



BRIEFING: OMATE

How a senior Congolese army officer receives a major slice of gold production from a mining company with consent of a court

31 October 2017

Overview

The Democratic Republic of Congo is in crisis. Its leader, President Joseph Kabila, refused to step down in December 2016 at the end of his constitutionally mandated two-term limit. The country's security and human rights situation has since been in decline.

In Congo's restive eastern provinces, members of the national army have long vied for positions of control over areas endowed with lucrative mineral reserves. While they are officially forbidden from participation in the minerals trade,¹ the illicit involvement of officers of all ranks has been well documented for decades.

In August 2017, the UN alleged that Major-General Gabriel Amisi Kumba, one of the country's most powerful figures, is personally profiting from the gold sector in the eastern Tshopo province.² Amisi – on European Union and United States sanctions lists since December 2016 – has a long record of serious human rights abuses in Congo, and was suspended by the president in 2012 for selling arms to poachers and militias.

A new Global Witness investigation shows that another senior army officer, Brigadier-General Etienne Mbunsu Bindu, appears to control a 30% cut in gold production – potentially worth tens of thousands of dollars per year – from a company operating at a mine in North Kivu province. Like Amisi, this is by no means the first time Bindu's involvement in the minerals trade has been exposed. Global Witness first wrote about him back in 2009.³

“ Bindu isn't the only one to hide behind his child – it's a strategy used by senior army officers throughout eastern Congo.”

– Researcher in Goma, eastern Congo

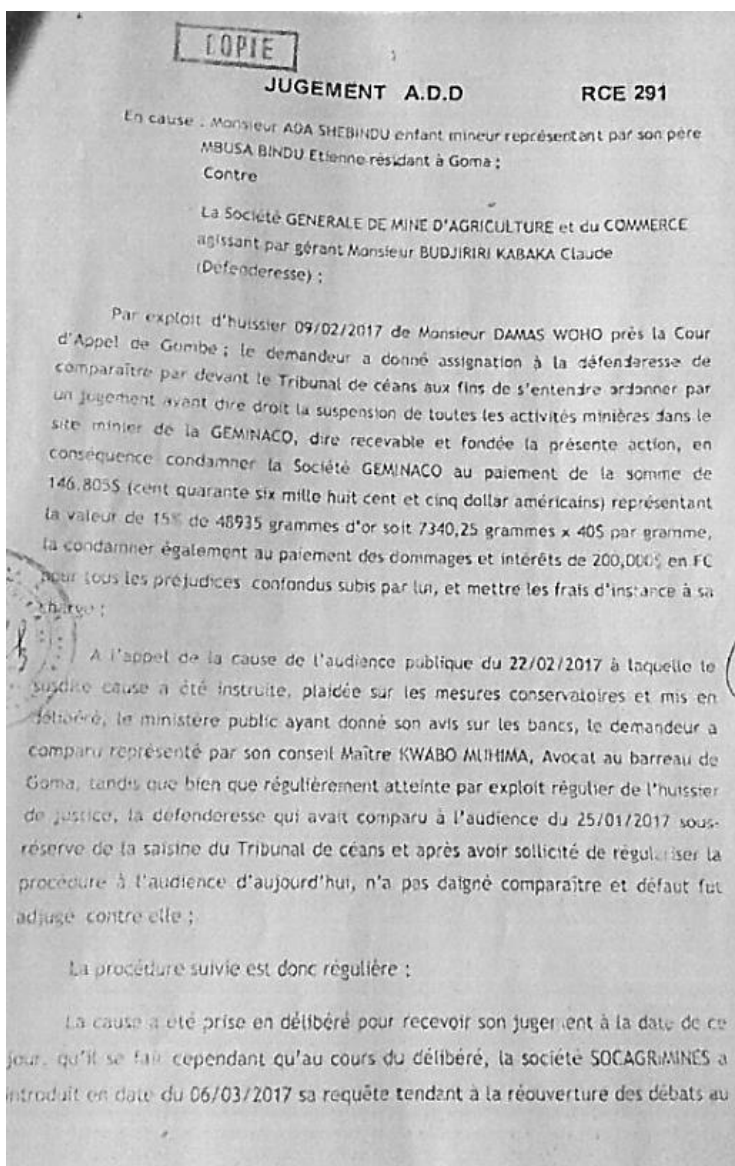
The case comes as Congo's mining law is up for review in parliament and risks being stripped of a critical part of its conflict of interest provision. This provision forbids political actors and other senior decision-makers – including members of the army, like Amisi and Bindu – from holding mining rights or trading minerals.⁴ It enshrines in law the principle that power must not be abused for private gain.

As Bindu and Amisi's cases show, this conflict of interest provision must be maintained, fully enforced and strengthened.

THE CASE

Documents seen by Global Witness show that Kinshasa-registered mining company GEMINACO is ceding one third of its gold production to the “underage” son of a senior army officer, Brigadier-General Etienne Mbunsu Bindu. Congolese law bans army officers from direct involvement in the mining sector, yet Bindu appears to have secured a slice of gold production from the mining company with no objections from the court.

The documents detail how a five-year dispute between the company and Bindu’s son, Ada Shebindu, has been resolved through an out-of-court settlement (“*acte de compromis*”). The agreement stipulates that the Bindus will drop claims against GEMINACO in exchange for the company handing over almost half of its gold production – 30% to Ada Shebindu and 10% to customary chiefs.



