

Evident but elusive: practical norms in the Congolese gold sector

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For years mineral resources in the Democratic Republic of Congo have stood out as an example of the famous ‘curse’, fuelling a bloody conflict in the eastern provinces and thwarting sustainable development. Over the last decade both the Congolese government and a whole range of external actors – international organizations, governments and NGOs – have tirelessly launched proposals and made attempts to regulate the mining sector and bring it further under government control, with a view to putting an end to ‘conflict minerals’ and making these resources contribute to state revenues. On the ground, however, many of these initiatives have been fruitless. Using a detailed empirical study of the gold sector in South Kivu province, I argue that external attempts at regulation fail to take into account the practical norms in the local arena. This chapter exemplifies what the practical norms in the gold sector are, why they came into place and how they evolved, how much stability or dynamism they provide for and how they are enforced and sanctioned. It discusses practical norms on two levels. First, there are the practical norms regulating transactions and interactions in artisanal gold exploitation and unofficial trade, which are historically shaped and dynamically interpreted by the actors. Second, there are the practical norms of local power complexes, where power holders aim to control the rents provided by gold mining and trade.

1. Artisanal mining in the DRC

This chapter focuses on the gold sector in South Kivu, in the east of the Democratic Republic of Congo (DRC). Gold production in this province is mostly ‘artisanal’ⁱ and 98 per cent of the trade in gold is not officially registered. Yet the Congolese Mining Code, in place since 2002, recognizes and regulates artisanal mining. It stipulates that the Minister of Mines may demarcate ‘artisanal exploitation zones’ (AEZ) in areas where ‘the technological and economic factors are not suited for the site to be industrially exploited’ⁱⁱ. Sites already covered by industrial mining titles cannot be transformed into AEZ. In turn, companies cannot acquire research permits inside the AEZ boundaries, except for demands by artisanal miners’ cooperatives. These cooperatives should ideally evolve into semi-industrial operations. Individual miners who want to work in an AEZ have to buy an official permit, which has to

be renewed every year. Registered miners should sell their production to registered traders in centralized trading points where agents from the different mining services are present, issue certificates and levy taxesⁱⁱⁱ. Miners also need to comply with regulations on security, hygiene, water use and environmental protection^{iv}. For example, negative impact on the environment should be minimized, the use of explosives and mercury is strictly forbidden, deforestation is prohibited, and shafts should not go deeper than 30 meters underground, while they should have an inclined degree of not more than 15 per cent^v. But the law also provides the possibility to close down the AEZ if ‘the factors justifying its creation ceased to exist’, or if a ‘new deposit necessitating large-scale exploitation has been discovered’^{vi}. In this case artisanal miners have to leave the area within 60 days.

But these legal provisions are barely implemented and enforced, as this chapter will demonstrate. This brings us to the issue of ‘governance’ in the mining sector, which is believed to be the clue for making mining activities contribute to growth and development, and avoiding the ‘resource curse’^{vii}. So far most international attention has been focussed on a range of initiatives aimed at breaking the link between minerals and violent conflict^{viii}. Several proposals have been made for targeted sanctions (so as to prevent armed groups financing their criminal activities with rents from mineral exploitation or trade) and, more recently, due diligence (focusing on the responsibility and moral obligation of consumers and buyers to buy ‘clean minerals’ and monitor the supply chain)^{ix}. The success of due diligence requires a monitoring of the entire supply chain (i.c. traceability), whereby each product can be refused or accepted on the basis of well-established criteria (i.c. certification)^x. It actually presumes a completely formalized supply chain, in which all the steps are transparent, and all the actors assume their legally recognized responsibilities. Despite some pilot projects with mixed success, formalized chains have not yet been established and seem to be particularly challenging for gold. This chapter tries to provide some insights into why this is the case, focusing on the gold sector in South Kivu^{xi}. Official gold production in South Kivu is extremely low, falling below 100 kilogrammes per year in recent years (86 in 2009, 33 in 2010, 23 in 2011 and 41 in 2012). In reality, however, gold is currently the most important subsector in terms of the number of people involved (an estimated 130,000 people) and volumes (a very rough estimate of 10 tonnes) and value produced (Spittaels and Hilgert, 2013: 8; UN, 2014). Gold mining and trade thus provide a livelihood for thousands of people in South Kivu, in a context where few viable alternative livelihoods are available^{xii}. This chapter is based on qualitative fieldwork in different gold mines in South Kivu (Lugushwa, Kamituga,

Twangiza and Mukungwe) and in Bukavu (South Kivu's provincial capital and trade hub), between 2008 and 2012.

It starts from the question why it is so difficult to control the gold sector in South Kivu. On a first level, serious questions may be raised about the technical and practical feasibility of formalization, given the often dispersed presence of gold deposits and the inaccessibility of many mines. To this, questions may be added about the capacity of the government and its administrative and technical services to implement and enforce the law^{xiii}. Many observers agree that wider governance reform is needed before the Congolese state can play its role in mining sector reform (World Bank, 2008; Garrett and Mitchell, 2009; Mitchell and Garrett, 2009; International Alert, 2009; Pact, 2010). On a second level, we need to look at miners' and traders' incentives to comply with the law, as well as at the incentives of other key actors, such as state agents, security actors and local elites to follow public norms. But the analysis must go beyond practical issues and actors' willingness to comply.

