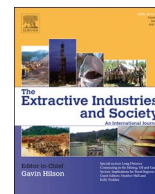




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Original article

“Referees become players”: Accessing coltan mines in the Eastern Democratic Republic of Congo

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ABSTRACT

This article offers ethnographic insights into how reforms of artisanal mining have triggered conflicts regarding property rights and access to minerals (coltan),¹ in eastern Democratic Republic of Congo (DRC). The study was inspired by the literature on access control and elite capture. Based on fieldwork undertaken in 2013 and 2014 at the Kisengo and Kahendwa mining sites (Nyunzu territory, northern Katanga), the study found that, although ongoing reforms aimed to sever the supposed linkages between the mining business and violent conflicts, these reforms brought in new types of conflicts, labelled here as ‘reform conflicts’. These conflicts result from the reconfiguring of power relations in the Katangese province where state authorities instrumentalize reform policy and redefine access to mining areas. Providing an in-depth understanding of the narratives, strategies and practices of the key players, this article argues that the widespread concern about ‘conflict-free minerals’ tends to obfuscate the nature and effects of ‘reform conflicts’. Unless these conflicts are revealed, better understood and adequately addressed, mining reforms will fail to improve the living conditions of people living in artisanal mining areas.

1. Introduction

The Katangese mining business can be compared to a football team. However, during the game, it is not the competitors—but the referees—who are the players on the pitch. [Interview with civil servant from the *Division des Mines*, Nyunzu, May 2014]

Following national, regional and international policies aimed at ending the supposed linkages between the mining business and violent conflicts, artisanal mining in the Congolese region of northern Katanga is undergoing reforms. Inspired by international discourse on ‘conflict-free minerals’, ongoing mining reforms follow a complex conflict landscape (Autesserre, 2012) and take many forms, including certification schemes, legislative measures and specific interventions promoting transparent models of resource governance (Verbruggen et al., 2011).

Recently, eastern Democratic Republic of Congo (DRC) has become a testing ground for many reform initiatives. In 2009, the Congolese government began to demarcate a number of artisanal exploitation zones (AEZ)² which were granted to mining cooperatives with the aims

of governing artisanal mines and stopping minerals from falling into the hands of armed groups or unregistered traders. In 2014, 13 initiatives were active in this region: 10 focusing on 3T³ and three on gold (Cuvelier et al., 2014).

In several parts of sub-Saharan Africa, many scholars are convinced that the mineral sector reforms have been predominantly top-down, externally driven and biased in favour of large-scale extractive companies (Hilson and Potter, 2005). This has led to tensions between these companies and artisanal miners (*creuseurs*), as well as other local stakeholders such as customary chiefs (Geenen and Claessens, 2013; Maconachie and Hilson, 2011). Adding to this body of work, the present study examined how ongoing reforms have fuelled conflicts, in other words disputes over property rights and access to coltan in the Congolese region of northern Katanga. These conflicts, involving either violence, miners’ eviction or conflicting entitlements over mining sites, have been between mining cooperatives and trading houses, and between both of these entities and mineworkers. State authorities that are ‘in the making’ in the complex institutional landscape of mining reforms play an active part in these conflicts – reinforcing their authority and determining access in the process.

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¹ In eastern DRC, coltan is an abbreviation of columbite–tantalite, a mixture of two mineral ores, namely niobium and tantalum, used for industrial applications in high-tech industries. For more details, see Nest M. (2011). *Coltan*. Cambridge: Polity Press, pp. 3–30.

² AEZ are areas where ‘the technological and economical factors are not suited for the site to be industrially exploited’ (Mining law (T. 4, Ch. 1, Art. 109).

³ The abbreviation ‘3T’ refers to three types of minerals extracted in DRC: tin (cassiterite), tantalum (coltan) and tungsten (wolframite).

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Policymakers, advocacy-oriented NGOs and other well-informed observers (De Koning, 2010) are convinced that ‘cleaning’ the mineral trade through reforms can end the armed conflicts obstructing the mineral sector in eastern DRC. Little research so far has examined the nature of the interactions between actors and entities engaged in the reform process (e.g. trading houses, cooperatives and mineworkers) or how these interactions create new conflicts. By analysing how the ongoing reforms engender new conflicts, this study aimed to contribute to debates on the governance of artisanal mines in post-conflict DRC. This article argues that the widespread concern regarding ‘conflict-free minerals’ as a way of making the mineral market transparent and addressing the appalling poverty of people tends to obfuscate the nature and effects of ‘reform conflicts’. For the mining reforms to yield positive change, these conflicts need to be unmasked and adequately addressed.

This article is based on fieldwork undertaken at two coltan mining sites in the Nyunzu territory (Kahendwa and Kisengo) from March 2013 to September 2014, and additional data were gathered in October 2014 in Lubumbashi (the provincial capital of what was then Katanga province). In both Kahendwa and Kisengo, the reforms basically aim to trade coltan through a ‘closed-pipe’ supply chain organised by and around the International Tin Research Institute (ITRI), that initiated the ITRI Tin Supply Chain Initiative (iTSCi). The ‘closed-pipe’ supply chain is organised so that iTSCi determines the origin of the so-called 3T and documents their trading chain, by tagging their bags at the level of mine sites, trading posts and mineral depots.

