

No rebel without a cause

Shifting the debate about conflict minerals in eastern DRC

Nina Bernarding, Lena Guesnet \ BICC, Marie Müller-Koné \ BICC

SUMMARY

Precluding conflict financing through the minerals sector has come to be seen as the panacea to ending conflicts in the eastern Democratic Republic of the Congo (DRC). The us Dodd-Frank-Act (2010) and European draft legislation attempt to reduce the financing of armed groups in conflict zones by asking companies to conduct due diligence along their supply chains to avoid the purchase of “conflict minerals”. This *Working Paper* lays open the misconceptions that have led to such a narrow regulatory approach towards the Congolese conundrum and analyses the consequences of implementing this legislation without embedding it in a wider agenda for peace. The authors argue that regulation on conflict minerals can only contribute to solving conflicts in eastern DRC if it becomes part of a wider approach to peacebuilding, which takes into account the complex reality of eastern DRC’s conflicts.

CONTENTS

Summary	2
---------	---

Main findings	5
The “regulation discourse” falls short of capturing the reality of conflicts	5
Regulatory measures have not reached their objectives	5

Introduction	7
---------------------	----------

Misconceptions of the regulation discourse	8
Minerals finance conflict ... and livelihoods	8
Fighting for minerals ... and more	9
Underlying root causes of conflict	9
The problematic role of the government itself	10
Interim conclusion	12

Consequences of putting the regulation discourse into practice	13
Collapse of the mining sector	13
Increase in smuggling	13
Deterioration of the security situation	14
Financing of armed groups	14
Worsening of living conditions	14
Modest improvements through certification efforts	14

Reflexion	16
------------------	-----------

Bibliography	17
--------------	----

Main findings

Current legislation in the United States and Europe champions technical solutions such as “conflict-free” certification schemes for minerals or supply chain due diligence by companies to cut the links between armed conflict and Western consumers. This legislation is the expression of a wider “regulation discourse” that is based on an economic reading of civil wars. The shortcomings of this discourse lie in its narrow interpretation of violent conflicts. When translated into policy, these shortcomings persist. The resulting narrow policy approach in itself is unable to solve the conflicts it means to address.

The “regulation discourse” falls short of capturing the reality of conflicts

One of the assumptions held by proponents of the regulation discourse is that mineral exploitation and trade is dominated by greedy rebels. Yet, looking at the case of the eastern Democratic Republic of the Congo (DRC), the mining economy—one of the most important economic sectors—provides for basic livelihoods of civilians and armed actors (non-state armed groups and the military) alike. Greed for mineral profits may be one of the drivers for armed actors, but stronger drivers are limited livelihood options, anger about economic and political marginalisation, and frustration over unsuccessful disarmament, demobilisation and reintegration (DDR) programmes.

Another common assumption is that minerals represent the main income stream for armed groups and an important reason for conflict. However, non-state armed groups in eastern DRC rely on diverse income sources, with the mineral trade just being one of them. Also, the root causes of conflicts in eastern DRC go well beyond the minerals economy: They can be traced back to long-standing socio-political struggles over land, identity and power in a dysfunctional state and an instable region.

Whereas regulatory initiatives base the definition of conflict-free minerals on the distinction between legal and illegal behaviour, in the Congolese mining sector, the line between legal and illegal, “good” and “bad” is blurred. Government actors are

enmeshed in legally ambiguous activities within the sector, collaborating with armed actors and profiting from the illegal exploitation of the minerals. At the same time, the central government in Kinshasa grants most of the mining concessions to industrial mining companies, making it nearly impossible for artisanal miners to legally work in the mining sector.

Contrary to the common view that the Congolese state apparatus is absent, it is in fact very much present in the daily lives of Congolese, as officials raise high levies on legal and illegal economic activities. Still, it is a case of state failure—a failure to provide security and basic necessities for the people living in the Congo. Officials from army, police and administration commit most human rights abuses. All of these behaviours showcase the dysfunctional and predatory nature of the current state apparatus. Extending state authority in this context cannot be the solution.

Regulatory measures have not reached their objectives

Empirical evidence suggests that prohibitive policy measures enacted in line with the regulation discourse have led to unintended negative consequences. This highlights the necessity that policies aimed at conflict-free minerals are embedded in a wider agenda for peace.

Following the signature of the US Dodd-Frank Act (July 2010) and the ensuing suspension of mining activities by the Congolese government (September 2010–March 2011), the mining sector in the eastern provinces (Kivus and Maniema) collapsed, as many smelters stopped buying tin, tantalum and tungsten from eastern DRC. The following *de facto* embargo resulted in a significant drop in prices of the minerals in eastern DRC. As a consequence, the (already high) levels of smuggling to neighbouring countries went up. With income from artisanal mining drying up, the money circulating in the local economy shrank, school drop-out rates in some areas rose up to 50 per cent, and living standards deteriorated.

Coinciding with the downturn in the mineral sector and the *de facto* embargo in eastern DRC, new armed groups proliferated in the period between 2010 and 2013. This was partly because young men and women joined armed groups for lack of income. The decreased revenues from the mineral trade seemed to have had little impact on the financial power of armed groups, which shifted and diversified their income sources. Gold became more important for armed groups and artisanal miners. At the same time, criminality, including looting, rose significantly. Overall, the security situation deteriorated.

With the implementation of certification initiatives in some areas of the Kivus and Maniema, the production of tin and, to a smaller extent, tungsten and tantalum picked up during the course of 2013. Here, prices increased and the population's economic situation improved. However, due to continuous insecurity and dysfunctional state structures, the process of certifying minerals remains a challenge and is limited to less remote areas closely watched by national and international stakeholders.

Introduction

With the European parliament set to vote on “conflict minerals” legislation in May 2015, it seems that a solution to tackling “resource conflicts” has been found. This *Working Paper* intends to show why such a technical solution can only be the beginning and not the end of dedicated work towards ending violent conflicts in which resources are instrumentalised.

The proposed EU legislation has the potential to enforce responsible sourcing of tin, tantalum, tungsten (3T) and gold from conflict and high-risk areas.¹ The European legislative process follows section 1502 of the Dodd-Frank Act, passed by the US government in July 2010, which

requires companies listed on the US stock exchange to provide specific assurances that any products that they have manufactured or contracted to manufacture do not contain minerals “that directly or indirectly finance or benefit armed groups” in the DRC or its neighbours (Cuvelier, van Bockstael, Vlassenroot, & Iguma, 2014, p. 1).