A rough calculation based on the figures cited in the court documents suggests a 30% cut in production could earn the Bindus around \$66,480 per year. Meanwhile, 77% of Congolese live on less than \$1.90 per day (under \$694 per year).⁵

The dispute arose from a February 2012 agreement in which Ada Shebindu allegedly agreed to cede his gold washing site at Omate mine in Walikale, North Kivu, to GEMINACO, in exchange for a 15% share of gold production. In January 2017, Ada Shebindu – represented by his father – took GEMINACO to court for not keeping its side of the deal.⁶

Screenshot of the first page of the Goma Tribunal de Commerce’s preliminary judgement (“*jugement ADD*”). For the full document, see annex.

BOX 1: GENERALE DES MINES, D'AGRICULTURE ET DU COMMERCE SARL (GEMINACO)

According to GEMINACO SARL's August 2014 corporate statutes, the company is owned by Mr Rene Mwinyi Zuheri Badjoko (21%), Mr Claude Bujiriri Kabaka Katengura (18%), Mr Guelor Bujiriri (18%), Mr Lucky Bafulwa Shomberwa (13%), Ms Butshianga Mvumbi (10%), Ms Michelle Volcy-Kabaka (10%) and the company M-Intercom (10%).⁷ Its headquarters are in Gombe, Kinshasa.

In 2009 – only one year before GEMINACO was reported by the UN to have teamed up with now US- and EU-sanctioned Major-General Amisi – the company attracted interest from London's AIM-listed Dimension Resources and three Canadian businessmen – Paul Lemmon, J. François Lalonde and Bernard J. Tourillon.⁸ According to an AIM regulatory announcement, Dimension planned to purchase 18% of GEMINACO. However, Brian Moritz, then director of Dimension, and Jean-Francois Lalonde both told Global Witness the deal fell through before anything was signed or any transactions took place.

(IL)LEGALITY

BREACH OF THE MINING CODE

Article 27 of Congo's Mining Code forbids members of the army from directly holding mining rights or trading minerals.⁹ However, officers may legally represent their children in court – irrespective of whether the case pertains to a mineral concession or gold-derived proceeds.¹⁰

On face value, the scenario therefore appears legal: if Ada Shebindu is a minor, Brigadier-General Bindu could legitimately represent his interests in court.

However, Global Witness has reason to believe that Bindu is using his son as a proxy for his mining interests and to evade the law.

This is not the first time Bindu has had a deal with GEMINACO at the Omate mine. In 2010, Bindu alongside Major-General Amisi and another senior army officer, General Mayala, had an agreement to receive a 10% cut of the company's gold production (Amisi and Mayala received 25% and 10%, respectively).¹¹ According to UN experts, the three officers facilitated the arrival of GEMINACO in Omate by sending soldiers to remove its predecessor, SOCAGRIMINES, from the mine and paying off local chiefs.¹²

Prior to 2010 Bindu was involved in the cassiterite (tin) trade at the nearby Bisie mine, one of the world's largest tin deposits.¹³ Although direct involvement of military personnel in mining is forbidden by Congolese law, he has a long history of investment and participation in the minerals trade in Walikale.¹⁴

Finally, Global Witness has been informed by two sources – but has been unable to confirm – that Ada Shebindu is not in fact underage, as stated in the court documents. This would mean he has the legal capacity to act on his own behalf and would not need his father to represent him in court. Bindu's involvement therefore suggests a more direct interest in the gold.

“ Bindu arrived and tried to chase us from Omate, so we had to find a compromise.

– Prosper Habimana Bujiriri,
GEMINACO

“The military authorities in Goma and Kinshasa have positioned their men at Omate. They are profiting from the chaos to do business, make money, threaten people ...”

– Rene Mwinyi, GEMINACO

Global Witness called, emailed and sent text messages to Brigadier-General Bindu but he did not respond to requests for comment.

Prosper Habimana Bujiriri, a signatory of the *acte de compromis* and the brother of Claude Bujiriri Kabaka Katengura, shareholder of GEMINACO, confirmed the general nature of the dispute and settlement, explaining that “Bindu arrived and tried to chase us from Omate, so we had to find a compromise. GEMINACO formed an agreement with Bindu, but didn’t keep its side of the deal, so he took us to court.”

Rene Mwinyi, manager and shareholder in GEMINACO, also confirmed Bindu’s historic involvement at Omate and “large network of support”, but added he is based in Kinshasa and does not know what is going on in Walikale.

BOX 2: BRIGADIER-GENERAL ETIENNE MBUNSU BINDU

Born in Walikale, Bindu is described as a jack of all trades – but first and foremost a businessman.

His CV includes membership of a local Mai Mai militia group, stints as deputy-commander of the 8th military region for the Congolese army, and lawyer and professor at a university in Goma.

He has also been described as “instrumental” in the creation of the NDC, an armed group led by recently surrendered warlord and alleged family member Sheka Ntabo Ntaberi.¹⁵ Congolese army major Morgan is his younger brother, and colonel Samy Matumo a “frère du territoire”.¹⁶ Both major Morgan and colonel Matumo have featured in UN reports for their illegal roles in the minerals sector.

Bindu currently lives in Kinshasa, where he works for the “civilian arm” of the Congolese army, the “departement d’Education civique, patriotique et actions sociales.”

