

VOICES FROM THE INSIDE

Local views on mining reform in Eastern DR Congo

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Voices from the inside: Local views on mining reform in Eastern DR Congo

AUTHORS:

Päivi Pöyhönen (Finnwatch), Kristina Areskog Bjurling (Swedwatch) and Jeroen Cuvelier (IPIS)

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This report is published as part of the makeITfair campaign, a Europe-wide project on consumer electronics. MakeITfair aims to inform young consumers about human rights violations, as well as social and environmental issues along the supply chain. It also addresses consumer electronics companies that can contribute to change.



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**CONTACT DETAILS:**

Swedwatch
Research partner of makeITfair
Tel. +46 (0)8 602 89 50
info@swedwatch.org
www.swedwatch.org

Finnwatch
Research partner of makeITfair
Tel. +358 (0)9 2280 8349
info@finnwatch.org
www.finnwatch.org



MakeITfair is a Europe-wide project on consumer electronics, aiming to inform young consumers about human rights violations, as well as social and environmental issues along the supply chain, and life cycle of electronics. MakeITfair is co-ordinated by the Dutch organisation SOMO. Project partners are Swedwatch, Church of Sweden and Fair Trade Center from Sweden; Finnwatch and Pro Fair Trade Finland from Finland; DanWatch from Denmark, Germanwatch from Germany, Association for Conscious Consumers (ACC) from Hungary, ACIDH from the DR Congo, CIVIDEP from India, Workers Assistance Center from the Philippines and Civil Society Research and Support Collective from South Africa. Website: www.makeitfair.org.



FINNWATCH

Finnwatch observes and researches Finnish companies operating in developing countries, focussing on human and labour rights, the environment and social development. The member organisations of Finnwatch are: Service Centre for Development Cooperation (Kepa), Trade Union Solidarity Centre of Finland (SASK), Friends of the Earth Finland, Finnish Association for Nature Conservation and FinnChurchAid. Website: www.finnwatch.org.



Swedwatch is a non-governmental organisation whose task is to critically examine Swedish business relations with developing countries focusing on environmental and social concerns. Swedwatch consists of five member organisations: The Swedish Society for Nature Conservation, Church of Sweden, Solidarity Sweden – Latin America, Friends of the Earth Sweden and Fair Trade Center. Swedwatch is financed by the Swedish Development Aid Agency, Sida. Website: www.swedwatch.org

Church of Sweden

Church of Sweden works for a just world without hunger, poverty or oppression. Church of Sweden works to exert an influence on public opinion in Sweden and with development co-operation and emergency relief together with local partners in about 40 countries. Website: www.svenskakyrkan.se

FAIR TRADE CENTER

Fair Trade Center is a Swedish non-governmental organisation (NGO). We have been promoting fair trade with developing countries since 1996. Our intention is to increase consumer and company awareness of social and environmental responsibility. Website: www.fairtradecenter.se



The Centre for Research on Multinational Corporations (SOMO) is a non-profit Dutch research and advisory bureau. SOMO investigates the policies of multinational enterprises and the internationalisation of business worldwide. Focus is placed on research into labour conditions in the global South and cooperation with local organisations and trade unions. Website: www.somo.nl.

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ABBREVIATIONS

BGR	German Federal Institute for Geosciences and Natural Resources
CNDP	Congrès National pour la Défense du Peuple
CTC	Certified Trading Chains
DFID	UK Department for International Development
DRC	Democratic Republic of Congo
EICC	Electronic Industry Citizenship Coalition
EITI	Extractive Industries Transparency Initiative
FARDC	Forces Armées de la République Démocratique du Congo
FDLR	Democratic Liberation Forces of Rwanda
GeSI	Global e-Sustainability Initiative
HDI	Human Development Index
HP	Hewlett-Packard
ICGLR	International Conference For Peace, Security, Stability and Development in the Great Lakes Region
IPIS	International Peace Information Service
ITRI	Association representing the tin industry
iTSCi	ITRI Tin Supply Chain Initiative
MONUC	United Nations Mission in the Democratic Republic of Congo (the UN force in the DRC up to June 2010)
MONUSCO	United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (from June 2010)
NGO	Non-governmental organisation
OECD	Organisation for Economic Cooperation and Development
SAESSCAM	Small-scale mining technical assistance and training service
SE	Sony Ericsson
UNOPS	UN Office for Project Services

EXECUTIVE SUMMARY

The consumer electronics industry utilises a significant proportion of the global supply of several metals that are essential parts of mobile phones, computers and game consoles. One of the most serious sustainability issues is where minerals are extracted from conflict areas such as Eastern Democratic Republic of Congo (DRC). Despite a peace deal in 2003, people in the east of the country remain highly vulnerable and live in fear of rebel groups and the army. Tens of thousands of women, possibly hundreds of thousands, have been raped since the beginning of the war. Income from the extraction of four minerals (tin-ore cassiterite, tantalum-ore coltan, wolframite and gold) is evidently part of the unofficial economy that sustains the deadly conflict.

Partly as a result of makeITfair reports and roundtable meetings on the subject, major electronics companies have accepted accountability for the extractives phase of their supply chains. The industry associations Electronic Industry Citizenship Coalition (EICC) and Global e-Sustainability Initiative (GeSI) have established a working group on extractives and publically declared that they have a shared responsibility to address these urgent issues at the mine level.

Recently, numerous efforts and initiatives ranging from legislation to certification have focused on the link between conflict and the mineral trade from Eastern DRC. Despite the fact that all such initiatives aim to end the mineral trade funding armed groups in Eastern DRC, there is growing concern that there is a boycott in practice on minerals from Eastern DRC, which may lead to worse consequences for the people on ground.

This report especially wants to channel local voices from the concerned people and civil society in Eastern DRC. The makeITfair project sees it as crucial that the views and suggestions of those most dependent on mining and affected by insecurity in Eastern DRC are taken into account when corporate decisions on this issue are taken. On behalf of the makeITfair project, the International Peace Information Service (IPIS) interviewed representatives of relevant non-governmental organizations (NGOs) in Eastern DRC and representatives of local mining authorities.

The UN Group of Experts on the DRC has released several reports documenting in detail how businesses, armed rebel groups and government actors are involved in the mineral trade. Several countries are currently involved in initiatives to curb the link between the mineral trade and the conflict in Eastern DRC. In the US a law on disclosure of conflict minerals from the DRC and adjoining countries has already been passed and similar legislation is in the pipeline. The German government is working with the Congolese Ministry of Mines to set up a certification scheme. The international tin industry association ITRI has started a pilot project called iTSCi to trace and tag minerals from two major cassiterite mines. However, the selection of these mines is quite controversial due to the presence of the national army FARDC and highly questionable human rights situation at both sites. So far the iTSCi project has focused on the logistics of traceability.

In mid-September 2010, a few weeks before the intended publication of this report, Congo's ministry of mines issued a statement banning the mining, processing and marketing of minerals in Eastern DRC. This decision may have serious implications for the future of many of these initiatives, not to mention those tens of thousands of Congolese making a living from mining. For example, the iTSCi project has been suspended at the time of writing.

Both governmental and non-governmental organisations demand that international companies have strict due diligence processes in place when conducting business in weak governance zones, such as for example the DRC. Companies connected to trade in conflict zones are increasingly expected to do their utmost in becoming aware of, preventing and mitigating human rights abuses.

The EICC and GeSI set up an Extractives Workgroup in 2008. The Workgroup plans to start a smelter validation scheme starting with tantalum and tin ores in late 2010. The final aim is to ensure that the material smelters purchase originate from socially and environmentally responsible mines. However, the current focus is on avoiding minerals from mines controlled by armed groups by ensuring the smelters show the exact origin of minerals. The Workgroup supports ITRI's traceability project iTSCi and hopes that this project will make it possible for end users to purchase minerals from Eastern DRC. However, the industry confesses that there is a risk that the intention to stay away from 'conflict minerals' means in practice an embargo on minerals from Eastern DRC, or even the whole region. This is also evidently what end users such as Sony Ericsson, Nokia and Hewlett-Packard are doing in practice for the moment. Research based NGOs and consultants voice strong warnings about this partly unintended embargo effect, which they see as a risk for the whole fragile economy in the region.

In the field interviews it was demonstrated that all members of civil society groups in Goma and Bukavu welcome the attempts of policymakers to 'clean up' the mining business in Eastern DRC. However, they want to have a stronger voice in the debate and more influence over initiatives that are currently taking shape. Most of the respondents rejected the idea of an embargo on minerals from Eastern DRC, while they expressed their concerns about the feasibility of traceability mechanisms, the lack of sensitization and organization of stakeholders at the grassroots level, and the lack of attention to social problems associated with the exploitation and trade in mineral resources. These problems include land disputes, forced labour and sexual violence.

There is also a worry that international initiatives uncritically strengthen the Congolese state in a part of the country where trust in the state is very low due to years of corruption and state violence. The most important recommendations from local stakeholders are: education, capacity building and sufficient wages for civil servants involved in tracing and certification projects; support to artisanal miners and people living around the mining areas; capacity building for traders and buying houses to adopt to new demands; and more attention to land rights, forced labour and sexual violence in mining areas.

The makeITfair project advises companies to apply a due diligence process, including tracing of minerals down to the mine from where they were extracted, and setting up systems to detect whether purchasing occurs from mines controlled by armed groups (including taxation by armed groups along the trading routes). For end users, this means monitoring the supply chain down to the smelters, and ensuring that smelters have control right down to the individual mine. If purchasing from mines 'controlled' by armed groups (including FARDC) is detected, the company should have a strategy to respond to this. This strategy should depend on the nature and level of involvement from armed groups, human rights abuses etc., where some involvement should mean direct disengagement. However, action taken should include engaging proactively with local actors and working to make improvements, rather than boycotting the mine as a first step. Ultimately, the involvement of either rebel groups or state army actors cannot be accepted. Purchasing of minerals should continuously increase from mines that respect and implement the basic standards of sustainable mining.

1. INTRODUCTION

The makeITfair project published a series of three reports in December 2007, including ‘Connecting Components, Dividing Communities – Tin production for consumer electronics in the DR Congo and Indonesia’. The report characterized the extractive industry as the “forgotten level” of the consumer electronics supply chain, as well as shedding light on mining practices and their repercussions for workers and the environment in two tin mining countries.

The consumer electronics industry utilises a significant proportion of the global supply of several metals that are essential parts of mobile phones, computers and game consoles. Currently the electronics industry accounts for over one third of the world’s tin consumption – as solder. Apart from solder, tin is used in the LCD screens found in many electronic products. In recent years, the global tin market has been greatly affected by the increase in demand for lead-free solder in consumer electronics. Unlike other metals, the majority of the world’s tin is derived from small scale operations with susceptible social and environmental issues.

In Eastern DRC a large majority of tin and other minerals are extracted by artisanal miners living and working in harsh conditions. The mines could be managed by landowners, local leaders or armed groups belonging either to the Congolese army or rebel groups. The armed groups may also be involved in taxing the mineral routes or giving “protection” from attacks by other armed groups. The actual mining is carried out by diggers working for daily wages. The local communities around the mining sites are employed as daily wage earners as diggers, helpers or carriers with some forced to work in the mines through for example debt bondage or coerced through violence. Many different types of abuses against the workers and the local population around the mines are common. However, mining is an important livelihood for many people in the region.

In 2007, the makeITfair project contacted the 20 market leaders producing consumer electronics. These companies asserted that they are marginal users of metals in general, and that the extractive phase was beyond their sphere of influence. However, even if one gadget may need only a small quantity of these minerals, they are manufactured and sold in their billions worldwide, making the electronics industry a significant user of metals like tin. Partly as a result of the makeITfair reports and roundtable meetings on the subject, most major electronics companies have accepted responsibility for the extractives phase of their supply chains. The industry associations EICC and GeSI have for example established a working group on extractives and have publically declared that they have a shared responsibility to address, in one way or another, urgent issues at the mine level. As the makeITfair project sees it, this responsibility covers a wide range of sustainability issues, such as working conditions of miners, respect for local populations around the mines and environmental degradation resulting from mineral extraction.

One of the most serious sustainability issues is where minerals are extracted in conflict areas such as Eastern DRC. Income from extraction of four minerals (tin-ore cassiterite, tantalum-ore coltan, wolframite and gold) is clearly part of the unofficial economy that sustains the deadly conflict. It was through the reports of the UN’s Expert Panel on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DRC in 2001 that the world first came to know about the connection between the war and the world trade in metals. There have also been other armed conflicts in which natural resources have played a role and that have been documented by the UN (see e.g. Angola).

Recently, numerous efforts and initiatives have focused on the link between conflict and the mineral trade in Eastern DRC.

Many of these initiatives aim to implement a certification scheme for non-conflict/sustainable minerals. Legislation designed to halt the import of so called conflict minerals into the US passed in July 2010. Politicians in Sweden have started to ask for a similar law in Europe. At the same time, both international and local voices have been raised regarding the risk of further marginalisation of Congolese small-scale miners in this process. There are also concerns that the growing public debate on ‘conflict minerals’ will lead to corporate boycott strategies in practice on minerals from Eastern DRC.

When high level institutions and industry are busy drawing up standards, local views and priorities are in danger of remaining unheard. This makeITfair report especially wants to channel the local voices of concerned people and civil society in Eastern DRC. The aim is to present the views and opinions of local stakeholders on recent developments in the mineral trade from Eastern DRC, as well as their views on international and local initiatives.

In mid-September 2010, a few weeks before the intended publication of this report, Congo’s ministry of mines issued a statement banning the mining, processing and marketing of minerals in Eastern DRC. This decision may have serious implications for the future of many of these initiatives, not to mention the tens of thousands of Congolese making a living from mining. At the time of writing, however, the minister of mines in the DRC stated that the “ban will soon be over”. A short description of this new development, conflict mineral clampdown, is in Chapter 6.

