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CONFLICT MINERALS IN THE DEMOCRATIC REPUBLIC OF THE CONGO

Aligning Trade and Security Interventions

RUBEN DE KONING

STOCKHOLM INTERNATIONAL PEACE RESEARCH INSTITUTE

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Preface

Congolese conflict minerals starkly illustrate the complex interconnections that are being created by globalization in trade, manufacturing and communications. Ores of tin, tantalum and tungsten—which are needed to make crucial components in many modern consumer electronic devices—are abundant in the east of the Democratic Republic of the Congo (DRC), as is gold. International demand for these resources has allowed—and even encouraged—non-state groups to finance continued armed violence by robbing and taxing local miners and mineral traders and by facilitating smuggling. Increasingly, government forces are engaging in similar forms of exploitation. As a result, the region remains poor, insecure and lawless; civilian communities suffer looting and brutal attacks that have included mass rapes carried out by armed groups; and the Congolese state is deprived of valuable revenues that could be put towards development.

Such interconnectedness calls for responses that cross borders, even cross continents. The past few years have seen responsibility move down the commodity chain. Largely thanks to the work of civil society organizations, consumers in wealthy countries are far more aware of the human and environmental costs of the goods they buy, pressuring retailers, industry and even governments to closely examine their supply chains and processes. At a more official level, UN 'smart sanctions' can now theoretically target anyone, anywhere, who purchases minerals from which armed groups in the DRC have benefited financially.

These are positive steps but, as this Policy Paper makes clear, the challenges are immense. For example, 'conflict-free' mineral exports depend on improvements in resource governance and security along the mineral supply chain. Trade regulation can encourage legal trade, but too much regulation could kill it, exacerbating poverty in mining communities and increasing illegal trade. Driving illegal armed groups out of mining areas is of little use when regular soldiers are just as prone to violence and extortion. The policy recommendations presented in this study are intended to promote the kind of comprehensive, inclusive and coordinated approaches that offer the only hope of finally breaking resource–conflict links in eastern DRC.

Thanks are due to the Swedish Ministry for Foreign Affairs for its generous support of the project on resource–conflict links in the DRC that led to the production of this report. We have been especially fortunate to have the author of the report, Ruben de Koning, as part of the SIPRI team for several years, and we wish him well in his new role as a member of the UN Group of Experts for the DRC. Finally, I would like to thank the SIPRI editorial department, and in particular Caspar Trimmer.

Dr Bates Gill
Director, SIPRI
June 2011

Summary

Mineral resources have played a crucial role in fuelling protracted armed conflict in the east of the Democratic Republic of the Congo (DRC). Resource revenues obtained by looting, illegal levies and more sophisticated entrepreneurial involvement help foreign rebels and Congolese militia to finance violence and to withstand military defeat and pressure to lay down arms. However, the regular armed forces are becoming equally involved in illegal exploitation of mineral extraction and trade. The thirst for resource revenues spurs rivalry between regular army units and undermines effective command and control.

In recent years various actions have been taken to break mineral–conflict links in eastern DRC. The ultimate aim is the legal and transparent export of 'conflict-free' Congolese minerals (minerals that are not linked to violence or other human rights abuses) and the restoration of security and state authority in eastern DRC, allowing post-conflict peacebuilding to progress. These actions include UN sanctions; industry-led certification schemes for key minerals; the establishment of due diligence guidelines for importers; legislation against imports of conflict minerals; establishment of safe trading centres; military campaigns; and, from September 2010 to March 2011, a controversial government ban on all artisanal extraction of and trade in selected minerals from eastern DRC. So far these have done little to weaken armed groups and to detach army units from mines and trading chains.

Recent conflict dynamics have significantly altered the environment in which such initiatives operate. A series of military campaigns against the exiled Rwandan rebel group Forces démocratiques de libération du Rwanda (FDLR) and Congolese militia groups in eastern DRC that started in 2009 have not helped the demilitarization of mining locations, with victorious army units simply taking over the control and exploitation of 'liberated' mining and trading sites. In particular, elements of the former Congolese rebel group Congrès national pour la défense du peuple (CNDP) that have recently been integrated into the regular army have strengthened their grip on mining areas. Meanwhile, the FDLR and militia groups have resorted to vicious revenge and looting attacks on mining and trading communities from which they have been dislodged during the military campaigns.

Progress in terms of formalizing and certifying trade was mostly suspended and risks being undone as a result of the mining ban. There are signs that formal mineral companies that have the will and capacity to help reform trade are instead disengaging from the DRC, while the mineral trade has moved further underground. This provides ample opportunities for military actors to invest in, facilitate and protect illegal trading networks.

Trade interventions alone cannot solve the security problems associated with the artisanal mining sector in eastern DRC. Although certification schemes could potentially cover much of the trade in metal ores in eastern DRC, this can only happen with the prior demilitarization of important mines and associated trading

chains. Meanwhile, such initiatives largely fail to affect the gold trade, which is entirely illegal and is likely to remain so. Gold is so easily smuggled and converted into cash or goods that business actors have little incentive to register transactions. They are also dissuaded from openly trading gold by the risk of robbery and extortion from illegal armed groups and military and civil state authorities.

The problem of conflict minerals is essentially a problem of security rather than one of informal or illegal trade. Nevertheless, resource governance interventions can provide entry points to improve security. Similarly security sector reform can be targeted at demilitarization of mines and trading chains, supporting trade-focused initiatives. Better coordination and complementarity are needed between the various actions. External donors must better target future support in these directions. At the same time, ownership of resource governance reform initiatives by the Congolese Government and other local stakeholders must be increased in order to deliver authoritative, legitimate and effective solutions.

Summarized policy recommendations

1. Specialized Congolese security organs and judicial authorities should be professionalized and equipped to gather evidence on armed groups' financing strategies and the illegal involvement of regular armed forces in mining and mineral trade, which should lead to effective prosecution of suspect armed actors and their economic associates for violations of the Mining Code, the military penal code and other relevant national legislation.

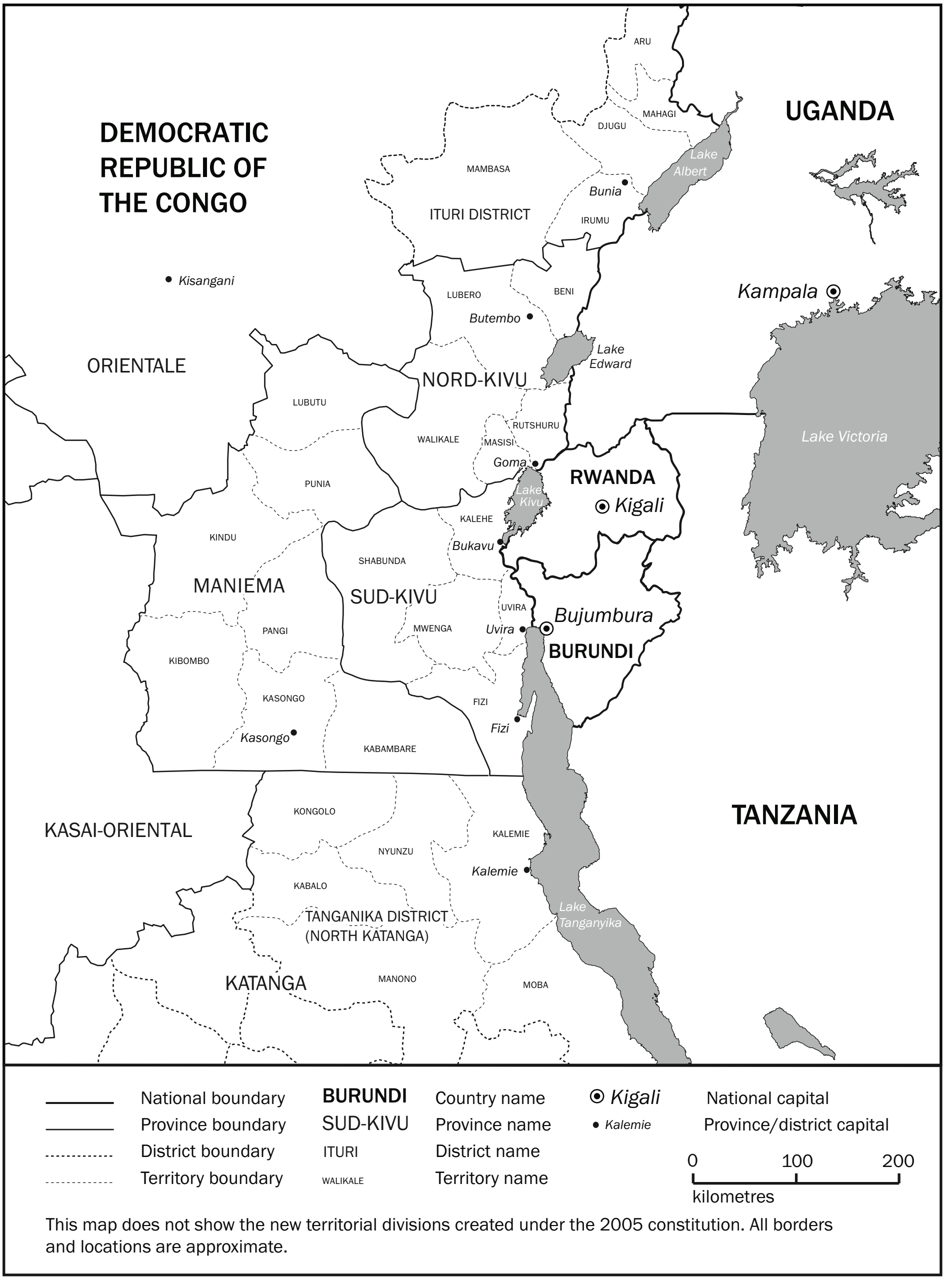
2. International donors should use their support to police and wider security sector reform to persuade the Congolese Government to demilitarize mining areas and deploy sufficient well-trained, adequately paid and supervised police units at mining sites, trading centres and border posts to inspect trade and shield miners and traders from military interference.

3. The Congolese Ministry of Mines should assume a more prominent role in current mineral traceability efforts by conducting multi-stakeholder consultations to identify what assistance local actors need in order to fulfil due diligence requirements, and by offering better guidance to companies and auditors concerning which mines in eastern DRC are acceptable sources of conflict-free minerals.

4. International donors and Congolese Government agencies currently investing in mineral traceability should simultaneously clarify multiple user rights at the production level and speed up the formalization of artisanal mining through widespread demarcation of and technical support to legal artisanal mining zones.

Abbreviations

3Ts	Cassiterite, coltan and wolframite
AMZ	Artisanal mining zone
BGR	Bundesanstalt für Geowissenschaften und Rohstoffe (German Federal Institute for Geosciences and Natural Resources)
CEEC	Centre d'Evaluation, d'Expertise et de Certification (Centre for Evaluation, Expertise and Certification)
CNDP	Congrès national pour la défense du peuple (National Congress for the Defence of the People)
CTC	Certified Trading Chains project
DRC	Democratic Republic of the Congo
FARDC	Forces armées de la République démocratique du Congo (Armed Forces of the DRC)
FDLR	Forces démocratiques de libération du Rwanda (Democratic Forces for the Liberation of Rwanda)
IOM	International Organization for Migration
ISSSS	International Security and Stabilization Support Strategy
ITRI	Formerly the International Tin Research Institute
iTSCI	ITRI Tin Supply Chain Initiative
MONUC	UN Organization Mission in the Democratic Republic of Congo (former name of MONUSCO)
MONUSCO	UN Organization Stabilization Mission in the Democratic Republic of the Congo
NGO	Non-governmental organization
PDG	Pit owner (from président-directeur general)
PROMINES	Growth with Governance in the Mineral Sector project
SAESSCAM	Service d'Assistance et d'Encadrement du Small Scale Mining (Small-scale Mining Assistance and Training Service)
STAREC	Stabilisation and Reconstruction Programme of the zones affected by armed conflicts in eastern DRC



Map of eastern Democratic Republic of the Congo

1. Introduction

The role of mineral resources in fuelling the protracted conflict in the eastern provinces of the Democratic Republic of the Congo (DRC) has attracted considerable international attention. Spurred in part by media reports about 'conflict minerals' and the success of the Kimberley Process in stemming the flow of so-called blood diamonds, the Congolese Government, mineral importers, international donors and the United Nations have all started to take concrete steps to break mineral–conflict links. These are aimed ultimately at allowing the trade in certain key minerals originating in eastern DRC to continue while excluding armed actors from the economic benefits, allowing the restoration of security and space for post-conflict peacebuilding.[1]

These steps take very different forms. For example, UN sanctions can now target anyone who—knowingly or negligently—purchases minerals from which armed groups have profited; international partnerships are seeking to establish 'conflict-free' certification schemes for key minerals; and importing countries have legislated against imports of conflict minerals. Besides trying to neutralize non-state armed groups in the area, the Congolese Government has taken various steps aimed at suppressing illegal trade, excluding military personnel from involvement in mineral trade and boosting government mineral revenues, including establishing safe and regulated trading centres. Most recently, it unexpectedly imposed a total ban on extraction and trading of certain minerals from eastern DRC, from September 2010 to March 2011.

While a variety of interests motivate these interventions, the different actors involved share a similar objective: a steady, regulated, transparent and conflict-free flow of essential minerals from eastern DRC to international markets. Most of the current interventions are potentially complementary and mutually supporting. Indeed, recent experience demonstrates that none of them has a realistic chance of success in isolation. When armed groups have been militarily driven out of mining and trading centres where they have been involved in economic exploitation, the result has frequently been for others—including elements of the regular army—to fill the vacuum or for armed groups to resort to looting and revenge attacks on the communities from which they have been ejected. Furthermore, piecemeal attempts to reform trade have thus far done little to weaken armed groups and detach elements of the regular army from the mines and trading chains that they have been exploiting for profit. While political circumstances in the DRC undoubtedly play a role, it has also become clear that the ability of trade reforms alone to help improve security is limited.

Without proper coordination and complementarity, there is also considerable potential for interventions to undermine each other. For example, trade regulation risks killing formal trade altogether, jeopardizing the livelihoods of thousands of already poor local people and forcing trade underground. An unwanted

[1] Eastern DRC refers to the provinces of Nord-Kivu, Sud-Kivu and Maniema; Ituri district in Orientale province; and Tanganika district (North Katanga) in Katanga province. See the map on p. viii.

consequence of certification schemes may be that while state or non-state armed actors and their associates adapt to, use and abuse new regulations, other artisanal miners and small-scale traders lose out because they operate in non-certified mines or have limited access to new regulations. The mining ban, intended to accelerate demilitarization of mining areas, effectively suspended numerous trade reform interventions. Any combination of responses needs to be coordinated in a way that reflects the complexity of the situation on the ground.

This Policy Paper aims to assess the appropriateness of current interventions aimed at breaking the links between mineral resources and ongoing conflict and human rights abuses in eastern DRC—particularly in the light of recent conflict dynamics and the multiple and constantly evolving ways in which armed actors are involved in and profit from the mineral supply chains—and to recommend ways to improve their complementarity. The central argument is that trade interventions have so far had limited positive impact on peace and stability in eastern DRC because they have not been accompanied by efforts in the security sector aimed at demilitarization of mines and the pursuit of economic crimes. In addition, interventions do not adequately target the gold trade and furthermore risk failure because they are too much driven by foreign donors rather than the Congolese Government and local stakeholders

This chapter presents a discussion of the concept 'conflict minerals' in the context of eastern DRC and a brief summary of some of the recent events that have significantly changed the environment in which interventions operate. Chapter 2 provides an overview of the commodity chains of the main conflict minerals in eastern DRC. Chapter 3 presents important recent developments in the dynamics of conflict in eastern DRC and describes the changing patterns of military exploitation of the mineral commodity chains. Chapter 4 discusses non-military responses to resource–conflict links in eastern DRC, including due diligence and mineral certification schemes along with initiatives to improve resource governance as part of the UN's and international donors' broader stabilization and reconstruction plans. Chapter 5 draws conclusions and sets out some policy recommendations for the Congolese Government and its international backers.

