The ‘conflict-free’ status of minerals from Mai-Baridi and Kisengo, and the due diligence of MMR and CDMC: an evaluation

Executive Summary

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The views expressed here are the author’s alone, and should not be construed as signalling the position of any other organisation with which the author is associated.

Introduction

During the fieldwork for this study, I carried out an evaluation of MMR’s exercising of due diligence as defined by the OECD and UN Group of Experts’ guidelines. In addition, since MMR’s official minerals supplier at Mai Baridi and Kisengo is a mining co-operative called CDMC, I also carried out an evaluation of CDMC’s exercising of due diligence, according to the same standard. I have also evaluated the ‘conflict-free’ status of the supply chain from Mai-Baridi and Kisengo to export from the DRC according to the standards and definitions of the US Dodd Frank Wall Street Reform and Consumer Protection Act of 2010.

One: MMR’s due diligence

Step One of the OECD and UN due diligence guidance is to establish strong company management systems for the supply chain of minerals originating from conflict-affected and high-risk areas. Northern Katanga, where Mai Baridi and Kisengo are situated, is mostly not conflict-affected, according to assessments by the UN Stabilisation Mission in the DRC (MONUSCO) and international NGOs such as IPIS.1 Northern Katanga is, however, a high-risk area, both because of its immediate proximity to conflict-affected provinces of the DRC, and the presence throughout the province of the FARDC, whose activities could turn the province’s minerals into ‘conflict minerals’ according to the Dodd Franks definition. For these reasons, due

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diligence requires that MMR establishes a strong company management system for its supply chain of minerals from Mai Baridi and Kisengo.

MMR representatives informed me that the company is adapting its supply chain policy in the light of the OECD’s guidelines, which must still be reviewed by management and then approved by the MMR board. No timeline has been supplied. I recommend that MMR presents a timeline for the process, and that it incorporate the new supply chain policy into its contract with CDMC.

MMR has established a due diligence team headed by the company’s marketing manager, who has regular access to the company’s general manager. MMR is being assisted in its due diligence implementation by PACT, an NGO, which has also facilitated implementation of ITRI’s tagging and traceability scheme.

MMR representatives say they have ensured sufficient resources to support due diligence, and I saw nothing to suggest that either the MMR due diligence team or PACT’s work for MMR on this issue have been unduly restricted by financial constraints.

MMR’s head office apparently meets regularly with company representatives at mine sites, but the company’s due diligence efforts would be enhanced by more structured interaction between the company’s due diligence team and MMR mine sites and regional branches. Also useful would be training in due diligence for headquarters, MMR mine site and regional branch management.

Internal accountability concerning due diligence would be strengthened by structured monitoring and evaluation of the company’s overall performance in this regard by MMR’s due diligence team.

Concerning the taxes, fees and royalties paid by MMR to the government for the purposes of extraction, trade, transport and export, the company has provided a synthesis of these payments showing payments to the Centre d’Evaluation, Expertise, et Controle (CEEC), OFIDA/DGDA (customs authorities), and to the DGRAD (tax office). I have not seen audited accounts.
MMR further provided me with a copy of its contract with the Police Nationale Congolais (PNC), for the provision of mines police. The contract, signed in Kinshasa in February 2010, requires MMR to pay each *police des mines* officer FC43,130/month, as per interministerial arrêté No: 061/CAB/MININTERDESEC/2006 and No 097/CAB/MIN/FINANCES/2006.

There is general consensus among not just MMR and CDMC representatives, but also MONUSCO and NGO’s that there is no illegal armed group presence in or around Mai Baridi or Kisengo, and nor is there along the transportation route the minerals from both sites take, between Nyunzu to Kalemie. It thus seems a fair conclusion that MMR is not making payments to illegal armed groups.

MMR has confirmed that cash payments to mines police do take place, apparently due to the late payment of mines police by the state authorities. MMR is advised to regularise the situation, so that payments to the police are made as per its contract, and by bank transfer to an official account, rather than in cash, on-site.

I visited Mai Baridi twice during June and July and while the *police des mines* presence was highly visible, I saw no indication of an FARDC presence. A civil society researcher who visited Mai Baridi in June also found no evidence of a military presence. I have only briefly visited one of Kisengo’s several pits and cannot therefore comment on all of them. There was a *police des mines* presence, but no indication of any FARDC presence at or around the MMR head office in Kisengo, and nor en route to, nor in the “Bic” pit, where hundreds of diggers were at work.