The makeITfair project focuses on how international electronic companies can support a regulated mineral trade that could contribute to economic and social development in Eastern DRC, rather than funding the belligerent parties. We see it as crucial that the views and suggestions of those most affected by mining in Eastern DRC are taken into account when corporate decisions on this pressing issue are taken. It is, however, important to note that efforts regulating the mineral trade are not by any means the only initiatives needed to end violent conflict in Eastern DRC. Much research supports the fact that the root cause of insecurity in Eastern DRC is not the conflict mineral nexus, which means many security sector reforms need to be put in place to complement initiatives to break the circle of militarized mines and the mineral trade.¹

FACTS ABOUT THE DRC¹

- DRC is struggling to recover from Africa’s “world war” in which an estimated three million people died between 1998 and 2003.
- In a recent leaked report from the United Nations High Commissioner for Human Rights, the Rwandan army, among others, is accused of having committed acts of genocide in Eastern DRC between 1993 and 2003. The report is expected to be officially published in October 2010 despite opposition and threats from the Rwandan government.
- The five-year conflict has pitted government forces, supported by Angola, Namibia and Zimbabwe, against rebels backed by Uganda and Rwanda.
- Despite a peace deal and the formation of a transitional government in 2003, people in the east of the country remain vulnerable and live in fear of rebel groups and the army.
- Tens of thousands of women, possibly hundreds of thousands, have been raped since the beginning of the war. In just one month – August 2010 – over 200 women were raped close to a mining area in North Kivu.
- DRC hosts the UN’s largest peacekeeping mission (MONUC²).

1 BBC, Democratic Republic of Congo country profile, http://news.bbc.co.uk/2/hi/africa/country_profiles/1076399.stm#overview; New York Times (17 October 2008), Rape Victims’ Words Help Jolt Congo Into Change, http://www.nytimes.com/2008/10/18/world/africa/18congo.html?_r=1; Friends of the Congo, Leaked UN Mapping Report on Crimes in the DRC”, <http://friendsofthecongo.org/united-nations-report.html>

2 Called MONUSCO since June 2010

1 Garrett, N. et al. (May 2010), Promoting Legal Mineral Trade in Africa’s Great Lakes Region – A Policy Guide on Professionalisation, Formalisation and Increased Transparency, Resource Consulting Services (sponsored by the UK Dept. for International Development, Netherlands Ministry of Foreign Affairs and the London School of Economics)

2. METHODOLOGY

On behalf of the makeITfair project, a Belgian non-governmental organisation called the International Peace Information Service (IPIS), contributed to parts of this report. IPIS is one of the organizations most experienced in undertaking reliable research concerning natural resource issues in Eastern DRC and has been researching the issue since 2001.² In August 2009, IPIS published a map of mines in Eastern DRC, trying to show which mines are controlled by different armed groups. Jeroen Cuvelier, a researcher at IPIS, conducted the field study on behalf of the makeITfair-project. He has been working on the issue of resource exploitation in the DRC since 2001 as an affiliate of IPIS and the Royal Museum for Central Africa in Tervuren.³

Between 18 May and 1 July 2010, IPIS interviewed 21 representatives of relevant non-governmental organizations (NGOs) in Goma and Bukavu (the capitals of North and South Kivu provinces) dealing with issues related to natural resource exploitation (see Annex 1). The selection of interviewees was made on the basis of organisations that were generally recognized as being strongly involved in the current debate on mining issues in North and South Kivu. In addition, IPIS conducted a few interviews with members of state institutions involved in the artisanal mining sector in Eastern DRC: SAESSCAM and the provincial mining division. Because of time constraints and the fact that miners are often not organised, IPIS did not, however, have the possibility to interview mine workers, who would have been eligible.

The information collected focused on the feasibility of newly developed initiatives and traceability mechanisms for more sustainable mineral production. The information also highlighted the embargo option and a possible ban on DRC-tin, the need for improved sensitization and organization of stakeholders at the grassroots level and the socio-cultural context in which mining takes place. The focus was on cassiterite (tin ore) mining and trade in the region. It is however important to stress that this report is not a complete overview of the local situation or of any single company. The views and opinions of local NGOs should be seen as indicators of general problems that need to be addressed.

IPIS also compiled a short overview of the initiatives concerning mineral resource exploitation and conflict financing. This is presented as background in the next chapter of the report. In addition, Finnwatch and Swedwatch made a literary review and interviewed 12 representatives of companies and other organisations and researchers. Company representatives directly quoted in the report have had the opportunity to comment on the report before publication. The makeITfair project also asked EICC/GeSI for an official comment to this report. Their comments are available at the website www.makeitfair.org.

Finnwatch and Swedwatch have chosen to focus on the production and trade of cassiterite (tin) however, it should be noted that most discussions in this report are also highly relevant for wolframite and tantalum (since these minerals are extracted in the same region or even from the same mines) and for the fourth conflict mineral, gold, to a lesser degree, since gold carries an even bigger risk of smuggling and is partly extracted in other areas.

² For more information: <http://www.ipisresearch.be/index.php>

³ http://www.ipisresearch.be/staff_detail.php?id=23&lang=en, accessed 1 September 2010

3. WHAT HAS HAPPENED SINCE 2007?

3.1 DEVELOPMENTS IN THE MINING SECTOR IN EASTERN DRC

According to the United Nations Development Programme's Human Development Index (HDI) 2009, the DRC is the world's seventh least developed country.⁴ Despite reunification of the country, much of the eastern part remains unstable and violent. At the same time the DRC is a land plentiful in natural resources. According to the British Geological Survey, the DRC's production of tin was about 12,000 tonnes in 2009 which is 4.3 percent of total world production.⁵ According to other sources, in early 2010 cassiterite (tin ore) from the DRC represented around 6 percent of global production with around half of that originating in North Kivu.⁶ However, it is difficult to obtain real production figures when it comes to the DRC since there is a large informal sector and a significant proportion of minerals are smuggled out without registration.

The mining business in Eastern DRC cannot be adequately understood without taking into account the inherently regional nature of the mineral trade in this part of Sub-Saharan Africa. Before reaching their final destination, minerals extracted from North and South Kivu and other Congolese provinces need to pass through one of the countries neighbouring the DRC such as Rwanda, Burundi, Uganda and Tanzania. Therefore, many international mineral buyers use the hubs of Kigali, Bujumbura, Kampala and Dar-es-Salaam to conclude and coordinate their mineral deals, which makes it even harder to trace the metals.⁷

The mining industry in the Great Lakes region is currently struggling with two major problems. The first problem concerns the phenomenon of so-called 'conflict minerals'. Authorities in the DRC and in neighbouring countries experience serious difficulties monitoring mineral flows in the area, while they are largely incapable of preventing state and non-state armed groups from gaining revenues through mining and mining-related activities. The second problem is the collection of tax revenues. Most countries in the Great Lakes region lack the capacity to levy taxes in an effective and efficient manner.⁸ As a result of this, they miss

WORKING CONDITIONS AMONG ARTISANAL MINERS IN EASTERN DRC¹

- Most Congolese artisanal miners earn between US\$ 1–3 per day irrespective of whether they mine diamonds, gold, copper, coltan, cobalt or cassiterite.
- The UN noted that around 75 percent of artisanal miners were unable to cover minimum family needs with their earnings.
- Most miners become trapped, either through debt bondage, or because they have travelled far and abandoned their homes and farms and have no way of returning to their previous livelihoods.
- Artisanal mining in the DRC encompasses a range of typically dangerous practices such as unstable open pits, poorly supported or unsupported deep shafts and galleries where diggers may remain underground for days.
- Child labour and debt-bondage exist in the mines.
- The labour conditions of virtually all artisanal mines in the DRC are appalling and miners are generally completely unaware of basic occupational health and safety. Injuries and fatal accidents caused by shafts collapsing often occur.

1 D'Souza, Kevin (2007), Artisanal Mining in the DRC, Briefing note (prepared for discussion at the DRC Donor Coordination Meeting), Wardell Armstrong, LLP, p. 4; FinnWatch/makeITfair (2007), Connecting Components, Dividing Communities – Tin production for consumer electronics in the DR Congo and Indonesia

4 <http://hdr.undp.org/en/statistics/>

5 British Geological Survey (2010), World Mineral Production 2004–2008, p. 98

6 Garrett, N. et al. (May 2010), Promoting Legal Mineral Trade in Africa's Great Lakes Region, Resource Consulting Services, p. 32

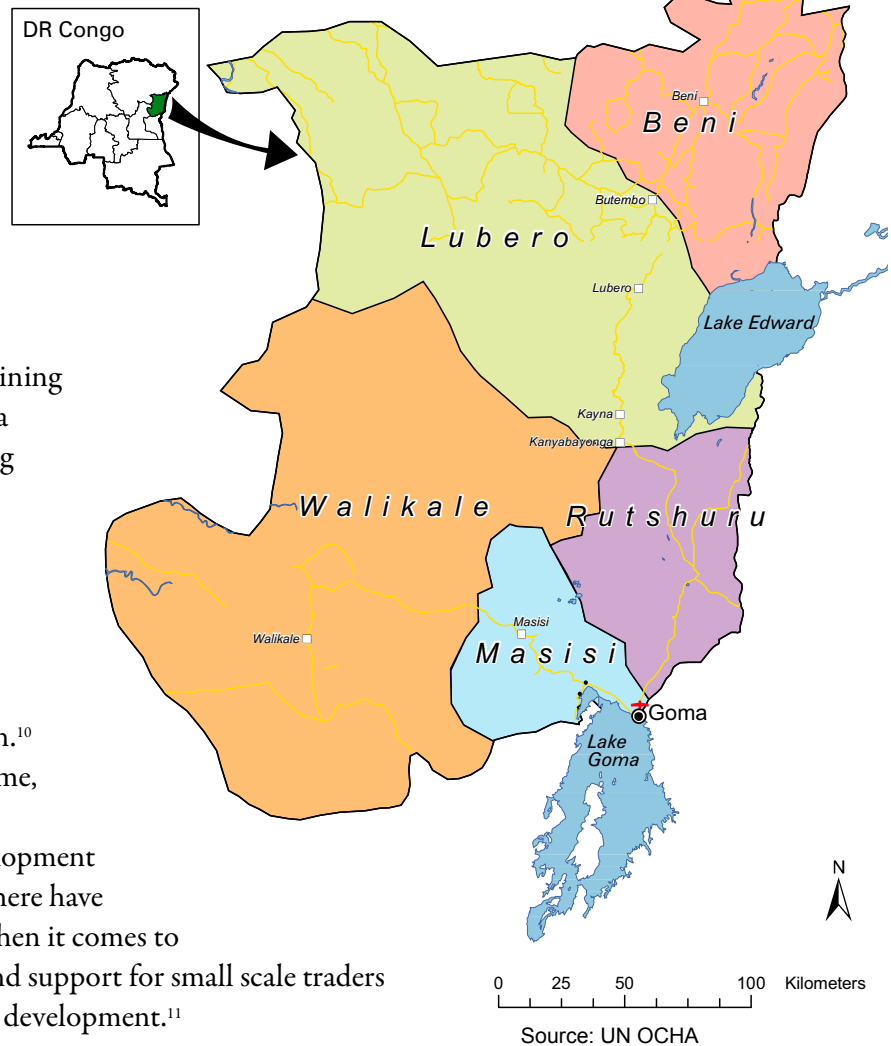
7 Garrett, N. et al. (May 2010), Promoting Legal Mineral Trade in Africa's Great Lakes Region, Resource Consulting Services, p. 11

8 International Conference on the Great Lakes Region, Un système de suivi et de certification des minéraux de la région des Grands Lacs de l'Afrique Centrale, hébergé par la CIRGL, Ottawa, March 2010, p. 2.

out on a significant amount of money that could be used to improve the well-being of their populations.

There are, however, signs of better controlled and legally taxed mineral flows from Eastern DRC. Today, registered cassiterite and coltan exports are close to known mining capacity and fraudulent exports are a fraction of what they were, according to a recent report from the Pole Institute.⁹ The Pole Institute, based in Goma, DRC, has considerable experience in research and consultation regarding peace, development and trade in natural resources in the Eastern DRC region.¹⁰ Also the Trading for Peace programme, initiated by among others the UK Department for International Development (DFID) and USAID, reports that there have been some positive developments when it comes to building cross-border networking and support for small scale traders that it believes can support peaceful development.¹¹

Territorial Map of North Kivu



Large amounts of cassiterite from the DRC still originate from the province of North Kivu, in an area named Walikale, where the richest tin mine is Bisie. Bisie employs approximately 2,000 artisanal miners and their 10,000 dependents.¹² The makeITfair report from 2007 described the power struggles and corruption around Bisie. It also looked at the working conditions of artisanal miners, as well as the buying houses and international traders involved, and export routes and destinations of these traders. In 2007, Bisie was under the control of a renegade brigade of the national army (FARDC) that had allegedly committed many crimes against humanity. Since early 2009, the FARDC's first regular brigade, dominated by ex-CNDP¹³ soldiers, has been controlling the mine.¹⁴ In a newly published report from the Pole Institute, the author Primo Pascal Rudahigwa writes about his experiences at the Bisie mine which confirms the picture of a lawless land with several different fractions of the army and different soldiers profiting from mining activities.¹⁵

9 Johnson, Dominic (August 2010), Who's in charge? – Putting the Mineral Trade in Eastern DRC under International Control: An Overview, Pole Institute, p. 21

10 For more information: <http://www.pole-institute.org/>

11 DFID (March 2009), Trading for Peace – An Agenda of Reform

12 Garrett, N. et al. (May 2010), Promoting Legal Mineral Trade in Africa's Great Lakes Region, Resource Consulting Services, p. 32

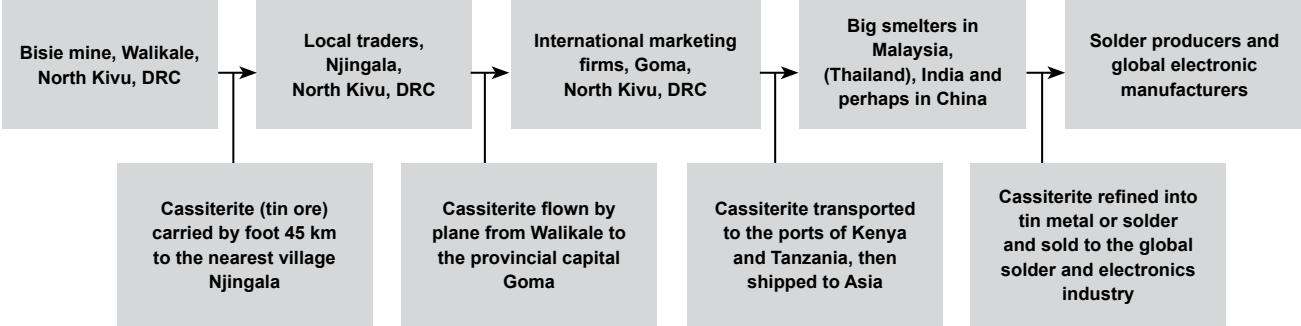
13 The CNDP (*Congrès National pour la Défense du Peuple*) was a political armed militia established by Laurent Nkunda in the Kivu region of the DRC in 2006. The CNDP was engaged in the Kivu conflict. In January 2009, the CNDP split and Nkunda was arrested by his ostensible-Rwanda backers. The remaining CNDP splinter faction was integrated into the national army FARDC. According to IPIS, after its integration into the FARDC, the (ex-)CNDP access to the mines has clearly increased. The (ex-)CNDP soldiers have installed of taxation in the mining centres they control. (see http://en.wikipedia.org/wiki/National_Congress_for_the_Defence_of_the_People; Spittaels, S. & Hilgert, F. (August 2009), Accompanying note on the interactive map of militarised mining areas in the Kivus, IPIS, p. 3, 11

14 Garrett, N. et al. (May 2010), Promoting Legal Mineral Trade in Africa's Great Lakes Region, Resource Consulting Services, p. 10

15 Pole Institute (August 2010), Blood Minerals – The Criminalization of the Mining Industry in Eastern DRC, p. 12–16

The UN Group of Experts on the DRC has released several reports documenting in detail how businesses, armed rebel groups and government actors are involved in the mineral trade.¹⁶ Several countries are currently involved in initiatives to end the link between the mineral trade and the conflict in Eastern DRC. In the US, a law requiring disclosure of any minerals originating from the DRC and adjoining countries has already been passed and other legislation is in the pipeline. The German government is working with the Congolese Ministry of Mines to set up a certification scheme, while the British and Dutch governments are examining how to support customs harmonization between the DRC, Burundi and Rwanda to reduce smuggling across the borders. DFID, USAID and the organization for regional trade in Southern and Eastern Africa, COMESA, have worked since 2006 on a common programme called Trading for Peace which supports regional economic integration. The International Conference for Peace, Security, Stability and Development in the Great Lakes Region (ICGLR) plans to set up a certification scheme for minerals from the region. These initiatives have focused on three ways of dealing with the problem: due diligence, certification and reinforcing local institutions.¹⁷ In a recent report from Resource Consulting Services the authors call for better coordination and consolidation of some of these efforts and initiatives in order to make them more viable and effective.¹⁸

Tin supply chain from the Bisie mine in Eastern DR Congo to global electronic manufacturers.