Conflict minerals

Minerals have played an important role in more than a decade of armed conflict in eastern DRC. By tapping into and controlling the informal trade in precious metals and gemstones, rebel leader Laurent Kabila was able to build an opposition army and overthrow the regime of Mobutu Sese Seko in 1997. Later, newly formed armed groups opposing the governments of Laurent (1997–2001) and then Joseph Kabila (2001–present) followed the same strategy, often openly supported by either Rwanda or Uganda, in their efforts to gain territorial control.[2] Simultaneously, Mai–Mai (community-based) militia, established to oppose

[2] Koning, R. de, 'Resource–conflict links in Sierra Leone and the Democratic Republic of the Congo', SIPRI Insights on Peace and Security no. 2008/2, Oct. 2008, <http://books.sipri.org/product_info?c_product_id=364>.

foreign incursions into eastern DRC, and Rwandan Hutu rebels who had spilled over into eastern DRC in the wake of the Rwandan genocide in 1994, progressively engaged in illicit resource trade as a source of finance and means of survival.

Besides non-state armed groups, regular armed forces of the Forces armées de la République démocratique du Congo (FARDC, Armed Forces of the DRC) are also involved in exploiting mineral commodity chains to enrich themselves or, in some cases, to make up for low and unpaid wages. The FARDC's ranks include large numbers of former rebels; many of them, particularly a substantial new influx in eastern DRC since 2009, are only superficially integrated into the FARDC command structure and retain their former composition.[3] Elements of the regular army, up to and including high-ranking officers, are involved in the various forms of exploitation, which range from ad hoc looting attacks to investment in mineral trading enterprises.

The aim of securing control of lucrative mining areas and positions in mineral trading chains has resulted in sometimes violent rivalry between FARDC units and has undermined effective command and control within the FARDC. Some former rebels, even those who have embarked on integration or demobilization, have defected from the FARDC and rejoined non-state forces, dissatisfied with slow progress and poor and often delayed payments. In addition, competition between non-military actors such as local state and customary authorities, mining enterprises, and miners' cooperatives, has frequently turned violent.

Responses aimed at breaking resource–conflict links in eastern DRC have sometimes been constrained by a narrow understanding of what constitute conflict resources, seeing them as resources 'that originate from areas controlled by forces or factions opposed to legitimate and internationally recognized governments, and are used to fund military action in opposition to those governments'.[4] This definition fails to recognize the involvement of the FARDC and other state actors in the illegal exploitation of mining and mineral trade. It also misses the crucial point that resources that are used to fund armed conflict at the same time provide livelihoods to many people who work in and around artisanal mines—albeit usually without licences—but are not directly involved in the conflict. Artisanal mining involves manual excavation of alluvial mineral deposits with minimal technological input. Artisanal mining communities are mostly in remote areas, and artisanal miners are generally poor and have few other alternative livelihood sources. As is discussed in later chapters, they can be adversely

[3] Various former rebel and militia units have automatically become FARDC units under the terms of peace agreements. However, under the full integration process they are supposed to be absorbed into the FARDC command structure and their existing command structures dismantled. For more detail see Koning, R. de, 'Demilitarizing mining areas in the Democratic Republic of the Congo: the case of northern Katanga province', SIPRI Insights on Peace and Security no. 2010/1, Jan. 2010, <http://books.sipri.org/product_info?c_product_id=401>.

[4] See e.g. United Nations, General Assembly, 'The role of diamonds in fuelling conflict: breaking the link between the illicit transaction of rough diamonds and armed conflict as a contribution to prevention and settlement of conflicts', A/RES/55/56, 29 Jan. 2001.

affected by measures that aim to demilitarize mining areas and mineral trading chains.

Exploitation of mineral trade by armed groups—whether state or non-state—clearly fuels conflict and undermines stability and security. However, the militarization of mineral commodity chains is symptomatic of a broader security deficit characterized by failure to neutralize foreign and local rebels, incomplete and inefficient integration of former rebels and militia into the FARDC, and a poor system of training and payment to integrated units. Eastern DRC's war economy is particularly hard to defuse because of the multiplicity of armed actors involved, porous borders with neighbouring countries, and the limited capacity and poor performance of the relevant civil state agencies. These facts explain the limited progress that has been made to date and highlight the importance of coordinated, multi-faceted responses.

Recent developments

The Congolese Government's imposition of a mining ban in September 2010 followed a series of military campaigns against the Rwandan rebel group Forces démocratiques de libération du Rwanda (FDLR, Democratic Forces for the Liberation of Rwanda). These campaigns had succeeded in driving FDLR forces—along with Mai-Mai (community-based) militia that had opted out of disarmament, demobilization and reintegration (DDR) or FARDC integration programmes—out of some areas, but had largely failed to demilitarize mines and mineral trading chains. Often, victorious FARDC units simply took over control—and exploitation—of the 'liberated' mining and trading sites. This was particularly true of units of the formerly anti-government Congolese group Congrès national pour la défense du peuple (CNDP, National Congress for the Defence of the People), which had been rapidly incorporated into the FARDC under a deal made in early 2009. This in turn sparked revenge attacks by the ousted FDLR and militia units.

On 10 March 2011 the mining ban was lifted. It is not yet clear how successful it was in starving out military actors from mining and trading areas, or at what cost. It appears, however, that cassiterite production has fallen—and continued to do so even after the ban was lifted—because the main international buyer decided not to accept any minerals that could not be traced back to the mine of origin. This seems to have reduced military presence in some cassiterite mines. For example, according to UN experts, the mining sites of Bisie and Omate in Walikale territory, Nord-Kivu, have been progressively demilitarized since the lifting of the ban.[5] This provides a window of opportunity to generate a clean supply chain from the mine that would capture a significant part of the trade and allow international buyers to return.

[5] United Nations, Security Council, Interim report of the Group of Experts on the Democratic Republic of the Congo, S/2011/345, 7 June 2011, p. 12.

2. Mineral production and trade

The mining sector of eastern DRC is focused on gold, cassiterite (tin ore), coltan (colombite–tantalite, an ore of tantalite and niobium) and wolframite (tungsten ore), which are collectively referred to as the 3Ts. Tin, tantalum, tungsten and niobium are all in demand from the international electronics industry, while gold mainly goes to home smelters in the Middle East and East Asia that supply local jewellery markets.

While healthy markets exist for all of the minerals mined in eastern DRC, there has been no industrial mining in the region for several years, largely because of large mining companies' concerns over security and stability. While extractive companies are returning to some gold-rich areas in Ituri district, Orientale province, nearly all mining in eastern DRC is still artisanal. Only rudimentary mineral processing takes place within the DRC, keeping the value of mineral exports lower than it could be. Furthermore, a large proportion of output, particularly of gold, leaves the DRC without being documented or generating revenue for the Congolese Government. In contrast, trade in the 3Ts has been largely formalized. Most traders have licences, while mining authorities record the larger share of internal shipments (by aeroplane or road), transactions and exports. The extraction of all minerals, however, remains largely informal since few mines are legally designated for artisanal mining.

While mining and the mineral trade in eastern DRC are associated with protracted violence, instability and corruption, they are also a major provider of employment and state revenue. Although there are no reliable government statistics of the number of artisanal miners in the region, adding up estimates of separate areas produces a figure of about 450 000 people.[6] On top of this are porters, traders and those employed in rudimentary processing of the mined ores. While eastern DRC's mineral wealth could potentially generate much larger government revenues, combined fiscal receipts from the mining sector in Nord-Kivu and Sud-Kivu amounted to about $6 million in 2008.[7] The share of exports documented and taxed by the government has increased in recent years.

Artisanal miners of gold and the 3Ts are linked to the respective trading chains by small-scale intermediary traders (*petits négociants*) who buy minerals for cash but more often prefinance mining operations by bringing in equipment and supplies in return for minerals. The minerals are bought and sold by traders (*négociants*) and eventually sold to buying houses (*comptoirs*), which arrange export. In some cases *petits négociants* and *négociants* act as agents for a *comptoir*. Minerals are transported to the major trading centres from interior trading centres by air (see box 2.1) and road. As the cases presented in boxes 2.2 and 2.3 below show, it

[6] Pact Inc., 'PROMINES study: artisanal mining in the Democratic Republic of Congo', June 2010, <http://pactworld.org/galleries/resource-center/PROMINES Report English.pdf>, p. 21.

[7] Provincial Division of Mines, Nord-Kivu, *Rapport Annuel 2008* [Annual report 2008], unpublished government document, Goma, 7 Feb. 2009; and Provincial Division of Mines, Sud-Kivu, *Rapport Annuel 2008* [Annual report 2008], unpublished government document.

Box 2.1. The role of air cargo companies in the mineral trade

A portion of the minerals produced in mines in eastern DRC is transported to Bukavu and Goma by air. About a dozen small air cargo companies are active in eastern DRC. Air cargo companies may own aircraft but also lease from other airlines. While some cargo flights are carried out on behalf of a single *comptoir*, flights usually take minerals from several *negociants* supplying several *comptoirs*. The cargo companies' flight rotations depend on the availability of planes and the quantity of minerals awaiting transport at airstrips in the interior.

The availability of aircraft has significantly decreased since September 2007, when the Congolese Ministry of Transport banned the use of Antonov aircraft that fail to meet safety standards. About 10 Antonov aircraft that had been used to transport minerals and other goods in eastern DRC were grounded at the end of 2009, leaving some 15 other aircraft (Short SC-7 Skyvans and Let L-410s), registered in Goma and Bukavu, in operation.

Mining authorities closely monitor the volume, origin and destination of 3T minerals transported by air. At airstrips, mining authorities issue transport authorizations, which are checked on arrival in Bukavu or Goma, both at the airport and at the air cargo company facility from which goods are collected. Gold is also transported by air but escapes all forms of control as it is sent by so-called *colis de valeur* (parcel of value), which authorities are not allowed to open.

Sources: Division of Mines Sud-Kivu, Daily reports Jan.–June 2010, unpublished government documents; Transcom (Congolese state transport authority), Aircraft inventories for Nord-Kivu and Sud-Kivu, 2010, unpublished government documents; and New Congocom Airlines representative, interview with the author, 28 June 2010.

is not unusual for the owners of mineral *comptoirs* to also own airlines or road transport companies, which are often used to transport minerals. In some cases this cross-ownership has allegedly been used to facilitate smuggling. Figure 2.1 shows the main land and water transportation routes by which minerals can leave eastern DRC for international export.

Differences between the trading chains for gold and the 3Ts in eastern DRC are largely related to the forms in which they leave the mining areas. The 3Ts are bulky and are transported in large quantities by truck or aeroplane. This creates natural choke points where state agents can inspect, document and tax shipments. As gold is much easier to transport and conceal, the gold trading chain typically involves fewer transactions between the original mine site and exporter, making it much harder for the government to control. Not surprisingly, the degree of formalization is much higher in the case of the 3Ts than in the case of gold. Nevertheless, responses to the problem of conflict minerals in the DRC tend to focus on the 3Ts.

The following sections look in more detail at the trade in the 3Ts and in gold. Each section first provides a survey of available statistics about production and trade, drawing from data from the customs and mining authorities of the DRC and of neighbouring countries. The respective trading chains are then examined, including the main routes used to transport minerals, official documentation procedures, and the mode of operation of domestic traders, exporters, transporters and foreign processors and sellers.

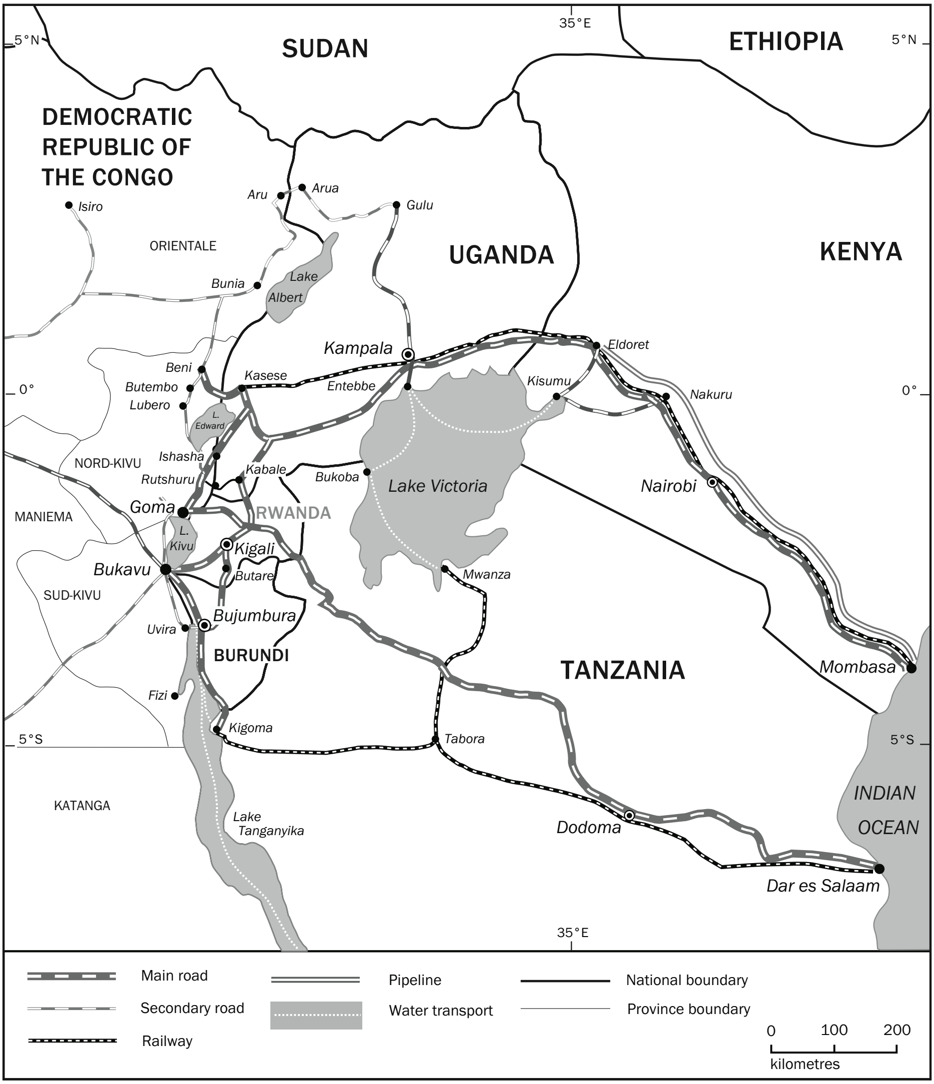


Figure 2.1. The main land and water transport routes for resources to and from eastern Democratic Republic of the Congo

Source: Pourtier, R., *The Role of the Exploitation of Natural Resources in Fuelling and Prolonging Crisis in the Eastern DRC* (International Alert: London, Jan. 2010). p. 79.

Cassiterite, coltan and wolframite

More than half of cassiterite production in eastern DRC is estimated to derive from Bisie. Other important production areas are in Maniema (Kasese in Punia territory) and Sud-Kivu (Lulingu in Shabunda territory). Coltan and wolframite mines are scattered across the region. All three ores are exported through the frontier cities of Bukavu (Sud-Kivu) and Goma (Nord-Kivu).

Table 2.1. Official cassiterite, coltan and wolframite mineral exports from Nord- and Sud-Kivu, 2007 to mid-2010

Figures given are tonnes of mineral exported

Mineral	2007	2008	2009	2010 (Jan.–June)
Nord-Kivu				
Cassiterite	10 172	13 331	10 543	4 569
Coltan	74	87	281	99
Wolframite	719	548	304	38
Sud-Kivu				
Cassiterite	4 731	6 004	4 652	1 908
Coltan	354	440	187	7
Wolframite	455	168	81	7
Total	**16 505**	**20 578**	**16 048**	**6 628**

Source: Provincial Division of Mines, Nord-Kivu, Annual reports 2007–10, unpublished government documents; Provincial Division of Mines, Sud-Kivu, annual reports 2007–2008, unpublished government documents; and Office Congolais de Contrôle (OCC), Sud-Kivu, unpublished statistics (for 2009–2010).

Statistics for the 3Ts

Cassiterite is the most important of the 3Ts traded from eastern DRC. Coltan and wolframite fetch double the price per kilogram but are exploited and traded in much smaller quantities. In the peak year 2008, the export value of the 3Ts from Nord-Kivu and Sud-Kivu amounted to $137 million, according to statistics from the provincial Division of Mines in both provinces. Government data further show that cassiterite exports for 2009 dropped back to 2007 levels, valued at $118.5 million. Based on official export figures from the first half of the year, the downward trend appears to have continued in 2010 up to the September mining ban (see table 2.1). However, there is also a possibility that underdeclaration and smuggling increased.

