

Down to earth

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in artisanal and small-scale mining in DRC



From Paris to Katanga

Conflict mineral policy and the reform of artisanal mining
governance in the Democratic Republic of the Congo

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2016

RESEARCH BRIEF #13 (NOVEMBER 2016)

Wageningen University and Research

ISDR-BUKAVU Institut Supérieur de Développement Rural

Netherlands Organisation for Scientific Research

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An in-depth understanding of how international mining reform initiatives for transparency affect governance, local institutions, livelihoods and the roles of women in artisanal mining in DRC.

From Paris to Katanga

Conflict mineral policy and the reform of artisanal mining governance in the Democratic Republic of the Congo.¹

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¹ This research was funded by the WOTRO Science for Global Development programme of the Netherlands Organisation for Scientific Research.

At the end of the first decade of the 2000s, large-scale awareness of the link between artisanal mining and the continuation of the armed conflict in eastern Democratic Republic of Congo (DRC) began to develop. Armed groups were said to control mine sites and mineral transportation routes. These groups used the revenue from the sale of 'conflict minerals' to finance their military operations, fuelling the continuation of conflict and human rights abuses in eastern DRC. In an attempt to break the link between natural resources and conflict, a large variety of conflict mineral initiatives began to emerge around 2010. Many of these have been implemented over the last six years. Examples of these initiatives include the Dodd-Frank Act, which obliges US stock market-listed electronics manufacturers to verify the origin of the minerals used in their production processes; industry-led traceability schemes; and the Paris-formulated voluntary due diligence guidance on responsible mineral sourcing from the Organisation for Economic Co-operation and Development.

How effective is conflict mineral policy?

After six years of implementation, we ask whether conflict mineral policy has been successful and whether it has achieved the results sought by policy makers.

Different research institutes and international organisations have attempted to measure the impact of conflict mineral policy. For example, in 2014, the Enough Project, a US-based lobby and advocacy NGO, claimed that conflict mineral interventions had been successful. They pointed to a significant decrease in the militarisation of cassiterite and coltan mines in North and South Kivu – from almost 100% in 2010 to 33% in 2014 – since the implementation of these interventions (Enough Project 2014). However, several researchers have tempered this claim of success. They have pointed to a move of militarisation away from cassiterite and tin mines towards the gold sector (OECD 2015); the trend of indirect armed involvement, where armed group commanders use family members as intermediaries to manage their business interests in and around the mines (Cuvelier et. al 2014); and the fact that a reduction of presence of armed groups could also have been triggered by more general political and military developments, such as the defeat of the rebel group M23 (Vogel and Raeymaekers 2016). Claims about the success or effectiveness of conflict mineral policy remain disputed.

Other existing work has critiqued conflict mineral policy for not having yet delivered the anticipated results and for having caused unintended – mainly negative – consequences. Many have highlighted the devastating effect of the 2010–11 mining ban on artisanal mining (Geenen 2012; Seay 2012). The ban heavily impacted the livelihoods of people who directly or indirectly depend on the mining sector when President Kabila decided to temporarily close down the artisanal mining sector in Maniema and in North and South Kivu. Some scholars have noted the slow pace at which the policy is implemented (Cuvelier et. al 2014; Diemel and Cuvelier 2015; Vogel and Raeymaekers 2016): After six years of interventions, only a very small fraction of Congolese cassiterite and coltan sites have been incorporated into traceability and certification schemes.

The social life of conflict mineral policy

It makes sense for policy makers to want to know about the unforeseen consequences of their policy, in addition to measuring its effectiveness. However, this research brief argues that it provides for a more interesting analysis of conflict mineral policy to go beyond the terminology of effectiveness and unintended consequences. In the end, we do not wish to know only *whether* conflict mineral policy has achieved its objectives; we also wish to understand *why* it has – or has not – done so. In explaining conflict mineral policy outcomes, I follow the sociology of development literature (Acre 1993; Colebatch 1998; Hilhorst 2003; Long 2001; Mosse 2004) to draw attention to the ‘social life of policy’. Although social change regularly results from external intervention, this intervention is certainly not the only factor causing it. Rather, it is the interplay that takes place between external and internal actors when policy enters local dynamics that ultimately determines the outcome of an intervention (Long 2001). Therefore, in explaining the outcomes of conflict mineral policy, this brief aims to analyse the continuous process of negotiation between miners, *comptoirs*², government officials and policy implementers, who, together, translate conflict mineral policy into DRC’s socioeconomic and political realities.

