

REPORT

The formalisation of artisanal mining in the Democratic Republic of the Congo and Rwanda

International Peace Information Service

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Abbreviations

3Ts	tin, tantalum and tungsten
BGR	Bundesanstalt für Geowissenschaften und Rohstoffe (German Federal Institute for Geosciences and Natural Resources)
BMZ	Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung (German Federal Ministry for Economic Cooperation and Development)
CdN	Centre de Négoce (trading centres initiative)
CEEC	Centre d’Evaluation, d’Expertise et de Certification (Centre for Evaluation, Expertise and Certification)
CIFOR	Center for International Forestry Research
CSO	civil society organisation
CTC	Certified Trading Chains programme
DRC	The Democratic Republic of the Congo
EITI	Extractive Industries Transparency Initiative
FARDC	Forces armées de la République Démocratique du Congo (Armed Forces of the Democratic Republic of the Congo)
FLEGT	Forest Law Enforcement, Governance and Trade Action Plan
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit (German Agency for International Cooperation)
GMD	Geology and Mining Department
ICGLR	International Conference on the Great Lakes Region
IMCA	Independent Mineral Chain Auditor
IPIS	International Peace Information Service
ITRI	International Tin Research Institute
iTSCi	ITRI Tin Supply Chain Initiative
MMR	Mining Mineral Resources
MONUSCO	United Nations Organization Stabilization Mission in the Democratic Republic of the Congo
MSC	Malaysia Smelting Corporation
NGO	nongovernmental organisation
OECD	Organisation for Economic Co-operation and Development
PAC	Partnership Africa Canada
RINR	Regional Initiative on Natural Resources
RCD	Rassemblement Congolais pour la Démocratie (Rally for Congolese Democracy)
RCM	Regional Certification Mechanism
SAESSCAM	Service d’Assistance et d’Encadrement d’Artisanal et Small Scale Mining (Service for Assistance and Organisation of Artisanal and Small-scale Mining)
Sominki	Société Minière et Industrielle du Kivu (Kivu Mining and Industrial Company)
UNGoE	UN Group of Experts on the DRC
VPA	voluntary partnership agreement
ZEA	zone d’exploitation artisanal (artisanal mining zone)

Executive summary

The formalisation of the mining sectors in the Democratic Republic of the Congo (DRC) and Rwanda offers a compelling parallel to the Forest Law Enforcement, Governance and Trade Action Plan (FLEGT). Both are relevant to governance in weak or fragile states, respond to the need to ensure socially and environmentally responsible sourcing of natural resources, and both resources have funded conflict– and in the case of the DRC, still do.

Industrial mining dissolved in the eastern DRC in the 1990s, due to the instability of world markets, the failure of the state and the Congo wars, and mineral exploitation became exclusively artisanal. Since then, mineral production and trade have played an important role in financing armed groups and consequently prolonging insecurity. The central government's lack of control over the eastern part of the DRC, including the artisanal mining sector, offers an opportunity for all armed groups (state as well as nonstate) to profit from the mineral wealth. Because artisanal mining is mostly informal, it is difficult for the government to gain a hold on the sector, and to effectively tackle the 'conflict mineral' phenomenon. The government also misses out on a significant portion of tax revenues from the sector.

Yet, the informal and opaque nature of the sector and its role in prolonging insecurity does not necessarily mean it is wholly criminal and chaotic. Despite the involvement of armed groups, including state actors, artisanal mining is essential for local livelihoods, in an area where few alternative sources of income exist. It has been estimated that more than 500 000 miners may be working in the eastern DRC, who in turn support a wider community. The artisanal mining sector also constitutes an important source for the flow of cash into many communities.

Although the DRC's 2002 Mining Code created some provisions to formalise the artisanal mining sector, very little has changed. Actors in the mineral chain, including miners, local traders and exporters, see little incentive to enter the formal sector. Insecurity, the tax burden, a lack of state investments and the low number of official artisanal mining zones, are the reasons most often given to explain the disincentive to act within the formal sphere. Consequently, considerable mineral production leaves the country without being registered.

These exports are transported eastwards to the seaports of Mombasa in Kenya, and Dar es Salaam in Tanzania. From there, the minerals are increasingly transported to southeast Asia, where they are refined and used for the production of electronic components and hard metals for heavy industry.

Since 2008, legislators, governments, multilateral organisations and industry organisations have made several other attempts at formalising the artisanal mining sector in the DRC and neighbouring countries, including Rwanda. This report offers an overview of all major upstream initiatives trying to ensure that mineral extraction and trade is not tainted by conflict in the DRC and the African Great Lakes region. Three different approaches have been identified: 1) certification schemes – such as the Certified Trading Chains initiative, the International Conference of the Great Lakes Region Regional Certification Mechanism, and the DRC National Certification scheme; 2) traceability systems – mainly the traceability scheme designed and implemented by the International Tin Research Institute; and 3) due diligence measures – efforts at enhancing private sector accountability carried out by the UN Group of Experts on the DRC and by the Organisation for Economic Co-operation and Development.

1. Introduction

This report describes and evaluates initiatives to formalise the artisanal mining sector in the Democratic Republic of the Congo (DRC) and Rwanda, in order to locate lessons learned. We hope that these perspectives will support the formation of well-informed policy and regulatory options – both by the EU and by harvesting countries – concerning the formalisation of timber production in tropical countries.

The report has been compiled by the International Peace Information Service (IPIS), a Belgian-based independent research organisation. It was commissioned by the Center for International Forestry Research (CIFOR), which is dedicated to advancing human well-being, environmental conservation and equity through providing information that leads to better informed and equitable decision making about the use and management of forests in tropical countries.

CIFOR is undertaking broad research to provide information for the EU, and policymakers in timber producing countries, about the scale and structures of informal domestic timber production. Crucially, this includes analysis of the key considerations and potential costs and benefits of promoting formalisation in the sector. Significantly, the EU's requirements regarding the legality of timber imports are currently subject to change, steered by the Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan.

The timber sector in many tropical countries is largely informal. The CIFOR project, Policy and Regulatory Options to Recognise and Better Integrate the Domestic Timber Sector in Tropical Countries, seeks to present a thorough understanding of the functioning of the informal timber sector, accompanied by relevant legal, policy and institutional frameworks and industrial standards to help formalise these informal processes.

To help CIFOR explore what formalisation of the timber sector would entail in practice, and whether or how formalisation might be accomplished while safeguarding the interests of small-scale, informal and/or less economically and politically powerful actors, they have sought to compare this to other formalisation processes in order to understand where lessons may be learned.

IPIS has been commissioned to describe and evaluate the formalisation of artisanal and small-scale mining in the '3Ts'¹ sector in the eastern DRC and Rwanda.² This will provide insights to inform the FLEGT initiative.

In Section 2, we describe IPIS' methodology: our experience in the DRC and Rwandan mining sector, and how we have gone about collecting specific information for this study.

1 The '3Ts' refers to tin, tantalum and tungsten, which are mined in the form of cassiterite, coltan and wolframite ores.

2 In this report 'eastern DRC' refers to Ituri district in Orientale province, North Kivu, South Kivu, Maniema and the northern part of Katanga.

In Section 3, we describe the similarities between formalisation initiatives in the DRC and Rwandan mining sector and the FLEGT initiative, in order to understand how this case study will be of particular relevance to FLEGT.

In Section 4, we explore the landscape of mineral production in the eastern DRC and Rwanda within the context of the historical governance of the mining sector. Specifically, we explain the lifecycle of 3Ts production: the decline of production throughout the 1970s and 1980s; the Congo wars³ and the role of artisanal mining within them; and artisanal mining during and after the transition from 2003 onwards. The section concludes with current information on production levels, artisanal mining patterns and overseeing agencies, trade models and trade statistics.

In Section 5, we outline recent efforts to formalise the 3Ts sector, including policy and donor interventions, international legislative measures, and the Trading Centres and National Certification initiatives in the DRC. We also describe certification initiatives in the context of formalisation, including the Regional Certification Mechanism of the International Conference of the Great Lakes Region (ICGLR) and the Certified Trading Chains (CTC) programme in the DRC and Rwanda. Lastly, we review supply chain management initiatives: the International Tin Research Institute (ITRI) Supply Chain Initiative in the DRC and Rwanda, and efforts at enhancing private sector accountability via due diligence recommendations by the UN Group of Experts (UNGoe) and the Organisation for Economic Co-operation and Development (OECD).

In Section 6, we evaluate these formalisation efforts. We review the effectiveness of the above processes with regards to their influence on illegal and/or unsustainable use of property, tax revenues, conservation of resources, livelihoods, society, and corruption. We also analyse the designs of formalisation initiatives, assessing whether adequate measures have been put in place to safeguard the livelihoods, rights, and safety of artisanal miners. We examine the costs of formalisation, including potential economic losses, the marginalisation and inclusion status of upstream actors in the region, how benefits of the process have or have not been shared, and whether any criminalisation has resulted from formalisation efforts. Finally, we consider the success of formalisation initiatives, and whether they have achieved lasting and sustainable outcomes.

In the conclusion, we consider lessons that can be learned from these formalisation endeavours with reference to the FLEGT initiative. Specifically, we assess the role of external agencies in promoting and supporting these national formalisation efforts, review costs and the need for external support, and link these analyses to the structure and demands of FLEGT.

3 There have been two “Congo Wars”: The First Congo War (1996–1997) and the Second Congo War 1998–2003 (Also known as the Great War of Africa).

2. Methodology

At the end of 2011, IPIS and CIFOR began the joint project which produced this report: to analyse formalisation efforts in the DRC artisanal mining sector, supporting CIFOR's efforts to explore what formalisation of the informal timber sectors would entail in practice.

In order to produce a comprehensive list of lessons learned, information gathering included both desktop study and field research. IPIS consulted a variety of sources and held discussions with a wide range of stakeholders, with the aim of identifying how the formalisation process can take place for small-scale and less economically powerful actors.

2.1. Desktop study of available literature

The link between mineral trade and the activities of several armed groups in the DRC has been well documented since the beginning of the century. Reports that describe the conflict, seek to uncover the motives of the warring parties, and make recommendations, have been written by various actors including advocacy groups, local civil society, international organisations and academics. Analyses and recommendations tend to vary considerably; different sources have expressed differing views regarding formalisation efforts in the artisanal mining sector in Central Africa.

In order to incorporate these differing views, a broad range of sources has been consulted for this study. The references cited in this report give a broad overview of the published literature.

2.2. Additional and recent information from the field

Field research was carried out in the first half of 2012. Various stakeholders were interviewed in Kigali (Rwanda), Kinshasa, Bukavu, Goma and Lubumbashi (DRC).

Given the complexity and sensitivity of this research topic, IPIS decided to use a qualitative approach. Previous scholarship has shown that qualitative research methods are particularly well suited to collecting information on informal economic activities.⁴ Qualitative research allows for flexibility on the part of the researcher and creates opportunities for discussing certain topics in more detail.