Both pieces of legislation are based on the assumption that it is crucial to preclude conflict financing via these minerals in order to bring about peace in regions affected by resource conflicts—the most prominent example being the eastern provinces of the Democratic Republic of the Congo (DRC). The underlying logic seems plausible: When armed actors are deprived of an important source of income, it makes fighting less attractive and thus contributes to an end to the conflict. This view has been promoted in recent public and political debates that have focussed on the special link between mineral resources and violent conflict.²

It is undoubtedly important to hold companies accountable and prevent negative effects of business operations in conflict areas. The observation of human rights due diligence and conflict-sensitive business practices should become a standard. To oblige companies to conduct due diligence on conflict minerals in their supply chains would be an important step in that direction (Müller-Koné & Guesnet, 2015). We believe, however, that in itself it will not bring an end to armed conflicts in eastern DRC and elsewhere.

To illustrate the shortcomings of a narrow regulatory approach, this *Working Paper* lays open the misconceptions that have led to such an approach towards the Congolese conundrum and analyses the consequences resulting from regulations not embedded in a wider agenda for peace.

In the first part of this *Working Paper*, the authors confront the major assumptions underlying the “regulation discourse” with evidence from eastern DRC. The second part assembles empirical evidence about the consequences of the signature of the US Dodd-Frank Act (July 2010) and the ensuing suspension of mining activities by the Congolese government (September 2010–March 2011). It shows the consequences of prohibitive measures taken without concern about the bigger picture.

Thus, the authors argue that, to avoid negative consequences of policy measures focussed on the minerals sector, legislation on conflict minerals needs to become part of a wider approach to peace-building that takes into account the complex reality of eastern DRC’s conflicts.

1 \ The proposed legislation uses the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas as a basis for implementation. Whether the legislation will make this implementation mandatory or voluntary is one of the open questions. The other is its scope: Will it only encompass importers of minerals or companies that sell finished products containing these minerals, too? For further details see BICC *Policy Brief 2/2015*.

2 \ See for instance, the Raise Hope for Congo Campaign by the enough project: <http://www.raisehopeforcongo.org/content/initiatives/conflict-minerals> and the page on Global Witness’ campaign on conflict minerals: <http://www.globalwitness.org/campaigns/conflict/conflict-minerals>

Misconceptions of the regulation discourse

Both the proposed EU regulation and the Dodd-Frank Act are the expression of a wider regulation discourse that has come forward in consequence of two emerging trends of the late 1990s: First, the increasing prominence of the link between local economies of violence and international markets, through which rebel and government groups have financed their war activities. The International Community attempted to break this link, for instance in Sierra Leone and Angola, first with broad and later with “smart” sanctions. Second, the shift towards the responsibility of the private sector (Haufler, 2009, p. 407). In contrast to the previously dominant discourse on irresolvable wars resulting from intractable tribal and ethnic rivalries (Kaplan, 1993), economic agendas behind civil wars were given importance (Keen, 2000). This shift—away from explaining civil wars as an expression of irrational violence and breakdown of any order—offered room for new solutions. The seemingly straightforward answer of ending brutal conflicts by cutting the financial sources of greedy warring parties seemed very attractive, not only to policymakers, but also to non-governmental organisations and human rights activists. Nevertheless, the new economic reading also has its shortcomings. It predominantly asks for technical solutions to address the economic side of conflicts. In the following, we discuss the major assumptions underlying the regulation discourse in the light of evidence from the DRC.

Minerals finance conflicts ... and livelihoods

The regulation discourse is based on the idea that mineral exploitation and trade are dominated by greedy rebels.³

In the DRC, armed groups remain involved in the exploitation and trade of minerals—most importantly gold (IPIS, 2014, pp. 8–10). Yet, these activities represent but one of their income sources. Laudati (2013) states that in most cases, it is not even the most

important one.⁴ The recent example of the rebel movement M23 (for armed groups, see Table 1), which occupied parts of northern Kivu from April 2012 to November 2013, illustrates how militarily active rebel groups do not necessarily engage in the minerals trade. As a matter of fact, M23 was not involved in the mineral sector, but relied mainly on household and transport taxes (UN Group of Experts, 2014, pp. 12–13). Laudati (2013) also found that M23’s predecessor, the National Congress for the Defence of the People (CNDP) derived only about 15 per cent of its budget from mining activities (p. 33). Even the Democratic Forces for the Liberation of Rwanda (FDLR) who rely comparatively heavily on revenues from gold have additional income sources, such as illegal taxation of other goods, agriculture and charcoal production (UN Group of Experts, 2014, p. 24; Seay, 2012, p. 18). Other armed actors also generate income through the trade in palm oil, charcoal, hemp, timber and bush meat (Doevenspeck, Guesnet, & Müller, 2013, p. 285). These clearly diverse income sources indicate that armed actors exploit whatever they regard as profitable and do not rely solely on the mineral sector (Johnson, 2009, cited in Laudati, 2013, p. 33).

It seems most important to acknowledge that “the majority of those involved in the trade in precious minerals continue to be motivated by coping and survival” (Larmer, Laudati, & Clark, 2013, p. 6). In the context of little alternative livelihoods mining is indeed the most important coping mechanism and survival strategy for 710,000 to two million eastern Congolese (Parker & Vadheim, 2013, p. 6; Seay, 2012, p. 7). With a functioning state absent, the population uses this income to directly finance basic needs, such as health care, nutrition or education. To some extent, this is also true for rebels and large parts of the Congolese army, particularly the lower ranks. Congolese soldiers’ salaries are low (approximately US \$40–50/month) and are rarely paid. The additional income they gain from extorting money from mineral traders goes to buy basic necessities for them and their families (Seay, 2012, p. 18).

3 \ In early publications on greed and grievances Collier and Hoeffler (2002) cite greed as the major reason for conflict. In later works, they mainly argue that the exploitation of natural resources provides opportunities for armed conflict, without conflict actors being necessarily driven by greed (Collier, Hoeffler, & Rohner, 2006).

4 \ This is a change from the situation in both Congo Wars (1996–1997, 1998–2003), where the war economy “created a context in which it was economically lucrative and politically rational for the parties to continue the war despite the fact that a military solution was unlikely from an early stage of the conflict” (Aust & Jaspers, 2006, p. 12).