This research is part of the ‘Down to earth: Governance dynamics and social change in artisanal and small-scale mining in DRC’³ research programme, which aims to understand the negotiated outcomes of the implementation of conflict mineral policy for three important aspects of the Katangese artisanal mining sector: gender, livelihoods and governance. This brief sheds light on how the negotiation of conflict mineral policy has affected the governance of the artisanal mining sector in DRC, and specifically on how it has transformed the (relative) position of the state in resource governance.⁴

The research draws upon 17 months of qualitative fieldwork in the artisanal mining territory of Bukama (central Katanga), the administrative mining hubs of Lubumbashi and Kalemie, and Kinshasa. As the negotiation of conflict mineral policy takes place on various levels and in different locations, multiple research settings were selected along the mineral supply chain. The research explored the start of the chain, where mineral exploitation takes place on cassiterite and coltan mine sites in Bukama; the mineral-trading *comptoirs* in Bukama’s mining hub of Luena; and the mineral export depots in the exporting cities of Lubumbashi and Kalemie.

International demand for artisanal mining governance reform

The analysis of the negotiation process through which conflict mineral policy is translated into the Katangese realities starts with understanding this policy’s initial objectives and approach. In brief, conflict mineral policy takes an economic approach to resolve a peacebuilding problem. It attempts to stop human rights violations and armed conflict by reforming the artisanal mining sector – or, more specifically, artisanal mining governance. The logic driving these interventions builds on the idea that formalising the mineral trade and bringing mining administration and mine site governance (back) under state control will increase oversight, governability and transparency in the mining sector. It is assumed that this increased oversight and transparency will discourage armed groups from controlling mine sites and benefitting financially from the mineral trade. To

2 Large-scale mineral traders

3 www.wur.nl/en/Expertise-Services/Chair-groups/Social-Sciences/Humanitarian-Aid-and-Reconstruction/Research-1/Down-to-earth.-Governance-dynamics-and-social-change-in-artisanal-and-smallscale-mining-in-DRC.htm

4 I follow Colebatch’s (2009) definition of governance as ‘the collaborative accomplishment of order through the process of negotiation’.

achieve such reform in mining governance, the international community formulated the following requirements, around 2010⁵ :

1. Urgent intervention is needed, considering the gravity of the problem (i.e. the vast number of human rights abuses and the protracted instability in the eastern parts of DRC);
2. Mineral supply chains should be clearly defined and grouped into larger compartments to facilitate oversight over mineral extraction and trade, including clearly demarcated mine sites and identifiable supply chain actors;
3. Mineral trade and exploitation should be moved under the control and oversight of the Congolese state mining authorities⁶, who will be responsible for the administration of extracted and traded minerals as well as the inspection and validation of the mine sites;
4. Private actors – as much as public actors – are responsible for making sure not to contribute to human rights abuses and conflict financing. They must verify the origins of their sourced minerals, even if that means taking an active role in the set-up and implementation of conflict mineral initiatives.

Negotiating the transformation of natural resource governance

The following section discusses the main findings of this study.

The reforms meant to address conflict in mining areas are, ironically, mostly implemented in the areas least affected by conflict.

The sense of urgency and the top-down, mandatory implementation of conflict mineral policy in the DRC resulted in a rapidly changing mineral trade landscape from 2010 to 2011 and in substantial differences in policy implementation across the country's provinces. Whereas all 43⁷ mining areas in Katanga were included in the iTSCi⁸ traceability scheme within a year, North and South Kivu together only managed to include 3 mining areas in more than three years (Diemel and Cuvelier 2015). The rapid roll-out of conflict mineral policy in Katanga was possible because of the close collaboration, serious commitment and financial investment of three important stakeholders: Katanga's biggest large-scale mineral trader, MMR⁹; the Congolese state mining authorities; and the tin industry-led traceability scheme, iTSCi, an important example of the public-private collaboration longed for by the international community. However, this collaboration seems to have turned out differently from what was anticipated; in addition to the creation of shared responsibilities, this public-private collaboration has created a network-like construction that has significantly benefitted MMR, iTSCi and the Katangese government, while excluding other mineral traders and providers of traceability schemes.

