on conflict minerals and the Dodd-Frank Act, see the documentary *We Will Win Peace*, by Seth Chase: www.wewillwinpeace.com

were forced to work for armed groups. In response to growing international pressure about the DRC's conflict minerals problem, particularly following the adoption in the United States of the Dodd-Frank Act, President Kabila proclaimed a "presidential suspension on mining activity in Maniema, South and North Kivu" in September 2010.

The suspension was lifted by the Minister of Mines on 10 March 2011, but was quickly replaced with what stakeholders came to call an "embargo *de fait*" (or "*de facto* embargo"). This expression was a term widely used to describe the fact that the international market had begun avoiding Congolese 3T (tin, tantalum and tungsten) minerals, due to international scrutiny of the conflict minerals-issue in the DRC.³⁰

Local stakeholders in Walikale further complain that the territory was affected by an additional "suspension *de fait*." In February 2012, the National Minister of Mines signed a ministerial decree defining procedures for qualifying and validating mine sites, including designating them as 'green sites' from which 'clean minerals' could be legally authorised for export and sale.³¹ However, much to the consternation of local stakeholders, the validation of Walikale mines did not take place until October 2014.³²

Previously, in March and April 2014 two joint evaluation missions, including among others representatives from IOM, MONUSCO, Pact/iTSCi, miners' cooperatives, civil society and the mining administration, had been sent to Walikale to assess whether it would be appropriate to send a joint validation mission (see text box below) to the territory's mining sites. The reports of those missions recommended that a validation mission would be beneficial to reorganize Walikale's mining sector. However, several issues were also raised with regards to Bisie, and MONUSCO-JMAC/IOM and USAID concluded that the conditions at the Bisie sites were not favorable for validation. The national Minister of Mines reportedly endorsed these recommendations. Nevertheless, the reports also stated that it would be interesting to send a validation mission to other permits held by Sakima, in order to boost the Isanga trading center.³³

Four issues had been raised with regards to Bisie: First, the team observed that most of the pits are deeper than the legal limit of 30 meters, presenting a high risk of accidents and casualties. Second, a minimum level of security could not be guaranteed due to presence of armed groups in the vicinity of the mine. Furthermore, illegal taxation by FARDC, local authorities and customary chiefs, along the trading route or at the mine, are not in line with the DRC government's criteria to validate a site. Third, questions were raised over the production volumes. Finally, the titleholder MPC/ABM had never received a formal demand for its approval of a validation. Besides, it had expressed its concern that a validation mission might cause an influx of miners.³⁴

Joint Validation Missions

A DRC Government joint validation team includes representatives from the Provincial Ministry of Mines, as well as provincial representatives from SAESSCAM, CAMI, the Mining Police or the Military Region, the Mining Division and the Chamber of Mines, the German Federal Institute for Geosciences and Natural Resources (BGR), ITRI, MONUSCO, and civil society working in the natural resources sector.

30 Wolfe L., How Dodd-Frank is Failing Congo, in Foreign Policy, 2 February 2015, and Letter from SME director to SEC chairman, 25 October 2011, <https://www.sec.gov/comments/s7-40-10/s74010-348.pdf>

31 Ministry of Mines, Ministerial Decree of 29 February 2012 n°0058 formalizing the mine sites validation in accordance to the OECD guidelines. http://mines-rdc.cd/fr/documents/Arrete_0058_2012.pdf

32 Arrêté ministériel, 0598/CAB.MIN/MINES/01/2014 du 02 octobre 2014 portant Qualification et Validation des Sites Miniers du Territoire de Walikale dans la Province du Nord-Kivu.

33 Rapport de la mission conjointe d'évaluation des sites miniers et des voies d'évacuation des minerais dans le territoire de Walikale, Province du Nord Kivu, April 2014 ; JMAC/MONUSCO, Rapport de mission conjointe à Mpama Bisie du 27-29 Mars 2014. And USAID letter to Minister of Mines Kabwelulu, *Recommandations sur la validation des sites miniers du territoire de Walikale, Province du Nord-Kivu*, 15 May 2014.

34 Ibid.

These joint missions assess the security situation at the site and its surroundings, verifying that there is no presence of or control exercised by non-state armed groups, bandits and/or undisciplined members of the FARDC over mine sites and transport routes in the vicinity. The missions also evaluate socio-economic risks such as child labour, depth of pits, presence of pregnant women and environmental issues.

Validation teams classify sites as red, yellow or green depending on the security and socio-economic situation prevailing. Only sites classified as “green” are allowed to produce and trade minerals.

Source: Ministerial Decree n°0058/CAB.MIN/MINES/01/2012 of 29 February 2012 formalising qualification and validation procedures of the auriferous and tin-bearing mining sites in North Kivu, South Kivu and Province Orientale.

Despite this, and the consequent illegality of the trade in minerals from this locality, mining at the Bisie sites continued. This led to much cassiterite production getting stockpiled, both on site and at local trading centres. Furthermore, there have been allegations about Bisie’s minerals being transported to Bukavu and Goma, in order to mix them with other mineral batches.

In June 2015, an iTSCi mission estimated Bisie’s stock to be at 1,351,350 kg, packed in 27,027 bags of 50kg.³⁵ On 16 July 2015, the Congolese government released a revised list of owners of the Bisie stock, prepared by Bisie’s *Antenne des Mines*. The document includes reference to the number of bags, the quantity in kilogrammes and the production dates of the minerals.³⁶ The latter runs from November 2010 to June 2015. The list of owners is composed of two separate excel sheets, one registering “*négociants*,” and the other listing “*miners*.” The total amount of the stock is estimated at 1,438,450 kg divided between 26,669 bags. These figures exhibit an apparent discrepancy to the extent that if each bag weights 50kg, it should be a total of 28,769 bags, leaving a difference of 2,100 bags. Despite this discrepancy, the document remains fundamental in outlining the registration dates for the bags.

This chapter will go on to analyse the proportions of cassiterite extracted before and after February 2012. As will be explained in chapter two, the Congolese national army, the *Forces Armées de la République Démocratique du Congo* (FARDC) regained control of Bisie from the militia group, NDC, in February 2012. After that time, the security situation at Bisie improved thanks to the demilitarisation of the mine sites and the direct disengagement of military forces in the mining sector.

Bisie Production before February 2012

According to the aforementioned document prepared by *Antenne des Mines* of Bisie, the oldest portions of Bisie’s current mineral stock date back to the period of the Presidential suspension between September 2010 and March 2011.

In February 2012, the armed group NDC led by Sheka left Bisie and was replaced by the FARDC, leading to the stabilisation of the security situation in Bisie. The document prepared by *Antenne des Mines* of Bisie indicates that only a small part of Bisie’s stock was produced before that date. It specifies that 10 tonnes of cassiterite was extracted in November 2010, 5.55 tonnes in March 2011, 12 tonnes in December 2011 and 25.45 tonnes in January 2012.³⁷ These amounts constitute approximately 4% of the total stock.³⁸ This production took place in the context of the presidential suspension and just after its lifting, when the *Police des Mines et Hydrocarbures* (PMH) was responsible for the provision of security at the mine (November 2010 and March 2011). It also covers a period of armed group control over the site by the NDC, led by

35 iTSCi mission of the 24th June 2015, Identification de stock résiduel Bisie. Excel sheet attached to the iTSCi “Notes on Mineral Stock Clearance Process”, 26 August 2015, p.4.

36 Chef d’Antenne des Mines de Bisie, Enregistrement Stocks Minerais résiduels à Bisie. 16th July 2015. One excel sheet registers the “*négociants*” and the other “*artisanal miners*”. Attached to the iTSCi “Notes on Mineral Stock Clearance Process”, 26 August 2015, p. 4-5.

37 Ibid.

38 $53,000 \text{ kg (production registered in 2010-January2012)} / 1,351,350 \text{ (total amount of the stock)} = 0.0392$. Calculating the proportion with the primary estimation of the total amount of the stock, 1,438,450, the percentage represents 3.68%.

Commander Sheka (December 2011 and January 2012).

This pre-February 2012 period was turbulent for miners. As outlined above, despite the presidential suspension between September 2010 to March 2011, production continued at the site.³⁹ This is alleged to have seen some FARDC soldiers illegally recruiting young people from Mubi and Ndjingala to continue extracting and stocking minerals.⁴⁰

Despite this continued mining, Walikale suffered economically from the suspension and the subsequent *embargo de fait* imposed by the international market. Local tin prices in Mubi fell from \$5.5 a kilo in 2010 to \$2 after May 2012. Indeed, Bisie production in 2011 represented only an estimated 10% of the cassiterite mined in the preceding year.⁴¹ Miners had started leaving Bisie, reducing the workforce from 1,200 workers before the suspension, to only 200 in July 2012.⁴²

As a result of declining cassiterite prices and production,⁴³ existing investment in artisanal mining in Bisie dropped, forcing any remaining cooperatives, traders and artisanal miners to seek new investors.

Bisie Production after February 2012

Whilst the “*embargo de fait*” persists to this day, the security situation after February 2012 showed a marked change when the FARDC restored security at Bisie (see chapter 2). Reduced prices, left artisanal miners and cooperatives in search of new investors. Although Bisie was not validated, miners and cooperatives were convinced that a joint validation mission (see text box) would nevertheless visit Bisie sooner or later, using this supposition to persuade potential financiers to invest in the artisanal mining sector.⁴⁴ According to the list of owners prepared by the *Antenne des Mines de Bisie*, 62 of the investors were identified as artisanal miners and 16 as *négociants*. The local population has thus reportedly participated in financially supporting this exploitation. However, it was not possible as part of this review to identify the stakeholders who have pre-financed artisanal miners to continue to extract minerals.

New investments in mining at Bisie between 2012 and June 2015, enabled miners to continue extracting cassiterite. Nevertheless, as these minerals could not be sold officially, they were allegedly partly smuggled and partly stockpiled. *Antenne des Mines de Bisie* estimates that this stockpiled production of the period 2012-June 2015 represent 96% of the iTSCi estimate of the Bisie stock of 1,351,350 kg of cassiterite.

Some sources, however, state that Bisie’s existing stock appears to have been overestimated by 400-500 tonnes.⁴⁵ During the evacuation period (October-December) *Division des Mines* and SAESSCAM⁴⁶ agents noticed discrepancies between stock quantities registered in June 2015 and the minerals actually weighed during the evacuation. Suspecting that overestimation had taken place, they requested a visit to the owners’ warehouses. Some were reportedly empty, while some self-declared owners refused to show their stock.⁴⁷ Synergy Global Consulting, however, refers to logistical reasons and a ‘financial bottleneck in the value chain’ to explain the slow pace of the stock evacuation process.⁴⁸

It should be noticed that there have been reports of stock movement between the dates of registration.

39 Radio Okapi, *Walikale : les militaires des FARDC continuent d’exploiter les minerais*, 29 September 2010; Zingg Wimmer S. & Hilgert F., Bisie. *A one-year snapshot of the DRC’s principal cassiterite mine*, IPIS, November 2011; Written confirmation by Global Witness representative, 27 May 2016.

40 Radio Okapi, *Walikale : les militaires des FARDC continuent d’exploiter les minerais*, 29 September 2010; Written confirmation by Global Witness representative, 27 May 2016.

41 UN Group of Experts, *Final report*, S/2011/738, December 2011, p. 115.

42 UN Group of Experts, *Final report*, S/2012/843, November 2012, p. 52-53.

43 IPIS interview with SAESSCAM, Goma, 31 January 2016.

44 IPIS Interview with SAESSCAM, Goma, 31st of January 2016; IPIS Interviews with cooperatives and Antennes des Mines of Bisie, 8th of February 2016; IPIS interview with the *Coordination du Territoire de la Société Civile*, Walikale, 3rd of February 2016.

