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A LOT OF GOLD A LOT OF TROUBLE

A study of humanitarian impacts of the gold industry in DR Congo

 **diakonia**
MÄNNISKOR SÖKER FÖRLÄSNINGAR KÄRLÖSEN

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Foreword

The Democratic Republic of the Congo is still recovering from a ruinous civil war where the countries abundance of mineral have brought little peace and no sign of economic development to the local population. Instead, the people have suffered badly from not only their domestic war, but also from conflict and insecurity, which has spilled into north eastern DR Congo from wars being fought in neighbouring Uganda and South Sudan. The Congolese national army, which consists of thousands poorly integrated former rebels, is also feared and not generally trusted by the local population. Some of the officers in the Congolese military have developed very good relations with the mineral exploiters, and their soldiers have continued earlier habits of violence and extortion of locals.

However, conditions in north eastern DR Congo have not been as widely reported as the situation and sporadic fighting in nearby north and south Kivu. At the end of 2010, Swedwatch and Diakonia became aware of a small Stockholm-based gold exploration, mining and trading company operating in north eastern DR Congo. This case caught the attention of Swedwatch and Diakonia because the gold industry is one of the potential drivers for industrial and commercial development in this area. The case study would provide an opportunity for a more general understanding of the impact the gold industry has on the local population.

It is clear that the local population, civil society, local authorities and mine workers hope that through the mining industry there will be increased development in the area. However, operating and investing in DR Congo, a post-conflict country with a fragile state structure, involves a high degree of risk.

Just as the expectations are high, the critical voices at the local level are many, and those people have described their fears, and shown clear examples, of how mineral resources, in the end, have not benefited the general population.

This report has the ambition to describe an actual case, but also to inspire and serve as a base for a broad discussion about possibilities and risks of investments in conflict and post conflict areas. And finally to contribute to a discussion on our own responsibility to make sure that natural resources should not finance conflict, injustice and suffering, but contribute to development and finally a better life for those most in need.

Bo Forsberg, secretary general of Diakonia

Viveka Risberg, director of Swedwatch

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Executive Summary

The Democratic Republic of the Congo (Congo-Kinshasa or DR Congo) is a country still recovering from a ruinous eight-year civil war that killed more than 5.4 million people. The value of untapped deposits of raw minerals is equivalent to the combined gross domestic product of Europe and the United States. Cobalt, diamonds, copper and, of course, gold is on the list along with highly sought after cassiterite, wolframite and coltan, which are used in consumer electronic products.

Much of the extraction, or mining, is done in small operations known as artisanal, or small-scale mining, where the regulations that govern the activities are rarely enforced. Recently, more money is being invested into the extraction and refining of some of the ores found in the DR Congo, primarily copper, cobalt, and very recently, gold in Orientale Province.

Mineral Invest International MII AB is a Swedish junior gold mining company surrounded by some of the largest international players in the extractive sector. Despite its diminutive size and its limited financial resources, the local community is waiting for Mineral Invest to increase its operation. The artisanal miners hope for jobs and the local community is waiting for development in the form of schools, hospitals and improved roads. According to Mineral Invest’s website, the company has laudable plans for development projects in the area where it operates.

Swedwatches’ and Diakonia’s study shows that investment in post-conflict countries like DR Congo should require proper due diligence and a social licence to operate. So far, this has not been carried out.

The DR Congo’s Cadastre Minier has issued the licenses to SOKIMO, which is a partner in the joint venture with Mineral Invest. This joint venture features significant payments to the Democratic Republic of the Congo without specifying the recipient authority or entity within the state, which is a problem of transparency.

The contractual agreement between Mineral Invest and the Congolese state-run mining company, SOKIMO, implies conflicts of interest and a lack of clarity. SOKIMO being both provider of mining licenses and at the same time having a financial interest implies a concentration of power that can create conflicts of interest and invite corruption. The allocation of payments to the state raises concerns as well as the agreements regarding development projects or, for example, accountability for environmental destruction.

Finansinspektionen, the Swedish financial regulator, and Aktietorget, the Swedish market where Mineral Invest is publicly traded, have insufficient regulation and guidance for companies operating in difficult or post-conflict countries.

Mineral Invest has not worked out an agreement, often called a social license to operate, with members of the local community where it operates. The company has contracted a unit of the Congolese military to provide security. This unit has been implicated in the ethnic slaughter of pygmies and cannibalism. The soldiers have also been accused of extorting gold from miners.

Swedwatch and Diakonia recommend that Mineral Invest:

- Terminates its relationship with the Congolese military that has been contracted to provide security.
- Follows *the UN Voluntary Principles on Security and Human Rights* before contracting another security provider.
- Develops a plan to assist artisanal miners in finding alternatives to the use of mercury in the Mineral Invest concession area and help local miners adopt better working methods.
- Follows its social and environmental commitment in accordance with the website, as it concerns security, health, the environment and transparency.
- Follows *the OECD Guidelines for Due Diligence* and the *UN Guiding Principles for Business and Human Rights*.
- Agrees on a public social license to operate with members of the local community.

Swedwatch and Diakonia recommend that Aktietorget and Finansinspektionen:

- Promote the investigation of instances where publicly-traded companies have entered into joint venture agreements with state-run companies in post-conflict states where corruption is a factor and there are potential conflicts of interest.
- Request companies to publish names of subsidiaries, staffing information, economic performance indicators, assets, taxes paid and other relevant financial indicators on a project-by-project basis to promote transparency.
- Promote a regulatory framework that monitors companies operating internationally in order to protect human rights, particularly if those companies are operating in conflict or post-conflict parts of the world.

Swedwatch and Diakonia recommend that the Swedish Government:

- Develops legislation requiring companies operating in, or trading in, high-risk areas to conduct proper due diligence in accordance with the OECD Guidelines and to publish its due diligence on the company website.
- Works with the international community, for example, through EU, OECD or UN initiatives to end secrecy over the ultimate beneficial ownership of extractive companies.

1. Introduction and purpose

The private sector can be a driver for development in post-conflict countries such as the Democratic Republic of the Congo. However, without proper regulation and oversight, economic growth will not necessarily lead to development in countries such as DR Congo, which has been crippled by political instability and corruption and has now slowly begun rebuilding its state apparatus after decades of decay. The DR Congo has a huge amount of natural resources, which has attracted large multinationals and junior mining companies from all over the world. Investment is required and job opportunities badly needed by the local people, as are decent roads, functional schools, hospitals and electrical infrastructure.

Needless to say, operating in a Congolese context is a high-risk commitment. Proper risk management is necessary in order to avoid harm on the ground, reputational damage and eventual low profits. On the other hand, managed in accordance with all available ethical guidelines the rewards can be mutually significant for all stakeholders involved; the company and its shareholders, the local people, the community, the DR Congo.

The purpose of this report is to investigate whether the Swedish junior mining company Mineral Invest operates responsibly and has a positive influence on the local community, or whether it has instead had a destabilizing influence in a country still recovering from war.

Moreover the study examines if Mineral Invest operates in compliance with the Congolese and Swedish law and within internationally accepted business norms and guidelines such as the UN Global Compact's *Guidance on Responsible Business in Conflict-Affected and High Risk Areas: A Resource for Companies and Investors*, the *OECD Due Diligence Guidance on Responsible Supply Chains of Minerals from Conflict-Affected and High Risk areas* and the *UN Voluntary Principles on Security and Human Rights*.

Also, this report hopes to spark constructive debates on the problems and possibilities for mineral exploration and exploitation in weak states and conflict and post-conflict zones, and how investment should benefit a local population through development and ultimately lead to a better life for the local population.

The report is concluded with a discussion on the ability of Swedish financial regulators to monitor and supervise the activities of companies as they work in post-conflict countries and emerging markets throughout the world.

2. Methodology

In March 2011, Swedwatch began investigating Mineral Invest and its operations in the DR Congo. The methodology consisted of a combination of expert interviews, on-site interviews with relevant stakeholders in the Mineral Invest project, a commissioned local non-governmental organization context analysis report, and a commissioned expert legal document analysis.

Expert interviews were conducted with, among others, mining experts in Belgium, Sweden, the DR Congo and the United Kingdom. On-site stakeholder interviews were conducted with government officials and mining industry representatives in Stockholm, Sweden; Kampala, Uganda; the Congolese capital Kinshasa; and the eastern Congolese town Watsa and the village of Wanga, where Mineral Invest is operating.

In Wanga and Watsa, interviews were conducted with more than 20 small-scale miners, and, finally, members of the Mineral Invest staff.¹

The Swedish journalist Nils Resare undertook research in parallel with Swedwatch for an article on Mineral Invest, published in Filter magazine in January 2012. During the field study Resare was accompanied by Joakim Wohlfeil from Diakonia and the researcher Jonathan Ewing from Swedwatch. The Pole Institute, a local non-governmental organization (NGO), was commissioned by Swedwatch to provide a context analysis. The Pole Institute conducted a pre-study in Orientale Province, where Mineral Invest's concession is located.

A portion of the research concerning the exploration and joint venture contracts signed by Mineral Invest and the state-run mining company, SOKIMO, was reviewed by Advocates for International Development, a London-based organization, which provides legal advice for development and non-profit organizations.

Mineral Invest has been somewhat open to Swedwatch's requests for additional information, and the company has been open to dialogue, which has strengthened the result of the research. Other factors, however, have presented significant research challenges for Swedwatch. These problems concerned the sometimes contradictory information received from senior company officials at Mineral Invest. Mineral Invest has had the opportunity to read and comment on the report before it was published.

Finally, to protect local stakeholders, many of the names of interviewees in Watsa and Wanga have been changed.

¹ Swedwatch travelled to Uganda and DR Congo from 6 October to 28 October 2011.

3. Background

3.1 The war and its aftermath

The Congo Civil War, at its height, involved the armies of eight African nations and 25 different armed groups. The war began in 1996 and an official peace was signed in 2003, but sporadic fighting continues. By 2008, the war and its aftermath had claimed the lives of as many as 5.4 million people, many from disease and starvation. More than 1.5 million people remain internally displaced and some 450,000 have become refugees.²

It is important to note that 90 percent DR Congo's minerals are mined artisanally. In eastern DR Congo, armed groups continue to finance their armies through illegal mining and the illegal taxation of conflict minerals such as cassiterite, wolframite, coltan and, of course, gold, which is the subject of this report.³ Most of these materials are smuggled illegally out of DR Congo and into neighbouring countries including Rwanda, Uganda, Tanzania and Burundi, where they enter the world market.⁴

Eventually these minerals are bought by multinational companies for use in mobile phones, laptops and MP3 players. International demand for these products has boomed over the past 20 years and allowed armed groups to finance violence by robbing, taxing local miners and mineral traders and by facilitating smuggling. In the Kivu provinces of eastern DR Congo, government forces have also been involved in violence and extortion and as a direct result; the region remains poor, insecure and lawless.⁵ Civilian communities continue to suffer brutal attacks and the Congolese state is being deprived of valuable revenues that could be invested in development.