In the remainder of this article, I begin by outlining the theoretical framework. After introducing the study areas and the research methods, I explain how these areas experienced ‘conflict minerals’. I then outline how property and access to mining sites has evolved in eastern DRC, particularly in northern Katanga. The next section examines the findings from the two case studies. Briefly, the first of these centres on conflicts over accessing coltan in Kisengo, and the second focuses on conflicts following the entitlements to Kahendwa’s mines being granted to several cooperatives and trading houses. The two final sections respectively analyse the findings and put forward the main conclusions.

2. Theorizing access control and elite capture

The present study approached conflicts over property rights and access to minerals (coltan) from a property rights perspective. As the mining reforms have mainly revolved around granting entitlements of AEZ by state authorities to mining cooperatives or trading houses working under the iTSCi monitoring scheme, a property rights lens allows for a fruitful analysis of these entitlements and the related conflicts triggered by the reforms.

Debates on property and access have been informed by the field of legal pluralism, which studies the coexistence of different normative systems in the same social space (Griffiths, 1986). Drawing on theoretical understandings from legal pluralism, von Benda-Beckmann (1981), for instance, developed the notion of ‘forum shopping’ to describe how people use multiple legal orders and different institutional frameworks to foster their claims or to protect their interests. Being traditionally focused on dispute resolution, public service delivery and hybrid governance, legal pluralism also provides relevant insights for studying how social actors are able to further their property claims by drawing on various legal systems to access resources (Geenen, 2016).

Broadly speaking, ‘property is about relationships among social actors with regard to objects of value’ (von Benda-Beckmann, 1981, quoted in Sikor and Lund, 2009: 4). In other words, property is a relation not between people and things, but rather between people about things. As Sikor and Lund (2009: 4) assert, property encompasses any enforceable claim to the use and benefit of something. Such a claim may derive from conventions, customary rules or state law. From this legal perspective, property contributes to maintaining order within society. It entails the regulation of entitlements and the distribution of wealth among social actors (Singer, 2000). However, recent theory emphasises

that establishing property relations is not just the act of authorities, but are one of the means that authorities get established, especially in times of rupture (Lund, 2016). In the mining reforms of DRC, where institutions are in flux, and power relations between actors in the mining areas unsettled, state authorities play a role in conflicts between people and entities (e.g. mining cooperatives) and become part of the reshuffling of power in the areas. Blomley (2003) contends that such conflicts may be shaped by overt or hidden violence and processes of exclusion.

Access is distinct from property in many ways. Indeed, having property rights does not necessarily mean that one has the ‘ability to benefit from things’ (Ribot and Peluso, 2003: 153). Thus, Ribot and Peluso (2003: 160) define access as all ‘means, processes and relations by which actors are enabled to gain, control and maintain access to resources’. Relating property to access, these authors conceptualise the notion of property as a ‘bundle of powers’ instead of a ‘bundle of rights’ (Ribot and Peluso, 2003: 173). In their study on access theory, Ribot and Peluso (2003: 161–172) identify three access mechanisms, namely rights-based access (legal or illegal), structural mechanisms of access, and relational mechanisms of access. These mechanisms mediate, condition or constrain people’s access to resources and benefits. Rights-based access can be ‘sanctioned by law, custom, and convention or unsanctioned, by theft, coercion or violence’ (Geenen and Claessens, 2013: 11). Structural mechanisms include access to technology, capital, markets, labour and labour opportunities, knowledge and authority. Relational mechanisms related to access through social identities and access via the negotiation of other social relations.

Sikor and Lund (2009) see property and access as closely linked to power and authority (Lund, 2016: 1201). They argue that, when people try to further their claims or to turn these into ‘recognized property’, power and authority are closely related (Sikor and Lund, 2009: 9). This is especially the case during so-called ‘moments of rupture’ (Lund, 2016: 1202) — like during mining reforms — as period when things are fluid and negotiable and when different politico-legal institutions are trying to strengthen their authority. To a certain extent this tallies with the notion of ‘elite capture’ or ‘elite control’ defined as situations ‘where elites manipulate the decision-making arena and agenda and obtain most of the benefits’ (Wong, 2010: 3). However, in moments of rupture, elites like authorities, are in flux and depend on the outcome of competition over property. Reform conflicts that concern issues of access and property are thus also about the formation of new constellations of power tying economic actors in with authorities. The mining reforms, granting AEZ entitlements to mining cooperatives and trading houses has not only legitimised these organisations’ claims over property, but this legitimisation has also led to the denial of property rights to local resource users, especially the *creuseurs*.

Access control and property are dynamic, with changes over time being shaped by various factors, which determine ‘the nature of power and forms of access to resources’ (Ribot and Peluso, 2009: 154) and position individuals including elites and institutions vis-à-vis access to property. These factors include shifts in authority, competition among different powerholders changes in political circumstances (Vlassenroot and Huggins, 2005), new economic opportunities and shifts of ideas and of ideologies, policy, politics and the environment (Peluso and Lund, 2011: 673–676). All of these factors affect the conditions under which access processes take place and influence how individuals or interest groups develop different strategies to benefit from resources.

The literature outlined above is mostly concerned with property rights and access in relation to state formation. It emphasises the coexistence of norm-producing authority, institutional legitimisation, access processes and the contestation of claims. This article adds to this body of work. It unveils how the mining reforms that are showcased to end violent conflict in the mines has created such an arena of competition over property and access amidst processes of state formation. The reform law — as other pieces of legislation — becomes instrumentalised by elites and authorities for private ends (Plateau, 2004), leading to renewed types of conflict in the region, less violent at first sight but

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