45 Both sources, mentioned an estimated total stock volume of 800 to 900 tonnes in separate interviews. IPIS interviews with a representative of an international organisation and an official of the state mining service, February 2016, North Kivu.

46 Tagging activity usually requires agents of the SAESSCAM, *Division des Mines* and iTSCi/ITRI. However, the interviewee providing this information referred to only to the observation on the part of the state agents. IPIS does not know if the iTSCi/ITRI agent shared his concern with the hierarchy.

47 IPIS interviews with a representative of an international organisation and an official of state mining service, February 2016, North Kivu.

48 Synergy Global Consulting (December 2015), op. cit., pp. 16-17.

The Group of Experts wrote in 2013 that “while most of production at Bisie is consigned and stored, some of the current production is being smuggled.”⁴⁹ The Group of experts detailed, a year later, that mine operators shipped 776,2 tons of red tin ore from Bisie between the 1st of July and the 30th September 2013.⁵⁰ It further calculated that 420 tons of tin ore was added to Bisie’s stock after February 2013.⁵¹

When IPIS visited, the *15 minutes* mine site in February 2016, some artisanal miners interviewed claimed that they were not extracting cassiterite but only maintaining the sites to be ready for a joint validation mission.⁵² However, during its visit to Bisie, IPIS observed that workers were still extracting from the *5 minutes* and *15 minutes* sites and also visited new pits in these sites, thus confirming that production remained ongoing. In February 2016, IPIS observed around 50 workers at the site. Moreover, in June 2015 as many as 500 were observed as engaged in operations by a previous IPIS monitoring team. This illustrates the fluctuation of miner numbers at mining sites. Some sources suggest that artisanal miners may have been extracting new cassiterite and hoping to record, sell and evacuate it as part of the existing stock.⁵³

Effects on Security and Local Economy

Local authorities, the mining administration and local NGOs assert that because local traders own nearly the entire Bisie stock, there is a strong argument for authorising its commercialisation.⁵⁴ Much money has been invested by these individuals; for example, one trader said “I have invested my savings in minerals hoping to make money, but if I can’t sell them, what can I do? I can’t eat them.”⁵⁵ As mentioned above, it was not possible to identify the stakeholders who pre-financed the accumulation of the stock. Consequently, it is still unclear to what extent local stakeholders actually own the stock, or to what extent it belongs to financiers that have financed those local actors.

Bisie’s stock has created a vast web of creditors and lenders in the region.⁵⁶ Indeed, traders usually supported artisanal miners, providing them upfront with equipment, and sometimes food or petrol. However, Synergy Global Consulting reported that they are only able to pay in full once they have sold the cassiterite. Despite this, in Bisie, production took place over a long period without generating revenue. This means that many traders have been unable to pay the artisanal miners for production that was not yet sold.⁵⁷ As a result, traders owe money to exporters who pre-funded their collection of minerals, and to artisanal miners and transporters who in turn have debts with regional business owners while they themselves await payment.

A decision to ban the sale of the stock may be viewed as unfair by local miners and cooperatives as prohibiting the sale of the stock could impoverish most of its owners and some local miners. Such a decision could potentially fuel violence by compounding miners’ existing frustrations about being expelled from the *45 minutes* site, the potential loss of their savings, and a growing sense that Bisie will not be validated.

Miners at the *15 minutes* site clearly expressed how angry they would be if the stocks could not be sold, and more generally, if Bisie were not validated by the government.⁵⁸ The whole mining administration, from the Mining Division in Goma and Walikale to the *Antenne des Mines* of Bisie, as well as the provincial authorities, talked about the stock as “a ticking time bomb” were it not to be sold, thus advocating its sale.⁵⁹

ABM does not object to the transparent selling of the Bisie stock, with objective and full disclosure of the

49 UN Group of Experts, *Midterm report*, S/2013/433, July 2013, p. 36.

50 UN Group of Experts, *Final report*, S/2014/42, January 2014, p. 43.

51 Ibid.

52 IPIS interviews with miners at the site, Bisie, 9th February 2016,

53 IPIS interviews with a representative of an international organisation and an official of state mining service, February 2016, North Kivu.

54 IPIS Interviews with the Mine Administration, a local NGO and the Territory Administrator, Walikale, 3rd and 4th of February 2016. According to Synergy Global Consulting, many owners of the minerals, or négociants, actually from places such as Kisangani, Lubumbashi, Goma, but they bring other economic activities from which the local population of Walikale benefits.

55 IPIS Interview with ANEMNKI, Mubi, 5th of February 2016.

56 IPIS interviews with representatives of mining authorities, Goma and Walikale, January/February 2016.

57 Synergy Global Consulting (December 2015), op. cit., pp. 16-17.

58 IPIS interview with miners, Bisie, 9th of February 2016.

59 IPIS interview with the Mine Division, Walikale, 3rd of February 2016.

conditions under which it was produced.⁶⁰ Some of the inhabitants of Manoire are allegedly waiting to sell their stock to leave the region, and their continued or increased presence may obstruct the development of ABM's industrialisation projects.⁶¹

Development and Implementation of the Evacuation Process

By 2012, Congolese authorities had expressed their concern regarding the fate of the untagged minerals stocked in warehouses in North Kivu. The issue was raised again in November 2014 at the OECD Multi-stakeholder Forum in Kinshasa. At the OECD-organised side meeting on this issue, participants suggested a stock evacuation process allowing for a 60-day period for the tagging of "*cassiterite from Walikale unskilled sites*,"⁶² and its consequent evacuation to Goma. However, already at that stage, several participants to the meeting, including OECD representatives, raised some concerns, which were recorded in the minutes of the meeting,⁶³ and are discussed below (see next subheading 'Effects on Due Diligence Efforts').

The evacuation process would involve labelling the minerals with unique tags and informing potential buyers about the associated risks. Furthermore, the minerals would be exported with a non-ICGLR CEEC certificate of origin, as they do not conform to the export requirements attendant with CEEC ICGLR certificate of origin since Bisie had not been validated.

The evacuation process was developed in more detail at the Congolese level, and finally approved by the National Minister of Mines in a letter from June 2015 and signed on 3 July 2015. At that time, the National Minister referred only to the presence of a 56.67 tonne cassiterite stock from non-validated Walikale mining sites in exporters' warehouses.⁶⁴ He did not make reference of mineral stocks present at Bisie's mining sites. In later documents, however, the Minister went on to specifically authorise the evacuation of these mineral stocks at Bisie.⁶⁵

In July 2015, the entire evacuation process to Goma was further developed by a wide range of actors, including the mining authorities, a cooperative representative, ANEMNKI (the traders' association), ABM, Pact/ITRI, IOM and Tetra Tech.⁶⁶ This saw the introduction of measures to control stock volumes to ensure that no additional production was added to the stock. Furthermore, a process was developed to bag and tag the minerals to guarantee traceability. Meanwhile, the payment of official taxes had been assured, and it was agreed that artisanal miners would leave Bisie, and that *négociants* could not buy any more untagged minerals.⁶⁷

The evacuation process was initially due to be finished on 13 December 2015, but the Minister of Mines first extended this deadline to 20 December, and adjusted it a second time to 31 December 2015, at the request of the cooperatives.⁶⁸ Furthermore, the Minister of Mines exceptionally authorised an airlift to Goma to meet a deadline of 31 December 2015. Expediting the evacuation process would allow the sale of the minerals to be accelerated, which could generate the cash needed to remove the remainder of the stock. Nevertheless, it rapidly became evident that it was too expensive for traders to finance this air transport and it did not therefore take place.⁶⁹

Eventually, the Bisie stock was evacuated between 13 October and 31 December 2015. By the end of this process, a total of 980,650 kg had been evacuated, which is 7,414 bags (or 370,700 kg) less than the total estimated by the iTSCi mission in June 2015, and 457,800 kg less than the total estimated by the Bisie's

60 ABM Letter of ABM Bisie Mining S.A to the Provincial Minister of Mines, N/ref: RC/2015/008Goma, 27th April 2015. IPIS correspondence with ABM, 8 June 2016.

61 IPIS interview with ABM, Goma, 31 January 2016.

62 Side meeting at the 8th ICGLR-OECD-UN Group of Experts Multi-stakeholder Forum, *Minutes of the Meeting of Exchange views on Minerals stocks that are not eligible to the ICGLR Certificate*, 6th of November 2014

63 Ibid.

64 Ministère des Mines (RDC), *Lettre n. CAB.MIN/MINES/01/1054/2015*, 26th of June 2015.

65 Ministère des Mines (RDC), *Lettre n. CAB.MIN/MINES/01/2016/2015*, 21st of December 2015.

66 *Proces verbal de la réunion tenue à Goma par le directeur général du CEEC*, 27 July 2015.

67 Synergy Global Consulting (December 2015), op. cit.

68 Synergy Global Consulting (December 2015), op. cit.,

69 For further information on the mineral evacuation by air, see Synergy Global Consulting, (December 2015), op. cit. section one "Background of the multi-stakeholder agreement and description of the tagging and evacuation process".

Antenne des Mines in its July 2015 revised list of owners.⁷⁰

SAESSCAM agents gave different reasons as to why about 400,000 kg were left untagged in Manoire, despite two evacuation deadline extensions. These arguments have been discussed in detail in Synergy Global Consulting's report. It describes the stock evacuation process has been seriously slowed down by several barriers. There is a financial bottleneck in the value chain because of local mineral traders' lack of cash flow and their debts towards miners. Furthermore, it was said that there were too many bags to physically evacuate during the specified time frame, despite the extensions granted.⁷¹ The evacuation process also encountered logistics difficulties in implementation due to the long roads.⁷²

Another explanation that has been raised, is that this 400,000 kg of cassiterite never existed. As discussed above (see subheading 'Bisie Production after February 2012'), some 'stock owners' allegedly speculated that this overestimation would allow them to continue mining during the evacuation process.

Effects on Due Diligence Efforts

Despite a strong agreement on the need for authorisation of the stock sale, during the side meeting at the OECD Multi-stakeholder Forum of November 2014, several participants, including OECD representatives, raised concerns about the proposed stock evacuation. Whilst these concerns were added to the minutes for that meeting, which were subsequently signed by all participants, OECD representatives felt that several of these concerns had not been adequately addressed.⁷³

One such concern relates to the creation of a precedent to the extent that other artisanal miners may be encouraged to mine illegal sites, generate a stock and request special measures to authorise its trade at a later date, including at Bisie. This is a concern that OECD representatives fear has been largely ignored.⁷⁴ The Congolese authorities have provided no assurances that this exceptional process would not form a precedent, and the Minister's letter of June 2015, which authorises the evacuation process, only stated that the evacuation constituted a 'special dispensation' (*dérogation speciale*),⁷⁵ not that it was 'a one-time only exemption.'

At the 30th of May 2016, however, the Minister of Mines has issued a statement to CFSI that he "... assures all stakeholders that no more residual stock of minerals from Bisie and surrounding sites from before January 2014, that has not been part of the evacuation process, will be authorised for iTSCi tagging system, in order to export them."⁷⁶ However, the statement seems to be limited to Bisie and surrounding mining sites, and does not necessarily provide a guarantee that no more exemptions will be granted for other stocks.⁷⁷ An international observer flagged that if such a precedent were set it would jeopardise the traceability of the mineral supply chains that the government and international partners have worked hard to implement to date.⁷⁸

On the other hand, the existence of this large stock also represents an important risk to the contamination of supply chains of other minerals. Should it not be traded legally, the cassiterite from Bisie could be fraudulently mixed with production from other sites that are not monitored. Consequently, its sale, with accompanying mitigation measures and public reporting might be considered a reasonable risk mitigation strategy. However, the OECD also expressed concern that the Ministerial letter of June 2015 did not

70 IPIS Interview with SAESSCAM, Bisie, 8th of February 2016.

71 Synergy Global Consulting (December 2015), op. cit., pp. 16-17; IPIS Interview with SAESSCAM, Bisie, 8th of February 2016.