Table 1
Mentioned armed groups

Armed group	Description
CNDP National Congress for the Defence of the People	This rebel group was active between 2006 and 2009 under the leadership of Laurent Nkunda. Its proclaimed objective was the protection of Tutsi in the DRC. As part of the peace agreement of 23 March 2009, the group was recognised as a political party, and its armed branch was integrated into the Congolese army. CNDP originated from the RCD-Goma (Congolese Rally for Democracy) group that took part in the Second Congo War.
FDLR Democratic Forces for the Liberation of Rwanda	The FDLR rebel group was created in 2001 and mainly consisted of Rwandan Hutu, some of whom were strongly implicated in the Rwandan Genocide of 1994. For a long time, the FDLR was the strongest armed group in eastern DRC. A sequence of military operations launched against the group since 2009 has substantially weakened it. Since 2002, demobilisation programmes are also in place. Its current strength is estimated at less than 1,500 combatants.
M23 March 23 Movement	This rebel movement was founded by former CNDP-combatants who deserted the Congolese Army in April 2012. It received political and military backing from Rwanda and Uganda. After its military defeat it announced an end to its insurgency in November 2013.

Fighting for minerals ... and more

Linked to the idea of greedy rebels is the notion that insecurity in eastern DRC mainly results from competition over mining sites and trade routes (e.g. Global Witness⁵). While fighting over mining areas was an important feature of the Congo Wars and still occurs in North and South Kivu (IPIS, 2014, pp. 8-10), not all fights are motivated by profits to be made in the mining economy. Many armed clashes in eastern DRC today are not related to mining. Congolese

5 \ Refer to <http://www.globalwitness.org/campaigns/conflict/conflict-minerals>

armed groups are also driven by anger over economic and political marginalisation, frustration over unsuccessful disarmament, demobilisation, and reintegration (DDR) programmes⁶ and ideologies (Stearns, Verweijen, & Baaz, 2013, pp. 30-38; Seay, 2012, p. 19; Vogel, personal communication, 2014). The M23 Movement illustrates this point: Due to frustration with the conditions of their integration into the national army, former CNDP rebels mutinied and formed the M23 Movement in March 2012, conquering Goma in November that same year. While their motivation seemed to have changed over time, they clearly had the political ambition to challenge the national government in Kinshasa in 2012 (IPIS, 2012, p. 18). Even the FDLR does not focus merely on conquering mining areas. Its presence in the border area Rutshuru (North Kivu), which is depleted of mining resources, is a clear indicator that not only other motives, but also other income sources influence their strategies (IPIS, 2014, p. 15).

Underlying root causes of conflicts

One can actually trace back armed conflicts and the insecurity the population faces in eastern DRC to longstanding socio-political struggles over land, identity and power in a dysfunctional state and an unstable region. This goes well beyond the rather simplistic explanation of conflicts by a combination of wealth in natural resources and greedy rebels.⁷ While it is beyond the scope of this *Paper* to offer an exhaustive account of reasons for violent conflicts in the eastern provinces, some root causes will be sketched here with regard to North and South Kivu.

At the heart of the formation of many armed groups is the feeling that the dysfunctional Congolese state does not protect the political, economic and security interests of social groups. One example of this is the involvement of Tutsi businessmen and military commanders in the foundation of the CNDP and the

6 \ For more information on this topic see for instance: International Alert, 2012. Ending the deadlock: Towards a new vision of peace in eastern DRC.

7 \ According to Global Witness "fighting [in the DRC] has continued for almost fifteen years, driven by the trade in valuable minerals." See: <http://www.globalwitness.org/campaigns/conflict/conflict-minerals>

M23 Movement (Stearns, 2013, p. 9). While it is only recently that these conflicts have become militarised, their roots reach back to post-colonial, colonial and even pre-colonial times.

The special position of the Kivu provinces towards the central state and towards neighbouring Rwanda as well as land politics over the last century play a crucial role in the unfolding of violent conflicts in eastern Congo. The most prominent of these conflicts involves Rwandophone populations (locally known as Banyarwanda), encompassing Hutu and/or Tutsi communities (depending on the local context). The Banyarwanda are labelled non-Congolese by Congolese groups that define themselves as autochthones. Some Hutu and Tutsi lived in the Kivus before colonial times. When colonial plantations attracted labour from neighbouring Rwanda, their presence increased significantly. The Belgian colonial administration resettled 85,000 Hutu and Tutsi from Rwanda to the Kivus. After Rwandan independence, many Tutsi came to Congo to escape state repression (Huggins, 2010). The land rights and citizen rights of the Banyarwanda have been and still are contentious. They were given citizenship in 1972 when the ruling class welcomed their presence. When their status and influence was questioned during the 1980s and 1990s, their citizenship and other rights were also challenged. The contested issue of access to land is related to these identity politics. As a sound land policy is lacking in the DRC, the manifold shortcomings of land governance⁸ have led and continue to lead to numerous disputes between individuals, which in some areas come to overlap with identities, pitching communities against each other (Vlassenroot, 2013). During the democratisation process of the early 1990s, these struggles over land and identity led to militia

8 \ According to Vlassenroot (2013) there are “a number of critical land-related factors contributing to violence and conflict, including many different types of land governance mechanisms; the existence of overlapping legal frameworks and the weakness of the statutory land law; competition between indigenous and migrant communities; limited access to arable land in demographically dense areas; the weak performance of the administration and justice system in the reconciliation and arbitration of land disputes; growing stress on local resources caused by massive displacement; the expansion of artisanal and small-scale mining; and increased competition between elites for the control over land and consequent land concentration” (p. 1).

violence in North Kivu, killing 10,000 and displacing 250,000 people in 1993 (Garret, Sergiou, & Vlassenroot, 2009, p. 7).

The whole region was destabilised, when—after 200,000 Burundians had already fled into the DRC in 1993—one million Rwandan Hutu refugees crossed into the DRC, as a result of the genocide and civil war in Rwanda in 1994 (Reyntjens, 2009, p. 2). Among them were perpetrators and organisers of the genocide. When new rebel groups were formed in refugee camps and threatened to attack Rwanda, the new leadership in Rwanda decided to intervene. Not only did Rwanda commit mass atrocities when clearing the refugee camps, this also was the starting point of the two Congo Wars (1996–98; 1998–2003). These were fought on Congolese territory but involved the troops of seven African countries and numerous rebel groups allied to different neighbouring countries. Ever since, and even after the Peace Agreement of 2002, rebel and militia groups have been present in the east and continue to proliferate (Doevenspeck et al., 2013, pp. 280–81).