3.1.1 Orientale Province

Orientale Province in the north eastern corner of DR Congo is the region considered to have the second-richest mineral deposits, after Katanga Province in southern DR

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- ² The International Rescue Committee on the web at <http://www.rescue.org/special-reports/special-report-congo-y> accessed on 4 June 2012; see also The Refugee International website at <http://www.refugeesinternational.org/where-we-work/africa/dr-congo>, accessed on 6 February 2012.
 - ³ United Nations Security Council, (2011). Letter dated 18 October 2011 from the Group of Experts on the Democratic Republic of the Congo addressed to the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) (final report of the Group of Experts on the Democratic Republic of the Congo). (Goma/New York: UNSC)
 - ⁴ Garrett, N. et al. (May 2010), Promoting Legal Mineral Trade in Africa's Great Lakes Region, Resource Consulting Services, p. 11. Cuvelier, J. (Ed.). (2010). The complexity of resource governance in a context of state fragility: The case of eastern DRC. (Brussels/London: IPIS/International Alert).
 - ⁵ Stockholm International Peace Research Institute, "Conflict Minerals in the Democratic Republic of the Congo: Aligning Trade and Security Interventions," Ruben De Koenig, SIPRI Policy Paper 27, June 2011.

Congo.⁶ Orientale has also been the location of some of the fiercest fighting during and after the war, and this is, in part, due to the abundance of gold and diamonds found in Ituri and Haut Uele districts of Orientale Province.

In the past, there was some industrial production of palm oil, coffee, and cocoa, but the economic decline during the authoritarian rule of President Mobutu and the subsequent wars following his overthrow have virtually eliminated all large-scale agricultural production.⁷ Today, most of the agriculture is small-scale even though it remains the main economic activity for 84 percent of the population.⁸

The war and its aftermath have also destroyed much of the province’s infrastructure, including its road networks. There are 20,100 kilometers of road in Orientale but of this total only about 100 kilometers are paved. Roads linking towns in Bas and Haut Uele are generally poor. Main routes can manage truck traffic during the dry season, but other roads are passable only by motorbike or bicycle. Some of the main roads in Haut Uele were redeveloped with the assistance of international companies and they mainly lead to neighboring Uganda, one of the biggest trading partners for north-eastern DR Congo. No roads exist to the capital, Kinshasa, which is accessible only by boat or airplane.⁹

The civil society, often a strong local and regional factor in DR Congo, also appears to be weaker in Oriental when compared to many other parts of the country. Reverend Kamba Alois, who represents the local commission for justice and peace, describes the mining industry as a great hope for development in the region, and many young people dream of a job at one of the international mining companies. But in general he considers the situation as bleak. The dreams especially of young men about a future in mining often end up in the artisan mining pits with high risks but little income. For young women the situation is even worse as the mining pits in Oriental have few roles for women, and initial offers for low paid service sector job in the mining areas become portals to prostitution. Instead he claims that with proper training, local agriculture could probably offer better opportunities for a lucrative living wage, and provide as much as or even more than gold mining.¹⁰

The pastor describes a situation where the state has become nearly irrelevant as a counterpart for the civil society as the private mining companies are stronger than the state. This line of argument was also confirmed by members of the team who observed the private guards from a mining company giving orders to members of the police and the military forces as though they were superior officers. In private talks

6 Landscape Analysis of Community-Based Organizations: Maniema, North Kivu, Orientale and South Kivu Provinces of Democratic Republic of the Congo, published by the Eastern Congo Initiative, May 2011.
7 Province Orientale, Planning Ministry, “Plan de retour pour la relance economique et le developpement humain durable province Orientale” Kisangani, January 2011 pp. 13-14.
8 Province Orientale, Planning Ministry, “Plan de retour pour la relance economique et le developpement humain durable province Orientale” Kisangani, January 2011.
9 Ibid., p. 14
10 Interview 14 October 2011.



Map of northeastern DR Congo.

after the incident some of the soldiers and policemen described how they are dependent on extra payments from private companies.¹¹

3.1.2 Uganda - the Entrance to Orientale

In terms of commerce, Uganda remains the major source of consumer products for the people of Orientale. The main entry points to DR Congo are Mahagi and Aru-Ariwara in the Ituri district. Everything from gasoline to soap and toilet paper to bottled water comes into Orientale from Uganda.¹²

Even though agriculture remains the largest sector of economic activity, many people are eagerly anticipating the opportunity of regular employment once the industrial production of mines in Orientale begins. The main mining area is in northeast Orientale, following an arc from the western Djugu territory north into the Mahagi territory (both in the Ituri district) and into the Watsa territory (Haut Uele district).

11 Observation and discussion 13 October 2011.
12 Landscape Analysis of Community-Based Organizations: Maniema, North Kivu, Orientale and South Kivu Provinces of Democratic Republic of the Congo, published by the Eastern Congo Initiative, May 2011

Gold exported by the DR Congo				
	USD thousand			
	2007	2008	2009	2010
Gold powder non-monetary	-	509	117	849
Gold in unwrought form non-monetary	19	667	499	265
Gold in other semi-manufactured form non-monetary	80	89	630	26
Gold exported by Rwanda				
	USD thousand			
	2007	2008	2009	2010
Gold powder non-monetary	0	0	124	0
Gold in unwrought form non-monetary	0	0	329	170
Gold in other semi-manufactured form non-monetary	0	0	402	0
Gold exported by Uganda				
	USD thousand			
	2007	2008	2009	2010
Gold powder non-monetary	0	0	0	0
Gold in unwrought form non-monetary	7,537	0	0	0
Gold in other semi-manufactured form non-monetary	57,445	43,013	13,100	30,072

Gold exports from DR Congo and its neighbours (Source: Market Analysis and Research, International Trade Centre, Geneva, Switzerland).

Most of the gold extraction throughout the province is artisanal, and this kind of work is mostly informal and unregulated activity. As a result, many of the artisanal miners work in hazardous conditions for long hours and little pay. Conditions for the estimated 12.5 million artisans working throughout DR Congo are not good.¹³

In Orientale, artisans and others have been mining gold for more than 100 years, but there has been very little to show for their efforts.¹⁴ The province remains poor and underdeveloped. There are only a few hospitals and schools, and there is very little work other than artisanal mining.¹⁵

13 (Garrett, Nicholas (2007). "The Extractive Industries Transparency Initiative (EITI) & Artisanal and Small-Scale Mining (ASM). Preliminary Observations from the Democratic Republic of the Congo (DRC)"

14 Human Rights Watch, The Curse of Gold: Democratic Republic of Congo, p.13., 2005

15 Landscape Analysis of Community-Based Organizations: Maniema, North Kivu, Orientale and South Kivu Provinces of Democratic Republic of the Congo, published by the Eastern Congo Initiative, May 2011.

Due to the fact artisanal operations require very little capital investment to operate, they can be found even in the most remote parts of the region. Because of their locations, the mines are also difficult to regulate and police. Prostitution, child labour, substance abuse and violence are common features in the mining environment. The remote locations of the mines and the lack of national or international oversight have made it easier to smuggle gold out of the country.

3.1.3 Gold trade from the DR Congo

In eastern DR Congo, most of the gold trade goes unrecorded, and most transactions are concluded in cities in nearby countries, such as Kampala, Uganda; Bujumbura, Burundi; Nairobi, Kenya; or Dar es Salam, Tanzania. The UN Group of Experts for DR Congo found substantial discrepancies, more than three tons, between gold import statistics provided by the authorities of the United Arab Emirates and those exports claimed by the Government of Uganda.¹⁶ Much of Uganda’s gold comes from northeastern DR Congo. It is the gold trade in this region that remains one of the most important sources of financing for Congolese armed groups and criminal networks within the military.¹⁷

This is the political and social environment that Mineral Invest, and an increasing number of larger international companies, has chosen to operate in.

3.2 New investment in mining exploration

Because DR Congo is a country endowed with exceptional mineral resources, the exploitation of these resources holds great promise for jump-starting economic development. If managed properly, the mining sector could, within ten years, contribute 20-25 percent of gross domestic product and one-third of total tax receipts, according to World Bank estimates. But Kinshasa has been unable to harness its mineral wealth for economic development, and this has been due largely to corrupt management and political interference in the parastatal mining companies.¹⁸

In the years since the fall of the former dictator Mobutu and the civil war which followed, the Government has taken some important steps to stimulate development of the sector, including restructuring the parastatals, such as the state-run mining companies, and allowing private sector investment. The most significant step in this direction was the passage, in 2002, of a new Mining Law and regulations.¹⁹ This

16 United Nations Security Council, (2011). Letter dated 29 November 2011 from the Group of Experts on the Democratic Republic of the Congo addressed to the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) (final report of the Group of Experts on the Democratic Republic of the Congo). (Goma/New York: UNSC)

17 Ibid.

18 Democratic Republic of the Congo: Growth with Governance in the Mining Sector, the World Bank, May 2008, Report no. 43402-ZR.

19 Ibid.

action, together with current high commodity prices, has resulted in a renewal of investment in exploration and exploitation activities.²⁰

However, for a number of reasons, the World Bank and other international observers believe that this will not soon result in a positive economic outcome or improved conditions for the Congolese people. The administration of the mining sector remains dysfunctional – handicapped by insufficient institutional capacity, continuing political instability, corruption, and fundamental deficiencies in governance. The Government, with the assistance of donors, private sector companies, and civil society, has begun a systematic series of actions to address these issues, but these efforts will take time.²¹

3.2.1 Public-private partnerships

Until 1995, mineral rights in DR Congo could only be held by the state through its various state-owned companies such as Gecamines, MIBA, Sominki or OKIMO. But because the state-owned companies were unable to sustain acceptable levels of production and profits, the Government in 1995 began allowing partnerships with private companies. These new agreements between the private companies and the State put the mineral rights at the disposal of the partnership.²²

Several of the most notable contracts entered into during this period include Gecamines and the Swedish-based Lundin group for the development of the Tenke Fungurume copper deposit. Other contracts were entered between OKIMO with Mindev and Barrick for development of gold deposits, Sominki and Banro Resources for the development of polymetallic deposits, and MIBA and Senegamines for diamonds. These were entered, however, during the civil war in DR Congo and it was alleged that some of these and other contracts were awarded under opaque and suspect circumstances.²³

According to the World Bank, there was a relative lack of transparency with respect to the negotiations and approval of some contracts. In the turmoil and confusion of the civil war period this was perhaps understandable, but the lack of disclosure leads to public suspicions that contracts have been negotiated in secret to serve special interests.²⁴ This lack of transparency is especially sensitive since the illegal exploitation of conflict minerals has in the past been linked to the financing of rebel groups allegedly responsible for numerous human rights abuses.

20 Telephone interview with Steve Dimitryev, senior analyst with the World Bank, 5 November 2011.

21 This analysis contained in the World Bank's Project Appraisal Document on a Proposed Grant to the Democratic Republic of the Congo for a Growth with Governance in the Mineral Sector Technical Assistance Project, 19 May 2010.

22 Democratic Republic of Congo Growth with Governance in the Mining Sector, May 2008, Report No. 43402-ZR, p. 132

23 Ibid

24 Ibid

It is not known if this practice continues in the northeast at the time of this writing, but in general, criminal networks within the national army are increasingly exercising commercial control over mineral trading chains. This control is exerted through a combination of investments in mineral purchases, the protection of local mine operators and the facilitation of the transport and fraudulent export of minerals. This practice is, of course, enormously destabilizing.