Consequently, we relied on semi-structured interviews. These typically begin with a series of open-ended questions, and, as the conversation proceeds, both the interviewer and interviewee have the liberty of discussing certain issues in more detail.⁵ Our attention was focused on key players in the 3Ts sectors in the DRC and Rwanda, such as public servants (Mines Division of the DRC; Service for Assistance and Organisation of Artisanal and Small-scale Mining; and Centre for Evaluation, Expertise and Certification), representatives of the Armed Forces of the DRC (FARDC) and the mines police,

4 Ellis S. & MacGaffey J., Research on sub-Saharan Africa's unrecorded international trade: Some methodological and conceptual problems, in: *African Studies Review*, vol. 39, no. 2, 1996, pp. 19–41; Titeca K., Les OPEC boys en Ouganda, trafiquants de pétrole et acteurs politiques, in: *Politique africaine*, 103, 2006, pp. 143–159; Nordstrom C., *Global outlaws: Crime, money and power in the contemporary world*, London, University of California Press, 2007; Meagher K., *Identity economics: Social networks and the informal economy in Nigeria*, Woodbridge, James Currey, 2010.

5 Britten N., Qualitative research in medical research, in: *British Medical Journal*, vol. 311, no. 6999, 1995, pp. 251–253.

artisanal miners and cooperatives, staff members of industrial mining companies, mineral buyers, managers of trading houses, local and international civil society organisations and other international observers. The use of semi-structured interviews allowed IPIS to gain a solid impression of the latest developments and sentiments in the region.

In addition to conducting interviews, IPIS also attended several meetings between local stakeholders, such as a donors–civil society meeting in Goma (DRC), and a government–donors–industry meeting in Lubumbashi (DRC). Since the artisanal mining sector in the African Great Lakes region is currently in a state of flux, groups of stakeholders meet on a regular basis, creating opportunities to observe discussions and dynamics between them and to apply the ‘focus group technique’. This research method enables collection of data through ‘group interaction on a topic determined by the researcher’.⁶

Most notably, the team engaged with groups of mineral trading house representatives through this technique, thus fostering debate on the current challenges faced by the trading sector when implementing different formalisation initiatives.

This interaction with a broad set of different groups permitted IPIS to capture the multiplicity of perspectives on the effects of the formalisation efforts. This met one of the main objectives of this project – to play a part in informing policymakers, in order to enable them to develop deliberate policies regarding formalisation.

6 Morgan D.L., Focus groups, in: *Annual Review of Sociology*, vol. 22, 1996, pp. 129–152.

3. Similarities between formalisation initiatives in the DRC and Rwandan mining sectors and the FLEGT initiative

The formalisation of the mining sectors in the DRC and Rwanda offers a compelling parallel to the FLEGT initiative. Both are relevant to governance in weak or fragile states, which is significant because mineral resources have funded conflict in both countries – and in the case of the DRC, still do. Before further exploring the DRC and Rwanda case, it is useful to recall some important precedents relevant to minerals, timber, conflict and eventual governance reform from Sierra Leone and Liberia.

The relationship between natural resources and conflict can be illustrated by the role that the diamond and timber trades played in Sierra Leone's civil war. Whilst head of state in Liberia, Charles Taylor played an instrumental role in neighbouring Sierra Leone's bloody, 11-year civil war. In April 2012, the Special Court for Sierra Leone found him guilty of crimes against humanity, war crimes and other violations of international humanitarian law, including rape, pillage and the use of child soldiers. Looting and trade of diamonds are often seen as the resources that funded and fuelled the conflict. Yet in 2001, loss of revenue as a result of sanctions on diamond exports led Taylor to sell Liberia's forests to logging companies. Among these were companies run by notorious arms dealers, who were involved in importing arms to Liberia and developing infrastructure to transport them into Sierra Leone.⁷ By 2003, income from logging was substantial; according to the UN, an estimated 20% of the country's budget derived from the logging industry.⁸

Logging is still taking place, following the alleviation of sanctions in 2006. The new, formalised timber industry, promised by Liberia's current president, Ellen Johnson-Sirleaf, is yet to be realised.⁹ It was therefore highly significant when the EU and Liberia signed a voluntary partnership agreement (VPA)¹⁰ under the FLEGT initiative in May 2012, meaning that Liberia agreed to take responsibility for verifying the legal source and production of wood. Liberia's Agriculture Minister, Florence Chenoweth, lauded this move as 'a stepping stone for a new, stronger Liberia, built on principles of good governance, transparency, and rule of law'.¹¹

In the DRC, the economic activities of another notorious warlord, Bosco Ntaganda, illustrate the relationship between the mineral trade and conflict. Known as the 'Terminator', Bosco Ntaganda is subject to an arrest warrant by the International Criminal Court in order to face allegations of war

7 Global Witness, Taylor-made: The pivotal role of Liberia's forests and flag of convenience in regional conflict, September 2001, p. 8.

8 Final report of UN Panel of Experts on the Illegal Exploitation of Natural Resources of the Democratic Republic of the Congo (15 October 2003), UN Doc. S/2003/1027.

9 Jonathan Paye-Layleh, BBC, Liberia and EU sign deal to end 'logs of war', last update on 10th May 2011, (<http://www.bbc.co.uk/news/world-africa-13338764>)

10 See Annex 1 for a detailed description of voluntary partnership agreements.

11 European Forest Institute, *EU-Liberia sign landmark trade accord to ensure legal timber exports to European markets*, last update on 9 May 2011, (http://www.efi.int/files/attachments/press_releases/efi_liberia_press_release_-_en_-_final.pdf)

crimes, including the recruitment of child soldiers.¹² In 2009, Bosco Ntaganda joined the national army, but used the position to gain control of a substantial portion of mineral trade from the Kivus in the eastern DRC.¹³ Faced with national bans on the trade of artisanal mined minerals, Ntaganda smuggled them over the border to Rwanda. In 2011, the UNGoE estimated that these activities earned him around US\$15 000 per week.¹⁴ In April 2012, he mutinied from the national army along with an estimated 600 men. In May 2012, Global Witness stated, 'it is highly likely that this latest insurgency is being financed with money made via Ntaganda's illegal involvement in the minerals business'.¹⁵ Whether or not these claims can be verified, Bosco Ntaganda is one example of a broad and pervasive 'conflict mineral' problem, in which the DRC's minerals fund civil war.

This financing of conflict from mineral profits has led to sustained international pressure to use domestic and regional law to hold importers and importing countries accountable. In the US, this resulted in a provision on conflict minerals from the DRC and adjoining countries in a larger law that became known as the Dodd-Frank Act.¹⁶ The provision on conflict minerals is contained in Section 1502 of the act and obliges companies that trade on US exchanges and are implicated in the supply chains of tin, tantalum, tungsten and gold, to act with due diligence.¹⁷

The due diligence process requires companies to identify, prevent, mitigate and account for how they address their adverse human rights impacts. According to the UN's 'Protect, Respect and Remedy' Framework for Business and Human Rights, 'the process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.'¹⁸ In contexts where there is a risk of contributing to conflict, risk-based due diligence is necessary to address potential or actual risks, and to mitigate the adverse impacts of activity or sourcing.¹⁹

On 22 August 2012, the Securities and Exchange Commission (SEC), the US body responsible for clarifying the particulars around the Dodd-Frank Act, finalised the rules on disclosure of conflict minerals.²⁰ However, before the SEC had finalised their definition of due diligence and published final or specific regulations, Section 1502 of the Dodd-Frank Act had already generated intense debate among civil society organisations and various economic actors in the supply chain. It has been argued that, while the disclosure obligation is an important step in the right direction, it has

12 International Criminal Court, *Warrant of arrest against Bosco Ntaganda unsealed*, last update on 28 April 2008 (<http://www.icc-cpi.int/menus/icc/situations%20and%20cases/situations/situation%20icc%200104/related%20cases/icc%200104%200206/press%20releases/warrant%20of%20arrest%20against%20bosco%20ntaganda%20unsealed>)

13 Global Witness, *Coming clean: how supply chain controls can stop Congo's minerals trade fuelling conflict*, May 2012, p. 5.

14 Final report of the Group of Experts on the Democratic Republic of the Congo (2 December 2011), *UN Doc. S/2011/738*, § 487.

15 Global Witness (2012), *op. cit.* p. 21.

16 Verbruggen D., Francq E. & Cuvelier J., *Guide to current mining reform initiatives in eastern DRC*, IPIS, 2011, p. 10.

17 *Ibid.*, p. 6.

18 Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, United Nations General Assembly (21 March 2011), *UN Doc. A/HRC/17/31*. p. 16.

19 OECD, *OECD due diligence guidance for responsible supply chains of minerals from conflict-affected and high-risk areas*, OECD Publishing, May 2011.

20 Securities and Exchange Commission, *SEC adopts rule for disclosing use of conflict minerals*, last update on 22 August 2012 (<http://www.sec.gov/news/press/2012/2012-163.htm>)

created a considerable pressure on downstream buyers and created a quasi-embargo on DRC minerals. Important end users of 3Ts have reacted to the adoption of the Dodd-Frank Act by deciding to only source material from the DRC and neighbouring countries that is tagged by the ITRI Tin Supply Chain Initiative (iTSCi) traceability scheme. Given that this system is only operational in Rwanda, and Katanga province of the DRC, this decision has had a severe impact on livelihoods in the eastern DRC.²¹

The reaction of downstream buyers to the failure to finalise the Dodd-Frank Act, should, or at least could, have been foreseen. The SEC's profound international influence requires foresight that was, perhaps, lacking. However, since the Dodd-Frank Act was passed by the US Senate, pressure has been put on all economic actors to implement due diligence. The act has arguably served as a catalyst to other initiatives, and indirectly had positive effects already.

The parallel between FLEGT and the Dodd-Frank Act is remarkable, in that the timber and mineral sectors are the first two in which mandatory due diligence has been introduced. In 2010, the EU Timber Regulation was adopted, which will come into effect on 3 March 2013. During this interval, the European Commission will introduce more detailed rules. The 2010 Timber Regulation places a responsibility on EU traders (or 'operators') to take steps to minimise the risk of illegal timber entering the market through exercising due diligence.

Observing the evolution of the formalisation initiatives that have stemmed from the introduction of the Dodd-Frank Act will provide useful lessons for FLEGT.

21 This has been the case for members of the Global e-Sustainability Initiative (GESI), an organisation that brings together leading information technology companies, and for members of the Electronics Industry Citizenship Coalition (EICC), an organisation aiming at enhancing corporate social responsibility policies in the global electronic supply chain.

4. Governance, production and trade of minerals in the eastern DRC and Rwanda

4.1. The pre-war era: Decline of formal production in the 1970s and 1980s

Artisanal mining has a long history in the DRC, dating back to colonial times.²² Cassiterite and coltan were discovered in the Kivu region²³ in 1910,²⁴ after which the tin sector soon fell entirely into the hands of private Belgian companies. By the first half of the 1940s, production of cassiterite amounted to more than 10 000 t per year and employed more than 73 000 people.²⁵ Following a decade of rising production figures, companies began to invest in industrial exploitation in the late 1940s and early 1950s, enabling a further rise in production in the 1950s and 1960s.²⁶

The 1960 independence of the Republic of the Congo (as it was then known) did not initially appear to have a significant impact as Belgian private companies remained in control of the mining sector.²⁷ However, 35 years later industrial exploitation of the 3Ts ceased entirely; the instability of world markets and a failing state were arguably at the root of this collapse.²⁸

The patrimonial rule of Mobutu Sese Seko had a disastrous effect on the country's economy. A growing economic crisis in the 1970s forced a number of Belgian investors to restructure their activities, resulting in the creation of the Société Minière et Industrielle du Kivu (Sominki) in which the state held a 28% stake.²⁹ However none of Sominki's shareholders showed real interest or confidence in the company; as a result, Sominki was unable to withstand the global tin price crash of 1985. The formerly high price of tin on the world market had pushed the industry to look for cheaper alternatives (such as aluminium), causing a price decrease of 31% between 1980 and 1985. The liquidation of the International Tin Agreement in 1985 was followed by another price cut of 45% one year later.³⁰

Further crises in 1987 and 1991 resulted in Sominki confining its operations to the commercialisation of minerals extracted from its concessions by artisanal miners. Sominki, however, paid the diggers

22 Commercial gold exploitation by the Belgians began in 1905 in the Kilo-Moto area, Orientale province. See: Fahey D., *Le fleuve d'or: The production and trade of gold from Mongbwalu, DRC*, in: *L'Afrique des Grands Lacs, Annuaire 2007–2008*, 2008, pp. 357–384.