ILLEGAL EXPLOITATION AND TRADE OF OMATE’S GOLD

GEMINACO holds five active “permis d’exploitation de petite mine” in Walikale – but Omate is not one of them.¹⁷ The site is not “validated”, according to provincial mining authorities, meaning no mining or trading activities are legally authorised.

Both Rene Mwinyi and Prosper Bujiriri stated GEMINACO has not yet started producing gold at Omate. “Any gold production at

Omate is coming from Bindu and his men who have an arrangement with the diggers,” said Mwinyi.



Satellite image of a mine site (*chantier*) likely to be Omate in Walikale, North Kivu, based on Global Witness analysis. We believe the image was taken between 2010 and 2014. Credit: Google Earth and Bing Maps.

Provincial mining officials told Global Witness that the Omate mine is being run by GEMINACO in collaboration with a cooperative called COMIDEWA. According to a source close to the arrangement, COMIDEWA was founded by Brigadier-General Bindu himself and is run by his uncle, Yoshuwa Makuru. COMIDEWA has not received formal accreditation from the provincial mining authorities and is therefore also operating in breach of the law.¹⁸

In September 2017 none of the 32 gold traders based in Mubi, the local mineral trading centre eight hours' walk from Omate, were formally authorised to trade, according to the mining office in Walikale.

Taken together, this indicates that none of the proceeds from the gold produced at Omate are being formally taxed and will therefore not make it into the national Treasury or provincial accounts and back to the general population.

BOX 3: OMATE

Omate (sometimes known as Umate) is an artisanal mine site located in the forests of North Kivu, which was operated under Belgian control up until around 1970.¹⁹ The Omate site is made up of seven “*chantiers*”, one of which is also called Omate.²⁰ Today the mine site supports around 500 individuals, including the majority of the surrounding villages.

Omate is the subject of a long-running family feud, which pits GEMINACO against another company SOCAGRIMINES, each owned by a son of Mr Katengura Bujiriri. The dispute has seen the involvement of various senior members of the Congolese army over the past two decades, including Major-General Amisi and Brigadier-General Bindu.²¹

According to a provincial mining agent, the site is currently peaceful but there is a military presence. The Omate *chantier* has six pits and six crushing machines run by around 60 diggers in total, which are currently producing around 500g gold per month.²² The diggers are forced to sell their gold at Omate to the cooperative, COMIDEWA,²³ and are required to hand over a weekly “contribution” to the Congolese army officers present.²⁴ COMIDEWA imposes a price of \$32 (50,000 Congolese francs) per gram.²⁵

Most of the gold produced at Omate is sent to Bukavu and sold to the *comptoir*²⁶ Namukaya, according to the provincial mining agent. The rest is sold to traders based in Mubi.

“Sometimes the trading houses in Bukavu fraudulently sell their gold in Bujumbura [capital of neighbouring Burundi],” commented the agent. “This is not the case for CongoCom [Namukaya], which sends its gold to Dubai.”

Congo has a domestic law governing its gold sector, which requires all companies – including GEMINACO and Namukaya – to conduct a series of checks on their supply chains known as “due diligence.”²⁷ According to this law companies must check, for example, whether they are directly or indirectly supporting public security forces, such as Congolese army officers, who are illegally controlling or taxing the minerals trade.²⁸ If they identify such a link, they must put in place a strategy to address and report on this.

At the time of writing, Global Witness has been unable to substantiate current links to Namukaya or trace the route the gold takes onto international markets.²⁹ North Kivu’s provincial mining division commented in September 2017 that it has no production statistics for Omate and has “no idea” where the gold is going.

In August 2017, the UN reported that “almost all” artisanally sourced gold in Congo was exported illegally and underestimated in both value and volume.³⁰ North Kivu province registered just 0.1kg of official gold exports in 2016 – this is equivalent to only 1% of the estimated annual production of the Omate mine alone, according to the court documents.³¹ No gold production statistics were reported for Walikale territory in North Kivu in 2016.³²

CARTE BLANCHE FROM THE COURT (AND KINSHASA?)

This case pitches the son of a senior army officer with historic involvement in North Kivu's minerals trade against a company in a dispute over a mine that neither side has the rights to. The plaintiff, defendant and subject of the proceedings are all arguably in breach of the law, and certainly the spirit of it.

The question remains as to why the court – Goma's Tribunal de Commerce – did not apparently identify whether the interests advanced by the parties accorded with the law. The judge did not appear to verify Ada Shebindu's age, nor the rights alleged to be held by the Bindus or GEMINACO to Omate. Instead, the court has let Brigadier-General Bindu use his son as a proxy to get around Congo's law aimed at preventing army officers from abusing their power to make money.

“The judge accepted Bindu's role in the case and said nothing ... But the case got out of hand, so we decided to settle outside of court.”

– Prosper Habimana Bujiriri, GEMINACO

“The judge accepted Bindu's role in the case and said nothing,” said Prosper Bujiriri. “But the case got out of hand, so we decided to settle outside of court.”

Rene Mwinyi told Global Witness that GEMINACO never signed a document with Bindu in 2017 and that he has always personally refused to do business with the army. The *acte de compromis* is null and void, according to Mwinyi: “Prosper is not a representative or shareholder of GEMINACO and therefore has no legal right to sign anything on behalf of the company.”

Another question remains as to why, a decade after his involvement in the minerals trade was first exposed, Brigadier-General Bindu is apparently still managing to get his cut.