The decline in official 3Ts exports in 2009 and the beginning of 2010 does not appear to be the result of lower market prices. The international price of tin has more than doubled since the beginning of 2009, as has that of tantalum. A more likely reason is the fact that a number of importers stopped buying cassiterite, coltan and wolframite from the DRC in 2009. The 2010–2011 government mining ban brought official exports down to zero.

The 3Ts trading chains

Trade in the 3Ts is first documented when ores are loaded onto aircraft or trucks for shipment to either Goma or Bukavu. At this stage, licensed *négociants* pay a small fee for a transport authorization issued by the Service d'assistance et d'encadrement du small scale mining (SAESSCAM, Small-scale Mining Assistance and Training Service) or the provincial Division of Mines. Once minerals arrive in Goma or Bukavu at the *comptoir* or the airline office, authorities from the Division of Mines register the shipment in the name of the *négociant*. The

Centre d'Evaluation, d'Expertise et de Certification (CEEC, Centre for Evaluation, Expertise and Certification) registers transactions between *négociants* and *comptoirs* and provides a voucher (*bon d'achat*) to the *comptoir*. The CEEC also issues an export certificate for each consignment (weighing 23–55 tonnes) shipped. Other government agencies need to sign the certificate. The export certifycate does not name the *négociant(s)* involved in supplying the minerals or where the minerals were purchased or mined.

Some *comptoirs* have a policy of only buying minerals originating in non-rebel-held areas. However, others buy from *négociants* regardless of their areas of operation.[8] *Comptoirs* in Nord-Kivu principally obtain cassiterite from the FARDC-controlled mine at Bisie, which is estimated to provide 70 per cent of the cassiterite traded in Goma.[9] However, according to the UN Group of Experts, an increasing share of cassiterite arrives in Goma by road rather than by air following significant improvements to the road network in 2009.[10] This makes it more difficult for the government to control minerals entering Goma and could therefore lead to increased illegal exports to Rwanda.

Consignments of 3Ts from eastern DRC are transported by road through Burundi, Rwanda and Uganda to the Kenyan port of Mombasa and the Tanzanian port of Dar es Salaam, from where they are shipped to importing or processing companies in Asia and Europe (see figure 2.2.). During 2009, two major 3Ts importers, one in Belgium and one in Thailand, stopped buying from the DRC after criticism from the UN Group of Experts and advocacy groups that *comptoirs* that they purchased from obtained minerals in rebel-occupied territories. The biggest smelting company processing Congolese cassiterite is now in Malaysia.

Official Congolese exports of the 3Ts are certain to have fallen sharply in 2011 as a result of the mining ban. There are indications, however, that extraction continued under the ban in certain areas where mining authorities had limited or no control. Any minerals produced under the ban would have been either exported illegally or stockpiled. Road improvements have arguably facilitated illegal exports, in Nord-Kivu and possibly in Sud-Kivu. *Negociants* who transport minerals by road obviously avoid controls at airports and are also able to bypass the main border crossings to Rwanda near Goma and Bukavu. Some of the trade in the 3Ts previously passing through Goma is diverted to Uganda via Bunagana, in Rutshuru territory, Nord-Kivu. Likewise, a portion of the trade directed to Bukavu is diverted to Burundi via Uvira, in Uvira territory, Sud-Kivu, using the Gatumba and Kavinvira border crossings. Alternatively, traders use smuggling routes across Lake Kivu into Rwanda from either Goma or Bukavu.[11]

[8] See e.g. United Nations, Security Council, Final report of the Group of Experts on the Democratic Republic of the Congo, S/2009/603, 23 Nov. 2009, pp. 42–44.

[9] Garrett, N., 'Walikale: artisanal cassiterite mining and trade in North Kivu', Communities and Small Scale Mining (CASM), June 2008, <http://www.artisanalmining.org/userfiles/file/CASM_WalikaleBooklet.pdf>, p. 51.

[10] United Nations, S/2009/603 (note 8), p. 50.

[11] United Nations, Security Council, Final report of the Group of Experts on the Democratic Republic of the Congo, S/2010/596, 29 Nov. 2010, p. 65.

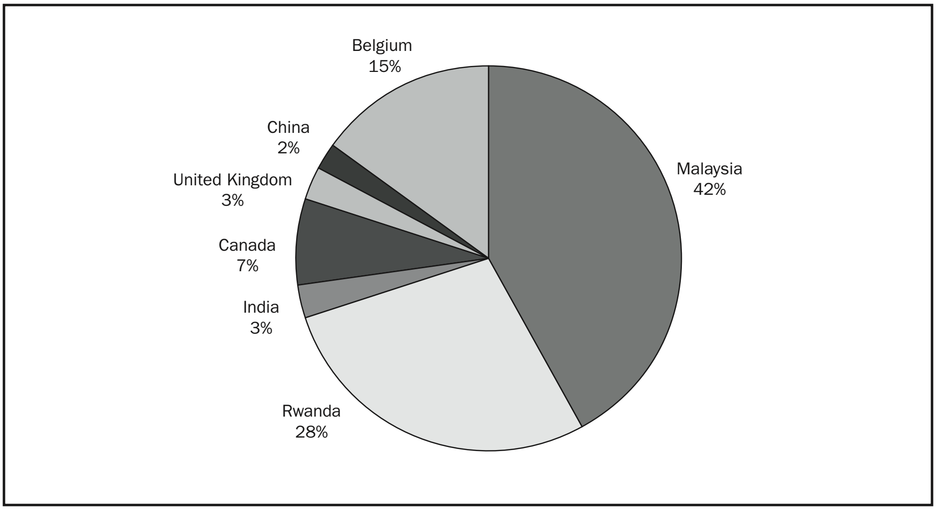


Figure 2.2. The main importing countries for cassiterite, coltan and wolframite from eastern Democratic Republic of the Congo, January–June 2010

Source: Provincial Division of Mines, Nord-Kivu, *Annual Report 2010;* and Provincial Division of Mines, Sud-Kivu, *Annual Report 2010*, unpublished government documents.

Authorities in Burundi and Rwanda have little incentive to prevent the smuggling of Congolese minerals onto their territories, as they can levy export duties. Rwanda is the main country through which Congolese minerals—whether legally or illegally imported there—are exported. While Rwandan trade statistics categorize minerals in transit and re-exported minerals, domestic production statistics are likely to include legal and illegal imports from DRC. This is because, in the Rwandan system, minerals are automatically registered with Rwanda as the country of origin if they are processed in the country. The quantity of illegal imports from the DRC to Rwanda cannot be derived by comparing Rwandan production and export statistics, as the production statistics are inaccurate and insufficiently disaggregated.

Gold

Statistics for gold trade

Gold mining is concentrated in Ituri district of Orientale province and in Sud-Kivu province. Because hardly any gold is officially exported, production estimates are highly variable. A Congolese Senate report published in September 2009 estimated that 40 tonnes of gold, worth $1.24 billion, was smuggled out of the DRC each year. This figure, which has been frequently cited in the media and in UN reports, seems high compared to earlier estimates by specialized bodies. For example, according to the Pole Institute in Goma, local sources in the industry estimate gold exports of 4.8 tonnes a year from Sud-Kivu and 5.2 kg a year from Ituri.[12] The US Geological Survey uses both estimates to derive an annual figure for Congolese gold production of about 10 tonnes, worth $310 million.[13] However, this estimate excludes Nord-Kivu and Maniema provinces, where some gold extraction also takes place.

Almost none of this estimated production appears in Congolese export statistics. Official gold exports declined from 6 tonnes in 1983 to 2 tonnes in 2002 to barely 54 kg in 2008.[14] The volume of legal gold exports from the DRC increased slightly in 2009–2010. This was most probably because several new *comptoirs* were established after the government lowered the licensing fee for a gold *comptoir* tenfold in 2009.[15] As a result, five new *comptoirs* were established in Bunia and Butembo. Together with Etablissement Namukaya in Bukavu, these exported 236 kg of gold from May 2009 to June 2010.[16]

A better indicator of the DRC's production capacity than official Congolese statistics is the exports of neighbouring countries, notably Burundi and Uganda. As table 2.2 shows, official exports from both countries have increased as rapidly as those from the DRC have declined. At its peak in 2006, Burundi exported over 4.5 tonnes of gold, while its domestic production capacity is estimated at between 500 kg and 1 tonne.[17] Uganda's exports peaked in 2002 and again in 2006 at about 7 tonnes, even though the country has negligible domestic production capacity. Based on these figures, over 10 tonnes of gold must have arrived in Burundi and Uganda from elsewhere in 2006. The DRC is the most likely source.

If large amounts of Congolese gold have indeed been exported illegally through Burundi and Uganda for several years, this has deprived the Congolese state of considerable export revenues. However, official exports from these countries have declined markedly in the past three to four years, falling below 1 tonne in 2009. In Burundi, the decline continued in 2010, with only 142 kg of official exports in the first six months.[18] This could be interpreted as a sign that trade from the DRC is drying up. However, there are no other indications that this is the case. New mining sites are being discovered in eastern DRC and industrial prospecting has displaced very few artisanal miners. Indeed, ever-increasing gold prices since the beginning of the global financial crisis at the end of 2008 have spurred production in many places.

[12] Johnson, D. and Tegera, A., *Rules for Sale: Formal and Informal Cross-border Trade in Eastern DRC*, Regards Croises no. 19 bis (Pole Institute: Goma, May 2007), pp. 89, 99.

[13] Yager, T. R., 'The mineral industry of Congo (Kinshasa)', *2007 Minerals Yearbook*, (US Department of the Interior, US Geological Survey: Reston, VA, Mar. 2010), p. 11.3.

[14] Congolese Senate, 'Commission d'enquête sur le secteur minier, Rapport' [Report: Senate Commission of Enquiry on the mining sector], 26 Sep. 2009, <http://www.bamanisajean.unblog.fr/files/2009/10/rcessm.pdf>, pp. 59–60.

[15] Abedi, C., 'La RDC perd 70 millions $US à cause de la fraude du métal jaune' [The DRC loses 70 million $US as a result of fraud of the yellow metal], *La Prospérité*, 15 July 2009, <http://fr.allafrica.com/stories/200907150336.html>.

[16] Fahey, D., 'Government efforts at formalisation and implications for future gold trade' and Geenen, S., 'The gold trade in Butembo', ed. J. Cuvelier, *The Complexity of Resource Governance in a Context of State Fragility: The Case of Eastern DRC* (International Alert: London, Nov. 2011), pp. 17–18.

[17] United Nations, Security Council, Final report of the Group of Experts on the Democratic Republic of the Congo, S/2007/423, 18 July 2007, p. 22.

[18] Burundian Ministry of Mines, *Annual Report 2009*, unpublished government document. No data is available for Uganda for 2010.

Table 2.2. Official gold exports by declared country of origin, 2002–2009

Figures are kilograms of gold exported.

Country of origin	2002	2003	2004	2005	2006	2007	2008	2009
Uganda	7 036.0	3 470.6	5 461.4	4 232.0	6 936.2	3 181.9	2 049.7	931.3
Burundi	483.0	2 855.0	3 229.0	3 905.0	4 568.0	4 190.0	2 005.0	971.0
Rwanda	10.0	2.0	–	–	–	–	39.0	14.0

Source: Ugandan Customs Authority statistics, unpublished (for 2002–2009); Burundian Customs Authority statistics, unpublished (for 2006–2010); Yager, T. R., 'The mineral industry of Burundi', *2006 Minerals Yearbook* (US Department of the Interior, US Geological Survey: Reston, VA, Nov. 2009) (for 2002–2006); Yager, T. R., 'The mineral industry of Rwanda', *2006 Minerals Yearbook* (US Department of the Interior, US Geological Survey: Reston, VA, Nov. 2009) (for 2002–2007); and National Bank of Rwanda statistics, unpublished (for 2008–2009).

Rather than trade drying up, it is more likely to have moved further underground. Some trading companies in importing countries have cut ties with companies in transit countries like Burundi and Uganda in order to avoid further accusations of whitewashing Congolese conflict minerals. Nevertheless, the prices paid for gold in places like Bukavu, Bujumbura and Kampala have remained stable. This suggests that traders in the region do not need international importers to commercialize their gold. Instead, black markets and home refineries in the Middle East and East Asia generate sufficient demand for Congolese gold to keep prices up.[19] The informal, unregulated nature of these importers and a high rate of gold smuggling from the DRC are among the factors that will make due diligence and other trade-focussed initiatives aiming to break resource–conflict links in the DRC much more difficult for gold than for the 3Ts.

The gold trading chain

Gold has a high value by volume. As a result, exportable quantities can easily be concealed—one reason why only a small part of the gold trading chain in the DRC is documented. Those transactions that are documented are, firstly, between *négociants* and *comptoirs* in frontier towns like Bukavu, Bunia and Butembo, the *négociants* having acquired the gold at mines and small local markets. The second type are legal exports between *comptoirs* and buyers or partner companies abroad. Most domestic gold transactions and exports—whether by licensed or unlicensed traders—go unrecorded. The *petits négociants* who buy at mines or at markets in the interior are often pre-financed by larger traders in the frontier towns of Bukavu, Butembo and Bunia who arrange export. *Petits négociants* carry gold themselves or send parcels by aeroplane.

Anecdotal evidence of illicit exports of Congolese gold focuses on a few actors in the DRC, Burundi and Uganda. In Bukavu in Sud-Kivu, most allegations concern smuggling to Bujumbura, which is connected to Bukavu by a major road. In

[19] See also Olden, P., 'OECD due diligence guidance for responsible supply chain management of minerals from conflict affected and high risk areas: Implications for the supply chain of gold and other precious metals', Aug. 2010 <http://www.oecd.org/dataoecd/14/18/46080654.pdf>, p.5.

Box 2.2. Allegations of gold smuggling from Sud-Kivu

Etablissement Namukaya is Bukavu's principal and most successful gold *comptoir*. Its owner, Evariste Shamamba, also owns a domestic airline, New CongoCom Air, and a small bus company, Ngomo Express, with regular services to Bujumbura, Burundi. The gold bought by Namukaya mostly arrives in Bukavu on New CongoCom Air flights. According to customs statistics, Namukaya uses a small trucking company, MBP & CIE, to transport gold to Nairobi. These exports ranged between 5 and 7 kg per month in 2010, according to the same statistics. The shipments presumably include gold legally purchased in Bukavu, as the quantities match purchases recorded by the provincial Department of Mines. However, based on enquiries in mine locations, UN experts estimate that Shamamba's agents purchased about 60 kg of gold per month in 2010 from Mwenga alone. The group has also reported allegations that Shamamba is implicated in increasing gold trafficking from Bukavu and Bujumbura, via Kigali, to Kampala in order to take advantage of tax incentives for exports from Uganda.

Two unlicensed traders based in Bukavu, Mange Namuhanda and Buganda Bagalwa, frequently appear in NGO and UN reports. They are alleged to be the main suppliers of the Burundian-registered company Berkenrode BVBA in Bujumbura.[a] In 2009 Berkenrode legally exported over 970 kg of gold to the United Arab Emirates (UAE). Broken down in small packages of a few kilograms, only some of this gold appears to have been declared on arrival in Dubai. In 2009 Berkenrode's agents were able to sell gold at the Dubai Multi Commodities Centre (DMCC). In a letter sent in 2007 the DMCC advised its members to stop purchasing gold from the DRC, Rwanda and Uganda, but did not mention Burundi. Berkenrode's legal exports in the first half of 2010 fell to only 75 kg.

[a] This company has denied any connection with the Belgian gold importer Berkenrode BVBA, although the Belgian company's owner is known to have imported Congolese gold for his refining and smelting company.

Sources: Burundian Ministry of Mines, *Annual Report 2009*, unpublished government document; Geenen, S., 'The gold trade in Butembo', ed. J. Cuvelier, *The Complexity of Resource Governance in a Context of State Fragility: The Case of Eastern DRC* (International Alert: London, Nov. 2011), p. 35; Office des douanes et accises (OFIDA, Customs and Excise Office), monthly statistics, Jan.–May 2010, unpublished government document; United Nations, Security Council, Final report of the Group of Experts on the Democratic Republic of the Congo, S/2010/596, 29 Nov. 2010, pp. 81, 63; and United Nations, Final report of the Group of Experts on the Democratic Republic of the Congo, S/2009/603, 23 Nov. 2009, pp. 36–40, 173.