On a third level, I argue that we need to uncover the practical norms of gold exploitation and trade. If we want to understand why formalization and regulation fail and why there is such a wide gap between laws and practices – which Olivier de Sardan and De Herdt in this volume qualify as 'the gap problem' – we need to analyze practical norms, looking at the following key questions: what are the practical norms; why did they come into place and how do they evolve; how much stability or dynamism do they provide for; and how are they enforced and sanctioned? The chapter analyzes practical norms on two levels. First, there are the practical norms regulating transactions and interactions in artisanal gold exploitation and unofficial trade, which are historically shaped and dynamically interpreted by the actors. Second, there are the practical norms of local power complexes, where power holders aim to control the rents provided by gold mining and trade. The practical norms discussed in this chapter are 'evident', in the sense of openly applied and quite visible/explicit for those who are *inside* the gold sector, but 'elusive' in the sense that they are difficult to grasp and puzzling for policy makers wanting to reform the sector.

2. Practical norms in gold mining and trade

Artisanal gold mining in South Kivu started in the 1970s. At the time the industrial companies M.G.L. (Minière des Grands Lacs) and its successor Sominki (Société Minière et Industrielle du Kivu, since 1976) were active in Kamituga (since the 1930s), Lugushwa (since 1959) and Twangiza (since 1957)^{xiv}. After independence in 1960, industrial gold production had declined because of political unrest, bad maintenance of infrastructure and poor economic management. At the same time, individual Congolese discovered the possibility of searching for gold themselves and making good money by selling it to intermediate traders. The latter evacuated the gold via the provincial capital Bukavu to neighbouring countries, primarily Burundi. In the 1970s more and more artisanal miners started working in Sominki's abandoned concessions, but also in the underground galleries (Mobale mine) that were still in operation. They did so with the complicity of the guards who were supposed to protect the company's installations. In the late 1980s these miners in Kamituga even united in the 'Nindja' movement, which presented itself as a 'resistance' movement and was very attractive to local youth because it guaranteed access to fast money, fashionable clothes and prestige in the local community (Bulambo Katambu, 2002). Every Nindja collaborated with a financier, a local trader who paid for the expenses (tools, clothes, food and so on), and who in turn bought the raw gold at a favourable price (idem and Dupriez, 1987). This local trader was in turn financed by another trader, usually operating from Bukavu. In this way, a tight network of clients and supporters, debtors and creditors, miners and traders emerged, the basic structure of which still exists today. In this 'informal' network, practical norms developed out of a need for stability and for gearing all actors' interests to one another. As I will explain in the next paragraphs, the practical norms historically developed, partly out of customary, social, moral and professional norms, and partly out of the specificities of the gold sector and the materiality of gold.

2.1. Shafts and relationships

Inside the shafts the work is done manually and miners make use of shovels, chisels and other small tools to dig underground galleries and tunnels. Different categories of workers intervene. The 'conducteurs', who are always experienced miners, orient and oversee the work. The 'bouts de feu', specialized workers, use explosives to open up new shafts. This is quite a dangerous job. The excavated tunnels are then often shored up with wooden trunks, a task carried out by the 'boiseurs'. These skilled workers may offer their services in different

shafts. After them, the ‘foreurs’ set to work. This category of workers extracts the auriferous rocks, cuts them into smaller stones and then proceeds into the tunnel. The work of the ‘foreurs’ is physically very demanding and is typically done by men aged between 20 and 40. They usually have a certain degree of experience in underground mining. Next come the ‘peleteurs’, who are mainly younger and/or less experienced men. They clear the rocks and bring them to the surface in barrows or jute bags. Recruitment is thus based on skills, experience and physical ability (see Bryceson and Jønsson, 2010), although pre-existing family and friendship relations may facilitate someone being hired. Yet someone who is physically unable to do the hard work in the underground shafts will not last in the activity. Within the teams there is some hierarchy, as the description of the different specialisations showed. But everyone who works underground faces the same harsh working conditions, which to some extent levels out the differences and provides for, as Bryceson et al (2014) said, ‘democratic tendencies’. In other words, the specialization of work tasks in shaft mining relates to practical norms based on self-interest, to use De Herdt and Olivier de Sardan’s typology. The nature of gold extraction itself requires that people with specific qualities carry out particular tasks. However, the collegial feeling that ‘we are all in this together’ also hints at a social norm, levelling out social differentiation. The next paragraphs show how the credit arrangements around the mines equally respond to self-interest, while incorporating some social norms as well.