3.2.2 The Kibali Gold Project

The owners of the Kibali Gold Project, Randgold Resources and AngloGold Ashanti, have worked as partners with the state-mining company, SOKIMO, since 2009 when RandGold mounted a friendly take-over of the junior mining company Moto Goldmines, for USD 500 million.²⁵ Both AngloGold Ashanti and RandGold are large, experienced companies with projects on four continents.

However, the Kibali Gold Project is faced with the challenge of maintaining a smooth running operation in DR Congo without having a destabilizing impact on the local population.

In the Haut Uele district of Orientale Province, the Kibali Gold project has become one of the largest international gold mining projects in the region. Their arrival was abrupt and their purchase of land for their mining operation has led to the relocation of more than ten villages and 15,000 people.²⁶ Most of the displaced are former artisanal miners who have worked independently on small-scale locally run projects. The land they worked has been bought and made off-limits by the new owners of the Kibali project.²⁷

Mass relocations and the elimination of livelihoods for thousands of small scale miners, many of them ex-combatants, has destabilized the area further by leaving a large segment of the population unemployed and without a means to support themselves or their families. According to Gregory Mthembu-Salter, an advisor the UN Group of Experts for DR Congo, young men such as these may find unemployment so unbearable that they decide to join one of the regions many armed groups.²⁸

The owners of the Kibali Project have made efforts to assist those who were displaced, but the vast majority of the population remains unsatisfied.²⁹

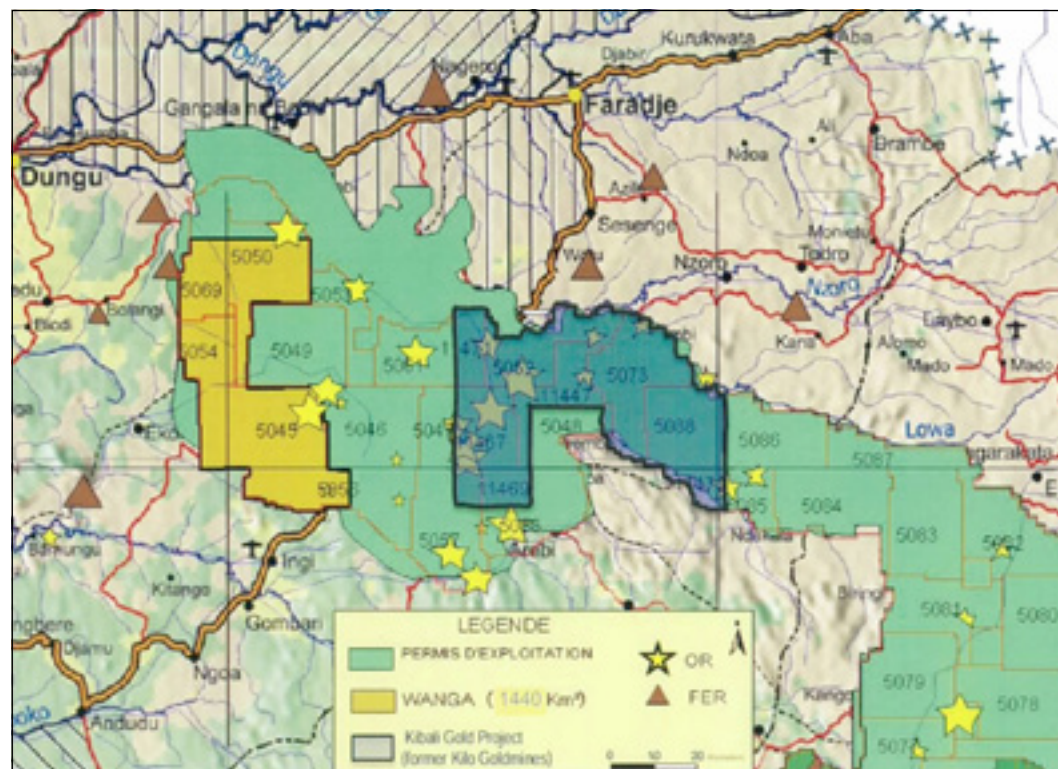
25 Financial Times, "RandGold Shares Placing Furthers Moto Ambitions," William MacNamera, 29 June 2009.

26 Global Banking News, July 20, 2011, "Randgold Resources – Kibali relocation starts, paving way for project's construction phase." 2011 ENPublishing at <http://www.enpublishing.co.uk> ENP Newswire, accessed on 25 Nov 2011

27 Interview with Watsa Territorial Administrator Edmund Lokakao Lupantshia in Watsa on 13 October 2011.

28 Interview with Gregory Mthembu-Salter, an advisor to the UN Group of Experts on the Democratic Republic of the Congo, 15 September 2011.

29 Interview with Watsa Territorial Administrator Edmund Lokakao Lupantshia in Watsa on 13 October 2011.



Mineral Invest concession area in yellow.

3.2.3 SOKIMO

The Société des Mines d'Or de Kilo Moto (SOKIMO) was formed in 1926 and built much of the infrastructure throughout Haut-Uele and neighbouring Ituri during the colonial period. In 1966 the company was nationalised under the name of Office des Mines d'Or de Kilo Moto (OKIMO), which took over the concessions of 83,000 sq. km divided between the main mining sites, reaching from Ituri into Haut-Uele.³⁰

During the 1990s, the steady decline of the company led to sub-contracting to artisanal miners, making it possible for individuals to prospect for gold.³¹ In December 2010, the Government closed the offices of OKIMO in order to transform the parastatal into a commercial enterprise. It would again be called SOKIMO.³²

³⁰ Marchal, J., *Travail forcé pour le cuivre et pour l'or : L'histoire du Congo, 1910 – 1945*, Borgloon, éd. Paula Bellings, 1999, pp. 210, 298.

³¹ “The role of the exploitation of natural resources in fuelling and prolonging crises in the Eastern DRC,” International Alert and IPIS p. 15 at http://www.international-alert.org/sites/default/files/publications/Natural_Resource_Jan_10.pdf, accessed on 5 November 2011.

³² SOKIMO is the new entity replacing the “Office des Mines d'Or de KILO-MOTO” (“OKIMO”), a public corporation created by ordinance n°66-419 dated 15 July 1966, which was transformed into a limited liability company by shares (“SARL”) by article 4 of the law n°08/008 dated 7 July 2008 and decrees dated 24 April 2009. For more on this see “Gold is the Flavor of the Month” Africa Mining Intelligence, 16 February 2011.

The transformation means that, in some cases, SOKIMO will distribute licenses for exploration and exploitation, while also entering into financial relationships through contracted joint ventures with international companies. This is what happened with Mineral Invest. Concession 38 lies in the Watsa territory of Haut-Uele in Orientale Province and it is here that Mineral Invest is licensed to operate through a joint venture agreement with state-run SOKIMO.

The World Bank, which has been charged with overseeing the transition from parastatal to commercial company, has repeatedly warned against potentially significant conflicts of interest in contracts where the partners are also the suppliers and/or vendors of goods and services.³³ Indeed, this kind of structure is loaded with potential problems and it is difficult to guarantee transparency and minimize corruption.³⁴

This report does not review SOKIMO, but independent testimony from multiple sources illustrates a dilemma that underscores the problem described by the World Bank. Several local representatives from both the small scale diggers and larger companies described the high incentive of SOKIMO officials to collect fees. It was even stated that miners were aware of conflicts within SOKIMO concerning with which office or which representative the fees should be paid. These conflicts even apply to large contracts and amounts. At the same time several independent testimonies also stated that SOKIMO continually lacked funds for even simpler operational needs in the Oriental province.

Even though we could not follow up those testimonies, they clearly raise questions about where the fees and money finally end up. It also underscores the urgent need for action to counter the problems pointed out by the World Bank.

3.2.4 Financial speculation

Throughout the country, but particularly in the northeast where international mining companies have shown recent interest, the Congolese are pinning much of their hopes for the future on a chance to benefit from international investment, through jobs and development projects sponsored by the companies.

However, not all investments have led to job opportunities. International so-called “junior” mining companies have frequently created financial partnerships with state-owned companies for the sole purpose of financial speculation.

In these kinds of cases, a publicly-traded company buys or leases a concession and promises great return on investment to stockholders and jobs and development projects, such as schools and hospitals, for the local population. But none of this ever materializes.³⁵ The real goal of these kinds of operations has been to buy a valuable concession and sell it to a larger company for profit.

³³ Democratic Republic of the Congo: Growth with Governance in the Mining Sector, World Bank Report no 43402-zr, May 2009, p.51.

³⁴ Comment by Steve Dimitryev, World Bank, 5 November 2011.

³⁵ Interview with Gregory Mthemba-Salter, an advisor to the UN Group of Experts on the Democratic Republic of the Congo, 15 September 2011.

There is nothing illegal about this kind of speculation, but it would be a problem if the company adopts a short-term view of its investment and does not follow through on any of the environmental or social programs that it has promised to deliver.

Peer Schouten, a PhD researcher with the School of Global Studies at Gothenburg University, Sweden, who has worked on mining issues in DR Congo for several years, says:

– Smaller, publicly traded companies, often put out shares for sale on financial markets based on the discrepancies between initial estimations of gold deposits and analysis of the mineral samples they have taken. And basically, they make a fortune by doing this. They keep costs down by keeping to a minimum the number of expatriates they have on the ground. And then they sell.³⁶

³⁶ Telephone interview with Peer Schouten, PhD researcher School of Global Studies, University of Gothenberg, 15 August 2011

4. Mineral Invest

4.1 A race for more capital

Mineral Invest is a small Swedish gold exploration, mining and trading company, founded by Joachim Andersson and Patrik Walle in 2007.

In June 2009, Balkan Resources Ltd., acquired Mineral Invest and then, one month later, changed the company name to Mineral Invest International MII AB. In September 2009, Mineral Invest became a publicly traded company on the Aktietorget exchange in Stockholm, under the stock symbol MII.³⁷

In 2010, Mineral Invest signed an exploration deal for gold and other minerals in Orientale Province. In 2011, the company made additional progress when it signed the joint venture agreement with the Congolese state-run mining company SOKIMO to begin exploiting gold. Senior company officials highlighted good returns on investment during the Annual General Meeting in June 2011.³⁸

Indeed, when Mineral Invest became a publicly traded company, it had not yet acquired the necessary licenses or permits to explore, exploit or even trade for gold in DR Congo. Hence it had no formal and secure source of revenue, a requirement that would have been impossible to ignore for listing on the larger Nasdaq OMX exchange in Stockholm.

In its prospectus before going public, the company said that it was pursuing mining contracts in DR Congo and another in Ethiopia and that its primary focus would be on trading minerals and metals.³⁹ Mineral Invest also included in its prospectus projects in Puntland and Somaliland, two autonomous regions of Somalia in East Africa. Neither region has been recognized internationally.

– It looked like an odd-ball collection of disparate business interests, and none of them showed a reliable revenue stream. But it got them listed on Aktietorget and it generated the money that was badly needed for financing the company's operations, said an industry analyst to Swedwatch.⁴⁰

Moreover, in its effort to raise badly needed capital and to create a reliable revenue stream, Mineral Invest has authorized several rights issues. This is a procedure by which a company can raise capital through issuing additional shares of stock for sale when it is having problems raising capital through traditional means. Mineral Invest's reason for announcing new rights issues was the company's need for money in order to begin a new phase of production. The shareholders were supportive. In total,

³⁷ Mineral Invest website at www.mineralinvest.com, accessed 14 February 2012

³⁸ Jonas Eriksson, Mineral Invest's former CEO, Annual General Meeting in June 2011.

