

**INDIGENOUS PEOPLES, INTERNALLY DISPLACED PERSONS
AND SOCIAL VULNERABILITY: IMPLICATIONS FOR THE
MOTO GOLD PROJECT, DEMOCRATIC
REPUBLIC OF CONGO**



NOVEMBER 2009

(VERSION 1.0)

***DISPLACEMENT AND
RESETTLEMENT
ANALYSIS***

www.displacementanalysis.com

Acknowledgements

Graeme Rodgers (Displacement & Resettlement Analysis) prepared this report on the basis of a desk-study and a site visit undertaken from 24 September 2009 to 2 October 2009. Paul Kapelus (Synergy) and Emily Keeble (Synergy) provided important strategic input and editorial suggestions. Joseph Njuma (Synergy) arranged and participated in interviews on site. Patrice Tshiyekela Mukengeshayi (Moto Gold) provided translation and valuable guidance. Georgina Jones (Resettlement and Development Solutions), Garth Lappeman (Resettlement and Development Solutions), Colin Forbes (Moto Gold), Eric Mandey Amisa (Moto Gold), Alfred Lunga (Moto Gold), Nicholas Garrett (Resource Consulting Services) and Will Thompson (Moto Gold) generously shared ideas and data that were considered in the process of producing this report. Responsibility for any errors, omissions and mistakes, however, remains with the author.

The author has prepared this report with all reasonable skill, care and diligence within the terms of the contract with the client. Our conclusions are the results of the exercise of our professional judgment based in part upon materials and information provided by Moto Goldmines and others. We disclaim any responsibility and liability to the client and others in respect of any matters outside the scope of the work. This report is confidential to the client and we accept no responsibility of whatsoever nature to third parties to whom this report, or any part thereof, is made known. Any such party relies on the report at their own risk. No part of this document, including quotes from stakeholders, may be reproduced without the prior written approval of Synergy Global Consulting Ltd.

For all enquiries contact: graeme.rodgers@displacementanalysis.com

Cover Photograph: A Mbuti Woman, Dubele, 2009. © G. Rodgers.

Executive Summary

This report was commissioned by Synergy Global Consulting, on behalf of Moto Goldmines. It examines issues related to indigenous peoples, internal displacement and social vulnerability in the context of the Moto Gold Project (“the project”), located in northeast Democratic Republic of Congo (DRC)¹. The major social impacts associated with the project relate to the concentration of operations within an exclusion zone – an area of approximately 35 square kilometres, situated adjacent to the town of Durba. The establishment of this exclusion zone will require the resettlement of approximately 11 500 residents (or approximately 20 villages) and the removal of extensive small-scale mining activities². Furthermore, the rapid development of mining operations to an industrial scale will have significant broader social and economic impacts, which will extend well beyond the exclusion zone. Moto Gold is currently investigating the nature and extent of these impacts. To date, the studies that have examined socio-economic issue related to the project, and which were considered in the production of this report, include:

- Synergy, 2009a. *Moto Gold Project: Community and Social Development Optimisation Report*.
- Resettlement and Development Solutions (RADS), 2009. *Resettlement Policy Framework: Moto Gold Project*.
- Synergy 2009b. *Moto Gold Project: Human Rights Assessment*.
- Resource Consulting Services (RCS), 2009. *Regional Economic Assessment for Moto (Kibali) Goldmines*.
- Pact, 2009. *Update on Orpillage on Concession 38: Options for developing an ASM Transition Plan*.
- Synergy 2009c. *A Non-Judicial, Rights-Based Grievance Mechanism for Kibali*.

The rationale for this study comes out of the social impact assessment and social development optimisation study (Synergy 2009a), which identified internally displaced persons and indigenous peoples as specific categories of vulnerable persons that required further analysis. Furthermore, in a context that has been affected by war and underdevelopment for decades, additional social vulnerability risks have been identified.

Methods

The report was developed primarily from a desk-study of relevant background data, literature and international standards related to indigenous peoples, internal displacement and social vulnerability. This was supplemented by limited empirical information gathered on a site visit, conducted from 24 September 2009 to 2 October 2009. The list of persons consulted during the site visit is attached as Appendix 1. Unless informants objected, interviews were recorded digitally. Notes were also taken during all interviews. Interview data were analysed fully and interpreted and presented in relation to relevant information from secondary sources. As this primary qualitative data were derived from a small sample, over a short time period, it could not always be validated or cross-checked. It should therefore be regarded as illustrative of specific perspectives and experiences, and not necessarily as representative of broader processes, trends or opinions.

¹ For an overview of the project see:

http://www.motogoldmines.com/project_information.12.html

² RADS (2009:9). Note this figure is preliminary and is subject to change, with the figure most likely increasing to around 2400 households or 14500 people.

Standards of Assessment

With regard to indigenous peoples and internal displacement, the study was conducted with reference to established international standards and principles, which are also sometimes reflected and developed further at regional and national levels, as well as through industry-led initiatives. With regard to indigenous peoples and internally displaced persons, the main standards that were drawn on in this report are listed in the table below:

Table 1: Summary of Main Standards Relating to Indigenous Peoples and Internal Displacement

	Indigenous Peoples	Internal Displacement
International	1969, ILO Convention on Indigenous and Tribal Peoples in Independent Countries	1998, UN Guiding Principles on Internal Displacement
	2007, UN Declaration on the Rights of Indigenous Peoples	
Regional	2002, African Commission on Human and Peoples Rights, Working Group on the Rights of Indigenous Populations/Communities	2006, Great Lakes Protocol on the Protection and Assistance of Internally Displaced Persons
		2009, African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa
National	N/A	N/A
Industry-standards and Initiatives	2006, IFC Performance Standard 7: Indigenous Peoples	N/A
	2008, ICMM Position statement on Indigenous Peoples	

With regard to standards related to general social vulnerability risks, the report draws on a range of lessons and best practices related to the identification of social vulnerability in specific contexts.

Findings: Major Issues, Challenges and Risks

The major risk-areas related to social vulnerability, which are developed in the body of the report are summarised in the table below:

Table 2: Summary of Major Issues and Risk-Levels Related to Social Vulnerability in the Moto Gold Project

MAJOR ISSUES	RISK LEVEL³	
Indirect impacts of the project on forest resources that Mbuti (Pygmy) communities depend on.	LOW	MED
Widespread discrimination against the Mbuti.	MEDIUM	
The marginalisation of “autochthon” groups from mining	MED	HIGH
Internally displaced persons in the exclusion zone.	MEDIUM	
The internal displacement of artisanal and small-scale miners.	HIGH	
Internal displacement caused by resettlement.	LOW	
Other vulnerable groups affected by the project.	MEDIUM	

Indirect Impacts of the Project on Forest Resources:

This project development is largely contained within an area that has been impacted by mining over many decades. At this stage it does not appear to directly threaten the forest areas that Mbuti (Pygmies) depend on for protection and the maintenance of their livelihoods. But as illustrated in more detail below, the Mbuti are not limited to the forests areas and their livelihoods are structured around activities and forms of exchange that rely on movement between forests and markets and commercial centres such as Watsa and Durba. Increased development will place additional pressure on the forest resources that the Mbuti depend on.

This impact is indirect and not limited to the project. It therefore represents a relatively low risk to the project. The project can mitigate this risk significantly by promoting and investing in the protection of forest reserves for the explicit purpose of protecting the lifestyles and livelihoods of the Mbuti

Widespread Discrimination Against the Mbuti:

As a historically marginalised minority group, the Mbuti continue to be subjected to serious forms of discrimination, especially with regard to access to land (title and security of tenure), access to health services, education and employment opportunities. In order to avoid unwittingly perpetuating such forms of discrimination, the project needs to take active measures to ensure that Mbuti have reasonable access and equal opportunity to project benefits, such as employment opportunities and community-based development initiatives. Any project-sponsored initiatives that are targeted specifically at addressing the historical forms of deprivation suffered by the Mbuti should be implemented on the basis of full consultation and principles of sustainable development. The risks posed to the project by widespread discrimination against the Mbuti are limited to some extent by the fact that there are very few points of encounter between the project and the Mbuti.

³ This “risk level” refers to risks posed *to the project*, rather than to risks to the categories of vulnerable persons that they refer to. These risk levels are presented as *relational*, rather than *absolute*. See the detailed discussion below, in the main body of the report.

The Marginalisation of Autochthon Groups from Mining:

“Autochthons” refer to those ethnic groups that were considered as *local* to the project area. Although these groups have been exposed to mining over many decades, they have largely failed to access mining-related opportunities to any significant degree. Members of other ethnic groups have moved to the area and dominated the local mining sector. The historical marginalisation of autochthons over many years has therefore contributed towards their social and economic vulnerability. Their livelihoods are largely land-based and their control over land and access to it derives from their traditional authority as autochthons. This leaves autochthons particularly vulnerable, to the impacts of resettlement that relate to their cultural status and cannot be managed easily. By promoting access to mine-related opportunities for autochthons and respecting their claims as traditional authorities over land, will reduce the risks associated with this form of social vulnerability.

Internally Displaced Persons in the Exclusion Zone:

Recent attacks by the Lord’s Resistance Army against civilians the region to the north of the project area has led to the displacement of approximately 140 000⁴. Some of these internally displaced persons have settled within vicinity of the project, including within the project exclusion zone. There are no settlements or camps for the internally displaced and the have settled amongst the local residents. The internally displaced are highly vulnerable and they have very little access to humanitarian assistance. Their predicament makes them more susceptible to local exploitation and impoverishment. Whilst many appear to have returned, as the security situation has improved, a minority have remained settled within the project area.

Internally displaced persons settled in the exclusion zone present significant challenges to the project. The report suggest that these challenges can be met by recognising the internally displaced as full and legitimate project beneficiaries with regard to all project-related activities (including resettlement) on the basis of the principle of non-discrimination. Furthermore, the internally displaced should be recognised as a “vulnerable group” and monitored carefully over the course of the resettlement process and provided with additional assistance where needed. The risks posed to the project by the presence of internally displaced persons are reduced significantly by the fact that there appear to be relatively few in the area. This risk may change in future, if the security situation deteriorates and the area around the mine attracts significantly greater numbers of internally displaced persons.

The Internal Displacement of Artisanal and Small-Scale Miners:

As already noted in other project documents (Synergy 2009a; RADS 2009; Pact 2009; RCS 2009), the removal of artisanal and small-scale miners from the exclusion zone represents one of the major social and developmental challenges associated with the Moto Gold Project. In considering these challenges, issues have been raised regarding:

- The extent to which OKIMO can manage the situation, given that the ASM activities fall under their responsibility;
- The degree of responsibility of the project towards the ASM community, give that much of the ASM is considered as “illegal”;
- The extent to which ASM activities fall within the scope of the International Finance Corporation’s performance standards for resettlement (IFC 2006a) and the extent to

⁴ As of February 2009. See HRW (2009:5).

which their removal would be considered as “economic displacement” in terms of these standards;

Project responses to these questions and dilemmas still need to be finalised. In the absence of firm project commitments and plans, the ASM community should be regarded as at risk of becoming internally displaced as a direct result of the implementation of the project. With reference to international standards regarding protection from of internal displacement, this section makes the argument that this risk can be mitigated most effectively by resettling the ASM activities within the resettlement policy framework.

Internal Displacement Caused by Resettlement:

Resettlement planning focuses on the re-establishment of livelihoods and the avoidance of economic impoverishment. Resettlement is, however, a complex process and always runs the risk of failure. Shortcomings in resettlement do not only enhance the risks of impoverishment but may also lead to rights-based failures that lead affected populations to becoming internally based. Adherence to a resettlement framework based on internationally-recognised best practices and a strong company commitment to core principles around resettlement design, consultation and implementation will maintain this risk at a relatively low level.

Other vulnerable groups affected by the project:

The final section of the report briefly identifies other categories of persons that can be considered as vulnerable. It suggests that social vulnerability should be determined in relation to context-specific criteria, rather than in terms of assumptions about fixed categories.

Table of Contents

Executive Summary	iii
Table of Contents	viii
List of Figures	x
List of Tables.....	x
List of Acronyms	x
1 INTRODUCTION.....	1
1.1 METHODS.....	1
1.2 STANDARDS OF ASSESSMENT	2
1.3 STRUCTURE OF THE REPORT	2
2 INDIGENOUS PEOPLES.....	4
2.1 STANDARDS, RESPONSIBILITIES AND BEST PRACTICE	4
2.1.1 <i>International Instruments and Developing Standards</i>	4
2.1.2 <i>Regional Responses to Indigenous Peoples</i>	6
2.1.3 <i>Domestic Protection of Indigenous Groups in the DRC</i>	7
2.1.4 <i>Mining-Related Standards and Initiatives</i>	7
2.2 THE SITUATION OF THE MBUTI (PYGMIES).....	11
2.2.1 <i>Entitlement to Land</i>	14
2.2.2 <i>Entitlement to Forest Resources</i>	15
2.2.3 <i>Access to Employment</i>	16
2.2.4 <i>Access to Health Care</i>	17
2.2.5 <i>Access to Education</i>	18
2.3 “AUTOCHTHON” GROUPS WITHIN THE PROJECT AREA	18
2.3.1 <i>Background</i>	19
2.3.2 <i>Access to Employment</i>	20
2.3.3 <i>Land-Based Livelihoods</i>	21
2.3.4 <i>The Impacts of Colonial Resettlement</i>	22
2.3.5 <i>Access to Mine Opportunities</i>	23
2.3.6 <i>Relations between Autochthons and Non-Autochthons</i>	23
2.4 KEY RISKS AND CHALLENGES RELATED TO INDIGENOUS PEOPLES.....	23
2.4.1 <i>The Historical Legacy of Mining</i>	24
2.4.2 <i>Protection of Forest Resources</i>	25
2.4.3 <i>The Status of Autochthon Groups</i>	25
2.4.4 <i>Ongoing Discrimination Against the Mbuti</i>	25
2.4.5 <i>Limited Access to Mine Employment Opportunities</i>	26
2.5 RECOMMENDATIONS: PROJECT RESPONSES TO MBUTI AND AUTOCHTHON GROUPS.....	26
2.5.1 <i>Implementing Principles of Non-Discrimination</i>	26
2.5.2 <i>Investing in the Preservation of Forest Reserves</i>	26
2.5.3 <i>Promoting Employment Opportunities</i>	27
3 INTERNAL DISPLACEMENT	28
3.1 STANDARDS, RESPONSIBILITIES AND BEST PRACTICE	28
3.1.1 <i>International Standards on the Protection of Internally Displaced Persons</i>	28
3.1.2 <i>Regional and Domestic Responses to Internal Displacement</i>	29
3.1.3 <i>Internal Displacement and the Mining Industry</i>	30
3.2 INTERNAL DISPLACEMENT AND THE MOTO GOLD PROJECT	30
3.2.1 <i>Movement and Demographics</i>	31
3.2.2 <i>Humanitarian Assistance for Internally Displaced Persons</i>	31
3.2.3 <i>Access to Land</i>	34
3.2.4 <i>Access to Employment</i>	34
3.2.5 <i>Access to Health</i>	35