Ituri district and northern Nord-Kivu, a significant portion goes to Kampala. Some of the best documented allegations regarding gold smuggling from Sud-Kivu and from Ituri district and Nord-Kivu are presented in boxes 2.2 and 2.3, respectively.

In addition to exports by established *comptoirs*, individual Congolese traders reportedly travel independently to destinations such as Dubai and Guangzhou, China. According to their suppliers, these traders usually sell gold abroad in order to raise money to buy consumer goods to take back to the DRC. Alternatively, foreign businessmen allegedly buy gold on the streets of Bujumbura and Kampala and smuggle gold onto international flights. It is not possible to be certain that illicit exports by individual Congolese and foreign traders make up for the reduction in official exports by formal companies. However, it does seem that the gold sector has diversified in the past few years, with more *comptoirs* officially exporting less gold, and more individual traders able to connect to markets overseas.

Box 2.3. Allegations of gold smuggling from Nord-Kivu and Ituri

In Butembo, Nord-Kivu, gold trade was formerly dominated by the businessman Kisoni Kambale, who was estimated to export 20–60 kg each month to Bujumbura and Kampala in 1998–2003. In March 2007 Kisoni, along with his *comptoir* and airline, was listed by the UN Security Council Committee established pursuant to resolution 1533 (the Sanctions Committee for the DRC) as targets of sanctions for violating the arms embargo by transporting gold, provisions and weapons for militia in Ituri. After Kisoni's murder in 2007, a group of four traders, including (briefly) Kisoni's widow, took over part of his business operations. They registered a *comptoir*, Glory Minerals. Glory Minerals legally purchased more than 5 kg of gold in 2009 but had difficulty obtaining an export license. However, another company, Northern Goldline, allegedly exported 3 kg of gold that was both purchased and sold by the owners of Glory Minerals. A handful of other *négociants* are active in Butembo. One, Kasereka Maghulu, also known as Kavatsi, operates Galaxy Kavatsi Airlines, which provides regular flights to remote destinations in eastern DRC. At the time of writing, Kavatsi looked poised to take over Kisoni's dominant position in the gold trade in Butembo.

In Bunia, Ituri district, licensed *comptoirs* returned to Bunia in 2009, following government measures intended to make it easier for *comptoirs* to operate legally, including a reduction in taxes and fees. The two licensed *comptoirs* in Bunia export the larger part of official trade from eastern DRC. However, this is reportedly only a fraction of the gold actually exported from Bunia. Gold exports by Bunia's 10 major *négociants* reportedly go to Kampala or are exported via Butembo. None of the *négociants* owns an airline but they allegedly use commercial flights or roads to transport gold. Gold traded in Ituri reportedly goes to India, Lebanon, Sudan, the UAE and the United Kingdom. Several companies are reportedly planning to start industrial-scale gold mining operations in Ituri.

The main destination of gold smuggled from Ituri district and the northern part of Nord-Kivu is reported to be Kampala. Two major gold exporting companies in Kampala, Uganda Commercial Impex (UCI) and Machanga Ltd, were listed for UN sanctions in 2007 owing to their commercial relationships with Kisoni. Soon afterwards, they ceased all official exports. However, company owners allegedly continue to purchase gold from *négociants*, some of whom they pre-finance. This gold is reportedly transferred via commercial passenger flights to Dubai.

Sources: Fahey, D., 'The informal trade in Ituri's gold', ed. J. Cuvelier, *The Complexity of Resource Governance in a Context of State Fragility: The Case of Eastern DRC* (International Alert: London, Nov. 2011), pp. 14–16; Fahey, D., 'Government efforts at formalisation and implications for future gold trade', Cuvelier, pp. 17–18; Geenen, S., 'The gold trade in Butembo', Cuvelier, pp. 22–23; Raeymaekers, T., 'The power of protection: governance and transborder trade on the Congo–Ugandan frontier', PhD dissertation, Ghent University, 2007, <http://www.biblio.ugent.be/input/download?func=downloadFile&fileOId=492973>, p. 113; United Nations, Security Council, 'Sanctions Committee Concerning Democratic Republic Congo adds two individuals, five entities to assets freeze, travel ban list', Press release SC/8987, 29 Mar. 2007, <http://www.un.org/News/Press/docs/2007/sc8987.doc.htm>; United Nations, Final report of the Group of Experts on the Democratic Republic of the Congo, S/2009/603, 23 Nov. 2009, pp. 16–17, 34–36.

3. Militarization of mines and trading chains

Coercive exploitation of informal mining activities and the surrounding communities as well as of mineral trading chains has long been an important financing strategy for a variety of non-state armed groups in eastern DRC. This exploitation has taken various forms, from organized looting attacks, through the imposition of various unofficial levies and fees, to more sophisticated entrepreneurial activity. Recent developments—particularly a series of military campaigns and the absorption of several former rebel and militia units into the Forces armées de la République démocratique du Congo—have significantly affected patterns of militarization and created new security problems, not least linked to the involvement of FARDC personnel in similar forms of exploitation. These new developments have a direct bearing on attempts to permanently demilitarize Congolese mineral supply chains.

This chapter first surveys recent conflict dynamics and developments in eastern DRC. It then examines and illustrates the various types of exploitation practised by armed actors. Finally, it discusses the implications of militarization of mineral supply chains for security in eastern DRC.

Recent conflict dynamics

The most recent conflict in the DRC formally ended in July 2003, when a transitional government was formed to lead the country to elections in 2006. Both the transitional government and the elections were provided for in the Global and Inclusive Peace Agreement signed in December 2002.[20] Although elections were held on time, fighting continued in eastern DRC because, among other factors, of the government's failures to neutralize or repatriate the Forces démocratiques de libération du Rwanda and to bring all Congolese rebel and militia groups under effective central command.[21] In particular, Laurent Nkunda's Congrès national pour la défense du peuple, which claimed to be fighting to protect Congolese Tutsis against the FDLR, repeatedly refused to abide by agreements with the government to be integrated into the FARDC.

Rapprochement between Rwanda and DRC

At the beginning of 2009 an opening appeared in the apparent stalemate in eastern DRC as a result of new diplomatic efforts between the Congolese and Rwandan governments. Without informing the UN the DRC allowed Rwandan

[20] The parties to the Global and Inclusive Agreement included the sitting government, the political opposition and the following non-state armed groups: Rassemblement congolais pour la démocratie (RCD, Congolese Rally for Democracy), Mouvement pour la libération du Congo (MLD, Movement for the Liberation of the Congo), RCD–Mouvement de libération (CRD/ML, RCD–Liberation Movement), RCD—National (RCD/N) and the Mai-Mai.

[21] The FDLR often fought alongside Congolese government forces during the 1997–2003 conflict. However, since a détente between the Congolese and Rwandan governments in late 2007, the FARDC has launched several military campaigns against the FDLR.

troops to pursue the FDLR in eastern DRC in a 35-day operation starting on 20 January. The operation, codenamed Umoja Wetu (meaning 'our unity' in Swahili), was jointly undertaken with the FARDC. In return, Rwandan authorities arrested Laurent Nkunda on 22 January in the Rwandan border town of Gisenyi, where he has remained under house arrest.

Soon after Nkunda's arrest the chief of staff of the Rwandan Army, James Kabarebe, convinced CNDP leaders that the rapprochement between the DRC and Rwanda necessitated the CNDP's integration into the FARDC.[22] Before Nkunda's arrest, his rival in the CNDP, Bosco Ntaganda, had already announced that he had reached an agreement with the Congolese Government on immediate cessation of hostilities, the participation of the CNDP in the operation against the FDLR, and the immediate integration of CNDP combatants into the FARDC.[23] Likewise, Mai-Mai united under the Coalition des Patriotes Résistants Congolais (PARECO, Coalition of Resisting Congolese Patriots), announced that they had ceased hostilities against the FARDC. The accelerated integration of 7000 CNDP and 5000 PARECO soldiers into the FARDC started on 26 January.[24]

Accelerated CNDP integration

The accelerated integration process created a number of problems. It took place without proper vetting of recruits, thereby allowing known human rights violators to enter the regular army. The most wanted of these is Bosco Ntaganda, who became the de facto commander of forces operating on the front lines of Umoja Wetu. Despite a 2006 International Criminal Court arrest warrant for Ntaganda being unsealed in April 2008, he nevertheless continued to be in command in a subsequent military operation, Kimia II, carried out by the FARDC (including the newly integrated units) and supported by the UN Organization Mission in the DRC (MONUC) in March–December 2009.[25] Kimia II extended the pursuit of the FDLR from Nord-Kivu into Sud-Kivu. The most recent operation against the FDLR, Amani Leo ('peace today' in Swahili), is also supported by the UN mission (renamed UN Organization Stabilization Mission in the DRC, MONUSCO, in mid-2010) but under stricter conditions than for Kimia II, excluding units known to have abused human rights. Nevertheless, key posts in the Amani Leo chain of command are still occupied by alleged former human rights violators.[26]

[22] International Crisis Group (ICG), *Congo: Pas de stabilité au Kivu malgré le rapprochement avec le Rwanda* [Congo: no stability in Kivu despite rapprochement with Rwanda], Africa Report no. 165 (ICG: Nairobi and Brussels, 16 Nov. 2010), p. 4

[23] United Nations, Security Council, Twenty-seventh Report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo, S/2009/106, 27 Mar. 2009, p. 2.

[24] United Nations, S/2009/106 (note 23), p. 2.

[25] Kimia I had been an FDLR-targeted military operation executed in 2008.

[26] E.g. on an organizational chart for Amani Leo in Sud-Kivu dated 3 July 2010, Colonel Bernard Byamungu—held responsible for massacres in Kisnagani (2002), Kindu (2002) and Shalio (2009)—appears as commander of the 4th operational zone. Lieutenant-Colonel Jean-Pierre Biyoyo—a former Mai-Mai fighter who was convicted by magistrates for conscripting children and other human rights abuses in 2006 but fled prison in 2009—appears as commander of the 31st sector. For the allegations against these and other commanders see United Nations, S/2009/603 (note 8), pp. 275–76. On Lt-Col. Biyoyo see also Avocats Sans Frontières, 'ASF is concerned by the fact that Jean-Pierre Biyoyo remains at large', May 2009, <http://

Another problem of accelerated integration is the fact that former CNDP and Mai-Mai units retained essentially the same personnel and command structures. Thus, central FARDC command over them is weak and precarious. Former CNDP units reportedly still obey a parallel chain of command under Bosco Ntaganda.[27] Finally, accelerated integration also complicated payroll procedures. In the chaotic integration process, former CNDP and other newly integrated troops have often been paid late, in part or not at all.[28] This has provided an incentive—and even a need—to seek alternative income.

The integration of the CNDP into the FARDC was accompanied by official and unofficial guarantees on the part of the Congolese Government. The official guarantees, set out in a 23 March 2009 peace agreement, included a general amnesty for acts of rebellion, the release of imprisoned CNDP members and the transformation of the movement into a political party with positions in the current government.[29] Unofficially, the government also conceded that the CNDP's military structure and parallel administration in the territories of Masisi and Rutshuru in Nord-Kivu, both of which include mining sites, would not be immediately dismantled; that former CNDP soldiers would not be redeployed outside Nord- and Sud-Kivu before the FDLR was fully neutralized (after integration, new FARDC troops are supposed to be deployed away from eastern DRC); and that control of mines in Nord- and Sud-Kivu previously controlled by the FDLR and Mai-Mai would revert to former CNDP units after their conquest.[30] In part, these unofficial guarantees were designed to compensate for the limited payment of freshly integrated CNDP forces.

Shifting control of mining areas

FARDC units involved in Kimia II and Amani Leo—many of them commanded by or largely composed of former CNDP soldiers—have vied for control of several mineral-rich areas in the Kivus since early 2009—including areas that were already under FARDC control. In Feburary 2009 the 212th FARDC brigade, a former CNDP unit, was moved into an area that included the Bisie cassiterite mines. In doing so it replaced the 85th FARDC brigade, which was made up of former Mai-Mai fighters. The 212th brigade reportedly established a taxation system at Bisie, set up roadblocks along local trading routes to demand money from traders and started imposing other fees on miners. A top commander of Amani Leo operations, Colonel Balumisa Chuma, reportedly unhappy at the percentage of locally generated profits that were being transferred to him,

www.asf.be/publications/ASF_RDC_Biyoyo_ENGL.pdf>; and American NGO Coalition for the ICC, 'The International Criminal Court and children during armed conflict: prosecuting the crime of enlisting and conscripting child soldiers', 5 June 2009, <http://www.amicc.org/docs/Child_Soldiers.pdf>.

[27] United Nations, S/2010/596 (note 11), p. 42.

[28] Gouby, M. 'Les ex-rebelles congolais enrôlent encore des enfants' [Ex rebels still enrol children], Radio Netherlands World service, 21 Dec. 2010, <http://www.rnw.nl/afrique/article/les-ex-rebelles-congolais-enrolent-encore-des-enfants>.

[29] Accord de paix entre le Gouvernment et le Congrès National pour la Défense du Peuple (CNDP) (Peace Agreement between the Government and the CNDP), signed at Goma, 23 Mar. 2009, <http://www.amanileo.net/index.php?option=com_content&view=article&id=53&Itemid=17>.

[30] International Crisis Group (note 22), p. 4.

ordered another brigade to replace the 212th.[31] When the 212th brigade disobeyed the order, reserve battalions were sent to oust them.

In Sud-Kivu, military operations by FARDC units largely composed of former CNDP elements dislodged FDLR and Mai-Mai forces from mining areas in the territories of Kalehe and Shabunda, as well as from Mwenga and Fizi in the south of the province. Meanwhile, FARDC units not involved in operations against armed groups retained control over key gold mines in the province, such as Lugushwa and Mukungwe.[32]

Survival of the armed groups

Consecutive military campaigns against the FDLR and other militia have not been particularly successful in stabilizing eastern DRC and neutralizing the armed groups there. Although over 1900 FDLR soldiers joined the disarmament, demobilization, reintegration, resettlement or repatriation (DDRRR) programme between January 2009 and April 2010, the group has been able to recruit among the Congolese population to replenish its forces.[33] Furthermore, while 1000 Mai-Mai demobilized in the first quarter of 2010, factions that are dissatisfied with the dominance of ex-CNDP forces in Amani Leo operations are opting out of the process. Pulling back to inhospitable areas away from major towns and markets, the FDLR and Congolese anti-government armed groups hostile to demobilization and integration have forged new alliances, mostly with Mai-Mai groups.[34]

There has been a rapid increase in retaliatory attacks by FDLR and Mai-Mai forces on mines, villages and markets that they have lost control of in the recent military campaigns. These attacks can involve intense violence, mass rape and looting of possessions, including minerals. The emergence of several new Mai-Mai groups is principally motivated by a desire to establish, or re-establish, control over mineral resources. For example, the Mai-Mai Sheka (see below) is mainly composed of members of the 85th brigade that was dislodged from Bisie in January 2009. In Shabunda territory, Sud-Kivu, a new militia emerged in April 2010 to fight the FARDC in order to control the gold mine of Moba.[35] The Mai-Mai Yakatumba abandoned its alliance with the FARDC in November 2009 after a battle with a FARDC unit that led to the Mai-Mai group losing control of the port of Baraka in Fizi territory, where much of the gold trade to Tanzania passes across Lake Tanganyika.[36]

[31] United Nations, S/2010/596 (note 11), pp. 51, 53–54.

[32] Author's fieldwork in Sud-Kivu, July 2010.

[33] United Nations, Interim report of the Group of Experts on the Democratic Republic of the Congo, S/2010/252, p. 7.

[34] The most important alliances with Mai-Mai units are between the FDLR and the Mai-Mai Sheka, operating in Walikale territory, Nord-Kivu, and Shabunda territory, Sud-Kivu; the FDLR and the Forces républicaines fédéralistes (FRF, Federalist Republican Forces), a former PARECO militia operating in the High Plateau zone of Fizi, Mwenga and Uvira territories in Sud-Kivu; and the FDLR and the Mai-Mai Yakatumba in the Baraka area in the south of Fizi. United Nations, S/2010/252 (note 33), p. 7; and United Nations, S/2010/596 (note 11), p. 16.

[35] International Crisis Group (note 22), p. 13.

[36] Bulongo, M., Independent consultant, correspondence with the author, 25 Sep. 2010.