3.2 CURRENT EFFORTS AND INITIATIVES TO REFORM THE CONGOLESE MINING SECTOR

Faced with demands from consumers, NGOs and some countries, including proposals for legislation, the electronics industry recently started to consider traceability in their mineral supply chains and the issue of avoiding fuelling the conflict in Eastern DRC. The efforts highlighted here represent some of the leading initiatives from both the industry, organisations and state actors in the area, even though the list is not exhaustive.

Due diligence processes by companies and business associations

In order to avoid the risk of companies becoming complicit in human rights abuses, the concept of due diligence has gained widespread support in recent years. Both governmental and non-governmental organisations are now increasingly demanding that international companies have

16 The reports can be downloaded at <http://www.un.org/sc/committees/1533/egroup.shtml>
 17 Hege, S. & Stearns, J. (January 2010), Independent Oversight for Mining in the Eastern DR Congo – A Proposal for a Third Party Monitoring & Enforcement Mechanism, Center on International Cooperation concept note, http://www.cic.nyu.edu/peace_ssr/docs/oversight_mechanism.pdf
 18 Garrett, N. et al. (May 2010), Promoting Legal Mineral Trade in Africa’s Great Lakes Region, Resource Consulting Services, p. 17

strict due diligence processes in place when conducting business in weak governance zones, such as the DRC.¹⁹

The judicial definition of due diligence is the process a person or a company goes through to satisfy a legal requirement or to discharge an obligation. The Special Representative of the UN Secretary-General on Human Rights and Transnational Corporations, John Ruggie, uses this term in its broader sense; according to him due diligence is “a comprehensive, proactive attempt to uncover human rights risks, actual and potential, over the entire life cycle of a project or business activity, with the aim of avoiding and mitigating those risks.”²⁰

The concept of due diligence is similar to the principle of ‘Do no harm’ which is used within the humanitarian community to avoid complicity with human rights abuses in conflict regions or weak governance zones.²¹

The most recent and detailed guidance for companies on how to implement due diligence processes when sourcing minerals from conflict zones in Eastern DRC comes from an international NGO focusing on investigations and campaigning concerning trade in natural resources, Global Witness²², and the Organisation for Economic Cooperation and Development (OECD). Both organisations make a distinction between the roles and due diligence requirements of a) companies handling, trading and processing raw mineral concentrate and b) those using refined metals.²³

According to Global Witness, applying due diligence means that companies make sure they do not source from mines where military involvement is evident. Companies such as smelters should perform quarterly unannounced audits at mines, while downstream companies such as electronic manufacturers should verify “through a rigorous assessment” that the claims about the sources and any military involvement made by their suppliers are correct. Global Witness recommends that each smelter is assessed once a year²⁴ and that all audits are made publicly available.²⁵ OECD set up a pilot project ‘*Promoting Responsible Investment through Enhanced Due Diligence*’²⁶ in 2009 with the aim of presenting practical guidelines for companies on how to implement due diligence when sourcing in conflict zones.²⁷ The guidance includes the following steps: (1) establish a chain of custody tracking system over the mineral supply chain, (2) identify and assess risks in the supply chain, (3) design

DEFINITION OF TRACING AND TRACKING

Tracing and tracking of materials through the supply chain both refer to the process of identification of metals from user to source.

The difference is that “tracking” refers to the process of following material forward along the supply chain, following the flow “downstream,” for example from mine to smelter and down to the manufacturer. “Tracing” refers to an examination of the flow backwards, or “upstream,” through the supply chain to determine the sources and processors of the material.

Source: EICC/GeSI (2008), *Social and Environmental Responsibility in Metals Supply to the Electronic Industry*, p. 33

19 See the portal of the Special Representative of the United Nations Secretary-General on Business & Human Rights, John Ruggie, <http://www.business-humanrights.org/SpecialRepPortal/Home>; and OECD pilot project in the mining sector: promoting responsible investment through enhanced due diligence, http://www.oecd.org/document/36/0,3343,en_2649_34889_44307940_1_1_1_1,00.html, accessed 19 April 2010

20 UN General Assembly, Human Rights Council (22 April 2009), Promotion of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Summary, p. 18, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.pdf>

21 See for example OECD (2010), Do No Harm – International Support for State Building, http://www.oecd.org/document/30/0,3343,en_2649_33693550_44408734_1_1_1_1,00.html

22 For more information: http://www.globalwitness.org/pages/en/about_us.html

23 Global Witness (July 2010), A Guide for Companies: Do No Harm – Excluding conflict minerals from the supply chain; and OECD (June 2010), Due Diligence Guidance for responsible supply chain management of minerals from conflict-affected and high-risk areas, working draft, p 5. (copy available from the author)

24 Global Witness is part of a multi-stakeholder group that gives input to EICC/GeSI's Extractive Workgroup's audit standards for their smelter validation scheme,

25 Global Witness (July 2010), A Guide for Companies: Do No Harm – Excluding conflict minerals from the supply chain, p. 9–13; Mike Davies, Global Witness, interview on 23 April 2010.

26 Promoting responsible investment in the mining sector through enhanced due diligence, OECD project overview

27 Dr Lahra Liberti, Adviser on International Investment Law, Investment Division, OECD, e-mail interview on 10 May 2010

and implement a strategy to respond to identified risks, (4) ensure independent third party audits of smelters' due diligence practices and (5) publish an annual report on supply chain due diligence.²⁸

In other words, companies connected to trade in conflict zones are increasingly expected to do their utmost to be aware of, prevent and mitigate any involvement in human rights abuses through strict processes.

The electronics industry's efforts: EICC/GeSI Extractive Workgroup

The electronics industry has worked on the issue mainly within its two associations focused on sustainability and responsible electronics manufacturing: The Electronic Industry Citizenship Coalition (EICC) and the Global e-Sustainability Initiative (GeSI). They set up an Extractives Workgroup in 2008.²⁹ In April 2010, in an effort to improve traceability, the Washington-based research institute Resolve published a report – commissioned by EICC and GeSI – in which it presented data on the supply chains for electronic products containing tin, tantalum and cobalt.³⁰ Resolve, among others, recommended a sector-wide approach and pilot projects on best practice on the ground in Eastern DRC. The Workgroup decided to start a smelter validation scheme starting with tantalum and tin ores to ensure materials that the smelters purchase originate from non-conflict mines. It is expected that initial audits will begin in late 2010. “In short, the smelters need to show us where all the minerals come from and we need to be able to verify it with audits,” said John L. Plyler, Manager Supply Chain Corporate Responsibility, from Motorola.³¹ EICC/GeSI has also decided to support and work closely with the iTSCi, ITRI's tracing project in Eastern DRC (see further information below).³² The standard for the smelter validation scheme is still not publicly available. A request from the makeITfair project to take part in drafting the scheme has so far not been accepted.

ITRI's Tin Supply Chain Initiative

Faced with criticism from the UN Panel of Experts³³ and from several international NGOs working on natural resource issues³⁴ and conflict, the tin industry association ITRI decided to develop a due diligence mechanism for tin originating from Eastern DRC, labelled the ITRI Tin Supply Chain Initiative (iTSCi). The first pilot phase in 2009 focused on the interface between Congolese trading posts (*comptoir*) and foreign smelters. The second pilot phase aims to improve traceability from the mine to the buying houses. It is ITRI's intention to work closely together with Congolese institutions such as the provincial mining division and SAESSCAM.³⁵ In June 2010, ITRI announced that it had signed a '*protocole d'accord*' with the Congolese Ministry of Mines and selected two mine sites for the initial trials, namely Bisie in North Kivu and Nyabibwe in South Kivu (see below for more information about these mine sites). The American international development organisation Pact was charged with the task of providing strategic and technical advice to ITRI and their local partners.³⁶

Pact is as an NGO working with capacity building projects particularly related to artisanal mining

28 OECD (June 2010), Due Diligence Guidance for responsible supply chain management of minerals from conflict-affected and high-risk areas, working draft, p 5. (copy available with the author)

29 EICC Annual Report 2009, <http://eicc.info/documents/AnnualReport.pdf>, p. 21

30 Resolve (April 2010), Tracing a Path Forward: A Study of the Challenges of the Supply Chain for Target Metals Used in Electronics, <http://eicc-gesi.resolve.wikispaces.net/Tracing+a+Path+Forward+-+A+Study+of+the+Challenges+of+the+Supply+Chain+for+Target+Metals+Used+in+Electronics?frprint>

31 John L. Plyler, Manager Supply Chain Corporate Responsibility, Motorola, interview on 13 May 2010

32 EICC Press release (28 May 2010), <http://www.eicc.info/pdf/PR%20Extractives%20Sn%20Workshop%20%20FINAL.2.pdf>

33 S/2008/773 Final Report of the Group of Experts on the Democratic Republic of Congo

34 Global Witness (June 2005), Under-mining peace: the explosive trade in cassiterite in Eastern DRC; Global Witness (July 2009), Faced with a gun what can you do? War and the militarisation of mining in Eastern Congo; International Peace Information Service IPIS (May 2009), Culprits or scapegoats? Revisiting the role of Belgian mineral traders in Eastern DRC; De Koning, Ruben (October 2009), Artisanal mining and post-conflict reconstruction in the Democratic Republic of Congo, SIPRI background paper; The Enough Project (January 2010), Digging in: recent developments on conflict minerals

35 DRC Tin supply chain initiative, ITRI press release, 10 July 2009

36 DRC Ministry of Mines reconfirms official support, ITRI press release, 11 June 2010



Artisanal cassiterite mining in Bisie, Walikale area, in North Kivu. © *Nicholas Garrett*

around the world. As a result of the recent legislation in the US, Karen Hayes, Pact’s Director of Corporate Community Engagement for Africa writes that Pact now has “a greater management role in order to help to accelerate and expand the iTSCi-project”. Pact takes a pragmatic approach to its development programmes; Hayes writes that Pact’s role is to find appropriate local solutions that can improve the lives of Congolese people, and that this means having room for flexibility. So far the pilot project is focusing on putting in place appropriate traceability mechanisms and ITRI has not yet set up any standards for “non-conflict” mines. At this point, the only mines in which the iTSCi-project will not implement the traceability system are those which are under ‘rebel control’. Karen Hayes argues that forcing dramatic change in a short time can be a highly risky activity. “In our opinion, the objective of a project like this should be to establish a baseline on the social-economic-security issues, engage all the relevant partners, and collectively and progressively work towards improving the situation without creating security risks.”³⁷

The selection of Bisie and Nyabibwe mines is quite controversial. At both mines the national army FARDC is present, and the human rights situation at both sites is highly questionable according to many sources.³⁸ Global Witness has been critical of ITRI for its acceptance of army controlled mines, which they regard as bad as the rebel groups when it comes to human rights violations. Dominic Johnson from the Pole Institute said “definitely FARDC is no more acceptable than FDLR or anyone else, because the boundaries between FARDC and rebel groups are fluid and fighters move in and out of FARDC”. According to him FARDC is in no sense a proper army, and even if it was: “nowhere in the world is a military presence in mines acceptable”.³⁹ A UN report in March 2010 reported the continued presence of serious violations by the security forces. Members of the FARDC

37 Karen Hayes, Director of Corporate Community Engagement for the Africa Region, Pact, interview on 20 August 2010

38 See for example Pole Institute (August 2010), Blood minerals – The Criminalization of the Mining Industry in Eastern DRC (recent information on Bisie) and for Nyabibwe: IPIS Congolese research assistant from Action pour la Paix et la Concorde (APC) in Bukavu recently visited the mine site and interviewed people for International Alert, published in a coming report

39 Dominic Johnson, the Pole Institute, e-mail on 7 June 2010

and the police were reported as being responsible for summary executions, sexual violence, torture and ill treatment. Many of the FARDC troops used to be members of rebel groups prior to being integrated into the army.⁴⁰

Hayes notes that the selection of Nyabibwe and Bisie was based on the basic premise of ‘no rebel control’ and says that other criteria will be added later. Both Nyabibwe and Bisie represent big production units with many opportunities to learn from the first phase of the process.⁴¹

(Note that at the time of writing the iTSCi-project is suspended due to the sudden Congolese ban on mining in Eastern DRC, see Chapter 6 for more information).