The problematic role of the government itself

The solution to ending violence in the Congo as heeded in the regulation discourse is that of state building—to reconstruct state authority and to stop the illegal exploitation of minerals (Autesserre, 2012; International Alert, 2012, pp. 33–41). In spite of numerous attempts at (and difficulties with) disarmament, demobilisation, and reintegration as well as security sector reform, the holding of national elections in 2006 and 2011 and the presence of the largest UN peacekeeping mission worldwide, the government⁹ has so far not been able (or willing) to provide security, rule of law and basic services in its eastern provinces. This is not to say the government is absent. It is indeed very much present in the daily lives of the Congolese—but in a corrupted and dysfunctional manner, benefitting the elite’s interests only. In

9 \ The term government is used in its wider definition here, encompassing all branches and levels of the state apparatus, and refers to successive governments, not just the currently ruling government.

Box 1**Local modes of governing and certification****Regulatory pluralism and “débrouillardise”**

Since the Congo Wars, political authority in eastern DRC has been fragmented and under negotiation (Raeymaekers, Menkhaus, & Vlassenroot, 2008, p. 14). Government institutions and other competing power holders such as customary authorities or armed groups strive for political control and domination and attempt to regulate mineral extraction. This political context can be termed “regulatory pluralism” (Roitman, 2005). In practice, these different power holders compete and collaborate at the same time; supposedly “informal” artisanal mining sites are co-governed by customary authorities, armed groups or military units and civil government institutions (Müller-Koné, forthcoming).

We propose to understand these different attempts to regulate the mineral sector as modes of governing (see Bulkeley, Watson, & Hudson, 2007) that bring together different power holders (state and non-state) in shifting coalitions.

The predominant modes of governing in eastern Congo constitute the practices of débrouillardise (Müller-Koné, forthcoming). The French term débrouillardise [se débrouiller = to manage, cope, get by] is often associated with informal economy and marginalised individuals. The term is used by Congolese people to denote a common survival tactic (Marriage, 2013, pp. 2–3). Débrouillardise implies complicity and overlap between state and non-state power holders. The exact mode of governing, including the set-up of actors who exert control, is very flexible and differs from one mining site to the other. Most of artisanal mining sites in the Kivus are governed by this principle of débrouillardise.

This mode of governing competes with other modes that govern mineral extraction, namely “statutory” large-scale mining ventures and transnational efforts aimed at “conflict-free” minerals.

Conflict-free certification

The formal requirement of the conflict-free certification to be legal is incompatible with the regulatory pluralism of the débrouillardise. The requirement of legality currently excludes most of artisanal mining sites in the Kivus, which are located in industrial concession areas. Hence, conflict-free certification can only be achieved via ad hoc agreements on the legal status of mining sites among state authorities, economic actors, and international monitors. This means that, in the DRC’s context of regulatory pluralism, a conflict-free certification scheme can only be implemented if it operates according to the principles of débrouillardise.

addition to this, it is officials from army, police and administration who commit most of the human rights abuses (Autesserre, 2012, p. 219).

The mining sector is a good illustration of the government’s behaviour. It is the government that makes it nearly impossible for artisanal miners to legally engage in mining activities. Hardly any artisanal mining zones are established, contrary to what is demanded by the Mining Code (Cabinet du Président de la République, 2002); instead, the government grants most concessions to industrial mining companies. Yet officials participate in the large parallel mining economy, which relies on artisanal mining. Disregarding legal requirements, these officials register and tax artisanal miners and other economic actors wherever the security situation allows it (IPIS, 2014, p. 17; interviews by Marie Müller-Koné in South Kivu, 2011). Some high-level officials protect smuggling networks (UN Group of Experts, 2014, p. 37), and army elements continue to directly control and tax mining sites (IPIS, 2014, p. 9).

Mineral exploitation and trade in eastern DRC is thus not only characterised by the involvement of non-state armed groups, but also by that of military and government officials as well as local authorities. Altogether they make up one “well-established system of cooperation, competition, coordination” (Charbonnier & Atanasijevic, 2014b)—with all elements gaining from these activities. Instead of dismissing artisanal mining as “informal” or “illegal”, its activities need to be seen as an adaptation to the socio-economic structures within a predatory state (Laudati, 2013, p. 44; EurAc, 2014, p. 9). In other words, they are a mode of governing which follows the principles of “débrouillardise” (see Box 1 and 2).

The described circumstances, in sum, put into question the clear-cut distinction between illegal and legal behaviour and the notion that any business in conflict zones has mainly negative effects (Ballantine & Nitzschke, 2003, p. 37). It also challenges the notion of bad rebels getting “in the way of all the good people” (Reyntjens, 2009, p. 216).

Interim conclusion

The above said indicates that a purely economic reading falls short of capturing all elements necessary for a comprehensive conflict analysis of eastern DRC to identify lasting solutions. Whilst the recognition of economic factors and mechanisms has brought important international attention to the ongoing conflicts in the DRC, the oversimplified explanation that all fighting in the DRC is motivated by wanting to secure access to resources (and is financed through the trade in resources) has obstructed a closer look at and a better understanding of the actual causes of conflict.

Instead of taking the proliferation of armed groups and the militarised mineral trade as the main reasons for misery and conflicts, they have to be seen as symptoms of an enduring state failure (Doeven-speck et al., 2013, p. 289; Seay, 2012, p. 17)—a failure to provide security and basic necessities for the people living in the Congo.

Box 2

Collaboration of official and non-official actors in governing an artisanal mining site in South Kivu*

In alluvial artisanal gold mining, groups of workers manually wash gold out of river sands. The visited mining sites in Mukera, Fizi Territory, South Kivu are situated outside the village, in government-controlled territory. In 2011, various regulatory authorities were present: the mining authority, a local chef de police, the village chief, the Congolese secret service (ANR), and military units. Both the mining authority and the village chief physically checked on the mining sites to control miners' registration cards and collect fees that go beyond what is foreseen by law. Sometimes they were accompanied by a local policeman who could lock up those who did not have valid papers or who were not prepared to pay a bribe. Customary and civil state authorities thus actively co-governed the mining site and collaborated closely. The military units stationed in Mukera were not directly positioned at the mining sites, but were reported to occasionally erect barriers at the entry points of the mining sites and to force miners to pay random amounts of "duties". In addition, the mining division reportedly collected fees on behalf of the military.