3.2.6	<i>Access to Education</i>	35
3.2.7	<i>Possibilities of Return</i>	35
3.2.8	<i>Resettlement-Related Internal Displacement</i>	36
3.3	PROJECT RISKS AND CHALLENGES RELATED TO INTERNAL DISPLACEMENT	37
3.3.1	<i>Lack of Project Recognition of Internally Displaced Persons</i>	37
3.3.2	<i>Internal Displacement of Artisanal Miners</i>	37
3.3.3	<i>Mass Arrival of Internally Displaced Persons into the Project Area</i>	39
3.3.4	<i>Resettlement as a Cause of Internal Displacement</i>	40
3.4	RECOMMENDATIONS: PROJECT RESPONSES TO INTERNAL DISPLACEMENT.....	40
3.4.1	<i>Protection of Internally Displaced Persons affected by Resettlement</i>	40
3.4.2	<i>Support for Humanitarian Work for Internally Displaced Persons</i>	40
3.4.3	<i>Addressing the Risks of Displacing Artisanal Miners</i>	41
3.4.4	<i>Strengthening of the Rights-Based Dimension of the Resettlement Programme</i>	41
4	GENERAL SOCIAL VULNERABILITY RISKS AND CATEGORIES	43
4.1	IDENTIFYING AND RESPONDING TO SOCIAL VULNERABILITY	43
4.1.1	<i>Social Vulnerability on the Basis of Inherent Human Qualities</i>	43
4.1.2	<i>Social Vulnerability on the Basis of Membership of a Social Category or Group</i>	44
4.1.3	<i>Social Vulnerability on the Basis of Status and Condition</i>	44
5	REFERENCES	45
6	APPENDICES	48
	Appendix 1: List of Persons Contacted on Site Visit.....	49

List of Figures

Figure 1: Smoked meat from a primate killed by a Mbuti hunter and sold to a “bush meat” seller (photo: G. Rodgers, DRA).	15
Figure 2: A ration card issued by Premier Urgence (names of beneficiaries have been disguised) (Photo: G. Rodgers, DRA)	33
Figure 3: Moto Gold, with the assistance of Caritas, distributing food and medicine to internally displaced persons (photo: Will Thompson, Moto Gold).	34
Figure 4: An former artisanal miner who was accused of house robbery being dragged to the police in Durba by local youth after being arrested, beaten and bound (Photo: G. Rodgers, DRA).	39

List of Tables

Table 1: Summary of Main Standards Relating to Indigenous Peoples and Internal Displacement.....	iv
Table 2: Summary of Major Issues and Risk-Levels Related to Social Vulnerability in the Moto Gold Project.....	v
Table 3: Summary of Main Standards Relating to Indigenous Peoples and Internal Displacement.....	2

List of Acronyms

ASM	Artisanal and Small Scale Mining/Miners
CERD	Committee on the Elimination of Racial Discrimination
DRC	Democratic republic of Congo
HRC	Human Rights Council
ICMM	International Council on Mining and Metals
IDMC	Internal Displacement Monitoring Centre
IDP	Internally Displaced Person
IFC	International Finance Corporation
NGO	Non-Government Organisation
OKIMO	<i>Offices des Mines d’Or de Kilo-Moto</i>
RADS	Resettlement and Development Solutions
UN	United Nations
UNICEF	United Nations Children’s Fund

1 Introduction

This report was commissioned by Synergy Global Consulting, on behalf of Moto Goldmines. It examines issues related to indigenous peoples, internal displacement and social vulnerability in the context of the Moto Gold Project (“the project”), located in northeast Democratic Republic of Congo (DRC)⁵. The major social impacts associated with the project relate to the development of operations within an exclusion zone – an area of approximately 35 square kilometres, situated adjacent to the town of Durba. The establishment of this exclusion zone will require the resettlement of approximately 11 500 residents (or approximately 20 villages) and the removal of extensive small-scale mining activities⁶. Furthermore, the rapid expansion of mining operations to an industrial scale will have significant broader social and economic impacts on the local social environment, which will extend beyond the exclusion zone.

Moto Gold is currently investigating the nature and extent of these impacts. Studies produced to date, which were considered in the production of this report, include:

- Synergy, 2009a. *Moto Gold Project: Community and Social Development Optimisation Report*.
- Resettlement and Development Solutions (RADS), 2009. *Resettlement Policy Framework: Moto Gold Project*.
- Synergy 2009b. *Moto Gold Project: Human Rights Assessment*.
- Resource Consulting Services (RCS), 2009. *Regional Economic Assessment for Moto (Kibali) Goldmines*.
- Pact, 2009. *Update on Orpaillage on Concession 38: Options for developing an ASM Transition Plan*.
- Synergy 2009c. *A Non-Judicial, Rights-Based Grievance Mechanism for Kibali*.

The social impact assessment and social development optimisation study undertaken by Synergy (2009a) identified internally displaced persons and indigenous peoples as specific categories of vulnerable persons that required further analysis. Furthermore, in a context that has been affected by war and underdevelopment for decades, additional concerns related to social vulnerability have been identified. This reports contributes towards the identification and management of these issues.

1.1 Methods

The report was developed primarily from a desk-study of relevant background data, literature and international standards related to indigenous peoples, internal displacement and social vulnerability. This was supplemented with limited empirical information gathered on a site visit, conducted from 24 September 2009 to 2 October 2009. The list of persons consulted during the site visit is attached as Appendix 1. Unless informants objected, interviews were recorded digitally. Notes were also taken during all interviews. Interview data were analysed fully and interpreted and presented in relation to relevant information from secondary sources. As this primary data were derived from a small sample, over a short period of time it could not always be validated or cross-checked. It should therefore be regarded as

⁵ For an overview of the project see:

http://www.motogoldmines.com/project_information.12.html

⁶ RADS (2009:9).

illustrative of specific perspectives and experiences, and not necessarily as representative of broader processes, trends or opinions.

1.2 Standards of Assessment

With regard to indigenous peoples and internal displacement, the study was conducted with reference to established international standards, which are also sometimes reflected and developed further at regional and national levels, as well as through industry-led initiatives. With regard to indigenous peoples and internally displaced persons, the main standards that were drawn on in this report are listed in the table below:

Table 3: Summary of Main Standards Relating to Indigenous Peoples and Internal Displacement

	Indigenous Peoples	Internal Displacement
International	1969, ILO Convention on Indigenous and Tribal Peoples in Independent Countries	1998, UN Guiding Principles on Internal Displacement
	2007, UN Declaration on the Rights of Indigenous Peoples	
Regional	2002, African Commission on Human and Peoples Rights, Working Group on the Rights of Indigenous Populations/Communities	2006, Great Lakes Protocol on the Protection and Assistance of Internally Displaced Persons
		2009, African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa
National	N/A	N/A
Industry-standards and Initiatives	2006, IFC Performance Standard 7: Indigenous Peoples	N/A
	2008, ICMM Position statement on Indigenous Peoples	

With regard to standards related to general social vulnerability risks, the report draws on a range of lessons and best practices related to the identification of social vulnerability in specific contexts.

1.3 Structure of the Report

Section 2, below, considers the global indigenous peoples framework and considers its applicability in the project area. It identifies the Mbuti (Pygmies) as a group that can clearly be considered in terms of this framework. It also identifies “autochthon” groups living within the project area (such as the Bari, for example) as a vulnerable group with a potential claim on indigenous peoples status.

Section 3 examines how internal displacement contributes towards social vulnerability risks. This section looks at persons that have been internally displaced as a result of violence and armed conflict in the region, and considers their predicament in relation to the project. It also includes a brief discussion on the internal displacement risks associated with resettlement. Drawing on international and regional guidelines related to internal displacement, this section highlights artisanal miners in the exclusion zone as a specific group at risk of becoming internally displaced as a direct consequence of the implementation of the project.

Section 4 considers how the project may identify social vulnerability more generally in relation to the social impacts of the project. This section provides suggestions on institutionalising an awareness of social vulnerability risks in all aspects of social risk management.

2 Indigenous Peoples

The term “indigenous peoples” is generally used with reference to those social groups that possess distinct cultural identities, social structures and modes of livelihood. Such groups are also frequently associated with specific territories and are often dependent on ecologically unique or fragile natural environments. In many cases, indigenous groups are the product of historical processes of marginalisation from the dominant state-based societies that they exist within. Many indigenous communities across the world have also been systematically persecuted and continue to suffer the socio-economic effects of such persecution.

This section considers the question of indigenous peoples in the context of the Moto Gold Project. It situates this question within a developing global framework that seeks to advance the rights of indigenous peoples. Focusing on the international, regional and national levels respectively, it draws out a range of key principles and standards that relate to the impact of the project on indigenous peoples. It also considers industry-led initiatives in this regard, which are developed with reference to international standards. It then goes on to describe the situation of indigenous peoples in the context of the project, highlighting the Mbuti (Pygmies) and a range of “autochthon”⁷ groups as particularly relevant. Following this description, the section considers the risks and challenges posed to the project by issues related to indigenous peoples. The section concludes by making recommendations to Moto Gold, on developing a response to the indigenous peoples that are affected by the project.

2.1 Standards, Responsibilities and Best Practice

Over recent decades, there has been a growing international effort to recognise the plight of indigenous peoples and to respond to the endemic forms of social marginalisation, deprivation and discrimination that many have been subjected to. One of the enduring challenges to this movement relates to the problem of defining “indigenous peoples” as a clearly delineated group with shared characteristics and interests. Across the world, people regarded as “indigenous” are referred to by many different designations (such as “aboriginals”, “tribal peoples”, “first-nation peoples” etc). They also live under highly diverse social and economic conditions and claims on the basis of being indigenous vary considerably from one group to the next. This has made it difficult to identify indigenous people through a single all-inclusive and precise definition that enjoys universal acceptance⁸. As illustrated below, this lack of definitional consensus is relevant to the project, because it enables a number of groups to potentially engage with the project on the basis of a claimed status as “indigenous peoples”.

2.1.1 International Instruments and Developing Standards

The struggle for the rights of indigenous peoples began to gain momentum at an international level from the 1950s onwards⁹. Finally, in 1989, the International Labour Organisation (ILO) adopted a landmark *Convention on Indigenous and Tribal Peoples in Independent Countries*. This convention described indigenous and tribal peoples as:

⁷ In this context, “autochthon” was the word used to describe ethnic groups with strong claim at being regarded as *local* (i.e. they were not regarded as outsiders or migrants from another area).

⁸ This has led to considerable debate amongst academics and advocates, the value and consequences of defining people as “indigenous” (Kuper 2005; Kenrick & Lewis 2004).

⁹ See Chernela 2003, for a detailed chronology of this development.

“...[p]eoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions”¹⁰.

The ILO Convention represented an important milestone in the recognition of indigenous peoples as a specific category of international interest. Even though it was not considered as binding under international law, the Convention made a significant contribution towards identifying and codifying the rights and entitlements of indigenous peoples.

Such recognition was bolstered in 2000, when the United Nations established a *Permanent Forum on Indigenous Peoples Issues*. One of the major objectives of this forum has been to generate statistical profiles on the world’s indigenous populations, as a means of assessing their relative well being in relation to other groups (Taylor 2008). In this regard the forum has been mandated to examine six areas identified as particularly relevant to the well-being of indigenous peoples. These include:

1. Economic and Social Development;
2. Environment;
3. Health;
4. Education;
5. Culture
6. Human Rights

The Forum comprises a permanent secretariat and meets annually to advance discussions related to these mandated areas.

More recently, in September 2007, the United Nations adopted a *Declaration on the Rights of Indigenous Peoples*¹¹. This declaration did not seek to define indigenous peoples, apart from recognising that:

“... the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration,”¹²

This declaration (UN 2007) addresses a broad range of issues related to indigenous peoples, but the following principles are of specific relevance to the Moto Gold Project¹³:

- The right of indigenous peoples to the full enjoyment of all human rights (Article 1) and all rights under domestic and international law (Article 17);

¹⁰ ILO Convention 169.

¹¹ The DRC government was one of the twenty seven governments that sponsored the resolution that led to the adoption of the Declaration.

¹² UN (2007: preamble).

¹³ United Nations declarations are specifically directed at guiding state behaviour, even though they are not legally binding. See the section on “soft law” in the Human Rights Assessment (Synergy 2009b) for more details.

- The right to freedom from discrimination based on their indigenous origins (Article 2)
- The right to state protection from “any action which has the aim of dispossessing them of their lands territories and resources” (Article 8 [2b]) and Article 10 stipulates the right not to be forcibly removed from their lands or relocated without their “free, prior and informed consent”. The right to land and the development of land is reinforced by Articles 26 (1 & 2), 29 (1) and 32 (1). Article 11 (2) outlines the redress for property that has been appropriated illegally and without the free, prior and informed consent of indigenous owners;
- Article 14 reaffirms the right of indigenous peoples to an education and Articles 24 (2) and 29 (3) reaffirm the right to health for indigenous peoples;
- Article 18 affirms the obligation on states to consult and cooperate with indigenous peoples in order to obtain their free, prior and informed consent on all matters on all administrative and legislative matters that affect them;
- Article 19 emphasises the right of indigenous peoples to participate in on the basis of “free, prior and informed consent”;
- Article 20 (1) and (23) acknowledges a right to development and Article 21 (1 &2) notes a right to improvement of economic and social conditions.

It is important to bear in mind that this international declaration has not reached the point of being legally binding yet. However, it still incorporates many established and binding principles of international law. Some of the non-binding aspects point to evolving legal standards whilst others may be regarded as aspirational. Despite having no international legal force, the declaration and the other international processes that have preceded it have drawn significant international public attention to the plight of the world’s indigenous people. It has strengthened the position of organisations that advocate on behalf of indigenous peoples and promoted greater awareness of rights at the local level. Finally, it is also worth noting that state authorities have the primary duty to protect international principles. Mining companies and other private companies—along with other private interest groups—have a responsibility to respect the principles and to refrain from violating them¹⁴.

The development of the indigenous peoples movement at an international level raises important questions for project such as the Moto Gold Project, operating at the local level. Some of these questions relate to the extent to which indigenous groups can veto state power (through the application of the notion of “free, prior and informed consent”) as well as the ability of groups other than states to have the capacity to conclude treaties (see Tahvanainen 2005, Van Genugten and Perez-Bustillo. 2004; Al Faruque and Begum 2004, Pitty 2001, Richardson 2001 for example).

2.1.2 Regional Responses to Indigenous Peoples

Within the regional context of Africa, the concept of “indigenous people” has not been taken up as enthusiastically as at the international level. Some post-colonial African states exhibited reluctance to recognise minority elements of their populations as more “indigenous” than the majority. This reluctance derives from the argument that all native (i.e. non-settler) populations in Africa are essentially “indigenous” and suffered under colonial domination. This view suggests that isolated minority groups are no more “indigenous” than other groups (See Render ND: 18). Over time, however, concern over indigenous peoples

¹⁴ See Moto Gold’s Human Rights Impact Assessment (Synergy 2009b) for a more detailed discussion on scope of the responsibilities of private corporations in protecting human rights.

has acquired greater traction in Africa. In response to pressure from indigenous peoples groups in Africa, the *African Commission on Human and Peoples Rights* (ACHPR) established a *Working Group on the Rights of Indigenous Populations/Communities*. In 2003, the report of the Working Group was presented and adopted by the Commission (ACHPR 2005). In line with international developments, this report identifies the problems of indigenous peoples explicitly in terms of a failure to realise their human rights.