Initiatives by countries and international organizations

Certified Trading Chains

ITRI/iTSCi traceability project has agreed to work with the BGR (German Federal Institute for Geosciences and Natural Resources) certification project.⁴² Within the framework of development cooperation between Germany and the DRC, efforts have been made to create a new system for the recording and certification of the origin of minerals (mainly tantalum). The system is called ‘*Certified Trading Chains*’ (CTCs)⁴³ and has been developed by the BGR and several departments of the Congolese Ministry of Mines, including SAESSCAM. Phase 1 of the project is expected to run over a three-year period – from the beginning of 2009 until the end of 2012 – and it has a budget of €3.2 million⁴⁴. In the opinion of its designers, the CTC system has the potential to play a vital role in rendering the mining industry more transparent and accountable, and in ensuring that the Congolese state uses its revenues from the mining business to improve the socio-economic situation and to reduce the level of poverty in Eastern DRC.⁴⁵ BGR will cooperate with the iTSCi-project especially in the field at Nyabibwe. Both BGR and ITRI are members of the Ministry of Mines Thematic Working Group which aims to coordinate all initiatives concerning developing the mining sector in the DRC.⁴⁶

The International Conference on the Great Lakes Region (ICGLR)

The International Conference For Peace, Security, Stability and Development in the Great Lakes Region (ICGLR) came into existence in November 2004, when 11 heads of state and government of the Great Lakes region met to talk about ways to put an end to the many wars and conflicts in the region. In 2006, the ICGLR launched a ‘*Regional Initiative Against Illegal Exploitation of Natural Resources*’.⁴⁷ In April 2010, the ICGLR’s steering committee of the initiative gathered in Bujumbura to discuss further steps in the ‘cleaning up’ of the mineral trade in the Great Lakes region. An agreement was reached on a draft proposal that will oblige all participating countries to certify the

40 UN General Assembly, Human Rights Council, Technical assistance and capacity-building (8 March 2010), Second joint report of seven United Nations experts on the situation in the Democratic Republic of the Congo, 13th session, Agenda item 10, A/HRC/13/63

41 Karen Hayes, Director of Corporate Community Engagement for the Africa Region, Pact, interview on 20 August 2010

42 iTSCi News Bulletin 4, June 2010

43 BGR serves as the geological service of the German Federal Government. Amongst other things, it is expected to carry out projects of technical cooperation on behalf of the Federal Ministry of Economic Cooperation and Development. BGR is currently operating in nine African countries, including the Democratic Republic of Congo (source: Atelier de planification du projet BGR-MDM: certification des substances minérales (March 2010), Bukavu, p. 8

44 Atelier de planification du projet BGR-MDM: certification des substances minérales (March 2010), Bukavu

45 Pole Institute (August 2010), Blood Minerals – The Criminalization of the Mining Industry in Eastern DRC

46 DRC Ministry of Mines reconfirms official support, ITRI press release, 11 June 2010, http://www.itri.co.uk/pooled/articles/BF_NEWSART/view.asp?Q=BF_NEW-SART_319685

47 ICGLR (September 2006), Regional Programme of Action for the Promotion of Democracy and Good Governance

origin of minerals extracted within their territories.⁴⁸ The four main components of the ICGLR Mineral Tracking and Certification Scheme are mineral tracking, the establishment of a regional database, the organization of regular third party audits and the nomination of an overall auditor-general.⁴⁹ The ICGLR process works in close cooperation with the above mentioned OECD's guidance for due diligence.⁵⁰ So far there is no formal cooperation with the iTSCi and BGR's projects; however, it is requested by many actors with more coordination between all international initiatives going on.⁵¹

UN sanctions and interventions

According to resolution 1896 (2009), the UN Group of Experts is now entitled to formulate recommendations about due diligence procedures to be followed by all importers, processing industries and consumers dealing with mineral products from Eastern DRC.⁵² For this work, OECD's project on due diligence is timely and OECD will report their findings to the Group of Experts.⁵³ Following the adoption of resolution 1906 (2009) on 23 December 2009, MONUC⁵⁴ is expected to exchange information with the Group of Experts about the illegal trafficking of natural resources from the DRC. When the mandate of the UN mission in the DRC was extended on 28 May 2010 – an extension that was coupled with the transformation of MONUC into MONUSCO⁵⁵ – it was clear that the issue of mineral exploitation in Eastern DRC would remain high on the agenda.⁵⁶

The Extractive Industries Transparency Initiative (EITI)

The aim of the EITI, established by former British Prime Minister Tony Blair in 2002, is to promote the disclosure of revenues generated by the natural resource sector and to encourage transparency with regard to revenue received by government bodies. Although the DRC expressed its willingness to join the EITI already in 2008 (it was accepted as an EITI candidate country on 22 February 2008) it has not yet obtained its membership, mostly due to the troublesome situation in country at the political and security level.⁵⁷ The DRC had until 9 September 2010 to submit a final validation report to the EITI Board.

Foreign legislative measures

In July 2010 the US Senate passed the Dodd–Frank Wall Street Reform and Consumer Protection Act which includes a section on Congolese “conflict minerals”.⁵⁸ The aim of the law is to put an end to the import of minerals (tin, tantalum, wolframite and gold) originating from Congolese conflict areas by companies established on US territory.⁵⁹ The law requires US companies to submit an annual report to the Securities and Exchange Commission disclosing if their products contain these four

48 Business for Social Responsibility (May 2010), Conflict Minerals and the Democratic Republic of Congo: Supply Chain, Government and Capacity Building – An Overview for Participants in the DRC Conflict Minerals Forum, available at <http://pactworld.org/galleries/default-file/Conflict%20Minerals%20Forum%20Issue%20Overview.pdf>

49 Blore, S. & Smillie, I. (April 2010), An ICGLR-based tracking and certification system for minerals from the great lakes region, Partnership Africa Canada – working document of the ICGLR (copy available with the author)

50 A joint OECD-ICGLR conference in Nairobi, Kenya, 29–30 September 2010

51 See for example conclusions in Garrett, N. et al. (May 2010), Promoting Legal Mineral Trade in Africa's Great Lakes Region, Resource Consulting Services

52 Resolution 1896 (2009), Adopted by the Security Council at its 6225th meeting, on 30 November 2009, p. 3, <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/DRC%20S%20RES%201896.pdf>

53 OECD, http://www.oecd.org/document/36/0,3343,en_2649_34889_44307940_1_1_1_1,00.html, accessed 2 September 2010

54 MONUC (Mission in the Democratic Republic of the Congo) is the UN force in the DRC

55 MONUSCO (United Nations Organization Stabilization Mission in the Democratic Republic of the Congo) has a mandate to work for stabilization in foremost the Eastern DRC up to 30th of June 2011. UN Resolution 1925 (2010) Adopted by the Security Council at its 6324th meeting (28 May 2010), http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1925%282010%29

56 Spittales, Steven (June 2010), MONUC's / MONUSCO's role in Eastern DRC in regards to the demilitarization and securing of mining zones, (unpublished commissioned IPIIS report), p. 4

57 Information from the EITI website (<http://eiti.org>), accessed 8 June 2010

58 The full text of the “Dodd-Frank Wall Street Reform and Consumer Protection Act” is published by the US Government on <http://www.gpo.gov/fdsys/pkg/CRPT-111hrpt517/pdf/CRPT-111hrpt517.pdf>, accessed 11 August 2010

59 Information from the website of US Congress (www.opencongress.org/bill/111-h4128/show), accessed 27 April 2010

metals from the DRC or adjacent countries. If they do, they are prescribed to report what measures they are taking to trace the minerals' origin and exercise due diligence on the source. The law does not impose any penalty on companies who report taking no action. But the disclosures must be made publicly.⁶⁰ The US Secretary of State is entitled to develop a conflict map to "address the linkages between human right abuses, armed groups, mining of conflict minerals, and commercial products", including guidance on how to ensure that minerals are not directly or indirectly financing armed groups.⁶¹

The US legislation has been met with divided reactions, which are described in more detail in the next chapters. Many fear that the law will lead to exclusion of mineral mining and trade from a large region in Africa and point to the fact that it is today very difficult to prove that non-conflict minerals have come from Eastern DRC. The law has got support, in addition to some NGOs⁶², from Margot Wallström, the UN's Special Representative on Sexual Violence in Conflicts, as well as several Swedish political parties which expressed their intention to work for similar legislation in the EU.⁶³

Capacity building of the Congolese state

STAREC

The STAREC⁶⁴ plan is the Congolese state's stabilisation programme. The plan is due to be implemented in several areas in Eastern DRC and has three components: a security component, a humanitarian and social component, and an economic component. The restoration of state authority over the timber and minerals sectors is considered an objective associated with the security component. The aim is to have official Congolese security forces exercise permanent supervision over mining sites exploited by armed groups, to deploy a number of state agencies at the provincial level⁶⁵ and to set up checkpoints in the vicinity of airstrips and roads leading to mining areas.⁶⁶

The creation of trading centres

Together with the UN force MONUSCO, the Congolese government has devised a plan to create five trading centres (*centres de négoce*) in North and South Kivu.⁶⁷ The creation of the trading centres fits in with the STAREC plan, as it would contribute to the restoration of the authority of the state in Eastern DRC. MONUSCO or local police officers will protect the sites where the centres will be located, and the UN Office for Project Services (UNOPS) will rehabilitate roads in order to facilitate access to the sites.⁶⁸ The idea is also that the trading centres will lead to less smuggling and enable local people to benefit more from the extraction of minerals.

60 Dodd-Frank Wall Street Reform and Consumer Protection Act, Sec. 1502, p. 851; Washington Post (21 July 2010), U.S. financial reform bill also targets 'conflict minerals' from Congo

61 Ibid., p. 853

62 The American legislation has got support from international NGOs such as World Vision and Global Witness as well as American NGOs such as Enough

63 Dagens Nyheter (3 August 2010), Sverige och EU måste agera, <http://www.dn.se/debatt/sverige-och-eu-maste-agera-1.1147499>, Dagens Nyheter (5 August 2010), Vi vill lagstifta mot konfliktmineraler, <http://www.dn.se/debatt/vi-vill-lagstifta-mot-konfliktmineraler-1.1148845>

64 Programme de Stabilisation et de Reconstruction des Zones sortant des conflits armés, can be translated as *Programme for the Stabilization and Reconstruction of zones coming out of armed conflict*. Its total cost is estimated at approximately US\$ 1.204 million

65 These state agencies include the mining registry, the CEEC, and the anti-fraud service of the Ministry of Mines (source: Custers, Raf (August 2009), Het STAREC-plan van de Congolese regering: een voorlopige analyse, IPIS)

66 Custers, Raf (August 2009), Het STAREC-plan van de Congolese regering: een voorlopige analyse, IPIS

67 Le Potentiel (18 February 2010), La guerre du controle des puits miniers a commence

68 MONUC to support the Congolese government's efforts for the regulation of the mineral trade', MONUC press release, 17 February 2010

PROMINES

The World Bank has started a technical assistance project called PROMINES, which is going to be led and driven by the Congolese Ministry of Mines.⁶⁹ Co-funded by the UK Department for International Development (DFID), PROMINES' aim is to strengthen the capacity of Congolese state institutions involved in the mining sector so that they become capable of managing the mining business in a more responsible and transparent manner.⁷⁰ In July 2010, the World Bank announced the approval of a US\$ 50 million grant for PROMINES.⁷¹ A central aim of the project is helping the DRC move towards compliance with the enhanced Extractive Industries Transparency Initiative (EITI).

The Ministry of Mines Thematic Working Group

In order to steer things in the right direction, the Congolese government has decided to create a so-called Thematic Working Group, which is led by the Congolese Ministry of Mines. The Thematic Working Group has been charged with the coordination and harmonization of a wide variety of measures, such as ITRI's and BGR's projects, aimed at 'cleaning up' the mining sector.⁷² This shows that the Congolese state sees the need for greater coordination of different initiatives.

A common feature of most of the efforts and initiatives is that they have originated internationally, and often only in dialogue with the central authorities in the DRC. During the summer of 2010 the makeITfair project and its partners therefore asked local stakeholders for their views, described below.

3.3 LOCAL VIEWS AND OPINIONS: DOUBTS ABOUT THE FEASIBILITY OF TRACEABILITY MECHANISMS

A topic that frequently popped up during the interviews carried out for the makeITfair project by IPIS in Goma and Bukavu was the feasibility of putting in place a well-functioning traceability mechanism. Many interviewees doubted whether Congolese civil servants had enough expertise, equipment, authority and integrity to play a positive role in the newly developed initiatives to render the mining business more transparent.

Aloys Tegera, the head of the research-based Pole Institute in Goma, expressed his concern about the continuing weakness of Congolese state institutions in the mining sector. He argued that the strengthening of these institutions is a precondition for claiming any area 'conflict free'. For example, he mentioned that transport routes between mining areas and trading centres would most probably not receive enough protection from the Congolese state and from MONUSCO. That would mean that it would still be possible for armed groups to levy illegal taxes, attack those transporting minerals and mix minerals from different mines in order to conceal their exact origin.⁷³

Delly Mawazo Sesete, the Director-General of the human rights organisation Creddho (*Centre de Recherche sur l'Environnement, la Démocratie et les Droits Humains*), pointed out the difficulties

69 Information from Rachel Perks (Pact) to Jeroen Cuvelier (IPIS), 21 June 2010

70 Information from the Pact website (<http://pactworld.org>), accessed 8 June 2010

71 World Bank approves a grant of US\$50 million for growth with governance in the mineral sector project (PROMINES) in the DRC, World Bank press release, 1 July 2010

72 La Prospérité (27 May 2010), Martin Kabwelulu évalue les travaux du Groupe Thématique

73 Still, Tegera was glad that economic operators had finally understood that, if they wanted their business activities to continue, it was absolutely necessary for them to support international initiatives aimed at cleaning up the mining sector. In his view, the most positive effect of the debate on traceability mechanisms was that all stakeholders (with the exception of non-state armed groups) were finally prepared to sit together around the same table in order to talk about solutions for the problem of conflict minerals, interview in Goma, 21 May 2010

associated with demilitarizing the mines. In his view the Congolese government's statements about the demilitarization of mining areas in Eastern DRC are just a form of window dressing. In order to make his point, he cited the example of the Bisie mine, situated in the territory of Walikale in North Kivu (see above). According to a research report that was published by Credhho in September 2009, Bisie witnessed the visit of a high profile delegation on 7 August 2009. The delegation was composed of the Congolese Prime Minister, the National Minister of Mines, the Commander of the 8th Military Region, the Joint Military Commander and several other senior officials.⁷⁴ The official aim of the visit was to announce the decision of President Joseph Kabila that all members of the FARDC had to pull out of mines in the region.⁷⁵ However, on 12 August 2009, just five days after this announcement, there was an attack led by a trader with links to the Mai Mai rebel group⁷⁶ and FDLR⁷⁷ on Bisie, which left several people dead and several others wounded. According to the authors of the Credhho research report, the timing of this attack was not a coincidence. They claimed that the raid on Bisie was the result of a conspiracy between certain military officials in FARDC and leaders of the FDLR. In their view, it was plausible that the former had asked the latter to attack Bisie so that the former could justify the continued presence of the military at the mine.⁷⁸

Saidi Kubuya, the spokesman for Assodip, an organization that deals with sustainable development and human rights in North Kivu, shared the concerns of Aloys Tegera and Delly Mawazo Sesete with regard to the poor performance of public servants in the mining sector in Eastern DRC. According to Kubuya, there were four reasons to be sceptical about the chances of success of MONUC's '*centres de négoce*': the distance between the mining sites and the trading centres; the lack of appropriate security measures on the road between the mines and the trading centres; the lack of governmental control in the mines themselves⁷⁹; and the continuing presence of military actors in the mining areas. Kubuya argued that, since the mining areas had not yet been demilitarized, there is still a risk that members of the FARDC would continue to harass transporters of minerals on their way from the mine to the trading centres.