“You should speak to the military authorities in Goma and Kinshasa,” said Mwinyi. “They've positioned their men at Omate. They are profiting from the chaos to do business, make money, threaten people [...] Bindu has a network, a huge network behind him [...] he wants to manipulate members of GEMINACO to maintain access to the gold production.”

“[President] Kabila & co. are fearful of an opposition emerging within the army, so they just look the other way.”

– Anonymous source close to the agreement

“There must be someone powerful in Kinshasa behind all this, an umbrella, someone who needs an army man who knows his way around,” commented a Congolese researcher familiar with armed groups and the mining sector in the Kivu provinces. “Influential people profit from this kind of scenario to make money.”

“[President] Kabila & co. are fearful of an opposition emerging within the army, so they just look the other way,” added another source close to the arrangement.

ENDING IMPUNITY

The case appears to be illustrative of the economic opportunism widespread among senior ranks of the Congolese army, and the climate of impunity that enables them and the companies involved to ‘get away with it.’

“Bindu is not the only one to hide behind his child – it’s a strategy used by senior army officers throughout eastern Congo”, explained another researcher.

“Many mining concessions are in the hands of the military or people with direct or indirect links to them. These include the children whose names are used to obtain mining titles”, added another Goma-based lawyer and advocate. “I call it ‘socio-judicial exploitation’. It’s a form of abuse of social position that military parents are increasingly using to conceal their illegitimately-acquired mineral wealth and property.”

“ I call it ‘socio-judicial exploitation’. It’s a form of abuse of social position that military parents are increasingly using to conceal their fraudulently-acquired mineral wealth and property.”

– Lawyer and advocate in Goma, eastern Congo

More broadly, Congo’s senior public officials from all sides of the political divide have been accused of abusing their office for personal enrichment, often with or enabled by foreign companies and jurisdictions. Reports by the Congo Research Group and Bloomberg³³ show how President Kabila and his family have stakes in over 80 businesses worth tens of millions of dollars. Global Witness recently revealed how more than \$750 million paid by mining companies to Congo’s state bodies in the past few years have “disappeared,” never making it to the national treasury.³⁴

Congo’s Mining Code is up for review in the current parliamentary session, further to a series of amendments submitted in March 2015. Among these amendments was the proposed removal of part of the Code’s crucial conflict of interest clause.³⁵

As this case shows, the conflict of interest provision must be maintained, strengthened and, most importantly, fully enforced (see box 4).

Brigadier-General Bindu’s involvement and interests in North Kivu’s mining sector, and GEMINACO’s operations at Omate should be further investigated and, if wrongdoing found, they should be held to account in line with Congolese law.

Amid Congo’s current crisis and at a time when the political elite stand widely accused of abusing their power for personal gain, these steps are more important than ever to ensure that the population sees the benefits of the country’s rich resource wealth.

BOX 4: PROPOSED REVISIONS TO THE MINING CODE'S CONFLICT OF INTEREST PROVISION – GLOBAL WITNESS' RECOMMENDATIONS

The proposed changes to Congo's 2002 Mining Code submitted in March 2015 seek to modify article 27 by removing the stipulation that the proscribed list of persons cannot hold mining rights.

The original 2002 text of article 27 reads: « Ne sont pas éligibles pour solliciter et obtenir *les droits miniers et/ou de carrières*, les cartes d'exploitant artisanal, de négociants ainsi que l'agrément au titre de comptoir d'achat et de vente des substances minérales d'exploitation artisanale... »

In the proposed changes, the underlined text in italics above has been removed.

Global Witness proposes the following insertion, which returns the above deleted text and adds the stipulation that the list of proscribed persons cannot have a direct or indirect financial interest in a mining company or subcontractor.

This suggestion also expands the list of ineligible persons to include “Les membres de familles, collègues et amis proches des dites personnes ne sont également pas éligibles”:

Ne sont pas éligibles pour détenir un intérêt direct ou indirect dans des entreprises minières et leurs sous-traitants, ou solliciter et obtenir les droits miniers et/ou de carrières, les cartes d'exploitant artisanal, de négociants ainsi que l'agrément au titre de comptoir d'achat et de vente des substances minérales d'exploitation artisanale :

a. les agents et fonctionnaires de l'Etat, notamment le Président de la République, les membres du Gouvernement national et des Gouvernements provinciaux, les magistrats, les membres des Forces armées, de la Police et des services de sécurité, les employés des organismes publics habilités à procéder aux opérations minières, ainsi que les membres de familles, collègues et amis proches desdites personnes.

Rationale:

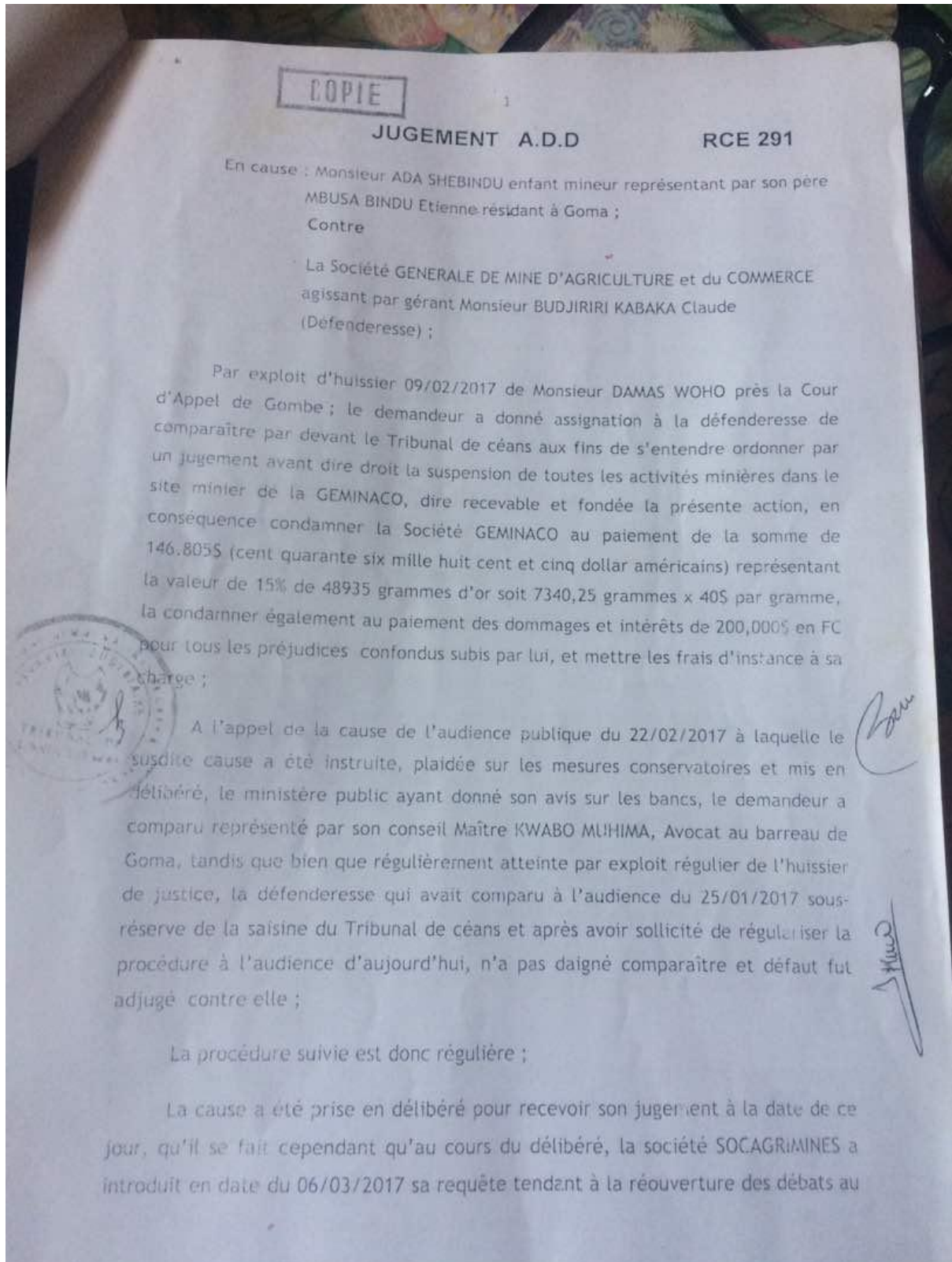
The proposed amendments to the conflict of interest rule represent a step backwards, removing language from the 2002 law that prevents political actors and other decision-makers from taking financial interests in private companies in the mining sector.

Unless politicians, military, civil servants and others in or close to positions of decision-making power are prohibited from profiting from Congo's mining sector, the door is left open for corrupt officials to make decisions that are favourable to themselves, their family and friends, which drain Congo's natural resource wealth from the Treasury into private accounts.

Global Witness' full analysis and recommendations regarding the proposed revisions to the Mining Code are available online.³⁶

ANNEX

1. Preliminary judgement by Tribunal de Commerce in Goma



2.
motif pris qu'elle a été informée que le Tribunal est saisi dans la cause sous RCE 291 opposant Monsieur ADA SHEBINDU à la société GEMINACO et prise en délibéré ; qu'il sollicite intervenir volontairement pour protéger ses intérêts ;

Il a été jugé que : - Il est possible que l'une des parties n'a pas eu l'occasion de déposer un document important pour l'instruction d'un procès par ce que cette pièce ne lui est parvenue qu'après la clôture des débats. Elle pourra s'adresser au tribunal par voie de requête ou de lettre missive et solliciter la réouverture des débats pour le dépôt de ce document qui doit nécessairement avoir été soumis en communication à la partie adverse. La partie adverse a toujours le droit de s'opposer à cette réouverture mais le juge tranchera cet incident - ;

En l'espèce, il ressort des éléments du présent dossier sous le RCE 291, que la cause oppose Monsieur ADA SHEBINDU à la Société GEMINACO ; que par contre, la Société SOCAGRIMINES n'a jamais participé aux débats pour n'avoir pas été partie au procès ; dès lors n'a pas droit de solliciter la réouverture des débats ;

Déclarera sa requête irrecevable ;

Il résulte des faits de la cause que le demandeur prétend avoir conclu en février 2012 une convention aux termes de laquelle, il a cédé son site de laverie d'or à la défenderesse pour l'exploitation de la carrière minière à UMATE dans le Territoire de Walikale moyennant de 15% de production réalisée ; que pendant 4 ans et 5 mois d'activités, la GEMINACO a réalisé 48935 grammes d'or y compris 1272 cartons de cigarette (vente compte cigarette) soit, 25440 grammes d'or représentant la valeur de 1272 cartons en raison de 20 grammes d'or par carton de cigarette, 1855 cartons de piles tigers marque pile crayon au prix de 7 grammes d'or par carton soit 12985 grammes d'or (vente compte piles tiger crayon) et 3710 grammes d'or sur compte laverie soit la valeur de 70 grammes d'or par mois soit, au total 48935 grammes d'or soit 7340,25 grammes en raison de 40\$ par grammes, c'est-à-dire $7340,25 \text{ grammes} \times 40\$ = 146.805\$$; qu'il dispose de plusieurs témoins qui sont prêts à déposer ;