23 At that time Kivu included the current provinces of North Kivu, South Kivu and Maniema.

24 Global Witness, *Same old story – A background study on natural resources in the Democratic Republic of Congo*, June 2004, p. 22.

25 The gold sector's employment rate in 1941–1943, was 88 177. See: International Alert, *The role of the exploitation of natural resources in fuelling and prolonging crises in the Eastern DRC*, January 2010, pp. 13–14.

26 Mthembu-Salter G., *Social and economic dynamics of mining in Kalima, DRC*, Institute for Security Studies, April 2009, p. 2.

27 *Ibid.*, p. 2.

28 International Alert (January 2010), *op. cit.*, pp. 13–14.

29 Vlassenroot K. and Raeymaekers T., *Conflict and artisan mining in Kamituga (South Kivu)*, in: *Conflict and social transformation in eastern DR Congo*, Conflict Research Group, 2004, pp. 123–156.

30 Raffaelli M., *Rise and demise of commodity agreements: An investigation into the breakdown of international commodity agreements*, Cambridge, Woodhead Publishing, 1995, pp. 181–185, 201–203.

very little for their ore, reducing incentives and causing further falls in output.³¹ By the time Sominki was liquidated in 1997, its production level was a fraction of its former output.³²

While formal industrial mining declined, the informal artisanal mining sector had been steadily rising since Mobutu's liberalisation of the DRC's mining sector in 1982.³³ By the 1990s eastern DRC's industrial mining had dissolved and mineral exploitation became exclusively artisanal.

4.2. The Congo wars and the role of artisanal mining in the conflict (1996–2003)

During the 1990s the African Great Lakes region was afflicted by war, genocide and humanitarian suffering. The DRC suffered two successive wars in 1996 and 1998. The first war ended in 1997 with the toppling of the Mobutu regime by Laurent Kabila's Alliance of Democratic Forces for the Liberation of Congo (AFDL), supported by the DRC's eastern neighbours Rwanda and Uganda. The second war, defined by Susan Rice as the 'First African World War',³⁴ officially ended in 2003.³⁵

During the Second Congo War the economic dimension of the conflict took on an ever more significant role. President Laurent Kabila accused Rwanda and Uganda of supporting the rebel movement, Rally for Congolese Democracy (RCD), in order to strengthen their grip over the DRC's natural resource wealth, rejecting the two countries' assertions that they were motivated by security concerns.³⁶ Over time, it has become clear that the DRC's natural resources were not the cause of the conflict. However, these resources were an important factor in prolonging the war, and still contribute to insecurity in the eastern part of the country. The UN Panel of Experts wrote in its final report in 2003: 'Illegal exploitation remains one of the main sources of funding for groups involved in perpetuating conflict, ... Over the last year, such exploitation has been characterised by intense competition among the various political and military actors as they have sought to maintain, and in some instances expand, their control over territory.'³⁷

During the Second Congo War, the eastern DRC's mining sector fell into the hands of mafia-like networks, which systematically exported minerals directly to Rwanda and Uganda.³⁸ The eastern provinces gained nothing from these fraudulent exports. 'During the early months of the rebellion, the financial setting and networks were already in place', the UN Panel of Experts wrote in 2001.³⁹

31 IPIS/International Alert, The complexity of resource governance in a context of state fragility: An analysis of the mining sector in the Kivu hinterlands, November 2010, p. 27.

32 Cassiterite production fell from 4638.1 t in 1976 to 352.8 t in 1997, coltan from a peak of 147 t in 1985 to 272kg in 1997, and wolframite production had completely halted. Source: Mthembu-Salter G. (April 2009), op. cit., p. 3.

33 Vlassenroot K. and Raeymaekers T. (2004), op. cit., p. 127.

34 Reyntjens F., *De Grote Afrikaanse Oorlog: Congo en de regionale geopolitiek, 1996-2006*, Antwerpen, De Bezige Bij, 2009, p. 185.

35 For a detailed analysis of the Congo Wars, see: Reyntjens F., *The Great African War: Congo and regional geopolitics, 1996–2006*, Cambridge, Cambridge University Press, 2009.

36 Turner T., *The Congo wars: Conflict, myth and reality*, London, Zed Books, 2007, pp. 162–163.

37 S/2003/1027, op. cit., § 44.

38 Kabanga Musau Donatien, *Le remodelage du paysage socio-economique dans les zones de conflit du Nord Kivu et du Maniema (R.D. Congo)*, in: *L'Afrique des Grands Lacs, Annuaire 2004–2005*, 2005, pp. 235–261.

39 UN Security Council, Report of the Panel of Experts on the illegal exploitation of natural resources and other forms of wealth of the Democratic Republic of Congo, 12 April 2001, UN Doc. S/2001/357, § 29.

'Between 2000 and 3000 tons of cassiterite and between 1000 and 1500 tons of coltan were removed from the region between November 1998 and April 1999.'⁴⁰

The occupying forces employed several strategies to profit from the mining sector. Firstly, some major sites were managed by enterprises that belonged to people linked to the Rwandan government or to the RCD rebellion. Secondly, the Rwandan army directly controlled several mining sites and mineral trade activities, making use of Congolese labour, both forced and otherwise. Thirdly, mining sites that were not directly controlled by people linked to Rwanda or the RCD were constantly at risk of attack or looting by RCD militias.⁴¹

It was not only the mafia-like networks who were lured by the DRC's mineral wealth. During the wars, many people turned to mineral exploitation in the hope of making a quick profit, causing agricultural production to decrease dramatically. In addition, farming land and equipment were often pillaged, constituting another disincentive to agricultural investments.⁴² The case of Masisi territory (North Kivu) is a good example of the great attraction of mining for those seeking to earn a living during times of insecurity. During the war, almost one-third of the adult population worked in the mines.⁴³

4.3. Artisanal mining during and after the transition (2003 onwards)

The Second Congo War officially ended in 2003 with the integration of the warring parties into the Transitional Government, the much-criticised '1+4'.⁴⁴ Yet conflict and insecurity have persisted ever since in the eastern part of the country. A huge number of Congolese and foreign armed groups are still seeking shelter in the vast territory of eastern DRC. Conflict minerals continue to play an essential role in the financing of these armed groups and consequently the prolongation of the conflict. The UNGoE considers the mineral trade to be one of the most significant sources of income for armed groups in eastern DRC. The UNGoE estimates that the trade in gold might yield them several million dollars a year, and calculated that anywhere between several hundred thousand and a few million dollars a year might arise from the cassiterite trade.⁴⁵ Furthermore, a 2009 IPIS study showed that armed groups had positions at slightly more than half of the mining sites in the Kivu provinces that were examined in their study.⁴⁶

The term 'conflict minerals' is applied to define a broad problem: the extraction of minerals from conflict-affected areas where human rights abuses take place. The situation in the eastern DRC is a prominent example of this problematic issue. Consequently, most initiatives, national and international, that address 'conflict minerals', deal with the 3Ts and gold – the minerals most prominently linked to conflict in the eastern DRC.

40 *Ibid.*, § 33.

41 Ndungu Mukasa A. & Kilosho Buraye J., La filière stannifère artisanale au Sud-Kivu: Cas du coltan et de la cassitérite, in: *L'Afrique des Grands Lacs*, Annuaire 2008–2009, 2009, pp. 215–244, p. 219.

42 IPIS/UNEP, unpublished report, 2009.

43 Kabanga Musau Donatien (2005), *op. cit.*, pp. 247–248.

44 Within the Transitional Government, Joseph Kabila was appointed as President and Azarias Ruberwa, Z'Ahidi Ngoma, Yerodia Ndombasi and Jean-Pierre Bemba as vice presidents.

45 Final report of the Group of Experts on the Democratic Republic of the Congo, 23 November 2009, *UN Doc. S/2009/603*, § 124–125.

46 Spittaels S. & Hilgert F., Accompanying note on the interactive map of militarised mining areas in the Kivus, IPIS, August 2009, p. 11.

Rebel groups are not the only armed actors plundering the DRC's natural resources. Criminal networks within the FARDC and the national police are also notorious for profiteering from the exploitation and trade in minerals.⁴⁷ This criminal behaviour and lack of discipline within the FARDC is the result of various factors. A rashly executed integration process of several rebel groups into the national army has resulted in a number of army units that do not obey the regular FARDC command, but rather are directed by parallel chains of command. Furthermore, other factors persist, such as the irregular payment of salaries, corruption, the incapacity of the military justice system, and a lack of political will to truly reform the army.⁴⁸ The extent of the problem was starkly illustrated by a GRIP study carried out in 2009;⁴⁹ their survey of more than 10 000 households in the Kivus showed that the FARDC was considered to be the second largest source of insecurity, following banditry.⁵⁰ The pillaging and extortion conducted by national security forces also extends beyond areas that are immediately affected by conflict, including large parts of Maniema and the western part of Orientale province.

Armed groups apply a wide variety of methods to profit from the DRC's natural resources. They might exert direct control over a mining site, profiting from it through taxation of mineral production or demanding an entrance fee to miners. Levels of coercion can be much more severe however; forced labour is occasionally observed in the eastern DRC. Some armed groups do not exercise this level of control but, rather, attempt to acquire a share of the country's minerals through regular pillaging of mining sites. Other observed ways in which profits are skimmed from the natural resource sector include taxation at roadblocks, trading (using intermediaries) and mineral smuggling.⁵¹

The central government's lack of control over the eastern part of the country, including the artisanal mining sector, offers an opportunity for all armed actors to profit from the mineral wealth. The fact that artisanal mining mostly occurs informally makes it difficult for the government to gain a hold on the sector and, therefore, to effectively tackle the conflict mineral phenomenon. In addition, the government misses out on a significant portion of tax revenues from the sector. Yet the informal and opaque nature of the sector and its role in prolonging insecurity does not necessarily mean it is wholly criminal and chaotic. Section 4.4 illustrates that the artisanal mining sector is indeed well structured, closely interwoven with a web of social relations,⁵² and an important livelihood strategy for many in the eastern DRC. These key dynamics render it all the more difficult for the state and the international community to plan an appropriate strategy to combat the issue of conflict minerals.

47 Numerous examples can be found in the reports of the UN Group of Experts on the DRC.

48 More info on the DRC's need for a profound security sector reform can be found in: Crisis Action and a group of 13 international and Congolese civil society groups, *The Democratic Republic of Congo: Taking a stand on security sector reform*, April 2012.