In Kubuya's view, policy makers had made a mistake in assuming that the problem of conflict minerals could be solved by building highly protected mineral trading centres in the immediate vicinity of what were known to be the most important mines (in terms of production and number of miners). He pointed out that mines could be very popular at one point in time, but that they could also lose that popularity shortly afterwards. In addition to this, Kubuya argued that artisanal miners were very mobile so that, sooner or later, they would migrate to mines further away from the *centres de négoce*. The greater the distance between the mines and the *centres de négoce*, Kubuya said, the more problems the Congolese authorities would experience in terms of monitoring the bottom end of the trading chain.

In Kubuya's opinion, a possible withdrawal of MONUC from Eastern DRC would have disastrous consequences for the security situation in and around the *centres de négoce*, because the Congolese security services (and the *police des mines* in particular) are probably not capable of protecting these centres on their own.

74 Credhho (September 2009), La dé militarisation du site de Bisie ou conflit d'intérêts entre acteurs politico-militaires, p. 14

75 Bisie killings show minerals at heart of Congo conflict, Global Witness press release, 18 August 2009

76 Mai-Mai is used as a term for any community-based militia group, most of them formed locally to resist Rwandan or Rwanda-affiliated Congolese rebel groups. The Mai-Mai rebel groups are led by warlords, traditional tribal elders, village heads, and politically motivated resistance fighters.

77 The FDLR (Democratic Liberation Forces of Rwanda) is based in Eastern Congo following the flight of Hutu extremists to eastern Congo after their involvement in the 1994 Rwandan genocide.

78 Credhho (September 2009), La dé militarisation du site de Bisie ou conflit d'intérêts entre acteurs-politico-militaires, Credhho, p. 14; On 11 March 2010, Global Witness reported that former members of the CNDP, who were in charge of the 212th brigade of the FARDC, were '*pocketing tens of thousands of dollars per month from illegal taxes imposed on civilians in and around Bisie (...)*' (source: DR Congo: ex-rebels take over mineral trade extortion racket, Global Witness press release, 11 March 2010)

79 According to Kubuya, there was a real risk that the '*centres de négoce*' would start functioning as 'laundering centres'. He feared that minerals passing through those centres would always receive a 'green label', even if their exact origin had not been certified by a reliable Congolese state service.

According to Anny Mbombo, the head of an NGO working on research concerning natural resources, ERND (*Environnement, Ressources Naturelles et Développement*) it is highly doubtful whether government institutions such as the Ministry of Mines and SAESSCAM are up to the task of implementing new traceability mechanisms such as the iTSCi-project. She claims that the visibility of these two institutions on the ground is very limited and suggests that this is probably due to a shortage of personnel. Moreover, Mbombo indicated that the weakness of the Ministry of Mines and SAESSCAM is illustrated, amongst other things, by the fact that they do not seem to have reliable data on the number of diggers, and by the fact that they fail to organize the distribution of artisanal mining permits in a satisfying manner. Without such permits the artisanal miners become illegal, even though they depend on mining for their survival. Not only do agents of the Ministry of Mines adjust the prices for the sale of these permits at their own discretion (so that they were able to pocket a commission on the sale of each permit), but they are also unable to prevent large groups of diggers from working in the mines without any form of official permission whatsoever.⁸⁰

Jean-Pierre Buledi, the research coordinator of the NGO CEDAC (*Centre d'Etude, de Documentation et d'Animation Civique*), which works with issues concerning civil education, transparency and democracy, hopes that public servants expected to implement the traceability mechanism(s) would receive a decent training in advance. He says that many members of the public administration suffer from a lack of schooling and are poorly informed about the latest rules and regulations in the mining business. According to Buledi, the success of the traceability mechanism(s) will also depend – to a very large extent – on the way mining officials would be paid by the Congolese government. He thought it is highly unlikely that badly paid officials would play a positive role in the initiatives to increase the level of transparency in the mining sector.⁸¹ It is widely known that poorly paid officials tend to rely on corrupt practices.

Finally, Manassé Shubazi Kabambe, who's the director of the Bukavu-based study centre BEGEM that is having a prominent role in the ITRI's tin supply chain initiative⁸², acknowledged that Congolese state services overseeing the mining sector are struggling with a lack of personnel and are forced to work under difficult conditions. Manassé stated that the Congolese authorities had taken a long time to get genuinely involved in the traceability mechanism designed by the tin industry, but he is hopeful that things would change for the better given the new agreement that was signed between ITRI and the Congolese government in the beginning of June 2010. According to Manassé, there are indications that, slowly but gradually, progress is being made on the implementation of ITRI's traceability mechanism. He pointed out that in South Kivu, the first batches of labelled and traceable mineral bags have already been sold to buying houses in Bukavu, whereas, in North Kivu, representatives of all stakeholders in the project had just paid a visit to the mine at Bisie with a view to evaluating the situation on the ground and preparing the start of the next phase of the project. Although Manassé agrees that the iTSCi project could only work if all participants on the government side receive proper training in advance, he said that (in South Kivu) mining officials had already been trained for the tasks they are expected to carry out in the context of the project. Moreover, he suggested that even mineral buyers and managers of buying houses have already been informed about the traceability approach and about their role in the project.⁸³

80 Anny Mbombo, ERND, interview in Bukavu 24 May 2010

81 Jean-Pierre Buledi, CEDAC, interview in Bukavu 24 May 2010

82 BEGEM is doing the actual tagging/labelling of the bags of minerals and keeping the register

83 E-mail from Manassé Shubazi Kabambe, BEGEM, 1 July 2010

3.4 MODERATE OPTIMISM AMONG CONGOLESE MINING OFFICIALS

Congolese officials involved in the implementation of traceability mechanisms for minerals originating from Eastern DRC said they were moderately optimistic about the chances of success of the various reform initiatives. While they admitted that there was still a lot of work to be done and acknowledged that the context in which they had to operate was complex and difficult, they still found it encouraging that a genuine debate had come into being between the different groups involved with widely different views and interests. According to Jean-Jacques Duga, the local director of SAESSCAM in South Kivu, it was too early to sum up the strong and the weak points of the traceability mechanisms. In an e-mail he writes: “We realize that the work is not easy given the complexity of the political and economic situation in our country as a whole and in South Kivu in particular. ... It’s pointless to continue complaining about each other without changing one’s own behaviour.”

Adolphe Saninga Lubango, the head of office of the provincial mining division in the territory of Shabunda, told IPIS that none of the initiatives to reform the Congolese mining sector had yet been carried out in the area for which he was responsible. He argued that this was due to the ongoing war in Shabunda: “... the authority of the state ... has not yet been restored in the territory of Shabunda due to the presence of national armed groups and FDLR (elements) who prevent the initiatives of the provincial mining division and the office of the mining district from being implemented everywhere.” However, Saninga reported that the provincial mining division and the district office of mining have recently jointly taken the initiative to bring artisanal miners together to prepare them for the creation of mining cooperatives. The creation of mining cooperatives is something that is encouraged by the Congolese state as a way to formalize the mining sector.

4. BANNING EASTERN DRC MINERALS: RESPONSIBLE OR NOT?

Since 2001 there have been efforts to trace companies that take economic advantages of the mineral trade that partly supports different armed groups in the conflict in Eastern DRC. Some NGOs, as well as the UN Panels of Experts, demand that the extraction of minerals in Eastern DRC has to be placed under strict supervision, and minerals from mines controlled by armed groups should be boycotted by consumers of finished products utilizing these minerals. The arguments put forward in their reports, that there is a close connection between the violence and suffering of the civilian population living in the mining zones in Eastern DRC and the control exercised in these areas by different armed groups, are certainly valid.⁸⁴

A lot of attention has been given to the fact that we all, as consumers purchasing personal electronic devices, are linked to the conflict in Eastern DRC. Many argue that we must demand that companies stop buying conflict minerals and so cut off the funding of armed groups. Skeptics of the idea that ending the trade will stop the violence say it will only hurt an already extremely weak economy and make the local population suffer even more.⁸⁵ They underline the fact that more than two-thirds of the revenue of a province like North Kivu is from mineral exports.⁸⁶ Even though none of the NGOs or the legal initiatives actually promote an embargo in the sense of ending the mineral trade from the whole of Eastern DRC or even the whole of the DRC, many point out that it is likely to be the effect, especially before initiatives for a trustworthy certification schemes are in place. The local research-based Pole Institute is of the opinion that the dilemma becomes even greater when the mining industry is criminalized without offering an economic alternative to a possible boycott of these minerals.

Consumer campaigns against conflict minerals have been launched, among others, by American Enough campaign⁸⁷ and international NGOs such as Global Witness.⁸⁸ They call on companies within IT, aerospace and other industries using minerals from Eastern DRC to issue strict due diligence routines if they continue the sourcing. “Companies should need to do their due diligence work if they source in the DRC so that they are not funding these armed groups. Otherwise they should not source there. It is as simple as that,” says Mike Davies from Global Witness.⁸⁹ Others such as Resource Consulting Services and Pact suggest that banning the trade in conflict minerals is unlikely to sever the link between mineral sourcing and the conflict. Since mineral extraction in the DRC is poorly monitored and the resulting metals are undifferentiated commodities, it is also argued that it is relatively easy to get around bans.⁹⁰

Steve Hege, a program officer of the Center on International Cooperation (CIC) at New York University and Jason Stearns, Phd. candidate at Yale have written a proposal for a Third Party

84 Pole Institute (March 2010), Blood Minerals: the Criminalization of an Economic Sector in Eastern DRC; Global Witness (July 2009), Faced with a gun – What can you do?; Reports from the UN Expert Panel, see <http://www.un.org/sc/committees/1533/egroup.shtml>.

85 Advocates for this opinion are found at the Resource Consulting Services, a research-based consultancy with a good reputation for in-depth analysis and assessments on issues concerning natural resources and development, see www.resourceglobal.co.uk, the Pole Institute, a research-based organisation with considerable experience in research and consultation regarding peace, development and trade in natural resources in the Eastern DRC region, www.pole-institute.org, IPIS, one of the organizations which are most experienced in undertaking reliable research on natural resources issues in Eastern DRC, www.ipisresearch.be and the Öko-Institut, a leading European research and consultancy institution working for a sustainable future employing more than 125 staff, <http://www.oeko.de/aktuelles/dok/544.php>.

86 Pole Institute (March 2010), Blood Minerals: the Criminalization of an Economic Sector in Eastern DRC

87 The Enough project, Center for American Progress, <http://www.enoughproject.org>, accessed 3 June 2010

88 Global Witness, http://www.globalwitness.org/pages/en/democratic_republic_of_congo.html, accessed 9 June 2010

89 Mike Davies, Global Witness, interview on 23 April 2010

90 Business for Social Responsibility (May 2010), Conflict Minerals and the Democratic Republic of Congo: Supply Chain, Government and Capacity Building – An Overview for Participants in the DRC Conflict Minerals Forum

Monitoring and Enforcement Mechanism for the mineral trade in Eastern DRC.⁹¹ Hege explained that due diligence is critical to ensure that the private sector take ownership and responsibility for their economic participation in the supply chain. He thinks however, that companies “will likely never have the sufficient local knowledge to actually trace the complex and malleable web of networks that define the mineral trade in Eastern DRC”.⁹² Most likely this will lead to a situation in which companies will instead avoid purchasing minerals from Eastern DRC. Hege and Stearns question the viability of asking all individual companies undertaking due diligence work in the field in Eastern DRC. “Due diligence is a good idea in theory, but very difficult to implement given the corrupt administrative apparatus it would have to rely on and the security situation in the mining areas”, they write.⁹³

In addition, many have voiced serious concerns about the consequences of the new US legislation on conflict minerals for the people of the DRC. According to the Pole Institute, the US law risks causing considerable economic damage in Eastern Congo. The end effect can be the opposite of that intended: pushing people towards conflict rather than leading them towards peace. Therefore the Pole Institute has called for a broad cross-border consultation on the ground in order to find practical ways of promoting responsibility in the natural resource trade which develop the economy instead of killing it.⁹⁴ Also, a representative of a US law firm, David Levine of McDermott Will & Emery, is quoted in the Financial Times: “If the law is implemented to require manufacturers whose product components contain conflict minerals to track back the sources of the materials to establish an audit trail that could be a task of mind-boggling complexity”.⁹⁵ According to the US Enough Project, reporting will be defined in regulations, with feedback from industry groups, and won’t be required for several years to ensure that the regulations are “reasonable and achievable”.⁹⁶ For the moment a multi-stakeholder group in close contact with the US Securities and Exchange Commission SEC has taken up different tasks to give input to the implementation of the law in the best way.⁹⁷

Pact has been consulting many local stakeholders within the iTSCi-pilot project. Karen Hayes writes: “We have found that people are quite angry that there is a risk of an embargo about which they have not been consulted, and a great deal of worry that there is not a reasonable timeframe in which to meet the requirements. They consider that this would lead to a loss of their livelihoods, would force them to migrate to new areas, it could cause some to turn to crime, and they feel they would then have to operate in a more clandestine manner in which they are more vulnerable to exploitation and conflict.”⁹⁸

One important question is whether it is actually possible today to source ‘conflict-free’ minerals from Eastern DRC. There are varying degrees of involvement from armed groups, just like there are also varying degrees of legality. IPIS estimates that for the time being is that there is not a single mine

91 Center on International Cooperation (CIC) (January 2010), Independent Oversight for Mining in the Eastern Congo? A Proposal for a Third Party Monitoring & Enforcement Mechanism, Jason Stearns, Phd. candidate at Yale University and Steve Hege, CIC Research Associate, New York University

92 Steve Hege, Research Associate, Center for International Cooperation (CIC), New York University, e-mail interview on 10 May 2010

93 Center on International Cooperation (CIC) discussion paper, Mining and Conflict in the Eastern DR Congo

94 Johnson, Dominic (19 July 2010), Killing the economy in the name of peace? The new US “conflict minerals” legislation for the DRC, Pole Institute, <http://www.pole-institute.org/site%20web/echos/echo138.htm>, accessed 8 May 2010

95 Financial Times (17 August 2010), Businesses resist ‘conflict minerals’ law, Jean Eaglesham and Jeremy Lemer in New York, <http://www.ft.com/cms/s/0/36cdb886-aa3b-11df-9367-00144feabdc0.html>

96 The Enough Project, FAQ about the conflict minerals regulations, <http://www.enoughproject.org/special-topics/understanding-conflict-minerals-provisions>, accessed 23 August 2010

97 The makeITfair project participates in monthly multi-stakeholder calls where information is shared among organizations and industry on developments around the conflict mineral issue. From July 2010 in the US groups are busy getting involved in the implementation of the legislation, taking on different tasks and finding definitions etc.