The ‘shaft manager’ (locally called PDG or ‘Président Directeur Général’) coordinates and finances the work. In a survey I conducted in late 2011, I found that the shaft managers face average monthly costs of US\$ 1707. Such costs run up high in the preparatory period, when the team is chasing the gold vein, which may take several months or years. As a consequence, investments in shafts may run to tens of thousands and even more than US\$ 100,000 before the team eventually reaches the productive gold vein. These costs are borne by local traders who grant credit^{xv} to shaft managers and individual miners^{xvi}. This obviously involves self-interest on both sides: miners need to make investments, while traders have to secure a supply of gold. So for traders, giving larger investment credits, or small credits in the form of money, tools, food and water, batteries for torches or clothes, is a commercial strategy: ‘I give them some beans to eat, buy them some petrol for the water pump or some branches to shore up the shaft’ (commission agent 12 August 2009 int.) or: ‘They are my friends and they usually come to me. You help them with a little money, they go to the shafts and when they return, they will pay you back’ (commission agent 19 August 2009 int.). The latter quote suggests

that these relationships go beyond the purely commercial, and have a social meaning too. Such relationships may stretch out over a long period of time, and in the social world of the gold mines, many people know each other and develop solidarity relations based on common work experiences.

Of course miners need to ‘repay’ in the form of a gold supply, and will be in a weaker bargaining position when negotiating about the price. But on the other hand, traders also take big risks. They may lose a lot of money when a mining project fails to generate an output, or when the miner who took the credit, suddenly disappears. According to our interviewees, this happens frequently. But traders take it as ‘part of the job’. Even when debtors are clearly not able to pay, the relationship will not be easily ended, since both parties need each other if they want to have any hope of having some output in the future. This is the incentive for maintaining the relationship, despite the fact that it may require a lot of patience: ‘until God blesses us so that he finds [gold] and pays us; we are patient’ (trader 12 August 2009 int.). Yet traders are certainly not only watching and waiting for their investments to become profitable. They also supervise the works in the mining shafts, going on-site themselves or hiring guards.

2.2. Trust, morality and self-interest

These relationships, as miners and traders say themselves, are characterized by trust, which builds up over time (Granovetter, 1993: 27). Trust is the result of repeated interaction and, according to my interviewees, something you need to earn: ‘if you deliver a good service, I will grant you trust’ (trader 20 August 2009 int.), or ‘someone who brings his production to me four times in a row, wins my trust’ (trader 13 August 2009 int.). But more than that, trust is part of the professional ethic that prevails in the gold sector^{xvii}. Even beyond bilateral relationships, ‘being trustworthy’ seems to be a condition sine qua non to do business in the gold trade. This hints at a professional ethic and a norm which is also justified on a moral basis, prescribing what the quality of a ‘good trader’ is. A Bukavu based trader (29 July 2009 int.) declared: ‘We are all men of trust: we give trust, we receive trust and we deserve trust. That is how we do our business’. Just like the norms on work specialization and credit arrangements discussed above, the importance of trust can be related to the specificities of the gold sector and institutional insecurity, which requires stability and predictability. Business is also complicated by physical insecurity and lack of infrastructure (roads, flights, electricity,

banking facilities and so on). Traders therefore often hold a lot of cash and when they travel, they prefer to hide their money and their commodities. This is easy for gold, at least much easier than for example for bulk volumes of cassiterite, coltan or copper, which partly explains why the gold sector is so difficult to ‘control’. Traders fear theft, pillaging and intimidation by armed groups or other bandits. But they also fear that jealousy may lead some people to adopt witchcraft-like activities such as poisoning, or mysterious disappearances of the gold. Traders therefore prefer doing business ‘on the quiet’ and with trusted partners only. This way, they seek predictability, proximity and security.

But as has been suggested, there is also an aspect of morality in these relationships. Indeed, some practical norms prevailing in South Kivu’s gold sector give a good idea about the professional qualities that are highly appreciated, such as honesty, trustworthiness, responsibility and loyalty. As I said, a mining project may extend over a long time period, and there are periods in which the team is making hardly any profit, periods they must endure before reaching the production phase. The miners who are working hard to open up the tunnel and proceed in the direction of the gold vein, are sometimes called ‘souffrants’, or those who suffer. On the other hand, you find those miners who only show up and offer their services when a shaft is about to reach high production. These miners are called ‘kanyata na fine’ in Kilega (the language of the Balega), those who ‘go along with the fine gold’. The latter have a bad reputation and are not well respected. Some shaft managers therefore have an internal ‘order of business’: if you have been absent for three months, you are declared to be a deserter. In that case you cannot show up just like that in the high production phase to claim your share. As one local leader overseeing a number of mining shafts said: “everyone has to be aware of his obligations towards the other” (local leader 31 May 2012 int.). Pretension is not tolerated either. This is illustrated by a story that was told in Kamituga about a man who had grown rich by mining and bought a house in Bukavu. When he went back to visit his native village, he demanded three mattresses to sleep on, and he refused to eat the local food. But he was punished for behaving so arrogantly, fell bankrupt and eventually had to sell all his properties. These kinds of exemplary stories are also used in the traditional Balega culture to educate children and teach them about good and bad behaviour. It shows how practical norms often result from a bricolage process of pre-existing norms and practices.