The FDLR and its new allies have progressively moved away from the Rwandan border into the forested hinterland, thereby posing less of a threat to Kigali. Nevertheless, it was reported in November 2010 that the Rwandan Government forces had entered Nord-Kivu once again to pursue the FDLR.[37] The FDLR's operations are concentrated in Walikale, where it is thought to exercise a degree of control in 10 out of 13 *groupements* (sub-territories).[38] The Rwandan Government seems particularly worried about an unusual FDLR alliance with ex-CNDP Nkunda loyalists who opted out of army integration and are now united in the strongly anti-Rwandan Front patriotique pour la libération du Congo (FPLC, Patriotic Front for the Liberation of Congo). Although the FPLC's areas of control are in the old CNDP heartland of Masisi and Rutshuru, the alliance with the FDLR could allow the group to take mining areas in Walikale that are now being destabilized by the FDLR and Mai-Mai Sheka.[39] The upsurge of violence, particularly in mineral-rich areas of Walikale, was one justification given for the government artisanal mining ban imposed in September 2010.

Forms of military rent seeking

While the control of many mining and trading locations has shifted between non-state armed groups to FARDC units—and from one FARDC faction to another—this had done little to end the economic exploitation of miners and traders by the time of the mining ban. All of the main methods of military rent-seeking continued, albeit with shifts of emphasis—for example, the increased looting attacks by dislodged FDLR and Mai-Mai units.

According to a recent report, armed groups had positions at slightly more than half of the roughly 200 mines identified in the Kivus in August 2009 and received income in some way through their deployment.[40] However, much remains unclear about how armed groups are involved in production and trade; how their involvement relates to that of other actors; and to what extent this involvement leads to violence and the disruption of local production. All three types of involvement identified and elaborated below—taxation, entrepreneurship, and organized looting—have been practised by both non-state armed groups and FARDC units. Officials of other government agencies have also been implicated.

Taxation

The involvement of armed groups in local mining economies is usually understood as the levy of unofficial taxes on mine workers and intermediary traders.

[37] 'Kagame's troops return to Congo', *Africa Confidential*, vol. 51, no. 22 (5 Nov. 2010), p 5.

[38] Woodside, D., 'Criminal mines: rebels continue to exploit the DRC resources', *Jane's Intelligence Review*, Oct. 2010, p. 40.

[39] Stearns, J., 'Rwandan Army rumored to be sending new soldiers to neighboring Congo', *Africa Monitor,* 13 Sep. 2010, <http://www.csmonitor.com/World/Africa/Africa-Monitor/2010/0913/Rwandan-Army-rumored-to-be-sending-new-soldiers-to-neighboring-Congo>.

[40] Spittaels, S. and Hilgert, F., 'Accompanying note on the interactive map of militarized mining areas in the Kivus', International Peace Information Service, Aug. 2009, <http://www.ipisresearch.be/maps/MiMiKi/20090807_MiningKivus.pdf>, pp. 3, 11.

These levies include regular payments on the basis of production and trade as well as haphazard forms of extortion, payable both in money and in kind.

At the production level, pit owners—locally called PDGs[41]—are often obliged to make a standard weekly payment to the officer in charge of the area. The size of these taxes varies considerably. In the remote mine of Lubamba, in an FDLR-controlled part of Itombwe forest in Sud-Kivu, the taxes are large. According to a gold trader visiting the area, the FDLR demands five grams of gold (worth $150) every week from each of about 20 pit owners (each pit produces about 150 grams per week).[42] This would yield the FDLR illicit revenues worth $3000 per week. In the most important and fastest-growing gold mining site, Lugushwa, also in Sud-Kivu, the levy is lower. Sixty or so pit owners pay $5 a week in cash to agents of the current local commander or Amani Leo-linked operations and the same amount to the FARDC 10th military region commander in Bukavu.[43] Weekly military levies on the mining pits thus total $600.

Military taxes on gold are usually levied at a fixed rate at the individual mining pits because of the ease with which gold can be concealed. In contrast, taxes on cassiterite, coltan and wolframite are usually based on extracted volumes, which are easier to measure. While levies on the 3Ts are commonly imposed further along the commodity chain, they can also be imposed at the mine. For example, in Bisie soldiers stationed at the entrance of each tunnel reportedly deduct 1 kg (worth $4 at the mine level) from each load of 50 kg extracted.[44] Based on an industry estimate that 115 tonnes of cassiterite are produced in Bisie each week, this would yield about $9200 worth of illegal revenues a week.[45] Soldiers also arbitrarily extort small payments from porters travelling between Bisie and the markets of Njingala and Muba. Porters must also pay another illegal tax of $5 per 50 kg load when they leave Bisie.[46] This revenue is divided between different state authorities, including the sub-territorial chief, the Internal Migration Directorate, the intelligence service, and the Department of Health. Formal taxation by mining authorities takes place only once minerals are loaded onto planes or trucks and transport authorizations are issued.

Illegal military levies can comprise 2–5 per cent of the value of extracted minerals at the production level alone. Mine workers and traders are generally coerced to pay. Nevertheless, it has been recognized that armed actors can fulfil security and governance functions in areas that they control in return for the payments. In Bisie, for example, before 2009 the 85th brigade was found to collaborate with the police in mediating disputes between artisanal miners, to enforce local regulations and to punish offences committed by those within its

[41] PDG comes from the French term président-directeur général, which is the equivalent of the chief executive officer (CEO).

[42] Koning, R. de, 'The Bukavu–Uvira–Bujumbura gold triangle', ed. Cuvelier (note 16), p. 35.

[43] Koning, R. de, 'The Bukavu–Uvira–Bujumbura gold triangle', ed. Cuvelier (note 16), pp. 32–39.

[44] Rudahigwa, P., 'Seventy two hours at the mining site of Bisie', Pole Institute, *Blood Minerals: The Criminalization of the Mining Industry in Eastern DRC* (Pole Institute: Goma, Aug. 2010), p. 15.

[45] For the estimated output of Bisie see United Nations, S/2009/603 (note 8), p. 50. At the beginning of 2010 these revenues were allegedly collected on behalf of a former CNDP commander who had become a FARDC officer, Lieutenant Mbua Mapasi. Rudahigwa (note 44), p. 15.

[46] Rudahigwa (note 44), p. 16.

own ranks.[47] In Kisengo, a coltan mine in North Katanga, non-integrated FARDC soldiers of the 69th brigade were also found to contribute to local governance by, among other things, preventing coltan consignments being mixed with less valuable cassiterite.[48]

Clearly the controlling military actor stands to gain by establishing a minimum level of stability in which miners and traders can operate. This is more likely to happen when one military actor controls a mine for an extended period. The 85th and 69th brigades had both controlled the respective mines for several years. In contrast, in mines where control shifts frequently from one military actor to another, the exploitation is more often purely predatory (see below). Recent military campaigns and the associated rapid changes in patterns of territorial control by the different armed groups can be expected to pose significant security challenges for the local mining populations.

Entrepreneurship

Besides collecting levies, armed actors at all ranks (as well as civil officials) are known to conduct and invest in mining and trading activities. In this, these actors either mimic the operations of private businesses or operate in partnership with them, offering means of production and transport, as well as a degree of protection. To profit in these ways, military and administrative actors do not always need to maintain territorial control over mines.

There are few documented cases of soldiers digging for minerals themselves. Instead they tend to coerce or persuade teams of diggers to work for them. At times they can act as *petits négociants* and PDGs, providing tools, supplies and other necessities in return for most of the minerals produced. In addition, teams of diggers working on behalf of military actors are usually exempted from levies by other military actors or civil authorities. Soldiers who are deployed in mines can work on their own account but are usually also instructed to manage operations on behalf of higher-level commanders posted elsewhere.

One illustrative case is that of the mining area of Nyambembe in Shabunda territory, Sud-Kivu. Several cassiterite pits were at the beginning of 2010 operated by the commander of the 5113th battalion—which was involved in Kimia II operations—according to a local mining official.[49] This commander allegedly worked together with a *comptoir* in Bukavu, which channelled money down to the mine to pre-finance mining operations through the battalion's soldiers. Part of the cassiterite production—usually the value of the pre-financing plus some interest—went directly to the *comptoir*, while miners were free to sell the remainder to any other buyer. The commander's profits were likely to have been shared with soldiers posted at the mine as well as with his superiors

[47] Garrett, N., Sergiou, S. and Vlassenroot, K., 'Negotiated peace for extortion: the case of Walikale territory in eastern DR Congo', *Journal of Eastern African Studies*, vol. 3, no. 1 (Mar. 2009), pp. 1–21

[48] Koning, R. de, 'Demilitarizing mining areas in the eastern Democratic Republic of Congo: the case of Northern Katanga', SIPRI Insights on Peace and Security no. 2010/1, Jan. 2010, <http://books.sipri.org/product_info?c_product_id=401>.

[49] Mining inspector, Mining Services Shabunda, correspondence with the author, 20 Sep. 2010.

commanding the 511th brigade who, according to mining officials, regularly inspected military mining operations in Nyambembe.

An example of military officers cooperating with civilians in the management of mines or buying minerals through them is provided by the gold mining area of Lugushwa in Sud-Kivu. One civilian PDG called Kaché claimed that he received financing from General Amisi Kumba (also known as Tango Fort), the national Commander-in-Chief of Land Forces.[50] According to UN experts the PDG received $9000 from his sponsors in 2010, presumably including General Amisi.[51] This money was allegedly used to buy gold for Kaché's sponsors and to finance the operations of over 200 mine workers digging for gold in the main mining pit in the area known as D18. According to UN experts, Kaché was regularly escorted by members of the military intelligence service, T2, two of whom lived in his home. Besides Amisi, a string of other FARDC officials, police officers and local administrators allegedly invested in mining operations through pit PDGs.[52] In turn, the T2 in Lugushwa allegedly protected the PDGs, thereby ensuring that part of the produced gold reached the initial investors.

At the level of trade, military entrepreneurs provide logistical services and protect illicit transport consignments, activities that require even less control over a mining area. Provision of means of transport by FARDC military officials is reportedly common in the cassiterite sector. For example, in the cassiterite trading centre of Burhale in Sud-Kivu, agents of SAESSCAM report that a military truck full of minerals passes their checkpoint once every few weeks without showing any transport authorization.[53] While gold does not require large transport capacity, military actors facilitate its export in other ways. For example, an officer of the trade-inspection agency Office Congolais de contrôle (OCC, Congolese Control Office), under the Ministry of Trade, has testified that the 31st sector commander under Amani Leo, Lieutenant-Colonel Jean-Pierre Biyoyo, on one occasion intervened after the OCC had apprehended a gold smuggler in order to let the 6 kg shipment pass.[54]

Military entrepreneurs have established positions in the local resource economy that do not rely on sustained military control over mines and trade routes. Military investment schemes and protection rackets encompass commercial actors and tie high-level FARDC officials together with loyal security forces on the ground. Command over criminal networks within the FARDC rests with national and regional commanders, who are able to mobilize the necessary financial means and transport facilities to facilitate commercial operations. These forms of involvement are more sophisticated and less direct than military taxation and looting and therefore more difficult to address through existing mining and army regulations.

[50] Anonymous source, MONUSCO, correspondence with the author, 22 Sep. 2010.

[51] United Nations, S/2010/596 (note 11), p. 55.

[52] MONUSCO source (note 50).

[53] Surveyor, Service d'assistance et d'encadrement du small scale mining (SAESSCAM, Small-scale Mining Assistance and Training Service), Interview with the author, 3 Aug. 2010.

[54] Border controller, Office Congolais de contrôle, correspondence with the author, 20 Sep. 2010. On Biyoyo see note 26.

Organized looting

Organized looting is the most direct and coercive form of military involvement in the mineral commodity chain. In looting operations, sites are attacked, populations scattered and their minerals and other goods taken. Armed groups usually loot sites over which they do not exercise control. FARDC elements and purely criminal groups are also known to carry out looting attacks, often pretending to be rebels or militia in order to disguise their identity.[55] In turn, FARDC units can start or use rumours of impending looting attacks by illegal armed groups to justify their deployment in mining areas.[56] For these reasons, attribution of a looting attack to a particular group, in media or other reports, should be treated with caution.

Looting attacks on mines, trading hubs and other communities are most frequently reported in Walikale territory, Nord-Kivu. Such attacks are part of armed groups' wider strategy of targeting commercial competitors, disrupting FARDC deployments and creating disorder to prevent the return of refugees.

One group apparently behind many of the attacks is Mai-Mai Sheka (also known as Nduma Defence for Congo), which often cooperates with elements of the FDLR's Montana Battalion.[57] Mai-Mai Sheka is named after its leader, Sheka Ntabo Ntaberi, a man who apparently had no military experience prior to founding the group in mid-2009 but had worked with several mining companies and cooperatives prospecting for and trading minerals in Bisie. As he had relied on the 85th FARDC brigade for protection, his activities were effectively curtailed when the 85th brigade was driven out of the mine of Bisie at the beginning of 2009. According to the UN Group of Experts, the Mai-Mai Sheka mainly comprises deserters from the 85th brigade. It is also claimed to rely on military support from the deputy commander of the FARDC 8th military region, Colonel Etienne Bindu. While Sheka claims that his primary aim is to resist the return to Walikale of Congolese refugees currently in Rwanda, his true aim seems to be to re-establish a foothold in the local mining sector.[58]

Combined Mai-Mai Sheka and FDLR attacks in the middle of 2009 concentrated on key mining sites and trading centres in Walikale. As FARDC deployments intensified in the area, the two groups extended their operations southwards into the forests of Kahuzi Biega National Park, which straddles Walikale, Shabunda territory in Sud-Kivu and Punia territory in Maniema province. On 8 February 2010, FDLR and Mai-Mai Sheka elements reportedly looted a cassiterite quarry called D25 near the village of Nkumwa in Punia. Following the attack, the FDLR is believed to have taken several dozen hostages to carry 1000 kg of cassiterite from the mine to an FDLR stronghold in Shabembe, deep inside

[55] Sematumba, O., 'The FDLR in North and South Kivu: a state within a state', Pole Institute, *Guerillas in the Mist: The Congolese Experience of the FDLR War in Eastern Congo and the Role of the International Community* (Pole Institute: Goma, Feb. 2010), p. 16.

[56] Bilonda, K., Director, Progrès des peuples indigènes [Progress of Indigenous Peoples], Interview with the author, Kalemie, 7 June 2009.

[57] United Nations, S/2010/596 (note 11), p. 40.

[58] United Nations, S/2010/596 (note 11), pp. 15–17.

the park.[59] Such strongholds are often used as hubs for looting operations in mine locations on the perimeter of the park.

FARDC elements are also occasionally involved in looting cassiterite mines in and near the park and are often mistaken for FDLR soldiers. Radio Okapi reported one attack that took place on the night of 17 to 18 May 2010, also in Punia. According to the report, six FARDC soldiers approached a mining community speaking Kinyarwanda, the language used by FDLR forces. This caused the local population to flee, allowing the soldiers to loot 400 kg of cassiterite. The commander of the FARDC unit concerned was later arrested.[60]

While such looting attacks by FARDC forces are not common, FARDC soldiers reportedly use other, highly coercive, means to obtain minerals—for example, forcing miners to work for them on certain days of the week or arbitrarily arresting traders and forcing them to pay for their release in minerals.[61]

The military campaigns against the FDLR and certain Mai-Mai militia since 2009 have led to an increase in looting attacks on villages and mines that were formerly under some level of control by these groups. Besides looting per se, these attacks also serve armed groups' wider strategies, for example to create insecurity to prevent the return of refugees, to disrupt FARDC deployments or to remove commercial competitors from the commodity chain.[62]

Security implications of the militarization of mineral commodity chains

Informality and militarization

Distinguishing between licit and illicit resources, as well as between legal and illegal armed groups, is of limited value in discussing the issues of conflict resources and militarization of mines and commodity chains, since all can help to perpetuate conflict. Through combining different strategies, armed actors adapt to changing circumstances, including external laws and regulations, developments in domestic and international commodity markets, and a switch from being rebels and militia members to being regular soldiers.