98 Karen Hayes, Director of Corporate Community Engagement for the Africa Region, Pact, interview on 20 August 2010

in Eastern DRC where there are no security problems at all.⁹⁹ In other words, if there are very strict requirements regarding taxes to armed groups and no involvement of armed groups in the mineral trade at all, at the moment, it means it is not possible to source minerals from Eastern DRC at all. This is an option that Karen Hayes foresees could lead to more insecurity in the region: “Potential exclusion of mines from the traceability system with resulting loss of their legitimate market could have major impacts. This could leave mines with the options of (a) closure – resulting in loss of livelihoods, migration forced by economic need, new resource conflicts as miners try to find new sites, new debt as new sites are developed, etc; (b) continued mining and trading but with only illegal actors or buyers who are unscrupulous about their sourcing; (c) a move away from the restrictive tin/tantalum/wolframite market towards the more lucrative and secretive gold mines and markets where traceability is a huge challenge.”¹⁰⁰



Local tin ore (cassiterite) trader. © Enough Project

4.2 LOCAL VIEWS AND OPINIONS: RESISTANCE AGAINST THE EMBARGO OPTION

So even if no one is directly in favour of a boycott of minerals from Eastern DRC, this may very well be the result of recent legislative and due diligence demands. During interviews in Goma and Bukavu in May 2010, IPIS encountered very few representatives of civil society groups who were in favour of an embargo on minerals from Eastern DRC. One of the only interviewees who really stood up for the embargo option was Alphonse Muhindo, who worked for the Goma-based office of the environmental organisation, the ‘Réseau pour la Conservation et la Réhabilitation des Ecosystèmes Forestiers’ (CREF).¹⁰¹ According to Muhindo, the intentions of the proponents of the embargo scenario at the international level were honourable. He argued that the latter wanted to suppress the illegal exploitation of natural resources, to lower the intensity of the conflict in Eastern DRC, to discourage armed groups preying on local mining activities, and to give the Congolese government the time needed to embark on a profound reform of the country’s mining sector.¹⁰²

By far most informants questioned the usefulness of an embargo. The most outspoken critic was Désiré Segahungu, the chairman of the business association, *Fédération des Entreprises du Congo* (FEC), in North Kivu. In Segahungu’s opinion, “an embargo would be dramatic for the

99 Jeroen Cuvelier, Researcher, IPIS, e-mail to Swedwatch on 11 August 2010

100 Karen Hayes, Director of Corporate Community Engagement for the Africa Region, Pact, interview on 20 August 2010

101 The CREF network, created in May 2003, is composed of 21 organizations working on environmental issues in the province of North Kivu (source: the website of Congolese civil society: www.societecivile.cd/node/1651, accessed 9 June 2010)

102 Alphonse Muhindo, CREF, interview in Goma on 20 May 2010

local economy”. The main reason for this, he said, “Is that the mining sector is currently the most important earner of foreign currency in Eastern DRC”. He was convinced that an embargo would inevitably lead to the destruction of the most important source of foreign currency, which, in turn, would have a negative impact on the purchase and import of goods from abroad. In addition to this, he feared that an embargo might have pernicious consequences for the security situation in the region. “Considering that mining is currently one of the only sources of income for unemployed youngsters in North and South Kivu,” he noted, “there is a serious risk that some of these youngsters will join armed groups if an embargo prevents them from making money through mining or mining-related activities.” Segahungu accused the UN Panel of Experts and NGOs such as Global Witness of showing all participants in the local mining business in a bad light, while he regretted that the publication of their reports had coincided with the emergence of the global financial crisis. He believed the latter two developments have been responsible for the fact that many Goma-based buying houses are having serious problems finding foreign buyers for their minerals.¹⁰³

Following the example of their colleagues in Goma, most members of civil society groups in Bukavu rejected the idea of a general mineral embargo for Eastern DRC. Cyprien Birhingingwa Mugabo, the coordinator of the NGO Cenadep in Bukavu and the chairman of a network of civil society organisations in South Kivu, stated that an embargo would not help to solve the many problems associated with artisanal mining in his province. He suggested that an embargo would probably give rise to massive fraud, while it would also rob local youngsters of a significant source of income.¹⁰⁴

Christian Alissi, a collaborator of the religious organisation Groupe Jérémie in Bukavu, who works with civil education, human rights, media & communication, peace & democracy and female emancipation, reiterated the argument put forward by Désiré Segahungu (FEC / North Kivu) with regard to the negative impact of a mineral embargo on trade in the region. He pointed out that the emergence of mining centres had given rise to new trade flows, which involved a massive influx of goods such as foodstuffs and medicine into the interior. He suspected that an embargo would probably cause these trade flows to dry up and would thus have a negative effect on commercial activities in the region.¹⁰⁵

Finally, Descartes Mponge, a researcher for the Bukavu-based NGO ‘*Environnement, Ressources Naturelles et Développement*’ (ERND), deplored the fact that some stakeholders in the mining business in the Kivu region were deliberately spreading false information about the embargo issue. He emphasized that, contrary to what was generally assumed, Global Witness and other international NGOs were actually not in favour of a general mineral ban in Eastern DRC.¹⁰⁶ As explained above, this is true; however, a de facto result of strict requirements and recent US legislation may very well result in an unintended embargo.

4.3 WHAT DO COMPANIES THINK OF THE EMBARGO OPTION?

As discussed above, companies may favor banning “conflict minerals” from their individual or industry supply chains because, if effective, it would simplify their own risk management and mitigate the risk of negative publicity related to the DRC conflict.¹⁰⁷ Finnwatch reported in 2007

103 Désiré Segahungu, FEC, North Kivu, interview in Goma on 20 May 2010

104 Cyprien Birhingingwa Mugabo, Cenadep, interview in Bukavu on 26 May 2010

105 Christian Alissi N, Groupe Jérémie, interview in Bukavu on 22 May 2010

106 Descartes Mponge, ERND, interview in Bukavu on 24 May 2010

107 Business for Social Responsibility (May 2010), Conflict Minerals and the Democratic Republic of Congo: Supply Chain, Government and Capacity Building – An Overview for Participants in the DRC Conflict Minerals Forum

how tin ore from North Kivu was exported by numerous international, mainly Belgian, marketing firms via Uganda to the ports of Kenya and Tanzania. From there, cassiterite (tin-ore) was shipped mainly to Asian smelters: Thailand, Malaysia, India and perhaps to China.¹⁰⁸ Following intense advocacy pressure, several companies in the trade, such as Traxys and Thaisarco, state that they suspended purchasing from Eastern DRC in 2009.¹⁰⁹

For this report, Finnwatch and Swedwatch sent questions to five international marketing firms and one smelter¹¹⁰, out of which two (Sodexmines¹¹¹ and Trademet¹¹²) answered. Sodexmines said that they have not stopped their activities in the DRC since they know their suppliers are trustworthy and supervise them. Trademet is aware that Traxys and Thaisarco have temporarily suspended buying from Eastern DRC and state that it has been winding down for a few months in order to clarify what could be done or not in a way that will satisfy everybody. However, Trademet is still present in the Congolese market. The UN Group of Experts investigated Sodexmines in Goma in 2009 and found their business was not involved with armed groups, according to Sodexmines. Trademet participates in the iTSCi programme.

Both Sodexmines and Trademet are of the opinion that an embargo on natural resources from Eastern DRC would have a negative impact on the Congolese population. According to Trademet there is no international embargo in place yet, but “there is intense advocacy pressure which, whether right or not, is trying to push things in that way”. Sodexmines believes that a ban would lead to a new rebellion in the region. Sodexmines has noticed that when there are crises on the international market or when mineral production is down due to rain or technical problems, people are seriously affected. “The whole population in this region lives from minerals and it is the only income that the locals have,” said Edwin Raes, director of Sodexmines.

Sodexmines is prepared to get involved in any attempt to make the business more transparent and legitimate. Trademet is already involved here. “We are a small company, employing three people, and part of some of these certification programs and funding some of them. We are teaching our suppliers how to follow all these rules, but this ‘clean up’ will not happen in one day – these are all medium term projects which in my view will take from one to three years,” said Freddy Muylaert, director of Trademet.

The reaction of local traders and buying houses to the new US conflict minerals legislation for the DRC seems to be very strong. John Kanyoni, an established mineral trader in Goma and president of the Association of Comptoirs in North Kivu, said in a letter to the Economic Section of the US embassy in Kinshasa on 16 July that he was “totally shocked”. The measures passed by the US Congress, he continued, were “in fact an embargo on materials from the Great Lakes Region... and even the whole African continent...”¹¹³ (Since the law also applies to countries bordering the DRC, it affects many other African countries.)

The issue of an intended or unintended boycott of minerals from Eastern DRC or even from the whole of the DRC is something which the EICC and GeSI is clearly aware of. “Our intention is

108 FinnWatch (December 2007), *Connecting Components, Dividing Communities – Tin production for consumer electronics in the DR Congo and Indonesia*, p. 18–20, 35–39

109 Garrett, N. et al. (May 2010), *Promoting Legal Mineral Trade in Africa’s Great Lakes Region*, Resource Consulting Services, p. 27, 33

110 Finnwatch and Swedwatch sent questions to five marketing firms (Metmar, SDE/Sodexmines, Shamika Resources, Trademet, Traxys) and to one smelter (Thaisarco).

111 Edwin Raes, Director, Sodexmines/SDE, e-mail to Finnwatch on 28 July 2010

112 Freddy Muylaert, Director, Trademet, e-mail to Finnwatch on 23 June 2010

113 Johnson, Dominic (19 July 2010), *Killing the economy in the name of peace? The new US “conflict minerals” legislation for the DRC*, Pole Institute

not to shut off trade from the DRC; however, the quickest path to conflict-free may be to source from outside the region,” says Jerry Meyers of Intel, co-chair in the Extractive Workgroup.¹¹⁴ When it comes to individual electronics companies, it seems that much of the present effort comes down to asking for assurance from suppliers that they do not source from the DRC. This is despite the contradictory fact that none of the electronics companies publicly supports a boycott of minerals from the DRC as a whole.

A selection of interviews with consumer electronics companies illustrate how the industry thinks about this issue.

Sony Ericsson has requested its suppliers to report how they make sure tantalum is not originating from “conflict mines”. Even though SE argue that they are not against sourcing from Eastern DRC, or in favour of a boycott, directives to their suppliers of components containing tantalum have led the suppliers to guarantee not sourcing any tantalum from the DRC.¹¹⁵ The tin supply chain is another and more difficult issue, according to SE. “We buy electronic components from around 1,500 suppliers. Most components consist of small quantities of tin. There is no way that we could follow up where all of these suppliers source their tin. It is not viable,” says Mats Pellbäck-Sharp. Instead he favors working within the industry cooperation group, EICC and GeSI and therefore intends to become more active in GeSI’s Extractive Workgroup.¹¹⁶

Nokia says the company is an active member of iTSCi project and GeSI/EICC Extractives Workgroup and is currently participating in the smelter validations. Nokia also says that it does not ban or boycott Congolese minerals as such, but it has banned minerals from conflict areas such as Eastern DRC. According to Nokia’s website, the company asks for “written assurance from its suppliers whose components contain tantalum, tungsten¹¹⁷ and tin that these materials do not originate from the conflict areas in DRC”. At the same time Nokia says it is concerned about the impact on local people of a ban on minerals from the DRC conflict areas and means that this issue has to be addressed simultaneously with the development of audit processes. According to Nokia it continues to trace its raw materials and participate in industry efforts like the EICC/GeSI extractives smelter audits.¹¹⁸

Hewlett-Packard (HP) has recently investigated its supply chain in order to find out if it uses “conflict minerals” in their products in breach of their policy. So far the answers collected have not shown any evidence of minerals from the DRC. However, HP says: “Despite this feedback, there is no certification mechanism currently available that can assure us that the metals used in our products are not sourced from mineral trade associated with the conflict in the DRC”. That is why HP works actively in the EICC/GeSI’s Extractives Workgroup. HP openly supports the current legislative efforts in the US. “We believe that legislation ... can play a role in stimulating demand for supply chains free of conflict minerals. As such, HP supports the objective of legislative or market instruments that encourage the development of an internationally recognized, independently monitored, cross-industry approach to ensuring that metals are not sourced from mineral trade associated with the conflict in the DRC.”¹¹⁹

114 Jerry Meyers, Program Manager, Intel, e-mail to Swedwatch on 18 August 2010

115 Mats Pellbäck Sharp, Head of Corporate Sustainability, Sony Ericsson, interview on 8 June 2010

116 Mats Pellbäck Sharp foresees this to happen within the autumn of 2010.

117 Tungsten = wolframite

118 Mika Kiiskinen, Senior Manager, Social & Ethical Issues Management, Nokia, e-mail to Finnwatch on 31 August 2010

119 Hewlett-Packard’s website, Human rights in minerals mining in Central Africa, <http://www.hp.com/hpinfo/globalcitizenship/society/supplychain/minerals.html>, accessed 16 August 2010

5. A STRONGER VOICE FOR CIVIL SOCIETY GROUPS IN THE KIVUS

According to Resource Consulting Services, a research organisation, local civil society groups have little say in the current discussions on Eastern DRC's mineral sector, yet they represent the people that are most vulnerable to change within the sector. Support for these civil society groups, to give them a voice at international, regional and national discussions, is key to ensuring that policies are relevant to local people and do not cause unintended adverse effects. In some cases, this may require significant capacity building and support to ensure the representatives can make a meaningful contribution. According to them, the Congolese government and civil society, as well as the private sector operating in the DRC, are those stakeholder groups who should generate a higher development dividend from the DRC's mineral resources for generations to come.¹²⁰

One of the outcomes of a major gathering of multi-stakeholders in a forum about DRC Conflict Minerals in Washington in May 2010 was that there is an urgent need to take into account the perspectives of local stakeholders within the DRC. According to the Pole Institute, it remains to be seen to what extent local Congolese stakeholders will be involved not just in the work on the ground, but also in the debate at the international level. Even the modest direct impact of mineral trade reform is unlikely to be achieved if traceability, due diligence and certification schemes are not set up together with the local population and do not win local understanding and backing, says Dominic Johnson at the Pole Institute.¹²¹ He believes that bringing local people back in are key to the success of reform programmes for the mineral trade in Eastern DRC.