72 For more details on the mineral evacuation challenges, see Synergy Global Consulting, (December 2015), op. cit., 16-17.

73 IPIS telephone interview with OECD representatives, January 2016; OECD's comments can be consulted in detail in the minutes of the side meeting: Side meeting at the 8th ICGLR-OECD-UN Group of Experts Multi-stakeholder Forum, *Minutes of the Meeting of Exchange views on Minerals stocks that are not eligible to the ICGLR Certificate*, 6th of November 2014.

74 Ibid.

75 Ministère des Mines (RDC), *Lettre n. CAB.MIN/MINES/01/1054/2015*, 26th of June 2015.

76 "... et peux assurer toutes les parties prenantes qu'aucun autre stock résiduel des minerais du site minier de Bisie et sites environnants d'avant janvier 2014, n'ayant pas fait l'objet de ce processus d'évacuation, ne sera autorisé à l'étiquetage par le système ITSCI, en vue de leur exportation." Minister of Mines letter to CFSI, *Respect des engagements/Stocks résiduels des minerais de Bisie, sites environnants et des entrepôts de Goma*, CAB.MIN/MINES/01/0835/2016, 30 May 2016.

77 Minister of Mines letter to CFSI, *Respect des engagements/Stocks résiduels des minerais de Bisie, sites environnants et des entrepôts de Goma*, CAB.MIN/MINES/01/0835/2016, 30 May 2016.

78 IPIS telephone interview with Global Witness, January 2016.

specify a requirement for stakeholders along the supply chain to demonstrate a minimum level of due diligence.⁷⁹

Risk of Mixed Production

In the context of Bisie, references to “mixing” denote the aggregation of this stockpile with production from other sites. This generates concern because these other mine sites may not be monitored for the presence of armed group interference.

While the risk of mixing at the Bisie mining site cannot be excluded, it would seem to be rather limited. Even though there are a few cassiterite mines nearby, the closest one being Kalay-Boeing, their number is limited. Most mineral mining in the Bisie area concerns gold mining.⁸⁰ Other important cassiterite mines are located far away, close to national road number 3, where several mines are qualified green and were validated in October 2014. Bissagowa was until March 2016 the closest green site from Bisie.⁸¹ Moreover, whilst feasible, it is not clear whether moving tin ore from Kalay-Boeing to Bisie would be profitable in light of the cost of transport.

Despite this, local and international NGOs both alleged that mineral mixing was taking place further downstream in Ndjingala and Mubi, a trading towns 40 km south of Bisie.⁸² According to iTSCi notes on the mineral stock clearance process, only 72,620 kg (1,424 bags), or 5%, of the Bisie’s stock were no longer stocked in Bisie, but stored in Mubi, Ndjingala and Goma.⁸³ This means that only this 5% may have been exposed to the risk of mixing in local trading centres in Walikale territory.

79 These requirements are described in more detail in the minutes of the side meeting at the November 2014 OECD forum. They entail: (i) the trader, exporter has documents that comply with the DRC’s own traceability manual (to establish some chain of custody, until more robust traceability measures are in place); (ii) proof of on-the-ground assessment (e.g. sourced from validated mine site or/and through the traders’ own assessments and monitoring networks until such mine site validations are scaled up); and (iii) The entity had filed a public report on their due diligence with the Ministry of Mines. (Sources: IPIS telephone interview with OECD representatives, January 2016; OECD’s comments can be consulted in detail in the minutes of the side meeting: Side meeting at the 8th ICGLR-OECD-UN Group of Experts Multi-stakeholder Forum, *Minutes of the Meeting of Exchange views on Minerals stocks that are not eligible to the ICGLR Certificate*, 6th of November 2014.)

80 See IPIS interactive webmap from 2016, to be published in July 2016.

81 In March 2016, Kalay-Boing was validated green. *Arrêté Ministériel n°0028/CAB.MIN/MINES/01/2016 du 7 Mars 2016*.

82 IPIS telephone interview with Global Witness, 21st of January 2016 and local NGO, February 2016, Goma.

83 iTSCi, *Notes on Mineral stock clearance process*, Annex, August 2015.

3. Security, Human Rights, and Armed Actor Interference since 2002

Armed actor Interference before November 2010

*This subsection relates to the period prior to the reported accumulation of the Bisie mineral stock.*⁸⁴

Bisie's mineral wealth was said to have been discovered by local people around the start of the 21st century.⁸⁵ At that time, Walikale territory was subject to armed contestation between the Congolese armed forces and local and foreign armed groups.⁸⁶ Local Mai Mai militia were in control of Bisie⁸⁷ (located deep in the forest), while the *Rassemblement Congolais pour la Démocratie-Goma* (RCD-Goma), a rebellion supported by Rwanda, controlled the cassiterite trading route from Bisie to Goma. It also controlled all exports from Goma to Rwanda. In early 2004, RCD-Goma took control of Bisie, and consequently all of its cassiterite supply chain up to point of export.⁸⁸

In 2006, however, the 85th FARDC Brigade commanded by Colonel Samy Matumo took over Bisie. This brigade was largely composed of former Mai Mai fighters and Colonel Samy soon used the mines for his own profit, imposing his power through illegal taxes⁸⁹ and numerous human rights violations occurred, specially arbitrary arrests,⁹⁰ child labour⁹¹ and forced labour.⁹² Colonel Samy allegedly appropriated pits for his hierarchy in the 8th military region.⁹³

A 2008 IPIS report detailed illegal practices by the 85th FARDC brigade:

*Soldiers of the 85th Brigade steal from other miners, they levy illegal taxes, they rape, torture and force people to work for them. Colonel Matumo organises the mining of several pits himself and is known for his wealth. The income for the 85th Brigade is far beyond what is needed for their survival and their involvement in the mining business runs deep.*⁹⁴

Global Witness noted that FARDC collected at least \$120,000 over the course of 2007 and the first part of 2008 by taking a commission of \$0.15 on each kilogramme of extracted cassiterite (total illegal tax revenue based on a monthly production of 800 tonnes).⁹⁵

In early 2009, Kinshasa decided to replace the 85th brigade. Colonel Samy was sent on "training" in Bukavu,⁹⁶ and the Bisie area was placed under the control of the 212th brigade, commanded by Lieu-

84 According to a document prepared by *the Antenne des Mines of Bisie*, the accumulation of the Bisie mineral stock started slowly in November 2010. The stock is discussed more in detail in chapter 1.

85 CERN-CENCO, *Impact de l'exploitation minière sur l'économie et le social de Walikale*, décembre 2013, p. 86.

86 For a definition of the 'armed group', see for example section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act: *The term "armed group" means an armed group that is identified as perpetrators of serious human rights abuses in the annual Country Reports on Human Rights Practices under sections 116(d) and 502B(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n(d) and 2304(b)) relating to the Democratic Republic of the Congo or an adjoining country.*

87 For a definition of the meaning of 'an armed group controlling a mine', we refer for example to section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which explains that it "means areas within the Democratic Republic of the Congo or adjoining countries in which armed groups— (A) physically control mines or force labor of civilians to mine, transport, or sell conflict minerals; (B) tax, extort, or control any part of trade routes for conflict minerals, including the entire trade route from a Conflict Zone Mine to the point of export from the Democratic Republic of the Congo or an adjoining country; or (C) tax, extort, or control trading facilities, in whole or in part, including the point of export from the Democratic Republic of the Congo or an adjoining country."

88 Garrett N., Sergiou S. and Vlassenroot K., *Negotiated peace for extortion: the case of Walikale territory in eastern DR Congo*, in *Journal of Eastern African Studies*, March 2009, pp. 7-8.

89 Global Witness, "Faced with a gun, what can you do?", *War and militarisation of mining in Eastern Congo*, July 2009, pp. 27-33.

90 Garrett N., *Walikale: Artisanal Cassiterite Mining and Trade in North Kivu implication for Poverty Reduction and Security*, CASM, June 2008, p. 46.

91 N. Garrett, *DRC: Guns, sweat and tears in North Kivu's tin ore mines*, in *The Africa Report*, n°13, October-November 2008, p. 44.

92 Zingg Wimmer S. and Hilgert F. (November 2011), op. cit., p. 5.

93 Global Witness, "Faced with a gun, what can you do?" *War and militarisation of mining in Eastern Congo*, July 2009, p. 27-32.

94 Spittaels S. and Hilgert F., *Mapping Conflict Motives: Eastern DRC*, IPIS-Fatal Transactions, March 2008, p. 30.

95 Global Witness, "Faced with a gun, what can you do?" *War and militarisation of mining in Eastern Congo*, July 2009, p. 29.

96 Boltanski C., *Les minerais des sang, esclaves du monde moderne*, Grasset, 2012, p. 191.

tenant Colonel Yusuf Mbhoneza. This brigade was composed of former Congrès National pour la Défense du Peuple (CNDP) rebels, and allowing ex-CNDP officers to take control of Bisie was largely understood as a way of encouraging their rapid integration into the national army.⁹⁷

Mboneza's troops allegedly continued the taxation of mineral extraction and transport from Bisie to Ndjingala.⁹⁸ The UN Group of Experts calculated, in its report of November 2009, that the local military commanders, following Colonel Samy's departure, were continuing to make \$60,000 per annum by levying illegal taxes on minerals in Bisie.⁹⁹

Around the same period, Sheka Ntabo Ntaberi founded his own rebellion in Walikale, called the NDC. He claimed that his mobilisation was targeted at countering Congolese Hutu refugees in Rwanda returning to Walikale, and as a former cooperative member in Bisie, he also claimed the desire to free mines in Walikale from army interference. With the replacement of the 85th FARDC brigade by the 212th brigade, Sheka managed to mobilise deserters of the 85th Brigade and soldiers of the close-by military base at Biruwe to join his group.¹⁰⁰

Generals of the FARDC 8th military region also opposed the 212th brigade's control over Bisie. As such, they allegedly continued to support deserters of the 85th brigade, as well as the newly-created NDC rebellion.¹⁰¹ Indeed, Sheka benefited from relationships with elements of the Congolese army. In 2010, the UN Group of Experts reported, for example, that Colonel Etienne Bindu, former FARDC Deputy Commander of the 8th military region, supported Sheka, who is his nephew.¹⁰² Furthermore, on the political side, former administrator of Walikale territory, Dieudonné Tshishiku Mutoka, was allegedly another of Sheka's clandestine supporters.¹⁰³

Sheka's opposition to the newly arrived FARDC unit resulted in serious security incidents. On 13 August 2009, Sheka, in collaboration with rebels from the *Forces démocratiques de libération du Rwanda* (FDLR), attacked the "45 minutes" Mpama site, killing 30 people, including 16 artisanal miners, two policemen and injuring 40 other people. The UN Group of Experts stated that this massacre should be regarded within the context of a "wider power struggle for the control of the mine".¹⁰⁴

Due to human rights violations committed by Sheka's fighters, the Security Council Committee added his name to the UN sanctions list in November 2011.¹⁰⁵

Armed actor Interference from November 2010 to February 2012

This subsection relates to the period during the production of the first 4% of the Bisie stockpile.

In March-April 2011, following the lifting of the presidential suspension, and as part of a province-wide restructuring of the army (the regimentation process), the Congolese government enforced the demilitarisation of Bisie.¹⁰⁶ Control over Bisie, as well as the trading centres of Ndjingala and Mubi, was handed over to the mining police. Whilst 30 to 40 mining police were stationed in Bisie,¹⁰⁷ this restructuring nevertheless created security vacuums throughout the Kivu provinces.