5 This summary of the international community's demands for reform of the artisanal mining sector is based on a content analysis by the author of this policy brief of the following five core policy documents that form the backbone of conflict mineral intervention and continue to guide much thinking in the conflict mineral debate:

- UN Group of Experts (November 2010) Report on the DRC (UN SC S/2010/596)
- US Congress (2010) Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act
- OECD (2011) Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas
- ICGLR (2006) Protocol against the Illegal Exploitation of Natural Resources
- ICGLR (2011) Regional Certification Mechanism Manual

6 Such as SAESSCAM (*Service d'Assistance et d'Encadrement du Small Scale Mining*), a Congolese mining service responsible for supporting artisanal miners and for the development of small-scale mining, and Division des Mines, a Congolese mining administration service documenting mineral production, trade and export.

7 iTSCi listed 43 mine areas in Katanga in March 2015, which included just over 200 separate mine sites.

8 iTSCi (the ITRI Tin Supply Chain Initiative) is a joint industry-led traceability scheme between ITRI (International Tin Research Institute, association for tin producers) and TIC (Tantalum-Niobium International Study Centre, an association representing the interests of the tantalum industry), aiming to assist companies to source conflict-free minerals by providing a means to determine the origin of minerals and track them along the supply chain.

9 The Indian-Congolese mineral exporter Mining Mineral Resources

Reforms have led to an extended state presence in mining areas. This enlarged presence of state agents in and around the mine sites weighs heavily on miners and small-scale traders, as they now face increased informal taxation and other informal practices.

The Katangese state mining authorities have responded to the international requirement for increased oversight by extending its offices in mining areas and increasing the number of civil servants permanently based on mine sites. Although this extended presence of state authorities in mining areas has certainly improved the mineral trade administration, it also seems to have impacted mining communities in a negative way. These communities are now faced with increased (informal) taxation obligations and more *tracasseries*¹⁰ organised by under-paid or, in many cases, not-at-all-paid local civil servants. Operating in a country without a well-functioning state apparatus, *comptoirs* such as MMR have also started to take on governance tasks. This Indian company covers local civil servants' salaries¹¹ in Bukama, for example. They also assist mining communities by investing in poverty alleviation and provide technical assistance to miners on their concessions. With private actors such as MMR obliged to take up governance tasks, both mining communities and civil servants now lean heavily on them for financial support and technical assistance. I argue that this dependency on private actors distorts the emergence of a 'natural' legitimate relationship between communities and state authorities and that it allows for national state authorities in Lubumbashi and Kinshasa to loosen their responsibilities even further vis-à-vis their local offices.



A SAESSCAM agent tagging a mineral bag.
(Kyenze mine camp, February 2015)



Office of Territory Administrator.
(Bukama city, September 2014)

¹⁰ *Tracasseries* is a term used to describe mismanagement, extortion, illegal taxation and unjust actions taken by authorities.

¹¹ *Police des Mines*, SAESSCAM and *Division des Mines* agents working in MMR depots or on MMR mine sites

Increased local state presence is not matched by a similarly large involvement of the central state. This uneven involvement of different levels of the state results in an unequal distribution of fiscal responsibilities and revenues and in the complexification of mining governance.

The need for increased oversight over the mineral trade has led to an extension of local offices around mining areas. However, although local offices do base their activities on national and provincial decrees and report monthly on mineral extraction and trade volumes to the provincial offices, the extension of local state authorities is not financially supported by the higher levels. Local offices have to pay additional agents without receiving a budget from the national or provincial level. This is true although most revenue from locally levied taxes on mineral trade and production are sent to the provincial and national administrative centres of Kalemie, Lubumbashi and Kinshasa. This 'financial autonomy' of local offices leaves them with little choice but to create additional, non- or semi-legal taxes, and under-paid mining authority agents exploit economic side-activities that regularly result in conflicts of interest or extortion. The independent functioning of local offices weighs heavily on mining communities, but it also leads to the complexification of mining governance and the co-existence of centralised and devolved structures of governance and taxation.

While the mineral supply chain has become more transparent, it remains unclear who profits locally from changing patterns of access to mineral exploitation and trade.