Moreover, Dominic Johnson argues that the whole underlying assumption that the problems of Eastern Congo can be solved by strengthening the government side in the conflict and by allowing this side to impose 'order', is both wrong and dangerous. He emphasises that the Congolese state throughout history has been more on the side of private interests than the general welfare of the people. Therefore it is of utmost importance to involve civil society and local population in Eastern DRC instead of taking sides and simply strengthening Kinshasa-based government officials. Johnson argues that otherwise, international initiatives may instead actually create new grounds for conflict.¹²²

Several local stakeholders complained during interviews that policy makers at the national and international level had failed to consult them about their plans to reform the Congolese mining sector. They regretted that only a limited number of civil society groups were able to participate in high-level talks about the aforementioned reform measures. Moreover, they were concerned about the fact that stakeholders at the lowest level of the trading chain – such as artisanal miners and traders – were insufficiently organized to be able to defend their interests in a meaningful way. They considered this lack of organization all the more worrisome because the same group of people also lacked knowledge about their rights and duties in the mining sector.¹²³ The iTSCi-project has undertaken some consultation with local stakeholders, including multi-stakeholder meetings in Goma and Bukavu, within their pilot project. They intend to enlarge this as the project gets established, according to Karen Hayes at Pact.¹²⁴

120 Garrett, N. et al. (May 2010), Promoting Legal Mineral Trade in Africa's Great Lakes Region, Resource Consulting Services, p. 21, 85

121 Johnson, Dominic (August 2010), Who's in Charge? Putting the Mineral Trade in Eastern DRC under International Control: An Overview, Pole Institute

122 Ibid. p 21.

123 One collaborator of an NGO in Bukavu had a well-chosen expression for the situation he encountered during his work in the mining areas. He said that Eastern DRC was not characterized by a 'geological scandal' (*scandale géologique*), but by an 'educational scandal' (*scandale d'éducation*) (source: Descartes Mponge, ERND, interview in Bukavu on 24 May 2010)

124 Karen Hayes, Director of Corporate Community Engagement for the Africa Region, Pact, interview on 20 August 2010



Cassiterite mining in Maniema province. © International Peace Information Service IPIS

5.1 THE NEED FOR IMPROVED SENSITIZATION AND ORGANIZATION OF STAKEHOLDERS AT THE GRASSROOTS LEVEL

Despite the fact that all the Congolese civil society organizations *Groupe Jérémie*, *Réseau CREF*, *Justice pour Tous*, *Femmes pour la Paix et les Droits Humains* and *ALEFEM*, *Association de Lutte contre l'Exploitation des Femmes et Enfants dans les Mines*, have directly or indirectly been involved in work concerning the mining sector, are advocates for human rights, and have documented violations against artisanal miners, none of the groups have been invited to take part in talks about reforming the Congolese mining sector. According to some informants in Bukavu, who preferred to speak off the record, one of the reasons why some NGOs received invitations for such events while others did not was that civil society groups in South Kivu were divided into two camps. The first camp was said to be composed of NGOs that continued to denounce abuses in the mining sector, despite the fact that the Congolese authorities and a considerable number of economic operators in the mining sector were prepared to talk about initiatives to clean up the mining business. The second camp is said to consist of Congolese NGOs that preferred to concentrate on solutions instead of carrying on with the identification of problems in the Congolese mining sector. In the opinion of the aforementioned informants, it seems plausible that policy makers do not want to make life difficult for themselves and therefore prefer to invite NGOs adopting a 'constructive' attitude and are refraining from harsh criticism of continuing abuses in the mining sector.

Nevertheless, despite their differences of opinion about the best ways to solve the multitude of problems associated with mineral resource exploitation in Eastern DRC, most civil society groups in North and South Kivu argue that it is necessary to do something about the weak position of people working in and around the mines, far away from the decision-making centres of Kinshasa, New York, Brussels and Paris. According to Didier de Failly of the Bukavu-based research institute

BEST, it is of crucial importance to avoid stigmatization of ordinary people who work as artisanal miners in order to make ends meet. He said that the buying houses do not deserve to be blamed for the chaotic circumstances in which mining activities take place. In de Faily's opinion, they should rather receive technical assistance from external actors, such as geologists, so that their conditions can be improved.¹²⁵ In a similar vein, Eric Kajemba of the *Observatoire Gouvernance et Paix* (OGP) noted it was high time to do something about the harsh circumstances in which creuseurs have to dig minerals. Although he welcomed the creation of mining cooperatives¹²⁶, he said there is still a lot to be done in terms of promoting better forms of organization among low-level stakeholders.¹²⁷ Ezra Mutima Kambale of the Goma-based human rights organisation *Réseau d'Action Citoyen pour la Démocratie* (RACID) shared Kajemba's concern about the need for better forms of organization among actors at the bottom end of the trading chain. Kambale had the impression that many existing cooperatives are not functioning properly: their leaders fail to comply with official rules and regulations, while they frequently manage their organizations in a strictly hierarchical manner, offering their members very few opportunities to speak their minds on the modus operandi of the cooperatives.¹²⁸

Several interviewees said that local NGOs have already taken a number of steps to strengthen the position of stakeholders at the grassroots level. Balume Anaclet of the Bukavu-based *Action pour la Promotion et la Défense des Personnes Défavorisées* (APRODEPED) said that his organisation is involved in the organization of law clinics where different actors in the mining business in Eastern DRC can get legal advices. Lawyers working for APRODEPED regularly go into the field where they serve as focal points for complaints submitted by people at the grassroots level. Apart from playing a mediating role in disputes between for instance, artisanal miners and traders, APRODEPED also made efforts to protect the miners against illegal taxes.¹²⁹

Aloys Tegera said that the Pole Institute had made an attempt to promote money saving strategies among artisanal miners, since saving money can help the mine workers to build a more stable future for themselves and their families. According to Alphonse Muhindo, the *Réseau Ressources Naturelles* (a network of Congolese NGOs working on natural resource issues) organized a workshop on the Congolese mining code in November 2009, together with the Congolese Ministry of Mines.¹³⁰ For his part, Raoul Kitungano of the Bukavu-based '*Justice pour Tous*' said that his organization highlights the limitations of the Congolese mining code by talking to the local press, delivering speeches and performing critical sketches. This kind of work helps local people to understand their legal rights and which new laws are needed to end their exploitation.¹³¹

5.2 THE DANGERS OF IGNORING THE SOCIO-CULTURAL CONTEXT IN WHICH MINING-RELATED ACTIVITIES TAKE PLACE

Although most of the interviewees were pleased with the fact that the three main parties in the debate on mineral resource exploitation in Eastern DRC – the Congolese authorities, private companies and civil society groups – were finally talking about solutions to the problems of conflict minerals and illicit mineral trafficking, there was some resentment about the fact that policy makers

125 Didier de Faily, BEST, interview in Bukavu on 26 May 2010

126 Eric Kajemba mentioned the following cooperatives: COMELU, COPAMIC, COMYABU and the Coopérative des artisans de Luwinji.

127 Erick Kajemba, OGP, interview in Bukavu on 25 May 2010

128 Ezra Mutima Kambale, RACID, interview in Goma on 20 May 2010

129 Balume Anaclet, APRODEPED, interview in Bukavu on 26 May 2010. Strikingly, lawyers working for APRODEPED met with great opposition from customary authorities in the same region. Possibly, this opposition is due to the fact that traditional chiefs consider conflict mediation as a source of revenue.

130 Alphonse Muhindo, Réseau CREF, interview in Goma on 20 May 2010

131 Raoul Kitungano, Justice pour Tous, interview in Bukavu, 22 May 2010

seemed to pay almost no attention to the socio-cultural context in which mining activities take place. A recurrent criticism of policy makers at the national and international level was that the latter seem to care more about the reputation of foreign companies interested in buying Congolese minerals than in the well-being of the people living and working in and around the mines. There was a widespread feeling that it was high time to tackle problems such as the use of physical violence, the establishment of predatory taxation systems, and the creation of illicit trade monopolies by military actors.¹³² In addition to this, it was also felt that policy makers need to do something about other mining related issues such as land rights, forced labour and sexual violence against women, that had only received scant attention.

A key problem that – in the opinion of some of our respondents – deserved to receive more attention is that of access to land. The Bukavu-based NGO ‘*Action pour la Paix et la Concorde*’ (APC) said that the spectacular boom in artisanal mining over the past few years had made the land issue increasingly complicated. In Nyabibwe mine¹³³, for instance, which is situated in Kalehe, various types of unofficial agreements are being concluded between different groups in the area. The APC research shows that policy makers would do well to collect more information about what is happening at the micro-level of society, so that they can improve the efficiency and effectiveness of their interventions.¹³⁴

A second problem that needed more attention – according to some of our informants – is that of forced labour. Saidi Kubuya of the NGO Assodip in Goma said that military commanders of state and non-state armed groups in North Kivu try to increase their mining revenues by taking advantage of people’s familiarity with the system of ‘*salongo*’, the name for compulsory collective labour during the Mobutu era¹³⁵. According to Kubuya, the aforementioned military commanders force miners to work exclusively for them at least one day a week.¹³⁶ Delly Mawazo Sesete of the NGO Credhho in Goma pointed out that, in the territory of Lubero, the rebel group FDLR used to send out labour contractors to villages in the interior with the aim of finding young men who are prepared to work in the mines. Although these youngsters are allowed to keep part of the minerals for themselves, they are forced to relinquish a substantial part of their production to FDLR commanders.¹³⁷ The issue of slave labour in the mines of Eastern DRC has recently been studied through extensive field research by the American organisation Free the Slaves. The organisation found evidence of several forms of modern slavery in the mines, including debt bondage slavery, child soldiering and forced marriages.¹³⁸

A third problem that was mentioned during the interviews is that of sexual violence against women. It is important to emphasize that, when IPIS did their interviews in Goma and Bukavu, there was a serious lack of reliable information on sexual and gender based violence (SGBV) in mining areas controlled by armed groups. As a result of the fact that no systematic monitoring was taking place, it is impossible to tell whether the number of rape victims in these areas is higher than in other parts of the interior.¹³⁹ Still, some of our interviewees maintained that rape is a very serious problem in the

132 Personal communication with Rachel Perks, Pact, 21 June 2010

133 Also Dominic Johnson (Who’s in Charge?, Aug 2010, p. 23) stresses that for example in Nyabibwe there is an overwhelming risk that it might be international led reforms that may very well generate future conflict since there is so much at stake and for the government to have ITRI or other powerful international actors as co-partners means a lot. If international actors have not done enough independent consultation locally in advance they run the risk of becoming involved in the conflict.

134 Sostène Maliyaseme and Emery Mushagalusa, APC, interview in Bukavu on 24 May 2010

135 After a visit to China, where he witnessed how Mao Zedong forced the population to work to promote national development, Mobutu decided to apply the same system in Zaire. He gave orders to show the Chinese propaganda movie ‘*Esprit de Yukung*’ on national television and made provisions for the creation of the Zairian television series ‘*Esprit de Salongo*’, which was meant to illustrate the virtues of *salongo* (source: Katrien Pype (2008), *The making of the Pentecostal melodrama: mimesis, agency and power in Kinshasa’s media world*, K.U.Louvain (unpublished PhD dissertation), pp. 58–60

136 Saidi Kubuya, Assodip, interview in Goma on 21 May 2010

137 Delly Mawazo Sesete, Credhho, interview in Goma on 21 May 2010

138 Free the Slaves, *Slavery in the Democratic Republic of the Congo*, <http://www.freetheslaves.net/Page.aspx?pid=579>, accessed 23 August 2010

139 Personal communication with Rachel Perks, Pact, 21 June 2010

region as a whole, and they suggested that it is certainly one of the issues that make life very difficult for women living close to the mines. Elysee Yohali of the Bukavu-based NGO *Femmes pour la Paix et les Droits Humains* said that rape victims in Eastern DRC are faced with several problems. Not only are they confronted with an indifferent or even hostile reaction from Congolese authorities, they are also afraid of being repudiated by their husbands and of being stigmatized by their communities.¹⁴⁰ For his part, Ezra Mutimba Kambale of the NGO RACID stated that rape victims are also struggling with the fact that it is culturally unacceptable for women to talk about sexuality. To make things worse, there is often a great distance between where the crime is committed and the place where the victim can institute legal proceedings against her aggressor. As a result, many rape victims are unable to cover the cost of travelling to the city and staying in a hotel in order to file a complaint.¹⁴¹

140 Elysee Yohali, *Femmes pour la Paix et les Droits Humains*, interview in Bukavu on 25 May 2010

141 Ezra Mutimba Kambale, RACID, interview in Goma on 20 May 2010

6. RECENT DEVELOPMENTS

Mining in three provinces of Eastern DRC (North Kivu, South Kivu and Maniema) was suddenly banned by President Joseph Kabila on 11th September 2010. He ordered the indefinite suspension during a visit to the mining hub town of Walikale; the mining industry later confirmed it was with immediate effect. The president said he wanted to weed out what he called a "kind of mafia" involved in the mining industry. According to many the ban is difficult to enforce.¹⁴²

Analysts say a clampdown on so called "conflict minerals" will be difficult because government troops are themselves heavily involved in the trade. "Previous attempts at a ban have only increased smuggling," Harrison Mitchell, analyst from Resource Consulting Services, told Reuters. "It's all very well to say they want to get rid of the mafia in the mineral sector, but when the godfather is a powerful figure in Kinshasa it's less easy," he added, referring to what analysts say are indications that senior army officials are heavily involved in the trade. A ban could also increase the likelihood of unrest in the region as tens of thousands of Congolese live off the mining industry.¹⁴³