2.1.3 Domestic Protection of Indigenous Groups in the DRC

This scope of this report does not extend to a comprehensive review of all domestic legislation in the DRC that affects indigenous groups. However, there appears to be significant evidence to suggest that there have been, in effect, serious limitations on the ability of the DRC government to protect the interests of indigenous peoples.

A recent (2007) country review of the DRC by the United Nation *Committee on the Elimination of Racial Discrimination* (CERD) suggests that there are still very weak forms of protection of the rights of indigenous peoples within the DRC. The committee highlight the failure to protect the land rights of Pygmies and the natural resources on which they rely (para. 18). Specifically, the review noted that:

“Pygmies are subjected to marginalization and discrimination with regard to the enjoyment of their economic social and cultural rights, in particular their access to education, health and the labour market”¹⁵.

The Committee noted further that there was almost no domestic case law on discrimination, due to a lack of complaints. The committee concluded that this resulted from an absence of relevant legislation, lack of public awareness of available remedies, or reluctance or unwillingness on the part of authorities to prosecute¹⁶.

This review suggests that despite making strong commitment to human rights, the DRC has limited capacity to realise these commitments, with regard to indigenous peoples. In the same 2007 review, CERD and the Human Rights Council (HRC) have pushed for the resolution of property rights for indigenous peoples in DRC. In particular, the commission argued for (see Musafiri 2008:16):

- Clear delimitation of the lands and territories of indigenous peoples;
- Assurance that territories are of sufficient size to meet the needs of indigenous peoples
- The granting of titles to land owned by indigenous groups.

2.1.4 Mining-Related Standards and Initiatives

With regard to the specific obligations that mining companies may have towards indigenous peoples that are impacted by their operations, two major sources of guidance include:

1. The International Finance Corporation’s *Performance Standard 7: Indigenous Peoples*
2. The International Council on Mining and Metals’ *Position Statement on Indigenous Peoples*

¹⁵ CERD, 2007. “Concluding Observations of the Committee on the Elimination of Racial Discrimination: Democratic Republic of Congo”, para. 19.

¹⁶ CERD 2007 Para. 20.

Performance Standard 7 of the International Finance Corporation (IFC 2006) outlines requirements that all IFC clients are expected to meet with regard to the impacts of their projects on indigenous peoples. Like other IFC Performance Standards, these are often interpreted as reflecting the “industry standard” for managing the environmental and social impacts of projects, even in instances where projects are not financed by the IFC. This performance standard therefore informs a broad but practical framework for private companies to manage the impacts of their operation on indigenous peoples issues through the development of appropriate interventions and responses.

It is important to note that—like other recent contemporary approaches to indigenous peoples—Performance Standard 7 does not seek to define the concept of “indigenous peoples” too rigidly. This standard recognises explicitly that there is no universally accepted definition of indigenous peoples and acknowledges that it is problematic to try to identify one. It also notes that groups that may be regarded as “indigenous people” may be referred to by different terms in different parts of the world and applies the term in a “generic sense” to refer to distinct groups that possess the following broad characteristics to “varying degrees” (IFC 2006: para. 5):

1. Self identification as a distinct cultural group;
2. Collective attachment to specific territories and environments in the project area;
3. Social, economic, cultural and political institutions that exist apart from the dominant society;
4. A distinct language.

The IFC’s Performance Standard 7 also emphasises the following key performance areas that companies are expected to focus on and manage appropriately:

- Avoidance of Impacts: IFC clients are required to avoid adverse project impacts on indigenous peoples through the implementation of a rigorous process of environmental assessment of all communities of indigenous peoples affected by the project. Where avoidance of impacts is not possible, clients should seek to “minimize, mitigate or compensate for these impacts in a culturally appropriate manner” (para 8);
- Participation, Consultation and Information Disclosure: In the course of developing their projects IFC clients are required to establish a suitable process of culturally appropriate and informed participation for indigenous peoples, based on the “free, prior and informed consultation” (para 9). This should involve indigenous institutions, pay culturally appropriate attention to factors relating to gender and age; develop and implement according to time frames that are sensitive to indigenous peoples collective decision-making processes. It should also enable free expression of indigenous viewpoints without external manipulation, interference, coercion or intimidation (para. 9);
- Community Development: IFC clients should actively seek out opportunities to enhance “culturally appropriate development benefits” (para. 10). Furthermore, such benefits should be “commensurate with the degree of project impacts”, aimed at improving their standard of living and livelihoods, culturally appropriate and “the long term sustainability of the natural resource on which they depend” (para. 10).
- Avoidance of Resettlement: The involuntary resettlement of indigenous peoples should be avoided wherever possible and resettlement should be consistent with the IFC’s Performance Standard 5 on Involuntary Resettlement (para. 14);

In contrast to the United Nations declaration and many preceding statements on the rights of indigenous peoples, the IFC requires free, prior and informed *consultation* with indigenous peoples, rather than *consent*. The IFC Guidance Note of Performance Standard 7 does not provide any explicit definition of “free, prior and informed participation” (beyond those mentioned above) nor does it offer a view on the extent to which “consultation” equates to “consent”. Some advocacy groups have expressed concern over what they interpret as the World Bank Group (of which the IFC is a member) as trying to dilute or undermine an important emerging principle in international law. The World Bank has, however, justified their position by pointing to a lack of global consensus over the meaning of the concept of “free, prior and informed consent”, particularly regarding the suggestion that it implies a limitation on state sovereignty and a veto on development. A legal opinion from the the World Bank general counsel in 2004 highlighted the following:

“In sum, the requirement of free, prior and informed consultation proposed by [World] Bank Group Management will not require the prior informed consent of any group. However, such consultation would require the demonstration of ‘broad community support’ as a project pre-requisite.”¹⁷

The notion of “broad community support” is somewhat vague, but suggests that “consultation” implies a level of participation that enables indigenous peoples to play a meaningful role in project decision-making. In the context of the ICMM, this issue is the subject of ongoing development, through debate and dialogue between various interest groups (See IUCN/ICMM 2008, Mehta and Stankovitch 2000 for example).

Beyond the IFC and in response to growing international interest and pressure, the mining industry has begun to develop industry-specific guidance on managing relations between mining and indigenous peoples. For example, the ICMM commissioned a comprehensive review of the relationship between mining and indigenous peoples (Render, ND). After engaging with a broad range of perspectives and stakeholders, this review identified the following issues that commonly arose in situations where mining companies impacted on indigenous communities:

- Community Development: The role of mines in promoting community development ranked as the primary concern amongst all interest groups. Misunderstanding or a lack of consensus over what constitutes development appeared as a primary concern for stakeholders (Render ND: 34).
- Trust: Mining is often linked with colonisation and prior government practices that worked against the interests of indigenous peoples. Stakeholders expressed concerns over health and social issues related to older mining operations. There were also strong perceptions of links between mining and impacts of other practices, such as hydropower and logging;
- Governance: Governments were represented as being at the core of many of the problems raised by indigenous interest groups. The unwillingness or inability of governments to uphold the law and inconsistencies with regard to recognising indigenous entitlements were highlighted;

¹⁷ “Legal Note on Free Prior and Informed Consultation, Senior Vice President and General Counsel, World Bank General Counsel, IFC, MIGA, August 2, 2004”, quoted in Tamang 2005: 11).

- Land Rights: Clarity on land rights was at the top of the list of importance for stakeholders in both the mining industry and amongst representatives of indigenous peoples. The mining industry was concerned over disputed land rights and a lack of clarity over who they should be negotiating with in order to access land;
- Industry Recognition: The reluctance of certain actors and constituents within the mining industry to take the issue of indigenous peoples seriously also emerged as an issue.
- Community Engagement: Mining initiatives around community engagement (with both indigenous and non indigenous communities) and the establishment of partnerships arrangements for benefit sharing etc) – based on respect and understanding; devising effective research and impact assessment processes; communication and information; managing expectations; gaining consent (Render ND: 29).

In light of the challenges summarised in this review, the ICMM has developed a “Position Statement” on indigenous peoples, published in May 2008. This statement outlined the following recognitions and commitments by ICMM members:

- Full recognition and respect for the rights of indigenous peoples, as these are defined in applicable international and domestic laws;
- Understanding the “interests and perspectives” of indigenous peoples affected by operations;
- Engagement with potentially affected indigenous peoples at all stages of project development;
- The promotion of “cross-cultural understanding” between companies and indigenous peoples;
- Where appropriate, to actively encourage national governments to address the plight of indigenous peoples within their national territories;
- Design projects that explicitly seek to minimise negative impacts on indigenous peoples;
- Pursuit of agreement on the basis of mutual benefit and programmes that lead to improvements in the social, economic, environmental and cultural situations of indigenous peoples;
- Support the development of frameworks for appropriate facilitation, mediation and dispute resolution between companies and indigenous peoples
- In cases of a failure to achieve broad community support for project developments, companies will consider a reversal of decisions to go ahead with project even if such projects are legally permitted.

In light of the section above, which summarises the scope and extent of the evolving international interest in indigenous peoples and current standards regarding project responsibilities towards indigenous peoples, this section examines two areas of applicability. First, it identifies and discusses significant indirect impacts of the Moto Gold Project on Mbuti (Pygmy) communities living within the vicinity of the mine. Second, it examines the concerns of autochthon groups located within the immediate vicinity of the project area in terms of the indigenous peoples framework.

2.2 The Situation of the Mbuti (Pygmies)¹⁸

This section considers Mbuti groups located in relation to the Moto Gold Project. It starts with a general background discussion of the Mbuti, highlighting the ethnographic and historical characteristics of this group. This includes brief reference to their experiences of social change, exposure to prolonged conflict, risks associated with mining and their social marginalisation from the DRC state. This leads on to a more focused description of the situation of the Mbuti within the project area.

The term Mbuti refers to the broad range of “Pygmy” communities living in and around the forested areas of north-eastern DRC. It is estimated that their total population numbers between 30 000 and 40 000 individuals in the DRC (Mukenge 2002). Traditionally they tend to live in small “bands” within and on the edges of the vast tropical rain forests (Turnbull 1961). Many are nomadic and retain few possessions. They rely on hunting and gathering to generate their livelihoods, which they practice largely on a subsistence basis. Mbuti hunters use both archery as well as nets to catch their prey. There is a strong gendered division of labour within the community, particularly in the domestic realm. Mbuti families tend to be structured around monogamous marriages and residence practices reflect both patrilocal and matrilocal patterns (Turnbull 1961).

When considering these broad descriptive characteristics of Mbuti society it is important to bear in mind that Mbuti society has not remained static over time and has been profoundly impacted by broader social changes and transformation. Such change appears to have been experienced particularly intensively by the Mbuti during the imposition of colonialism and during the transition from colonialism to independence (Turnbull 1983). As detailed below, Mbuti communities have also been devastated by war in the DRC over recent decades

Although Mbuti society was probably never isolated from surrounding groups, the Mbuti have been forced to interact more closely and frequently with a broad range of non-Mbuti groups. These include neighbouring tribes, government officials and soldiers, as well as private companies. Such contact has been facilitated by the developments of roads in the early postcolonial period, which allowed outside penetration into the forests. It also facilitated changes in local settlement patterns

One of the effects of the transition from the colonial to the post-colonial period relates to changes in hunting patterns. During the colonial period, the Mbuti mainly hunted for their subsistence. Neighbouring non-Mbuti villagers tended to keep livestock, including chickens and goats, which provided a principal source of meat. However, civil conflict in the early post-colonial period led to significant losses of livestock, which were not always replaced particularly as villagers moved into new roadside settlements.

Although it is clear that the population of Mbuti is relatively low, there are no reliable figures on the numbers of Mbuti that may be affected (either directly or indirectly) by the Moto Gold Project. Their highly mobile lifestyle and constant changes in the structure of groups or “bands” makes it difficult to identify fixed groups or individuals that may be affected by the project. Both local residents and Moto Gold staff tend to identify Mbuti groups in relation to

¹⁸ The term “Pygmy” is often used to refer to indigenous hunter-gatherer groups living within the forests of central Africa. The term “Mbuti” is used with specific reference to Pygmy groups living in northeast DRC. “Mbuti” was used widely within the project area, including as a term of self-reference by pygmies.

the specific forested areas that they tend to be associated with. These include Surur and Dubele.

According to a *chef de groupement*, there are no Mbuti living permanently in the Kibali Sector. The nearest groups of Mbuti are located in the forests of the neighbouring Mangbutu Sector. However, a number of observers confirmed that Mbuti do travel to the area for the purpose of hunting. Observers also noted that they tend to stay away from the mining because, as the *chef* noted “they are not accustomed to mining”¹⁹. Although they do not spend extensive periods of time in the mining areas, they do visit centres like Durba relatively frequently. They tend to visit on market days in order to trade and offer their services as traditional healers. Local residents reported that since the increase in LRA activities in the area they have stayed away.

Like much of the civilian population in the DRC, the Mbuti have been adversely affected by the ongoing civil conflicts and rebellions. The historically marginal status of the Mbuti has put them in a position where they are particularly vulnerable to the effects of armed conflict. In 2003 the *Permanent Forum on Indigenous Issues at the United Nations* was informed that Mbuti were being “hunted” by militia in the Ituri Forests as meat for human consumption²⁰. Whilst the accuracy and extent of some of these claims have been questioned, this narrative of violence against the Mbuti and their dehumanisation by armed groups reinforces concerns over their vulnerability (see Pottier 2007 for a detailed analysis of these claims and the meanings).

Mining and deforestation have been recognised as significant threats to the Mbuti communities living in the DRC (see Counsell 2006; Trefon 2006, Greenpeace 2007), The 2005 report from the *African Commission on Human and Peoples Rights Working Group on the Rights of Indigenous Populations/Communities* (mentioned above) was strongly critical of the practice of mining companies in eastern DRC, particularly with regard to their impact on indigenous Pygmy communities:

“The Batwa/Bambutu from the DRC suffer from serious problems in relation to their land. The multinational mining, exploitation and infrastructure companies have planned their strategies for activity in the DRC with a view to exploiting the natural resources of the Congo as soon as conditions permit. This will inevitably lead to the destruction of the forest and will wipe out the Pygmies’ way of life. The Batwa/Bambutu have been driven out of their forests, with neither financial compensation nor compensation in terms of other cultivable land. A large number of Batwa/Bambutu thus find themselves landless and live as tenants on the land of others, who can evict them at any time” (ACHPR 2005: 26)

The paragraph above illustrates how mining companies have become identified as specific threats to the welfare and interests of indigenous peoples, in this case the Mbuti of the DRC. In response, mining companies have sought to acknowledge and seek to manage the effects of their operations on indigenous groups. There are signs that Indigenous Peoples

¹⁹ Interview, Doko, 28/09/2009.

²⁰ See UN New Centre “Delegates at UN Forum tell of alleged cannibalism in DR of Congo”, Africa Recovery “Indigenous Peoples Lament Exclusion”; The Independent “Congolese Pygmies say they are Being Hunted by Cannibals” 23 May 2003; BBC News “DR Congo Pygmies Appeal to UN”, 23 may 2003.

organisations are becoming more organised and able to participate at an international level, highlighting the vulnerability of indigenous peoples to impoverishment, displacement, sexual violence, disease and social marginalisation²¹. The World Bank was subjected to criticism for following its own policies on indigenous peoples and environmental assessments and failing to protect the interests of indigenous peoples in the DRC. The World Bank subsequently reviewed and re-worked its approach to forestry in the DRC²².