International demand for clearly defined mineral supply chains has made *comptoirs* settle closer to mining areas. It has also shortened supply chains through the grouping of miners and small-scale traders into cooperatives. This redefinition of the mineral supply chain has definitely encouraged due diligence and rendered the mineral trade more transparent. However, the demand for clarity has seriously reduced the number of small-scale traders, putting the mineral trade in the hands of a few *comptoirs* and business-oriented and politically (and in some cases militarily) affiliated cooperatives. Free mineral trade and space for negotiating mineral prices are now restricted, making it difficult for miners to profit optimally from their work.



Artisanal miners next to their mine pits in Bulombo, Bukama Territoire (November 2014).

The international demand for clearly defined mineral supply chains has led to a redefinition and re-appropriation of mining concessions and contracts.

The redefinition of mining concessions and contracts resulting from the international demand for clarity in mineral supply chains has led not only to the reshuffling of access to mineral trade and extraction, but also to the contestation of authority. Local and provincial public mining authorities, such as SAESSCAM and the *Division des Mines*, seem to have consolidated and extended their authority through the renegotiation of access provision, at the expense of the centrally run Mining Cadastre. I argue that, although the mineral supply chain might have become more transparent, the local and provincial renegotiation of access arrangements and the lack of both public disclosure and central registration of these arrangements seriously obscures information about who benefits from which mining area or mineral trade in Katanga.

Conclusions

The negotiation of conflict mineral policy into Congolese realities has certainly left its mark on artisanal mining governance and the state's role therein. In short, this has resulted in the complexification of mining governance, where the creation of additional governance layers or the extension of existing ones has brought about the co-existence of centralised and decentralised systems of governance and taxation. More specifically, this study's conclusions can be summarized as follows:

1. Extended state presence

The extended state involvement in the artisanal mining sector stands out immediately. Very much in line with the international push for formalisation, the number of state officials in the field has increased, and state mining offices have been opened in close proximity to mine sites. This has facilitated the verification of the origins of minerals and the administration of mineral exploitation, and trade in Katanga has become more reliable. In this sense, the Congolese state has come to play a more present role in artisanal mining governance.

2. Improved governance practices?

This research also demonstrates that extended state involvement does not necessarily mean that governance practices have improved. As a result of this state extension, mining communities are being increasingly confronted with local mining taxes as well as extortion practices by under-paid state officials.

3. Increased state control?

One would expect state oversight to increase as a result of this extended state presence. But that does not seem to be the case. I argue that, although the supply chain may have become more transparent, it has rendered the governance of the artisanal mining sector more obscure. This research shows that the Congolese state is not easily represented as a unified actor, even though the international community often approaches it that way. Different levels of the state function rather independently from each other. The provincial and national levels seem to avoid fulfilling their financial responsibilities, and local-level offices are left to cover the remuneration of their agents while also being obliged to transfer most local tax revenues to the provincial and national administrative centres. This independent functioning of different state levels has failed to promote a more equal distribution of mining revenues and to benefit the Congolese population in its totality. The increased presence of the state at the local level has led state authorities traditionally more involved in the day-to-day practical governance of the mining sector – such as SAESSCAM and *Division des Mines* – to become involved in additional governance tasks concerning the negotiation of access provision. As access

provision is a governance task officially assigned to the provincial and national offices of the Mining Cadastre, increased state presence on the ground has resulted in the contestation of authority among these state mining authorities.

4. Public-private collaboration

In addition to the state, the private sector has also extended its involvement in governance over the last six years. Although this links fully with the idea that curbing the trade of conflict minerals should be a shared responsibility, this public-private collaboration seems to work out differently from what was anticipated. First, it has resulted in network-like structures economically benefitting large scale private actors and high government officials. Second, it allows for national state authorities in Lubumbashi and Kinshasa to further loosen their responsibilities vis-à-vis their local offices as well as the mining communities.

Since 2013, **Jose Diemel** has conducted fieldwork throughout the DRC, of which the larger part around mine sites and mineral depots in the former Katanga province. Fascinated by the interaction between transnational policies and local level impact she started her PhD research project on artisanal 3T mining reform in 2012. Still based in Lubumbashi, together with her husband and 1 year-old son, she continues to work in the mining sector. However, she made a switch away from the artisanal towards the industrial copper/ cobalt mining sector. Where she works on sustainable mining, CSR projects and engagement with communities.

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