49 Groupe de Recherche et d'Information sur la Paix et la Sécurité (GRIP), *Armes légères dans l'est du Congo: Enquête sur la perception de l'insécurité*, Brussels, 2011.

50 Crisis Action (2012), *op. cit.* p. 7.

51 The reports written by the UN Group of Experts illustrate all of these methods with numerous examples. Their reports can be found at: <http://www.un.org/sc/committees/1533/egroup.shtml>

52 Geenen S., A dangerous bet. The challenges of formalizing artisanal mining in the Democratic Republic of Congo, *Resources Policy*, 37, 3, September 2012, pp. 322–330.

4.4. Artisanal production patterns

Despite the involvement of armed groups (state as well as nonstate actors), artisanal mining is an essential livelihood strategy, as well as an important source for the flow of cash into many communities. Since Mobutu liberalised the mining sector in 1982, it has become an important source of revenue for impoverished people.⁵³ It is estimated that more than 500 000 miners may be working in the mines of the eastern DRC,⁵⁴ who in turn support a wider community. Across the country as a whole, artisanal and small-scale mining is estimated to provide direct and indirect support to over 10 million people.⁵⁵

However, the artisanal mining sector is largely informal. Despite a great number of artisanal miners and mineral traders, very few are officially registered.⁵⁶ The 2002 DRC Mining Code, which was developed in cooperation with the World Bank, legalised artisanal mining,⁵⁷ whilst imposing a number of conditions; these have almost all been neglected. Several reasons can be given to explain why most actors in the mineral chains opt to work outside the formal sphere. Below, these motives will be discussed for each type of actor.

At the source of the country's mineral chains, hundreds of thousands of artisanal miners are extracting ores with rudimentary tools and brute manpower. They rarely hold the official artisanal mining card,⁵⁸ which is issued by the Mines Division.⁵⁹ Artisanal miners do not perceive any incentive to purchase the card, deeming it too expensive, as in practice they get nothing in return for card ownership, such as technical support⁶⁰ or better infrastructure.

Besides not being registered, artisanal miners generally dig in areas where such extraction is legally prohibited, i.e. on industrial concessions. The Mining Code determines that artisanal exploitation is only permitted in specially designated artisanal mining zones, or *zone d'exploitation artisanale* (ZEA).⁶¹ Although some progress has been observed in their establishment, there are still large areas where not a single ZEA exists.⁶² As of 2012, only 60 official artisanal mining zones, covering 1575

53 Matthysen K., Hilgert F., Schouten P. & Mabolia A., *A detailed analysis of Orientale Province's gold sector*, IPIS/GIZ/ICGLR, In press, p. 9.

54 Pact, PROMINES Study. Artisanal mining in the Democratic Republic of Congo, 2010, pp. 5–6.

55 Lamb G., Alusala N., Mthembu-Salter G. & Gasana J.M., *Rumours of peace, whispers of war: Assessment of the reintegration of ex-combatants into civilian life in North Kivu, South Kivu and Ituri, Democratic Republic of Congo*, Transitional Demobilisation and Reintegration Program (TDRP), February 2012, p. 17.

56 In Orientale province, for example, the Mines Division reported that 507 artisanal miners were officially registered in 2010, while it is estimated that there are already more than 150 000 artisanal gold miners. (Source: Matthysen K. *et al.* (In press), *op. cit.*, p. 10.)

57 Loi N° 007/2002 du 11 juillet 2002 portant Code Minier, Titre IV: De l'exploitation artisanale des mines, Chapitre I: De l'exploitation artisanale.

58 Matthysen K. *et al.* (In press), *op. cit.*, p. 28.

59 Loi N° 007/2002 du 11 juillet 2002 portant Code Minier, Titre IV: De l'exploitation artisanale des mines, Chapitre I: De l'exploitation artisanale; and Decret N° 038/2003 du 26 mars 2003 portant règlement minier, Titre IV: De l'exploitation artisanale des mines, Chapitre I: De l'exploitation artisanale.

60 This is one of the responsibilities of the Service for Assistance and Organisation of Artisanal and Small-scale Mining (SAESSCAM), under the Ministry of Mines.

61 Loi N° 007/2002.

62 De Koning R., *Conflict minerals in the Democratic Republic of the Congo: Aligning trade and security interventions*, SIPRI, June 2011, p. 30.

km², have been established in the DRC.⁶³ Furthermore, ZEAs have very little security of tenure, as the government can close such a zone within 60 days if it deems industrial mining viable.⁶⁴ Moreover, most ZEAs are located in remote and less mineral-rich areas. Recognising these disincentives, state services tolerate most informal artisanal mining.⁶⁵

Most artisanal mining takes place on industrial concessions,⁶⁶ in breach of the Mining Code. Overlapping and often conflicting property rights further complicate the situation. Firstly, there is an often tense relationship between modern property law, enacted since colonial times, and customary law, which still holds a strong authority in isolated territories. On top of this, the 2002 Mining Code introduced yet another legal paradigm, that of mining rights. According to Congolese law, mining rights have precedence over land rights. However, since customary rights do not receive adequate recognition in the Mining Code, this causes pervasive dispute over property rights.⁶⁷

Artisanal mining varies considerably from site to site, but is largely well structured despite its informality. Artisanal mining sites are generally managed by pit bosses. The extraction itself is often organised through teams of about a dozen of diggers who cooperate in one pit; they are usually accompanied by porters, rock crushers and mineral washers.⁶⁸

Three main types of mine exist: underground mines, open-pit mines and alluvial mines. Underground mining usually takes place in old industrial mines. Tunnels can be up to 500 m long and reach a depth of 30 m. Tunnels collapsing and asphyxiation are professional hazards for artisanal miners working underground. Open-pit mining often occurs at tailing sites, with each site containing several pits. Finally, alluvial mining takes place in rivers, with miners sifting through mud for minerals.⁶⁹

The capacity of state services to oversee the artisanal mining sector is extremely limited. The Mining Regulations of 2003⁷⁰ established several technical services within the Ministry of Mines with specific responsibilities in the artisanal mining sector, such as the Service for Assistance and Organisation of Artisanal and Small-scale Mining (SAESSCAM) and the Centre for Evaluation, Expertise and Certification (CEEC). SAESSCAM is the closest service to the miners themselves: it is dedicated to supporting them, helping them to create artisanal mining cooperatives and ensuring taxes are collected correctly.⁷¹ The CEEC was established to certify precious and semiprecious minerals and also plays an important role in the trade of these minerals. These services have been criticised as inadequate for a number of reasons: corruption, inability to cover the territory under their responsibility, a lack of means, lack of personnel and lack of capacity and technical knowledge.⁷²

63 Information obtained from the DRC's Mining Registry in February 2012.

64 Pact (June 2010), *op. cit.*, pp. 52–53.

65 Matthysen K. *et al.* (In press), *op. cit.*, p. 10.

66 It should be noted that most industrial mining companies that hold an exploration or a mining license are not yet present on the ground. This is explained in: IPIS/International Alert (November 2010), *op. cit.*, p. 39.

67 International Alert (January 2010), *op. cit.*, pp. 24–25.

68 Pact (June 2010), *op. cit.*, pp. 49–50; International Alert (January 2010), *op. cit.*, pp. 32.

69 Matthysen K. *et al.* (In press), *op. cit.*, pp. 10–11.

70 Decret N° 038/2003.

71 For a more detailed description of SAESSCAM's responsibilities and activities, see: Putzel L. & Kabuyaya N., *Chinese aid, trade and investment and the forests of the Democratic Republic of Congo*, CIFOR, 2011, pp. 7, 23–24.

72 Pact (June 2010), *op. cit.*, pp. 35–40.

4.5. Mineral trade

Further along the mineral chain, traders buy minerals at or in the vicinity of mines. These mineral traders then sell them at a profit to other traders further up the chain, or to trading houses in major trading centres near the border.

Although some traders are officially registered and possess an official trading card,⁷³ most prefer to operate in the informal sphere. These clandestine traders often run ordinary shops with manufactured goods, but with the intent of buying and/or bartering minerals from miners. In this way, they avoid paying the taxes imposed on official traders.⁷⁴ It is an interesting indication of the innate structure of the mineral trade that artisanal miners often prefer to sell to traders they know well. A trust-based relationship decreases the chances of being cheated and a miner might even rely on funds from this trader when hard times strike.⁷⁵

The poor condition of the country's transport infrastructure has a serious effect on the mineral trade. The degeneration of the road network throughout the eastern part of the country isolates many territories from the main trading centres. Consequently, a large proportion of mineral production does not reach the country's border towns by road, but is carried for several hours, if not days, on peoples' backs, bicycles and motorbikes, and is airlifted from small airstrips scattered all over the territory.⁷⁶ However, as air transport is quite expensive, the miners in these isolated areas receive a lower price for their ores. Bisie in North Kivu, the DRC's principal cassiterite mine, is a good example of this. Before the cassiterite reaches the main road between Kisangani, Walikale and Goma, it has to be carried on small paths through dense forests, over more than 50 km. Normally, a porter carrying a 50 kg-sack on his back would cover the 50 km distance in one and a half days, and receive US\$20 for his labour.⁷⁷

Mineral traders sell their commodities to trading houses⁷⁸ established in one of the major trading centres near the border, such as Butembo, Goma and Bukavu. According to the Mining Code, traders are obliged to sell purely to official trading houses, registered with the Ministry of Mines. Only official trading houses are permitted to export artisanally mined minerals from the country.⁷⁹ Before

73 Loi N° 007/2002, Titre IV: De l'exploitation artisanale des mines, Chapitre II: Du transport et de la commercialization des produits miniers d'exploitation artisanale.

74 Matthysen K. *et al.* (In press), *op. cit.*, p. 11.

75 IPIS interview with a gold trader, Butembo, October 2011.

76 International Alert (January 2010), *op. cit.*, pp. 39–40; IPIS/International Alert (November 2010), *op. cit.*, p. 32.

77 Murairi J. and Kubuya S., *Etat des lieux du développement socio-économique dans les zones minières au Nord-Kivu (territoires de Walikale et Masisi)*, IPIS/ASSODIP, March 2012, pp. 10, 14.

78 Under the mining code they are referred to as *comptoir d'achat*. More recently, however, the Congolese Minister of Mines adopted another *note circulaire* which obliges *comptoirs* to transform themselves into processing entities (*entités de traitement*); they are therefore no longer allowed to export unprocessed materials (brutes). (Sources: Loi N° 007/2002, Titre IV: De l'exploitation artisanale des mines, Chapitre II: Du transport et de la commercialization des produits miniers d'exploitation artisanale; OECD/IPIS, *Upstream implementation of the OECD due diligence guidance for responsible supply chains of minerals from conflict-affected and high risk areas: Cycle 2 interim progress report on the supplement on tin, tantalum and tungsten*, June 2012, p. 7.)