Other norms do not appeal to social or moral prescriptions, but have just been installed in a pragmatic way, out of self-interest and in order to facilitate the work underground. For

example, in some gold sites which are intensively exploited, several teams may be working on a relatively small surface area. Sometimes they unexpectedly bump into one another underground. In this case, the norm prescribes that the team that last arrives at a place where another team is already working and where they have left tools (a sign that they are still in operation), needs to retreat. The work underground also poses a number of material challenges. To overcome them, shaft managers may sometimes cooperate, as the following example from Lugushwa demonstrates:

Alex, a shaft manager in Lugushwa (20 January 2011 int.) explained that he shares a shaft with someone else. Alex, with his sixty workers, proceeds to the left-hand side, while the other shaft manager, employing more than 100 miners, proceeds to the right. In principle they work independently. They do not share the benefits, but they do share the costs. As the other shaft manager is working seven metres below Alex, all the groundwater flows his way. Therefore they have agreed that Alex takes an equal share in the costs of the water pump (buying or hiring a pump, paying for the gasoline and paying for two guards to watch over the pump). It may also happen that a team unexpectedly bumps into another underground team. As a general rule, if a team reaches a place where another team is working, it has to retreat.

However, a few other practices in gold mining have evolved into norms, but seem to lack such a causal mechanism. For example, when a mining team is proceeding in a shaft, they divide the output (extracted rocks) according to the following rule: one-third is used to reimburse investment costs, one-third goes to the shaft manager, and one-third is distributed among the other miners (sometimes equally, sometimes according to their category; workers with specific tasks are typically paid a fixed quantity per shift). Every miner is then responsible for processing his own part of the production, and for selling it to the local traders. In other words, the quality of the rock determines whether a miner will make profit or not. At first sight, this system seems to be inefficient and it makes revenues completely unpredictable. Yet in a way it also makes the process more transparent for the miners, in building in certain guarantees that the shaft manager will not add to his own share. It also gives individual miners the freedom to go and sell their gold to whomever they want. And it gives them the responsibility for processing their own rocks or sand. Not surprisingly, responsibility and freedom are aspects of the work that are highly valued by artisanal miners.

2.3. *Stability and sanctioning*

The preceding paragraphs have demonstrated why and how practical norms emerged. The system of gold exploitation and trade requires a certain degree of stability, in order to provide a context that is 'secure' enough for transactions and interactions. Yet emphasizing the 'stability' of the system, does not mean that the system is 'static'. It is flexible enough to respond to changing circumstances, and to allow for negotiations over the practical norms. Although the practical norms are known and agreed upon by the professional actors, deviance does happen and norms may need some adaptation. Let me give two brief examples to illustrate this.

First, I have said that miners who took a credit from a trader, will be in a weaker bargaining position when negotiating about the price for their gold. The local gold price is directly determined by the world market price and so it fluctuates accordingly. Smaller traders and even miners are now also better informed about this price thanks to cell phones and the internet. Yet there is considerable room for negotiation about the price. One of the factors determining this negotiation is the question of whether credit has been given or not. Another is the quantity a miner has to offer: the bigger the quantity, the better his bargaining position. So in this case, there is a possibility to bend the norms in the supplier's favour.

Second, the credits I mentioned are not 'formalized', in the sense of being officially recognized and legally enforceable. When asked whether they 'write down the agreement', traders said they did not. Certainly for small amounts there is no written agreement. These sums are part of the 'creation of the relationship', which is not valued in monetary terms. Yet the accumulated value may run up high. Therefore most traders keep a record of their outstanding credits:

There is no writing, because if you find someone with a US\$ 1000 debt, he did not borrow that amount at once. Today he comes and asks US\$ 5, tomorrow he comes

back, the work is not going well, and he needs another sum. He is a client. The next day he can come with 5 grammes of gold, but then he might borrow another US\$ 10. And thus the amount becomes larger, until you realize you are at US\$ 1000. There are no receipts. [...] Those small amounts, you just write them in your notebook (commission agent 14 August 2009 int.).

However, sometimes both parties do sign a written agreement. This may happen in the case of larger investments, or when the trader and the miner do not know each other very well (yet) (commission agents 12 and 20 August 2009 int.). Another possibility is to make an oral convention in front of a witness, such as a customary chief. A written agreement may also be required when problems arise between the two parties: ‘When he starts to hide away from us, we ask him to make an agreement’ (trader 19 August 2009 int.). This indicates that credit and debt relationships may come under considerable pressure, which may necessitate a dynamic interpretation of, or a deviance from the norms.