Each time I travelled the Nyunzu-Kalemie road there were no FARDC personnel at any checkpoint or barrier. Interviews with locals along this route did not elicit any information about FARDC personnel along this route. I was informed in Kalemie by Colonel Banza, who is in command of this section of the Sixth (Katangan) military region that no troops of his were deployed along this road. I was further informed by the Auditoriat Militaire in Kalemie that there were no military road blocks on the Nyunzu-Kalemie Road, and that if any soldiers were found to be extorting money from passing traffic along this route, they would face prosecution.
However, a civil society researcher with knowledge of the area said an agent of the national intelligence service (ANR), who resided there was being paid US$100/month in cash by MMR. The researcher personally encountered three military posts en route from Kalemie to Nyunzu where either he or his driver was asked by soldiers to pay small sums of money. The soldiers are reportedly from the 611th battalion. MMR management has denied that it has, or has had any formal or informal arrangement with the FARDC. The testimony of the civil society researcher suggests MMR is not paying soldiers along the Nyunzu-Kalemie route. Instead, the researcher said that illegal taxes to the FARDC were mostly paid by motorbike taxis.

My conclusion is that while there is circumstantial but not conclusive evidence of an FARDC presence on the Nyunzu-Kalemie road, there is no evidence of payments to the FARDC by MMR. However, any military presence at either Mai Baridi or Kisengo, and along transport routes should be carefully monitored. The issue should be properly addressed and discussed in Katanga’s comité de pilotage, where a formal undertaking should be given by the FARDC representative that soldiers will not be present at mine sites, and where they are on transport routes for security reasons, they will not extort illegal taxes. The FARDC representative should also detail what MMR should do if illegal taxes are demanded of company representatives by the FARDC, and commit to taking disciplinary action against soldiers who do so. MMR and those further downstream in the supply chain should continue to monitor the issue, and to facilitate this build links with civil society organisations with on-the-ground knowledge of the situation.

MMR has disclosed to me and to its downstream purchasers its ownership and corporate structure, including the names of corporate officers and directors. MMR says there are no government, political or military affiliations of the company or its officers, and I have seen no evidence to the contrary. MMR’s chief business affiliation is with its parent company Somika.

Another critical factor determining whether Mai Baridi and Kisengo’s output is ‘conflict free’ is the mine of mineral origin. MMR signed a contrat d’encadrement des exploitants artisanaux et d’achat des minerais sur les gisements de Kisengo, Mai
Baridi, Lunga et Katange with the Katangan provincial minister of mines on March 25th, 2010 (No 06/1331/CABMIN/MAF/KAT/2009). The contract gives MMR exclusive rights to the entire output of all four mines.

At both Mai Baridi and Kisengo, coltan is purchased in cash from diggers at agreed sites near the pits by CDMC acheteurs/négociants. The material is weighed and bagged there, with each bag given an iTSCi négociant tag by SAESSCAM, which also keeps a record of each transaction. CDMC négociants then sell their material to MMR at the Kisengo and Mai Baridi head offices, where it is re-bagged, and a representative of the Division des Mines gives each bag a new tag. The original tags are all kept and transported along with the material. This system significantly mitigates the risk of material from other mines entering these supply chain.

Other material could come from three other possible sources:

- nearby, untagged mine sites;
- mine sites in other provinces; and
- stockpiled Mai Baridi and Kisengo material from prior to the introduction of tagging.

I have seen no evidence that minerals from nearby, untagged mine sites, or from other provinces are making its way either to Mai Baridi or Kisengo, and I consider it unlikely that minerals are doing so. Mai Baridi and Kisengo’s remote and hard-to-access geographic locations would make it expensive and difficult to bring material from other provinces. But the key reason is that MMR offers less money for material than many rival tantalite buyers. This is in a market context where there continues to be international demand for untagged output from the DRC. While DRC export figures indicate that no tantalite is being exported, import figures from importing countries, by contrast, show that the trade in Congolese tantalite is continuing. Since no tagged Congolese tantalite has yet been exported, this implies that untagged Congolese tantalite is still being exported. For as long as this continues, diggers and négociants with untagged minerals from other provinces, or from North Katanga, will be unwilling to take the price cut required to sell material to MMR.
I have not yet received information from MMR about Kisengo and Mai Baridi’s stocks. One way for stockpiled material to enter the system would be for it to be given or sold to diggers, who would then sell it to CDMC acheteurs as per the usual practice. This way, the sales would be certified by SAESSCAM. If material was simply bagged and given unused negociant tags, and then sold to MMR, this would not show up in SAESSCAM’s records, and nor in the data it sends to ITRI. If material was bagged after this stage, and given both unused MMR and negociant tags, this would not show up in either SAESSCAM or Division des Mines records, or the data they send ITRI. In theory, anomalies like these would be picked up by ITRI, and I have seen no evidence to date that this has ever happened. The issue, however, deserves closer examination.