Given the challenges faced by Mbuti communities in the DRC, it is not surprising that there is no accurate reliable data on the demographics and settlement patterns of Mbuti living and travelling within and around the mine concession. One group of Mbuti that live within relatively close proximity to the mine are sometimes located in the Surur-Nzoro area²³. They could not be accessed at the time of the field visit due to security constraints. We were, however able to access two other groups in the Dubele area. A number of informants confirmed that numerous groups lived within the forests around Dubele, which is approximately 38 kilometres from the project site in the neighbouring sector of Mangbutu.

Local residents around Doko represented Mbuti as divided into two types. The first type were described as living around the town, according to a lifestyle that was more or less like non-Mbuti. The second group were described as living primarily within the forest²⁴. In some areas, intermarriage between Mbuti and non-Mbuti took place. However, it appears as though there is a significant level of mistrust between non-Mbuti and Mbuti. As one man noted²⁵:

“If a man marries a pygmy woman, he is getting into big trouble. All of his brothers in law will be living next to his house. Whenever he has a quarrel with his wife, his brothers in law will come out to fight against him and take their sister away”²⁵

Community representatives from Ndala suggested that it was extremely rare to find a woman from a Bantu group marrying a Mbuti man. The men also mentioned that they were not willing to share a meal with a Mbuti person because of what they regarded as their unappealing body odour. The Mbuti were represented by others as socially separate from the dominant society, to the point they were seen to live by their own laws and authorities.

Mbuti perspectives on inter-marriage with non-Mbuti were quite different, reflecting stark inequalities:

²¹ See, for example the request submitted to the World Bank Inspection Panel by “Indigenous Peoples Organisations and Pygmy Support Organisations in the democratic Republic of Congo” (October 30, 2005, Kinshasa); The UN Permanent Forum on Indigenous Issues “Press Conference By Indigenous Peoples of Democratic republic of Congo”; World Bank Press Release, “Pygmy Delegation from Democratic Republic of Congo Visits World Bank”, 21 October 2007.

²² “ See World Bank Press Release “World Bank Committed to Staying Engaged in Improving Management of Congolese Forests”, 15 January 2008; Peaceful Societies “Controls on Logging and Warfare May help the Mbuti”, 31 January 2008; New Internationalist 2008.

²³ Will Thompson, Moto Gold, personal communication.

²⁴ Interview, Kukundeku, 26/09/2009.

²⁵ Interview, Ndala, 26/09/2009.

“People from outside can accept to take wives from us but they cannot accept that we take wives from them”²⁶.

2.2.1 Entitlement to Land

Representations of Mbuti as essentially nomadic and economically dependent on the forest resources foster an impression that they are not involved in, nor interested in, agricultural production. However, as illustrated below, Mbuti spend significant periods of time working as labourers in the fields of non-Mbuti groups. In addition Mbuti attempt to develop small temporary gardens within cleared patches of the forest. As one man noted

“We have small fields, but they not enough to make a living on”²⁷.

However, these gardens seem temporary and transient. Later in the same interview the respondent added:

“We have never asked permission to farm because we are not settled in one place and we move around”²⁸.

Whilst it may be assumed that limitations on Mbuti involvement in cultivation reflect a lifestyle choice on their part, it also reflects a high problem of landlessness amongst Mbuti.

On our visit to the Mbuti in the Dubele area, one of the members mentioned that Mr. Will Thomson²⁹ had encouraged them to move closer to the road on a previous occasion. The Mbuti explained that they were unable to do this, essentially because the young men refused to move from the forest. They did not provide a clear explanation as to why they refused and, once again, it is possible that the presence of the chief had something to do with this. It is likely that the reason they were unable to settle near the road relates to the close proximity to the village. By keeping their distance in the forests, Mbuti are able to protect themselves, to some degree, from discrimination and exploitation by other groups. Some of the comments made with reference to this request to settle closer to the road are illustrative of some of the difficulties that the Mbuti face³⁰.

“We have received new machetes and tried to make a new settlement but people are still afraid of living in the open air”

“As we were told to move to the road, the young men retreated and moved further into the forest. But this time we will do our best to move to the road”

“This is our custom, since the time of our ancestors. We don’t settle in one place. Because of our stupidity we don’t settle in one place for more than one month. We have to move from place to place.”

“We follow animals when we are hunting, and so we move from camp to camp”

²⁶ Interview, Dubele 29/09/2009.

²⁷ Interview, Dubele 29/09/2009.

²⁸ Interview, Dubele 29/09/2009.

²⁹ Community Projects Coordinator, Moto Gold Mines.

³⁰ Interview, Dubele 29/09/2009.

2.2.2 Entitlement to Forest Resources

The Mbuti groups in the Dubele area appear to generate their livelihoods by moving between the densely forested areas and more settled areas, close to road and other areas. Within the forests, they hunt (with bows and arrows) and collect plant-based food (such as wild yams, mushrooms and wild honey). According to the residents from a local village:

“Most of the time they are hunters and would hunt in a big forest nearby the mining area”³¹.

Whilst this appears to suggest a classic hunter-gatherer lifestyle, it is important to bear in mind that the Mbuti engage regularly with other groups and participate in the broader economy. For example, the groups that we visited told us that they hunt, not for their own consumption, but in order to either sell the meat to traders, or barter for specific goods that they may need. As one Mbuti man noted:

“When we kill an animal in the bush, we go and sell that meat at the local market. With that money, we can get all our supplies”³².



Figure 1: Smoked meat from a primate killed by a Mbuti hunter and sold to a “bush meat” seller (photo: G. Rodgers, DRA).

³¹ Interview, Kukundeku, 26/09/2009.

³² Interview, Dubele 29/09/2009.

Forest resources are therefore not only important to the extent that they help to meet the subsistence needs of the Mbuti, they also provide a means for the Mbuti to trade and participate more broadly in the local economy.

The mobile lifestyle of the Mbuti, essentially between the social isolation of forested areas and more developed areas, should therefore not be assumed to reflect a “traditional” or preferred lifestyle. It is also an essential survival strategy in response to entrenched forms of discrimination and marginalisation. Although they participate strongly in agricultural production, they do not appear to be able to access land. Their itinerant lifestyle is therefore at least partly in response to the fact that they are landless and incorporated into strong relations of servitude. As the project area developed as an artisanal mining area, and more people migrated into the area in search of opportunities, Pygmies appear to have been marginalised further.

2.2.3 Access to Employment

The Mbuti have very limited access to formal employment opportunities within and around the project area. Those that do manage to find informal employment, or participate in the cash economy in some way, appear to be highly discriminated against on the basis of their identity as Mbuti.

At present there are no Mbuti employed at Kibali Mine. Furthermore, we did not encounter any tangible evidence of direct participation by the Mbuti in any (formal or informal) aspect of the mining sector. We were, however, told that in “other areas” Mbuti worked as teachers and soldiers. Limitations on formal employment are partly related to the fact that Mbuti groups spend much of their time in remote forest areas and are essentially itinerants. However, Mbuti also spent time outside the forests and within areas populated by non-Mbuti. As one person noted:

“In the beginning, Mbuti were living in the forests. Now they live in the villages”³³

Informants within the project area reported that it was relatively common for Mbuti who visited or passed through villages to be employed informally as “day labourers”³⁴. This work involved weeding gardens, ploughing and harvesting. In terms of these arrangements, Mbuti appear to get paid very low wages, either in cash or more commonly through small gestures of payment-in-kind. As one informant noted:

“You pay them whatever you want. It depends on their needs. They can get money, clothes, foodstuffs, cigarettes...”³⁵.

Locals who employed Mbuti to work in fields represented them as lazy and untrustworthy. One person suggested that: “all they want is to get money and foodstuffs”³⁶. This relationship between Mbuti and other groups appears to be based on exploitation and mistrust. Compensation for labour is unregulated, often in kind and seemingly at the discretion of the employer. Commenting on the complex relationship between “Pygmies” and Bantu groups, Counsell (2006:8) notes that:

³³ Interview, Ndala, 26/09/2009.

³⁴ Interview, Kukundeku, 26/09/2009; Interview, Ndala, 26/09/2009.

³⁵ Interview, Kukundeku, 26/09/2009.

³⁶ Interview, Kukundeku, 26/09/2009.

“...most Pygmy communities now live at least part of the time in close proximity to Bantu ‘patrons’. The social and economic relationship between Bantus and ‘Pygmies’ is often complex and problematic, with many ‘Pygmies’ experiencing conditions of ‘near slavery’” (Counsell 2006)

Informants noted that Mbuti frequently entered commercial centres, such as Durba, particularly on market days and were able to participate in the local economy to a very limited degree. The specific areas that they participated in included:

- The sale or barter of goods (such as “bush meat”);
- The sale of their services as herbalists and traditional healers.

Relations between Mbuti and non-Mbuti appear to be fairly amicable. As one person noted: “People are happy to see pygmies – they share food and drinks with them”³⁷. Another mentioned that children tended to follow the Mbuti around and were amused by them.

Whilst on their visits and stopovers in towns and villages, Mbuti also offered their services as healers. These services were based on their traditional knowledge of herbal medicine and their access to specific herbal remedies in the forests. Some informants expressed scepticism of these healers whilst others suggested that they were only successful at curing specific ailments³⁸.

With regard to all aspects of their participation in the local economy Mbuti appear to experience greatly reduced entitlements, especially when compared to other groups. Furthermore, such loss of entitlement is a direct result of their identity as Mbuti. Negligible levels of participation in the formal economy point to historically entrenched structures of social and economic inequality. This is reinforced by what appears to be a substantial limitation on the capacity of Mbuti to negotiate terms of exchange or compensation for their labour. The Mbuti are therefore in a historically weak position to access employment opportunities related to the project. Given their vulnerability to local exploitation and the ways that this has shaped their lifestyles, it is unlikely that they would assert any expectation of such employment. Whilst the project does not have an obligation to address the effects of discrimination against the Mbuti, in the absence of a concerted effort on the part of the project to open up and protect opportunities for Mbuti this *status quo* is unlikely to change.

2.2.4 Access to Health Care

When asked about the extent to which Mbuti use local health services, a local health official noted that:

“Pygmies do not live here, they live at Dubele and Maba. They just come to this area to go to the market. They do not come to the health centres here. Some health centres on the other side of the river claim that Pygmies go to them for health assistance, but they are not so numerous ... they are used to plants and their medicine men and so they do not go to health centres”³⁹.

³⁷ Interview, Doko, 28/09/2009.

³⁸ Interview, Doko, 28/09/2009.

³⁹ Interview, Mangbe, 28/09/2009.

This official perception perpetuates the stereotype of Mbuti as belonging within the domain of the forest, and essentially outside modern society. It is not clear how pervasive this perception is amongst health officials or the extent to which it informs local health practice. Comments by Mbuti in Dubele highlighted health as a major concern. They suggested that their extreme poverty meant that they struggled to get access to any kind of formal healthcare:

“There are many case of death here because we live in the forest. When we get Malaria, we don’t live for long, after 2 days we die”⁴⁰.

“We don’t have access to health assistance”⁴¹.

Disparities in health between indigenous and non-indigenous peoples have been well documented (see Horton 2006, Stephens *et al* 2005 for example). Ohenjo *et.al* (2006) report that mortality and morbidity rates within Pygmy communities in the DRC are high, relative to other groups. They explain this partly as a consequence of poor health infrastructure in areas occupied by indigenous peoples, exclusion from government health services and programmes and discrimination in relation to the broader population.

2.2.5 Access to Education

Whilst it was noted that Mbuti groups in other areas had managed to access school, it appears that access to formal education is severely limited for Mbuti living in the project area. In Dubele, the Mbuti highlighted their problems in accessing education as a significant issue.

Like healthcare, extreme poverty also meant that Mbuti could not afford the fees required to send their children to school. As a result, very few Mbuti had any education at all.

2.3 “Autochthon” Groups within the Project Area

According to the *chef de post* in Durba, as well as many other informants, the local population living in the vicinity of the project can be divided between autochthons and non-autochthons. As the distinction implies, autochthons comprise individuals from ethnic or tribal groups that were considered as native to the area. Non-autochthons (who were also sometimes referred to collectively as “migrants”, “outsiders” or “strangers”) included people from tribal or ethnic groups that were associated with territories that were beyond the immediate project area.

Within the project area, the autochthon population was recognised as in the minority, compared to non-autochthons. Autochthons tended to be land-based peasant farmers, whereas migrants were drawn to the area in great numbers in response to the development of mining. A recognisable class distinction has raised the question of the extent to which autochthon groups may be considered as socially vulnerable in relation to non-autochthons. This section addresses this question with reference to the indigenous peoples framework outlined above. This framework is an appropriate and useful tool for assessing vulnerability because claims of social deprivation were articulated in the terms:

- Historical attachment to land and land-based livelihoods;

⁴⁰ Interview, Dubele 29/09/2009.

⁴¹ Interview, Dubele 29/09/2009.

- Land based livelihoods and a strong attachment to territory;
- Culturally distinct identities and institutions.

In drawing on the indigenous peoples framework, this analysis is *not* meant to suggest that autochthon groups are “indigenous peoples”. As discussed above, indigenous groups are recognised principally through “self identification” and not on the basis of objective criteria. It does however acknowledge a potential for these groups assert their rights and entitlements in terms of the indigenous peoples framework and considers the risks and challenges that this would pose to the Moto-Gold Project.

2.3.1 Background

In Kibali Sector, the following ethnic groups (or “tribes”) as they were often referred to, were considered to be “autochthons”:

1. Bari
2. Kasabati
3. Mangbutu
4. Bangba
5. Bari Logo
6. Mangvu

According to community representatives from Ndala village the Kasabati were the descendants of a man named Kasa, who arrived in the area in the 1880s, from the region that is now part of Central African Republic. The Bari arrived around the same time from Sudan and dominated the Kasabati. The Kasabati have since been incorporated as a sub-group within the broader Bari designation. Two villages within the project area are recognised as explicitly Kasabati, namely Ndala and Gatanga⁴². According to a representative of the Mangbutu group located in the project area:

“In the beginning, autochthons were tortured by authorities and young men were discouraged from going to mining”⁴³

According to popular tradition, prior to the imposition of the colonial state, members of the autochthon tribes were warriors and were reluctant to work for the colonial authorities. When mining was introduced to the area from 1906 the colonial mining company had to bring in labour to work on the mines. Those brought in were predominantly from Logo, Dongo and Lendu tribes. These groups hailed originally from the Ituri region.

Representatives of autochthon groups emphasised that these groups were the original occupiers of the land and remained the traditional “owners” of the land. Over time, migrant or “outsider” groups were brought into the area and eventually dominated the autochthon groups, in terms of demographics.

Over time these migrant groups became a majority, but are still represented as outsiders. As one person commented:

⁴² Interview 26/09/2009.

⁴³ Interview, Kukundeku, 26/09/2009.