Although armed groups support themselves by involvement in and exploitation of informal mineral production and trade, it is important to recognize that informality and illegality are not the core of the security problem—simply formalizing mining and mineral trade will not end the violence, and indeed will not be possible without the restoration of a level of security. The security

[59] 'Kindu: 2 militaires FARDC tués, 50 personnes déportées, bilan d'une attaque des FDLR à Nkumwa' [Kindu: 2 FARDC soldiers killed, 50 persons deported, summary of an FDLR attack in Nkumwa], Radio Okapi, 10 Feb. 2010, <http://radiookapi.net/actualite/2010/02/10/kindu-2-militaires-fardc-tues-50-personnes-deportees-bilan-d%E2%80%99une-attaque-des-fdlr-a-nkumwa/>.

[60] 'Des soldats des FARDC pillent la carrière de Mwame à Kasese' [FARDC soldiers pillage the quarry of Mwame in Kasese], Radio Okapi, 20 May 2010, <http://radiookapi.net/actualite/2010/05/20/des-soldats-des-fradc-pillent-la-carriere-de-mwame-a-kasese/>.

[61] 'Findings of slavery linked with mineral extraction in eastern DRC', Free the Slaves Research Brief, July 2010, <http://www.endingslavery.com/celworx/DRC/docs/FTS_DRC_Findings--July_2010.pdf>.

[62] United Nations, S/2010/596 (note 11), p. 40.

problems principally concern the illegitimate behaviour of armed groups.[63] The role of both licensed and unlicensed economic actors is questionable when they actively collaborate with, support and buy the protection of armed actors, but more often traders and mining communities have little choice but to put up with armed actors' extortion, protection rackets and similar.

Nevertheless, the fact that mining and trading activities are informal or illegal may make them more attractive to armed groups. For instance, informal operators sometimes pay for protection from an armed group to defend their interests vis-à-vis state authorities that want to formalize and tax their activities. Alternatively, armed actors choose to engage in trading activities that easily bypass bureaucratic control in order not to antagonize their allies in government. The opposite may also be true when, for instance, armed actors acquire mineral trading licences—which the national Mining Code forbids[64]—or invite formal companies to enter their areas of control. In these ways armed actors formalize and professionalize the activities in which they engage or from which they benefit.

How current militarization patterns undermine security

'Conflict resources' are typically understood as resources that are exploited by non-state armed groups to purchase weapons, rations and military supplies necessary to sustain their insurgent activity. Much of the exploitation in eastern DRC still fits this definition. However, today the security threat posed by the involvement of FARDC elements in the mining and other natural resource sectors is just as severe as that posed by illegal armed groups using resource revenues—increasingly obtained by looting—to fund continued violence.

Although it could be argued that the promise of access to resources and the associated revenues can and has been used to persuade rebels to join the FARDC and—to some extent at least—obey central command, the longer-term security implications are becoming increasingly clear. For one thing, there is the increase in looting and revenge attacks by FDLR and Mai-Mai elements forced out of mining and trading areas in Nord- and Sud-Kivu. For another, there is now competition between those FARDC units involved in Amani Leo operations and those not, as well as between Amani Leo units loyal to different former CNDP commanders, for access to resource revenues. FARDC units collude with illegal armed groups to keep control over mineral-rich areas that they fear they will lose, or to regain areas that they have already lost. The persistence of parallel chains of command and the deployment of special army units to eliminate existing illegal economic activities tend to help the fragmentation rather than inte-

[63] See also Mitchell, H., 'The illegal trade in natural resources from the eastern Democratic Republic of Congo', Presentation at the Institute for Environmental Security international conference Illegal Trade in Natural Resources: What Can Brussels Do, Brussels, 29–30 Sep. 2010, <http://www.resourceglobal.co.uk/publications.php?doc=Illegal%20Trade%20Harrison%20Mitchell%20presentation.pdf>.

[64] Loi no. 007/2002 du 11 juillet 2002 portant Code minier [Law no. 007/2002 of 11 July 2002 on the Mining Code], *Journal officiel de la Republic democratique du Congo*, 15 July 2002, <http://www.miningcongo.cd/code_minier.htm>, article 27.

gration of the FARDC. In the worst-case scenario, former CNDP forces will return to insurgency rather than submit to redeployment.

Finally, when driven by economic interests, FARDC troop deployments focus on major mines and trading centres, leaving smaller mines and communities vulnerable to looting by armed groups. According to the UN Group of Experts, a number of villages in Walikale that were looted and where mass rapes took place in early July 2010 had no security presence because FARDC units in the area were competing for control of the Bisie mines.[65] Furthermore, the FARDC's ability to neutralize armed groups is compromised because important resources are diverted to serve officers' economic interests. Soldiers are deployed as economic agents in mines, military logistical capacities are used to transport minerals, and intelligence services are used to monitor mining operations rather than to gather information on armed groups.

In summary, recent events show that controlling mining and trading centres is a crucial component in the military strategy of superficially integrated ex-CNDP units within the FARDC, former and present Mai-Mai militia, and the FDLR. The proper integration and overall legitimacy of significant sections of the FARDC has been severely compromised as a result of their economic activities. Economic involvement in mineral extraction and trade are only part of armed groups' diversified financing strategies, and competition over control of mines and trading networks is not the sole cause of fighting. Nevertheless, access to mineral resource rents enables conflict and insecurity to persist and occasionally incites violent confrontations. To protect local populations against looting and cut armed groups off from this source of financing requires a FARDC or other Congolese security presence at mines and along trading routes. However, those same units are also likely to prey on the mineral economy in other more or less coercive ways.

Clearly even the military defeat of the FDLR and remaining Mai-Mai will not end illicit military involvement in commodity chains and the related security and human rights problems. Persuading the former CNDP and Mai-Mai units recently absorbed into the armed forces to accept full integration into the FARDC structure and to forgo lucrative rents from mining and trading areas under their control will be difficult, as their loyalty to the state is already weak. In this context, trade-related initiatives that privilege conflict-free minerals—which must be interpreted as minerals from which no armed actors, state or non-state, draw illicit benefits—and thus reduce the profitability of illicit trade, are an important complement. A growth in licit, registered mineral extraction and trade should increase government revenues that can in turn be invested in institutional capacity building and extension of the rule of law in eastern DRC, potentially creating better and more sustainable security and social conditions. Chapter 4 examines some of the current trade-related and other non-military initiatives aimed at breaking resource–conflict links in eastern DRC.

[65] United Nations, S/2010/596 (note 11), pp. 53–54.

4. Non-military responses

In his official communiqué on the mining ban in eastern DRC, President Joseph Kabila deplored the involvement of civil and military authorities in the illegal extraction of and trade in natural resources.[66] Certainly the Congolese Government has much to gain by ending the militarization of mineral commodity chains and the illegal involvement of state authorities. International mining concerns are already prospecting in some areas and have been granted concessions, but they are unlikely to invest in industrial-scale mining in much of eastern DRC until security and the rule of law are well established. In the shorter term, substantial potential government revenues are undoubtedly being lost due to smuggling. As long as opportunities to benefit from exploiting mining and the mineral trade exist, the obedience and loyalty to the state of large parts of the FARDC forces in eastern DRC will be fragile.

However, demilitarization of the mineral sector in eastern DRC is a sensitive process. As has been noted, irregular armed actors in control of a mining area sometimes provide a basic level of security, protecting traders and artisanal miners. When they are driven out by military means, they may resort to looting and revenge attacks, with far more serious consequences for the targeted communities. Also, a sizeable population relies on artisanal mining in remote areas of eastern DRC where there are few other livelihood opportunities. Interventions that significantly limit trade in artisanally mined minerals, and even those that try to encourage industrial mining, can have serious consequences for these populations that might even lead to further instability.

With demand for eastern DRC's mineral resources coming almost exclusively from international markets, international actors—whether industries that rely on the minerals, governments or non-governmental organizations—have considerable influence over the profitability of both licit and illicit mineral trade. They also have an interest in ensuring that any Congolese minerals that reach international markets are not associated with conflict or human rights abuses. Although the DRC is not the only producer of gold or the 3Ts, industries especially stand to gain from increased exports of Congolese minerals. Thus, their interests are complementary with those of the Congolese Government.

A full UN commodity embargo has never been contemplated for the DRC and the case for embargoing selected commodities, put forward by the UN Group of Experts on the DRC in 2007, was not taken forward by the UN Security Council.[67] The effectiveness of smart sanctions that target individual businesses for finan-

[66] President of the Democratic Republic of the Congo, 'Communique officiel et decision du President de la Republique sur l'exploitation miniere artisanale au Nord-Kivu, au Sud-Kivu et au Maniema' (Official communique of the President of the Republic on artisanal mining exploitation in Nord-Kivu, Sud-Kivu and Maniema), Goma, 13 Sep. 2010, unpublished government document.

[67] United Nations, Security Council, Interim Report of the Group of Experts on the Democratic Republic of Congo, pursuant to Security Council Resolution 1698 (2006), S/2007/40, 31 Jan. 2007, p. 13; and United Nations, Security Council, Report of the Secretary-General pursuant to paragraph 8 of Resolution 1698 (2006) concerning the Democratic Republic of the Congo, S/2007/68, 8 Feb. 2007.

cing armed groups in violation of the arms embargo has been limited.[68] The UN Security Council has not listed any individual mineral traders or related businesses since 2007, despite ample evidence against a number of others.[69] In addition, individuals under sanctions have continued to conduct their trade through different business entities.[70]

In part because of this limitation, the international community's response in recent years has shifted emphasis away from sanctions towards initiatives aimed at formalizing mineral supply chains and certifying minerals as conflict-free.[71] In 2008 the German Bundesanstalt für Geowissenschaften und Rohstoffe (BGR, Federal Institute for Geoscience and Natural Resources) launched an initiative to certify 'legitimate' artisanal mining sites and establish a system for tracing exported minerals back to them.[72] In turn, the body representing the international tin industry, ITRI, launched the Tin Supply Chain Initiative (iTSCI) in 2009 to improve the traceability of cassiterite. The project aimed to seal, tag with a barcode and register mineral bags at selected conflict-free mines and trace these up to the export level.[73] The Congolese Ministry of Mines in January 2010 committed to reinstating 'civil' state control over mines and to producing a map of conflict-free mines as guidance to the industry.[74] The opening, under a UN-supported initiative, of a number of regulated *centres de négoce* (trading centres) and the deployment of mining authorities at them further enhances the traceability of minerals from these sites.

Other initiatives at the multilateral level include the publication of sets of guidelines for conducting due diligence on the conflict-free origin of purchased minerals in 2010 by the UN, the Organization for Economic Co-operation and Development (OECD) and the US Government.

The deployment of mining authorities closer to mine locations is also part of the security component of the Congolese Government's multisectoral Stabil-

[68] Smart sanctions were first imposed under United Nations Security Council Resolution 1493, 28 July 2003, para. 20. United Nations Security Council Resolution 1533, 12 Mar. 2004, para. 8 created the Sanctions Committee on the DRC. United Nations Security Council Resolution 1857, 22 Dec. 2008, para. 4(g), specifies that sanctions can target individuals and entities supporting illegal armed groups in eastern DRC through illicit resource trade.

[69] See e.g. boxes 2.2 and 2.3 above.

[70] See e.g. United Nations, Security Council, Final report of the Group of Experts on the Democratic Republic of Congo, S/2008/773, 22 Dec. 2008, p. 23.

[71] It should be recognized, however, that potential UN sanctions, along with legislation passed in the USA in July 2010 to stop the import of conflict minerals and pressure from NGOs, have been instrumental in pushing the Congolese Government and the mineral industry to take action.

[72] See the project website, <http://www.bgr.bund.de/EN/Themen/Min_rohstoffe/CTC/Pilot-Project-Rwanda/CTC_Rwanda_node_en.html>.

[73] A parallel effort by the Electronic Industry Citizenship Coalition (EICC) and the Global e-Sustainability Initiative (GeSI) started in 2010 to assess the origin of tantalum at the smelter level. Smelter-level validation will be expanded to include tin and potentially other metals in 2011. See IPC-Association Connecting Electronics Industries, 'Comments on SEC regulatory initiatives under the Dodd–Frank Act Title XV: Miscellaneous provisions, Section 1502: Conflict minerals (P.L. 111-203)', 22 Nov. 2010, <http://www.sec.gov/comments/df-title-xv/specialized-disclosures/specializeddisclosures-78.pdf>, p. 7.

[74] See 'Synthèse des travaux pendant la réunion sur le renforcement des actions contre le financement des groupes armés à partir de l'exploitation et du commerce des ressources naturelles dans l'Est de la République Démocratique du Congo' [Synthesis of work during the meeting on reinforcing actions against financing of armed groups through the exploitation and trade of natural resources in the eastern Democratic Republic of Congo], Kinshasa, 21 Jan. 2010, unpublished government document.

isation and Reconstruction Plan for Eastern DRC (STAREC), which was launched at the beginning of 2009. Parts of the STAREC plan are also included in the International Security and Stabilization Support Strategy (ISSSS) of the UN system and key partners. Increased deployment of state mining authorities at artisanal mining sites could also be part of an upcoming technical assistance project, Growth with Governance in the Mineral Sector (PROMINES), which is supported jointly by the World Bank and the British Department for International Development (DFID) to 'strengthen the capacity of key DRC government institutions to manage the mining sector, improve conditions for increased investments and revenues from the sector, and help increase the socio-economic benefits from artisanal and industrial mining'.[75] To coordinate and harmonize the traceability and state capacity-building interventions the Ministry of Mines created a thematic working group at the beginning of 2010 that brings together donor representatives, project leaders and Congolese resource-management agencies. The group meets regularly and works out modalities for collaboration between different institutions.

The need for better coordination and harmonization of mining sector-related initiatives is also reflected in international and multi-donor forums. Since 1996 the International Conference for the Great Lakes Region (ICGLR) has provided a venue for ministers responsible for mining from the countries of the region to discuss harmonization of their certification schemes, taking the Kimberley Process as a model.[76] The main vehicle for donor coordination is the International Taskforce on Illegal Exploitation and Trade of Natural Resources in the Great Lakes Region, which was established at the beginning of 2009. The proposals, targets and commitments it defines in close consultation with the Congolese Government feed into the activities of the thematic working group.

While their existence demonstrates an increased commitment to impeding the trade in conflict resources and facilitating trade in conflict-free minerals, the traceability and state capacity-building initiatives are still in the early stages and some were suspended under the mining ban. It is thus too early to assess their progress and especially their effectiveness. This chapter instead traces the evolution of some of the main current and imminent initiatives and assesses their potential to deal with the current mining-related security problems.

[75] Grundel, H., 'Natural resource governance in conflict-affected contexts', International Alert Strengthening the Economic Dimensions of Peacebuilding Practice note 6, London, Nov. 2010, p. 4, <http://www.international-alert.org/publications/pub.php?p=1170>.

[76] On the IGLCR's Natural Resources programme see the IGCLR website, <http://www.icglr.org/>. The Kimberley Process led to the creation of an international certification scheme for rough diamonds. For more information see the initiative's website, <http://www.kimberleyprocess.com/>.

The Mining Code and the mining ban

The main legal instrument governing the mineral sector in the DRC is the 2002 Mining Code.[77] The Mining Code provides for the demarcation of artisanal mining zones (AMZs) where artisanal miners in possession of a permit (*carte de creuseur*) can legally work. Article 109 of the code states that these can be established in areas where 'the technical and economic factors which characterize certain deposits of gold, diamonds or any other mineral substance do not make it possible to ensure industrial or semi-industrial exploitation of same, but permits artisanal mining'. Although considerable progress has been made in recent years to establish AMZs across the DRC, they do not exist in some parts of eastern DRC, access to them is often difficult, miners are often unaware of their existence, and no mechanisms are in place to equip sites to make them attractive. As a result artisanal miners continue to work illegally, predominantly in industrial exploration and mining concessions. In addition, tenure in AMZs is insecure as, under Article 110 of the Mining Code, AMZs can be closed within 60 days when industrial or semi-industrial mining is considered feasible, which limits the attractiveness of investing in artisanal mining processes.[78] Another issue is that if industrial exploration concessions are repartitioned after the first or second five-year term, AMZs might be established in the least mineralized areas, while industrial and semi-industrial investors retain the richest and most accessible parts of the concessions.

Title IV of the Mining Code also governs the issuance of authorizations for traders and trading houses trading in artisanal mining products. Article 27 states that 'government employees and civil servants, magistrates, members of the Armed Forces, the Police and the Security Services, the employees of public entities which are authorized to carry out mining activities' may not hold artisanal mining permits or trading permits, although they are allowed to invest capital in mining ventures. Clearly, enforcing such aspects of the code has been difficult in many parts of eastern DRC. Furthermore, the unofficial agreement to allow newly integrated FARDC units to profit from artisanal mining communities in lieu of pay clearly violates the spirit of the code.