If such problems really evolve into a dispute, there are several possibilities for sanctioning. Going to court is difficult in the absence of formal contracts, and traders say they do not trust the court or the police (commission agent 13 August 2009 int.), or that it is not worth the effort (commission agent 12 August 2009 int.). Instead, creditors may ask for collateral. But the strongest sanction is the refusal to grant credit to individuals with a bad reputation^{xviii}. This is an incentive for people to behave in a reliable and honest way, for they could lose the benefits of future exchange if they default (commission agent 27 July 2009 int.). So although the primary motivation seems to be self-interest, people also comply with this because a damaged reputation leads to shame and possibly social exclusion.

So enforcement and sanctioning in this case is not done by the state, but by the professional actors themselves. Trade union-like organizations or cooperatives may act as sanctioning bodies as well. They exist in most mining sites, although they do not comply with the public norm of what a ‘cooperative’ should look like. In practice these organizations take up a myriad of functions, from defending miners’ rights over social assistance in case of an accident to technical assistance and inspection of the working conditions, but they may also intervene in the case of underground disputes. As I said earlier, the norm prescribes that if mining teams bump into each other underground, the one who last arrived, has to retreat. But

as this is not always easy to determine, a cooperative may need to intervene to sort out the case.

2.4. *Land, chiefs and bricolage*

Until now I have analysed the norms regulating transactions and interactions *between* miners and traders, *inside* the gold sector. In this section I take a broader perspective, seeing how artisanal mining is embedded in local governance and power complexes. As I have said, the Mining Code provides for 'artisanal exploitation zones'. Yet in South Kivu, only seven AEZ have been officially established by Ministerial Decree. They cover a total surface area of only about 219 km² (compared to the surface area of one gold company's [Banro] exploitation permits: more than 2790 km²^{xx}) and some are very remote and insecure. In reality, most artisanal gold miners do not work in AEZ, but in areas that have been given into concession to industrial companies, because these are known to host the richest deposits. Some underground galleries were abandoned by Sominki when it closed down in 1996^{xx}; other deposits had been abandoned by the company much earlier. So while legally these mining sites are part of an industrial concession, locally they are governed by practical norms, set and negotiated by a mix of customary, state, military and other power holders. These practical norms have been shaped through a process of 'bricolage' (see Cleaver in this volume). They are partly based on existing customary norms, but have been adapted and twisted, confronted with other norms.

To give one example, the process of acquiring and securing a plot of land where you can start to mine, is different in Kamituga and in Twangiza. Kamituga is a historical mining town of about 100,000 inhabitants, situated in Mwenga territory, Wamuzimu chiefdom, in a region traditionally inhabited by the Balega people^{xxi}. Sominki's main gold mine was in Kamituga, and the company recruited workers from all over South Kivu and beyond, which resulted in an ethnic mix in the mining camp. The Balega traditionally lived on hunting and slash-and-burn in the forest and the region was not densely populated. This had consequences for the system of land distribution, and for customary governance in general. The latter was decentralized, not strictly hierarchical. Any male adult could occupy a plot of land and start working (Biebuyck, 1973: 14; Dupriez, 1987: 17). This system is mirrored in artisanal mining. If you want to start a mining project in this area, it suffices to have the necessary

financial capital, recruit workers, provide them with tools and equipment, and start to dig, as interviewees in Kamituga assured me. At a later stage, you go and see the chief and pay the customary taxes and contributions. The procedure is different in Twangiza. Twangiza is actually the name of a concession, stretching over different Bushi chiefdoms such as Luhwindja, Burhinyi and Ngweshe. The Bushi chiefdoms were hierarchically organized with the mwami or king at the top. He was the holder of all land rights (Dupriez, 1987: 12). Such land rights, in the form of non-alienable inheritable user rights, were allocated by the mwami in exchange for the 'kalinzi', which came mostly in the form of cattle and banana beer and was handed over in a special ceremony in the presence of witnesses^{xxii}. By giving the kalinzi, the customary land owner became a 'political subject' of the mwami, had to pay his fiscal contributions and work on the king's land (Dupriez, 1987: 15-16). The industrial mines in this area were already abandoned by M.G.L. in the 1970s, but remained part of the concession, according to official state law. Yet in practice, thousands of people have been working in the artisanal mines since that time, and the entire system was controlled by the mwami. This was at least allowed, if not encouraged, by the mining company, which had an interest in maintaining good relationships with the chiefs (Geenen and Claessens, 2013). For the mwami, it was an opportunity to extend his power over land rights to the underground, and to substantially benefit from its yields. The following quotes illustrate how individual miners gained access to their shafts:

I went to the chief and asked him to give me the plot, since he was distributing all the sites (leader artisanal miners 08 January 2011 int.).

I was a veterinary, working in the public administration. So you know, the difficulties we have with the government, no salaries, or very little salaries [. . .] The beloved mwami has given me a pit in Mbweza in 1990 (former shaft manager 09 January 2011 int.).