The quantity, dates and method of extraction of minerals from Kisengo and Mai Baridi are recorded by Saesscam and the Division des Mines. CDCM acheteur materials are consolidated at the main MMR offices at both Kisengo and Mai Baridi, and then partially processed and further consolidated at MMR’s depot in Kalemie. I saw evidence of the blending of material from Kisengo and Mai Baridi at Kalemie. The only upstream intermediary between MMR and the mine site is CDMC, which, as we have seen, is closely associated with MMR. Material from Kisengo and Mai Baridi travels to Kalemie by road and remains there, waiting for export. Material can either be exported across Lake Tanganyika to Kigoma and then to Dar es Salaam, or down to Pweto, and then to Lubumbashi, and from there by road either to Dar es Salaam or Durban.

MMR informed me that it has an annually renewable agreement with CDMC, and is in the process of incorporating due diligence requirements into this agreement. MMR needs to provide a timeline for this. MMR has clearly established a long-term relationship with CDMC, as recommended by the OECD and UN, and on the evidence of my interactions with CDMC, does appear to have communicated to the co-operative its expectations regarding responsible mineral supply chains. MMR further indicated that it assists CDMC with capacity building, including supplying inter alia laptop computers, printers, tools and vehicles. MMR concedes that it pays CDMC acheteurs in cash on site, arguing that it has no alternative because there are
no banking facilities there. CDMC has, however, opened bank accounts in both Kalemie and Lubumbashi, and I recommend that MMR move towards electronic payments with CDMC through the use of these facilities.

The final component of Step One of the OECD guidance is the establishment of a company level grievance mechanism to allow any interested party the opportunity to voice concerns about the mineral supply chain. MMR representatives said the company had not to date established such a mechanism. I recommend that the MMR due diligence establish a mechanism within an agreed period, and report on this to the downstream supply chain.

**Step Two** of the guidance is to identify and assess supply chain risk. For upstream companies like MMR, this means mapping the factual circumstances of its supply chains, including the context of its taking place in a high-risk area, clarifying chain of custody and the activities and relationships of its upstream suppliers, and identifying the locations and qualitative conditions of the extraction, trade, handling and export of the mineral. The OECD and UN have recommended that companies supplement the information on these matters gained from implementing Step One with on-the-ground information. MMR should then compare this information with the model supply chain policy to determine supply chain risks.

MMR’s supply chain from Mai Baridi and Kisengo is simpler and more transparent then for most tin and coltan traders, principally because it has exclusive purchasing rights to the mines’ output, which have been enforced, from the Katangan provincial ministry of mines. The company has applied for exploitation permits for the mines from the national mines cadastre in Kinshasa, but has not yet received a response. CDMC negociants, who are pre-financed by MMR, currently purchase nearly all of Mai Baridi and Kisengo’s output, and sell it exclusively to MMR. MMR estimates that 5-10% of output is stolen and sold to other traders, which if true gives MMR has effective control of the chain of custody of at least 90% of the material, and 100% of the tagged material, from the outset. Furthermore, as discussed above, the possibility of material from other mine sites being mixed into Mai Baridi or Kisengo prior to tagging is remote.
With chain of custody and upstream supplier issues thus largely resolved, this leaves as the principal source of risk the location of the mine and supply chain in a high-risk area. As noted earlier, Katanga is a peaceful province in the main, there is no armed conflict happening anywhere near Mai Baridi or Kisengo, nor on the transport routes to export, and illegal armed groups are not operating near the mine sites, nor along their transportation routes. There is, however, an FARDC presence in Northern Katanga, where there is in some parts an insurgency by the Rwandan FDLR. It is thus essential that MMR establishes a system that monitors and records the possible presence of the FARDC on or around its mine sites, and along transport routes the company uses either itself or via contracted assessors. As per the OECD and UN guidance, however, whatever the findings of external assessors, the assessment and resulting strategy adopted by the MMR is the MMR’s responsibility alone.

**Step Three** of the OECD guidance is to design and implement a strategy to respond to risks identified by an assessment. MMR representatives concede that the company has not designed a risk management strategy but said the company was in the process of doing so. MMR should provide a timeframe to deliver a strategy, deliver one within this timeframe, in consultation with CDMC and other affected stakeholders, and then implement it. An important aspect of the strategy will be managing the risks arising from the actual or potential presence of the FARDC at or around mine sites, and along transport routes.