³⁹ Mineral Invest prospectus (Inbjudan att teckna aktier i Mineral Invest MII AB (publ), August 2009, p. 16.

⁴⁰ Interview with an industry analyst who spoke on condition of anonymity, March 2011.

Mineral Invest aggregated SEK 137 million, about USD 18.8 million, in 12 months through rights issues:

- In December 2010, Mineral Invest called for an issue of convertible bonds which provided the company with SEK 10.2 million (USD 1.4 million) to finance commitments under the company's exploration agreement with SOKIMO.
- In May 2011, Mineral Invest completes a rights issue providing the company with SEK 34.8 million (USD 4.7 million) before transaction costs for financing the exploration and the start of gold production in the DR Congo.
- In December 2011, the company called for another rights issue, which raised SEK 92 million (USD 12.6 million).⁴¹

After Mineral Invest called for its December 2011 issue, analysts and independent observers criticized the company and questioned its long-term commitment to mining in the DR Congo.⁴²

During spring 2012, persons with connections to the company have been under investigation. The prosecution suspects that the company was partly created with money from the accused cocaine smuggler, Jonas Falk, formerly Oredsson. The pre-investigation showed that the two main suspects have personal connections with the company's founder Joachim Andersson, and the former board representative Noel Mangan. Joachim Andersson was also Mineral Invest's Operations Manager until April 2012, when he left the position.⁴³

Jonas Falk knew Joachim Andersson since the early 90's. Both have served time in prison, Andersson 5,5 years for tax evasion related to the importation of gold. The other main suspect, Harriet Broman, was one of the largest owners in Mineral Invest and had an own representative in the board at the time.⁴⁴ Joachim Andersson, Patrik Walle and former CEO Michael Nilsson are scheduled to be heard as witnesses in the court of Stockholm 5th July concerning the issue.⁴⁵

During Swedwatch's research, Jonas Eriksson was the Chief Executive Officer of Mineral Invest. He was replaced with Nathan Medlock 28 March 2012.⁴⁶

41 Mineral Invest Pressmeddelande, *Mineral Invests Företrädesemission på 92,2 MSEK fulltecknad*, 23 December 2011, on the web at www.mineralinvest.com.

42 *Utmanande erbjudanden*, RealTid.se, 1 December 2011, on the web at http://www.realtid.se/ArticlePages/201111/30/20111130225552_Realtid249/20111130225552_Realtid249.dbp.asp, accessed 14 February 2012

43 *Mineral Invests operative cheflämnar efter kokainhärvan*, Dagens Industri, [www.di.se](http://di.se), 4 April 2012, on the web at <http://di.se/Artiklar/2012/4/4/263578/MINERAL-INVEST-OPERATIV-CHEF-LAMNAR-EFTER-MEDIAUPPGIFTER>, accessed 17 June 2012

44 *Kokainkopplingarna som Mineral Invest förnekar*, RealTid.se, 3 April 2012, on the web at http://www.realtid.se/ArticlePages/201204/02/20120402165307_Realtido78/20120402165307_Realtido78.dbp.asp, accessed 17 June 2012

45 Telephone interview and email correspondence with Karin Bergstrand and Hans-Jörgen Hanström, assistant prosecutors, 15, 16 and 19 June 2012

46 Jonas Eriksson has not been named by the prosecutor's office and was replaced before the public prosecutor's investigation was made public.

4.1.1 Trading gold, funding violence?

On its website and in its annual reports, Mineral Invest has reported that it conducts trading in metals and minerals, in addition to its other activities.⁴⁷ Company papers, issued shortly after the company had issued its December 2011 rights issue, report that Mineral Invest traded 72 kilograms of gold in the first quarter of 2011.⁴⁸

However, several senior officials of the company stated during interviews with Swedwatch that they had ceased trading and they gave conflicting reasons as to why that decision had been made.

Mineral Invest's former Chief Operating Officer Joachim Andersson is based in the Congolese capital, Kinshasa. During a 2.5 hours interview in October 2011, Andersson said to Swedwatch that the company had never traded and had never possessed the appropriate license to trade gold in DR Congo.

According to Andersson, it was important for Mineral Invest not to deal with conflict minerals, because it was impossible to confirm if insurgents or criminals were involved. At the time of the interview, Mineral Invest on its website, said that it traded gold and other minerals. When presented with this information, Andersson said that it was a mistake and should be removed.⁴⁹

In a separate interview, Mikael Eriksson, who worked briefly as Mineral Invest director of trading for Africa but has since become deputy site manager in Wanga, appeared to confirm Andersson's comments. He said that he told his bosses, including Andersson, that it was impossible to verify the identity and the possible criminal association of the people and organizations he was supposed to trade minerals with.

– I was hired as the director of trading for Africa, but simply refused to because I understood it to be a crime and a UN sanctionable offence to trade minerals, including precious metals and stones, with armed groups and it was too difficult to tell if an individual or company was representing an armed group in Congo. I told them I would not do this job.⁵⁰

However, the former CEO, Jonas Eriksson based in Stockholm, told a different story. He said Mineral Invest had traded through its partner Bijoux Lombeya's company, SIM, which has the necessary license to trade.⁵¹

Lombeya is the Mineral Invest Country Manager and he participated in the interview with Andersson at their office in Kinshasa. But Lombeya mentioned nothing of this arrangement and never spoke to correct or clarify comments about gold trading made by Andersson, who stated that nobody in Mineral Invest was trading gold or other minerals.

47 Mineral Invest Annual Report 2010, p 19.

48 Mineral Invest, *Företrädesemission* December 2011, p.32

49 Interview with Joachim Andersson and Bijoux Lombeya in Kinshasa, DR Congo. October 2011.

50 Interview with Mikael Eriksson, former director of trading for Africa and subsequent assistant operations manager in Wanga, DR Congo, 16 October 2011

51 Telephone interview with Jonas Eriksson 29 November 2011.



Mikael Eriksson, Mineral Invest's operations manager in Wanga, with locally hired assistant.

In a final comment sent to Swedwatch, Mineral Invest said that it had conducted “commission trades” of 72 kilograms of gold during Q1 2011. In Q2, all trading was put on hold until further notice.

Mineral Invest, the company said, has never had a license to trade gold in the DR Congo and has therefore only acted as a “consultant” on a commission basis, primarily for its minority partner SIM SPRL which holds all appropriate trading licenses.

SIM SPRL is an 8% minority owner of Mineral Invest's subsidiary, MII Congo AB SPRL, in DR Congo. It is important to note, however, that almost all gold from DR Congo is illicitly exported, which would make it challenging, even when dealing with “commission trades,” to avoid questionable sources (see chart on p. 12 of this report).

4.2 The joint venture agreement

The joint venture agreement (JVA) signed by Mineral Invest and the state-run mining company, SOKIMO, was signed in September 2011. It grants a 65 percent share of the joint venture company, called Wanga Mining Company, to Mineral Invest and 35 percent to SOKIMO.

Under the JVA, SOKIMO is represented by its chairman and its director. Both officials were appointed under a presidential ordinance for public corporations.⁵² However, SOKIMO was privatised and classified as a commercial company in 2010, so the

⁵² Appointment made by Presidential Ordinance n°08/004/2008 dated 12 January 2008, relating to the designation of Members of the Board of Directors of Public Companies.



Joachim Andersson, Mineral Invest's former chief operating officer and Bijoux Lombeya, Mineral Invest's country manager.

state-run company is now covered by commercial law, and not the laws that govern public corporations. The employment of the director and chairman under the public corporation ordinance thus created legal uncertainty.⁵³ Swedwatch asked an attorney retained by the London-based Advocates for International Development to read the contract. Their conclusion was that the agreement lacks clarity and may put investors in Sweden at risk as it could be used as a pretext for the DR Congo to revoke the existing contract and renegotiate a new agreement.

Swedwatch shared this report with Mineral Invest prior to publication. Mineral Invest sought legal guidance on the issue of clarity in the joint venture agreement. A memo was produced by Mineral Invest's legal representatives which is published along with this report. That memo disagreed with Swedwatch's findings on this issue.

Prior to SOKIMO's conversion into a commercial company, it had received mining licenses as a public corporation and now SOKIMO sells or leases such licenses for the

⁵³ The appointment of Mr Nsuka and Mr Bafoa was prior to the transformation of OKIMO, as a public corporation, to SOKIMO, as a commercial company. The Presidential Ordinance n°08/004/2008 dated 12 January 2008 relates to public corporations. SOKIMO's new regime is subject to commercial law and to its new by-laws. Under SOKIMO's by-laws, during the company's lifetime, directors are appointed by general meeting of shareholders and the chairman of the board of directors is appointed by the members of the board among them. The JVA should therefore not refer to the Ordinance n°08/004/2008 dated 12 January 2008 but to the minutes of the shareholders meeting appointing SOKIMO's directors to justify the capacity of Mr Nsuka and Mr Bafoa. Legal experts with experience in extractive contracts in DR Congo have said this is a common problem in a number of transformed Congolese state-owned companies that the legal representatives have not been properly re-appointed following the transformation.

exploration and exploitation of gold as a commercial company. That is likely to create conflicts of interests, according to lawyers retained by Advocates for International Development.

The World Bank has similarly warned that there may be significant conflicts of interest in the contracts, with the partners also being the suppliers and/or vendors of goods and services.

4.2.1 Legal uncertainty and a lack of transparency

In the joint venture agreement, Mineral Invest has agreed to pay USD 3 million to SOKIMO as a non-refundable up-front payment for the transfer of the mining permits from SOKIMO to the joint venture company, Wanga Mining Company.⁵⁴ According to the agreement, 50 percent of the up-front payment is made to the DR Congo and 50 percent is made to SOKIMO.⁵⁵ However, the up-front payment and the process by which the mining rights are transferred is not legally clear because it does not appear to be covered under the Congolese Mining Code and its regulations.

Lawyers retained by Attorneys for International Development also said that several of the financial provisions of the joint venture agreement also appear problematic and less than transparent. Firstly, the Congolese Mining Code and its regulations does not deal with agreements between mining state-owned companies and investors. Therefore, none of the financial provisions set out in the joint venture agreement are covered under DR Congo legislation. Secondly, up-front payments, royalties, monthly payments are not uncommon under these kind of joint-venture agreements. However, the lack of transparency within the calculation of the up-front payment and of the percentage of royalties is regrettable.

Thirdly, the share of the up-front payment between the DR Congo and SOKIMO is not covered under DR Congo legislation and is therefore controversial. This provision is also problematic because the DR Congo is not a direct party to the agreement. It has not signed the joint venture agreement. The 50 percent up-front payment of USD 1.5 million to the DR Congo, instead of SOKIMO, also lacks transparency because it features a substantial payment to the State of the DR Congo without ever specifying the recipient authority or government entity.

The payment is inconsistent with the commercial nature of the transaction but could be viewed as a positive development if the money were to somehow benefit the DR Congo. However, because the payment is unregulated and there are unclarity around the legitimacy, there is no guarantee that the money will be used in the interest of the Congolese people. This lack of clarity is not only a problem for the Govern-

54 Democratic Republic of the Congo, Ministry of Mines website at http://mines-rdc.cd/fr/documents/Contrat_Sokimo_mineral_invest_int.pdf, Contrat d'Association Mineral Invest and SOKIMO, accessed 8 December 2011.