Concluant, il soutient que le comportement de la défenderesse continue à lui causer de sérieux préjudices qui imposent réparation ; qu'en attendant l'examen au fond, il sollicite à la toute première audience utile une mesure conservatoire relative à la suspension de toutes les activités minières dans le site minier de la GEMINACO par un jugement avant-dire-droit pour ce faire ;

Dans son avis donné sur les bancs, le ministère public a sollicité d'accorder la mesure conservatoire sollicitée tout en la joignant au fond ;

Aux termes de l'article 25 de la loi n°002/2001 du 3 juillet 2001 « Si le défendeur ne comparait pas, il est donné défaut et les conclusions du demandeur sont adjugées si elles se trouvent justes et bien vérifiées après avis du ministère public » ;

En l'espèce, le Tribunal note des éléments du dossier de procédure que des déclarations recueillies des travailleurs de la GEMINACO sous RI 270 du Tribunal de paix WALIKALE, il est advenu entre le demandeur et la défenderesse une convention d'exploitation de la carrière minière signée en février 2012 aux termes de laquelle, celui-ci a concédé à la défenderesse sa laverie d'or sur le site minier de UMATE à WALIKALE pour la production et commercialisation d'or moyennant un paiement de 15% au demandeur sur la production réalisée ;

Il s'avère qu'à partir de la date pré rappelée, la défenderesse a produit et commercialisé l'or d'une valeur estimable en grammes d'or pendant 4 ans et 5 mois, vendu plusieurs cartons de cigarettes, et piles ; que fort malheureusement, le demandeur n'a jamais bénéficié de 15% convenu en dépit de vaines revendications ayant engendré par contre un conflit qui a compromis systématiquement leurs relations d'affaires mettant en péril ainsi l'intérêt communautaire de la société ;

Au point de vue du climat des affaires, il est à noter que l'environnement juridique de qualité pour l'exercice des activités socio économiques est perturbé du fait de cette mésentente sus-décriée, créant paricochet l'insécurité des investissements tant recherchée pour le développement intégré dont le pays a besoin en général et le Territoire de Walikale en particulier ; qu'il échet de restaurer la confiance entre les partenaires comme demandé ci-dessus ;

A cet effet, il est de la doctrine abondante qui enseigne que, « Sans préjuger du bien fondé, le Tribunal peut être amené à prendre, à la demande des parties, des mesures conservatoires (A. Rubbens Droit Zaïrois, Tome II, P.U.Z, Kinshasa 1978 pge 136) » ;

En l'espèce, le Tribunal ordonnera avant l'examen au fond, la suspension provisoire des activités d'exploitation minière de la GEMINACO dans le site minier

d'UMATE et ce, en attendant l'aboutissement de négociation pour trouver un terrain d'entente indispensable au rétablissement du climat des affaires en payant 15% de la production d'or depuis février 2012 à ce jour, tel que réclame non seulement par le demandeur mais, aussi par les travailleurs de la GEMINACO qui militent en faveur d'une solution négociée ;

Exécra pour ce faire, un délai de 45 jours qui court dès la signification de la présente décision aux parties, qui est un délai raisonnable applicable devant le Tribunal de Commerce ;

Renverra la cause en prosecution pour l'examen au fond en toute célérité à l'audience publique du 06/05/2017 ;

Reservra les frais ;

PAR CES MOTIFS :

Le tribunal,

Vu la loi n°13-11/B du 11 avril 2013 sur la loi organique ;

Vu la loi n°002/2001 du 03 juillet 2001 sur les Tribunaux de Commerce ;

Vu le C.P.C ;

STATUANT PUBLIQUEMENT ET PAR DEFAUT VIS-A-VIS DE LA DEFENDERESSE ET AVANT D-RE-DROIT ;

Entend le Ministère Public ;