Though MMR has no formal risk management strategy at present, the company is effectively managing its main ‘conflict mineral’ risks by establishing operations in North Katanga rather than directly conflict-affected provinces, and by establishing control of its supply chain.

**Step Four** of the OECD’s due diligence guidance concerns the conducting of an independent third-party audit on the due diligence practices of smelters and refiners. As a producer and exporter, this does not directly affect MMR, and the issue is only whether it would allow full access to auditors of company sites and documentation. MMR has said it would allow full access to due diligence auditors working for downstream companies, providing that OECD guidelines concerning confidentiality were respected.
**Step Five** of the guidance concerns public reporting of due diligence. MMR and its parent company Somika are privately owned companies that are not listed on any stock exchange. I recommend that MMR clarify what it will and will not publish regarding its due diligence, and provide a timeframe regarding this.

**Overall due diligence assessment:**
Due diligence is a process and not an event. MMR has begun the process, has made considerable progress in some areas, and should continue with this important work. Critically, the company has already mitigated its risk of providing direct or indirect support to conflict by siting its operations in an area without conflict or illegal armed groups, by implementing ITRI’s tagging scheme, and by establishing strong control over its mineral supply chain.

There are areas, such as Step Five, where more information is needed to make an evaluation. There are other areas where I have indicated that MMR has not thus far carried out, or sufficiently carried out the steps recommended in the OECD and UN’s due diligence guidance. The company should commit to carrying out these steps, and give a timeframe for this to happen. This is particularly important concerning MMR’s risk assessment and resulting risk management strategy, which should include measures to manage the risks posed by the FARDC’s presence in the North Katanga region.

**Two: CDMC’s due diligence**
CDMC includes both *negociants* (whom it prefers to call *acheteurs*) and diggers, who as buyers and sellers in the market have conflicting interests concerning the minerals price. In addition, CDMC’s *negociants* are pre-financed by MMR, which gives the latter considerable power and influence over the former. CDMC insists, however, that it is an autonomous organisation that intends progressively to lessen its dependence on MMR. However matters pan out, it remains the case that at Mai Baridi and Kisengo, CDMC is MMR’s supplier, and that therefore, according to the OECD and UN’s guidance, it too should be exercising due diligence.
Concerning **Step One** of the guidance, CDMC has not adopted a minerals supply chain policy and has not explicitly structured internal management systems to support supply chain due diligence. I recommend that the CDMC should do so. It is a positive sign, however, that CDMC president Serge Mulumba, along with PACT, has made efforts to communicate traceability and due diligence principles to CDMC members, including *negociants* and diggers.

ITRI tags are put on material purchased by CDMC *negociants*, and on the material they subsequently sell to MMR, and in this way the co-operative is assisting in the implementation of a traceability system.

CDMC has provided evidence of the taxes it pays to the state authorities, and this has also been supplied to MMR. Mulumba said CDMC also discloses to MMR the exact production statistics of its artisanal members.

I witnessed CDMC *negociants* in Mai Baridi and Kisengo making cash payments to CDMC artisanals for their minerals. As discussed earlier, CDMC also receives cash payments from MMR, but has opened bank accounts in Kalemie and Lubumbashi that could be used as an alternative.

The CDMC does seem to be making efforts to engage with its artisanal membership about traceability and due diligence issues, assisted by PACT. Diggers appear primarily concerned, however, about the price their minerals fetch. Concerning whistleblowing, the CDMC’s policy is that any of its artisanals or negociants who have concerns should report them to the CDMC representative at mine sites. This is a start, but I recommend that the CDMC take further steps to further facilitate whistleblowing and information sharing. In this context, it will also be important that the Katangan provincial tin and tantalite *comité de pilotage* set up multi-stakeholder *comités de suivi* at Kisengo and Mai Baridi, which would provide further opportunities for discussion and disclosure.

Concerning **Step Two** of the guidance, the CDMC said that it has assessed the context of the mine site being situated in a high-risk area, and that its on-the-ground assessment concurs with the consensus that there is no conflict, armed group or
FARDC presence at the Mai Baridi or Kisengo mines. The CDMC added that it considered there to be no risk of material from other provinces or from nearby, untagged mine sites entering the Mai Baridi or Kisengo supply chains prior to tagging. This broadly concurs with my assessment. I recommend, however, that the CDMC take steps to demonstrate that it is regularly assessing the risk of the FARDC’s presence at mine sites.