“Even though they are here in great number, they came just for work ... and they have settled here”⁴⁴

After the colonial period, mining operations were taken over by OKIMO, the state owned mining company. Once the mining sector went into decline, as a result of war and mismanagement, artisanal miners moved into the area in greater numbers. According to a local *chef de groupement*:

“In the beginning, this concession was occupied only by OKIMO’s workers. But as soon as they [i.e. the government] liberalised artisanal mining, people moved in from outside to work here in the concession. As they found they were living far from mine pits, they settled in the mine camps. Initially they were not supposed to live in the area. They were only supposed to work... It is not possible to know how many there are. The movement is constant... Since we had disorders in the country [i.e. war] it has become difficult to move these people out”⁴⁵

The development of mining in the project area had important transformational effects on movement and identity formation. One of the effects has been to forge a social distinction between autochthons and outsiders, raising the question as to the extent that autochthons (such as the Bari and Mangbutu) may be regarded as vulnerable.

2.3.2 Access to Employment

The Bari and Mangbutu were represented as the original occupiers of the mine concession area. As other groups have moved into the area, attracted by the possibilities of artisanal mining, so the Bari have become more marginalised. Representatives of autochthon groups complained that those who were employed by the project were inevitably outsiders. They added that former OKIMO workers were also given preferential access to employment opportunities. Others, they claimed, managed to get jobs through corruption, by paying to have their applications put forward and expedited. This group also felt that autochthons were not informed when the project was recruiting employees⁴⁶:

“They are choosing their own brothers and those who are paying to get employment. Mangbutu are determined not to pay to get employment, because they are living on their own land! ... There is no autochthon [artisanal miner] working at a high level. This trouble originated in Okimo’s management of artisanal miners. If Kibali Goldmines continues this path, we shall get in trouble”⁴⁷.

Representatives of Kasabati complained similarly, claiming that nobody from Kasabati was employed on the project. According to one representative:

“All the people employed are strangers to this area”

In Kukundeku, we were informed that no one from the Fataki family has been employed:

⁴⁴ Interview 26/09/2009.

⁴⁵ Interview, Doko, 28/09/2009.

⁴⁶ Interview, Kukundeku, 26/09/2009.

⁴⁷ Interview, Kukundeku, 26/09/2009.

“No group is really favoured – all groups from here are a minority and are not well treated”.

We were also informed that autochthons, such as Bari and Kasabati applied for employment, but were unsuccessful. When asked why autochthons were not employed, community representatives recognised that many lacked the necessary experience or skills. These included the ability to communicate in English. In contrast to migrants, who came from diverse and sometimes highly cosmopolitan backgrounds, many autochthons did not speak English and were therefore disadvantaged in relation to the project. Some suggested that when they apply for jobs they do not receive any reply. They also suggested that employment practices lack transparency and were nepotistic:

“We see people getting into the company without knowing when they applied [for a job]”⁴⁸

According to some autochthons only one is Mangbutu and three are Bari were employed by the project. The majority of employees were Logo, who originated from outside the sector⁴⁹.

Beyond employment, it also appears that autochthons may be marginalised from important local community events. For example, we were told that former OKIMO workers did not invite autochthons to meetings. “At the beginning”, we were told, “it was not like this”. In the past, autochthons were invited to meetings but now people from elsewhere are invited instead⁵⁰.

2.3.3 Land-Based Livelihoods

It is important to note that marginality from the mining process does not necessarily imply social marginality. Access to land and the ability to farm constitute an important livelihood opportunity that can offset the effects of being marginalised from mining. As one informant noted:

“None of the autochthons are very poor or indigent. The very poor people are those living at home selling hay and sticks. Others are farming and selling their crops and so they are better off. The poorest people we can see here are old people who came here long ago because of the mining. Now they have become too feeble to mine and cannot make a living. They have no strength to work the land. Local organisations like churches are very interested in such old people. Their families are far away and cannot look after them.”⁵¹

Some informants were also quite critical of the suggestion that access to mining was a sufficient and sustainable strategy for avoiding poverty. In the words of an autochthon:

“Artisanal mining without farming leads a man to poverty”⁵²

⁴⁸ Interview 26/09/2009.

⁴⁹ Interview 26/09/2009.

⁵⁰ Interview, Kukundeku, 26/09/2009.

⁵¹ Interview, Doko, 28/09/2009.

⁵² Interview 26/09/2009.

He explained further, suggesting that the promise of gold preoccupies men all day (“from 6am to 6pm”) and can yield little or no reward, or “food for his family”:

“Some people do not know how to build a house. They are just living on gold...”⁵³

According to an autochthon resident of people without any access to land or without skills to farm are at considerable risk of impoverishment⁵⁴. With regard to autochthons, their social vulnerability risks are related strongly to their security of access to land and their ability to sustain land-based livelihoods.

2.3.4 The Impacts of Colonial Resettlement

Community representatives of Kasabati expressed dissatisfaction over plans to resettle them. Referring to previous guarantees by OKIMO that they would not be resettled, they were unsure of where they would be moved to. They have experienced resettlement in the past, having originally lived in Doko. They were first resettled by the Belgian colonial authorities in the 1940s. In 1955, the government resettled people for a second time, splitting the community and settling people in two different places. One part of the community was moved from Doko, through Salambongo to Ndala whilst a second group was resettled to Duembe and Mango. Referring to bitter memories of previous experiences of resettlement, people stated that they would not agree to be moved unless they are well compensated. As one community member stated:

“All the gold is coming from this area but we [Kasabati] don’t get any benefit from it”⁵⁵

A representative of the Mangbutu added to this sentiment, noting that:

“All of the Sector is poor. We are living on very rich land, but we are all poor”⁵⁶

This was attributed to outsiders discriminating against autochthons.⁵⁷ Community representatives of autochthon groups emphasised a concern over being resettled:

“In the places where people will be resettled, they will find people already living there. Those people own that land. The ones coming from here will lose everything

In the village of Ndala, community representatives stressed that before agreeing to be resettled, they would need to be provided with schools, hospitals and dwelling places. They recalled the disruption and injustice of the previous two occasions, when they were displaced by the colonial regime to make way for mining. Autochthons emphasised that they are likely to be impacted by resettlement because they rely on the land, palm trees, and water sources. Community representatives also complained that they were not aware of their rights, adding that:

⁵³ Interview 26/09/2009.

⁵⁴ Interview 26/09/2009.

⁵⁵ Interview 26/09/2009.

⁵⁶ Interview, Kukundeku, 26/09/2009.

⁵⁷ Interview, Kukundeku, 26/09/2009.

“In our country we are ruled by thieves”

2.3.5 Access to Mine Opportunities

Community elders also expressed concern that mine gifts and tributes were extended to the government and not to the autochthons. In the beginning they felt happy about the company coming in and called them to meetings with others who were not autochthons.

Representatives of autochthon groups emphasised their role in conducting ritual ancestor ceremonies and felt that they should be acknowledged and paid for the ceremonial work that they do on behalf of OKIMO:

“We have been performing all these ceremonies for others to be healthier than ourselves. We cannot hope to get anything, unless the government and company can remember us”⁵⁸

“The company should give gifts to the elders. Should promote the opportunity for people to go to school. The Belgians disregarded everything. They just took out gold and went away. We are concerned the same thing is happening now”⁵⁹.

2.3.6 Relations between Autochthons and Non-Autochthons

In the event of the law forbidding people from engaging in artisanal mining, the autochthons expressed the view that strangers who had been attracted to the area by mining would return to the areas that they originated from. The autochthons, however, would have nowhere to go.

There does not appear to be a significant potential from conflict between different groups⁶⁰. People marry between different groups without any problem. For example, a Bari man who intended to marry would choose a bride according to his own wishes. There is no specific pressure to marry within the tribal group or incentive to marry outside it. However, some families accept intermarriage more easily than other families:

“We wish to see children of this land find employment. Because when outsiders get jobs, they do not invest it in this area. They go and build in their own villages.”⁶¹

Non-autochthons were represented as wealthier than autochthons. The reasons for that is that during the colonial period, autochthons refused to engage in mining and were “tortured” by the authorities as a result. Non-autochthons were brought in by the authorities and were more cooperative. When artisanal mining was finally allowed, people from outside were highly skilled and knowledgeable in searching for gold, giving them considerable advantage⁶².

2.4 Key Risks and Challenges Related to Indigenous Peoples

⁵⁸ Interview, Kukundeku, 26/09/2009.

⁵⁹ Interview, Kukundeku, 26/09/2009.

⁶⁰ Interview, Ndala, 26/09/2009; Interview, Kukundeku, 26/09/2009.

⁶¹ Interview 26/09/2009.

⁶² Interview, Doko, 28/09/2009.

The general socio-economic impacts of mining associated with the project have been identified and discussed within the Synergy Development Optimisation Study (Synergy 2009a). This section considers these impacts, specifically in relation to the situation of indigenous and autochthon groups. The Moto Gold Project will have significant indirect impacts on Mbuti groups living in areas neighbouring the mine concession. Furthermore, it will have direct impacts on autochthons (notably the Bari and Mangbutu) living within the mine concession—particularly within the exclusion zone.

2.4.1 The Historical Legacy of Mining

The Moto Gold Project is being developed in an area that has a long history of mining, conflict and migration. As illustrated above, the effects of mining on indigenous and autochthon groups has contributed towards the erosion of their entitlements and the entrenchment of discrimination and impoverishment. Mbuti groups have responded to this pressure by living well beyond the immediate mining environment. Historically, they do not appear to have participated in the mining economy to any significant extent. Their relatively isolated lifestyles have been fostered, at least partly, in response to chronic forms of social marginalisation from the broader society. Although autochthon groups are a more visible social presence in the project area, they have also been marginalised from the mining process and have suffered significant losses of entitlement, especially related to land.

Over recent years, mining in the DRC has attracted significant attention from advocacy groups⁶³. Whilst these analyses have tended to focus on the extent to which resource exploitation fuels conflict and human rights abuses, human rights organisations are also questioning the extent to which mining companies are benefitting from resources that may have been acquired and exploited illegally in the past⁶⁴. This question is especially sensitive where social vulnerability may be linked to a legacy of mining. The key issue relates to the extent to which mining companies wishing to establish operations in the DRC should accept a degree of responsibility for addressing this legacy.

One option may be for companies to refuse to accept that their operations unfit in any way from illegal gains and discriminatory practices. This will raise the potential that the mine may become a focus of intensive local and international “anti-mine” advocacy campaigns at some point in the future. Another option may be recognise the limits of the state and acknowledge some responsibility to address this legacy. This approach will reduce the risk of the mine becoming a target of advocacy groups. However, if it is not managed properly, such an approach could draw the project into making commitments that it cannot keep or control properly. The failure to deliver on such commitments could constitute a significant ongoing risk.

By understanding the extent to which the legacy of mining has contributed towards social vulnerability, particularly of Mbutu and autochthon groups, the project can take steps to avoid and reduce the potential to unintentionally perpetuate these legacies. It also identifies an important opportunity for the mine to invest in the area as a catalyst of positive social change.

⁶³ HRW 2005; Mullins and Rothe 2008

⁶⁴ See Mullins and Rothe, 2008, in particular.

2.4.2 Protection of Forest Resources

Mine-sponsored improvements to transport infrastructure will enable a greater degree of movement and trade between the project and the broader society. If security can be restored within the region, this process is likely to occur independently of the mine, but the mine will certainly contribute towards it. Improved access to the region will place greater pressure on the natural resource base of the Mbuti, which they rely on strongly for protection and survival (See RCS 2009 for a full discussion of regional economic dynamics).

As noted above, the project area (including the exclusion zone and its surrounds) has been largely cleared of forest cover and is relatively densely settled, largely as a consequence of mining. The Mbuti isolate themselves from villages and towns in these areas and only enter them for specific purposes. Their livelihoods and lifestyles have developed around an ability to move between the densely forested areas and more urbanised areas. The development of the mine may provide new markets for Mbuti groups to interact with, as well as providing new opportunities to sell the products of their hunting

Improvements in infrastructure (particularly roads) will improve access to the area from the outside. Whilst this will offer many benefits, it will also threaten certain aspects of the Mbuti's lifestyle. Improved access will encourage economic speculation, in-migration and possibly the further exploitation of forest resources. Added pressure on forest areas brought about by the development of the mine will challenge the ability of the Mbuti to protect and isolate themselves from the broader society. The process of easing access to forest resources may also contribute towards undermining the resource base upon which Mbuti groups depend for their survival, pushing them deeper into remaining forest areas.

2.4.3 The Status of Autochthon Groups

Although Mbuti groups are the most obvious group to claim status as “indigenous peoples”, this framework may also be drawn upon by other groups that have a more direct and permanent presence in the project area. Discussions with traditional representatives of “autochthonous” groups revealed considerable frustration at being marginalised by the mining process over many decades. This frustration dates back to the colonial period, but it will almost certainly continue as the project develops. Autochthon groups expressed concern at being displaced from gold producing areas and deriving little to no benefit from mining activities. They expressed a strong sense of ownership and belonging to the land and a strong sense of historical occupation. At present, these frustrations and claims do not appear to be framed in terms of entitlements as “indigenous peoples”. However, there is certainly scope for this to occur. This would have the effect of reframing local concerns as issues of global significance, related to the protection of the rights of indigenous peoples.

2.4.4 Ongoing Discrimination Against the Mbuti

Increased in-migration to the area as a result of mining may enhance the risks that Pygmies face when they interact with other groups in villages, towns and other market settings. Pygmies are already subject to direct forms of discrimination and abuse and receive no effective protection from government authorities. The development of the project—and particularly an increase in social pathologies typically associated with mining areas⁶⁵—will enhance the vulnerabilities of Pygmies to abuse and exploitation.

⁶⁵ See Synergy (2009a).

Another possible consequence of the attention that will be generated by the project will be to draw in humanitarian and development organisations that may seek to advocate on behalf of the Mbuti. Despite the area being historically established as a mining area that has been shaped and impacted by different interest groups over more than a century, such organisations draw on the evolving international regime on indigenous people to establish a greater entitlement of local Pygmy groups to the benefits of mining.

2.4.5 Limited Access to Mine Employment Opportunities

As outlined above, both the Mbuti and autochthon groups have been subject to historical barriers that have limited their participation in mining and limited access to employment opportunities. Factors such as access to education and discrimination have contributed significantly towards this situation.

2.5 Recommendations: Project Responses to Mbuti and Autochthon Groups

2.5.1 Implementing Principles of Non-Discrimination

While it is impossible for the project to fully address the historical legacy of discrimination against the Mbuti, the project can contribute positively towards addressing the social conditions that have led to such discrimination. This may include:

- Ensuring equality of access to all community relations activities;
- Promoting opportunities for Mbuti groups to participate meaningfully in development process that allow them to preserve the culturally significant and unique aspects of the lifestyles;
- Promote awareness of the rights of the Mbuti amongst project staff, through staff awareness and staff development programmes;
- Ensure that all mine practices, policies and procedures do not unintentionally perpetuate forms of discrimination against the Mbuti or autochthons, either directly or indirectly.
- Adoption of policies to ensure that that the project does not support any activity that is based on unfair exploitation of Mbuti labour;
- Explicitly monitoring Mbuti participation in mine-related activities such as employment, or as beneficiaries of community development initiatives.
- Highlighting and questioning the absence or social “invisibility” of the indigenous groups and advancing local awareness of the issue of discrimination and social marginalisation.