55 Democratic Republic of the Congo, Ministry of Mines website at http://mines-rdc.cd/fr/documents/Contrat_Sokim_mineral_invest_int.pdf, Contrat d'Association Mineral Invest and SOKIMO, accessed 8 December 2011.

ment and the people of the DR Congo, it is also a problem for Mineral Invest and its investors in Sweden.

Both the joint venture agreement and some sections of the exploration contract have been published on the Ministry of Mine's website, as required by presidential decree. But parts of the exploration contract were not included and that was regrettable.

Annex C of the exploration contract, which set out the principal terms of the proposed joint venture contract is missing. So are the confidentiality agreement referred to in Preambles 4 and 5 and (b) the loan contract referred to in Article 17.2.

Indeed, Sweden's ambassador to DR Congo, Mette Sunnergren, advises Swedish companies to be cautious and thorough when signing deals.

– Our absolute advice is to get a clear grip of the rules that exist. I think you will have to invest quite a lot of time in order to get to know what are the fees and the taxes that you should be paying, and then be so aware of this that you can actually tell if something is right or wrong. You will also need a backup group of lawyers and you will have to find out if these lawyers are straight or if they are corrupt. So all of this will cost you some time and some effort. But I think it is possible.⁵⁶

4.3 The company's social responsibility

The Mineral Invest website shows detailed information about its environmental and social commitments. From this information it seems as though Mineral Invest has undertaken a thorough analysis of the risks involved in investing in a country such as the DR Congo.⁵⁷ The company claims that it follows the UN Global Compact, a widely accepted policy with 10 universally accepted principles in the areas of human rights, labour, environment and anti-corruption.⁵⁸ But the company is not a member of the UN Global Compact and it has no immediate plans to apply for membership.⁵⁹

The company describes its social commitment on its web page as follows: "Mineral Invest will develop a responsible project plan for the communities in the areas we operate. We take account of both social and economic conditions that exist within these local areas. The projects will be implemented to benefit the locals both during the time Mineral Invest is operating in the area and when Mineral Invest have finished its operation. Projects [that] can be part of Mineral Invest's CSR projects for the population include: schools, hospitals, roads, water supply, agricultural development and health projects."

56 Interview with Swedish Ambassador to DR Congo Mette Sunnergren, October 2011.

57 Mineral Invest's social and environmental commitments are available on the company website at http://www.mineralinvest.com/our_commitment.asp?expandable=0, accessed on 20 January 2011.

58 See the UN Global Compact at <http://www.unglobalcompact.org/>, accessed on 8 December 2011.

59 Interview with Mineral Invest's former CEO Jonas Eriksson 3 January 2012.

The UN Global Compact

Human Rights

- Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and
 Principle 2: make sure that they are not complicit in human rights abuses.

Labour

- Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
 Principle 4: the elimination of all forms of forced and compulsory labour;
 Principle 5: the effective abolition of child labour; and
 Principle 6: the elimination of discrimination in respect of employment and occupation.

Environment

- Principle 7: Businesses should support a precautionary approach to environmental challenges;
 Principle 8: undertake initiatives to promote greater environmental responsibility; and
 Principle 9: encourage the development and diffusion of environmentally friendly technologies.

Anti-Corruption

- Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

In 2010, the UN Global Compact also published its *Guidance on Responsible Business in Conflict-Affected and High-Risk Areas: A Resource for Companies and Investors*. This guidance helps companies to implement responsible business practices in conflict-affected and high-risk areas consistent with the Global Compact's ten principles. It also tries to provide a common reference point for constructive dialogue between companies and investors on what constitutes responsible business practices in difficult operating environments, though it does not provide guidance on investment practices of financial institutions. This voluntary guidance aims to complement applicable national and international laws by promoting international good practice. It does not presume to replace the private sector's legal rights and duties to their home and host country governments.¹

1. UN Global Compact's Guidance on Responsible Business in Conflict-Affected and High-Risk Areas: A Resource for Companies and Investors, 2010 on the web at http://www.unglobalcompact.org/docs/issues_doc/Peace_and_Business/Guidance_RB.pdf

Mineral Invest has not yet developed or discussed a corporate social responsibility strategy with members of civil society in the area where the company is operating. Jonas Eriksson, Mineral Invest former CEO, said the company plans to sign an agreement, or a cahier des charges, with community leaders in the future but a date for that signing has not yet been set.⁶⁰

The company describes its environmental commitment on its web page as follows: "Mineral Invest recognizes that nature and its resources are of crucial importance for people and the economy. A large part of the population in large parts of Africa is self supporting, and directly dependent on the vegetation and water in their immediate environment. /.../ Mineral Invest has a strict environmental policy and requires that the environmental impact of our operations is carefully examined. If sufficient environmental legislation is missing in the countries in which we are active, Mineral Invest follows the Swedish environmental jurisdiction."

The use of mercury by artisanal miners extracting gold is understood to be a problem, but is generally practiced in DR Congo. In Sweden the use of mercury, which is extremely poisonous, is forbidden by law.

Mineral Invest also writes: "Mineral Invest will, within all of its zones of activity, use energy, land and material in an efficient and environmental-friendly way. The main environmental impact from Mineral Invest's activities is usage of land, energy consumption and waste handling. The purpose of Mineral Invest Health, Safety and Environment (HSE) policy is to raise awareness among staff and engaging them in structured activities and to promote sound HSE culture at Executive level and promote the company's overall HSE objectives to be applied wherever the company operates."

Swedwatch has requested a copy of the company's Health, Safety and Environment policy, but it has not been received.

60 Telephone interview with Jonas Eriksson, 3 January 2012.

5. On the concession

5.1 Awaiting the industrial phase

Mineral Invest's operations are rudimentary and small: about five tents surrounded by a wooden stockade on the edge of Wanga village. When Swedwatch visited the camp in October 2011, it was being run by Mikael Eriksson, Mineral Invest's site manager. He has held various positions in the company and was after the time of this interview made deputy site manager, according to former CEO Jonas Eriksson. At the time of the interview he was the only internationally employed staff member assigned to work at the camp. He worked with a small team of locally-hired Congolese assistants, drivers and cooks.

Mikael Eriksson was supervising the collecting of soil and mineral samples, which were being sent to various labs where they were tested for gold content. Exploration is a lengthy process which can take years, and which can sometimes require tens of thousands of samples.

In the short term, Eriksson said, Mineral Invest was sending him a dredge to find gold in nearby rivers and streams, which would be sold to fund further exploration. A dredge operates as something of a vacuum cleaner along river and stream bottoms. It sucks up mud, sand, weeds and probably some gold. This method is used frequently in DR Congo, but not often by publicly traded companies. Dredging is something of an amateur technology. The company said it had hoped to start an industrial production of gold during the final quarter of 2011, but this seemed a very long distance away.

– This project will be a long time coming. Realistically, we need to see what the results are from the lab-tested samples, which we are still taking and sending. That will tell us where the real gold is, said Mikael Eriksson.⁶¹

Industrial hard-rock production, according to Eriksson, is at least five years away.⁶² Further, industrial production would require a massive re-capitalization that would likely be priced in the hundreds of millions of dollars. There is no way to know in advance, of course, if Mineral Invest would qualify for the kind of bank loans it would need to begin industrial production through deep drilling, said Mikael Eriksson.

In Sweden, investors are waiting for positive news on their investments and the much anticipated industrial phase of production. In the Congolese village of Wanga and the nearby town of Watsa, the locals are also hoping for positive news in terms of development and jobs.

⁶¹ Interview in Wanga, DR Congo with Mikael Eriksson, former director of trading for Africa and subsequent assistant operations manager, 16 October 2011.

⁶² Ibid



Congolese national army soldier at artisanal mine on Mineral Invest concession area.

Approximately 7,000 independent artisanal miners are working the Mineral Invest concession area, and while numbers can fluctuate from day-to-day, local officials in DR Congo estimate that some 3,000 diggers are working in small-scale mines in the smaller license areas where Mineral Invest has received specific permission to work.

Mineral Invest has been given permission to exploit gold in license areas 5050, 5069, 5054, 5045, and 5056. These license areas are just a small part of Concession 38.

Most of the artisans on or near the license area where Mineral Invest is operating are hoping the company can begin industrial production. Most are hoping the Swedish company will hire them once that phase begins.⁶³ However, Mineral Invest has not, thus far, been in a position to provide very many jobs for the people of Wanga. The projected date for the industrial phase of production has been changed several times. In a telephone interview in January 2012, Mineral Invest former CEO Jonas Eriksson said he could not ever imagine hiring more than 500 locals.⁶⁴

⁶³ These figures were given by the head of civil society in Wanga, P. Makadiano and Catholic Priest Aloys Kamba July 2011.

⁶⁴ Telephone interview with Mineral Invest former CEO Eriksson, 3 January 2012.

The company employed between 50 and 100 villagers in various small jobs in an attempt to provide a small degree of patronage to the village of Wanga, according to Mikael Eriksson. Those jobs include cooks, drivers and labourers who are busy maintaining the roads to Wanga.

Mineral Invest officials in Stockholm later amended the number of people employed in Wanga and said that between 20 and 60 people were engaged in exploration activities. The company also employed between 20 and 50 people engaged in road work.

Otieno Ibobo, a 48-year-old artisanal from Wanga, is not one of them.

– I, and the rest of us living here in Wanga, would be very, very grateful if Mineral Invest hired us to work for them when they grow big. I can do many things for them, I know this land well – I have been digging here for many years. If they treated me with dignity, I would very happily work for them.⁶⁵

According to former CEO Jonas Eriksson, the company would not be able to employ many of the 7,000 artisans who might later be displaced when Mineral Invest increases the size of its operation, as he had said the company had planned to do during the industrial phase of production.⁶⁶

5.2 Soldiers at the camp

According to Congolese law, military involvement in mining activities is illegal and taken very seriously by the Ministry of Mines.⁶⁷ Soldiers are legally barred from mining areas because they are generally seen as sources of instability. Nevertheless, Mineral Invest pays soldiers from the Congolese national army to provide security at its camp.⁶⁸ According to Mikael Eriksson, it’s just the way things are done.

– I try to have very little contact with the soldiers. I pay them the money we’re supposed to pay. I can’t really completely trust them, they have supposedly been taking money from miners at the pits, but that’s Congo.⁶⁹

The soldiers at the Mineral Invest compound belong to the Commando Battalion, a former rebel unit which has not been fully integrated into the Congolese national army and which was implicated in war crimes during the 2002-2003 Effacer le Tab-

65 Interviews with villagers on 16 October 2011.

66 Telephone interview with Jonas Eriksson on 3 January 2012.

67 Article 27 of the Congolese mining code (Loi n° 007/2002 du 11 juillet 2002 portant Code Minier) and Article 63 of the Congolese military penal code (Loi n° 023/2002 du 18 novembre 2002 portant Code judiciaire militaire); Interview with DR Congo Ministry of Mines director Valery Mukasa Mwanabute on October 2011.