Concerning **Step Three** of the guidance, Mulumba said the CDMC was designing a risk management strategy but did not specify a timeframe for its completion. I recommend that CDMC gives a timeline for this, and adheres to it. CDMC *negociants* throughout the province have been instructed not to buy from armed groups, but it is not clear how this is being checked. This issue requires more work, even though the issue does not appear to be relevant at present in Mai Baridi or Kisengo. *Negociants* have also been equipped with mobile phones and have been told to report to Mulumba should important new information relating to due diligence, traceability and conflict minerals arise. But again, there appears to be no mechanism in place to check on the effectiveness of this process, and I recommend that one be designed and put in place.

Concerning **Step Four** of the guidance, CDMC said it was ready to co-operate with a due diligence audit commissioned by a smelter. Concerning **Step Five**, CDMC said it would publish information about its due diligence on the co-operative’s website ([www.cdmc-cooperative.com](http://www.cdmc-cooperative.com)), but did not give a timeframe. I recommend that it provide a timeframe and adhere to it.

**Overall due diligence assessment:**
The CDMC is a young, small, and under-resourced co-operative and cannot be expected to create elaborate structures with which to exercise due diligence. The co-operative needs to exercise due diligence nonetheless, and my interaction with its president shows that he understands the essence of what is required.

I have highlighted above the areas where more information is required, or further steps needed, to implement due diligence and I recommend that these steps are taken.
Since CDMC is present only at mine sites and not on transport routes, the co-operative’s main conflict risks are already mitigated by location, far from conflict, armed groups and – apparently - the FARDC. The ITRI tagging process has, in addition, significantly mitigated the risk of material from elsewhere entering into mineral supply chains that commence in Mai Baridi and Kisengo.

However, the CDMC still needs fully to assess its risk of providing direct or indirect support to illegal armed groups and the FARDC, and to devise and implement a strategy to mitigate this risk. With due regard to confidentiality, CDMC must also make public these efforts.

Three: The ‘conflict-free’ status of mineral output from Mai Baridi and Kisengo

As discussed in the Introduction, the relevant standard here is that contained in the Dodd Frank Act. For Mai Baridi and Kisengo’s tagged mineral output to be ‘conflict free’, the following conditions need to be satisfied:

- All the material tagged as originating from Mai Baridi and Kisengo must in fact originate from these mines;
- There must be no armed groups as defined by Dodd Frank directly or indirectly benefiting from the minerals of Mai Baridi or Kisengo, either at the mine sites, or on transport routes;
- Neither CDMC nor MMR can have links to armed groups, again, as defined by Dodd Frank.

My evaluation, as presented in earlier sections, suggests that the material tagged as originating from Mai Baridi and Kisengo does indeed originate from these mines. The risk of other material entering the supply chain prior to tagging is low.

My evaluation further indicates that no armed group benefits directly or indirectly from minerals at the Kisengo and Mai Baridi mine sites. There is no evidence to suggest that any illegal armed group benefits from the movement of minerals from Mai Baridi and Kisengo to Kalemie.
I have seen no evidence of the FARDC’s presence at either Kisengo or Mai Baridi, and no allegations to this effect have been made to me by civil society organisations. There is also no evidence, but there is a risk of the FARDC profiting from the transport of MMR material from Kisengo and Mai Baridi to Kalemie, and of equipment from the port to the two mines. The issue requires further attention, as per the recommendations provided earlier.

MMR and CDMC have disclosed their organisational structure, which offers no evidence of political and military affiliations, if any, of their company officers. I have seen no evidence of any direct or indirect links between CDMC, MMR and either armed groups, nor the FARDC, nor political parties, though CDMC president Serge Mulumbu has previously worked for a government ministry.

The overall finding therefore concerning the ‘conflict free’ status of Mai Baridi and Kisengo minerals is that the key conditions for this status have been met.

The main outstanding business is implementation of the recommendations given above concerning the FARDC. I also recommend that CDMC and MMR continue and improve their implementation of due diligence, again as per the recommendations given above, and that their progress be monitored and evaluated. It would be helpful for PACT to indicate how it can assist with this process.

It is important to stress that this evaluation gives a ‘snap shot’ of the situation at Mai Baridi and Kisengo. Looking forward, circumstances can and do change. North Katanga is a high-risk area, the situation requires regular monitoring and evaluation, and I recommend that AVX establish suitable mechanisms for doing so.

Another issue that requires further work is information and data sharing between MMR and ITRI. It is important that, with all due regard for confidentiality, MMR and ITRI’s data systems are able to ‘talk’ to each other, since otherwise, the prospect of anomalies and frauds being picked up tagging are weakened, to the detriment of the system’s credibility, and to efforts to remove conflict funding from the DRC mining sector.