In Bisie, the NDC sought to profit from this new security vacuum. It did so first by conducting regular raids, and finally by taking full control of the mine until February 2012. The NDC levied illegal taxes on the local population, allegedly asking artisanal miners to pay 2,000 Congolese francs a day to access the

97 Zingg Wimmer S. and Hilgert F. (November 2011), op. cit., p. 5

98 Ibid., p. 5.; UN Group of Experts, *Final report, S/2010/596*, § 35, 191.

99 UN Group of Experts, *Final report, S/2009/603*, November 2009, p. 50.

100 Zingg Wimmer S. and Hilgert F. (November 2011), op. cit., pp. 5-6.

101 C. Boltanski, *Les minerais des sang, esclaves du monde moderne*, p. 191.

102 UN Group of Experts, *Final report S/2010/596*, November 2010, p. 15.

103 UN Group of Experts, *Final report S/2011/738*, December 2011, p. 64.

104 UN Group of Experts, *Final report, S/2009/603*, November 2009, p.55.

105 UN, *Sanctions Committee Concerning Democratic Republic of Congo Adds One Individual to Assets Freeze, Travel Ban List*, 28 November 2011.

106 Global Witness, *Congo's minerals trade in the balance: Opportunities and obstacles to demilitarisation*, May 2011, pp. 4, 5 and 8.

107 Zingg Wimmer S. and Hilgert F. (November 2011), op. cit., p. 10.

pits,¹⁰⁸ and committed human rights violations, such as mass rape, abduction¹⁰⁹ and recruitment of child soldiers.¹¹⁰ At that time, the NDC had reportedly also established collaboration with the FDLR to control Bisie. Furthermore, it maintained a good relationship with FARDC officers in charge of the Biruwe military base, BAWA (*Base militaire de Walikale*). These officers allegedly provided arms and ammunition to Sheka's rebels in exchange for gold.¹¹¹ outlined above, Bisie mine is surrounded by numerous gold mines.

Pact's Bisie Security Report states that a man named Ramazani was the 'tax collector for Sheka'. The report refers to Ramazani Kokoli, who is currently the representative of the Bangandula clan.¹¹² The 2011 UN Group of Experts report also mentions this individual,¹¹³ stating that "Ramazani was responsible for liaising with Sheka to ensure that an appropriate amount of taxes were paid to Sheka and his allied customary chiefs".¹¹⁴ IPIS can confirm that at that time Ramazani was a PDG (mine manager) at Bisie, as the representative of the Bangandula clan, which owns the land where Bisie is situated. His role in that position was to manage the mine site, which included dealing with the demands of rebel groups. He was therefore the rebels' contact, responsible for collecting money from the miners and fulfilling the rebels' demands.

Toward the end of 2011, there were reports of Sheka negotiating a possible integration of the NDC into the Congolese army. Nevertheless, fighting simultaneously continued between the NDC and the FARDC south of Bisie.¹¹⁵ As such, sources disagree on whether the NDC's departure from Bisie in February 2012 resulted from a fight or a negotiated retreat. Regardless, the FARDC 803rd and 813th regiment eventually regained control of the site in February 2012.¹¹⁶

Armed actor interference after February 2012

This subsection relates to the period during the production of 96% of the Bisie stockpile.

State security forces

Based on its March 2012 research, Global Witness reported that FARDC forces at Bisie were still "illegally taxing [...] minerals production".¹¹⁷ However, as increased scrutiny of the minerals trade had rendered it unacceptable for armed actors to be present on mine sites, Global witness also reported that higher-ranking soldiers continued to control some pits through family members or intermediaries.¹¹⁸

Since this time, the general security situation at Bisie has improved considerably.¹¹⁹ Several local stakeholders confirmed that FARDC soldiers in charge of Bisie's security have kept their distance from the mine sites, confirming that the demilitarisation of Bisie mines had largely been achieved.¹²⁰

One FARDC officer claimed that his troops are spread in small groups in the forest to prevent attacks

108 IPIS Interview with porter on the Ndingala-Bisie axis, 6th of February 2016.

109 Between 30 July and 2 August 2010, in Luvungi, Walikale, NDC-Sheka raped 387 women, men and children and abducted 116 people. MONUSCO and UNHCDH, *Rapport Final des Missions d'Enquête du Bureau Conjoint des Nations Unies aux Droits de l'Homme sur les Viols Massifs et Autres Violations des Droits de l'Homme Commis par une Coalition de Groupes Armés sur l'Axe Kibua-Mpofi, en Territoire de Wakilake, Province du Nord-Kivu, du 30 Juillet au 2 Aout 2010*, July 2011. Also in UN Group of Experts final report, S/2010/596, November 2010, pp.39-40.

110 MONUSCO, *Child Recruitment by Armed Groups in DRC, From January 2012 to August 2013*, October 2013, p.6.

111 UN Group of Experts, *Final report, S/2011/738*, October 2011, §193-210.

112 IPIS interview with the Foyer Minier Bangandula, Bisie, 8th of February 2016

113 UN Group of Experts, *Final report, S/2011/738*, October 2011, p. 59.

114 *Ibid.*, p.59.

115 Zingg Wimmer S. and Hilgert F. (November 2011), *op. cit.* pp. 10-11.

116 Pact Institute,(March 2016), *op. cit.*, p. 16.; IPIS interview with SAESSCAM, Goma, February 2016.

117 Global Witness, *Coming Clean, How Supply Chain Controls Can Stop Congo's Minerals Trade fueling Conflict*, May 2012, pp. 14-15.

118 *Ibid.*, pp. 14-15, 22.

119 UN Group of Experts, *Final report, S/2012/843*, November 2012, p 54.

120 IPIS Interviews with traders, cooperatives, miners, porters and local mine administration: Ndjingala, Mubi and Bisie, February 2016. ABM has confirmed this observation when reading the document in May/June 2016.

from armed groups.¹²¹ However, small FARDC groups in the surrounding forests, were in some cases still involved in illegal taxation at some other mining sites up to 2015, including Bakha and Kalay-Boeing.¹²²

Despite the demilitarisation of Bisie mines, Global Witness reported in May 2013 that

*FARDC control of mineral production in Bisie persists and that Colonel Mundos, the commanding officer stationed at the nearby town of Mubi, illegally taxes the mine's mineral production and facilitates the transit of Bisie's cassiterite out of Walikale territory.*¹²³

Furthermore, IPIS field teams reported in August 2013 that some FARDC elements were still profiting indirectly from illegal taxation. The local chief (*collinier*) allegedly had to pay a contribution to a local FARDC commander on a weekly basis. On top of that, people passing road barriers near Bisie and Ndjingala, staffed by FARDC, the intelligence service ANR and the *Direction Générale de Migration* (DGM) had to pay a fixed amount of 1000 Congolese Francs per person.¹²⁴ In June 2015, however, IPIS field teams did not report any kind of illegal interference.¹²⁵

Also the joint evaluation mission to Walikale territory (more detail on its composition can be found under subheading '2010 Suspension and de facto Embargo', chapter 2), reported about FARDC taxes, as well as taxes by local authorities and customary chiefs, on the road to Bisie in March 2014.¹²⁶

Pact's Bisie Security Report quotes Global Witness' reports on FARDC's illegal interference, but says that this information cannot be confirmed, citing the local NGO CREDDHO as saying that "FARDC agents are not involved in any illegal tax collection or else in Bisie,"¹²⁷ and that "between February 2012 and March 2015, FARDC was not involved in any mining activities and did not collect or receive any taxes or fees at Bisie site from miners, traders and cooperatives".¹²⁸ CREDDHO staff interviewed by IPIS, however, deny making this statement.

Pact does confirm and reports in detail about the taxes along the Bisie–Ndjingala axis. (See subheading 'Recent roadblocks on the Ndjingala-Bisie axis', pp. 25-27)

Non-state armed groups

NDC and Mai Mai Simba rebels launched a few successful raids in 2013 and 2014 in and around the Bisie area.^{129,130} The attacks seem to be linked largely to increasing inter-communal tensions in 2013 between the Bakumu community, supported by Simba, and the Wanianga, supported by Sheka. As the NDC expanded its territory in the course of 2013, it collided with the Mai Mai Simba rebels in western Walikale.¹³¹ These raids did not target control over Bisie's artisanal mineral production and trade, despite NDC's alleged links with some cooperative members (discussed more in detail in chapter 4). However there have been allegations that these attacks, including the one on 16th of July 2014 on ABM's camp, have been part of a strategy to undermine ABM's activities. After July 2014, there have been no reports of armed group attacks on Bisie, even though tensions between some artisanal miners and ABM turned into violence in 2015 (see chapter 4).

121 IPIS Interview with Lieutenant of the FARDC 1st Battalion of S.P Company, Bisie, 8th of February 2016.

122 IPIS 2015 mapping data, to be published in the second half of 2016. The situation in Kalay-Boeing however seems to have improved since the site has been validated green in March 2016. *Annexe de l'Arrêté Ministériel n°0028/CAB.MIN/MINES/01/2016 du 7 mars 2016 portant qualification et validation des sites miniers du territoire de Walikale en province de Nord-Kivu.*

123 Global Witness refers to "Confidential civil society reports obtained by Global Witness and Global Witness interviews with diggers and mining sector officials in Walikale territory, March 2013." (Source: Global Witness, *Putting principles into practice: Risks and opportunities for conflict-free sourcing in eastern Congo*, May 2013, p. 6.)

124 IPIS 2013/2014 mapping data. Consult the interactive map at: <http://ipisresearch.be/publication/analysis-interactive-map-artisanal-mining-areas-eastern-drc-may-2014-update/>

125 IPIS 2015 mapping data, to be published in April/May 2016.

126 *Rapport de la mission conjointe d'évaluation des sites miniers et des voies d'évacuation des minerais dans le territoire de Walikale, Province du Nord Kivu*, April 2014 ; JMAC/MONUSCO, *Rapport de mission conjointe à Mpama Bisie du 27-29 Mars 2014.*

127 Pact Institute (March 2016), op. cit., p. 11.

128 Pact Institute (March 2016), op. cit., p. 18.

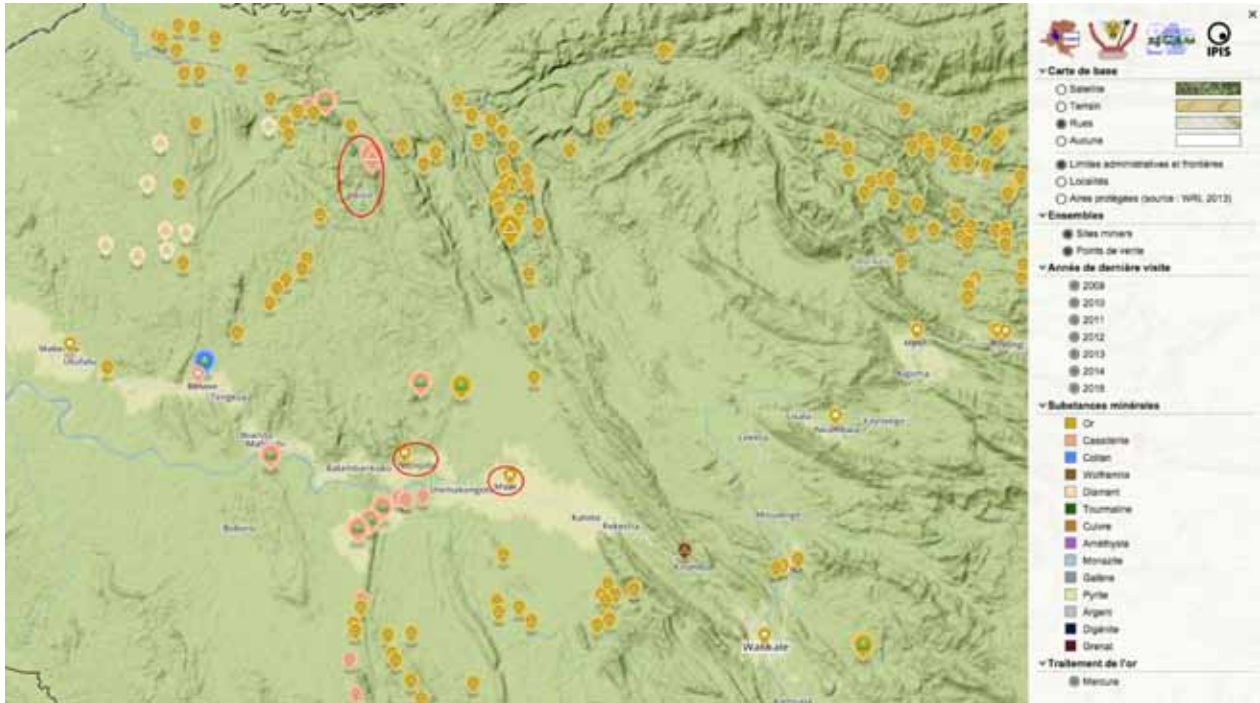
129 Pact's Bisie Security Report gives a detailed overview of these raids, see: Pact Institute (March 2016), op. cit., pp. 17-23..