68 Telephone interview with former CEO Eriksson 29 November 2011.

69 Interview with Mikael Eriksson, former director of trading for Africa and subsequent assistant operations manager in Wanga, DR Congo, 16 October 2011.

Voluntary Principles on Security and Human Rights

In the *Voluntary Principles on Security and Human Rights*, companies are urged to complete a risk assessment which should consider the available human rights records of public security forces, paramilitaries, local and national law enforcement, as well as the reputation of private security. Awareness of past abuses and allegations can help companies to avoid recurrences as well as to promote accountability.¹ *The OECD Due Diligence Guidance on Responsible Supply Chains of Minerals from Conflict-Affected and High Risk areas* recommends against the presence of soldiers at the mine site.²

1. This information contained in the Voluntary Principles on Security and Human Rights, at www.voluntaryprinciples.org. Accessed on 5 January 2012.

2. The OECD Due Diligence Guidance on Responsible Supply Chains of Minerals from Conflict-Affected and High Risk areas, p.59

leau battle on charges of cannibalism and the ethnic slaughter of pygmies.⁷⁰ Two senior UN officials in Kinshasa confirmed the identity, location and history of this unit in October 2011.⁷¹

The soldiers were part of the military wing of the Movement to Liberate Congo (MLC) under Jean-Pierre Bemba, a former rebel leader and vice president of the DR Congo who was arrested by Belgian police and is now being tried at the International Criminal Court in The Hague, Netherlands, for crimes against humanity.⁷²

Mineral Invest’s former CEO Jonas Eriksson told Swedwatch that the company had not checked the background of the soldiers they had contracted for security because he “simply hadn’t had the time”.⁷³

5.2.1 Formalized bribes called “tax”

The soldiers sleep in several green army tents in a barbed wire compound in clear view of the Mineral Invest camp, no further than 100 meters away. Yet, artisans and mine pit owners from Wanga who have been digging in the Mineral Invest license areas, have complained that they are routinely forced to pay money to the soldiers

70 Interview with soldiers at the Mineral Invest camp July and October 2011 and interviews with analysts at the UN’s Joint Mission Analysis Cell at the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) in Kinshasa, DR Congo 26 October 2011.

71 Interviews with analysts at the Joint Mission Analysis Cell at the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) in Kinshasa, DR Congo 26 October 2011.

72 Interviews with analysts at the UN Joint Mission Analysis Cell in Kinshasa, DR Congo October 2011.

73 Telephone interview with former CEO Jonas Eriksson 29 November 2011.

when they appear at the mine site. The amount of money they are obliged to pay to the military can vary, the workers have said.⁷⁴

The use of soldiers for security among larger Western companies operating in DR Congo is quite unusual.⁷⁵ Many companies prefer to hire private security firms, which although more expensive can help the company avoid the kind of reputational damage associated with contracting alleged human rights abusers or other criminal elements as private security.⁷⁶

Later, after Swedwatch informed Mineral Invest of its findings, Jonas Eriksson, the former CEO, appeared to amend his earlier statements. He said that Mineral Invest had been required by state-operated SOKIMO to make contracts with the army for security. When specifically asked about the presence of the Commando Battalion, he denied their presence and said they had moved away from the area several years earlier.

The presence of armed groups at mining camps, including the national army, creates instability and insecurity and can even discourage further responsible foreign investment in the sector because these soldiers are seen as an uncontrollable force, with the potential to be violent.⁷⁷

All of the main methods of the militaries use formalized bribes, misleadingly called tax, continues.

Baguinda Esipisu has been a digger for most of his life. He is married with 11 children and is troubled by the “extra fees” paid to the military and police.

– In a normal society you should pay taxes to the authorities and then get something back from the society. Here, the representatives from the society are happy to take what we produce but never give anything back.⁷⁸

A further problem is the fact that extortion of the minerals trade provides significant income to members of the military, including former rebels who are not fully integrated into the national army and maintain their own command structure and political allegiances.⁷⁹

– It is quite difficult, almost impossible to get around dealing with these men, paying them what they think is their due or their cut. Especially in terms of corruption, they will have to pay them to transport their minerals, or supplies or also protection, said

74 Numerous interviews with artisanal workers, pit bosses and buyers in Wanga, 15-16 October 2011.

75 Interview with analysts at the UN Joint Mission Analysis Cell in Kinshasa, DR Congo October 2011 and telephone interview with researcher Filip Hilgert, International Peace Information Service October 2011.

76 Telephone interview with Peer Schouten, PhD researcher School of Global Studies, University of Gothenberg, 15 August 2011.

77 Global Witness “Congo’s Minerals Trade in the Balance,” May 2011, p. 9.

78 Interview with artisanal, Yusuf, in organized pits outside Wanga on 16 October 2011.

79 Global Witness “Congo’s Minerals Trade in the Balance,” May 2011, p. 9.



Above: Artisanal mine on Mineral Invest concession area.



Right: Artisanal miner pans for gold on Mineral Invest concession area.



Artisanal miner at work on Mineral Invest concession area.



Artisanal miner holds gold extracted from Mineral Invest concession area.

Filip Hilgert, a researcher with the Belgium-based International Peace Information Service.⁸⁰

No women and children were reportedly working the area. Many of the miners have stated that the government soldiers who work at the Mineral Invest camp force diggers and pit bosses to give them money, sometimes gold or food and cigarettes.⁸¹

5.3 Artisanal miners and the use of mercury

A company is responsible for its operations and is accountable to its staff. In Wanga, not far from the Mineral Invest camp, and within its concession area, there are four main pits where many artisans work. These miners are working in a very dangerous and difficult environment. They are not hired by Mineral Invest and the hazardous methods are being used by artisans all over the country.

Nevertheless, it is on Mineral Invest's land that artisanal miners use mercury in order to help the gold to sink and separate from the flowing water-gravel mixture. Mercury particles also form mercury-gold mixtures and increase the gold recovery rates, but mercury is extremely poisonous. On one Mineral Invest license area outside of Wanga, Jean Pierre, a married artisanal who did not know his own age and had no children, said he had been working in the mines for most of his life. Throughout much of October 2011, he worked with the final cleaning process of gold that was found, and mixed the gold sand with mercury using his bare hands and then recovered the mercury by pressing the blend in a cloth.⁸²

When asked if he knew that mercury was dangerous, Jean Pierre said:

– Yes I know I might get sick and even die, but if I don't have work I will die anyway.⁸³

For most of the morning Jean Pierre stands up to his knees in a muddy pit together with other artisans. Repeatedly he rubs the mercury into a cloth combined with sand and gold. The mercury waste drips from his hands and into the cloth and then into the water he has been standing in for most of the morning.

Jean Pierre and the men he works with, indeed all of the artisans and buyers interviewed for this report, admitted using mercury. As if to underscore their desperate need for employment and money, all of the workers said they knew that mercury was poisonous and that regular exposure could cause kidney and respiratory failure, and even death.

⁸⁰ telephone interview with researcher Filip Hilgert, International Peace Information Service October 2011

⁸¹ Interview with artisans in organized pits outside Wanga on 16 October 2011.

⁸² Interview with artisanal, Jean Pierre, in organized pits outside Wanga on 16 October 2011.

⁸³ Ibid.

Both the chief operating officer in Kinshasa, Joachim Andersson and the former CEO in Stockholm, Jonas Eriksson, initially stated that they were unaware of the use of mercury by artisanals on the Mineral Invest license areas.⁸⁴ However, several weeks later, Jonas Eriksson said the company would eventually stop the artisanals from using mercury on the Mineral Invest concession.⁸⁵

5.3.1 Negative environmental effects

The use of mercury has quite obvious negative effects on a wider geographic area. Sites identified with high concentrations of metallic mercury, usually in or near flowing water, are called mining “hotspots.” Typically, although this has not been witnessed on the Mineral Invest area of operation, mercury-containing tailings are dumped into or beside bodies of water, and as a result soil, rivers, streams, ponds and lakes are contaminated for very long periods of time. These hotspots often present serious, long-term environmental health hazards to populations living downstream of mining regions.⁸⁶

In Orientale, mercury is also a problem as it is often used near rivers and standing bodies of water, and this contaminates aquatic life and soil used for farming. In this context, it is unfortunate that agriculture remains the province’s biggest and most important economic sector, including farming and fishing. Agriculture accounts for roughly 84 percent of the economic activity in Orientale.⁸⁷

Mineral Invest told Swedwatch that the company “does not have the legal powers or enforcement rights to prohibit local people from the use of mercury in near-surface gold production.”⁸⁸

However, Swedwatch and Diakonia would suggest that Mineral Invest assist artisanal miners in finding alternatives to the use of mercury on the Mineral Invest concession area in order to contribute positively to the local people and the environment.

5.4 The lack of roads

The Watsa Territorial Administrator, Edmund Lokakao Lupantshia, works from a dilapidated colonial-era building, which was abandoned by the Belgians at around the time Congo gained its independence in 1960. The Wanga concession, where Mineral Invest works, is situated 60 km to the west along very poor roads. There are no paved

84 Telephone interview with Joachim Andersson, former chief operating officer, on 20 October 2011 and Jonas Eriksson, former CEO, on 29 November 2011.
85 Telephone interview with former CEO Jonas Eriksson 29 November 2011.
86 United Nations Environmental Programme, Mercury Use in Artisanal and Small Scale Gold Mining, on the web at http://www.chem.unep.ch/mercury/awareness_raising_package/E_01-16_BD.pdf, accessed 21 May 2012.
87 Steven Spittaels (ed.), The Complexity of Resource Governance in a Context of State Fragility: An Analysis of the Mining Sector in the Kivu Hinterlands, Antwerp: IPIS, November 2010, p. 43.
88 Mail from Charlie Eldh, Mineral Invest, 13 June 2012.

roads here, just as there are very few paved roads anywhere in DR Congo outside of the capital, Kinshasa and one or two major cities, such as Kisangani, the capital of Orientale Province, where the governor lives.

– When you drive through our town, nothing tangible can be seen in terms of development. Unemployment is high and there is very little investment and perhaps you can’t expect much from the international companies. But maybe the state should have been stronger, Congo should have done more to help its own people, Lokakao said.⁸⁹

The poverty and lack of investment is obvious throughout the entire country.⁹⁰ In Watsa, the government buildings, and even the sub-offices of the state-owned mining company, SOKIMO, were windowless and appeared derelict. SOKIMO has, however, attracted the attention of some international investors and companies.

The region, including Watsa and Wanga, desperately needs a number of infrastructural projects, which if completed would benefit the local community and Mineral Invest, a point made by Lokakao, the Watsa territorial administrator, and Mikael Eriksson.⁹¹

On the road from neighbouring Uganda to the eastern Congolese town of Watsa the pavement ends on the Ugandan side of the border. The road turns to gravel, and then to packed red dirt and clay. During the rainy season the road becomes practically impassable.

The road from Watsa to Wanga, is a tangled mess of roots and narrow dirt roads through forest and savannah. Motorcycle traffic is the most common means of transportation. Occasionally four-wheel drive vehicles pass by, but they are mostly owned by the mining companies or by senior government officials.

Road maintenance and building, the company feels, has earned them some good will among local inhabitants.⁹² Mineral Invest recruited a team of between 20 and 50 locals who clear the road manually and are each paid USD 5 per day.⁹³ But the maintenance has more to do with patronage than with actual development.