The mining authority used forms of miners' self-organisation for governing the mining site. Pit managers and diggers were organised in so-called cells. The cell chiefs were responsible for co-ordinating the collection of levies by the mining authority. The mining authority also collaborated with unofficial regulatory powers—the village chief and his entourage—in the distribution of land for mining. When gold was found on land around the village, the land would be divided into three zones: one would belong to the original land owner, one to the lucky finder of the gold and the third to the authorities. A mining officer based in a town nearby pointed out that officially a prospection permit is necessary, yet, "because we do not have the documents, we leave them free access." By distributing land in an informal way, the local mining authority had seized control of land titling. It thereby provided the extraction practices with a semblance of legality. State agents collaborated with unofficial regulators—customary and military—to collect levies they would otherwise not have access to (cf. iTSCi, Channel Research and Pact, 2013; IPIS, 2014, p. 17).

**All information is based on interviews by Marie Müller-Koné with miners, customary authorities, police, and state mining authorities in Fizi Territory, South Kivu, September to October 2011.*

Consequences of putting the regulation discourse into practice

The above reality check of the regulation discourse suggests that technical interventions that follow this rationale will not suffice to address eastern DRC's problems. The following examination of the consequences of two such policy measures confirms this: the US legislation on conflict minerals from the DRC, the Dodd-Frank Act (DFA), and the mining ban that Congolese President Joseph Kabila introduced in September 2010. It is very difficult to analyse the impacts of Section 1502 of the DFA detached from the presidential ban. The ban prohibited all extraction and export of gold, tin and tantalum in North and South Kivu and Maniema provinces. It was in force until March 2011.

The ban, if not a direct consequence of the DFA, has been at least strongly influenced by it. Many scholars argue that the DFA reinforced the tendencies triggered by the presidential ban as companies were disincentivised from buying Congolese minerals. This led to a *de facto* embargo (Matthysen & Zaragoza, 2013, p. 8; Cuvelier et al., 2014, p. 2). The following section elaborates on the consequences of the *de facto* embargo on the mining sector, the security situation, the living conditions and the financing of armed groups.

Collapse of the mining sector

Despite its faulty implementation¹⁰, the mining ban had a “paralyzing effect” (Cuvelier et al., 2014, p. 2) on the mining sector and led to a significant reduction in mineral production to 20 per cent of the initial production volume (Parker & Vadheim, 2013, p. 12; Geenen, 2012, p. 327). Most international companies did not return to the DRC after the presidential ban was lifted in March 2011 because they were under pressure to state the origin of their minerals as required by the DFA (Matthysen & Zaragoza, 2013, p. 3). This concerns most notably the Malaysia Smelting Corporation, which had purchased up to 80 per cent of eastern Congolese tin before it pulled out in 2010 (Cuvelier et al., 2014, p. 21).

¹⁰ \ Many mining sites, such as Bisie (North Kivu), actually expanded during the presidential ban (Matthysen & Zaragoza, 2013, p. 36).

Between the deadline for the implementation of the DFA (1 April 2011) and the launch of tracing and tagging initiatives in South Kivu and Maniema (November and December 2012), there was no legal market for untagged minerals in the Kivus and Maniema (Cuvelier et al., 2014, p. 30; UN Group of Experts, 2012, p. 40). By August 2012, official exports of tin, tantalum and tungsten (3T) from these three regions had almost completely ceased (UN Group of Experts, 2012, p. 40). This also included exports from conflict-free mining sites (Matthysen & Zaragoza, 2013, pp. 23–27/36). In consequence, many artisanal miners were forced to sell their minerals at very low prices to refiners and smelters who were not obliged to prove the (conflict-free) origin of their minerals. Prices for tantalum and tungsten in eastern DRC in consequence fell by 20 per cent, those for tin between 60 and 75 per cent (UN Group of Experts, 2012, pp. 52–53)—despite increasing world market prices.

Increase in smuggling

In response to the low prices offered, many artisanal miners turned away from the 3T trade to the gold sector. This sector is much more militarised, with armed actors involved in various ways. Today, four out of five artisanal miners in the eastern DRC work in the gold sector (IPIS, 2014, p. 11–12). Gold, due to the small volume/high value ratio, is much harder to regulate and much easier to smuggle. It is estimated that today almost 98 per cent of DRC's artisanally produced gold is smuggled out of the country to Burundi, Uganda, Tanzania and South Sudan (IPIS, 2014, p. 12).

At the same time, the smuggling of 3T increased over the last years. A key incentive are the better prices offered in Rwanda where all minerals are certified. During 2012 and 2013, the export volume of tungsten and tantalum from Rwanda increased—mostly due to (illegal) imports of Congolese minerals (UN Group of Experts, 2014, p. 42, 2015, p. 38; Manhart & Schleicher, 2013, pp. 30–31).

Deterioration of the security situation

Faced with few economic opportunities outside of the mining sector, many unemployed young men, especially in remote regions not targeted by certification initiatives, joined armed groups (Matthysen & Zaragoza, 2013, p. 42; Charbonnier & Atanasijevic, 2014a, Vogel, 2014). Coinciding with the downturn in the local economy, the years between 2010 and 2013 saw a proliferation of armed actors, especially Mai Mai militias such as Raia Mutomboki, and their activities (Johnson, 2013, pp. 8–9; Vogel, 2014; Oxfam, 2012, p. 7). This increase has certainly been influenced by a number of factors, two of them being fewer opportunities to make a living out of mining and the threat by the M23 movement.