130 The Simba rebels' raid did not appear on IPIS' 2014 map, as the IPIS team had visited Bisie in 2013 prior to this event.

131 Berghezan G., *Groupes armés actifs en République démocratique du Congo : Situation dans le «Grand Kivu» au 2ème semestre 2013, 2013*, GRIP.

Nevertheless, in August 2013, IPIS field teams reported that NDC received regular contributions from local landowners in Bisie without being present at the Bisie site.¹³²

Despite the presence of FARDC in and around Bisie, alleged criminal bandits started attacking mineral porters and travellers on the Ndjingala-Bisie axis. This route to Ndjingala is the first part of the mineral trade to Goma.



Screenshot of the IPIS interactive map, showing the location of Bisie, Ndjingala and Mubi, to the northwest of Walikale. Weblink: <http://www.ipisresearch.be/mapping/webmapping/drcongo/v4/#-1.2046307842621162/27.91248321533203/11/streets,1,2,4//>

For example, Pact's Bisie Security Report notes that in March 2012, a *coupeur de routes* known as Chebutira looted several goods and raped people. Chebutira was killed on the Ndjingala-Bisie axis in 2015.¹³³ Porters spoken to by IPIS confirmed that since 2014, bandits have swarmed the forest and regularly attacked them.¹³⁴

Recent roadblocks on the Ndjingala-Bisie axis

Aside from interference at mining sites, it is also key to assess whether armed actors have been involved along the mineral transport route. Increased insecurity on the Ndjingala-Bisie axis due to alleged banditry, discussed above, demonstrated the need for state security along the route. As a result, IPIS observed three roadblocks along the Ndjingala-Bisie axis in early February 2016:¹³⁵ one near Ndjingala at the entrance of the axis to Bisie; a second in Makaochu, about three hours walk from Ndjingala; and a third at the entry to Bisie.¹³⁶

The first roadblock encountered was near Ndjingala, on the route to Bisie. It is manned by civilian agents of the *secteur* Wanianga.¹³⁷ IPIS team observed these individuals demanding 500 Congolese francs from those

132 IPIS 2013/2014 mapping data.

133 We have no more details on the date and place of his death. IPIS Interview with porters, axis Ndjingala-Bisie, 6th of February 2016.

134 IPIS Interview with the President of the *Association des Porteurs de Minerais et de biens au Congo*, Ndjingala, 4th of February 2016.

135 For more general information on roadblocks: see; Verweijen J., *The Ambiguity of Militarisation: the Complex interaction between the Congolese armed forces and civilians in the Kivu provinces, Eastern DR Congo*, PhD, University of Utrecht, December 2015.

136 Enough Project has already reported on these checkpoints and the illegal taxes to access or exit Bisie. (Source: Baflemba F., Mueller T. and Lezhnev S., *The Impact of Dodd-Frank and Conflict Minerals Reforms on Eastern Congo's Conflict*, Enough Project, June 2014, p. 21.)

137 The territory of Walikale is divided in two *secteurs*: Bakano and Wanianga.

wishing to cross. Whilst a receipt is given, this tax remains illegal to the extent that it is not recognised in the mining legislation. In June 2016, an international observer informed IPIS that several state agents involved in the mining sector were still taxing 1500 Congolese francs for every untagged bag of cassiterite.¹³⁸

The second roadblock, named Makaochu, existed prior to the 2010 suspension. It was reinstated by Walikale's security council¹³⁹ at the request of traders (ANEMNKI) and with the approval of the Association of porters and mining cooperatives,¹⁴⁰ due to high levels of insecurity on the axis. Walikale security council approved the presence of the roadblock and the levy of a 500 Congolese franc tax from anyone passing in either direction. Those who cannot pay, have to work for one or two hours for the soldiers posted there, for example, by doing agriculture or carpentry tasks.¹⁴¹

Pact and Synergy Global Consulting's reports include details about these roadblocks. The latter also discusses iTSCi incident reports that were opened to facilitate the identification and mitigation of these risks.¹⁴² The incident was raised in December 2015 and closed in April 2016. Synergy Global Consulting also provides a summary of the incident report, which reports that "the CLS (*Comité Local de Suivi*) signed an official letter mentioning that the deployment of security forces had been agreed by all stakeholders but recognized the tax is illegal. They committed to more transparency in the future for deployment of state security forces."¹⁴³ Even though ABM is a member of the CLS, they have not signed this letter,¹⁴⁴ and stated that they would never agree with such an illegal taxation.¹⁴⁵ ITRI however added that ABM is a member of the CLS and therefore engaged in all discussions impacting the area.

Whilst Pact's Bisie Security Report¹⁴⁶ and Synergy Global Consulting's report stated that all stakeholders agreed with these payments, a civil society representative told IPIS that he contested the Makaochu roadblock. He complained that the tax revenue generated at the roadblock is allegedly redistributed between the Territory Administration, the DGM and the FARDC. Despite the fact that this arrangement appears to have been approved by several stakeholders in the mining sector and the Territory Administration, this civil society representative stated that as civilian protection forms part of the FARDC's mission, it should not receive compensation from civilians.¹⁴⁷

The final roadblock at the entrance to Bisie, levies 1,000 Congolese francs for each 50 kilogramme bag of cassiterite leaving the site. The man in charge of collecting this illegal tax claimed to work for *Fédération des Entreprises Congolaises* (FEC),¹⁴⁸ which is not authorised to levy taxes. The FEC denies any tax leverage on its behalf or interference with the 3TG supply chain. The Federation highlights that there are no FEC members in Bisie because there is no industry there, and FEC's president states that her organisation has always advocated the eradication of these roadblocks in the Provincial Committee of Mining Activities.¹⁴⁹ The individual in charge at the roadblock maintained that this payment was in favour of the "national economy." A member of civil society stated that this roadblock was a *guichet unique*, meaning that the revenue generated there is divided among all institutions present in Manoire.¹⁵⁰ However, Bisie's Mining Police deny the involvement of local state authorities with the Bisie roadblock, blaming instead the *Foyer Minier Bangandula*.¹⁵¹ They went on to highlight that the Administrator of the Territory had recom-

138 IPIS local consultant interview with an international observer, Goma, 15 June 2016.

139 The *Conseil de Sécurité de Walikale* gathers the Territory Administration, the ANR, the DGM, FARDC, the PNC, and the Mining Police, as well as Civil Society (though only when it is invited).

140 IPIS interviews with the chief of the *Centre de Négoce de Ndjingala* and the *Association des Porteurs*, Ndjingala, 4th of February 2016; IPIS interview with the cooperatives, Bisie, 8th of February; and IPIS interview with Mine administration, Walikale, 3rd of February 2016.

141 IPIS interview with porters, axis Ndjingala-Bisie, 6th of February 2016.

142 iTSCi incident number NK/2015/0123.

143 Synergy Global Consulting (December 2015), op. cit., p. 38.

144 Ibid. Annex I, pp. 55-56.

145 Written input to draft report by ABM, 1 July 2016.

146 Pact Institute (March 2016), op. cit., p. 18.

147 IPIS interview with Civil society representative, Walikale, 4th of February 2016.

148 IPIS interview with the tax collector of the roadblock, Bisie, 6th of February 2016.

149 IPIS telephone interview with the FEC president, 14th April 2016. The FEC also stated that it intends to investigate further this usurpation of its name in Bisie.

150 IPIS interview with Civil society representative, Walikale, 4th of February 2016.

151 The Foyer Minier Bangandula is an association that defends the interests of the Bangandula, in Bisie. The Bangandula clan is the traditional owner of Bisie.

mended the removal of this roadblock.¹⁵² The identity of the real beneficiary of this tax remains unclear.

Also the joint evaluation mission to Walikale territory (see subheading '2010 Suspension and de facto Embargo', chapter 2), reported about the same roadblocks in March/April 2014, only tax levels seem to have increased.¹⁵³

Armed actor activity since the registered accumulation of the stockpile

Since the second semester of 2014, the harmful impact of the NDC has gradually diminished. This group was reportedly weakened in confrontations with the FARDC in 2014.¹⁵⁴ Moreover, aside from confrontations with the FARDC, the last few years have also seen the NDC fighting its former close ally, the FDLR. NDC's leader, Sheka, allegedly betrayed FDLR rebels by killing their Lieutenant Colonel Evariste Kanzeguhera, alias "Sadiki Soleil," on 20 November 2011.¹⁵⁵ Over the last years, Sheka has also been losing influence over his own men. In September 2014, Sheka's second in command, Guidon, decided to create a rivalling faction, the NDC-Rénové.¹⁵⁶

Many NDC-Sheka rebels are now allegedly deserting the militia and surrendering to the FARDC. According to their testimonies, living conditions are becoming extremely difficult. They claim that Sheka is ready to surrender in exchange for avoiding prosecution for crimes against humanity.¹⁵⁷ However, the Congolese government is unwilling to grant him immunity for the mass rapes perpetrated in 13 villages in Walikale in August 2011.¹⁵⁸

While Sheka and his remaining men seem blocked in the Mutongo forest, Guidon and his NDC-Rénové have created alliances that have increased their area of influence. In the North of Walikale, Guidon gave his support to the FARDC's Sukola II mission against the FDLR, with a view to keeping good relations with the national army.¹⁵⁹ Guidon is allegedly showing goodwill towards the FARDC in order to negotiate a better surrender – said by some to be potentially imminent.¹⁶⁰ However, other sources say that Guidon is merely interested in conquering gold mines in southern Lubero from FDLR and Mai Mai Lafontaine.¹⁶¹

Indeed, Guidon also seems to have set aside ethnic tensions with the Mai Mai Simba, which has facilitated his control over several gold mines.¹⁶² His group is consequently still in the area, controlling gold mines along the Osso river to the east of Bisie.¹⁶³ For the moment, however, it seems unlikely that NDC-Rénové would attack Bisie, as FARDC is securing the area.¹⁶⁴

Despite this, there are also reports of a newly formed and armed 'NDC 3' group. Some sources said that former artisanal miners who want to regain Bisie have gathered around Lieutenant Lavie, Sheka's younger brother, to found the NDC 3.¹⁶⁵ This threat appears to have become more serious when a weap-

152 IPIS interview with the Mine Police of Bisie, Bisie, 7th of February 2016.

153 Rapport de la mission conjointe d'évaluation des sites miniers et des voies d'évacuation des minerais dans le territoire de Walikale, Province du Nord Kivu, April 2014 ; JMAC/MONUSCO, Rapport de mission conjointe à Mpama Bisie du 27-29 Mars 2014.

154 IPIS interviews with Civil Society Organisation representative and a former Sheka-fighter, Walikale, 3rd and 4th February 2016. It is also confirmed by local media: Radio Okapi. *Nord-Kivu: l'armée lance les opérations militaires contre les miliciens de Cheka*, 3rd of July 2014, or Le Potentiel, *Nord-Kivu: Les FARDC reprennent le contrôle de Kibua à Walikale*, 17th of June 2013.