89 Interview with Watsa Territorial Administrator Edmund Lokakao Lupantshia in Watsa on 14 October 2011.
90 The United Nations Development Programmes 2011 Human Development Report ranked 187 countries according to income, education and health, based on information from the International Monetary Fund, United Nations Educational, Scientific and Cultural Organization, or UNESCO, and the World Health Organization. It assigned each country a Human Development Index. Norway was no. 1, with 0.943 and DR Congo was last with 0.286 points. On the web at http://www.beta.undp.org/undp/en/home/librarypage/hdr/human_developmentreport2011.html
91 Interview with Watsa Territorial Administrator Edmund Lokakao Lupantshia in Watsa on 14 October 2011 and also with Mikael Eriksson, former director of trading for Africa and subsequent assistant operations manager in Wanga, DR Congo, 16 October 2011.
92 Telephone Interview with former CEO Jonas Eriksson, 3 January 2012.
93 Interview with group of Mineral Invest road workers on road from Moku to Wanga, 15 October 2011.

– These roads are being maintained in the same way they were maintained 200 years ago, with pick and spade. But at least we give them some jobs and a bit of money. If this were really about development, then we could have some bulldozers to Wanga in a week and finish the road in another two weeks, said former CEO Jonas Eriksson in a telephone interview with Swedwatch in January 2012.⁹⁴

The road maintenance, however, is not about development or providing the villagers with access to markets outside of their immediate area. Mineral Invest also claims that it is improving the road, but the result is yet to be seen and the local population wants Mineral Invest to end their isolation by redeveloping the road linking Watsa with Mungbere, Gombari and Isiro.⁹⁵

Mineral Invest, from its headquarters in Stockholm, said that it has upgraded the road from Watsa to Wanga so that it can handle heavy traffic, trucks and busses. Mineral Invest road work has also shortened travel time and allowed the free movement of goods and persons, which has a direct impact on local food prices in Wanga, that has resulted in a 30 percent reduction in the cost of food, according to Mineral Invest, though Swedwatch was unable to confirm the report on price reductions.

Mineral Invest staff in the town of Wanga and government officials in Watsa said that roads were not a priority.

– Roads, when not critical to the operations of international mining companies, are also not a priority of the Government, said Lokakao.⁹⁶ Mikael Eriksson, the operations manager in Wanga echoed this statement a few days later.

– Social and environmental plans and projects just aren’t part of core business, we don’t do it well and headquarters isn’t ultimately going to deliver us a sum of money to hire the proper people to initiate real social and environmental programs here, it’s too far from the core of our business, said Mikael Eriksson.⁹⁷

Eriksson’s comment is at odds with Mineral Invest’s official vision and its statement on Corporate Social Responsibility, which is featured prominently on its website. (See chapter 4.3.)

Eriksson had said further that he had, on several occasions, requested information detailing Mineral Invest’s social and environmental plans for the area, but he never received a reply.

94 Telephone Interview with former CEO Jonas Eriksson, 3 January 2012.

95 Interview with President of Wanga Civil Society, P. Makadiano, July 2011.

96 Interview with Watsa Territorial Administrator, Edmund Lokakao Lupantshia, in Watsa on 14 October 2011

97 Interview with Mikael Eriksson, former director of trading for Africa and subsequent assistant operations manager in Wanga, DR Congo, 16 October 2011.

Social licence to operate

Local discontent and open protests have the potential to interrupt operations while local approval, gained through transparency, respect for local people’s views and clear benefits for the surrounding society, may create stability. Many companies may agree with this point, but there are several common, but easily avoidable, pitfalls when a company tries to gain the confidence of the local community.

They include:

- Interacting too late with stakeholders.
- Regarding the license as a series of tasks or transactions (a deal) while the community grants the license on the basis of the quality of the relationship.
- Underestimating the time and efforts needed.
- Failing to deliver promises or reliable information.
- Failing to understand the local culture and norms, to respect and to listen.¹

1. Thomason I. & Boutilier R., The Social License to Operate, <http://sociallicense.com> see also Swedwatch Report # 38 Passive Observers or Active Human Rights Defenders of Human Rights?, p.40, Sara Nordbrand.

5.5 No social license to operate

In a bid to clarify intentions and promises between a company and civil society, it is widely recommended that a so-called social license to operate be obtained during the early stages of development.⁹⁸ Throughout the industry, it has become increasingly common for an international company to create this type of social license.⁹⁹ In the DR Congo, such an agreement is often contractual and it is called a “Cahier de Charge”. It represents an agreement between the company and the community and it includes the expectations of the local population and mining company on the social and environmental impact of the project.

Residents of Wanga and Watsa have said that they are eager to understand how they might eventually benefit from Mineral Invest’s investment, but they complain that the company has not been open to questions on the status of the Cahier de Charge.¹⁰⁰

98 Swedwatch Report # 38 Passive Observers or Active Human Rights Defenders of Human Rights?, p.40, Sara Nordbrand.

99 This information contained in Swedwatch Report #38 Passive Observers or Active Defenders of Human Rights, p.40 Sara Nordbrand, 2010, also see <http://www.sociallicense.com>

100 This view expressed in numerous interviews with artisanal miners and members of civil society in Watsa and Wanga from 14 October 2011 to 17 October 2011.

– We’re waiting patiently and, of course, our hopes are high. We hope they will respect us and do the things they need to do in the agreement, a senior member of the region’s artisanal mining group said on condition of anonymity.¹⁰¹

Former CEO Jonas Eriksson said the company will negotiate and sign a Cahier de Charge in the near future, but an actual signing date has not been scheduled.¹⁰²

In 2010, the company did include a corporate social responsibility clause in its exploration contract, but it was a vague and one-sided statement. In the contract with SOKIMO, Mineral Invest was left free to approve the costs of social development activities on a case-by-case basis and to do “reasonable” work on road construction or rehabilitation and social development activities in consultation with SOKIMO, the Ministry of Mines, relevant public services and local communities.¹⁰³ The contract, and the clause within it, is part of Mineral Invest’s contract with SOKIMO. Representatives from civil society in Wanga and Watsa were not included in the contract, and the contract’s use of the word “reasonable” is never defined.

¹⁰¹ Interview with a member of the region’s artisanal mining group, who spoke on condition of anonymity in Watsa on 14 October 2011.

¹⁰² Telephone interview with FORMER FORMER CEO Jonas Eriksson on 3 January 2012.

¹⁰³ See the Democratic Republic of the Congo, Ministry of Mines website at http://mines-rdc.cd/fr/documents/Contrat_Amodiation_OKIMOOKIMO_MIIABC.pdf, Contrat d’ Amodiation Pour la Certification, article 4, paragraph (i), accessed 8 December 2011.

6. Commentary on the field findings

Swedwatch’s study shows that Mineral Invest runs the risk of being complicit to human rights abuses in the future because it has hired soldiers who have been implicated in human rights violations in the past. Furthermore, the soldiers have also been accused of extorting money from artisanal miners.

There are also many dubious circumstances around Mineral Invest’s operations in Orientale. The issues examined in this report, and where Mineral Invest appears to be lacking, include problems related to security, the environment, financial transparency and conflicts of interest.

If Mineral Invest had followed its own corporate responsibility guidelines and been compliant with the ten principles in the UN Global Compact, then it might not have needed to answer questions about its security arrangement, the use of mercury by artisans on its license area, and the clarity of the contract with a state-run company in a problematic nation such as DR Congo.

Mineral Invest appears to understand the fragility of the security and political situation in the DR Congo since it is discussed in detail on the company website. Mineral Invest also indicates that it understands that its operations in DR Congo must show a degree of consideration to the people and the environment. On its website, Mineral Invest details its environmental and social commitments.¹⁰⁴

The discrepancy between the company’s official ethical commitments and reality, is striking.

Mineral Invest may only have a limited responsibility for miners not employed in their production, as long as the miner’s gold does not enter the Mineral Invest supply chain. But Mineral Invest does, arguably, bear some responsibility for actions that take place in their concession area, which would include the use of mercury and the presence of government soldiers, which is against DR Congo law.¹⁰⁵

In DR Congo, the use of mercury is tolerated, but in Sweden it is illegal.¹⁰⁶ The use of mercury is widespread because it is an inexpensive and easy way for artisanal miners to extract gold but there are cost-effective alternatives. These alternatives can elimi-

¹⁰⁴ Mineral Invest’s social and environmental commitments are available on the company website at http://www.mineralinvest.com/our_commitment.asp?expandable=0, accessed on 20 January 2011.

¹⁰⁵ ‘OECD due diligence guidance for responsible supply chain management of minerals from conflict affected and high risk areas: Implications for the supply chain of gold and other precious metals’, Aug. 2010 <http://www.oecd.org/dataoecd/14/18/46080654.pdf>.

¹⁰⁶ Swedish laws forbidding the use of mercury can be found on the web at <http://www.riksdagen.se/webbnav/?nid=3911&bet=1991%3A1290> and also at <http://intra.kth.se/regelverk/lokalforsorjning/kretslopp/kvicksilver-1.29520>

nate or greatly reduce the quantity of mercury used, thus reducing health and environment risks and saving the additional expense of using excess mercury.¹⁰⁷

The United Nations Environmental Programme has promoted the use of retorts, which is essentially a bowl or other vessel inverted over the burning amalgam (usually a mixture of gold and mercury) in which the mercury vapour is trapped and condensed. The United Nations Industrial Development Organization’s Global Mercury Project field assessments found that effective retorts could be made cheaply (for as little as USD 3.20 in some cases) and that they could retain mercury vapour so that over 95 percent of the mercury is recycled. This reduces exposure hazards and saves money. Homemade retorts can also be made of steel tins or stainless steel or enamel kitchen bowls.¹⁰⁸

6.1 Poor compliance with the UN Global Compact

Although Mineral Invest has not applied for formal membership and has no immediate plans to do so, it has stated on its website that it follows the UN Global Compact. The Global Compact has published a report intended to assist businesses operating in difficult environments, called the *Guidance on Responsible Business in Conflict-Affected and High Risk Areas: A Resource for Companies and Investors*.¹⁰⁹

The report includes a number of guidance points, which in Swedwatch’s view, could have assisted Mineral Invest in its relations with the Government of DR Congo, the people of DR Congo and investors in Sweden. Guidance Point No 3, for example, encourages companies to develop clear policies and robust management practices to prevent corrupt relations with government officials. Within legal and commercial constraints, companies are encouraged to promote transparency with host governments and be as transparent as possible with other stakeholders about their relationships with governments. In an explanatory note, the guidance states that a lack of transparency may foster the perception of corrupt entanglement with the government.¹¹⁰

Indeed, there are problems with transparency in Mineral Invest’s joint venture agreement with SOKIMO. Mineral Invest has agreed to pay an up-front payment of USD 1.5 million to the DR Congo. This provision is problematic because the DR Congo has not signed and is not a direct party to the agreement. The contract is legally vague and appears to do too little to protect the company or its investors in Sweden, nor does it ensure that it will deliver genuine investment to the Government of DR Congo and its people.