Since the defeat of the M23 movement in November 2013, the activities of armed groups have significantly decreased, and a relatively large number of rebels have surrendered (IPIS, 2014, p. 7). This decrease, however, seems more linked to joint Congolese army/MONUSCO military operations and local dynamics than to developments in the mining sector (Vogel, personal communication, 2014). In addition, as some militias moved from the Kivus to Katanga in 2013, the latter suffered increasingly under spreading violence and insecurity (Johnson, 2013, p. 8). Mai Mai militias continue to have a destabilising effect on the north of Katanga until today (Ökumenisches Netz Zentralafrika, 2014, p. 3). Moreover, criminality has risen significantly, adding to the overall increased insecurity (Cuvelier et al., 2013, p. 10; Matthysen & Zaragoza, 2013, p. 26). Even where there is no active fighting, the day-to-day acts of looting present a constant threat to civilians (Laudati, 2013, pp. 38–39).

Financing of armed groups

The financial power of armed groups has been hardly affected by lower prices and decreased revenues from the 3T trade. Most of them have diversified or shifted their income sources, focussing increasingly on taxation of other goods, extortion, and the legal and illegal commerce of marijuana, palm oil, salt, sugar and other consumables (Laudati, 2013; Vogel, personal communication, 2014). Within the mining sector, gold has become increasingly

important for artisanal miners and armed groups alike. As gold is exported almost entirely unrecorded, its trade offers a lot of opportunities to armed groups (IPIS, 2014, pp. 11–12). In sum, contrary to the proclaimed goal, the Congolese mining ban and the *de facto* embargo did not cut down the income sources of armed groups. Furthermore, it allowed the Congolese army and police to consolidate and even foster their involvement in the mining sector, such as in the mining site Bisie (Matthysen & Zaragoza, 2013, p. 15; Cuvelier et al., 2014, p. 2).

Worsening of living conditions

In contrast to the armed groups, the mining ban and the *de facto* embargo had a strong impact on the civilian population. In the wake of decreasing prices and revenue flows, poverty and unemployment increased, businesses closed and school drop-out rates rose up to 50 per cent in some areas (Cuvelier et al., 2014, pp. 10, 26; Matthysen & Zaragoza, 2013, pp. 35–36; UN Group of Experts, 2012, pp. 53–54). Low prices also had an adverse impact on working conditions in the mines as workers had no means to buy boots, torches or gas (UN Group of Experts, 2012 p. 52). In sum, living standards in eastern DRC deteriorated sharply.

Modest improvements through certification efforts

During 2013, the production and trade of tin and, to a much smaller degree, of tungsten and tantalum was revived in the Kivus and Maniema (UN Group of Experts 2013, p. 36, 2014a, p. 42; Matthysen & Zaragoza, 2013, p. 36). This increase in tin production in South Kivu and Maniema coincided with the implementation of certification initiatives, such as the Conflict-Free Tin Initiative in South Kivu (Kalimbi) in November and in Maniema (Kalima and Kailo) in December 2012. In these areas, prices for minerals rose, and the economic situation of the population improved (Matthysen & Zaragoza, 2013, p. 41).

However, due to insecurity and dysfunctional state structures, progress in certifying minerals is very slow and will remain so. There is hardly any

infrastructure to trace the trading of artisanally mined minerals. By October 2014 only an estimated five to six per cent of all mining sites in eastern DRC had been accessed to check their conflict status. Only 86 out of more than 1,000 registered sites were considered conflict-free by that time (EurAc, 2014, p. 12). In consequence, the great majority of miners work “in a sphere of illegality” (Cuvelier et al., 2014, pp. 14-15) regardless of the presence of armed actors at their mining site.

A few trading centres were built in North Kivu (Rubaya) and South Kivu (Mugogo and Baraka) that were supposed to offer a safe place to market minerals at fairer prices. Yet this is clearly insufficient for the whole of the Kivus. Still, the hope that the mineral trade would soon pick up led to an increase in production there (Matthysen & Zaragoza, 2013, p. 11). These affirmative developments have been limited to 3T mines in areas that are watched more closely by international companies, mining authorities and civil society (UN Group of Experts, 2012, p. 54; Matthysen & Zaragoza, 2013, pp. 41-42).

In more remote areas, such as Walikale (North Kivu) and Lubutu (Maniema), the population had to bear the consequences of the presidential ban, but so far has not benefitted from initiatives to revive the trade (Matthysen & Zaragoza, 2013, p. 42).

Reflexion

In summary, the combined consequences of the DFA and the presidential ban on the economic situation in eastern Congo were disastrous and counter-productive to what had been intended: First, the local economy as well as civilians' livelihoods were severely affected and are still to recover. Second, the effect on the financial power of armed actors has been very limited. Moreover, and third, by depriving thousands of artisanal miners of their most important income source, both regulatory actions may have indirectly contributed to an increase in armed groups and their activities between 2010 and 2013, and to a rise in criminality.

Conflict-free certification initiatives, in contrast, have had more positive effects. These initiatives acknowledge the importance of the mineral sector for the local population and thus seek to stimulate the legal mineral trade. Conflict-free certification has led to a modestly improved economic situation of the population in the areas where they have been implemented. The DFA provided a crucial impetus to getting these initiatives off the ground. While their effect on the security situation is less clear, they at least seem not to have had an adverse effect. Their prospects for success remain limited due to the following obstacles:

- \ under the current laws, artisanal miners can hardly meet the criteria for legality and depend on the state to provide the conditions for legality (artisanal mining zones);
- \ various power holders—from military commanders, armed groups' leaders, to customary authorities and state institutions—gain from the practices of informal mining through taxation (i.e. the *débrouillardise* mode of governing).

Our analysis explains why technical and economic solutions, such as efforts to regulate the mineral trade, alone will and cannot end conflicts. Most armed actors—contrary to many civilians—are neither solely dependent on nor solely motivated by profits from the mineral trade. Any attempts of

suppressing the trade in minerals without creating sustainable income opportunities will first and foremost harm civilians and will not have a decisive impact on armed actors. Moreover, excluding armed actors from mining sites will not alter the quality of political structures. Armed actors—if determined to fight—will revert to alternative sources of income.

To change that determination, underlying factors that maintain conflict need to be addressed. To that effect, measures dealing with the local conflicts are needed, especially with those over land, and measures that diversify economic opportunities beyond mining that promote inter-community reconciliation and that address the dysfunctional and predatory state structures. All parties to the conflicts—including government actors—need not only be held accountable for their actions but also be involved to find sustainable solutions. A political process about pressing issues needs to be started and followed through.