155 UN Group of Experts, *Midterm report, S/2012/348*, June 2012, p. 10.

156 IPIS interview with JMAC, Goma, 12th of February 2016; UN Group of Experts, *Final report, S/2015/19*, January 2015, p. 28.

157 IPIS interview with JMAC, Goma, 12th of February 2016.

158 IPIS interview with the JMAC, Goma, 12th of February 2016 . The mass rape in Walikale is reported in the UN Group of Experts, *Final report, S/2010/596*, November 2010, box 4, p. 53; and UN Group of Experts, *Final report, S/2011/738*, December 2011, § 191.

159 Vogel C. and Mvano C., *Guest blog: The dogged persistence of the FDLR*, Congo Research Group blog/ <http://congoreserch-group.org/guest-blog-the-dogged-persistence-of-the-fdlr/>, 4 March 2016; Confirmed by IPIS Interview with JMAC, Goma, 12th of February 2016.

160 IPIS interview with JMAC, Goma, 12th of February 2016.

161 Verbatim Press Conference of the UN <https://monusco.unmissions.org/LinkClick.aspx?fileticket=U-yb3EpO5YE%3D&tabid=11468&mid=14882&language=en-US>, 8 October 2014. Confirmed by IPIS interview with a Civil Society Representative, Walikale, 4th of February 2016.

162 IPIS interview with JMAC, Goma, 12th of February 2016.

163 IPIS 2015 mapping data.

164 IPIS interview with a former NDC-Sheka, Walikale, 4th of February 2016

165 IPIS interviews with IOM, ABM and JMAC, Goma, January/February 2016.

ons warehouse was robbed of its contents in Walikale, leaving one FARDC soldier dead in October 2015.¹⁶⁶ A Synergy Global Consulting assessment confirms these reports on the basis of field interviews.¹⁶⁷

Lastly, the Mai Mai Simba have launched no attacks on Bisie since 2013, and the level of threat they pose to the site is rather low. They are based mainly in Maniema's Lubutu territory, and are involved in gold extraction on the Walikale-Lubutu border. They have been negotiating their disarmament for about a year, though disagreements persist on the issue of their reintegration in the army. The Simbas would like to be established as official guards of the Maiko National Park, where they have been sheltering for several decades. However, the government has stated in its National DDR 3 Plan that former armed groups will not be reintegrated into the army or security forces as such initiatives have failed on numerous occasions in the past.¹⁶⁸

Current Security Considerations

It is apparent from the above that since February 2012, armed group interference at Bisie mine sites has considerably reduced. The last major armed group attack at the site was the NDC assault in July 2014. Even though there are or have been alleged links between the cooperatives and the armed group (see chapter 4), there are no reports that NDC has profited directly from the mineral exploitation at Bisie.

Furthermore, the last rebel movements to have seriously affected Bisie should not currently (in 2015) be considered serious threats to the site: NDC-Sheka has been considerably weakened since. The influence in Bisie of both the NDC-Sheka and of cooperatives has drastically declined. NDC split in two and the cooperatives suffer from the emigration of artisanal miners. The population of Bisie has drastically diminished, especially after the evacuation of *45 minutes*. Lastly, the Mai Mai Simba seems to remain at its base in and around the Maiko park.

Nevertheless, new risks forming part of the recent and current security context will need to be carefully monitored by relevant parties as part of ongoing risk assessment and mitigation activities. NDC-Rénové seems to have gained strength and controls several gold mines to the east of Bisie, though it is questionable that the group would risk their improved relations with FARDC (as a supporter of Sukola II) by attacking Bisie.¹⁶⁹ Furthermore, there is threat posed by the new NDC 3 movement, which remains unclear as its strength is unknown.

Moreover, since the start of the 'regimentation process' and the demilitarisation of Bisie in 2011 (see above), there have been no more reports of undisciplined FARDC involvement in blatant human rights abuses, such as arbitrary arrest and torture, or predatory behaviour, such as forced labour¹⁷⁰ at Bisie. While Global Witness and IPIS highlighted reports in 2013 of indirect illegal taxation for the personal profit of FARDC elements, as discussed earlier, these interferences were not as coercive as those perpetrated by rogue FARDC officers several years earlier, and did not affect the general perception of improved security at Bisie. Furthermore, there have been no such reports for the last two years, and artisanal mining at Bisie seems free from armed actor interference.

Nevertheless, industrial titleholder ABM has been threatened by violent incidents on three occasions, in 2013, 2014 and 2015.

Furthermore, it should be noted that the risk of FARDC interference in mining in the Kivus should always be continuously and carefully monitored as some FARDC elements are key actors in the illegal mining sector. For example, BAWA officers have previously been accused of supporting the NDC in their fight for control over Bisie, and some BAWA soldiers have, to date, been reported to exert illegal control over gold, cassiterite and diamond mines in Walikale territory.¹⁷¹

166 IPIS Interview with ABM, Bisie, 8th of February 2016.

167 Synergy Global Consulting (December 2015), op. cit., p. 33.

168 IPIS interview with JMAC, Goma, 12th of February 2016. Also confirmed by IRIN, "Troisième plan DDR en RDC: cette fois-ci sera-t-elle la bonne?", Kampala, 4 March 2014.

169 IPIS interview with OCHA antenna of Walikale, Walikale, 5 February 2016. IPIS interview with JMAC, Goma, 12 February 2016.

170 See the Letter from the Military Prosecutor's office denouncing Captain Zidane and overall insecurity at Bisie by soldiers of the 212th Brigade in UN Group of Experts, *Final report, S/2010/596*, November 2010, Annex 29, p. 144.

171 IPIS 2015 mapping data, to be published in April/May 2016.

4. Local Stakeholder Relations: MPC/ABM, Mining Cooperatives, Bangandula Clan, and Civil Society

The Bisie Security Report provides a summary of tensions present between artisanal miners and companies engaged in mining activities at the site, which have given rise to some reports of security and human rights incidents. This section describes these elements and provides additional context for current local stakeholder relations present at Bisie, including with civil society and customary landowners.

Relations between ABM and Mining Cooperatives

The current tensions between company ABM and the mining cooperatives originated in the first years of mineral production at Bisie. In May 2005, *Groupe Minier Bangandula* (GMB, Bangandula Mining Group) became the first company to organise business in Bisie. Its General Manager was Alexis Makabuza, who also represented Saphir Society, owner of 50 percent of GMB's shares,¹⁷² and its first secretary was Ntabo Ntaberi Sheka.¹⁷³

Previously, a *comptoir* in Goma, Mining and Processing Congo (MPC), which sold cassiterite from Bisie-Mpama and other sites throughout eastern DRC, had ambitions to establish its own supply chain and officially applied for the development of an industrial mine. In September 2006, the Ministry of Mines in Kinshasa granted MPC research permit No. 5266, for the mining sites of Bisie.¹⁷⁴ This research permit granted MPC 321 mining squares¹⁷⁵, which included the Mpama mine sites *45 minutes*, *15 minutes*, *10 minutes* and *5 minutes*.

GMB contested the research permit, arguing that Bisie mines were part of the old concessions of the Sominki, *Société Minière et Industrielle du Kivu*, with whom GMB had signed a lease contract.¹⁷⁶ As the government formally and legally recognised the MPC research permit, GMB, in an attempt to strengthen its power at the base, mobilised miners and traditional landowners in a cooperative: the *Coopérative Minière de Mpama Bisie*, COMIMPA in short, of which GMB's first secretary, Sheka, is one of the founders.¹⁷⁷

In October 2006, unknown gunmen attacked the MPC team in Bisie,¹⁷⁸ and MPC sent an official letter to the mining authorities to complain about the presence of COMIMPA miners on its concession.¹⁷⁹ In January 2007, when MPC attempted to establish its base for exploration activities, a requirement under the Mining code, FARDC Colonel Samy (85th brigade) gravely injured their agent, Mr Mulamba.¹⁸⁰ Following these armed attacks against its employees and general insecurity, MPC withdrew from Bisie and applied for *force majeure*.¹⁸¹

Even though the mining legislation defines artisanal mining at an industrial concession illegal, MPC and COMIMPA signed an agreement in June 2007 that authorised the miners of the cooperatives to work at Bisie.¹⁸² MPC continued to operate as a *comptoir*, the 2007 agreement stipulated that the miners should sell half of their production to MPC and the other half should be sold to any other customer via COMIMPA.¹⁸³

172 UN Group of Experts, *Final Report, S/2007/423*, June 2007, pp. 19-20.

173 Letter from the Provincial Mining Division of North Kivu to the Chief of the Walikale Mining. Also De Koning R., *Conflict between industrial and artisanal mining in the DRC*, in Evers S., Seagle C. and Krijtenbourg F., *Africa for Sale?*, Afrika-studiecentrum series, Brill, Leiden, 2013, p. 195.

174 Ministerial decree No. 1660/CAB.MIN.MINES/01/2006 on the granting of Research Permit No. 5266 to Mining Processing Congo (MPC) company, Kinshasa, 28th of September 2006.

175 1 mining square = 84.955 ha.

176 Pole Insitute, *Rules of Sale: Formal and informal cross-border trade in Eastern Congo*, Regards Croisés, No. 19 bis, May 2007, p. 47.

177 De Koning R. (2013), op. cit., p. 195. Sheka signed documents on behalf of COMIMPA, such as the "addendum des Mesures d'application du contrat partenariat signé entre la COMIMPA et MPC, Walilake, 16 August 2007.

178 Pole Insitute (May 2007), op. cit., p. 47.

179 Letter from Yves Van Winden (MPC representative) to Provincial Mining Division, Goma, 28th of December 2006.

180 IPIS interview with local resident of Manoire, Manoire, 8th of February 2016.

181 Global Witness, "Faced with a gun, what can you do?" *War and militarisation of mining in Eastern Congo*, June 2009, p. 32.

182 *Protocole d'Accord entre MPC, COMIMPA et SAESSCAM*, Goma, 3 June 2007, and *Mesures d'Application du Contrat de Partenariat Signé entre la COMIMPA et MPC: Modalités de Travail à M'Pama/Bisye*, Goma, 8th of June 2007.

183 *Mesures d'Application du Contrat de Partenariat signé entre la COMIMPA et MPC, Walikale*, 8th of June 2007 ; *Protocole d'accord entre COMIMPA et MPC assisté par le SAESSCAM*, Goma, 3 June 2007.

ABM explained how MPC had signed the 2007 agreement in order to make some progress with the cooperatives and artisanal miners, but it claimed that due to resistance by the FARDC and the cooperatives, it was never implemented.