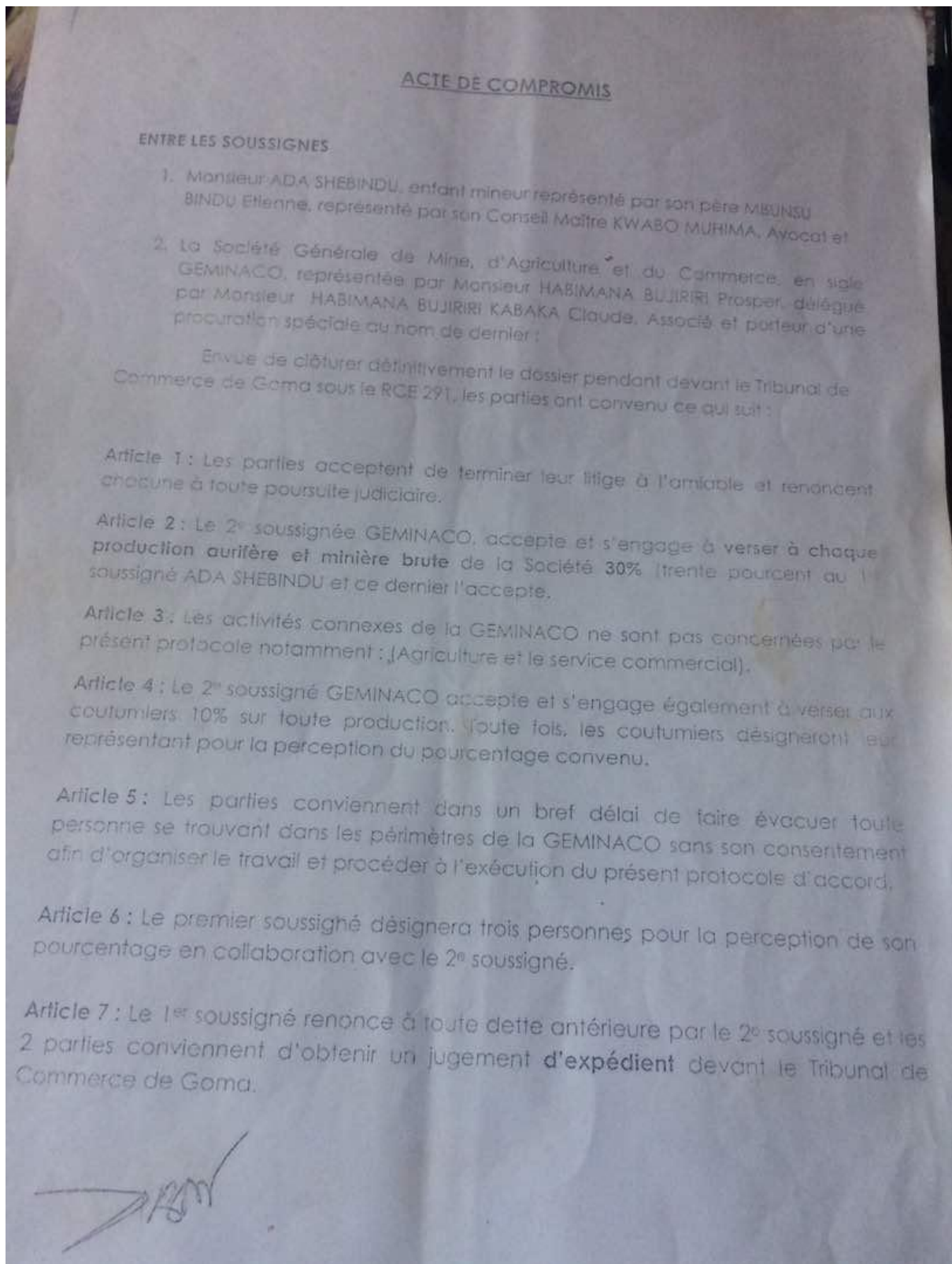
Déclare la requête de réouverture des débats initiée par la Société SOCAGRIMINES irrecevable ;

Reçoit la demande de Monsieur ADA SEHBINDU enfant mineur représenté par son père MBUNSU BINDU Etienne et la dit fondée ;

En conséquence :

Ordonne la suspension de l'exploitation des activités minières dans la carrière d'UMATE à WALIKALE par la GEMINACO, aux fins de permettre aux deux parties de négocier pour trouver un terrain d'entente indispensable au

2. 'Acte de Compromis' between the Bindus and GEMINACO



Article 8: Les parties s'engagent formellement à respecter le présent protocole d'accord et tout différend lié au non respect du protocole sera soumis préalablement à un règlement à l'amiable à défaut devant les juridictions compétentes en cas d'échec.

Article 9: Les parties acceptent et s'engagent chacun à supporter toute dépense liée à la production et ce, proportionnellement chacune selon son pourcentage après partage.

Article 10: Le présent protocole d'accord a été signé de bonne foi par les soussignés, sera porté à la connaissance des membres de toutes les parties signataires pour sa bonne exécution et entre en vigueur à la date de sa signature.

Ainsi fait à Goma en deux exemplaires, en originaux, le 20/05/2017


Pour le premier soussigné

ADA SHEBINDI

Pour le second soussigné

GEMINECO

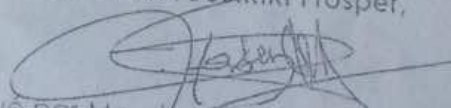
Son conseil



Maître KWABO MUHIMA

Avocat

HABIMANA BUJIRIRI Prosper,



délégué par Monsieur BUJIRIRI KABAKA Claude,
Associé et porteur d'une procuration spéciale.

