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Viewpoint

Fighting windmills in Eastern Congo? The ambiguous impact of the 'conflict minerals' movement

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ABSTRACT

The artisanal and small-scale mining (ASM) sector in the Eastern Democratic Republic of the Congo (DRC) is currently undergoing rapid reform of its governance structure as a result of multiple national, regional and international policies and initiatives designed to sever the direct link between minerals and conflict in the region. We briefly review the theoretical context behind and major policies outcomes of this reform process, and offer an initial assessment of its operationalization. We conclude that the 'conflict minerals' approach is at a critical juncture, caught between the need to deliver a reliable and viable response and the reality of delivering new modes of disarticulation and dispossession. To contribute to the former scenario, recommendations for the focus of future scholarship are provided.

1. Introduction[1]

The artisanal and small-scale mining (ASM) sector in the Eastern Democratic Republic of the Congo (DRC) is currently undergoing rapid reform of its governance structure as a result of multiple national, regional and international policies and initiatives designed to sever the direct link between minerals and conflict in the region. These interventions enter into a complex cohabitation in a landscape marked by legal pluralism and multiple conflict dynamics that have shaped the region's subsequent wars since 1996 (Vlassenroot and Raeymaekers, 2004; Stearns, 2010).

The ASM sector is one of the most important forms of employment in the Eastern DRC, with approximately 800,000 miners (D'sousa, 2007) and an estimated eight to 10 million people across the country directly or indirectly dependent on its activities for their livelihood (see for instance World Bank, 2008, Pact, 2010). Hence, the impact of this change on local communities and the developmental trajectory of the region has been and will continue to be profound.[2] In the remainder of this article, we briefly review the theoretical context behind and major policy outcomes of the current reform process, before offering an initial assessment of its operationalization, drawing on empirical evidence and observations from qualitative fieldwork conducted by both authors in North and South Kivu Provinces of the Eastern DRC between 2012 and 2015.[3]

2. Context

In an earlier issue of this journal, fellow researchers argued that over the past two decades "*growing concerns about the role of natural resources in conflict have* [. . .] *encouraged policymakers to*

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[1] The authors would like to dedicate this commentary piece to the memory of Reverend Didier de Failly who passed away in June 2015. This article is partly based on an op-ed for the Washington Post at http://www.washingtonpost.com/blogs/monkey-cage/wp/2014/09/10/in-eastern-congo-economic-colonialism-in-the-guise-of-ethical-consumption/. For their equal share of commitment and research, both authors should be considered as first authors of this article. Ben Radley is a PhD candidate at the International Institute of Social Studies at The Hague (radley@iss.nl), Christoph Vogel is a PhD candidate at the Political Geography Unit at University of Zurich (chvogel@geo.uzh.ch).

[2] See, for example, Seay (2012) who drew an estimate from Congolese civil society organizations that up to two million people were directly or indirectly affected by 'conflict minerals' policies (the presidential mining ban, followed by the enactment of Dodd–Frank Section 1502, in 2010).

[3] Ben Radley has carried out fieldwork in North and South Kivu in February–October 2012, February–March 2013, June–July 2013, November–December 2013, and August 2014; Christoph Vogel in January–May 2013, January–February 2014, May–August 2014, and January–February 2015.

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design new frameworks of intervention, aimed at cutting the supposed links between armed groups and resources and at promoting transparent models of resource governance" (Cuvelier et al., 2014a: p. 341). In the DRC, these 'growing concerns' can be traced back to 2001, when a UN Panel of Experts on the Illegal Exploitation of Natural Resources in the DRC submitted its first report to the Security Council, recommending an immediate embargo on the trade in minerals from the Eastern DRC due to their systematic exploitation by armed groups as a means to finance their activities (United Nations Security Council, 2001).

However, "*these interventions often tend to rely on unsupported assumptions regarding how natural resources are linked to the motivations of combatants and the dynamics of conflict, and rarely consider the populations in conflict-affected regions, who play an integral role in these dynamics*" (Cuvelier et al., 2014a: p. 341). The Eastern DRC is no exception, and the inadequacy of these assumptions in providing causal explanations for conflict in the region (and appropriate solutions) have been well documented elsewhere (Geenen and Radley, 2014; Stearns, 2014; Cuvelier et al., 2014a; Johnson, 2013; Cuvelier et al., 2013; Korf, 2006; Nathan, 2005): "*A number of studies have highlighted the fact that NRM* [Natural Resource Management] *interventions by themselves cannot be effective conflict-resolution tools unless they are integrated and aligned with SSR* [Security Sector Reform] *initiatives*" (Garrett and Piccinni, 2012: p. 7). Nevertheless, the mono-dimensional struggle against so-called 'conflict minerals' has become an integral part of the DRC's dominant narrative today, spanning policies and practical engagement in the sector (Autesserre, 2012) and reproducing quasi-'Orientalist' mind-sets that imagine Congolese as either barbaric and greedy or disenfranchised and helpless (see Said, 1979 for similar discursive constructions).