107 This analysis is contained in the UN Environmental Programme report “Mercury Use in Artisanal and Small Scale Gold Mining,” Copyright 2008, on the web at http://www.chem.unep.ch/mercury/awareness_raising_package/E_01-16_BD.pdf
108 Ibid.
109 Guidance on Responsible Business in Conflict-Affected and High Risk Areas: A Resource for Companies and Investors on the web at http://www.unglobalcompact.org/docs/issues_doc/Peace_and_Business/Guidance_RB.pdf
110 Ibid, p. 18

Separately, the UN Global Compact report also mentions Guidance Point No 1, which encourages companies to take adequate steps to identify the interaction between their core business operations and conflict dynamics and ensure that they do no harm.¹¹¹

Companies are encouraged to adapt existing due diligence measures to the specific needs of conflict-affected and high-risk contexts, and it is not clear if Mineral Invest had done that. The company has not agreed on a social license to operate with local officials who are hoping for development projects in the form of roads, hospitals and schools from the company. They are also expecting a large number of jobs.¹¹²

Guidance Point No 1 is followed by an explanatory note, which states that companies understand the risks and conflict dynamics present in the operating environment and the potential impacts of their own operations. Companies should be sensitive to the lack of socioeconomic opportunities for local populations.¹¹³

But Mineral Invest, thus far, appears to have focused primarily on its financial bottom line. It does not appear to be concerned with the nexus between the company’s core business operations and the conflict dynamics of the region.

6.2 A need for tighter financial regulation

One of the primary responsibilities of any bourse or stock exchange is to ensure that the market receives all of the information it needs to assign a price on the company and trade it fairly and legally. Therefore, any increase in international investment would probably increase the regulatory requirements of the listed companies. As regards financial information, markets can be expected to require more information on facts and circumstances that cannot be taken for granted or controlled, or that it may have reason to question.¹¹⁴

Peter Gönczi, chief executive officer for Aktietorget, the exchange where Mineral Invest is traded, says it is impossible to know exactly what is happening with a company and its operations in another country.

– Especially if you’re talking about countries where the economy is developing very quickly like in Russia, parts of South America and Africa. Investment there is risky, so maybe we should focus only on Sweden, the exchange where Mineral Invest is traded, said Peter Gönczi.¹¹⁵

111 Ibid, p. 10
112 Ibid, p. 10
113 Ibid, p.10
114 Telephone interview with Patrik Jacobsson, Swedish financial market regulatory authority, Finansinspektion, acting unit head of unit prospectus and stock exchanges. 6 December 2011.
115 Interview with Peter Gönczi, CEO of Aktietorget, during Swedwatch interview on xxx November 2011.

Due diligence in the mineral supply chain

Due diligence is an on-going, proactive and reactive process through which companies can ensure that they respect human rights and do not contribute to conflict. Due diligence can also help companies ensure they observe international law and comply with domestic laws, including those governing the illicit trade in minerals and United Nations sanctions. Risk-based due diligence refers to the steps companies should take to identify and address actual or potential risks in order to prevent or mitigate adverse impacts associated with their activities or sourcing decisions.¹

1. OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas, p 13, 2011.

At the Swedish Financial Supervisory Authority, Finansinspektionen, officials have adopted a slightly different and more withdrawn view, pointing out that there is a need for tighter regulations, particularly in times of economic crisis, and that demands to rapidly increase investment should be approached rationally and cautiously and with a "safety net", according to senior advisor Jan Axelsson.

But increased investment cannot be accomplished at any cost, according to Anna Gustafsson, head of Business and Human Rights at Amnesty International's Swedish Section.

– How do you reconcile the numbers [the goal of doubling international investment] with the reality of the political and human rights situations on the ground? It's impossible without inviting trouble and conflict. These kinds of situations beg for tighter regulation, said Anna Gustafsson.

7. Legislative and guiding initiatives for the mineral trade

It has been more than ten years since the UN Security Council became alerted to the illegal exploitation of natural resources in the DR Congo. The UN Group of Experts for DR Congo detailed how both rebels, both foreign and domestic, and the national army were profiting from the mineral trade.¹¹⁶ It was then that international organizations, governments and industry organizations first began scrutinizing companies sourcing minerals from eastern DR Congo and the wider region. These organizations have pushed for more transparency and corporate accountability in the mineral trade, and this effort has arguably lead to the creation of several legislative initiatives in the United States and Europe focusing on conflict minerals.

7.1 The Dodd/Frank Act

In July 2010, US President Barak Obama signed into law the Dodd/Frank Wall Street Reform and Consumer Protection Act.¹¹⁷ The law mainly concerns financial regulatory reform in the US, but it also contains a provision regarding Congolese 'conflict minerals' the result of several years of intense lobbying by, among others, advocacy groups and faith-based investors.

7.2 The EU regulations

In October 2011, the European Commission adopted regulations requiring extractive and logging companies to publish details of their financial activities for every mining, oil, gas and forestry project in every country in which they operate.¹¹⁸ Political momentum appeared to increase further after the UN Security Council strongly expressed its support for the Group of Expert's increased emphasis on due diligence guidelines. In 2011 the OECD also set a guidance on due diligence.

There has been a great deal of discussion on the European Commission's proposal for country-by-country reporting of payments to governments by extractive and forestry companies. The measure is being debated by industry and anti-corruption groups. The latter, in principle, supports measures intended to hold corporations accountable and improve transparency. At the time of this writing, the measure was before the EU Parliament.

¹¹⁶ UN Group of Experts on the DR Congo reports on the web at <http://www.un.org/sc/committees/1533/egroup.shtml>, accessed 6 February 2012.

¹¹⁷ US Security Exchange Commission website at <http://www.sec.gov/about/laws/wallstreetreform-cpa.pdf>, accessed 6 February 2012.

¹¹⁸ The Guardian newspaper, November 2011, <http://www.guardian.co.uk/global-development/2011/nov/02/carter-centre-website-congo-mining>.

7.3 The OECD due diligence guidelines

The OECD Due diligence guidelines argue that international companies, operating in difficult places such as the DR Congo, must take preventative responsibility for their actions. Despite the fragmented production process in the supply chain, companies are not insulated from the risk of contributing to adverse impacts occurring at various points in the mineral supply chain. Because of this, companies should take reasonable steps and make good faith efforts to conduct due diligence to identify and prevent or mitigate any risks of adverse impacts associated with the conditions of mineral extraction and the relationships of suppliers operating in conflict-affected or high-risk areas.¹¹⁹

With this in mind, the DR Congo Ministry of Mines on 6 September 2011 issued a note circulaire obliging all mining operators in the country, at every point of their supply chains, to exercise due diligence as defined in Security Council resolution 1952 (2010) and the guidance provided by the OECD.¹²⁰

Other countries in the region have also taken measures to raise awareness of the due diligence guidelines, particularly Burundi and Rwanda, assisted by the International Conference on the Great Lakes Region. It remains unclear, however, how effectively the Rwandan mining authorities have been able to prevent the fraudulent importation of Congolese minerals into Rwandan mines, where they are then tagged as Rwandan.¹²¹

119 OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas, p 14, 2011.

120 UN Group of Experts on the DR Congo 2 December 2011 at <http://www.un.org/sc/committees/1533/egroup.shtml>, accessed 6 February 2012.

121 The Guardian newspaper, November 2011 at <http://www.guardian.co.uk/global-development/2011/nov/02/carter-centre-website-congo-mining>. UN Group of Experts on the DR Congo 2 December 2011 at <http://www.un.org/sc/committees/1533/egroup.shtml>, accessed 6 February 2012.

8. Discussion and conclusion

Mineral Invest has said that it has taken a committed and long-term view towards investing in the DR Congo. In reality the company is straddling a very thin line between acceptable, unacceptable and possibly illegal business behaviour in DR Congo, which would, at a minimum, include a lack of clarity regarding the joint venture agreement (JVA) with SOKIMO, the alleged presence of Congolese military at the mines, the use of mercury by artisanal miners on the Mineral Invest license areas and the unknown source of the 72 kilograms of gold in the first quarter of 2011.¹²² Nearly all of DR Congo's gold is illicitly exported, which makes it nearly impossible for Mineral Invest to avoid questionable sources

Before signing the JVA, Mineral Invest did not conduct a human rights due diligence, as recommended in the UN Global Compact, which the company has said that it follows.¹²³ Mineral Invest has not worked to gain the support of the people that live and work in the area by agreeing on the terms of a Cahier de Charge: essentially an agreement on what Mineral Invest and the people of the area need from each other in terms of development and jobs.¹²⁴

Mineral Invest had just begun small-scale production during the autumn 2011, and industrial hard-rock production remains a long way off. Meanwhile, an estimated 7,000 artisanal miners are waiting and wondering what Mineral Invest will do for them in terms of employment, or the building of roads, hospitals and schools, which was mentioned as a possibility on the company website.

Currently, Mineral Invest has a camp secured by government soldiers who are accused of extorting fees from artisanal miners working at the Mineral Invest concession area. This is in breach of Congolese law and the UN Voluntary Principles on Security and Human Rights. Mineral Invest has not taken any of the social and environmental responsibilities seriously that it has listed on its website. Swedwatch believes that Mineral Invest's failure to take these items seriously is unfortunate, because the DR Congo remains a post-conflict country, struggling to rise to its feet after an extremely destructive five-year civil war.

Swedwatch's study has revealed a lack of preventative legislation requiring companies operating in, or trading with, high-risk areas to conduct proper due diligence. Some UN treaties explicitly encourage governments to take steps to prevent abuses by companies operating abroad. Voluntary mechanisms are a good place to start, however this approach is only embraced by the willing.¹²⁵

122 Mineral Invest, Företärdesemission December 2011, p.32

123 The first principal of the UN Global Compact can be found on the web at <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/principle1.html>

124 <http://sociallicense.com>, accessed 9 January 2012

125 This information contained in Swedwatch report #38, Passive Observers or Active Defenders of Human Rights?, p. 8, Sara Nordbrand 2010.

9. Recommendations

Swedwatch and Diakonia recommend that Mineral Invest:

- Terminates its relationship with the Congolese military that has been contracted to provide security.
- Follows *the UN Voluntary Principles on Security and Human Rights* before contracting with another security provider.
- Develops a plan to assist artisanal miners in finding alternatives to the use of mercury on the Mineral Invest concession area and help local miners to adopt better working methods.
- Follows its social and environmental commitment in accordance with the website, as it concerns security, health, the environment and transparency.
- Follows *the OECD Guidelines for Due Diligence* and *the UN Guiding Principles for Business and Human Rights*.
- Agrees on a public social license to operate with members of the local community.

Swedwatch and Diakonia recommend that Aktietorget and Finansinspektionen:

- Promote the investigation of instances where publicly-traded companies have entered into joint venture agreements with state-run companies in post-conflict states where corruption is a factor and there are potential conflicts of interest.
- Request companies to publish names of subsidiaries, staffing information, economic performance indicators, assets, taxes paid and other relevant financial indicators on a project-by-project basis to promote transparency.
- Promote a regulatory framework that monitors companies operating internationally in order to protect human rights, particularly if those companies are operating in conflict or post-conflict parts of the world.

Swedwatch and Diakonia recommend that the Swedish Government:

- Develops legislation requiring companies operating in, or trading in, high-risk areas to conduct proper due diligence in accordance with the OECD Guidelines and to publish its due diligence on the company website.
- Works with the international community, for example, through EU, OECD or UN initiatives to end secrecy over the ultimate beneficial ownership of extractive companies.

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