First steps in the right direction have been made. A comprehensive process on land reform has been started but still awaits further implementation. The parliamentary inquiry into the fate of mining revenues in South Kivu (IPIS, 2014) is another positive development. Initiatives like these need to receive powerful external backing and support. If the (legally and illegally acquired) revenues from the mineral sector were accounted for, they could be invested to improve the living conditions of people who pay the levies.

EU legislators should therefore bear in mind that they are currently dealing with symptoms of the armed conflicts in the DRC. To address the causes, conflict-minerals legislation needs to be embedded in coherent peace policies. Policies aimed at curbing conflict-financing should be weighed against the priority to satisfy basic needs of the population concerned.

BIBLIOGRAPHY

- Aust, B., & Jaspers, W. (2006). *From resource war to 'violent peace': Transition in the Democratic Republic of Congo*. (BICC Paper 50). Bonn: BICC. Retrieved from https://www.bicc.de/uploads/tx_bicctools/paper50.pdf
- Autesserre, S. (2012). Dangerous tales: Dominant narratives on the Congo and their unintended consequences. *African Affairs*, 111(443), 202-222. doi: 10.1093/afraf/adro80
- Ballantine, K., & Nitzschke, H. (2003). Business and armed conflict: An assessment of issues and options. *Die Friedens-Warte*, 79(1-2), 35-56. Retrieved from <http://www.jstor.org/stable/23773715>
- Bulkeley, H., Watson, M., & Hudson, R. (2007). Modes of governing municipal waste. *Environment and Planning*, 39(11), 2733-53.
- Cabinet du Président de la République. (2002). Loi no. 007/2002 du 11 juillet 2002 portant Code minier. Kinshasa, Journal Officiel de la République Démocratique du Congo.
- Charbonnier, G., & Atanasijevic, L. (2014a). The governance of natural resources in hybrid political orders. [Web log comment]. Retrieved from <http://inec.usip.org/blog/2014/jan/22/governance-natural-resources-hybrid-political-orders>
- Charbonnier, G., & Atanasijevic, L. (2014b). The governance of natural resources in hybrid political orders, Part 2. [Web log comment]. Retrieved from <http://www.sipri.org/media/blogs/eps-blog/the-governance-of-natural-resources-in-hybrid-political-orders-part-2>
- Collier, P., & Hoeffler, A. (2002). *Greed and grievance in civil war*. (CSAE Working Paper 2002-01). Oxford: CSRE. Retrieved from <http://www.csae.ox.ac.uk/workingpapers/pdfs/2002-01text.pdf>
- Collier, P., Hoeffler, A., & Rohner, D. (2006). *Beyond greed and grievance: Feasibility of civil war*. (CSAE Working Paper 2006-10). Oxford: CSRE. Retrieved from <http://www.csae.ox.ac.uk/workingpapers/pdfs/2006-10text.pdf>
- Cuvelier, J., Van Bockstael, S., Vlassenroot, K., & Iguma, C. (2014). Analyzing the impact of the Dodd-Frank Act on Congolese livelihoods. (Prepared for the SSRC Conflict Prevention and Peace Forum's DRC Affinity Group). Retrieved from https://s3.amazonaws.com/ssrc-cdn1/crmuploads/new_publication_3/%7B57858126-EF65-E411-9403-005056AB-4B80%7D.pdf
- Doevenspeck, M., Guesnet, L., & Müller, M. (2013). Ostkongo: Der ewige Krieg? In J. Kursawe, M. Johannsen, C. Baumgart-Ochse, M. von Boemcken & I. Werkner (Eds.). *Friedensgutachten 2013*, (pp. 278-291). Berlin: Lit Verlag.
- EurAc. (2014). *European draft regulation on responsible mineral sourcing. What lessons can be learned from the Democratic Republic of Congo?* (EurAc Report). Retrieved from <http://www.eurac-network.org/pdf/plaidoyers/eurac-position-lessons-drc-conflict-minerals-final.pdf>
- Garret, N., Sergiou, S., & Vlassenroot, K. (2009). Negotiated peace for extortion. The case of Walikale territory in eastern DR Congo. *Journal of Eastern African Studies*, 03(01), 1-21. doi: 10.1080/17531050802682671
- Geenen, S. (2012). A dangerous bet: The challenges of formalizing artisanal mining in the Democratic Republic of Congo. *Resources Policy*, 37(3), 322-330. Retrieved from <http://www.sciencedirect.com/science/article/pii/S0301420712000104>
- Haufler, V. (2009). The Kimberly Process Certification Scheme: An innovation in global governance and conflict prevention. *Journal of Business Ethics*, 89(4), 403-416. Retrieved from <http://www.jstor.org/stable/40605378>
- Huggins, C. (2010). *Land, power and identity: Roots of violent conflict in eastern DRC*. (International Alert Report). Retrieved from http://www.international-alert.org/sites/default/files/DRC_LandPowerIdentity_EN_2010.pdf
- International Alert. (2012). *Ending the Deadlock: Towards a new vision of peace in eastern DRC*. London: IA. Retrieved from <http://www.international-alert.org/resources/publications/ending-deadlock>
- IPIS. (2012). *Mapping conflict motives: M23*. (IPIS Report). Retrieved from http://ipisresearch.be/wp-content/uploads/2012/11/20121231_Mapping_Conflict_MotivesM23.pdf
- IPIS. (2014). *Analysis of the interactive map or artisanal mining areas in Eastern DR Congo: May 2014 update*. (IPIS Report). Retrieved from <http://www.ipisresearch.be/download.php?id=452>
- iTSCI, Channel Research & Pact. (2013). *Payments and taxation in the Democratic Republic of Congo (Katanga, Maniema and South Kivu Provinces) and Rwanda (iTSCI Governance Assessment)*. Retrieved from https://www.itri.co.uk/index.php?option=com_mtree&task=att_download&link_id=55218&cf_id=24
- Johnson, D. (2013). *No Kivu, no conflict? The misguided struggle against 'conflict minerals' in the DRC*. (Pole Institute Report). Goma: Pole Institute. Retrieved from <http://nanovj.files.wordpress.com/2013/05/etude-sur-les-mines-du-kivu.pdf>
- Kaplan, R.D. (1993). *Balkan ghosts. A journey through history*. New York: St. Martin's Press.
- Keen, D. (2000). Incentives and disincentives for violence. In: M. Bernald & D. M. Malone (Eds.). *Greed and Grievance. Economic Agendas in Civil Wars* (pp. 19-41). Boulder/London: Lynne Rienner Publisher.
- Larmer M., Laudati, A., & Clark, J. (2013). Neither war nor peace in the Democratic Republic of Congo (DRC): Profiting and coping amid violence and disorder. *Review of African Political Economy*, 40(135), 1-12. doi: 10.1080/03056244.2013.762165
- Laudati, A. (2013). Beyond minerals: Broadening 'economies of violence' in Eastern Democratic Republic of Congo. *Review of African Political Economy*, 40(135), 32-50. doi: 10.1080/03056244.2012.760446
- Manhart, A., & Schleicher, T. (2013). *Conflict minerals. An evaluation of the Dodd-Frank Act and other resource related measures*. (Öko-Institut e.V. Report). Retrieved from <http://www.oeko.de/oekodoc/1809/2013-483-en.pdf>
- Marriage, Z. (2013). *Formal peace and informal war: Security and development in Congo*. London: Routledge.
- Matthysen, K., & Zaragoza, M. (2013). *'Conflict minerals' initiatives in DR Congo: Perceptions of local mining communities*. (IPIS Report). Retrieved from http://ipisresearch.be/wp-content/uploads/2013/11/20131112_HU.pdf
- Müller-Koné, M. (forthcoming). The 'débrouillardise': Certifying 'conflict-free' minerals in a context of regulatory pluralism in South Kivu, DR Congo. *Journal of Modern African Studies*, 53(2), 1-24.
- Müller-Koné, M. & Guesnet, L. (2015). *How to enforce due diligence? Making EU-legislation on 'conflict minerals' effective*. (Policy Brief 2). Bonn: BICC. Retrieved from <https://www.bicc.de/publications/publicationpage/publication/how-to-enforce-due-diligence-making-eu-legislation-on-conflict-minerals-effective-602/>
- Ökumenisches Netz Zentralafrika. (2014). *Zentralafrika aktuell*. (OENZ Newsletter 02/2014). Retrieved from http://www.oenz.de/fileadmin/users/oenz/PDF/Newsletter/Newsletter_2014/OENZ_Newsletter_2_2014.pdf
- Oxfam. (2012). *Commodities of war. Communities speak out on the true cost of conflict in Eastern DRC*. (Oxfam Briefing Paper 164). Retrieved from <http://www.oxfam.org/sites/www.oxfam.org/files/bp164-commodities-of-war-drc-protection-201112-en.pdf>
- Parker, D. P., & Vadheim, B. (2013). Ban it or buy it? The unintended consequences of conflict minerals policies. Retrieved from http://www.aae.wisc.edu/mwiedc/papers/2013/parker_nick.pdf
- Raeymaekers, T., Menkhaus, K., & Vlassenroot, K. (2008). State and non-state regulation in African protracted crises: governance without government? *Afrika Focus* 21(2), 7-21. Retrieved from: <http://www.gap.ugent.be/africafocus/pdf/08-21-2-IntroTKKenp.pdf>
- Reyntjens, F. (2009). *The Great African War: Congo and regional geopolitics, 1996-2006*. Cambridge: Cambridge University Press.