79 Matthysen K. *et al.* (In press), *op. cit.*, p. 12.

the presidential mining ban (which will be discussed in Section 5) in North Kivu in 2010, 29 trading houses were counted as engaged in exports of 3T minerals; in South Kivu, seven.⁸⁰

The official trading houses have to pay both an annual registration tax and an export tax. These taxes make the official exports of registered trading houses less competitive than the clandestine exports carried out by illegal exporters. Consequently, official trading houses also offer a lower price to traders, to cover the taxes.⁸¹

Although the 2002 Mining Code and subsequent legislation introduced lower taxes, in practice the number and level of taxes has tended to be high. The perception of the high tax burden seems to be further facilitated by the poor vulgarisation of the Mining Code, so most actors within the sector do not know which taxes are legal and which are not.⁸² The case of cassiterite illustrates the tax burden on mineral exports: while cassiterite exports represented no more than one-third of the total value of North Kivu's exports in 2006, they contributed over two-thirds of total customs revenue from exports.⁸³

Furthermore, several informants stated that the unstable security situation, the burden of paperwork, and prevalent corruption are significant deterrents for actors to trade legally.⁸⁴

Consequently, considerable mineral production leaves the country without being registered. The evasion of official taxes is pursued through various practices: smuggling (among others by criminal networks in the FARDC),⁸⁵ exports by nonregistered trading houses, under-declaration of quantities exported, false declaration of the type of export (for example declaring wolframite instead of cassiterite) and falsification of documents by the customs service.⁸⁶ It is presumed that about half of cassiterite and coltan production leaves the eastern DRC informally.⁸⁷ An estimate made by Resource Consulting Services in 2009 assumes that official exports from the Kivus' 3T sector represented about 65% of the actual export.⁸⁸ However, the Pole Institute estimated in 2007 that less than 30% of cassiterite exports were registered in the official statistics.⁸⁹ When assessing the gold trade, a 2011 IPIS study showed that the informal sector represents more than 99% of the total export volume.⁹⁰

80 OECD/IPIS, Upstream pilot implementation of the OECD due diligence guidance for responsible supply chains of minerals from conflict-affected and high-risk areas: Baseline report on the supplement on tin, tantalum and tungsten, November 2011, p. 54.

81 Matthysen K. *et al.* (In press), *op. cit.*, p. 12.

82 Ndungu Mukasa A. & Kilosho Buraye J. (2009), *op. cit.*, p. 234.

83 Tegera A. & Johnson D., Rules for sale: Formal and informal cross-border trade in Eastern DRC, Pole Institute, May 2007, p. 31.

84 IPIS interview with several sources, Butembo, October 2011.

85 S/2011/738, *op. cit.*, § 484.

86 International Alert (January 2010) *op. cit.*, p. 21; Ndungu Mukasa A. & Kilosho Buraye J. (2009), *op. cit.*, p. 229.

87 Geenen S. (September 2012), *op. cit.*

88 Garrett N. & Mitchell H., Trading conflict for development: Utilising the trade in minerals from eastern DR Congo for development, Resource Consulting Services, 2009.

89 Tegera A. & Johnson D. (May 2007), *op. cit.*, pp. 5, 53.

90 Matthysen K. *et al.* (In press), *op. cit.*

Despite tax revenues from the mining sector already accounting for 60% of government income in North Kivu,⁹¹ this high level of informality entails an important loss for the DRC Treasury. Moreover, this informality facilitates the export of conflict minerals. For example, the UNGoE has reported on several trading houses, including registered ones, who pre-financed traders that were known to collaborate with rebel groups.⁹²

4.5.1 Closed pipelines as an alternative to the ‘trading house’ model

For many years, Kivu trading houses have dominated the 3T trade in the DRC. Yet these trading houses are not engaged in production. Their absence at the mining level leads to open pipelines with numerous intermediaries, which further complicates government efforts to control the sector. Recently the government of Katanga province promoted the vertical integration of production, through to processing and export, allowing for the creation of ‘closed pipelines’. This was possible because of relatively strong governance and a relatively stable security situation in the province.⁹³

The Katanga governor imposed a tax of US\$5/kg on transfers of cassiterite and its by-products to other provinces. Consequently, former trade routes to the Kivus were curbed to Lubumbashi, Katanga’s provincial capital. Furthermore, the provincial government had found a preferential partner in a company called Mining Mineral Resources (MMR). MMR is a subsidiary of Somika, a Lubumbashi-based, Indian-owned mining and processing company that over the last decade has grown into a significant player in the Katanga copper and cobalt sector. Backed by its parent company, MMR has many times more human and financial resources than the Kivu trading houses.⁹⁴

At MMR mine sites, the Congo Artisanal Mining Cooperative organises artisanal production and has a team of traders buying the minerals at the pit, where tagging procedures are executed by SAESSCAM in the presence of a representative of the mining administration, and with the assistance of iTSCI staff. The company’s policy is to refuse untagged materials. All transport is carried out by MMR itself, with its own or hired trucks and pick-ups. From MMR production sites, the company is able to organise a closed pipeline, which has convinced Motorola and AVX Corporation to buy extracted coltan under a project named ‘Solutions for Hope’.⁹⁵ Other companies such as Nokia, Hewlett Packard and Intel have subsequently joined the project. Early 2012 KEMET has launched a similar initiative to implement a model of vertical integration in the Kisengo mine in Katanga.⁹⁶ The Malaysia Smelting Corporation (MSC) is also considering the establishment of a closed pipeline supply chain from mine to smelter.⁹⁷ In April 2012, it communicated it was negotiating with the government of the DRC to acquire upstream tin assets in DR Congo.⁹⁸

It is, however, questionable as to whether these closed pipelines offer an effective solution to the conflict minerals problem. MMR’s preferential relationship with the Katanga provincial government creates a *de facto* monopoly. Kivu trading houses have complained about MMR’s ‘economic

91 OECD/IPIS (November 2011), *op. cit.*, p. 55.

92 Ndungu Mukasa A. & Kilosho Buraye J. (2009), *op. cit.*, p. 220.

93 OECD/IPIS (November 2011), *op. cit.*, pp. 54, 56.

94 *Ibid.*, pp. 57–58.

95 OECD/IPIS (November 2011), *op. cit.*, pp. 57–58.

96 OECD/IPIS (June 2012), *op. cit.*, pp. 16–17.

97 S/2011/738, *op. cit.*, § 347.

98 ITRI, *MSC near DR Congo, Indonesia deals*, press release, Wednesday, 4 April 2012.

dictatorship' and protested that they have had to face regular harassment by the Katangan authorities.⁹⁹

Moreover it can be questioned whether this system of vertical integration leaves adequate opportunity for national actors to develop within the mineral sector, in view of the fact that it requires a lot of resources. A similar evolution, with Chinese companies integrating vertically in the Peruvian forestry sector, has been analysed by Louis Putzel. He suggests that this might decrease value added to timber in Peru and offer greater profits to Chinese actors. As such, it would increase inequality by marginalising the actors that do not have the capacity to produce evidence of compliance with the imposed rules.¹⁰⁰

The UNGoE highlighted another worrying development when it reported on the involvement of military forces to monitor implementation and enforce the contract between MMR and the provincial government.¹⁰¹

4.5.2 Congolese and Rwandan 3T minerals on the world market

Congolese and Rwandan 3T mineral exports (see tables 1–6 in Annex 2) are transported eastwards to the seaports of Mombasa, Kenya, and Dar es Salaam in Tanzania. From there, the minerals are mostly shipped to southeast Asia, where the most important producers of refined tin are concentrated. Of the top 12 producers (in 2010), 5 were located in China, 2 in Indonesia, 1 in Thailand and 1 Malaysia. The other producers among the top 12 are located in Belgium, Bolivia and Peru.¹⁰² Despite the fact that China is the world's main source of tin ores,¹⁰³ for several years it has been a net importer. In 2011, China was estimated to have used about 43% of the world's tin production.¹⁰⁴

Table 6 in the Annex 2 also clearly illustrates the growing importance of China as a tin buyer in the Central African region. Rwandan tin exports to China have built to more than 900 t in 2010 from about 200 t in 2006. The biggest importer of Rwandan tin ores over the last 5 years, however, is Belgium. Other significant importers of Rwandan tin ores are Hong Kong, India, Malaysia, South Africa, Swaziland and the UK and, in the last 2 years, France and Switzerland.

The DRC's official tin ore exports are mainly destined for China.¹⁰⁵ The UNGoE reported that, since April 2011, most 3T trading houses were not able to find buyers for untagged minerals, except for those exporting to Chinese refiners, as they do not require tags or evidence of due diligence.¹⁰⁶

99 IPIS/International Alert (November 2010), *op. cit.*, pp. 21–22.

100 Putzel L., *Upside-down: Global forestry politics reverses directions of ownership in Peru-China timber commodity chains*, XIII World Forestry Congress, Buenos Aires, Argentina, October 2009.

101 S/2011/738, *op. cit.*, § 475–476.

102 United States Geological Survey (USGS), 2010 Minerals Yearbook – Tin, May 2012, p. 77.2.

103 It produced 43% of the world's tin output in 2009. (Source: USGS (May 2012), *op. cit.*, p. 77.1)

104 ITRI website, ITRI survey: tin demand growing slowly, last update on 17 May 2012 (https://www.itri.co.uk/index.php?option=com_zoo&task=item&item_id=2435&Itemid=65)

105 S/2011/738, *op. cit.*, § 479.

106 *Ibid.*, p. 5.

On the world market tin is mainly used in the production of solders, of which most are used in the electronics industry. Other important users are the tinplate, tin chemicals and industrial lead and copper alloys markets.¹⁰⁷

The European Commission defined tungsten as one of the minerals that would become critical for EU supply within a decade, because a large share of worldwide production originates from China.¹⁰⁸ Tungsten is used to produce hard metals for heavy industry, for example to make metal and stone cutting tools and mining tools. Tungsten is also used in light bulbs, alloys and in mobile phones' vibrating alerts.¹⁰⁹

The third mineral, tantalum, is mainly used in the production of electronic devices, such as circuits in mobile telephones, computers, game consoles and digital cameras.¹¹⁰

107 Information gathered from the ITRI website, last accessed on 17 September 2012 (<http://www.itri.co.uk>)

108 USGS, *2010 Minerals Yearbook – Tungsten*, February 2012, p. 79.3.

109 Global Witness, "Faced with a gun, what can you do?" War and the militarisation of mining in Eastern Congo, July 2009, p. 21.

110 *Ibid.*, p. 20.

5. Attempts at formalising the 3T sector in the eastern DRC and Rwanda

5.1. Government policy and donor intervention

5.1.1 The presidential mining ban

After a working visit to Walikale territory in North Kivu, in September 2010, President Kabila publicly denounced the involvement of militias and FARDC members in illegal mineral exploitation and the resultant levels of insecurity.¹¹¹ In order to rectify the situation, Kabila suspended all mining activities in Walikale and launched a FARDC military operation to root out the rebels.¹¹²

During the following days, the mining suspension was extended to three provinces: South Kivu, North Kivu and Maniema and it became clear that the measure targeted the artisanal mining sector, as industrial mining companies were exempt from the ban.¹¹³ The decree also mentioned four official reasons for the ban, all of which related to the 'conflict minerals' problem and the level of informality in the sector.¹¹⁴

Kabila's move was somewhat unexpected. It has generally been understood as a response to growing international pressure around the DRC's conflict minerals problem, particularly following the adoption of the Dodd-Frank Act in the United States.¹¹⁵ A number of other motivations are commonly cited however (see Section 6).

A further ministerial decree, issued on 20 of September 2010,¹¹⁶ formulated some accompanying measures. The mining administration was commissioned to make an inventory of all mineral stocks and to conduct field visits in order to identify all operational sites and actors. The miners, traders and trading houses were required to suspend their activities and to register officially.¹¹⁷

A half year after its inception, the mining ban was lifted on 10 March 2011. An evaluation on the effectiveness of the suspension is offered in Section 6.