Arguably the most significant policy outcome of this narrative to date, Section 1502 of the Dodd–Frank Act, was passed by American Congress and signed into law by President Obama in July 2010. It requires companies registered on the US stock market to report on an annual basis whether their minerals have been sourced from the Eastern DRC or neighboring countries, and if so, whether or not they are financing conflict. More recently, on 5 March 2014, the European Union introduced a voluntary conflict minerals regulation scheme for all member states, and the UN and OECD have developed due diligence guidelines on sourcing natural resources in high-risk areas such as the Eastern DRC (Spittaels et al., 2014). In February 2012, the Congolese Government ratified the OECD guidelines into national law.

This recent momentum at the level of policy has had a significant impact on the ground, where the problem has been understood as a technical matter requiring a technical solution (due to the ahistorical and apolitical analysis of underlying theories), to be found in the certification and formalisation of the Eastern DRC's entire mineral production and trade process (Geenen, 2012). Crucially, practical initiatives developed in response to the policy assume that state weakness in the Eastern DRC is associated with the absence of governance, contrary to increasing recognition of processes of negotiation of authority and governance between state and non-state actors (Radley and Rothenberg, 2014; Hagmann and Péclard, 2011; Raeymaekers et al., 2008). In such configurations, multiple political cultures and regulatory logics compete and coexist against (but ultimately dependent upon) the idea of Western statehood, a phenomenon referred to by De Sousa Santos as the 'heterogeneous state' (Raeymaekers, 2009: p. 579). Thus, the imposition of 'neutral' technical solutions onto an assumed 'terra nullius' has, rather than solving the problems it seeks to address, led to new forms of struggle, subversion, and co-optation as part of the region's "*constant mediation between global capitalism and local forms of governance*" (Raeymaekers, 2009: p. 583).

3. General effects and problems

More than four years after the signing of the Dodd–Frank Act, only a small fraction of the hundreds of mine sites in the Eastern DRC have been reached by the practical measures required to conform to Dodd–Frank legislation, OECD guidelines, and regional policies, such as supply chain traceability or mineral export certification.

In the Kivu provinces, as of 2014 only four areas (Nyabibwe, Rubaya, Lemera, and Nzibira)[4] have been introduced into traceability schemes through iTSCi, the bagging-and-tagging system put in place by the the International Tin Research Institute (ITRI) – the body of the international tin industry –[5] allowing for legal trade in tin, tantalum, and tungsten (3T) minerals. While they include around 40 mining sites, the overwhelming majority (over 900 sites in South Kivu alone) continue to await traceability or certification systems that would allow them to regain legal access to global markets.[6]

As a result, a large part of the local mining economy remains beyond the pale, forced into either illegality or collapse as certain international buyers have responded to the legislation by going 'Congo-free'.[7] This situation has in turn sustained a de facto embargo on mineral trade in the Kivu region,[8] negatively affecting the vast majority of Congolese mining communities. Large numbers of Congolese miners and those indirectly dependent on mining revenue (such as restaurant owners and local market sellers) lost their jobs or businesses or had their incomes significantly reduced, with some (re-) joining armed groups as a way to earn a living in the absence of alternative employment opportunities.[9]

At the same time a recent United Nations Group of Experts report found that the region's black market in minerals has been strengthened (United Nations Security Council, 2014), playing into the hands of the very mafia and rebel networks the movement is intended to starve of mineral revenue in the first place while enforcing lower mineral prices on miners who have no-one else left to sell to. According to an observer, "*that is the major, principle conclusion, the principle consequence of Dodd–Frank is that it boosted smuggling, absolutely*".[10] An increased number of related arrests by Congolese authorities in mid-2014 confirm this increased smuggling, indicating an even higher amount of undetected cases

[4] The respective provincial governments plan to launch traceability for 10–20 other mining sites in late 2014 and early 2015. In Maniema and Katanga provinces, a certain number of sites have been introduced to traceability, as well as in Rwanda and Burundi.

[5] See https://www.itri.co.uk/index.php?option=com_zoo&view=frontpage&Itemid=60.

[6] In an inversion of the legal principle of 'in-dubio-pro-reo', Section 1502 of the Dodd–Frank Act has judged all mine sites 'guilty' until proven 'innocent', regardless or not of whether they are or have recently been controlled by or financing armed groups. Mining in Maniema Province, for example, is known to have been free from armed group interference for several years.

[7] See Obama's Law interview with Matthias Wachter at http://www.obamaslaw.com/the-experts/matthias-wachter/.

[8] According to official government export statistics for South Kivu, for example, the value of cassiterite exports fell from 37,227,138 USD in 2009 to 9,218,850 USD in 2011. During the same time period, the value of coltan exports dropped from 2,646,333 USD to 233,916 USD. The impact was likely more severe for unofficial exports, which make up the majority of mineral trade in the region.

[9] Several independent sources interviewed in Shabunda made a link between the de facto embargo and the strengthening of armed groups in the region, and in particular the Raia Mutomboki. One unit of the Raia Mutomboki was also interviewed, among whom several members confirmed that they had left the mining sector for the armed group following the events of 2010 and 2011.

[10] From an interview with an artisanal mining expert in South Kivu, conducted in February 2013.