The total government ban on artisanal mining and trade in artisanally mined minerals imposed in September 2010 was unexpected. It covered Maniema, Nord-Kivu and Sud-Kivu provinces. The ban was declared in order to help end an upsurge of violence in mineral-rich territories—notably Walikale in Nord-Kivu province—and was supposedly aimed at rooting out both rebel and FARDC elements from the mineral trading chain.[79] However, it was greeted with scepti-

[77] Loi no. 007/2002 (note 64).

[78] According to a PROMINES study, 'examples already exist of artisanal mining zones which were re-allocated to commercial companies within months of being designated as official artisanal mining zones'. See Pact Inc. (note 6), p. 28.

[79] 'Walikale: Joseph Kabila suspend l'exploitation minière' [Walikale: Joseph Kabila suspends mining exploitation], Radio Okapi, 10 Sep. 2010, <http://radiookapi.net/actualite/2010/09/10/walikale-joseph-kabila-suspend-lexploitation-miniere/>. The announcement, made on 9 Sep., was reinforced by a presidential communiqué a few days later. President of the Democratic Republic of the Congo (note 66).

cism and seems to have had at best mixed results. For example, local com mentators claimed that FARDC elements used the ban as a pretext for confiscating minerals at markets, forcing traders to move underground.[80] It was reported that the units that are supposed to enforce the ban at cassiterite mines started to dig themselves and refused orders to leave the mines.[81] Gold was de facto exempt from the ban, since it is so easily concealed and smuggled.[82] The ban clearly impacted artisanal miners, most of whom are civilians posing no security risk. Furthermore, recent progress in terms of formalizing and certifying trade may have been largely undone by the ban, which was imposed without any prior warning. The ban was lifted, also without prior warning, on 10 March 2011. As noted above, it seems to have had a negative impact on cassiterite trade but there are signs that the demilitarization of some mining areas is progressing.

Company-led due diligence

In its February 2008 report, the UN Group of Experts on the DRC for the first time recommended that companies exercise due diligence in purchasing minerals originating in eastern DRC, arguing that a failure to do so constituted a violation of the sanctions regime.[83] The UN Security Council endorsed this recommendation in December 2008 and encouraged UN member states 'to take measures to ensure that importers, processing industries and consumers of Congolese mineral products under their jurisdiction exercise due diligence on their suppliers and on the origin of the minerals they purchase'.[84]

According to reports by the Group of Experts published in 2008, due diligence would entail the following steps on the part of companies buying minerals from 'areas at risk' in eastern DRC: 'determine the precise identity of the deposits from which the minerals they intend to purchase have been mined', and 'not accept verbal assurances from buyers regarding the origin of their product'.[85] In turn, they should ascertain whether the mines of origin are controlled or taxed by illegal armed groups, and refuse to buy minerals known or suspected to originate

[80] Mponge, D., Executive secretary, Action des Chrétiens Activistes des Droits de l'Homme à Shabunda (ACADHOSHA, Action of Christians Advocating Human Rights in Shabunda), Interview with the author, Stockholm/Bukavu, 4 Oct. 2010.

[81] Tegera, A., 'Impact of the presidential ban on mining and trading of minerals in the eastern DR Congo', Pole Institute, 29 Oct. 2010, <http://www.pole-institute.org/site%20web/echos/echo141.htm>.

[82] The Ministry of Mines communicated no guidance on how to suspend trade in gold, as it did for the 3Ts. Congolese Minister of Mines, 'Mesures d'application de la Décision de Son Excellence Monsieur le Président de la République Démocratique du Congo, en rapport avec la suspension de l'exploitation des minerais stannifères (cassitérite, coltan et wolframite) dans les provinces du Maniema, du Nord-Kivu et du Sud-Kivu' [Measures to implement the decision of His Excellency the President of the DRC, in connection with the exploitation of stanniferous minerals (cassiterite, coltan and wolframite) in the provinces of Maniema, Nord-Kivu and Sud-Kivu], Press release, 11 Sep. 2010.

[83] United Nations, Security Council, Final Report of the Group of Experts on the Democratic Republic of Congo, S/2008/43, 13 Feb. 2008, p. 20.

[84] United Nations Security Council Resolution 1857 (note 68), para. 15.

[85] United Nations, S/2008/43 (note 83), p. 20; United Nations, Security Council, S/2008/773 (note 70), p. 52.

from such mines. They should also refuse to buy minerals known or suspected to have been taxed by illegal armed groups on the way to the *comptoir*.[86]

The Tin Supply Chain Initiative

ITRI's Tin Supply Chain Initiative was started largely in response to these early UN recommendations and to allegations of its member companies' role in fuelling armed conflict.[87] The initiative's first phase was implemented in the summer of 2009. It standardized export procedures, specifying a number of official documents required for every shipment.[88] Nevertheless, two of the three main supporters of the initiative suspended purchases of cassiterite from the DRC—Traxys just before and Thaisarco shortly after the first phase was implemented—claiming that despite their attempts to purchase cassiterite ethically, negative publicity regarding cassiterite purchases from eastern DRC was too damaging to their reputations.[89] The second phase of the iTSCI started in March 2010. It aimed to establish systems for documenting the flow of minerals from the mine of origin to the exporting *comptoirs* that supplied the main remaining importer of Congolese cassiterite, Malaysia Smelting Corporation, which immediately filled the gap left by other importers. By August 2010 project staff and Congolese mining authorities had started tagging mineral bags for traceability at the Kalimbi mine site in Nyabibwe, Kalehe territory, Sud-Kivu, prior to their transport to *comptoirs* in Bukavu.[90] Project staff were trained at Kalimbi in order to start similar activities in Bisie. However, all activities in DRC were suspended in September 2010. High risk of damage to their reputations has made tin buyers and smelters who previously invested in traceability hesitant to re-engage in the DRC.[91]

In its press communications ITRI has repeatedly voiced a need for clearer guidance on what would be acceptable due diligence measures. In October 2009 it called upon the UN Security Council to provide a list of mining sites in the DRC clearly indicating those mines from which it was appropriate to buy minerals.[92] In January 2010 the Congolese Ministry of Mines committed itself to

[86] United Nations, S/2008/43 (note 83), p. 20.

[87] E.g. Global Witness, *Faced with a Gun, What Can You Do? War and the Militarisation of Mining in Eastern Congo* (Global Witness: London, July 2009).

[88] ITRI, 'ITRI Tin Supply Chain Initiative', Discussion paper, Oct. 2009, <http://www.itri.co.uk/SITE/UPLOAD/Document/iTSCi_Final_Version_2_English__2.10.09.pdf>.

[89] Bavier, J., 'Thaisarco suspends Congo tin ore purchases' Reuters, 18 Sep. 2009, <http://af.reuters.com/article/investingNews/idAFJOE58H09S20090918>.

[90] ITRI, 'iTSCi News Bulletin 6', Aug. 2010, <http://www.itri.co.uk/SITE/UPLOAD/Document/6_iTSCi_Pilot_Project_News_Bulletin_August_2010_EN.pdf>.

[91] Reportedly, the industry coalition implementing the bag-and-tag scheme decided to move its pilot activities to Rwanda following the imposition of the ban, with considerable success. This may have been one factor behind the Rwandan Government's announcement on 27 Apr. 2011 that it would no longer allow trade in Congolese minerals within Rwanda. Hall, A., 'Rwanda's gambit to ban Congo conflict minerals', Enough Project Enough Said blog, 29 Apr. 2011, <http://www.enoughproject.org/blogs/rwanda-gambit-ban-congo-conflict-minerals>.

[92] ITRI, 'ITRI statement regarding the final group of experts report S/2009/603 in relation to the DRC', 9 Dec. 2009, <http://www.itri.co.uk/SITE/UPLOAD/Document/ITRI_statement_on_the_final_UN_experts_report_9th_Dec.pdf>.

generate a map identifying mines under state control.[93] According to a senior adviser at the ministry, the planned map would show three categories of mine: those with no military presence (indicated in green); those with FARDC presence (orange); and those with rebel or militia presence (red).[94] It is unclear what the buying advice would be for mines with a FARDC presence, but the proposed colour coding indicates that they are at least seen as problematic. At the time of writing, no map had been published and no time frame given for publication.

Due diligence guidelines

In the absence of guidance from the Congolese Government, the UN Security Council in December 2009 gave the Group of Experts the task of producing recommendations to the Sanctions Committee for guidelines for the exercise of due diligence by importers, processors and consumers of mineral products from eastern DRC.[95] The group published these in December 2010, basing them on due diligence guidelines developed by an OECD working group, also published in December 2010.[96] Eleven African heads of state and government, including the president of the DRC, endorsed the OECD guidelines at an ICGLR summit.[97]

In parallel with the development of OECD and UN guidelines, the US Securities and Exchange Commission (SEC) in November 2010 proposed disclosure requirements for SEC-registered companies that produce goods requiring potential conflict minerals from the DRC and neighbouring countries, as a step towards the implementation of Section 1502 of the July 2010 Dodd–Frank Wall Street Reform and Consumer Protection Act (Dodd–Frank Act).[98]

All of the above sets of guidelines require or request companies to obtain documentation that traces their purchases back to the mine of origin, to make on-the-ground assessments of the risk of their purchases directly or indirectly supporting armed groups and human rights violations, to take measures to mitigate or minimize these risks, and to disengage from an area if no improve-

[93] 'Synthèse des travaux . . .' (note 74).

[94] Mabolia Yenga, P., Special adviser to the Congolese Ministry of Mines, Interview with the author, Kinshasa, 23 Jan. 2010.

[95] UN Security Council Resolution 1896, 30 Nov. 2009, para. 7

[96] United Nations, Security Council, Sanctions Committee, 'Due diligence guidelines for the responsible supply chain of minerals from red flag locations to mitigate the risk of providing direct or indirect support for conflict in the eastern part of the Democratic Republic of the Congo', Dec. 2010, <http://secint24.un.org/News/dh/infocus/drc/Consolidated_guidelines.pdf>; and Organisation for Economic Co-operation and Development (OECD), *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-affected and High-risk Areas*, (OECD: Paris, Dec. 2010).

[97] International Conference on the Great Lakes, Executive Secretariat, Lusaka Declaration of the IGCLR Special Summit to Fight Illegal Exploitation of Natural Resources in the Great Lakes Region, Lusaka, 15 Dec. 2010, <http://www.oecd.org/dataoecd/33/18/47143500.pdf>.

[98] Securities and Exchange Commission, 'Conflict minerals, proposed rule', 18 Nov. 2010, US Government Document, Release no. 34-63547, File no. S7-40-10, <http://www.sec.gov/rules/proposed/2010/34-63547.pdf>. Section 1502 of the Dodd–Frank Act states that a product can be labelled 'DRC conflict free' if the company is certain that its production or functioning does not require a mineral that 'directly or indirectly finance or benefit armed groups in the DRC or an adjoining country'. If the product requires a conflict mineral the company must file regular reports with the SEC on its due diligence measures etc. United States Government, 'Dodd–Frank Wall Street Reform and Consumer Protection Act', 21 July 2010, <http://www.sec.gov/about/laws/wallstreetreform-cpa.pdf>.

ments can be demonstrated. Importantly, the guidelines also propose third-party auditing of companies' supply chain management.

The existing US legislation and proposed SEC reporting requirements do not distinguish between different types of armed groups—state or non-state. They define as conflict minerals any minerals that 'directly or indirectly finance or benefit armed groups in the Democratic Republic of the Congo or an adjoining country'. 'Armed group' is defined as 'an armed group that is identified as perpetrators of serious human rights abuses' in US Department of State annual country reports on human rights practices.[99]

The OECD and UN guidelines do distinguish between types of armed group. They both call on companies purchasing minerals from the eastern DRC to immediately suspend or terminate dealings with upstream suppliers (miners, small traders, smelters etc.) when there is a risk of them providing direct or indirect support to non-state armed groups, and—in the case of the UN guidelines—sanctioned individuals or entities.[100] With regard to illegal activities by FARDC elements and other state security actors, companies should adopt risk-mitigation strategies.

In the OECD guidelines, this involves screening when hiring state or private security forces to exclude those 'known to have been responsible for gross human rights abuses'; transparency regarding payments made to state security forces; and engagement in efforts to avoid adverse impacts of security forces' presence in the artisanal mines from which companies source.[101]

According to the UN guidelines, companies should try to mitigate the risk of their upstream supply chains supporting criminal networks and perpetrators of human rights abuses, 'particularly within the State's security forces' by working with upstream suppliers to ensure that FARDC elements 'progressively cease any illegal involvement in mining and trade in minerals, including through illegal taxation and extortion of money or mineral shares, and that they are present solely to maintain security and the rule of law'. Among other things, companies should raise awareness among their suppliers of the illegality of military involvement in mineral extraction and trade and of the importance of respecting the law even where it is not enforced; make payments to armed forces solely for the provision of security and the rule of law; and make any payments to security services transparently through appropriate civilian structures.[102] Under both OECD and UN guidelines, companies should suspend or terminate dealings with upstream suppliers if no significant progress is made after six months.

Overall, the OECD and UN due diligence guidelines assign a good deal of responsibility to third-party auditors: mapping the company supply chain, gathering and examining documentation and evidence, assessing risk, carrying out evaluation of risk mitigation plans and proposing follow-up action. Auditors

[99] United States Government (note 98).

[100] The OECD guidelines also call on companies to comply with relevant UN sanctions. Organisation for Economic Co-operation and Development (note 96), p. 18.

[101] Organisation for Economic Co-operation and Development (note 96), pp. 19–20.

[102] United Nations (note 96), pp. 4–5.

are to report on how companies' due diligence measures conform with the guidelines and recommend ways to improve companies' due diligence policies and practices.[103] In turn, companies are supposed to publicly report on their due diligence efforts, presumably—although it is not stated explicitly—including the publication of auditors' reports.[104] The guidelines further recommend the establishment of an institutionalized mineral supply mechanism that would accredit auditors and oversee, verify and support the audits so as to standardize procedures and enhance objectivity. They do not, however, specify the parties that could be part of such mechanisms.[105]

The central role suggested for third parties to some degree bypasses the Congolese Ministry of Mines in terms of guiding due diligence efforts. However, since no oversight body has yet been created, there still is room for the Congolese Government to assume a prominent role in guiding the activities of third-party auditors and companies involved in due diligence efforts. As a start, the government could publish the promised mine map and start providing buying advice to companies.

Certification and the *Centres de négoce* initiative

Two more current initiatives should work in a mutually supportive manner with the company-led due diligence schemes: the BGR's project Strengthening of Transparency and Control of the Natural Resource Sector in DRC and the *Centres de négoce* initiative launched by the Congolese Government and supported by the International Organization for Migration (IOM) and MONUSCO. The first phase of the BGR project has a budget of €3.2 million ($4.7 million).[106] The *Centres de négoce* budget is $1.3 million, which is covered by the UN Peace Building Fund and individual donors.[107] By the time of the mining ban, the BGR had already started to cooperate with the ITRI project in Nyabibwe, the location of the Kalimbi mine, and in the future this collaboration may extend to Bisie, which is a pilot site in both initiatives. One of four or five *centres de négoce* will be established in Isanga, near Bisie, and a second may be established in Numbi, near Nyabibwe. This would mean that the three projects overlapped fully in two of the main cassiterite mining areas in the Kivus. In addition, there is overlap between the *Centres de négoce* and BGR initiatives in Walungu territory, Sud-Kivu. Here, the BGR aims to work in the gold mine of Mukungwe, a source of gold traded at Mugogo market, which is destined to become a supported *centre de négoce*.

[103] United Nations (note 96), p. 6; and Organisation for Economic Co-operation and Development (note 96), p. 33.

[104] United Nations (note 96), p. 6; and Organisation for Economic Co-operation and Development (note 96), p. 11.

[105] United Nations (note 96), p. 6; and Organisation for Economic Co-operation and Development (note 96), p. 34.

[106] Johnson, D., 'Who's in charge? putting the mineral trade in Eastern DRC under international control, an overview', Pole Institute, Goma, (note 44), p. 34.

