

# LUBERO INFORMATION CHANNEL

## BASELINE EVALUATION AND RECOMMENDATIONS FOR ENGAGEMENT IN THE LUBERO TERRITORY

### EXECUTIVE SUMMARY

The Democratic Republic of the Congo (DRC) is the most glaring illustration of the resource curse dilemma. While it is among the countries most replete with natural resource reserves in the world, such wealth has been siphoned off by illegal activities ranging from armed conflict funding to institutionalized corruption.

International initiatives focusing on demonstrating mechanic traceability with regards to tin, tantalum, and tungsten (3T) ores, have faced certain limitations in terms of their impact, and have also proven inappropriate for the local gold trade (where the premium for illegal trade is even more significant). This calls for new strategies to incentivize transparent engagement with the DRC mining sector and facilitate access to reliable information.

As part of the Justícia i Pau Barcelona's #ConflictMinerals campaign, taking into account the upcoming implementation of European regulation on conflict minerals, BetterChain recently conducted a sample baseline assessment of local implications. By way of case study, we hereby provide comprehensive, contrasted and up-to-date information related to the local risk and community context in the locality of Manguredjipa, in the Lubero territory of the North Kivu province, where we review the circumstances of extraction and trade of 3T and gold, the status of due diligence deployment, as well as associated risks of adverse impact and their effect on socio-economic conditions in the local community.

Insights and recommendations from this report are designed to guide advocacy and drive better and more effective engagement with DRC's mining sector, particularly in relation to the Artisanal and Small- Scale Mining (ASM) sector and the Lubero territory.

## Key Findings

### Mining sector and activity

Artisanal mining directly or indirectly contributes to the livelihood of large parts of the Eastern Congolese population. Thus, it must be supported and improved rather than fought against. However, artisanal mining is affected by countless challenges, including:

- Armed group interference and general insecurity;
- Widespread corruption and illegal forms of taxation;
- Fraud and illegal export to neighbouring countries;
- Inhumane working conditions, combined with health and safety hazard;
- Gender abuse and discrimination;
- Environmental impact and ecosystem degradation;
- Unequal revenue allocation and limited contribution to economic development and local communities' wellbeing.

These issues, which are relevant beyond the Lubero territory, are largely rooted in the ineffective functioning of DRC's mining agencies and broader governance structures, which are underfunded and inappropriately staffed.

Across Lubero, the 3TG mining sector is unorganized and mostly informal. The majority of known and uncovered mine sites produce gold, with wolframite accounting for most of the remaining 3T sites. The artisanal gold trade is plagued by informal and illegal activities, causing a significant loss of public revenue. The sector is essentially funded through iterations of pre-financing by the next buyer or supply chain intermediary.

Additionally, due to the informal nature of the mining sector, it is difficult to obtain reliable data on the number of miners, production or trade. It is widely recognised that official data of production and exports, particularly for ASM gold, is far lower than the reality. These issues are exacerbated by the fact that the government does not have a firm presence in the territory. Indeed, most mining State agencies lack manpower and resources to implement any relevant legislation. To make matters worse, understaffed and underpaid State agents are generally prone to bribery and corruption.

The level of insecurity in mining areas is very high due to the presence of many non-State armed groups, coupled with difficult access to mining extraction points and local trade hubs (underdeveloped transportation and access infrastructure). The level of militarisation is also high, with many mine sites illegally controlled and trading routes characterised by the presence of illegal tax checkpoints run by both non-State armed groups and the Congolese armed forces (FARDC). This situation further complicates formalisation efforts and the deployment of due diligence activities.

For the most part LSM is excluded from this study due to it being practically non-existent in the Lubero territory; this prevents any comparative analysis between LSM and ASM<sup>1</sup>.

### Due diligence status – key findings

Mineral supply chain due diligence and traceability initiatives, which have been deployed to Eastern DRC since the advent of US regulation (Dodd Frank 1502), have very limited presence and relevance in the territory, where they have so far proven ineffective towards addressing corruption and illegal mining activities.

In the 3T sector, organisations operating due diligence schemes report funding limitations for such a remote and complicated area, particularly considering its low productivity. Exporters are also not incentivized to comply with due diligence standards either, due to the associated costs and the existence of alternative ways for 3T minerals extracted from Lubero to reach international *compliant* markets.