The quotes highlight the importance of customary chiefs, as well as the inability of the state to provide for its citizens. Part of the Twangiza concession has now been taken over by the transnational gold mining company Banro, which acquired the concession titles in 1997, started exploration in 2005 and production in November 2011^{xxiii}. But Banro is just working in a 'core area' and left vast parts of the concession untouched. Here, artisanal miners still pay regular contributions (a monthly tax called 'citore', equal to one gramme of gold) to the

chief's representatives. When the miners start to produce good quantities of gold, the chief levies additional taxes on production, according to some sources amounting to 10 per cent (sometimes expressed in quantities of gold, sometimes in centimetres of excavated rocks; former shaft manager 08 January 2011 int.). Although this system does not conform to the Mining Code, as has been said, it gives the shaft managers tenure security because of the legitimacy of a customary title, which is still very prominent in the land tenure system^{xxiv}. But the system is not fully 'customary' either. In what follows I will show that other actors (state agents, security agents, association leaders and so on) also intervene to tax the miners and traders in exchange for some protection and security.

2.5. State agents and taxes

Specifically for artisanal miners, the Mining Code foresees in a number of administrative^{xxv} and technical services^{xxvi} aimed at supporting them. The most relevant probably is Saesscam, a technical service that should organize, supervise and materially and technically assist artisanal miners. It should be partly financed by taxes and contributions: on the one hand, a share in the export taxes (1 percent of export value), on the other, a contribution for the delivered services, to be paid by miners and traders in the trading points. In reality, Saesscam does not have the appropriate financial, material and human resources to take up its responsibilities^{xxvii}. Moreover, the centralized trading points are not yet operational. And at the export level, different services compete for their share in the taxation. Saesscam's local offices, set up in various mining sites (many of them also inside industrial concessions), have made some attempts to register mining shafts and miners, but they do not have the capacity to provide the services their mandate requires them to provide. Yet they do levy monthly taxes on artisanal miners, and on traders as well. In the eyes of miners and traders, Saesscam is therefore often seen as a 'harassing' body ('tracasseries'), not as a service provider. But Saesscam is not the only actor levying 'non-official' taxes. At the local level a whole range of actors tries to benefit something from artisanal exploitation and trade: state agents, local representatives of the Mining Division, customary chiefs, security agents and association leaders. They may all intervene to tax miners and traders, especially when the former are in the 'high production phase'.

The representatives of the Provincial Mining Division for example sell artisanal miners' permits. According to the law these may only be issued to individual miners, within artisanal exploitation zones, but since these zones are not yet operational, this official legislation cannot be enforced. In practice the price of such a permit also varies, between US\$25 and 125, depending on the person and his negotiation skills. Most miners do not have a permit, but some shaft managers buy one permit for the entire shaft, in order to guarantee extra tenure security. In other words, a practical norm exists, but may also be bent to come closer to, or become more distant from, the public norm. For the state agents, this is a matter of 'fending for themselves', since salaries are paid only irregularly. Pact (2010: 5) states that 'illegal taxation' by numerous state and non-state actors places a heavy burden on miners and traders, but paradoxically also provides 'a means of wealth distribution at a community level and fills the gap in payment of many government services'. Another example of such taxation could be observed during a temporary ban on artisanal mining activities that was imposed by President Kabila from September 2010 until March 2011 (Geenen, 2012)^{xxviii}. During this period gold production continued, albeit in much smaller volumes, in a clandestine way and at night, as opposed to openly, during daytime. For miners, this meant that carrying out their activities became risky, and required them to 'cooperate' with FARDC soldiers, Mining Police, intelligence officers or magistrates who demanded a part of the production and/or a fixed contribution in exchange for protection (miner 20 January 2011 int.). In other words, power holders here used the law in order to enrich themselves further from 'illegal taxation'.

This phenomenon is not new either. The aforementioned Nindja movement in Kamituga, for example, flourished because of the complicity of the ill-paid Sominki guards and of the Mining Police (former Sominki employees 24 and 31 July 2009 int.)^{xxix}. 'The guards had to oversee us, but they were not paid either. They had to survive just like us,' a former miner said (25 January 2011 int.). The Mining Police^{xxx} had been sent by the government in 1981, after repeated requests by Sominki to halt the intrusions. Ironically, this police quickly became involved in theft and illegal exploitation itself. In July 1982, for example, 80 kilogrammes of gold was stolen from a safe in the laboratory. The theft appeared to have been well planned by the commander of the Mining Police and one of his adjutants. They stole the entire production of May and part of the production of June (former Sominki employee 31 July 2009 int.). The commander also supervised a whole system to cover thefts in Mobale. He issued 'entrance permits' to Mobale underground, costing 1 gramme of gold. With an entrance permit, you were allowed to carry stones to the surface, but each parcel would be

taxed an additional 5 grammes. Goods that were smuggled in were also taxed in this way. One interviewee and former Nindja remembered that he paid 2 grammes to enter a bag full of batteries, salted fish and sugar (27 July 2009 int.).