111 Final report of the Group of Experts on the Democratic Republic of the Congo, 29 November 2010, *UN Doc. S/2010/596*, § 174.

112 Walikale: Joseph Kabila suspend l'exploitation minière, in: *Radio Okapi*, 10 September 2010.

113 Ministère des Mines, Communiqué du Ministre des Mines en rapport avec la décision du Président de la République sur la suspension de l'exploitation minière, 11 September 2010; Arrête ministériel n° 0705/CAB.MIN/MINES/01/2010 du 20 septembre 2010 portant suspension des activités minières dans les provinces du Maniema, Nord-Kivu et Sud-Kivu.

114 Geenen S. (September 2012), *op. cit.*

115 Zing Wimmer S. & Hilgert F., Bisie. A one-year snapshot of the DRC's principal cassiterite mine, IPIS, November 2011, p. 7.

116 Arrête ministériel n° 0706/CAB.MIN/MINES/01/2010 du 20 septembre 2010 portant mesures urgentes d'encadrement de la décision de suspension des activités minières dans les provinces du Maniema, Nord-Kivu et Sud-Kivu

117 Geenen S. (September 2012), *op. cit.*

5.1.2 PROMINES

PROMINES is an integrated, multisectoral programme of the Government of the DRC, funded by the World Bank and the UK Department for International Development (DFID). As a multifaceted programme, it covers broad research areas, linking best practices in the artisanal mining sector with good governance and development.

The overall object of PROMINES is to improve the legal status, working practices and economic return of artisanal mining in the DRC, whilst establishing mechanisms to sustainably reduce its negative impacts on society, security and the environment.¹¹⁸

PROMINES envisages meeting this target through investment in the structures, capacities and resources to support legal, safe and regulated artisanal mining. Replicable pilot projects will be run in order to respond to the economic and technical priorities of all stakeholders, and address the issues of insecurity, gender, child labour and environmental degradation.

The programme has five components that parallel the stages in the value chain: 1) access to resources, 2) sector management capacity building, 3) tax collection and transparency, 4) allocation of mining revenues, and 5) sustainable development of mining.¹¹⁹

Since the DRC Ministry of Mines operates on an annual budget of US\$6 million, PROMINES offers much-needed support (US\$90 million) for the government's efforts to adopt traceability and certification measures.

However, despite approval of the programme in July 2010, actual disbursement of funds has only begun in 2012. The programme is still mostly in the preparatory phase. To facilitate its implementation, the US-based nongovernmental organisation (NGO) Pact has carried out a comprehensive study in the DRC, attempting to identify stakeholders' views on the opportunities provided by PROMINES and the major challenges the programme could face.¹²⁰

After reviewing the status quo of artisanal mining in the mineral-rich provinces of the eastern DRC, Pact provided a list of recommendations upon which all consulted actors agreed. These recommendations, which range from strengthening the capacity of SAESSCAM to formalising artisanal mining zones, are intended as starting points to identify and prioritise the micro-objectives of PROMINES.

In August 2012, PROMINES signed an agreement with IPIS, to launch a comprehensive mapping project that will take place in the eastern DRC from the end of November 2012. This project could potentially impact all five components of PROMINES, thus advancing formalisation efforts.

The IPIS mapping team will be working together with the DRC's Mining Cadastre (CAMI), the Mining Administration and SAESSCAM to provide precise geographical information on the eastern provinces

118 World Bank website – external projects, last accessed on 17 May 2012 (<http://web.worldbank.org/external/projects/main?pagePK=64283627&piPK=73230&theSitePK=40941&menuPK=228424&Projectid=P106982>).

119 *Ibid.*

120 Pact (June 2010), *op. cit.*

of the DRC. Nine teams, based in nine towns,¹²¹ will map the mining territories and highlight the linkages between the exploitation and trade of minerals and conflict dynamics.

5.1.3 Trading Centres initiative

At the end of 2009, in the framework of the Programme of Stabilisation and Reconstruction of Zones Emerging from Armed Conflicts (STAREC), the Government of the DRC, the International Organization for Migration and the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) launched the Trading Centres (CdN) initiative. The CdN budget is US\$1.3 million, covered by the UN Peace Building Fund and by individual donors.¹²²

The logic behind these trading centres, is to allow miners and traders to profit from a competitive market environment and buy and sell products at fairer prices, without any intervention from armed groups. A fixed transport route (by air or over land) is to link the trading posts to regional hubs such as Goma or Bukavu.

MONUSCO, amongst other roles, is responsible for the rehabilitation of roads towards the trading centres, and the training of the mines police units, which are tasked with securing the sites and access roads to and from the centres.¹²³

Trading centres are planned for Baraka and Mugogo (near Bukavu, South Kivu), Isanga and Itebero (Walikale territory, North Kivu) and Rubaya (Masisi territory, North Kivu).¹²⁴ So far, four of these have been built,¹²⁵ however, before these centres become fully operational, all mines surrounding them need to be qualified by *ad hoc* validation teams.¹²⁶ So far, only two such missions have been conducted – one in Mugogo and another in Rubaya.

One of the greatest challenges faced by the CdN initiative is a legal controversy relating to illegal use of private concessions by artisanal miners. Since the creation of the Mining Cadastre in 2003, mining areas in the DRC are almost entirely covered by exploration and exploitation permits held by private companies. For example, the Mugogo trading centre, which operates 2 days a week, is situated on a

121 Bunia (Ituri), Goma, Walikale, Butembo (North Kivu), Bukavu, Uvira, Shabunda (in South Kivu), Kindu (Maniema) and Kalemie (Katanga).

122 UN Development Programme, Multi-donor Trust Fund Office, *Création des Centres de négoce à l'Est de la RDC, 1ere phase* (Creation of Centres de Négoce in eastern DRC, Phase 1), Project Document, 25 March 2010, p.1 (<http://mdtf.undp.org/factsheet/project/00074614>).

123 Spittaels S., MONUC's/MONUSCO's role in the Eastern DRC in regards to demilitarization and securing mining zones, IPIS, unpublished paper, May 2010.

124 The locations were selected on the basis of a number of criteria, the most important being the accessibility of the place and the close proximity of the mines.

125 The only one that has not been built yet is Itebero. The Centres of Mugogo and Isanga, however, lack depots for 3T minerals.

126 On the procedures and principles according to which these validation missions are to be conducted, see: N° CAB.MIN/MINES/02/0379/2011 Transmission Termes de Référence des équipes conjointes pour la validation des Mines, Kinshasa, 18 April 2011.

concession owned by the Canadian gold mining company Banro.¹²⁷ This means that most of the surrounding artisanal mine sites are illegal.¹²⁸

5.2. Certification initiatives

5.2.1 Certified Trading Chains in the DRC and Rwanda

The engagement of the German Federal Institute for Geosciences and Natural Resources (BGR) in the issue of minerals certification in the DRC and Rwanda is centred on implementing bilateral development cooperation projects on behalf the Federal Ministry for Economic Cooperation and Development (BMZ).¹²⁹ To this end, the BGR Certified Trading Chains (CTC) programme has been operating in partnership with local authorities in the African Great Lakes region since 2008. The CTC concept itself was developed in 2007 and aims to support responsible mining practice and good governance in the artisanal mining sector, while at the same time taking into account questions on supply security for downstream supply chain stakeholders.¹³⁰ It was first piloted in Rwanda, in partnership with the Geology and Mining Department (GMD), and involved five local cassiterite, coltan and wolframite mining and processing companies.¹³¹

The rationale behind CTC certification lies in shedding light on the supply chain relations between downstream buyers and upstream producing companies (notably in the DRC and in Rwanda). More precisely, instead of boycotting commodities originating from conflict-affected or high-risk areas, downstream companies use their leverage to trigger positive changes upwards in the chain. Trade sanctions that aim to use economic forces to influence behaviour by withdrawing from a market are deemed too risky or simply too unstable. Certification, on the other hand, offers interested buyers the opportunity to engage with that market and selectively purchase only those materials that meet a certain standard, be it for origin, method of production, or social and environmental impact.¹³²

Certification was presented by BGR as a viable contribution to breaking the linkages between mineral extraction and conflict financing in the African Great Lakes region, whilst concurrently avoiding abrupt trade suspensions and mining bans that would ultimately be to the detriment of both upstream actors and end users. Certification is also intended to foster a responsible and sustainable use of mineral resources and allow the population to benefit from mining and trading activities.

Through various rounds of international and local consultations, BGR developed a set of 20 certification standards aimed at increasing transparency and good governance along the supply chain, whilst reducing the environmental impact of such activities and strengthening compliance

127 Banro Corp. is a gold mining company based in Canada with operations in the DRC. Banro's flagship Twangiza mine, located near the city of Bukavu in the northeast DRC, began production in October 2011 and has an annualised projected production of about 3401 kg of gold (data from Banro Factsheet: <http://www.banro.com/s/Home.asp> last consulted on 10 September 2012).

128 PPA, *In-region trip report – Kivu leg; Governance Committee Members Summary Trip Report—Feb 4-8th, 2012* (<http://www.resolv.org/site-ppa/ppa-documents/>).

129 IPIS interview with BGR representatives in Rwanda, February 2012.

130 Verbruggen D., Francq E. & Cuvelier J. (2011), *op. cit.*, pp. 22-23.

131 The companies that joined the CTC pilot project in Rwanda are: Natural Resources Development, (NRD) Galumba Mining Concession (GMC), Eurotrade International (ETI), Rutongo Mines and Wolframite Mining and Processing (WMP).

132 BGR, Project Review – Implementing Certified Trading Chains (CTC) in Rwanda, March 2011, p. 14-16.

with core human rights and working standards, specifically in the artisanal and small-scale mining sector. Participation in the programme is voluntary.

Performance of mine site operators is measured against individual CTC standards, by assigning a score of 0–4, based on standard specific level descriptors. Five principles underpin this set of working standards:¹³³

1. Origin of minerals and transparency;
2. Prohibition of child labour and fair working conditions (including constant improvement of health and safety measures);
3. On-site security, without infringing on human rights;
4. Community consultations prior to and during mining operations (including constant dialogue regarding gender, socioeconomic and development aspects affected by such operations); and
5. Continual improvement of environmental performance.

CTC certification in Rwanda hinges on a compliance mechanism that has been devised to measure companies' adherence to individual standards. In order to obtain a certificate of CTC compliance, a mine site operator has to agree to an independent audit. To guarantee impartiality, the entire auditing process (on-site inspections and compilation of detailed evaluation reports) will be overseen by the Certification Working Group.¹³⁴

The auditor (or team of auditors) will assess performance against all standards.¹³⁵ An average level of 3 is required in all CTC standards, and a level of 4 in standard 1.1 (the origin and production volume of minerals from the mine site throughout the trading chain are traceable). Though it may seem that this sub-standard is of paramount importance (to manage conflict risks and implications for market access), overall responsible mining practices require balance, since all other standards (community and development issues, working conditions and environmental concerns) are crucial when seeking to turn artisanal and small-scale mining into a sustainable business in the long run.

For the CTC scheme to work, all actors, ranging from mineral producers and governmental agencies, to traders, consumers and development agencies should play an important part. CTC, paired with development efforts, presents the possibility of a technical solution to distinguish 'blood' minerals from 'clean' minerals. Yet political buy-in and long-term support from both governments and supply chain actors remains essential.