As for gold, there is a general lack of viable traceability and due diligence solutions for the ASM supply chain, particularly in such a territory abandoned by international donors. Consequently, the ASM gold sector has been even more prone to issues such as mineral theft, smuggling, and opaque trading practices, which significantly elevates the risk level. While some small quantities of gold are officially recorded by the government and exports sanctioned by an ICGLR certificate, such mineral certification is not delivered in conformance to the ICGLR Regional Certification Mechanism (RCM) requirements.

3TG originating from the Lubero territory access international markets with ICGLR certificates, however the certification process does not comply with RCM requirements

The above-mentioned compliance issues are compounded by:

- The loss of value (for miners) caused by due diligence: global market dynamics mean that costs associated with due diligence systems and efforts are discounted from the value returned to compliant mineral producers, so it is more profitable for upstream mining operators to sell minerals and gold illegally;
- Limited government capability to enforce existing legislation and monitor compliance;
- Limited knowledge and awareness in relation to the global supply chain due diligence process and requirements among actors involved in 3TG extraction and trade, including supply chain participants themselves, civil society organisations and mining State agencies;
- Beyond its lack of expertise regarding due diligence itself, the local civil society also does not have the capacity and funding to properly monitor activities at mine sites

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<sup>1</sup> The report references several studies of human rights abuses and environmental impact of large-scale mining and industrial projects.

and mining areas, report findings in a coherent manner (e.g. in line with the OECD Guidance), and conduct advocacy activities at the local, provincial and national level.

Due diligence efforts to date have not improved access to information, they have not increased transparency and in fact have complicated information sharing

In turn, opaque trading practices significantly increase risk (both in terms of adverse impact on the local community and business disruption / reputational impacts) for supply chains originating from DRC, and particularly the comparatively abandoned Lubero territory.

#### Impact on local communities – key findings

With ASM activities generating a substantial income for stakeholders in the Manguredjipa mining area and surrounding trading hubs, they also attract negative actors, which are a source of significant insecurity.

Observations and findings on local socio-economic conditions include:

- Insecurity and human rights abuses: kidnappings, extortion and coercion, killings, forced labour and sexual violence are commonplace;
- Lack of transportation infrastructure;
- Limited access to electricity and no access to running water;
- Access to drinking water is limited and sanitation levels are low;
- Low level of school enrolment and attendance: children often drop out to go work in agriculture and mining;
- Women: mainly work in small businesses (e.g. food) and prostitution. Practically no woman owns mine pits or works as a miner. They face multiple abuses: scams, rape and sexual slavery, forced prostitution, underage marriage, etc.

Since the implementation of the RCM (3TG) in Lubero and iTSCI system (3T) in Manguredjipa, civil society organisations do not report any tangible effect on the local community. However, it is worth noting that iTSCI is only vaguely operational in the area, as mineral production is very low and hence does not warrant sustainable due diligence deployment (no opportunity for volume-based cost recovery).

## Recommendations

Following are some of our recommendations to reduce the illicit trade of ASM minerals<sup>2</sup> and develop the potential of mineral supply chains at the local level to drive economic growth and prosperity in mining areas of similar nature:

<b>1</b>	<b>Support formalisation of the ASM sector</b>
<p><b>Advocate for strengthening of the ASM sector governance</b></p> <p><i>State mining and mineral trade actors in the Lubero territory have not received from as much guidance as other parts of Eastern DRC</i></p> <ul style="list-style-type: none"> <li>● Address systemic dysfunctions of mining State agencies, for instance Mines Divisions and SAEMAPE, which are underfunded and understaffed, with even unpaid staff (hence creating incentives for involvement in bribery schemes).</li> <li>● Establishment of more ZEAs (official ASM areas) in pre-identified, viable mining areas (involve State geological services in the pre-identification of mining areas).</li> <li>● Improve access to a common, reliable pool of geological data (through State agencies like CAMI, Mines Divisions, etc.) to increase sector visibility and better guide engagement.</li> <li>● Establishment of publicly available and up to date registry of mining cooperatives, as well as a transparent registration process.</li> </ul>	
<p><b>Encourage long-term collaborations and the closed-pipe supply chains model</b></p> <p><i>The in-country mineral supply chain is rendered extremely complex by the involvement of many intermediary financing (risk-taking) actors</i></p> <ul style="list-style-type: none"> <li>● Support the development of supply chains with fewer actors involved and reinforce the business engagement between supply chain partners to secure production and the implementation of due diligence requirements.</li> </ul>	
<p><b>Review the role of ASM cooperatives</b></p> <p><i>Many cooperatives are created to control the trade of minerals and become an extra layer of taxation imposed on miners</i></p> <ul style="list-style-type: none"> <li>● Review their business models and governance structures.</li> <li>● Help design more democratic structures that involve all the cooperative members.</li> <li>● Support the legalization of cooperatives.</li> <li>● Support the cooperatives to improve the working conditions of miners (equipment leasing, encourage H&amp;S measures, etc.)</li> </ul>	
<b>2</b>	<b>Create local incentives for miners to participate in the formal mineral trade</b>
<p><b>Incentives for mining actors to join the formal sector</b></p> <ul style="list-style-type: none"> <li>● Support mechanisms that make their participation in the informal sector less attractive. For example: reinforce the efficiency of the Congolese anti-fraud cell, reinforce cross-</li> </ul>	

<sup>2</sup> For specific recommendations on the illicit trade of gold between DRC and Uganda and to weaken the opaque network of actors, refer to the recommendations provided by The Sentry in their recent report “The Golden Laundromat: The Conflict Gold Trade from Eastern Congo to the United States and Europe” of October 2018.

border country collaboration to discourage smuggling practices, support programs targeting a general reduction of bribery practices among State agents.

- Increase miners' productivity by making provision of appropriate equipment (investment) contingent on ASM miners' participation in responsible supply chains.
- Increase value generated from the formal trade of minerals
  - More efficient supply chains, involving a limited number of intermediaries (while acknowledging the importance of local providers of finance).
  - Minimised due diligence costs, which may only be achieved by leveraging and capacitating local stakeholders and promoting due diligence cost optimisation and sharing among supply chain participants.
  - Make locally available (as yet) untapped data on mineral extraction and trade more directly relevant to downstream supply chain actors, so as to involve them in the continuous funding of local transparency efforts.

**Reduce the burden of taxes on ASM miners**

- Support efforts to harmonise mining and mineral trade taxes across DRC and the Central African sub-region:
  - Strengthen the dialogue among ICGLR member States to effectively implement the RINR, notably the harmonisation of legislations as requested by the RCM (differences in export taxes incentivise cross-border smuggling of minerals, especially gold).
- Advocate for a rationalisation of the DRC taxation system (currently there are many different taxes and fees), making it clearer and more transparent.
- Target the elimination (at least a comparative reduction) of illegitimate taxes on actors involved in transparent supply chains.

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**Attract local investment and facilitate access to finance for upstream supply chain actors**

**Encourage new strategies to support international private sector engagement and value creation for stakeholders at the origin of supply chains**

- International regulations (incl. the EU regulation) risk further marginalising CAHRAs such as Manguredjipa, by nudging international downstream actors to sourcing from less difficult areas to mitigate potential legal and reputational risks.
  - Advocate for procurement of minerals from the Lubero territory (and more generally from CAHRAs) as a way to support the inclusion of mining communities in global trading chains and engage with them on a compliance path.
  - Raise awareness among EU-based companies targeted by EU regulations on the OECD requirements and the importance of the ASM sector.
- Encourage mine-to-store connections and enable consumer-facing brands to constructively engage in support of local communities at the origin of their supply chain
  - International downstream supply chain actors / mineral end-users targeted by international regulation (including consumer-facing brands) and affected by reputational risks and investor pressure must demonstrate better forms of support