These examples show that state and non-state actors aim to control the rents provided by gold mining and trade. They seek the best way to serve their economic interests, but their practices are also constrained. The customary chiefs, for example, who appeared in the previous section, collect monthly contributions and levy taxes on production, but these are all part of a well-defined system that is known and acknowledged by the actors involved. If they were to suddenly raise taxes, people would not accept it because there is more or less an idea, a norm indeed, about what chiefs are entitled to and can expect from their subjects. Yet the mwamis also clearly 'shift' in response to changing circumstances. In the previous section I explained how the mwamis in the Twangiza concession managed to turn the departure of the company M.G.L. to their advantage, by taking control over the system of artisanal exploitation. But recently the situation changed, and the company Banro took over the concession. This again caused the mwamis of Luhwindja and Burhinyi chiefdoms to reposition themselves^{xxxii}. Especially the mwamikazi of Luhwindja, a woman who took up the interim position for her underage son, became very powerful. She managed to present herself to the mining company and to the government as the legitimate intermediary between them and the population, and had a lot of influence in the negotiation processes over resettlement and compensation for the local population. She also created subcontracting companies providing labour to Banro and building infrastructure, and she set up a NGO working with the Banro Foundation.

This is, of course, not to say that 'ordinary miners' have no agency. It is clear that miners also 'use' the aforementioned actors and services in order to gain and secure their access. If they pay taxes, their claims may be registered or written down, which increases their feeling of tenure security – probably more than the Mining Code and its current application can do. Besides, they negotiate over the amounts all the time and are thus trying to manoeuvre themselves into a more favourable position vis-à-vis the chiefs and state agents. Although these transactions are not always voluntary, and miners complain a lot about harassment, they also 'play upon' the practical norms themselves.

3. Conclusion

This chapter started from the question why it has been so difficult to formalize and control the gold sector in South Kivu. On a first level, serious questions may be raised about the technical and practical feasibility of the proposed formalization and regulation initiatives, given the often dispersed presence of gold deposits and the inaccessibility of many mines, and the incapacity of the government and its administrative and technical services to implement and enforce the law. On a second level, questions can be asked about miners' and traders' incentives to comply with the law, as well as at the incentives of other key actors, such as state agents, security actors and local elites to follow the official regulations. But the key argument of the chapter is that the analysis should dig at a third level: the level of the practical norms regulating the current system of gold production and trade, which are 'evident' in the eyes of the actors involved, but 'elusive' for outsiders wanting to control or formalize them. It is only by uncovering and analysing these norms, that the 'gap problem' can be addressed.

The analysis therefore focused on the following questions: what are the practical norms, why did they come into place and how do they evolve, how much stability or dynamism do they provide for and how are they enforced and sanctioned? First, it needs to be said that some norms can be traced back to the materiality of gold (such as the low volume/high value character which makes it easy to smuggle) and the inherent characteristics of gold mining (such as the fact that output is unpredictable and underground shafts require an investment). This explains why similar practices and norms can be found in Tanzanian or West African gold mines. For example, Grätz (2004; 2009) described similar norms with respect to work organization and output sharing in West-Africa, and Bryceson et al (2014) talked about the 'egalitarian norms' in Tanzania's artisanal mining sector. Some differences can of course be related to the institutional context. The whole issue of 'abandoned concessions' where a skilled labour force is present seems to be quite particular for South Kivu, as well as the insecurity and violence which push gold mining and trading activities further into unofficial circuits and the particular position of customary chiefs.

My empirical data have demonstrated that in South Kivu, the norms in gold production and trade have evolved since the 1970s out of a need for stability and security, and for assembling the 'high' and the 'low' economic interests of miners, traders and power holders at different levels. They were shaped through a dynamic interpretation, a 'bricolage', of customary, social, moral and professional norms, and were reproduced over time. I demonstrated that

they are not exclusively set and enforced by chiefs and state agents, but also by the professional actors themselves. As such, the ‘system’ is ‘functioning’ – at least it is providing for hundreds of thousands of livelihoods, and contributing to the local and regional economy, although not through the official channels. Some of the norms that regulate miners’ and traders’ relations, could be interpreted as being ‘adaptive practical norms’, to use De Herdt’s and Olivier de Sardan’s field-based typology. They do not aim to confront the law, but have been adapted to a situation of institutional insecurity in which the law is not being implemented. Yet other norms are ‘transgressing’, as they deviate from both the letter and the spirit of public norms and thus quite openly challenge the law, such as the system of permits and taxation. In the end, everybody knows that about 98 per cent of gold production and trade is not registered, that miners and traders work in concessions that have been officially granted to industrial companies, and that power holders at different levels get their piece of the pie. It is difficult to imagine how some of these practical norms can be reconciled with what the public norms (the Mining Code as well as international guidelines with respect to due diligence) provide for.

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ⁱ Artisanal production is done in small teams, using hand-held tools and possibly small portable machinery. Industrial, large-scale gold production existed since the 1930s until the start of the first Congo war in 1996, and resumed in November 2011 with the Canada based multinational Banro Corporation.

ⁱⁱ Mining Code, T. 4, Ch. 1, Art. 109.