2.5.2 Investing in the Preservation of Forest Reserves

As illustrated above, the densely forested areas around the project area represent critical resources for the survival of Mbuti groups. In a context where Mbuti have been discriminated against and persecuted, the forests have clearly provided—and continue to provide—important sanctuaries from oppression. It is also evident that, as Mbuti have been socially and economically marginalised from the dominant society, they have come to depend on the harvesting of natural resources from the forests to sustain their livelihoods. Forest areas have therefore provided crucial resources for the survival of the Mbuti. Detailed anthropological studies of Pygmy communities in the Ituri forests have demonstrated that the forests are integral to the social and cultural identities of the Mbuti Pygmies (Turnbull 1983).

The protection or preservation of forested areas represents a key element to recognising the status of Mbuti and protecting their rights as “indigenous peoples” under international law. The primary responsibility for providing such protection lies with the Congolese government.

However, as shown above, the government appears to have been largely ineffective in protecting the rights of indigenous people. In the absence of adequate government capacity or political will to protect indigenous peoples, companies such as Moto Gold need to ensure that they still meet international expectations which, as outlined in Synergy (2009b) prescribes to companies a responsibility to respect the rights of indigenous peoples and to meet international standards with regard to the impacts of their operations on indigenous peoples.

In light of the fact that the immediate project area has been highly impacted by mining over many decades, and is mostly already deforested and relatively densely settled, one could argue that the project does not have any significant discernable negative impacts on local Mbuti. However, as illustrated above, the process of modernisation and development in this region has exerted considerable pressure on and poses an increasing threat to the forest-based livelihoods of the Mbuti (Turnbull 1983). As a major infrastructural and economic development in the area, the project forms part of a broader modernisation process that will inevitably contribute towards increasing pressure on forest reserves.

As a means of recognising and seeking to offset this indirect negative project impact on the social, economic and cultural reproduction of Mbuti society, the project could consider investing in the protection of remaining forest resources. By explicitly linking such an investment to the advancement of the international rights of indigenous people, such an initiative would simultaneously promote the awareness of indigenous peoples rights and encourage the building of capacity to improve the realisation of such rights.

2.5.3 Promoting Employment Opportunities

Recognising that autochthon groups have been marginalised from the mining sector, the project should explore ways of enhancing opportunities for autochthon and the Mbuti to access employment opportunities on the mine. These may include:

- The establishment of skills development programmes that are made available to Mbuti and autochthon groups and designed explicitly to enable them to acquire skills to compete for project-related employment;
- Ensure that staff selection processes are fair and are not influenced by unofficial nepotism;
- Through awareness campaigns, ensure that Mbuti and members of autochthon groups are informed and encouraged to apply for project-related employment opportunities;
- Monitor the tribal and ethnic diversity of project employees, in order to assess any progress in promoting employment levels for autochthons and Mbuti.

3 Internal Displacement

Internally displaced persons (sometimes referred to as “IDPs”) are persons that are forced to move, yet do not cross an international border and as such remain within their countries of residence. By December 2008, the Geneva-based Internal Displacement Monitoring Centre (IDMC) estimated that there were in the region of 26 million internally displaced persons worldwide. Africa is the “most affected continent” hosting approximately 11.4 million internally displaced persons across 19 countries⁶⁶. Some of the major reasons why people become internally displaced include civil conflict, failed resettlement projects and natural disasters. Internally displaced persons (and persons at risk of becoming internally displaced) are recognised as caught in a complex and difficult predicament, essentially because their situation is indicative of the failure of their states to protect basic human rights. They should therefore be recognised as a highly vulnerable category.

This section considers the question of internal displacement in the context of the Moto Gold Project. It frames the problem in terms of a developing international regime around the recognition and protection of internally displaced persons, including responses at the regional and national levels. After summarising general key principles and standards relating to the protection of the internally displaced, the section describes the dynamics of internal displacement in the project area. This description highlights two major risk-areas of direct concern to the project: First, the project’s recognition of, and response to, conflict-induced internally displaced persons in the project area. Second, it considers the risk that the project may cause the internal displacement of artisanal miners in the exclusion zone. The section concludes by making recommendations to Moto Gold, to develop its approach to managing the risks and challenges associated with internal displacement.

3.1 Standards, Responsibilities and Best Practice

Following the end of the Cold War in the late 1980s, IDPs became recognised increasingly as an important category of international humanitarian concern. This section summarises the main aspects of that process and its significance to the Moto Gold Project.

3.1.1 International Standards on the Protection of Internally Displaced Persons

In 1992, in recognition of a growing international concern over the problem of internal displacement, the United Nations’ Commission on Human Rights appointed a Representative of the Secretary General on Internal Displacement⁶⁷. Through the mandate and efforts of this Representative, the United Nations eventually published a set of “Guiding Principles on Internal Displacement” in 1999 (hereafter referred to as “the Guiding Principles”). These principles comprise an important distillation of existing human rights and humanitarian law, which relate most directly to the plight and legal predicament of internally displaced persons.

Whilst the Guiding Principles are still not considered as a binding instrument under international law, many of the principles are drawn from sources of human rights and humanitarian law that are binding. Other principles reflect evolving international law or a

⁶⁶ These figures refer primarily to persons displaced internally by conflict and do not consider person displaced by other causes, such as natural disasters or failed development initiatives.

⁶⁷ Re-designated in 2004 as the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons.

progressive reading of international law. The Guiding Principles provide an important descriptive definition of internally displaced persons as:

“...persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural disasters, and who have not crossed an internationally recognised State border.”⁶⁸

In essence, the Guiding Principles seek to achieve the following objectives:

- Wherever possible, to protect people from becoming internally displaced;
- Where they have become displaced, to protect people during displacement;
- To facilitate humanitarian assistance to the internally displaced.

The Guiding Principles enjoy widespread support across the world and have encouraged new related initiatives at the regional and national levels, which are considered below.

3.1.2 Regional and Domestic Responses to Internal Displacement

Most advocates agree that the rights of the internally displaced will be protected most effectively when the Guiding Principles are adopted through national legislation. Some African states have done this, such as Angola. However, this is not yet the case for the DRC. A number of recent initiatives at the regional level have put pressure on states to develop stronger domestic remedies. For example, the *Great Lakes Protocol on the Protection and Assistance of Internally Displaced Persons*, signed in 2006, obliged signatory states to incorporate the Guiding Principles into their domestic law.

Most recently and significantly, on 22 October 2009, the African Union adopted the *African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa*⁶⁹. Referred to as the “Kampala Convention”, this regional instrument promises to strengthen responses to the plight of the internally displaced significantly across the continent. As one might expect it draws strongly from the Guiding Principles on Internal Displacement and restates many of these principles. Once this convention comes into force, members of the African Union will be bound to uphold it.

The Kampala Convention is directly relevant to projects like the Moto Gold Project. For example, Article 10 makes explicit reference to “displacement induced by projects”, and the state’s duty to take measures to prevent such displacement (Article 10.1), explore feasible alternatives through full information disclosure and consultation (Article 10.2) and carry out appropriate environmental and socio-economic impact assessments prior to undertaking projects (10.3).

⁶⁸ United Nations Office for the Coordination of Humanitarian Affairs (OCHA). 1999 *Guiding Principles on Internal Displacement*, United Nations, Geneva.

⁶⁹ This convention will come into force after it has been ratified or acceded to by fifteen member states.

3.1.3 Internal Displacement and the Mining Industry

To date, there are no specific standards or guidelines on internal displacement that are tailored specifically to the needs of the mining industry. Mining companies that face issues related to internal displacement need to interpret and apply the international principles contained in the Guiding Principles (as well as any applicable regional developments which have emerged as a result of these, such as the Kampala Convention) and consider their relevance to operations.

The evolving international regime on internal displacement certainly has important implications for mining companies, particularly those operating in conflict or post-conflict environments. By understanding the nature of the social impacts of their operations, mining companies are in a better position to manage these. Second, where large scale infrastructural developments, such as mining operations, require population resettlement, it is well documented these resettlement initiatives run a high risk of failure, frequently leading to acute and chronic forms of impoverishment for those affected⁷⁰. Depending on their scale and the extent of their consequences, such failed resettlement schemes are recognised as exacerbating situations of internal displacement (as “man-made disasters”, under the IDP definition). The IDP regime therefore compels mining projects (along with other large projects and schemes) to recognise that a failed resettlement project does not only create social and economic problems and setbacks, it may also lead to violations of human rights⁷¹.

The following sections consider two specific areas of concern in relation to the Moto Gold Project. These relate to project responses to persons displaced into the project area by recent LRA attacks and the risk that the resettlement required to implement the project could promote internal displacement.

3.2 Internal Displacement and the Moto Gold Project

In the context of the project, internal displacement as a result of armed conflict was identified as an issue of specific concern and in need of more detailed attention. This section outlines the scope and nature of the challenge that this type of internal displacement represents for the project and summarises appropriate project responses to these.

Internal displacement is a significant problem in the DRC. According to the Internal Displacement Monitoring Centre (IDMC) there were at least two million internally displaced persons in eastern DRC as of July 2009⁷². Almost 400 000 of these were located in Orientale Province (181 616 in Haut Uele; 36 481 in Bas Uele; 176 132 in Ituri)⁷³.

Of the two million IDPs in eastern DRC, the IDMC estimates that approximately 800 000 were generated during the first half of 2009. This displacement resulted from ongoing conflict between Congolese National Forces, supported by the United Nations, and a variety

⁷⁰ See Cernea (2000), de Wet (2005) and Oliver Smith (2009) for recent in-depth reviews of this phenomenon.

⁷¹ This aspect of the Guidelines on Internal Displacement reveals the important linkages between resettlement planning and Human Rights Impact Assessment (HRIA)(Synergy 2009b).

⁷² Including North Kivu, South Kivu and Orientale.

⁷³ Internal Displacement Monitoring Centre (IDMC), accessed at <http://www.internal-displacement.org>.

of armed groups⁷⁴. Recent attacks by the Lord's Resistance Army have displaced over 140 000 people (HRW 2009:5). Some of these (mainly from areas that included Faradje, Tamati and Tadu) ended up settled in the project area⁷⁵. Many arrived in early January, after the "Christmas Massacres" of the LRA (HRW 2009). Displaced persons initially took shelter at the Catholic Church. Once they found other options, many moved into the villages and found their own places to stay⁷⁶.

3.2.1 Movement and Demographics

There are no clear figures on the numbers of internally displaced persons in the immediate project area. Moto Gold estimated that approximately 4 000 people were displaced into the project area⁷⁷. This figure was confirmed (roughly) by *Premier Urgence*, an international NGO that conducted a census and registered approximately 4 400 individuals in the Durba area⁷⁸. Caritas, a Catholic Church-based NGO, took a leading role in providing assistance to approximately 600 families (or 3600 individuals) Community leaders from Ndala estimated that there were "more than 3 000" internally displaced persons in the "parish and Durba"⁷⁹.

It appears that the number of internally displaced in the project area is in decline at present, as some return to their homes, or leave the area. The local Catholic Church noted that there were "less than 1 000", suggesting that many have returned to their areas of origin⁸⁰. In Salambongo, community leaders told us that there were only 62 internally displaced living in the village. This included one family that comprised 23 members⁸¹. In Ndala, we were told that there were 14 families living in the village that were internally displaced. The resettlement team that is currently undertaking a household survey in the project exclusion zone also formed this impression, observing that there were relatively few internally displaced within the exclusion zone⁸².

3.2.2 Humanitarian Assistance for Internally Displaced Persons

The DRC's Ministry for Solidarity and Humanitarian Affairs has primary responsibility for meeting the humanitarian needs of the internally displaced. However, in effect, the Congolese government has played a relatively small role, at a national and provincial level, in meeting the needs of the internally displaced (IDMC 2009:139). This weakness is also evident at the local level, where the local government was observed to have almost no capacity to manage the situation, and to meet the humanitarian needs of the internally displaced.

Through the Catholic Church, Caritas was the first organisation to provide assistance to the internally displaced⁸³. At the beginning of the crisis the organisation was overwhelmed and

⁷⁴ See IDMC (2009:14-53) for a detailed historical summary of internal displacement in the DRC.

⁷⁵ Interview, Salambongo, 28/09/2009.

⁷⁶ Interview, Ndala, 28/09/2009. More recently, LRA movements led prompted people to flee to Watsa (Paul Kapelus, personal communication).

⁷⁷ Will Thompson, personal communication, 3 September 2009.

⁷⁸ Interview, Kukundeku, 26/09/2009.

⁷⁹ Interview, Ndala, 28/09/2009.

⁸⁰ Interview, Doko, 28/09/2009.

⁸¹ Interview, Salambongo, 28/09/2009.

⁸² Garth Lappeman, personal communication, 21 October 2009.

⁸³ Interview, Kukundeku, 26/09/2009.

could not feed everyone and as a result some had to be sent to Watsa. More recently *Premier Urgence* has provided very limited humanitarian assistance. Frustration over the sporadic and low levels of humanitarian assistance was reflected in some of the comments from the internally displaced, relating to cooking pots:

“I have been given a cooking pot, but there is no food to cook. What is the use of that?”⁸⁴.

“You may ask your neighbour to borrow a cooking pot. At the time that she needs it she will come and ask you for it – and then you cannot prepare your own food”⁸⁵.

Some informants expressed unhappiness with the aid provided by *Premier Urgence*, suggesting that very few internally displaced received any aid at all (eleven persons out of 4400 who were registered, according to one claim). It was also suggested that those who received aid, received very little (“two hoes and five kilograms of beans”). With reference to *Premiere Urgence* another person noted:

“we are very surprised to see trucks coming from the border with goods, which are never distributed to people. We are also supposed to see this food sold in the markets. This NGO has been lying since the beginning”

Also with reference to *Premier Urgence*, another added: “they are just liars, and they are robbing people”⁸⁶. This suggests that the capacity and legitimacy of NGOs to meet the needs of the local internally displaced population is highly limited.

⁸⁴ Interview Salambongo, 28, 09 2009.

⁸⁵ Interview Salambongo, 28/09/2009.

⁸⁶ Interview, Ndala, 28/09/2009.

SEMENCES		VIVRES (mois de distribution)									
Maïs	5	2009				8	9	10	11	12	
Haricot	5	2010	1	2	3	4	5	6	7	8	
Amarante											
Aubergine		Kits NFI/Abris	1	2	3	4	5	6			
Epinard		Outils (Houe)	2								

Figure 2: A ration card issued by Premier Urgence (names of beneficiaries have been disguised) (Photo: G. Rodgers, DRA)

In partnership with Caritas, the Kibali Mine donated and distributed approximately \$25 000 worth of food medicines and utensils to approximately 4 000 internally displaced persons in Durba and Watsa in early September 2009. A local representative from one internally displaced community noted that this assistance was highly appreciated but that it was not sufficient:

“Even though the amount was not so big, we appreciated receiving this”⁸⁷.

Another individual added:

“People were very happy with Kibali Goldmines because this was the first organisation to provide us with cooking pots and water containers. Since the beginning we did not receive such things”⁸⁸.

⁸⁷ Interview, Ndala, 28/09/2009.

⁸⁸ Interview, Ndala, 28/09/2009.



Figure 3: Moto Gold, with the assistance of Caritas, distributing food and medicine to internally displaced persons (photo: Will Thompson, Moto Gold).

3.2.3 Access to Land

In most cases, the internally displaced appeared to self-settle in villages and rely, to some extent, on the goodwill and charity of their neighbours. Some also reported working as “day labourers” in the fields of their hosts, often in return for payment in kind (i.e food). Most of the internally displaced survived through working as “day labourers”⁸⁹.

