

Negotiated Withdrawal of Illegal Army Presence and Resolution of Community Concession Dispute



CASE STUDY: IMPACT OF THE SOUTH KIVU VOLUNTARY PRINCIPLES WORKING GROUP

BITALE

**SOUTH KIVU PROVINCE
EASTERN DR CONGO**

BACKGROUND

The Kalehe Highlands in South Kivu Province are rich in gold and 3T minerals (tin, tungsten, tantalum). These minerals are mainly extracted through mining cooperatives engaging in artisanal and small-scale mining sites (ASM), so-called *Zones d'Extraction Artisanale* (ZEA – or “artisanal mining zones”). ASM provides a crucial livelihood for approximately 2 million Congolese and constitutes the majority share of minerals in international supply chains. According to the Congolese Mining Code, artisanal miners have the right to extract on artisanal zones on the condition that they operate as legally authorised cooperatives.



**Bitale, Kalehe territory,
South Kivu, DRC.**

THE ISSUE

Local inhabitants of an artisanal mining zone in Bitale extract minerals on the mining site. They had been self-organised as a cooperative but lacked formal status and legal authorization from the authorities. When a neighbouring formally recognised cooperative appeared to claim mining rights to the site, the local inhabitants resisted. Violent clashes erupted, resulting in a serious security and human rights incident. The second cooperative had hired elements of the Congolese army to establish its presence on the site through the use of force. The local inhabitants, including former Mai-Mai militia members, fought back.

To prevent further security incidents, public authorities suspended all mining operations on this artisanal zone. As a result, the local mining communities lost their main source of livelihoods. Subsequently, the hired armed forces moved away from the closed site and established their presence in the adjacent mining town, illegitimately taking over policing functions and abusing their position of power. Local community members alleged these forces were responsible for harassment, extortion, and in some cases torture when faced with resistance by the local population.

The formally recognized cooperative took their claim of mining rights to the provincial court in Bukavu. The court, however, did not settle the dispute between the two cooperatives.

THE WORKING GROUP'S SOLUTION

After the court failed to settle the dispute, a representative of the formally recognized cooperative approached the South Kivu Voluntary Principles Working Group to find an alternative dispute resolution. The Working Group discussed this case in its monthly multistakeholder meetings involving key actors from public authorities, private entities, and civil society and agreed to seek to facilitate a resolution. It conducted fact-finding missions to obtain an independent and neutral understanding of events to inform their interventions, undertaking the following actions:

AT THE PROVINCIAL LEVEL:

- Informed the commanding General of the local armed forces of the alleged human rights violations and persisting risks stemming from the troops' presence around this artisanal mining zone.
- Advocated successfully for the immediate withdrawal of the military troops illegally present in the mining site and mining town.
- Called for the deployment of the national Congolese Mining Police to the mining site and adjacent town.

AT THE LOCAL ARTISANAL MINING ZONE:

- Monitored the withdrawal of the illegal army troops from the mining town and accompanied the troops back to the provincial capital in Bukavu.
- Mediated a mutually acceptable agreement between the two disputing cooperatives. According to this agreement, the legally-authorized cooperative gained the extraction rights and agreed to provide the local communities with adequate compensation for their previous investments.

POSITIVE IMPACT

PREVENTION OF FURTHER HUMAN RIGHTS VIOLATIONS

The withdrawal of the illegal armed forces on the mining site and adjacent town is in line with the national legal framework for the demilitarisation of mining sites. The legal deployment of the Mining Police respects the wishes of the local population and other stakeholders, who perceive the Mining Police as the appropriate security actor. Community members have acknowledged the negotiated security arrangement's contributions to the prevention of human rights violations on the site.

PEACEFUL RESUMPTION AND SECURED LIVELIHOODS

Through the Working Group's dispute resolution, the local inhabitants received compensation from the cooperative, allowing their livelihoods to be secured and the resumption of peaceful artisanal mining. The Working Group helped clarify the new arrangement to the local population and has monitored the community's compliance with this agreement.

ONGOING MONITORING RESPONDS TO CHANGES IN SECURITY AND HUMAN RIGHTS RISKS

The Working Group engages regularly in a conversation with the provincial Mining Police and mining communities to assess the need for deployment. Production levels in this artisanal zone are currently low, which also reduces the likelihood of security risks, making it a greater priority to deploy the Mining Police in more precarious mining sites.

HEIGHTENED RISKS OF ILLEGAL DEPLOYMENT OF PUBLIC OR PRIVATE SECURITY FORCES ON MINING SITES

This case highlights the security tensions that can arise when mining communities illegally involve public security forces to protect their mining cooperatives. This is both in violation of Congolese law, and is contrary to the *OECD guidance on artisanal and small-scale mining*. Incidents as described in this case study expose mining sites to the risk of losing responsible sourcing certification to export their minerals.

The role of public and private security forces at mine sites and/or surrounding areas along transportation routes is strictly reserved to maintaining the rule of law. However, security forces in South Kivu frequently engage in illegal control of mine sites and transportation routes, illegal taxation or extortion of miners for minerals and money, often under the use of force, leading to human rights violations. The presence of public and private security forces on mining sites thus signifies a heightened risk to responsible mineral supply chains.

GOOD PRACTICE

The South Kivu Voluntary Principles Working Group actions in this case study illustrate a number of good practices identified by DCAF and the Fund For Peace (FFP) in the study **From Commitment to Impact: A Guide for Local Working Groups on Business, Security, and Human Rights**, as well as DCAF and the ICRC in the **Toolkit: Addressing Security and Human Rights Challenges in Complex Environments**.

DIVERSE STAKEHOLDER COMPOSITION

Local representatives of the Congolese army and mining police have participated in the Working Group since its establishment. The familiarity and trust built through the Working Group with the local army representative facilitated the withdrawal of the illegal armed forces.

LINKAGES BETWEEN NATIONAL LAWS AND GLOBALLY-RECOGNIZED SECURITY AND HUMAN RIGHTS GOOD PRACTICES

The Working Group built its case to the local communities and security forces based on a combination of global standards such as the Voluntary Principles, as well as relevant national legislation and regulatory codes.

LOCAL OWNERSHIP

An approach based on consultation, trust and the reputation of the Working Group as an impartial broker among local actors favoured quick and effective decision-making and implementation.

GRASSROOTS CONSULTATIONS AND TRUST

This case study illustrates the importance of the Working Group's early and sustained efforts at grassroots consultations throughout the province. This built trust among the local cooperatives at the artisanal zone, who proactively approached the Working Group for assistance with alternative dispute resolution.

The South Kivu Voluntary Principles Working Group was established in 2018 with support from a grant from the Dutch Embassy in the Democratic Republic of Congo (DRC) to DCAF's Security and Human Rights Implementation Mechanism (SHRIM). The Working Group is led by the Bukavu-based Congolese organisation: *Observatoire Gouvernance et Paix* (OGP) in collaboration with DCAF.

The SHRIM is a multi-donor trust fund supporting implementation of security and human rights good practices in fragile environments in a coherent, sustainable and cost-effective way. SHRIM Case Studies reinforce the impact of multistakeholder approaches by highlighting the challenges and successes of addressing security and human rights risks in fragile environments.