The purpose of CTC goes beyond pure certification, as it embraces capacity development and improvement of mining practices. These broader objectives are embedded in the procedures themselves. For instance, a baseline audit is meant to guide mineral producers and authorities through the most relevant issues; audit reports will include improvement suggestions.¹³⁶ The latter could then be further substantiated through consulting interventions (e.g. BGR engaged with key actors in Rwanda through five different consulting interventions, which will be discussed in depth in Section 6).

133 BGR, Certified Trading Chains in Mineral Production – Principles and Standards, November 2008.

134 The working group is composed of several government stakeholders (the most important being GMD) and BGR. For an overview of audit methodology, planning and procedures, see BGR/PHS, BB General Audit Considerations and Procedures, version 1.0 of 22 May 2011.

135 BGR, CTC Compliance Audit Rwanda – Terms of Reference, May 2011.

136 Ibid.

About 1 year after the baseline audit, a compliance audit is carried out on the mineral producers. This latter verification will determine whether they are CTC-compliant or not.

As of February 2012, there were three CTC-compliant mine sites (and associated trading chains) in Rwanda, where five mineral producers have been subject to one baseline and one compliance audit each.¹³⁷ Certification is performed by the Rwanda Bureau of Standards. No compliance certificates have been issued in the DRC yet, and a specific compliance mechanism is yet to be developed. Three baseline audits have been carried out in the DRC to date.¹³⁸

CTC standards have also been integrated as 'progress criteria' in the Regional Certification Mechanism of the International Conference on the Great Lakes Region (ICGLR). Under the ICGLR scheme CTC standards will be monitored, but not certified, as compliance with progress criteria is not required to obtain an ICGLR certificate.

5.2.2 The International Conference of the Great Lakes Region and the Regional Certification Mechanism

The ICGLR is a regional, intergovernmental organisation that was established in 2004. It is based on the recognition that political instability and conflicts involving its 11 member states have a considerable regional dimension and thus require addressing through concerted efforts.¹³⁹

At a December 2006 summit, the ICGLR adopted the Pact on Security, Stability and Development in the Great Lakes Region – a document that includes 10 legally-binding protocols covering a wide range of regional issues, from mutual defence and judicial cooperation, to the illegal exploitation of natural resources.¹⁴⁰

The protocol on the fight against the illegal exploitation of natural resources provides the legal basis for 'a regional certification mechanism for the exploitation, monitoring and verification of natural resources within the Great Lakes Region'.¹⁴¹ The protocol entered into force in June 2008 and was later embedded in the Regional Initiative on Natural Resources (RINR), adopted by the heads of all ICGLR member states in December 2010 (Lusaka Declaration).¹⁴²

RINR envisages six tools to address the challenge posed by natural resources in the region: 1) the Regional Certification Mechanism (RCM) for cassiterite, wolframite, coltan and gold; 2) harmonisation of national legislation; 3) formalisation of the artisanal mining sector; 4) a regional database on mineral flows; 5) promotion of the Extractive Industries Transparency Initiative (EITI);¹⁴³ and 6) a whistle-blowing mechanism.

137 IPIS interview with BGR representatives in Rwanda, February 2012.

138 Ibid.

139 ICGLR website, last accessed on 17 May 2012 (<https://icglr.org/spip.php?article1>).

140 ICGLR website, last accessed on 17 May 2012 (<https://icglr.org/spip.php?article2>).

141 Ibid.

142 ICGLR website, last accessed on 17 May 2012 (<https://icglr.org/spip.php?article89>).

143 The EITI is a multi-nation initiative between governments, industry and civil society whose aim is to promote good governance through the disclosure of revenue flows generated by natural resources extraction and trade. EITI website, last accessed on 18 May 2012 (<http://eiti.org/>).

The RCM is due to become mandatory in all ICGLR countries within the next 3 years. So far, only the DRC and Rwanda have enacted legislation that incorporates the RCM into their mining codes. The Rwandan Geology and Mines Department has recently finalised the template for baseline mine site inspections, and in August 2012 the largest mining company of the country has been inspected.¹⁴⁴

The scheme will operate as follows: the ICGLR has designed chain of custody tracking standards to ensure that minerals are fully traceable and conflict-free up to the point of export. These standards are described in the ICGLR Regional Certification Manual, which provides general guidance on fundamental criteria that should be met when designing a chain of custody for 3T minerals.

Member states are responsible for implementing and supervising the chain of custody system within their own borders. Mineral flow will be tracked and analysed via an ICGLR regional database, using the data on individual shipments provided to the ICGLR by each member state. Under the certification system, only minerals from a mine registered as certified in the ICGLR regional mine site database will be used, with government verification taking place at the different stages of the supply chain. Only actors implementing due diligence will be able to gain export certificates.

The implementation of these procedures should considerably improve the collection and sharing of information relating to on-site security, revenues generated at export, and all payments made along the supply chain. The RCM will also help companies certify how they mitigate the environmental impact of their activities and progressively introduce basic social services for miners.

Some progress has been made with other RINR tools, notably with regard to the composition and functioning of the whistle-blowing mechanism. This mechanism will consist of three components: 1) a whistle-blower platform, to submit complaints and reports anonymously using a variety of channels, including the Internet and SMS; 2) a validation and processing entity, which would receive the reports, conduct basic verification and forward the reports to the national authorities concerned; and 3) a phase of investigation and follow-up, led by investigative bodies located within the member state.¹⁴⁵ Different agencies and consultancies are involved in discussing the composition of the whistle-blowing mechanism, notably the German Agency for International Cooperation (GIZ) and the Canadian NGO, Partnership Africa Canada (PAC).¹⁴⁶

The possibility of establishing a permanent link between the whistle-blower mechanism and the platform, Coalition of the Civil Society of the Great Lakes Region against the Illegal Exploitation of Natural Resources, is currently being explored. This coalition focuses on awareness-raising around exploitation of natural resources and on state-level advocacy to respect and implement the ICGLR Pact in African Great Lakes countries. The first meeting – which saw the participation of civil society organisations (CSOs) from the Kivus, Burundi, Rwanda and Uganda – took place in Kampala in December 2011.¹⁴⁷

144 IPIS interview with GMD officials in Kigali, August 2012.

145 ICGLR, Stocktaking Study for a pilot whistle-blower mechanism within the framework of the ICGLR Regional Initiative on Natural Resources, September 2011.

146 OECD/IPIS (May 2012), *op. cit.*, p. 41.

147 CENADEP Kivu, Report on the Regional Meeting on data collection in the mining sector in order to implement the regional initiative against the illegal exploitation and commerce of minerals in the Great Lakes Region, February 2012.

According to a proposition advanced by PAC,¹⁴⁸ this platform should function as a whistle-blower platform and be capable of sharing information with the Independent Mineral Chain Auditor (IMCA), which would work as a validation entity. One great advantage of such a connection is that the RINR would constantly be linked to the reality on the ground, taking into account the independent and up-to-date contribution brought by CSOs.

GIZ is planning to hold a series of workshops targeting civil society and grassroots organisations in Bukavu, South Kivu. The aim of this initiative is to explain how the whistle-blowing mechanism was designed, as well as getting inputs from local actors on how it could work in practice.

5.2.3 National certification in the DRC

The DRC also launched the National Certification Initiative, designed to implement the Regional Certification Mechanism of the ICGLR in the DRC. Unlike the CdN initiative, national certification is not restricted to specific areas of the country, making it easier to prospect and select areas that do not lie within the boundaries of company concessions.

A notable advancement with this initiative came into effect on 29 February 2012, when the DRC minister of mines signed a ministerial decree implementing the ICGLR RCM in the country.¹⁴⁹ This piece of legislation obliges all actors involved in the supply chain in the DRC to adopt and respect the standards set by the ICGLR.

Through the Mining Code and the other legislation, the Government of the DRC has established a chain of custody scheme covering production, trade and transport all the way from mines to customs. The chain of custody system that is due to become effective in the DRC by 2013 is described in detail in the National Certification Manual.

Since this manual existed prior to the ICGLR RCM, some harmonisation is needed; however, full alignment between the two can only happen once the first certificates are issued and the two systems can be compared in practice.¹⁵⁰

Regarding the database, the DRC Ministry of Mines is working to coordinate transmission of statistics to the ICGLR Secretariat in Bujumbura. The IMCA will be recruited after the formation of an Audit Committee, and will be able to conduct investigations in ICGLR member states with regards to patterns of illegal exploitation of natural resources.¹⁵¹

The third party audit has already been piloted in the eastern DRC, through an audit visit to the Nyabibwe mine. This visit was carried out with the technical support of the Bureau d'Etudes Scientifiques et Techniques (BEST), a local CSO, and the DRC Working Group on Certification, as well as with financial support from BGR.

148 IPIS interview with PAC, March 2012.

149 Arrêté Ministériel portant mise en oeuvre du mécanisme régional de certification de la Conférence Internationale de la Région des Grands Lacs, 29 February 2012.

150 IPIS interview with PAC, March 2012.

151 OECD/ IPIS (May 2012), *op. cit.*, p. 18.

Under the National Certification initiative, these audits are scheduled to take place every 3 years, and to be complemented by yearly internal audits carried out by the Ministry of Mines. MONUSCO is to perform a rapid response watchdog function.

5.3. Supply chain management initiatives

5.3.1 The ITRI Supply Chain Initiative in the DRC and Rwanda

The International Tin Research Institute (ITRI) is a UK-based tin industry association, whose membership covers, as of 2012, 67% of global refined tin production.¹⁵² ITRI comprises members operating at all stages of the supply chain: smelters and processors, miners, traders and users. In July 2009, under international pressure,¹⁵³ ITRI designed a traceability system (iTSCi) that enables mineral purchasers to collect information on production and trade and keep track of them from pit to export.

The system involves two types of tags: a mine tag and a trader or processor tag. These are added to the bags of minerals at the first two points of the supply chain, i.e. extraction and processing. Each tag has a unique reference number, and is accompanied by a specific entry in the iTSCi logbooks (different logbooks are used for each supply chain tier). Information recorded in the logbooks includes: mine of origin, quantity, dates and method of extraction; locations where minerals are consolidated, traded, processed and upgraded; and the identification of all intermediaries, consolidators or other actors in the upstream supply chain. The data is then entered into the iTSCi online database.

The system is currently operational in Katanga province, DRC, and Rwanda, where it covers approximately 350 sites.¹⁵⁴ iTSCi undertakes a risk assessment of the regions where it operates (Katanga, Rwanda) and audits the companies that are participating in its scheme. Both services are provided by Channel Research.

A risk assessment report covering Rwanda was released in August 2011, after a Channel Research team visited Rwanda in December 2010, March 2011 and July 2011. A new reporting cycle on Rwanda is due to take place by the end of 2012. Similarly, a report on Katanga was finalised in late February 2012.

Both documents (the assessment and report) form part of iTSCi's effort to assess the risk of adverse impacts in light of artisanal mining practices, and to make a number of recommendations for mitigation measures.

As of July 2012, a total of 15 audits of mine sites have been carried out. Besides these, iTSCi uses two other tools to monitor and follow up challenges and problems arising during the implementation phase: the incident report and the Steering Committee of the iTSCi system, complemented by the local Follow-up Committees.