	<p>along their supply chain, to demonstrate their compliance and responsible sourcing credentials.</p> <ul style="list-style-type: none"> <li>○ The accountability for local (upstream) supply chain due diligence presently sits with small, relatively hidden actors (e.g. mineral traders, smelters, refiners) with limited incentive to increase transparency and positively impact local communities.</li> <li>○ New forms of accountability mechanisms can now exist to relate the context of mining operations to European consumer actions, without interfering with the business confidentiality of mineral and metal trade actors.</li> </ul>
	<p><b>Encourage the EU to create / reinforce a coordination mechanism</b> between donors aiming at guaranteeing strategy consistency towards a comprehensive responsible sourcing approach.</p>
	<p><b>Establish strategies to enable access to finance by upstream supply chain operators</b> (locally and internationally) to reduce credit uncertainties in their trading activities. This could take the form of loans or credit to support ASM trading and extraction activities.</p>
	<p><b>Restore the image of ASM activities</b>, which substantially contribute to the DRC's local economy, to lower the risk aversion of financial institutions to engage in the ASM sector (who now consider it too risky and not profitable).</p>
<b>4</b>	<b>Advocate for more efficient demilitarization strategies of 3TG mines sites</b>
	<p><b>Reinforce the use of MONUSCO's "intervention brigade"</b>. These brigades were initially created for offensive operations against specific non-State armed groups (M23 or ADF) that highly threaten civilians. Even though its efficiency and the long-term impact of such operations depend on the political context and on the level of collaboration with the FARDC, their actions to weaken armed groups were relatively positive. There is a need to advocate for such offensive interventions to target militarized sites and ensure a follow-up with the FARDC to secure the areas<sup>3</sup>.</p>
	<p><b>Reinforce implementation of DDR programs</b> (disarmament, demobilization and reintegration), to improve reintegration of former combatants and deter their involvement in private protection forces.</p>
	<p><b>Reinforce the fight against impunity at local and national level for both State and non-State actors involved in the illegal exploitation of minerals.</b> The Congolese military justice who oversees such crimes must create precedents.</p>
<b>5</b>	<b>Empower local organisations to better report on ASM extraction and trade circumstances, and to effectively ensure their role in the due diligence process</b>
	<p>Strengthen implementation and efficiency of upstream due diligence: empower upstream supply chain participants to conduct due diligence in a standardised way</p> <ul style="list-style-type: none"> <li>● Provide training on due diligence regulations and requirements.</li> </ul>

<sup>3</sup> This may require a review of the specific mandate of MONUSCO, which is more focused on peacekeeping rather than on offensive actions.

- Develop and provide standardised reporting tools that can be used directly by all of them, while minimising the requirement for costly international third-parties.

Provide financial support, training and tools to local civil society organisations across DRC's mining regions so they can 1) effectively monitor mining activity, and 2) enhance their communication capacity toward different types of stakeholders:

- Increase funding available for local organisations so that they can fund their data collection activities as well as advocacy and training work in relation to local, provincial and national authorities.
- Provide tools and training for consistent reporting of information provided by different sources, in order to address current limitations in terms of data reliability / discrepancies. Training would be useful also to learn about basic data analysis, incl. stakeholder engagement, mapping, investigation techniques, cross-checking of information, etc.
- Support local organisations based in trading towns to develop a network of key informants to get access to reliable data on minerals trade and extraction.

#### *Specific to the Lubero territory*

Support the creation of a direct channel of communication between local committees (based in the mining areas) and local organisations based in Butembo. This could take the form of an **observatory of mining activities for the Lubero territory**, composed by a network of civil society organisations. The observatory's activities could include:

- Monitoring function
  - Monitor mining activity: existing and new mine sites, number of miners and other supply chain stakeholders at the level of mines and mining areas, improvement (or lack thereof) of socio-economic conditions of mining communities, etc.
  - Reporting of key information and figures obtained from the monitoring activity. This could then be used to design improvement strategies, for advocacy and raising awareness, etc. Interested recipients could include international donors and NGOs, government agencies and even private sector international stakeholders.
- Capacity building function
  - Support the creation of mining cooperatives which actually implement cooperative principles, including more democratic structures and member participation.
  - Provide training to civil society organisations focused on topics related to mining, supply chain due diligence, and what that means in practice for Congolese stakeholders.
  - Provide training and tools to civil society organisations based in mining areas to conduct monitoring and reporting activity. This could then serve as input to the observatory's monitoring function.
  - Facilitate synergies among local organisations working on related topics: environment protection, human rights, women empowerment, etc.

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