IDP’s are able to get access to sites for settlement. The Sector chief instructed all the village chiefs to help the IDPs and to give them dwelling places⁹⁰. The government agronomist in Durba reported that, through the office of the *chef de poste*, IDP families had been given land for building as well as for cultivation⁹¹. Many, however, could not make use of this, because they did not have the necessary implements, such as hoes and seeds⁹².

3.2.4 Access to Employment

As mentioned above, the internally displaced survived principally through menial work that they were able to secure from neighbours and other local community members. Significantly it does not appear that many were drawn to the area in the hope of securing mine-related employment. As one person noted:

⁸⁹ Interview, Kukundeku, 26/09/2009.

⁹⁰ Interview, Ndala, 28/09/2009.

⁹¹ He noted that this land was outside of the project’s exclusion zone in Korogo and Kisaga.

⁹² Interview, Durba, 01/10/2009.

“I am a farmer. I don’t know anything about artisanal mining... Most of us don’t know anything about artisanal mining... Some have tried but have not succeeded”⁹³.

Explaining why internally displaced persons do not participate in artisanal mining, one internally displaced man noted that there were “many conditions” that needed to be met before one could engage in artisanal mining, including making payments:

“We are already starving, but we asked to pay tax, to the mine. It is better to work for somebody else, so that you can get your daily food”⁹⁴.

Much of this work for “daily food” included ploughing fields, building houses, collecting hay and thatch for persons who were miners as well as non-miners⁹⁵

3.2.5 Access to Health

In recognition of their vulnerable status the internally displaced were provided with card (issued by Malteser International) which were supposed to enable them to access state health facilities free of charge. However, they reported that they were often still forced to pay for services, even when they presented the health cards:

“The international NGO, Malteser, asked us [i.e. internally displaced persons] to go there to get special cards. We spent all day there waiting for these cards. At some point after getting these cards I became ill and went to any number of health centres here in Durba, but I could not get access to a clinic. Finally, I had to buy medicine by myself because I could not be received anywhere ... Here, you must pay by yourself, because there is no help from the [health] centres”

3.2.6 Access to Education

In the previous school year, the United Nations Children’s Fund (UNICEF) provided some assistance for internally displaced children to attend school. This, year UNICEF has not paid for children’s school fees and children had to stop attending school⁹⁶. Apart from these observations, the issue of education was not emphasised– perhaps because access to education is difficult for the vast majority of local residents, including displaced and non-displaced.

3.2.7 Possibilities of Return

Whilst it appears that some internally displaced families have returned, some amongst those that remain have suggested that they have no intention of returning:

“There is no way to return to where we came from”.

“We will be here permanently. Most for the IDPs did not return”

⁹³ Interview Salambongo, 28/09/2009.

⁹⁴ Interview Salambongo, 28/09/2009.

⁹⁵ Interview, Salambongo, 28/09/2009.

⁹⁶ Interview, Ndala, 28/09/2009.

“What we have seen in the north part of Faradje... That kind of suffering is too much to bear. You can run away and even forget your children, because you are terrified and trying to hide yourself first. We escaped from our house, leaving everything behind. We had no time to take anything... All of our belongings have been stolen”⁹⁷.

“Here we are at peace. Our concern is over hunger”⁹⁸

“I will stay here, because in [village of origin], I escaped death three times”

Regarding the land that people lived on, one person noted that:

“everything has been destroyed. Some house have been destroyed and others have been burned. There is nothing to hop to find there.”⁹⁹

Out of desperation, some people went back to their field in Faradja temporarily, to harvest cassava. However, they were killed in their fields by the LRA: “You have to go to your own fields as a thief”¹⁰⁰. Some informants mentioned that young men want to return, even though it is not safe, out of frustration over having nothing in the area¹⁰¹.

3.2.8 Resettlement-Related Internal Displacement¹⁰²

It is widely accepted that, even under highly enabling conditions, planned involuntary resettlement subjects affected populations to severe impoverishment risks (see RADS 2009). However, as the Guiding Principles on Internal Displacement note, resettlement also subjects people to risks of violation of their *human rights* (See Synergy 2009b). Resettlement planning in accordance with accepted international standards (such as the IFC’s Performance Standard 5) tends to focus on economic development issues and does not necessarily address the full range of displacement risks, particularly those related to human rights. The application of the Guiding Principles informs a more comprehensive treatment of the displacement risks associated with resettlement. As Walter Kalin—the current UN Representative on the Human Rights of Internally Displaced Persons—noted, if the Guiding Principles are applied correctly:

“[l]arge scale development projects ... can contribute significantly to the realization of economic and social human rights in particular” (Kalin 2000:32)¹⁰³

He goes on to point out that whilst the Guiding Principles do not seek to prohibit development-related resettlement, they seek to ensure that such resettlement “cannot be used as an argument to disguise discrimination or any other human rights violation ...” (Kalin 2008:32). For resettlement taking place within a context of prolonged conflict, weak

⁹⁷ Interview Salambongo, 28/09/2009.

⁹⁸ Interview Salambongo, 28/09/2009.

⁹⁹ Interview Salambongo, 28/09/2009.

¹⁰⁰ Interview Salambongo, 28/09/2009.

¹⁰¹ Interview, Ndala, 28/09/2009.

¹⁰² This section is not suggesting that resettlement associated with Moto Gold is especially at risk, but simply highlights risks that can be avoided through comprehensive resettlement planning (see RADS 2009 and other resettlement planning material, for example).

¹⁰³ See Synergy 2009b, for an expansion of this rationale.

governance and ongoing political instability, the risks to the resettlement process cannot all be controlled by the project.

3.3 Project Risks and Challenges Related to Internal Displacement

As far as internal displacement is concerned, it is premature to describe the project area as a “post-conflict” environment. New populations of internally displaced persons are still being generated in 2009 and the general security situation has not improved to the extent that existing internally displaced populations can begin to seek out durable solutions to their predicaments. Bearing in mind the context of this socio-political environment, the following significant risks related to resettlement have been identified:

- Insufficient Project Recognition of Internally Displaced Persons;
- Displacement of Artisanal Miners;
- Mass Arrival of Internally Displaced Persons into the Project Area;
- Resettlement as a Cause of Internal Displacement

3.3.1 Lack of Project Recognition of Internally Displaced Persons

People who are internally displaced often end up in situations where their presence is neither recognised nor sanctioned by local authorities and neighbouring communities. The failure to identify and locate the internally displaced can undermine their efforts to secure protection.

Although the population of internally displaced persons appears to be relatively low at present (at least within the immediate vicinity of the project) a failure to acknowledge the presence of the internally displaced, and to respond effectively, will increase the risks of:

- The project impacting negatively on internally displaced persons as a result of their presence in the project area not being known or recognised;
- Internally displaced persons choosing to settle within the project exclusion zone in greater numbers;
- The resettlement process impacting especially adversely on internally displaced persons, as a direct consequence of their vulnerable status

3.3.2 Internal Displacement of Artisanal Miners

The termination of artisanal and small-scale mining in the exclusion zone and the removal of miners poses a significant risk and management challenge to the project (Pact 2009). If it is not managed appropriately, this issue will enhance a range of serious and multi-faceted risks to the project. One aspect of this overall risk involves the potential for the project to cause the artisanal mining population to effectively become internally displaced (as defined above). Some of the factors that may enhance this risk include the following:

- The project makes a clear distinction between residents of the exclusion zone and persons involved in the ASM economy and may therefore apply different standards in managing their relocation;
- Strategies for managing the ASM issue are being developed outside of the resettlement framework;
- The project has not made a final decision and firm commitment on the extent to which artisanal miners qualify as full resettlement beneficiaries;
- Some draft project documentation (PACT 2009:23) has suggested that artisanal miners do not fall within the scope of the IFC’s Performance Standard 5 and therefore do not qualify

for full resettlement entitlements. This understanding seems to be largely based on a narrow interpretation of a small section of a recently included “Guidance Note” to the IFC Performance Standards (G10 of PS5);

- This draft project documentation also argues that ASM falls outside of the scope of resettlement because it is an “illegal” practice. Once again, this is based on a narrow reading of selected criteria related to resettlement;
- Artisanal is formally regarded as the responsibility of OKIMO. However, OKIMO is recognised as having limited capacity to meet its responsibilities towards this community;
- The draft strategy on artisanal mining assumes that most miners are either OKIMO employees or living in the exclusion zone and will therefore be accommodated with the resettlement framework.

These unanswered questions maintain the risk that the project response to the ASM issue may lead to a situation of internal displacement. This risk will emerge largely from a decision to treat ASM according to a lower standard than the standard committed to in the Resettlement Policy Framework (RADS 2009). Even if such a decision can be justified as consistent with the IFC’s performance standards, it will not ensure the protection of the ASM community from the risks of internal displacement. In determining whether this would amount to internal displacement, some of the factors that would have to be considered include:

- The ability and willingness of the Congolese state to provide tangible forms of protection for the ASM community (Principle 5 of the Guiding Principles);
- Local access to information and participation from the ASM community determining the terms of their removal;
- The availability of courts and other institutions through which the ASM community could challenge the decisions of the project relating to the conditions of their resettlement;
- The degree to which the decision to differentiate between ASM and other persons to be resettled could be interpreted as ‘arbitrary’ (Principle 6.1) from a human rights perspective;
- The extent to which such action could be interpreted as “collective punishment” for the artisanal miners, for practicing ASM illegally (Principle 6.2e);
- The extent to which the project is considered to be able to reasonably foresee any significant negative and lasting social consequences of its decisions to remove the ASM community from the exclusion zone.

Current attempts to limit ASM activities are leading to the loss of livelihoods and increasing in problems associated with this. The local *chef de poste* in Durba noted that certain crime had increased by 20-30% since ASM activities were curtailed.



Figure 4: An former artisanal miner who was accused of house robbery being dragged to the police in Durba by local youth after being arrested, beaten and bound (Photo: G. Rodgers, DRA).

3.3.3 Mass Arrival of Internally Displaced Persons into the Project Area

The successful realisation of the Moto Gold project will make a significant contribution towards promoting the broader social and economic development of the local economic environment. This may also lead to notable improvements in the security situation, at least within the immediate environs of the mine. If these positive local developments are not extended across the region, the project area could appear as an island of safety and stability for people seeking refuge from neighbouring regions and countries that are less stable. In the event of such a scenario, the project faces the risk that that area could experience a significant influx of internally displaced persons and refugees at some point in the future. Improved transport infrastructure would also enhance the attractiveness of the project area as a destination for displaced persons. The realisation of such a scenario may have the following consequences:

- Large numbers of displaced persons may settle spontaneously within the project area, without authorisation and in places that may be unsafe;
- The Congolese government and other social actors may request assistance from the mine to provide humanitarian assistance to the internally displaced and other groups;
- Large uncontrolled settlements of displaced persons may generate public health issues in the proximity of the project, such as water-borne illnesses related to poor sanitation.

3.3.4 Resettlement as a Cause of Internal Displacement

The resettlement of people that live and generate their livelihoods within the exclusion zone will be managed through a specific resettlement process (RADS 2009). This process will be guided by respect for accepted international norms and standards, notably the resettlement “Performance Standards” of the International Finance Corporation. Whilst these performance standards are widely recognised as representing international “best practice”, they focus explicitly on the social and development challenges related to resettlement. They do not place as much emphasis on the rights-based aspects of resettlement, which may present a serious risk of internal displacement. The resettlement programme is still in the planning stages and it is not possible to predict the degree to which the resettlement programme will anticipate and address these displacement risks. In the absence of a more complete the following rights-based risks are considered to be especially applicable in the context of the project:

- Protection and Prevention of Internal Displacement: National authorities, as well as “international actors” have a responsibility to “...prevent and avoid conditions that might lead to displacement of persons” (Principle 5). Similarly, Principle 3 of Guiding Principles emphasises that national authorities also have a “primary duty” to protect the internally displaced. The weakness of the Congolese state suggests that it has limited capacity to ensure such protection, and it cannot be taken for granted or relied upon in the resettlement process;
- Non-Discrimination: Principle 4 (1) states clearly that the Guiding Principles should be applied “without discrimination of any kind”. This includes discrimination made on the basis of *legal status*. A sudden disruption to the artisanal mining economy along with a government-led eviction of artisanal miners from the exclusion zone may reach the level of a “human-made disaster” that creates a situation of internal displacement. Regardless of the extent to which this is consistent with the IFC’s Guiding Principles, the reduction of resettlement entitlements of artisanal miners on the basis of their legal status will enhance the risk that this group may become internally displaced.

3.4 Recommendations: Project Responses to Internal Displacement

3.4.1 Protection of Internally Displaced Persons affected by Resettlement

With regard to persons displaced into the project area as a result of conflict, the project should develop and integrate an explicit mechanism for recognising their presence and their status as legitimate rights-holders. In the context of resettlement from the exclusion zone:

- Internally displaced persons should be fully registered, according to the same procedures and to the same degree as other project affected people;
- The project should recognise the existing population of internally displaced persons in the exclusion zone as a legitimate presence and not rely on the act that they are displaced to justify discriminatory treatment with regard to resettlement;
- Internally displaced persons should be flagged explicitly as a “vulnerable group” in the context of resettlement and provided with additional attention, assistance and monitoring

3.4.2 Support for Humanitarian Work for Internally Displaced Persons

Regarding the project’s response to the challenges in providing humanitarian assistance to internally displaced persons, the following recommendations are made:

- The project should continue to look for opportunities to contribute to the provision of humanitarian assistance to internally displaced persons;
- Any humanitarian programmes developed or effort made by the project should be undertaken in partnership with local NGOs and government officials;
- All project support for humanitarian work should be designed with the explicit aim of developing capacity at the local level. This should include a commitment to developing values such as transparency and accountability in the provision of humanitarian assistance;

In the event of a future large scale influx of internally displaced persons into the project area:

- The Moto Gold Project should engage with relevant authorities to ensure that internally displaced are settled at a safe distance from mine operations. Such support of local authority efforts to manage the influx of internally displaced persons should only be extended to further the aims and intentions of the UN Guiding Principles on Internal Displacement;
- The project should engage actively with relevant organisations to explore how mine infrastructure may be drawn on to promote humanitarian access to displaced and war-affected populations that may seek refuge in the project area.

3.4.3 Addressing the Risks of Displacing Artisanal Miners

At this point, a lack of clarity over how to manage the issue of artisanal mining in the exclusion constitutes the most significant displacement risk for the project.

- In consultation with other stakeholders, the project should develop a clear plan of action (beyond a strategy) that outlines a clear standard of commitment to ASM in the exclusion zone. Clarity on the matter may help to reduce this displacement risk;
- This action plan should be explicitly underpinned by a detailed consideration of the internal displacement risks faced by artisanal mining community;
- With reference to the Guiding Principles on Internal Displacement and the Kampala Convention, the plan of action should identify clear proposals to manage displacement risks;
- The action plan should be developed in advance of any attempt to limit artisanal mining or further restrict the activities of artisanal miners;
- The plan should be developed in partnership with local authorities and other stakeholders, as a joint effort to promote an institutionalised respect for human rights at the local level

3.4.4 Strengthening of the Rights-Based Dimension of the Resettlement Programme

In order to address the rights-based risks to resettlement, the resettlement programme should develop a more explicit rights-based framework, developed in accordance with the Guiding Principles on Internal Displacement and the newly adopted AU Kampala Declaration. By predicting and mitigating a full range of rights-related risks to resettlement, the project will reduce the potential for these risks to be realised. Some of the major areas where a rights-based focus may contribute towards strengthening the resettlement include¹⁰⁴:

- The right not to be displaced (Guiding Principle 6.2c);

¹⁰⁴ The following list is illustrative rather than comprehensive.