In April 2009, the chief of the *Collectivité Chefferie* Wanianga wrote a letter to the President of the Republic to denounce the granting of MPC Research Permit N°5266. Furthermore, he made a demand to install a ZEA (*Zone d'Exploitation Artisanale*, Artisanal Mining Zone) for the benefit of the local artisanal miners.¹⁸⁴

Shortly thereafter, two new cooperatives were formed. In July 2009, the former Minister of Interior, General Denis Kalume Numbi, founded his own cooperative:¹⁸⁵ *Coopérative Minière et de Développement pour la Reconstruction*, COMIDER.¹⁸⁶ Four months later, in November 2009, another cooperative was formed, the *Coopérative des Creuseurs Artisansaux de Bisie*, COCABI.^{187 188}

According to ABM, between 2007 and 2010, MPC tried to resolve the presence of ASM miners, to start exploration activities and lift the *force majeure*. In a 2010 agreement between the cooperatives and MPC, the artisanal miners were allowed to “attend to their mining activities in Mpama-Bisie [on the sites called *Golgotha*, *15 minutes*, *5 minutes*, *10 minutes* and *Ma Rouge*] within the perimeter of PR 5266, as long as these activities do not hinder the realisation of the Research Programme.”¹⁸⁹ The agreement also states that artisanal miners were allowed to continue their activity until the company obtains its Exploitation Permit.¹⁹⁰

Arrival MPC/ABM at Bisie

In February 2012, after the lifting of the *force majeure*, employees of the company arrived to explore the mine site of Ma Rouge (Bisie). However, as NDC had an alliance with M23, its threat grew in the area.¹⁹¹ By security measure, in November 2012, MPC once again left *Ma Rouge*, and even Goma, to resettle in Bukavu until M23 control of the city ended, to finally return in North Kivu.¹⁹²

When MPC, now wholly acquired by Alphamin Resources Corp., returned to Bisie in March 2013, the security situation was impacted by two factors: first of all, the ethnic conflicts between the Nyanga of NDC-Sheka and the Nkumu of Mai-Mai Simba, and secondly by the hostility of artisanal miners to MPC's return. ABM complained that diggers regularly sabotaged their equipment.¹⁹³ Cooperatives explained their hostility as they feared the return of MPC/ABM would result in their evacuation from the site.¹⁹⁴

Artisanal miners erroneously claim that the ZEA 195 lies within the perimeter PR n°5266 concession, comprising *15 minutes* and *45 minutes*. To support their statement, they refer to a 2008 sketch without geographic coordinates drafted by SAESSCAM.¹⁹⁵ However, SAESSCAM has no authority to issue such a map,¹⁹⁶ which depicts an inaccurate location of the ZEA, according to Mining Registry (see below).

Furthermore, the miners refer to an official delegation issued by the national Ministry of Mines commis-

184 Letter of the Mwami Kiroba Mulengezi, Chief of the *Collectivité Chefferie* Wanianga to the Cabinet of the President of the Republic of DRC, Walikale, 8th of April 2009

185 IPIS interview with NGO of Walikale and ABM, Walikale, 4th of February 2016.

186 Ministerial decree No. 0461/CAB.MIN/MINES/01/09 of 28th of July 2009.

187 Ministerial decree No. 0768/CAB.MIN/MINES/01/09 of the 18th of November 2009.

188 International Alert, *The role of the exploitation of natural resources in fuelling and prolonging crises in the eastern DRC*, January 2010, p. 32; “Transcript of David Barouski’s 10/19/08 Presentation for Congo week in Chicago, IL”. <http://www.congoforum.be/en/analysedetail.asp?id=180065&analyse=selected>

189 Article 2 of the Memorandum of Understanding, Walikale, 13th of February 2010. In French Protocole d’Accord entre MPC, COMIMPA, COCABI, COMIDER, ADECADEWA, signé le 13 Février 2010 à Walikale.

190 Article 7 of the Memorandum of Understanding, Walikale, 13th of February 2010. In French Protocole d’Accord entre MPC, COMIMPA, COCABI, COMIDER, ADECADEWA, signé le 13 Février 2010 à Walikale. p. 3.

191 At that time, the M23, a newly armed group composed of former CNDP rebels was conquering a part of North Kivu. Sheka made an alliance with M23, which ensured him weapons supplies.

192 IPIS interview with ABM, Bisie, 8th of February 2016.

193 Ibid.

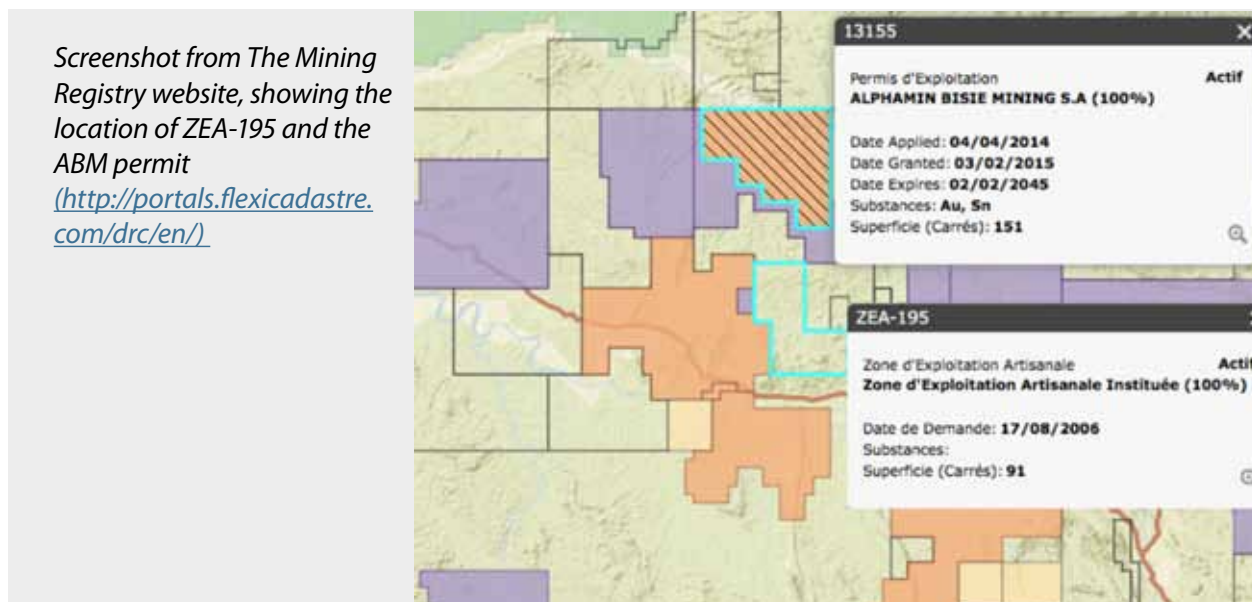
194 IPIS interview with members of COMINDER, COMIMPA and COCABI, 9th of February 2016.

195 Letter of the Mwami Kiroba Mulengezi, Chief of the *Collectivité Chefferie* Wanianga to the Cabinet of the President of the Republic of DRC, Walikale, 8th of April 2009

196 Décret n°047-D/2003 du 28 mars 2003 portant sur la nomination des membres d’un services d’assistance et d’encadrement du Small Scale Mining, en sigle “SAESSCAM”, in Journal Officiel de la République Démocratique du Congo, Kinshasa, 15 juin 2003, pp 4-5.

sioned to delimit the ZEA 195.¹⁹⁷ However, except the mission order mentioned above, IPIS has found no documentation, and consequently no conclusion from the governmental delegation about the ZEA 195. ABM explained how this delineation of areas where artisanal miners could work was intended to separate the geological exploration activity of MPC from artisanal mining activity allowed to continue under the 2010 *Protocole d'Accord*, but was never finalized.¹⁹⁸

The 2006 ministerial decree awarding MPC Research Permit, PR n°5266, clearly specifies the geographic coordinates,¹⁹⁹ and located it to the north of the ZEA-195. The map of the Mining Registry (*Cadastre Minier*), which is available on their website, precisely locates the ZEA-195 south of ABM's exploitation permit.²⁰⁰



Today, the miners are using the map drafted by SAESSCAM to justify their rights to *15 minutes* and *45 minutes* (from which they were suspended by the North Kivu provincial government in August 2014,²⁰¹ and subsequently expelled in March 2015, see below), while ABM is proceeding with preliminary construction and development activities under its *Permis d'Exploitation*.

The situation between parties led to violence on three occasions in November 2013, July 2014, and March 2015. Two of these attacks are discussed below.

16th of July 2014: Attack on MPC/ABM's Camp

On the 16th of July 2014, Sheka rebels launched an attack against MPC/ABM's camp. NDC men sacked the camp, looted the pharmacy and stole food. The attack lasted about 30 minutes, during which one FARDC lieutenant was killed and several others were injured.²⁰² MPC/ABM staff managed to flee and hide in the bush. According to ABM staff who witnessed the attack, artisanal miners from Manoire quickly arrived to loot the place, destroying machines and material and finally burning the camp. Looters allegedly also destroyed samples from potential sites for relocated artisanal miners.²⁰³ A local resident confirmed the

197 Ministry of Mines, *Ordre de Mission Collectif n°010/CAB.MIN/MINES/01/unreadable.*, Kinshasa. Courrier reçu par le SAESSCAM le 28 Janvier 2010.

198 Email exchange with ABM management and IPIS, 12 June 2016.

199 *Arrêté Ministériel n°1660/CAB.MIN.MINES/01/2006 du 28 septembre 2006 portant octroi du Permis de Recherche n°5266 à la Société Mining Processing Congo, MPC*, p.2.

200 <http://portals.flexicadastre.com/drc/en/>; older versions of the Mining Registry, showing PR-5266, can be found at <http://ipisresearch.be/publication/mining-concessions-dr-congo/>

201 *Arrêté Provincial n°01/215/CAB/GP-NK/2014 du 4 août 2014 portant suspension des activités des coopératives minières oeuvrant à Bisie, territoire de Walikale.*

202 IPIS interview with ABM, Goma, 31 January 2016.

203 The article 10 of the *Protocole d'accord* signed in February 2010 states that MPC must support logistically and technically the search of mineral occurrences in the ZEA n°5261.

miners went up to the ABM camp when they heard shootings from the raid of the NDC rebels.²⁰⁴ ABM estimated the loss at 13 million US dollars.²⁰⁵

Artisanal miner representatives deny any involvement. The court of Walikale issued warrants of arrest against 10 cooperative members, including leaders, for the looting of the MPC/ABM camp. To date, these warrants of arrest have never been executed.²⁰⁶ Also, an international observer claims that phone calls were traced between cooperative members and Sheka shortly before the attack,²⁰⁷ of whom two rebels were reportedly observed in Manoire a day before the attack.²⁰⁸

Following to the cooperatives' alleged involvement in the looting of the MPC/ABM camp after the NDC attack, the Governor of North Kivu Province issued a decree suspending all activities of COMIMPA, COMINDER and COCABI in the MPC/ABM concession n°5266, and demanding all miners to evacuate the site.²⁰⁹

4th-7th of March 2015: Protests against ABM and evacuation of miners from site 45 Minutes

On the 4th of March, there was an argument between artisanal miners and ABM employees about the installation of a drill. On the 6th of March, around 35 miners from the three cooperatives and eight women demonstrated, walking from their sites to ABM's camp.²¹⁰ Miners justify that women were present to organize the protocol for the Territorial Administrator for the International Women Day.²¹¹ An official report from the Territory Administrator referred to them as a 'human shield.'²¹² As tensions grew, ABM staff feared for their security and went back to the camp. The Mine Police in charge of protecting the company positioned itself at the level of the church, forbidding the crowd to come further and shooting in the air to disperse it.²¹³

The Territory Administrator's report describes how the Mine Police recovered several guns that have been used by the miners, according the local Mine Police in Bisie.²¹⁴ While cooperatives deny any use of weapons, Mine Police officers did find a total of five weapons.²¹⁵

Following these events, Marie-Claire Bangwene, Territory Administrator of Walikale, gave the order on 7 March to evacuate all artisanal miners and traders living in 45 minutes,²¹⁶ justifying it as the execution of an order issued by the Provincial Governor in August 2014 (see above).²¹⁷ The exact number of people evacuated is unknown, and estimates vary from a few hundred people, to a few hundred miners plus their dependents and shopkeepers.

The cooperatives claim that the police behaved violent during the expulsion, injuring a dozen people, destroying 26 (temporary) houses and looting 100 tonnes of cassiterite.²¹⁸ Furthermore, the local NGO CREDDHO has also reported about this behaviour,²¹⁹ but these claims have not be supported by any official investigation, and the report written by the Territorial Administrator does not report about destruc-

204 IPIS interview with a local resident, Bisie, 8 February 2016.

205 IPIS interview with ABM staff, Goma, 15th of February 2016.

206 IPIS interview with members of COMINDER, COMIMPA and COCABI, Bisie, 7th of February 2016.

207 IPIS interview with an international organisation, Goma, 15th of February 2016

208 Pact Institute (March 2016), op. cit., p. 26.

209 Arrêté Provincial n°01/215/CAB/GP-NK/2014 du 4 août 2014 portant suspension des activités des coopératives minières oeuvrant à Bisie, territoire de Walikale.