[107] UN Development Programme, Multi-donor Trust Fund Office, 'Création des Centres de négoce à l'Est de la RDC, 1ere phase' [Creation of *Centres de négoce* in eastern DRC, phase 1], project document, 25 Mar. 2010, <http://mdtf.undp.org/factsheet/project/00074614>, p. 1.

The BGR project pilot sites include gold, cassiterite and coltan mines, which are to be certified according to a number of standards and from which minerals must be traceable along the trading chain up to the point of export. The project is novel in that it seeks to assist the Congolese Government not only to perform registration functions but also to achieve certain standards on site, including in working conditions, security, social development and environmental conditions.[108] Registration and inspection of mineral consignments is supposed to be carried out by SAESSCAM at the mine site, something already piloted in the iTSCI, and certificates and permits are supposed to be issued by the CEEC in a standardized fashion at the *centres de négoce*. This moves the point of registration back down the trading chain from the trading centres to the mines, and certifycation from the provincial capitals to the trading centres. No mining officials have yet been trained or posted under the BGR project. However, the *centres de négoce* are being constructed and are expected to become operational in the course of 2011.[109]

An important omission in the BGR project is that it does not include the legality of artisanal mining operations as a condition for certification. This is remarkable given that the aim of the project is to establish a certification system that leads to a transparent and legitimate trading chain.[110] Logically, the establishment of AMZs in pilot mines should be essential to achieving this aim. However, much of the mineralized land in eastern DRC is under exploration concessions granted to industrial prospectors in the recent past. In Bisie and Kalehe, AMZs have been created but do not cover the most mineralized areas where artisanal mining is most intense and where the project is most likely to intervene. In Mukungwe, no AMZ can be created as all the mines fall within a concession held by the company Banro. Such concessions are valid for five years, with the possibility of extension, and the existing exploration concessions will not run out by the end of the first phase of the BGR project in 2012. The project needs to recognize overlapping ownership or access claims over its pilot mines and try to clarify them through the inclusion of different local stakeholders—the official concessionaires, customary landowners and artisanal mining cooperatives—in order to avoid provoking local resistance.

In a 2010 study to design the artisanal mining portion of the PROMINES technical assistance programme, the NGO Pact recommends that the programme should aim to, among other things, support existing artisanal and small-scale mining operations, formalize three new viable AMZs in eastern DRC, and engage with large-scale mining actors to consider legally granting parts of their con-

[108] Naeher, U., BGR Project Manager for DRC, Interview with the author, Kinshasa, 22 Jan. 2010.

[109] 'Roger Meece: la Monusco construit 4 centres de négoces au Nord et Sud-Kivu' [Roger Meece: Monusco constructs 4 trading centres in Nord- and Sud-Kivu], Radio Okapi, 16 Dec. 2010, <http://radio okapi.net/actualite/2010/12/16/roger-meece-«la-monusco-construit-4-centres-de-negoces-au-nord-et-sud-kivu»/>.

[110] Bundesanstalt für Geowissenschaften und Rohstoffe and Congolese Ministry of Mines, 'Note conceptuelle: Transparence et contrôle dans le secteur minier de la RDC: appui au développement et mise en place d'un système de certification des substances minérales' [Concept note: Transparency and control in the mining sector of the DRC: support for the development and establishment of a certification system for mineral substances], Kinshasa, 22 Feb. 2008, p. 1.

cessions to artisanal and small-scale mining actors.[111] The study also recommends that the PROMINES pilot sites in Nord- and Sud-Kivu, which have yet to be selected, should focus on traceability, certification and security. Security issues are to be addressed through the creation of local security committees, training in conflict resolution, and implementation of legal and punitive measures to remove unauthorized security actors from artisanal mining areas.[112] If these recommendations are adopted and implemented, they could help to tackle a range of problems at the extraction level that could add credibility to traceability initiatives.

The proper functioning of *centres de négoce*—and indeed the credibility of the entire certification enterprise—will depend on whether consignments are properly sealed and labelled when they arrive and on whether the posted mining officials operate transparently and not accept bribes to alter the stated origin of mineral consignments. It is also questionable whether the *centres de négoce* for gold at Mugogo and Baraka in Sud-Kivu will attract commerce at all. Today only very small quantities of gold are traded on official markets because traders are afraid to display their gold holdings due to high insecurity. Instead, traders wait for gold deliveries in major towns. To bring trade into the open, the *centres de négoce* for gold would have to offer special advantages for buyers, such as tax exemptions and police escorts. This is not foreseen in the project as it stands. Posted mining police are only supposed to protect the centres and trading activities from interference by soldiers and other unauthorized security forces; tax collection is one of the primary objectives of establishing the centres.

Stabilization and reconstruction plans for eastern DRC

The creation of *centres de négoce* and the deployment of mining authorities at mining sites through support projects dovetail with the Congolese Government's STAREC plan and by extension the international support plan for STAREC, the ISSSS. STAREC aims to restore state authority in eastern DRC and has three components: security, economic recovery, and social and humanitarian.[113] The third objective under the security component is the re-establishment of state authority over mineral and forest resources. The budgets for these two sectors are, respectively, $4.92 and $4.25 million. Activities include the institutionalization of permanent surveillance by state law enforcement agencies over mines that have been exploited by armed groups; deployment of CEEC and antifraud agents at artisanal mining sites; and intensified controls by a range of state authorities—including intelligence services, police, customs, the migration office and the antifraud service—at airstrips, on transport routes and at border posts.[114]

[111] Pact Inc. (note 6), p. 117.

[112] Pact Inc. (note 6), p. 118.

[113] Congolese Government, 'Programme de stabilisation et de reconstruction des zones sortant des conflits armés: STAREC' [Programme of stabilization and reconstruction of zones emerging from armed conflicts: STAREC], June 2009, <http://mdtf.undp.org/document/download/2842>.

[114] Congolese Government (note 113), p. 32.

In many places these administrative and security services are currently a source of, rather than a solution to, insecurity.

No donor has yet allocated money to help the government reform and properly re-establish such services. However, success in the *Centres de négoce* project could encourage further financial support for similar projects under the STAREC strategy. The security function of the *Centres de négoce* project is to be achieved through the deployment of 20 regular police officers distributed between the five project *centres de négoce*.[115] This is unlikely to be sufficient to provide safe escort for traders or to extend security to surrounding mining areas, which are all more than 20 kilometres away from the centres selected for the project. However, the centres are all in areas earmarked for deployment of rapid-intervention police units under a German-funded project, and the *Centres de négoce* project document anticipates that these units could help to bring security to the trading centres and access roads.[116]

As part of the ISSSS state authority objective, three police battalions are to be trained and deployed by a combined effort of the police component of MONUSCO, the IOM and the UN Office of the High Commissioner for Human Rights (OHCHR), with funding from the German Government. The overall objective of these battalions would be to fill the security vacuum in areas where illegal armed groups have been dislodged in recent military operations. Although not specifying protection, monitoring and inspection of mineral trade, one of the outcome indicators is increased safety of travel in Nord-Kivu, Sud-Kivu and a part of Orientale province.[117] Likewise, mineral inspection could be incorporated into the tasks of 800 border police who are to be trained by the same agencies and financed by the Japanese and US governments.[118]

Besides the $1.3 million allocated for the construction of *centres de négoce*, planned expansion of state security services in mine locations and along the trading chain is either not specified as such (in the case of ISSSS), or not yet funded (in the case of STAREC). Donors seem reluctant to support the further proliferation of state security services in mining areas and along the trading chain, probably because of the risk of them becoming involved in illegal rent seeking themselves. Proper security provision at the production level, however, remains crucial to generating a genuinely clean supply chain.

Another set of activities under STARECs security component and the ISSSS state authority objective concerns the extension and improvement of the judicial apparatus in eastern DRC. This is crucial to fighting the impunity that some members of the state security services currently enjoy for their illegal involvement in the mineral sector. In their November 2010 report, the UN Group of Experts recommended that MONUSCO's mandate should be adjusted to include

[115] UN Development Programme (note 107), p. 4.

[116] UN Development Programme (note 107), p. 7.

[117] United Nations, 'International Security and Stabilization Support Strategy: integrated programme framework 2009–2012', Jan. 2010, <http://mdtf.undp.org/document/download/2843>.

[118] Support for both specialized police forces was earmarked in STAREC's first objective, under the security rubric of consolidating operations against armed groups. Congolese Government (note 113),

further strengthening of its support to the judicial system, with a focus on investigating and prosecuting economic crimes, and called on donors to continue to provide support.[119] In 2009 the Group of Experts had already recommended 'the creation of a national tribunal to prosecute the abuse of military and police powers in connection with the illicit exploitation of natural resources'.[120] One of the intended security outcomes of the ISSSS is reduction of impunity for human rights violations committed by the FARDC through strengthened military justice systems and FARDC training by MONUSCO and the OHCHR.[121] In the January 2010 programme framework, no partners had yet allocated funding for this. Ideally, these recommendations of the Group of Experts should be integrated into the ISSSS; however, the huge funding gap for security-related activities, particularly justice-related activities, makes it unlikely that they will ever be implemented.

[119] United Nations, S/2010/596 (note 11), para. 370.
[120] United Nations, S/2009/603 (note 8), p. 89.
[121] United Nations (note 117), p. 21.

5. Conclusions and recommendations

Conclusions

Resource-fuelled conflict in eastern DRC has gone on unabated for more than a decade. The Congolese Government's rapprochement with Rwanda in 2009 and its 2010–11 mining ban have opened a window of opportunity to root out military elements from the mining sector so that it can at last start to contribute to—rather than help to delay—economic reconstruction. However, the transition to a clean industry following the lifting of the mining ban is unlikely to be smooth.

First, current control measures largely exclude the trade in gold, which is the conflict resource par excellence. Armed groups, can easily convert gold into cash or use it to pay directly for weapons and other supplies. In addition, the prevalence of smuggling provides ample opportunities for state security personnel to protect and facilitate shipments within the DRC and across its borders. Due to the ease of gold smuggling, efforts to formalize gold trade like the establishment of *centres de négoce* will prevent illegal exploitation of the trade by neither armed groups nor state security personnel. Depriving armed groups and state forces of gold revenues would require efforts to legally pursue both these types of actors, as well as the intermediary traders with whom they cooperate.

Second, while there is a real opportunity to create a conflict-free. formalized supply chain for cassiterite, there is also a risk that international buyers and smelters that would be willing and able to conduct proper due diligence will stop sourcing cassiterite from the DRC as a result of the stringent requirements of the Dodd–Frank Act. Under its broad definition of 'armed group', no minerals from eastern DRC can be considered conflict-free where there has been FARDC involvement in the supply chain, and companies are required to report it. Fearing damage to their reputations if they report such involvement, companies may opt to break links entirely with suppliers that buy from the DRC rather than invest in national traceability initiatives. To avoid a situation in which there are no credible international buyers for traceable, genuinely conflict-free minerals, supply chain assurance needs to be preceded by significant improvements in the overall security situation in eastern DRC and the demilitarization of the main mines and trading chains in particular.

Third, the Congolese Government and local stakeholders have limited ownership in the current due diligence and certification processes, which are largely driven by the interests of Western consumers, governments and pressure groups. The government has not received structural financial support to pay, train and deploy mining authorities in eastern DRC according to its STAREC programme. This deployment would be necessary to formalize trade down to the extraction level and make traceability and certification function adequately beyond the few pilot mines targeted in externally supported projects. On its side, the government has failed to provide the necessary guidance to mineral exporters and importers on responsible supply chain management. It has also failed to prosecute or penalize economic and military actors who violate national laws and regulations relating to mineral trade.

There is a danger that the minimal role played by the Congolese Government in shaping reforms could lead to a perception among local state and private-sector actors that the main problems in the mining sector in eastern DRC—loss of state revenues and business activity—are due to the sector being under international trusteeship, rather than caused by violent actors. This could make them sceptical about trade formalization, increasing the likelihood that they will not comply with—or will even sabotage—future activities. There is even risk that some local stakeholders who are not included in a government-backed certification scheme could associate with rebel militia to defend their illegal claims. Considering the danger of adverse reactions, it will be important that a range of local stakeholders—including traders, artisanal mining communities, customary authorities and mining companies—share ownership in locally implemented traceability and certification schemes and have their rights clarified.

Policy recommendations

Regardless of the progress that is made in the current trade formalization and state capacity-building efforts in the mining sector in eastern DRC, some steps are needed to address the risks and potential pitfalls outlined above, which could, in turn, enable meaningful implementation of due diligence and certification schemes. The policy recommendations presented below build on the propositions that resource governance must be used as an entry point to improve security, and security sector reform must to a larger extent be targeted at demilitarization of mines and trading chains. They combine punitive, accommodating and institutional measures. The Congolese Government should take the lead in implementing these recommendations, with the support of its international partners, external implementing agencies and commercial actors operating in the country.

To address the difficulties of controlling mineral trade, particularly gold trade, and the involvement of armed groups and high-ranking state security officials:

1. Specialized intelligence and anti-fraud services should be professionalized and equipped to investigate armed groups' financing strategies and the illegal involvement of regular armed forces in mining and mineral trade.

2. Military and civil courts should be equipped to prosecute state and non-state armed actors, as well as intermediary traders doing business with them, for violation of the Mining Code, the military penal code and other relevant national legislation.

3. The relevant national legislation should be reviewed and amended in order to explicitly outlaw a wide range of direct and indirect involvement in the mineral commodity chain by armed groups and state security elements, as identified in the UN Group of Experts due diligence guidelines.

To address the deployment of FARDC units in and around mining areas and along mineral trading routes in the context of ongoing military campaigns against rebel and militia forces:

4. The security component of the *Centres de négoce* project should be expanded by deploying a larger number of police at the new centres and by giving them the task of providing security to traders travelling from the mine sites and to *comptoirs* in larger towns. Follow-up projects should extend security provisions to mines surrounding the centres on a permanent basis, provided that police units are properly trained, paid and supervised.

5. International donors should commit to supporting, specialized police forces such as rapid intervention and border police, for at least five to ten years. These forces should be mandated to monitor and inspect mineral trade.

6. International donors should use their support in the area of security sector reform to pressure the Congolese Government to demilitarize mining areas, and integrate into their support strategies the replacement of FARDC units known to have controlled mines for economic gain by a legitimate security presence.

To address the limited ownership in traceability and certification initiatives on the part of Congolese Government and local stakeholders:

7. The Congolese Ministry of Mines should conduct an extensive local stakeholder consultation with miners, traders, local authorities and legitimate security actors to identify what they want and need to be able to meet due diligence requirements and improve the economic performance of the mineral sector. Such consultations should inform and spur new projects like the *Centres de negoce*, which is thus far the only Congolese-led project aimed at providing incentives to economic actors to engage in a formalized supply chain.

8. The Ministry of Mines should assume a more prominent role in providing companies and future auditors with due diligence guidance, particularly by publishing the promised map of mines in eastern DRC indicating the armed group in control and the level of their involvement in mineral extraction. In turn, it should advise companies as to which mines they should avoid when purchasing minerals.

9. Development and industry actors such as the World Bank, the UN, ITRI and BGR that are currently investing in traceability and certification should try to clarify multiple user rights at the local level and involve and consult multiple users in their activities in order to provide fair and equal access to benefits deriving from participation in the scheme.

10. The Ministry of Mines should advance the establishment of artisanal mining zones in eastern DRC, work out intermediate solutions that legitimize artisanal mining in concessions granted to mining and prospecting companies, equip artisanal mining sites to improve their viability for safe and efficient extraction, and install management systems that exclude unauthorized security actors. A considerable portion of the PROMINES programme funding should be allocated in support of such activities.

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STOCKHOLM INTERNATIONAL PEACE RESEARCH INSTITUTE

Conflict Minerals in the Democratic Republic of the Congo: Aligning Trade and Security Interventions

Mineral resources have played a crucial role in fuelling protracted armed conflict in the east of the Democratic Republic of the Congo (DRC). Illegal armed groups, state forces and civilian authorities are all involved in illicit rent seeking from the mineral sector, with serious repercussions for security, human rights and development. This Policy Paper examines the the prospects for and interactions between various trade- and security-related initiatives that are aimed at demilitarizing the supply chains of key minerals. It also describes the changing context in which such initiatives operate following a series of military campaigns against illegal armed groups. Finally, it offers policy recommendations for how the Congolese Government and international actors can coordinate and strengthen their responses in order to break resource–conflict links in eastern DRC.

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