- Rights related to information and informed consent (Guiding Principles 7.3b, c &d);
- Land replacement and the right to restoration of livelihood (Guiding Principle 9);
- Choice of settlement and the right to freedom of movement (Guiding Principle 14.1);
- Right to dignity and respect of property during the resettlement process (Guiding Principles 11, 16, 21);
- The right to participate in planning decisions (Principle 28).
- Access to legal remedy in the event of a dispute (Principle 7.3f and 20.1)¹⁰⁵

¹⁰⁵ See Synergy (2009b) for a discussion on more resettlement-specific rights.

4 General Social Vulnerability Risks and Categories

This report has focused on indigenous peoples and internal displacement. However, these are not, the only social categories that can be considered as vulnerable. This short final section outlines a broader project specific approach to identifying social vulnerability in the context of the Moto Gold Project.

4.1 Identifying and Responding to Social Vulnerability

In general, decades of colonial under-development, post-colonial mismanagement and failures of governance, along with the effects of prolonged war, have created a situation in which the majority of people in the social catchment area of the project live under highly insecure and impoverished conditions. It is still important, however, for the project to distinguish categories of persons from the general population that are especially at risk, in relation to the project's activities.

There is no universal definition of "social vulnerability" and this concept is applied differently in different fields and industries. In the context of the Moto Gold Project, "social vulnerability" should be considered in terms of the degree to which individuals or groups are exposed to social and economic risks as a consequence of a (either inherent or ascribed) quality of their person, condition or status. These risks may emerge independently of the project or they may be generated by the project. It is important to be able to distinguish between project-led processes that *promote social vulnerability* and those activities that *impact on* persons that are in a pre-existing situation of vulnerability.

Social vulnerability cannot therefore be identified in isolation from context. The degree to which a person may be considered as socially vulnerable and the complex reasons behind their vulnerability will depend directly on the broader social environment that they live within. In some cases they will be historically pre-disposed to such vulnerability whilst in other cases the project may render them vulnerable. In both cases, the project may have an obligation to identify the extent to which their actions enhance vulnerability, and take appropriate mitigation measures to address this. Social vulnerability may emerge in relation to the following:

- Inherent human qualities;
- Membership of a social category or group;
- Status and condition

4.1.1 Social Vulnerability on the Basis of Inherent Human Qualities

Social vulnerability is commonly identified, at least in the first instance, with reference intrinsic human qualities such as age, gender, race and physical and mental ability. During periods of social stress and rapid social change, social vulnerability is often identified in relation to inherent characteristics. Many aid and humanitarian organisation respond to crises on the assumption that people of certain ages ("young" & "old"), gender ("women") and ability ("disabled") are especially vulnerable to social risks and in need of assistance. The precise reasons why social vulnerability may take shape along these lines varies from context to context. In other words, the category "women" may be as equally vulnerable in two different social or cultural arenas, but the basis of their vulnerability may be very different

It is good practice to assume that age/gender/age/ability provides a reliable basis for identifying and responding to social vulnerability in the absence of a more nuanced understanding that demonstrates the contrary. But it is important to bear in mind that it is not the only basis for determining social vulnerability. Examples of potential categories of this type include:

- Women;
- Children;
- Mbuti;
- Autochthon (e.g. Bari)

The United Nations High Commissioner for Refugees (UNHCR) recognises that in contexts of displacement, certain categories of persons are inherently at risk including women and girls, the elderly and the disabled (see UNHCR 2008)

4.1.2 Social Vulnerability on the Basis of Membership of a Social Category or Group

People may be regarded as vulnerable because of they choose either to be affiliated or are associated with a particular social group, sometimes on the basis of their behaviour. This may relate to their work, the practice of their religion, their sexual orientation and so on. Examples of potential categories of this type include:

- “Artisanal Miners”
- “Prostitutes”
- “IDPs”
- “Widows”

4.1.3 Social Vulnerability on the Basis of Status and Condition

Social vulnerability may arise from a certain condition or ascribed status of persons or groups of persons. These often relate to health, stigma education, cultural status or socio-economic status. Examples include:

- “pregnant women”
- “HIV positive”
- “uneducated”
- “landless”

5 References

- African Commission on Human and Peoples Rights (ACHPR) 2002. Report on the Working Group on the Rights of Indigenous Peoples/Communities.
- African Union (AU) 2009. Convention for the Protection and Assistance of Internally Displaced Persons in Africa.
- Al Faruque, A. and M Begum. 2004. Conceptualising Indigenous peoples' Rights: An Emerging New Category of Third-Generation Rights. *Asia-Pacific Journal of Human Rights and the Law*. 2, pp.1-29.
- Cernea, M.M. 2000. "Risks, Safeguards and Reconstruction: A Model for Population Displacement and Resettlement" in M.M. Cernea and C. McDowell (eds) *Risks and Reconstruction: Experiences of Resettlers and Refugees*, Washington D.C.: The World Bank.
- Chernela, J. 2003. "The Rights of Indigenous Peoples: International Instruments"
- Counsell, S. 2006. "Forest Governance in the democratic Republic of Congo", report for FERN.
- De Wet, C. 2005. Ed. *Development-Induced Displacement and Resettlement: Problems, Policies and People*, Berghahn Press: Oxford.
- Greenpeace. 2007 *Carving up the Congo*, report.
- Horton, P. 2006. Indigenous Peoples: Time to Act Now for Equity and Health, *The Lancet*, 367, 1705-1707.
- Human Rights Watch (HRW) 2005. *The Curse of Gold*, New York: Human Rights Watch
- Human Rights Watch (HRW) 2009. *The Christmas Massacres: LRA Attacks on Civilians in Northern Congo*, New York: Human Rights Watch.
- International Council on Mining and Metals (ICMM), 2008 "Position Statement: Mining and Indigenous Peoples", International Council on Mining and Metals.
- International Union for the Conservation of Nature/International Council on Mining and Metals (IUCN/ICMM), 2008. "Mining and Indigenous Peoples Roundtable: Continuing a Dialogue Between Indigenous Peoples and Mining", IUCN-ICMM Dialogue on Mining and Diversity, Sydney Australia, 30-31 January 2008.
- International Labour Organisation (ILO) 1969. Convention on Indigenous and Tribal Peoples in Independent Countries.
- International Finance Corporation (IFC) 2006. Performance Standard 5: Land Acquisition and Involuntary Resettlement.
- International Finance Corporation (IFC) 2006. Performance Standard 7: Indigenous Peoples.

- Kenrick, J. & J. Lewis. 2004. "Indigenous Peoples' Rights and the Politics of the term 'Indigenous'", *Anthropology Today*, 20, 2, pp. 4-9.
- Kuper, A. 2005. *The Reinvention of Primitive Society: Transformations of a Myth*, Routledge: London.
- Lartzman, D. A. and H. Vredenburg. 2005. "Indigenous Peoples, Resource Extraction and Sustainable Development: An Ethical Approach" *Journal of Business Ethics*, 56, 239-254.
- Mehta, L. and M. Stankovitch (2000) "Operationalisation of Free Prior Informed Consent", contributing paper to the World, Commission on Dams: Cape Town.
- Mukenge, T. 2002. *Culture and Customs of the Congo*. Greenwood Press: Westport.
- Mullins, C.W. and D.L. Rothe. 2008. "Gold, Diamonds and Blood: International State-Corporate Crime in the Democratic Republic of the Congo", *Contemporary Justice Review*, 11, 2, pp. 81-99.
- Musafiri, P.N. 2008. "The Dispossession of Indigenous Land Rights in the DRC: A History and Future Prospects" in *Land Rights and the Forest Peoples of Africa: Historical, Legal and Anthropological Perspectives*, Forest Peoples Programme.
- New Internationalist 2008 "Garden Furniture for Europeans", 1 April 2008
- Ohenjo, N., Willis, R., Jackson, D. Good, K. and B. Mugarura. 2006. Health of Indigenous People in Africa. *Lancet*, 367, 1937-1946.
- Oliver-Smith, A. 2009. Ed. *Development and Dispossession: The Crisis of Forced Displacement and Resettlement*. SAR Press: Santa Fe.
- Pact. 2009. Update on Orpaillage on Concession 38: Options for Developing an ASM Transition Plan.
- Pottier, J. 2003. "Emergency in Ituri, DRC: Political Complexity, Land and Other Challenges in restoring Food Security", paper presented at the "FAO International Workshop on 'Food Security in Complex Emergencies: Building Policy Frameworks to Address Longer-Terms programming Challenges'".
- Pitty, R. 2001. Indigenous Peoples, Self determination and International Law. *The International Journal of Human Rights*, 5, 4, 44-71.
- Pottier, J. 2007. Rights Violations, Rumour, and rhetoric: Making sense of Cannibalism in Mambasa, Ituri (democratic Republic of Congo). *Journal of the Royal Anthropological Institute*, 13, pp. 825-843.
- Richardson, B.J. 2001. Indigenous Peoples, International Law and Sustainability. *Reciel*, 10, 1,-12.

Render ND “Mining and Indigenous Peoples Issues Review” report for ICMM.

Resettlement and development Solutions (RADS) 2009. Resettlement Policy Framework: Moto Gold Project.

Resource Consulting Services (RCS), 2009. Regional Economic Assessment for Moto (Kibali) Goldmines.

Synergy. 2009a. Moto Gold Project: Community and Social Development Optimisation Study Report. January 2009.

Synergy 2009b. Moto Gold Project: Human Rights Assessment, October 2009.

Synergy. 2009c. A Non-Judicial Rights-Based Grievance Mechanism for Kibali.

Stephens, C., Nettleton, C., Porter, J., Willis, R. and S. Clark. 2005. “Indigenous Peoples’ Health – Why are they behind Everyone, Everywhere?” *The Lancet*, 366, 10-13.

Tamang, P. 2005. “An Overview of the Principle of Free, Prior and Informed Consent and Indigenous Peoples in International and Domestic Law and Practices”, *Workshop on Free, Prior and Informed Consent (New York 17-19 January 2005)*, United Nations: New York.

Tahvanainen, A. 2005. The Treaty-Making Capacity of Indigenous Peoples. *International Journal of Minority and Group Rights*, 12, 397-419.

Taylor, J. 2008. Indigenous Peoples and Indicators of Well-Being: Australian Perspectives on United Nations Global Frameworks. *Social Indicator’s Research*, 87, pp. 111-126.

Trefon, T. 2006. “Industrial Logging in the Congo: Is a Stakeholder Approach Possible?”, *South African Journal of International Affairs*, 13, 2, pp.101-104.

Turnbull, C.M. 1961. *The Forest People*, Simon & Shuster: New York.

Turnbull C.M. 1983. *The Mbuti Pygmies: Change and Adaptation*, Cengage Learning: Ohio.

United Nations (UN) 1970, *Yearbook of International Law Commission, 1969, Volume II, Documents of the twenty-first Session including the report of the Commission to the general Assembly*, United Nations: New York.

United Nations (UN) 1998. Guiding Principles on Internal Displacement.

United Nations (UN), 2007. Declaration on the Rights of Indigenous Peoples.

United nations High Commissioner for Refugees 2008. *UNHCR Handbook for the Protection of Women and Girls*. UNHCR: Geneva.

Van Genugten, W. and C. Perez-Bustillo. 2004. The Emerging International Architecture of Indigenous Rights: The Interaction Between Global, regional and National Dimensions. *International Journal on Minority and group Rights*, 11, 379-409.

6 Appendices

Appendix 1: List of Persons Contacted on Site Visit

Appendix 1: List of Persons Contacted on Site Visit

Date	Name	Title	Gender	Location
26/09/2009	Amuta Atrole	PPRD	Male	Ndala
	Kolonganga	elder	Male	
	Kulundema Bodwe	Councillor of Gatanga/elder		
	Anindio Dango Christof	Village		
	Motoba Mbaiga Methode			
26/09/09	Mkenge Babile Ettiene	Village Chief , Kukundeku	male	Kukundeku
	Madifu Fataki	Elder	male	
	Dabu Bagina	Village chief, Kokiza	Male	
	Madrandive Kuli	Village advisor	Male	
	Ruko Duringa	Fataki Family	Male	
	Sedi Mona Fataki		Female	
	Dradonia manyatolo	Village Secretary, Kukundeku	Male	
	Karim Awikos	President of Fataki Family	Male	
	Fataki Undeite	Vice Chiar fataki Family	Male	
	Samiri Fataki	Advisor, Kukundeku	Male	
28/9/2009	Andrema Tamarube Valege	Chef de Groupement, Doko	male	Doko
28/9/2009	Alecha Iari	IDP (Tadu)	Male	Salambongo
	Kaloma Sirika	IDP (Tadu)	Male	
	Tamaru Timote	IDP (Tadu)	Male	
	Ago Tandema	IDP (Faradja)	Male	
	Mananzo Tandema	IDP (Faradja)	Female	
	Esperance Ajo	IDP (Faradja)	Female	
	Mawanza Edoize Sambia	IDP (Sambia)	Female	
29/09/2009	Foster Ntumba	Premier Urgence	Male	Salambongo
28/9/2009	Lotche Gudza	Head Nurse, Okima health Centre	male	Mangbe (check)
28/9/2009	Abiandroa Baudouin	IDP (Tamati)	male	Ndala
29/9/2009	Donato	Mbuti, Chief	Male	Dubele
	Zafino	Mbuti	Female	

Date	Name	Title	Gender	Location
	Alila	Mbuti	Female	
	Tabu	Mbuti	Female	
	Banjamin	Mbuti	Male	
30/9/2009	Damas Kwete	Youth	Male	Durba
	Jackson Kamabi	Youth	Male	
	Ekosi Thiedry	Youth	Male	
	Elindu Maweno	Youth	Male	
	Nicholas Gabo	Youth	Male	
30/9/2009	Mrs. Lufulwabo	ADDEFEN	Female	Durba
	Francois Dibela	ADDEFEN	Female	
	Georgette Kapinga	ADDEFEN	Female	
	Florence	ADDEFEN	Female	
30/9/2009	Ettienne Dizole	CARITAS	Male	Durba
	Diedonne Abiba	CARITAS	Male	
	Damas Kwete	CARITAS	Male	
1/10/2009	Jean-Laurent Mboli Hidi	Police Commissioner	Male	Doko
1/10/2009	Bulo Rene	<i>Chef de Posto</i>	Male	Doko
	Jean-Batiste Ntisele	immigration	Male	
	Jean Batiste Ilonga	Security	Male	
	Mondene Bazile	Agronomist	male	
	Yeka Lomazo	Village chiefe, Drati	male	
1/10/09	Eric Mandey Amisa	Fieldworker, Kibali Gold Mine	male	Kibali Mine
	Patrice Mukengeshay	Fieldworker, Kibali Gold Mine	male	Kibali Mine
2/10/09	N/A	Administrator	male	Waja
2/10/09	Josef Isabu	Sector Chief	male	Waja