The iTSCi project focused on pilot mines in South and North Kivu where a ban now seems in place. It appears to ITRI that mining at those sites will no longer be considered legal, so tagging and all associated activities to record production and prices have therefore stopped been by ITRI. A representative of ITRI says: "This all is very unfortunate as we were just getting all the aspects of the scheme in place. We can only hope that there is some long term benefit to stability and the Congolese people, as the situation in the short term is likely to be very difficult indeed."¹⁴⁴

At the time of writing, however, the Minister of Mines in Congo, Martin Kabwelulu, stated in an article by Reuters that the suspension of mining activities would soon be lifted. The minister said that the government would establish a commission to look into mining in the east, after which the ban would be lifted.¹⁴⁵

142 BBC News (11 September 2010), DR Congo bans mining in eastern provinces

143 Reuters AlertNet (13 September 2010), Congo conflict mineral clampdown seen tough to enforce, <http://www.alertnet.org/thenews/newsdesk/LDE68C1E5.htm>

144 DRC mining ban announced by President Kabila: impact in iTSCi project, ITRI press release, 13 September 2010

145 Reuters (21 September 2010), DR Congo to lift eastern mining ban soon: minister, <http://www.miningweekly.com/article/drc-to-lift-eastern-mining-ban-soon-minister-2010-09-21>

7. CONCLUSION AND RECOMMENDATIONS

It is clear that, although civil society groups in Goma and Bukavu welcome policy makers trying to ‘clean up’ the mining business in Eastern DRC, they want to have a stronger voice in the debate and more input into initiatives that are currently taking shape. Most of our informants rejected the idea of an embargo on minerals from Eastern DRC, while they expressed concern about the feasibility of traceability mechanisms, the lack of sensitization and organization of stakeholders at the grassroots level. They also decried the lack of attention to social problems associated with the exploitation of and trade in mineral resources such as land disputes, forced labour and sexual violence. There is also a worry that international initiatives uncritically strengthen the Congolese state in a part of the country where trust in the state is very low due to years of corruption and state violence.

The most important recommendations that emerge from interviews with civil society organisations are:

- Education and capacity building are needed for civil servants who will be involved in tracing and certification projects
- Soldiers and police need to be better paid if they are to no longer pose a threat locally
- Additional support to artisanal miners and local people living around the mining areas is urgently needed
- Support and capacity building for traders and buying houses to help them adapt to new demands
- More focus on land rights, forced labour and sexual violence (in connection to traceability schemes)
- Security needs to be improved on roads between mines and trading centres/buying houses.

There has been relatively limited focus on a ‘bottom up’ approach to conflict minerals issues in the DRC despite the fact that initiatives emphasize improving conditions at mines and on local trade routes. Some industries, governments and NGOs are working on improving local mining and trading, but there is much more that organisations and companies can do in this arena.¹⁴⁶ For example, the two Belgian marketing firms interviewed expressed their interest in getting more involved. According to the Pole Institute, traceability schemes will only work if they are locally owned. So far, much of the dialogue on the issue of ‘conflict minerals’ has been held outside the country and has not really involved local actors.¹⁴⁷ It is also important to note that a whole set of security sector reforms need to be put in place to complement initiatives to break the circle of militarized mines and mining trade. It is also important to develop links between these security sector reforms and recent tracing or certification initiatives.

The recent US legislation has got support from European politicians, and there is certainly potential in the implementation of the legislation (research for setting up an updated conflict map, considering support to build a road to the mine at Bisie, etc.). However, there is a huge risk that the law will mean companies avoid sourcing from the DRC and neighbouring countries, as trading with them is seen as too risky and complicated. This will not help the stability of Eastern DRC, rather the contrary. The makeITfair project recommends linking the implementation of the law to capacity building on the

¹⁴⁶ BSR (May 2010), Conflict Minerals and the Democratic Republic of Congo, p. 24

¹⁴⁷ Dominic Johnson, Pole Institute, e-mail to Swedwatch 7 June 2010; Karen Hayes, Pact, e-mail to Swedwatch 20 August 2010

ground, and not setting the bar too high at the beginning. According to many sources, Congolese stakeholders are upset that there is a risk of a mineral embargo about which they have not been consulted, and they also worry that there is an unrealistic time frame in which to meet the requirements.

If the iTSCi scheme continues to work with Bisie and Nyabibwe mines it is of the utmost importance that the initiators listen to local people during implementation and promote improvements for communities around the mines as well. The scheme should not only concentrate on tracing and tracking the minerals. ITRI's task will not be easy though, since both these mines remain mired in conflict and human rights abuses. In addition, ITRI has so far not developed standards, which makes it difficult to judge how well their scheme will work. Most initiatives have dual objectives: to be able to secure sustainably sourced minerals including non-conflict minerals; and to improve the working conditions of miners while promoting sustainable livelihoods for local populations and environmental care. All these issues must be addressed and the central question of "what are rebel controlled, conflict minerals?" needs collective reflection.¹⁴⁸ The makeITfair project stresses the need to include local actors in this work during the whole process.

In 2008 the makeITfair project developed a list of principles regarding the extractives phase of the supply chain of consumer electronics. This list identifies a number of social, environmental and labour issues that require immediate attention, offers a number of sustainable solutions, and suggests action that can be taken by electronics companies. In connection with this report we revised this list (see Annex 2). The makeITfair project would like to stress that it is not enough for electronics companies to track their minerals; rather it should be seen as a first step. Also, getting written assurance from suppliers that they do not source minerals from the DRC may lead to a de facto embargo, which is something we do not recommend. All actors present in this area, directly or indirectly, should ensure that they are aware of how their presence in the region affects the conflict. Companies need to implement a supply chain policy for minerals from conflict areas, identify and respond to risks in the chain, conduct audits at smelters, and disclose their findings. Companies need to take measures to minimize the negative impact of their presence or their sourcing in the region.

In addition, companies using the excuse that they have too many suppliers to check is not good enough. We also expect the electronics industry and individual companies to do their utmost in supporting traceability, certification and capacity building projects on the ground in Eastern DRC. Having said that, the makeITfair project also wants to emphasize that establishing too strict standards without flexibility for step-by-step improvements will most probably not help the situation in Eastern DRC. We urge decision makers in politics and business to ensure they involve local stakeholders in drawing up standards, so these are reasonable and constructive for the task in hand, ending the current violent conflict and building sustainable development in the region. Local stakeholders should also be included in implementation and monitoring by taking into account their views and concerns.

The organizations within the makeITfair project offer to play a role in connecting end users with local stakeholders and civil society in production countries.

¹⁴⁸ See MakeITfair publications on platinum mined in South Africa, copper and cobalt mined in DRC and Zambia, and tin mined in Indonesia. All reports are available at <http://makeitfair.org/the-facts/reports>

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ANNEX 1

REPRESENTATIVES OF RELEVANT NON-GOVERNMENTAL ORGANIZATIONS (NGOS) IN GOMA AND BUKAVU DEALING WITH ISSUES RELATED TO NATURAL RESOURCE EXPLOITATION, INTERVIEWED BY IPIS.

Name of the interviewee	Name of the organization	Locality	Field of expertise
1. Alphonse Muhindo	Réseau CREF	Goma	Environmental issues, sustainable development, natural resource management
2. Désiré Segahungu	FEC Nord Kivu	Goma	Association of economic operators
3. Cyprien Birhingingwa Mugabo	Cenadep	Bukavu	Community development, human rights, civil education, environmental issues, media & communication
4. Christian Alissi	Groupe Jérémie	Bukavu	Human rights, civil education, media & communication, peace & democracy, female emancipation, youth
5. Descartes Mponge	ERND	Bukavu	Research on the exploitation of natural resources
6. Aloys Tegera	Pole Institute	Goma	Research on peace & development, natural resource exploitation
7. Delly Mawazo Sesete	Creddho	Goma	Environmental issues, democracy, human rights
8. Saidi Kubuya	Assodip	Goma	Female emancipation, rural development, human rights
9. Jean-Jacques Duga	SAESSCAM	Bukavu	Public service (mining sector)
10. Adolphe Saninga Lubango	Division des Mines	Territory of Shabunda (South Kivu)	Public service (mining sector)
11. Anny Mbombo	ERND	Bukavu	Research on the exploitation of natural resources
12. Jean-Pierre Buledi	CEDAC	Bukavu	Civil education, transparency, democracy
13. Manasse Shubazi Kabambe	BEGEM	Bukavu	Traceability of minerals
14. Didier de Faily	BEST	Bukavu	Research on mining issues
15. Eric Kajemba	OGP	Bukavu	Governance, peace, natural resource management

Name of the interviewee	Name of the organization	Locality	Field of expertise
16. Ezra Mutimba Kambale	RACID	Goma	Human rights
17. Balume Anaclet	APRODEPED	Bukavu	Human rights
18. Raoul Kitungano	Justice pour Tous	Bukavu	Human Rights, civil education, democracy
19. Deo Buuma	Action pour la Paix et la Concorde (APC)	Bukavu	Development, conflict transformation, land issues
20. Elysée Yohali	Femmes pour la Paix et les Droits Humains	Bukavu	Female emancipation, human rights
21. Geneviève Makito	ALEFEM, Association de Lutte contre l'Exploitation des Femmes et Enfants dans les Mines.	Bukavu	ALEFEM defends the interests of women and children working in the mines.

ANNEX 2:

MAKEITFAIR'S LIST OF PRINCIPLES ON THE EXTRACTIVE PHASE OF THE ELECTRONICS SUPPLY CHAIN¹⁴⁹ (FIRST VERSION FEBRUARY 2008, REVISED OCTOBER 2010)

ELECTRONICS COMPANIES SHOULD:

1. Recognize their responsibility to extend their supply chain management to include sourcing and mining of metals and primary metal processing, as the industry as a whole consumes significant quantities of various metals. Extend due diligence processes to also cover this part of the supply chain. Implementation of internationally accepted environmental, social and labour standards for achieving best practice in CR throughout the supply chain is key.

2. Make efforts to increase the traceability of metals. To do so, companies should map their supply chain down to the extractives phase and set up a system to periodically update the supply chain for metals used. It is especially advised to identify the smelters, as they are key actors in supply networks in this aspect, and to require them to make demands on the mining companies and traders they are sourcing from. This is in order to verify that the minerals they buy conform to national laws and international standards for human rights and the environment (see point 3).

3. Set up requirements for the mining of metals used, based on the following basic standards relevant in extractive industries. These requirements should be developed in collaboration with all relevant stakeholders. In particular, local communities and employees at mining sites should be properly involved;

- Obtain free, prior and informed consent of affected communities.
- Ensure that projects do not force communities off their lands.
- Extract minerals without the involvement of armed groups.
- Only allow security providers who have been trained in and respect human rights.
- Refrain from dumping mine waste into the ocean, rivers, lakes or streams.
- Ensure that projects do not contaminate water, soil, or air with toxic chemicals.
- Cover all costs of closing down and cleaning up mine sites. This should include old sites not properly closed in the past.
- Fully disclose information about the social and environmental impact of projects which is independently verified.
- Fully disclose all money flows to governments.
- Adhere to all relevant international labour standards.
- Take into account and minimize the environmental and social impact of energy sources powering mining and smelting operations.

4. Apply due diligence with regards to conflict areas from which minerals are sourced. Companies should adhere to relevant guidelines.¹⁵⁰ A due diligence process for conflict aspects would have to include tracing minerals down to the mine, and setting up systems to detect whether purchasing is done from mines controlled by armed groups (including taxation by armed group along the trading routes).

¹⁴⁹ These standards are partially based on the principles of other campaigns, such as the No Dirty Gold Campaign, the OECDs draft guidance for responsible supply chain management of minerals from conflict-affected and high-risk areas and the GoodElectronics network.

¹⁵⁰ Such as the OECDs draft guidance for responsible supply chain management of minerals from conflict-affected and high-risk areas (DATE) and guidance presented by the UN Global Compact and PRI (http://www.unglobalcompact.org/docs/issues_doc/Peace_and_Business/Guidance_RB.pdf).

For end-users it means monitoring the supply chain down to the smelters, and implementing due diligence work to ensure that smelters have control down to the mining site. If the risk of purchasing from mines “controlled” by armed groups is detected, the company should have a strategy to respond. This strategy should correspond with the nature and level of involvement of armed groups, the human rights abuses involved etc, where some involvement should lead to direct disengagement. However, most measures should include engaging proactively with local actors and working towards continuous improvements, rather than applying a boycott as a first step. Ultimately, involvement of either rebel groups or state army actors is unacceptable. The purchase of minerals should continuously shift to mining sites which respect the basic standards set out in paragraph 3.

5. Develop action plans to tackle the issues in the extractives phase of their supply chains. Such plans should include;

- Risk assessments, which are independently verified, to identify social, environmental and labour issues.
- A strategy to use their position and their purchasing power within the supply chain to engage companies with more direct ties to mining companies to adhere to the principles and standards referred to above.
- A strategy to join forces with other players in the electronics and mining sector, as well as in other end user sectors, to promote widespread adherence to best practice and the principles referred to above.
- The inclusion of activities in mining areas within the company’s broader CR policies, such as capacity building programmes for local community groups or civil society organisations.
- The issuing of a public statement of concern regarding both general mining issues and specific cases.
- A strategy to optimize the use of sustainable recycled materials as a substitution for wasteful production.
- Measures to ensure that artisanal small scale miners are not disenfranchised or excluded from sourcing.
- Measures to stop their consumption of metals sourced from lands where mining lacks community consent and reduce consumption of metals originating from environmentally sensitive areas.
- Strategies to analyze lessons learned in one mining area, and apply these in other areas.
- Adopt the principle of applying criteria to the mother company and not just individual mines or subsidiaries.

6. Cost-sharing. Companies should make sure that all parties in the supply chain can implement the requested routines and improvements. If needed, they should support suppliers to invest in improved conditions and routines for monitoring, and for example share audit costs or provide other financial incentives.

7. Companies should report annually on their supply chain responsibility and disclose findings and actions taken as a response to the findings. In the reporting it should be possible to follow up how conditions improve.

8. Grievance mechanisms. Companies, in cooperation with other companies and stakeholders, should ensure that independent grievance mechanisms are in place down through the supply chain. There should be systems to take into account complaints from local populations, individuals concerned, NGOs, trade unions or employees.



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