ⁱⁱⁱ Ministère des Finances (2009) Manuel des procédures de traçabilité des produits miniers, de l'extraction à l'exportation.

^{iv} Mining Code, T. 4, Ch. 1, Art. 111 and 112.

^v Mining Regulations, Art. 1-12.

^{vi} Mining Code, T. 4, Ch. 1, Art. 110. This can be done by the Minister upon advice of the Geology Directorate.

^{vii} On the political aspects of the resource curse, see Davis and Tilton, 2005; Rosser, 2006. For some background on 'good governance' programmes in the DRC mining sector, see Herderschee et al, 2012; Promines, 2010; World Bank, 2008).

^{viii} For a discussion, see Geenen and Custers, 2010; Perks and Vlassenroot, 2010; Verbruggen et al, 2011.

^{ix} On due diligence, see UN, 2008 and 2010; Global Witness, 2010a and b; OECD, 2011a and b; and the 'Dodd-Frank Act in the USA (Resource Consulting Services, 2011).

^x Such traceability and certification systems have been proposed and piloted by ITRI (International Tin Research Institute), by the German government through the Federal Bureau of Geo-Sciences and Natural Resources BGR (Naeyer, 2010), by a private company Met Trak (CENADEP, 2012), by the ICGLR (Bloure and Smillie, 2010) and by the NGO Partnership Africa Canada (<http://www.pacweb.org/en/conflict-free-gold>), among others.

^{xi} Apart from South Kivu, important gold deposits are also found in Oriental Province.

^{xii} Agriculture, for example, is still the principal livelihood strategy for more than 80 per cent of households in the province, but it is mainly practiced at subsistence level, and has become less attractive for different reasons (demographic pressure, insecurity and war, soil exhaustion).

^{xiii} On the 'weakness' of the Congolese state, see also Englebert, 2003; Trefon, 2011.

^{xiv} This section is based on the personal archives of Serge Lammens, former Administrator-General Director at the mining company Sominki, and on archival research in the Royal Museum for Central Africa, Tervuren, Belgium. See also Geenen, 2013.

^{xv} Our interviewees would occasionally use the French term 'crédit', but when talking in Swahili (most of the time), they would use the term 'deni' (plural: madeni). This literally means 'debt'. It tends to lay more emphasis on the indebtedness (as a characteristic of the relationship) than on the credit (money or goods) itself.

^{xvi} For a more detailed description of these credit and debt relations and how they are regulated, see Geenen, 2011.

^{xvii} Grätz (2004) studied trust among gold traders in Western Africa and came to similar conclusions. Rubbers (2009) however titled his study on the copper traders in Katanga "We, the Congolese, we cannot trust each other" and found very low levels of trust.

^{xviii} On the use of reputation as a sanctioning mechanism, see Platteau, 2000; Greif, 2006.

^{xix} Status on 01/09/2011, Mining Registry, South Kivu.

^{xx} Sominki was already at the brink of bankruptcy in the mid-1990s, but definitively halted its activities with the advent of the first war in 1996.

^{xxi} A more detailed case-study on Kamituga can be found in Geenen, 2011 and Geenen, 2013.

^{xxii} There were other types of customary contracts, ranging from simple user rights ('obuhashe') over rental-like contracts ('bwaswa') to sales-like contracts ('bugule'), but 'kalinzi' was the most common (Ouchinsky, 1966).

^{xxiii} For more details on the case of Banro in Twangiza, see Geenen and Claessens, 2013; Geenen and Hönke, 2014.

^{xxiv} For a more detailed analysis of access to land in Twangiza (Luhwindja), see Geenen and Claessens, 2013.

^{xxv} National Minister of Mines, Provincial Mining Division, Mining Registry, Geology Directorate, Directorate of Mines, Department in charge of the Protection of the Mining Environment (Pact, 2010: 36).

^{xxvi} Saesscam (Service d'Assistance et d'Encadrement du Small-Scale Mining), CTCPM (Cellule Technique de Coordination et de Planification Minière), CEEC (Centre d'Evaluation, d'Expertise et de Certification) (Mining Regulations, T.1, Ch. 1., Art. 2).

^{xxvii} See Pact, 2010: 37; interview with cooperative leader, Bukavu 26/05/2012; and observations in the field.

^{xxviii} The ban was justified as a way to proceed towards formalization, to cut the financing of non-state armed groups, to reestablish state control, to fight against fraud and against the implication of 'non-authorized persons' in the sector. As was demonstrated in Geenen, 2012, it proved to be ineffective, however, and disastrous in its impact on local livelihoods.

^{xxix} The same was true for Lugushwa (former Sominki employee 25/01/2011 int.).

^{xxx} The 'Brigade Minière' was a section of the 'Gendarmerie Nationale' and was created to protect the means of production and the personnel of the mining companies in Zaïre. We will translate it here as Mining Police.

^{xxxi} See Geenen and Claessens, 2013; Geenen and Hönke, forthcoming.