ENDNOTES

- ¹ Article 27 of Law No. 007/2002 of July 11, 2002 relating to the Mining Code of the Democratic Republic of Congo and Article 20 of *Loi no. 13/005 du janvier 2003 portant statut du militaire des Forces Armées de la République Démocratique du Congo*.
- ² UN Group of Experts report, August 2017, para. 102.
- ³ Global Witness, “Faced with a Gun”, 2009.
- ⁴ Global Witness’ recommendations for DRC’s new mining law, October 2015: https://www.globalwitness.org/documents/18091/GW_DRC_mining_code_analysis-15.10.15.pdf
- ⁵ World Bank Databank, 2017 (most recent statistics available for Congo date to 2012): <http://databank.worldbank.org/data/reports.aspx?source=2&country=COD>.
- ⁶ The Bindus initially demanded \$146,805, equivalent to 15% of the 49kg gold produced at Omate since February 2012, plus \$200,000 worth of damages, interest and court fees, according to the documents. However, the case was eventually settled outside of court, granting Ada Shebindu a 30% cut going forward.
- ⁷ According to the latter’s website, M-Intercom is US-based multinational tech company DELL’s main import/export arm in Kinshasa. See: <http://www.m-intercom.com/>. Accessed 25 October 2017.
- ⁸ AIM Regulatory Announcement, “Dimension Resources Ltd: Share Purchase and Option Agreement,” 5 May 2009.
- ⁹ Law No. 007/2002 of July 11, 2002 relating to the Mining Code of Democratic Republic of Congo. Article 20 of *Loi no. 13/005 du 15 janvier 2003 portant statut du militaire des Forces Armées de la République Démocratique du Congo* also forbids officers from directly or indirectly doing business.
- ¹⁰ Global Witness interviews with three independent Congolese lawyers, September and October 2017.
- ¹¹ UN Group of Experts report, November 2010, para. 202.
- ¹² UN Group of Experts report, December 2011, para. 204; UN Group of Experts report, November 2010, para. 201.
- ¹³ UN Group of Experts report, November 2010; Global Witness, “Faced with a Gun”, 2009; Alphamin Resources Corp. website: <http://alphaminresources.com/bisie-tin-project/>. Accessed 25 October 2017.
- ¹⁴ See, for example, Global Witness, “Faced with a Gun”, July 2009; UN Group of Experts reports November 2010 and December 2011. Article 20 of *Loi no. 13/005 du 15 janvier 2003 portant statut du militaire des Forces Armées de la République Démocratique du Congo* forbids officers from directly or indirectly doing business.
- ¹⁵ UN Group of Experts report, December 2011, para. 201.
- ¹⁶ Global Witness interview with researcher on armed groups and natural resources in eastern Congo, September 2017. “Frère du territoire” is roughly translated into English as “from the same place”.
- ¹⁷ North Kivu provincial mining division, September 2017 and DRC Mining Cadastre Portal: <http://portals.flexicadastre.com/drc/en/>, accessed September 2017. “Permis d’exploitation de petite mine” can be roughly translated into English as “small-scale mine exploitation permits.”
- ¹⁸ North Kivu Mining Division, “Annual Report,” 2016, p. 13. COMIDEWA did not feature on the list of accredited cooperatives.
- ¹⁹ CREDDHO, “Conflit d’exploitation minière à Omate dans le groupement Utunda en territoire de Walikale”, 20 January 2012.
- ²⁰ A mining area might be made up of a number of individual sites, “chantiers” in French.
- ²¹ CREDDHO, 2012, *ibid.*, and UN Group of Experts reports, November 2010 and December 2011.
- ²² Provincial mining agent, October 2017.
- ²³ Provincial mining agent, October 2017.
- ²⁴ Provincial mining agent, October 2017.
- ²⁵ Provincial mining agent, October 2017.
- ²⁶ “Comptoir” is roughly translated as “trading house” in English.
- ²⁷ Arrêté ministériel no. 0057 CAB.MIN/MINES/01/2012 du 29 février 2012. Available here: http://mines-rdc.cd/fr/documents/Arrete_0057_2012.pdf. See also Global Witness, “Time to Dig Deeper”, 2017. Available here: <https://www.globalwitness.org/en/campaigns/democratic-republic-congo/time-dig-deeper/>.
- ²⁸ See Annex II of the “OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas”, OECD, 2016, and Arrêté ministériel no. 0057 CAB.MIN/MINES/01/2012 du 29 février 2012, *ibid.*
- ²⁹ Historically, most of Omate’s gold has ended up with comptoir Namukaya (formerly CongoCom) in Bukavu. See, for example, UN Group of Experts report, December 2011 and UN Group of Experts report, November 2010, para. 204.
- ³⁰ UN Group of Expert report, August 2017, para. 106. In 2014, Global Witness also calculated that around 94% of Congo’s gold left the country illegally. See Global Witness, “River of Gold,” 2015, footnote 17.
- ³¹ North Kivu Mining Division, “Annual Report: synthèse d’exportations par opérateur,” 2016. The 0.1kg of gold was exported by the company Gold Cash to Alsaman Jewellery in Dubai, UAE.
- ³² North Kivu Mining Division, “Annual Report,” 2016, *ibid.*
- ³³ Congo Research Group, “All the President’s Wealth: the Kabila family business network”, 19 July 2017: <http://congoresearchgroup.org/all-the-presidents-wealth/>; Thomas Wilson, “Diggers, Drivers, Diamonds: how Congo’s Zoe Kabila makes money”, Bloomberg, 19 July 2017: <https://www.bloomberg.com/news/articles/2017-07-18/diggers-drivers-diamonds-how-congo-s-zoe-kabila-makes-money>.

³⁴ Global Witness, “Regime Cash Machine”, 21 July 2017: <https://www.globalwitness.org/en/campaigns/democratic-republic-congo/regime-cash-machine/>.

³⁵ Global Witness’ recommendations for DRC’s new mining law, October 2015: https://www.globalwitness.org/documents/18091/GW_DRC_mining_code_analysis-15.10.15.pdf

³⁶ Global Witness’ recommendations for DRC’s new mining law, October 2015: https://www.globalwitness.org/documents/18091/GW_DRC_mining_code_analysis-15.10.15.pdf.