210 *Rapport des événements survenus à Bisie du 04 Mars au 07 Mars 2015*, written by the Territorial Administrator for the Governor of North-Kivu, n°5072/086/TW/Y6/2015, Walikale, 20th March 2015, p.1

211 IPIS interview with members of COMINDER, COMIMPA and COCABI, Bisie, 8th of February 2016.

212 See footnote 2009

213 Police Nationale Congolaise déployée à MPC, Bisie, *Rapport de déroulement des attaques orchestrées par les cooperatives et les artisanaux à Bisie du 4 au 7 Mars 2015*, Bisie, 11th March 2015.

214 *Rapport des événements survenus à Bisie du 04 Mars au 07 Mars 2015*, written by the Territorial Administrator for the Governor of North-Kivu, n°5072/086/TW/Y6/2015, Walikale, 20th March 2015; PNC déployée à MPC, Bisie, *Rapport de déroulement des attaques orchestrées par les cooperatives et les artisanaux à Bisie du 4 au 7 Mars 2015*, Bisie, 11th March 2015.

215 Officier de Police Judiciaire; Pro-Justicia, RN N°001/ShekaPMH BIS/015 to the Prosecutor of Tribunal de Paix de Walikale, Walikale, 8th March 2015. The Mine Police has taken pictures of the found weapon and sent them by emails to IPIS.

216 IPIS telephone interview with Territory Administrator, 25 February 2016.

217 Message officiel NO. 01/686/OKP/CAB/GP-NK/2014 du 29 août 2014. The document specifies

218 IPIS interview with cooperative representatives, Bisie, 8 February 2016.

219 CREDDHO, *Les violations des Droits de l'homme liées à l'exploitation minière dans les sites miniers de Walikale*, with the support of AJWS, Goma, August 2015, p. 6

tion of homes or violent behaviour by the police.²²⁰

Several stakeholders also insisted that the evacuation of the miners from the *45 minutes* site was legal.

Relationship between ABM and the cooperatives after March 2015

In comparison with the previous years, tensions have decreased but incidents still occurred.

An ABM employee lodged a complaint with MONUSCO against a COCABI member, Lavie Buingo-Nkenkeni, for a death threat.²²¹ This person is also Sheka's cousin, and is suspected of having established the new rebel group NDC 3 (see chapter one).

On the 17th of November 2015, Claude Asimbo, a cooperative member against whom there is still a warrant of arrest related to the looting of July 2014, was kidnapped. He said that FARDC soldiers under Captain Shabani's orders captured him and abandoned him in the forest three days later. Cooperatives accused ABM to be behind this kidnapping to intimidate them, although there is no proof of these accusations. On the other hand, there have been accusations that the FARDC seized weapons in Claude Asimbo's property in Manoire.

At the time of the IPIS team visit, the situation seemed to have improved, as ABM employees were comfortable to go to Manoire.

Relations between ABM, artisanal miners, the Bangandula clan, and civil society

Other relevant actors include the local population, and Bangandula clan, which is the recognised landowner. ABM as well as the cooperatives have signed agreements with representatives of local communities, to formalise the contribution of the mining operators to the development of Walikale.

Agreement between ASM actors, Civil Society and local communities

In July 2012, cooperatives, economic stakeholders of the mining sector (traders, *comptoirs* and transporters), North Kivu Civil Society (BEDEWA and *Coordination Provinciale de la Société Civile Nord-Kivu*) and the local communities of Walikale (*Communauté Nyanga, Communauté Lega Bakano*) signed an *Acte d'Engagement pour le Développement*.²²² Article 2 stated that stakeholders of the artisanal mining sector (cooperatives, traders, porters and *comptoirs*) had to pay \$180 per tonne of cassiterite produced in Walikale territory, \$130 of which goes to the Territory and \$50 to the province of North Kivu.²²³ To manage these funds transparently, the National Minister of Mines proposed to implement a *Comité Local de Développement (CLD)* and a *Comité Provincial de Développement*.²²⁴ The CLD of Walikale includes representatives of civil society (BEDEWA), mining cooperatives, traders, transporters, customary chiefs, and the Congolese Entreprises Federation (FEC). The chief of the *Division des Mines* in Walikale represents the local administration.

The CLD's first concern was the lack of distribution of Walikale territory's share of the 'basket fund' as the accrued amount is supposed to be deposited in a bank account opened by the Province, which is meant to be redistributed to the territory every month.²²⁵ However, the CLD complained the province never notified them about the available funds, which means the CLD cannot implement development projects. Subsequently, the CLD stopped meeting.²²⁶ The cooperatives recognise this is a problem. However, they

220 *Rapport des événements survenus à Bisie du 04 Mars au 07 Mars 2015*, written by the Territorial Administrator for the Governor of North-Kivu, n°5072/086/TW/Y6/2015, Walikale, 20th March 2015, p.2.

221 Complaint registered by MONUSCO on 24 March 2015.

222 *Acte d'engagement pour le Développement*, Goma, 3rd of July 2012

223 *Acte d'engagement pour le Développement*, Goma, 3rd of July 2012 and Letter of the Minister of Mines to the governor of North Kivu, No. CAB.MIN/MINES/0601/2012, Kinshasa, 18 July 2012.

224 *Letter of the Minister of Mines to the governor of North Kivu*, No. CAB.MIN/MINES/0601/2012, Kinshasa, 18th of July 2012.

225 "Acte d'engagement pour le développement", Goma, 3rd of July 2012 and Letter of the Minister of Mines to the governor of North Kivu, No. CAB.MIN/MINES/0601/2012, Kinshasa, 18th of July 2012. p.2.

226 IPIS interview and IPIS telephone interview with a member of the *Comité Local de Développement*, Walikale, 3rd of February 2016 and on 31st of March 2016

feel they cannot be held responsible for mistakes made by the Provincial government.²²⁷

Regarding local investment, according to the CLD, most of the miners come from Maniema, South Kivu and Orientale province and invest there, instead of in Walikale. Indeed, cooperatives and civil society organisations (CSO) supporting artisanal miners recognise that most of the workforce is not local but claim that the Constitution assigns any Congolese the freedom to move for new job opportunities.²²⁸

Finally, members of the CLD accuse local elected high-ranking politicians of inconsistent information. In Kinshasa or Goma, these politicians support the removal of the miners but when they come to Walikale, they support the artisanal miners. In a public meeting in Walikale, a member of the parliament representing the Walikale territory claimed that “if there are still artisanal miners in Bisie, it is because we stand for you”, while in the media, he advocates for their removal from the mine sites.

New agreement between the Walikale Community (the Bangandula and local community representatives of Walikale territory) and ABM

Representatives of the Bangandula²²⁹ claims that ABM did not hold promises MPC made in prior agreements for the construction of schools and hospitals.²³⁰ However, they believe their region’s future lies in the industrialisation of the mining sector. The ongoing construction of the road between Logu and Manoire by ABM will, according to them, develop the regional economy, open up Bisie, and attract skilled labour.

In April 2016, ABM, and a wide range of local community representatives (including five representatives of the Bangandula, representatives of the *secteurs* Bakano and Wanianga, representatives of the local *groupements* Wassa and Utunda, and representatives of Bunakima, Lusu-Bakano, and Komo) have signed a new Memorandum of Understanding, in order to improve living conditions for local communities in Walikale, and more particularly those living near Bisie, via the *Alliance Lowa*. The Memorandum includes a commitment by ABM to invest 4 per cent of its total operational spending over the life of the mine to community development, to employ local manpower, to use local subcontractors, to fight the illegal exploitation of mineral resources, and to build local infrastructure..²³¹

227 IPIS interview with the cooperatives, Bisie, 8th of February 2016.

228 IPIS interview with a local NGO, Goma, 12th of February 2016.

229 IPIS interviews with members of the *Foyer Minier Bangandula*, Walikale and Bisie, 5 and 8 February 2016.

230 *Cahier de Charge de la Famille Bangandula auprès de la société MPC*, Logu II, 9th of October 2012 and also *Convention Collective de Développement entre tous les chefs de groupements du territoire de Walikale et MPC*, Goma, 30th of December 2006.

231 <http://alphaminresources.com/category/community-program/>

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List of interviews

Date	Location	Position / Organisation
12/01/16	Telephone interview	OECD Responsible Business Conduct Unit: Legal Adviser and policy adviser
18/01/16	Telephone interview	Synergy consultant
20/01/16	Telephone interview	Pact consultants
21/01/16	Telephone interview	Global Witness researcher
31/01/16	Goma	SAESSCAM Agent
31/01/16	Goma	ABM Representatives
1/02/16	Goma	Agent of the Police des Mines
1/02/16	Goma	STAREC Director
1/02/16	Goma	ABM Managing Direction
2/02/16	Goma	Agent of Division des Mines
3/02/16	Walikale	Territory Administrator
3/02/16	Walikale	Agent of Division des Mines
3/02/16	Walikale	Representative of Coordination Territoriale de la Société Civile de Walikale
3/02/16	Walikale	Member of the Comité Local de Suivi de Walikale
3/02/16	Walikale	Local Representatives of the Bureau d'Etudes, D'Observation et de Coordination pour le Développement du Territoire de Walikale (BEDEWA)
4/02/16	Walikale	Community Development & Environment Manager of ABM
4/02/16	Walikale	Member of the Civil Society of Walikale
4/02/16	Walikale	Former Sheka officer
4/02/16	Mubi	Agent of the Police des Mines
4/02/16	Mubi	SAESSCAM Agent
4/02/16	Ndjingala	Representative of the Centre de Négoce of Ndjingala and President of the Association des Porteurs de Minerais et de Biens au Congo
5/02/16	Ndjingala	President of the Association des Porteurs de Minerais et de biens au Congo
5/02/16	Ndjingala	Representative of the Association des Négociants de Minerais du Nord Kivu (ANEMNKI)
5/02/16	Mubi	Member of the COCABI cooperative
5/02/16	Walikale	Members of the Clan of the Bangandula
5/02/16	Walikale	Representative of the OCHA Antenna in Walikale
6/02/16	Axis Djingala-Bisie	Porters, local population, tax collectors at roadblocks

Date	Location	Position / Organisation
7/02/16	Manoire /Bisie	ABM Security Coordinator and ABM geologists
7/02/16	Manoire /Bisie	Representatives of the Pateforme des Coopératives (COMIDER-COCABI-COMIMPA)
8/02/16	Manoire/ Bisie	Head of the Police des Mines
8/02/16	Manoire/ Bisie	Representatives of the Foyer Minier Bangandula
8/02/16	Manoire/ Bisie	SAESSCAM Antenna agent
8/02/16	Manoire /Bisie	FARDC Lieutenant and ANR Representative
8/02/16	Manoire /Bisie	SAESSCAM Agent
9/02/16	Site 15 Minutes	Diggers
9/02/16	Manoire /Bisie	Anonymous witness of the 2014 attacks in Bisie
12/02/16	Goma	JMAC Information Analyst
12/02/16	Goma	Director of BEDEWA
13/06/16	Goma	Director of Save Act Mine
15/02/16	Goma	International Migration Organisation (IOM)
15/02/16	Goma	CREDDHO
15/02/16	Goma	ABM Managing Direction
15/02/16	Goma	Tetrattech
25/02/16	Telephone interview	Territory Adminsitrator
6/04/16	Telephone interview	SAESSCAM Agent
15/04/16	Telephone interview	President of the Fédération des Entreprises Congolaises (FEC)