- Roitman, J. L. (2005). *Fiscal disobedience. An anthropology of economic regulation in Central Africa*. Princeton: Princeton University Press.
- Seay, L. E. (2012). *What's wrong with Dodd-Frank 1502? Conflict minerals, civilian livelihoods, and the unintended consequences of western advocacy*. (Center for Global Development Working Paper 284). Retrieved from http://www.cgdev.org/sites/default/files/1425843_file_Seay_Dodd_Frank_FINAL.pdf
- Stearns, J. (2013). *From CNDP to M23. The evolution of an armed movement in eastern Congo*. (Rift Valley Institute, Usalama Project Report). Retrieved from <http://www.riftvalley.net/publication/cndp-m23>
- Stearns, J., Verweijen, J., & Baaz, M. E. (2013). *The national army and armed groups in the Eastern Congo. Untangling the Gordian knot of insecurity*. (Rift Valley Institute, Usalama Project Report). Retrieved from <http://www.riftvalley.net/download/file/fid/3072>
- UN Group of Experts. (2012). Final Report 2012 (S/2012/843), November.
- UN Group of Experts. (2013). Interim Report 2013 (S/2013/433), July.
- UN Group of Experts. (2014). Final Report 2013 (S/2014/42), January.
- Vlassenroot, K. (2013). Land issues and conflict in Eastern DRC. Conflict Prevention and Peace Forum. (Prepared for the SSRC Conflict Prevention and Peace Forum's DRC Affinity Group). Retrieved from http://www.ssrc.org/workspace/images/crm/new_publication_3/%7B563a5594-2560-e211-8eac-001cc477ec84%7D.pdf
- Vogel, C. (2014, June 23). Eastern DRC: Stop fixating on conflict minerals. *Think Africa Press*. Retrieved from <http://thinkafricapress.com/drc/dodd-frank-conflict-minerals-3ts-obama-law>

bicc \

Internationales Konversionszentrum Bonn
Bonn International Center for Conversion GmbH

Pfarrer-Byns-Straße 1, 53121 Bonn, Germany
+49 (0)228 911 96-0, Fax -22, bicc@bicc.de

www.bicc.de
www.facebook.com/bicc.de

bicc Bonn
International Center
for Conversion \

Director for Research
Professor Dr Conrad Schetter

Director for Administration
Michael Dedek

AUTHORS

Nina Bernarding is a Mercator Fellow on International Affairs working on peacebuilding in East and Central Africa with a special focus on natural resource management and political dialogue.

Lena Guesnet is a researcher at BICC. Her research focus is on the link between natural resources and organised violence. She has conducted case studies on the influence of natural resource extraction on violent conflict in countries in Sub-Saharan Africa.

Marie Müller-Koné is a researcher at BICC. Her research focus is on the link between natural resources and organised violence. She has particular expertise in the impacts of resource governance on the artisanal mining sector.

The responsibility for contents and views expressed in this *Working Paper* lies entirely with the authors.

COPYEDITOR & LAYOUT
Heike Webb

PUBLICATION DATE
18 May 2015



Except where otherwise noted, this work is licensed under:
[cf. creativecommons.org/licenses/by-nc-nd/3.0/](http://creativecommons.org/licenses/by-nc-nd/3.0/)