152 Verbruggen D., Francq E. & Cuvelier J., (2011), *op. cit.*, p. 24.

153 The 2008 UN Group of Experts report (S/2008/773) indicated that some ITRI members had been buying cassiterite, coltan and wolframite from trading houses allegedly sourcing from sites controlled by armed groups.

154 OECD/IPIS (May 2012), *op. cit.*, p. 11- 12.

As July 2012, 150 incident reports had been filed,¹⁵⁵ some of which may have serious consequences. Earlier this year, one Kigali-based iTSCi member was suspended from the scheme following an incident report and subsequent investigations. In this case, fraudulent misrepresentations of mineral origin were detected and addressed by iTSCi on-the-ground staff, and then brought to the attention of the Rwandan authorities.¹⁵⁶

The incident shows the potential for tags to be purchased illegally, as well as the danger of minerals from the DRC being illegally traded through Rwanda and other neighbouring countries.

In contrast, the iTSCi committees are structures that have been put in place exclusively in Katanga; the Steering Committee is an oversight body bringing together the heads and representatives of different state mining services, all processing entities (trading houses), and a number of cooperatives and CSOs. It is intended to function as a platform to advance the debate on due diligence processes and formalisation of the artisanal mining sector. Best practices, as well as weaknesses that cause operational delays, are addressed by the Steering Committee on a regular basis. At the local level, Follow-up Committees have been established in order to guarantee proper follow-up in the mining territories.

However, iTSCi continues to face numerous challenges. Firstly, the limited resources placed at the disposal of the government services, which should closely work with iTSCi at mine sites (SAESSCAM in Katanga and GMD in Rwanda), cause long delays that risk disruption to the system.¹⁵⁷ Secondly, a disclosure and data distribution policy has not yet been finalised. This poses major problems, especially in terms of iTSCi-ICGLR close cooperation and data sharing.¹⁵⁸ These issues will be discussed in further detail in Section 6, which offers a comprehensive analysis of the iTSCi system.

5.3.2 Efforts at enhancing private sector accountability: Due diligence recommendations by the UN Group of Experts and the OECD

In December 2010, the OECD released the Due Diligence Guidance on Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. Considerable input on how to frame the issue of due diligence came from the UNGoE.

The UNGoE has been investigating the illegal exploitation of natural resources in the DRC since 2004.¹⁵⁹ It has constantly highlighted the linkages between the extraction and trade of minerals and the exacerbation of the conflict in the eastern provinces.¹⁶⁰

155 IPIS interview with ITRI project managers, July 2012.

156 Firms blacklisted for illegal mineral tagging, in: *The New Times*, 7 March 2012, (<http://www.newtimes.co.rw/news/index.php?i=14924&a=51028>).

157 IPIS interview with mining companies and traders in Rwanda, February 2012, further confirmed by IPIS interviews with the same actors in August 2012.

158 IPIS interview with the ICGLR Secretariat in Bujumbura, Burundi, February 2012, followed by an IPIS interview with PAC, March 2012.

159 The Group of Experts was originally established by resolution 1533 (2004) and subsequently renewed by several other resolutions. See UNSC website, last accessed 17 May 2012 (<http://www.un.org/sc/committees/1533/>).

160 UN Group of Experts on the DRC, last accessed 17 May 2012 (<http://www.un.org/sc/committees/1533/egroup.shtml>)

UNGoE produced a set of guidelines on the exercise of due diligence by importers, processing industries and consumers of mineral products, regarding the purchase, sourcing, acquisition and processing of minerals from the DRC¹⁶¹ - guidelines that are mirrored in the OECD document.

The OECD guidance, in the same manner as the UNGoE guidelines, provides a five step framework:

1. Establish strong company management systems;
2. Identify and assess risks in the supply chain;
3. Design and implement a strategy to respond to identified risks;
4. Carry out independent third-party audit of supply-chain due diligence at identified points of the supply chain;
5. Report on supply chain due diligence.

This framework requires all actors (be it upstream mining, processing and exporting companies or downstream smelting and retailing) to put in place a chain of custody and/or a traceability system to demonstrate the origin of their minerals. Companies are further required to design and implement robust and comprehensive risk assessment and risk mitigation measures to ensure that all potentially harmful situations are properly addressed. Lastly, companies are advised to publicly report on their supply chain due diligence policies and practices, which form the subject of independent third-party audits.¹⁶²

In 2011, the OECD Secretariat launched a pilot project on the implementation of the guidance, in which 67 companies are currently participating. This pilot phase fits in the framework of the ICGLR-UNGoE-OECD joint efforts in advancing due diligence processes in the supply chain of tin, tantalum and tungsten. The OECD has issued four reports on efforts to put the guidance into practice: two reports concerning upstream actors and two concerning downstream actors¹⁶³. Two other reports – the final ones – are due by January 2013. Drawing on lessons from the ground, the OECD Investment Committee and the Development Assistance Committee will then identify due diligence challenges and share best practices, as well as tools used by companies to implement the guidance.

161 S/2010/596, *op. cit.*, p. 83.

162 The OECD guidance does not foresee audits taking place of processors or exporters, but only of smelters; however, once the smelter has provided the auditor with a list of their suppliers, the auditor can conduct sample audits further upstream in the supply chain.

163 All four reports can be accessed via the OECD webpage on “Implementing the Guidance in Africa’s Great Lakes region”: ([http://www.oecd.org/daf/internationalinvestment/guidelinesformultinationalenterprises/](http://www.oecd.org/daf/internationalinvestment/guidelinesformultinationalenterprises/implementingtheguidance.htm)implementingtheguidance.htm)

6. Evaluation of ongoing formalisation efforts in the eastern DRC and Rwanda

6.1. Government policy and donor intervention

6.1.1 The presidential mining ban

Many national and international observers questioned the feasibility, effectiveness, impact, and motives of the presidential mining ban in the DRC.¹⁶⁴

From the ban's inception in September 2010, it was clear that it was very unlikely that either the suspension, or the accompanying measures, would be effectively enforced. State institutions lacked the capacity to carry out their supervising task – another illustration of the lack of state authority in the eastern DRC. Miners and traders, lacking any incentive to operate formally, ignored these measures.¹⁶⁵

Furthermore, the FARDC was also unsuccessful in enforcing the presidential mining ban. The period of the ban has, instead, enabled FARDC units to heighten their control over the mining sector in the eastern part of the country. The former National Congress for the Defence of the People (CNDP) militia group, in particular, have profited from the situation. They significantly strengthened their control over the FARDC units deployed in Walikale and Masisi, allowing them to tighten their grip on mining activities in the Kivus.¹⁶⁶

Consequently, although production and trade in the 3Ts were forbidden and decreased, mining continued at numerous sites, often under the control of criminal networks within the FARDC. For example, a 2011 IPIS study showed through satellite images that the actual mining area in Bisie, DRC's principal cassiterite mine, expanded between September 2010 and March 2011.¹⁶⁷ In addition, the UNGoE reported that mineral smuggling across the border to Rwanda increased during the suspension.¹⁶⁸

The fact that mining had not stopped and that the ban had intensified military control over the mining sector, shows that the measure was both ineffective and somewhat counterproductive. This is in sharp contrast to the official motives for the ban, of tackling the 'conflict minerals' problem and reducing the level of informality in the sector.

The suspension has had other unintended consequences, hitting local communities hard. The artisanal mining sector provides jobs to hundreds of thousands of people, whose livelihoods were threatened. The ban also had an indirect impact on retail traders, transporters and farmers. The

164 Verbruggen D., Francq E. & Cuvelier J. (2011), *op. cit.*, p. 18.

165 Geenen S., (September 2012), *op. cit.*

166 S/2011/738, *op. cit.*, § 439, annex 89; Zingg Wimmer S. & Hilgert F. (28 November 2011), *op. cit.*, p. 7.

167 Zingg Wimmer S. & Hilgert F. (28 November 2008), *op. cit.*, p. 8.

168 S/2011/738, *op. cit.*, § 478.

number of thefts in mining areas increased significantly,¹⁶⁹ as did the number of school drop-outs – as parents could no longer afford their children’s school fees.¹⁷⁰

The ban also deprived isolated mining communities of consumer goods and hard currency. For these communities, mineral exports are by far the most important exchangeable currency.¹⁷¹ Decreasing mineral trade equates to increased isolation for these communities. An airlift is often the only connection with the large trading centres near the border and the world market. On their inland flights, transport companies often take food and consumer goods while returning with minerals. During the ban, all transport companies significantly reduced the number of connections with remote territories, consequently reducing the supply of goods.¹⁷²

It has been argued that the presidential mining ban had a number of hidden motives. Some suggest that the ban constituted a tactical move to facilitate industrial miners’ control over their concessions. Another theory contests that drawing the attention of the international community to the officially stated problems of conflict minerals and the level of informality has diverted attention away from the issue of disputed industrial contracts¹⁷³ and the role of powerful politicians in these shady negotiations.¹⁷⁴

6.1.2 PROMINES

PROMINES entered its pilot rollout phase in June 2012. It is, therefore, too early to assess the impact of this multifaceted programme. Given and financial weight, PROMINES has the potential to dramatically change the artisanal mining landscape.

The analysis that follows also needs to be read in light the priorities and micro-objectives that have been identified by Pact in their study for PROMINES.¹⁷⁵

Through its large portfolio of projects, PROMINES aims to contribute to increased tax revenues, to an improvement in the livelihoods and welfare of artisanal miners and to the prevention of illegal exploitation on private concessions.

As far as the first objective is concerned, all actors acknowledge the need to increase state tax revenue and simultaneously put an end to informal taxation of artisanal miners.¹⁷⁶ Given the complexity of taxation issues, PROMINES will prioritise awareness-raising with regards to the mining law and tax regime in order to create an enabling environment for its implementation and, in parallel, it will work to strengthen the capacity of SAESSCAM.

With regards to the livelihoods and welfare objective, three pilot projects will be launched under the PROMINES umbrella. One will be run in several sites across South Kivu and will be focused on

169 Radio Okapi, *La suspension de l’exploitation minière serait à la base de regain des cas de vol à Punia*, 22 February 2011.

170 Geenen S. (September 2012), *op. cit.*

171 Verbruggen D., Francq E. & Cuvelier J., 2011, *op. cit.*, p. 19.

172 Geenen S. (September 2012), *op. cit.*

173 For example the dispute over First Quantum’s mining assets in Katanga.

174 Geenen S. (September 2012), *op. cit.*

175 Pact (June 2010), *op. cit.*

176 IPIS interviews with stakeholders in Lubumbashi, Goma and Bukavu, January and February 2012.

engaging artisanal mining communities in understanding the negative health and environmental consequences of using mercury in gold recovery.¹⁷⁷ A second pilot project will be run in Kolwezi in Katanga and will aim to sensitise local economic actors about child labour. The third project, a national programme to be implemented in pilot sites across the DRC, will focus on the provision of financial services in artisanal mining areas.¹⁷⁸

Finally, with regards to illegal and unsustainable use of private property, PROMINES incorporates a pilot project which aims to support artisanal and small-scale mining operations, formalise three new ZEAs in the eastern DRC, and engage with large-scale mining companies to consider legally granting parts of their concessions to artisanal and small-scale miners.¹⁷⁹

6.1.3 Trading Centres initiative

The CdN initiative has not yet been put into practice for a number of reasons. These range from resource constraints to security threats and the illegal use of private concessions, where, theoretically, artisanal mining should not occur.

The current situation on the ground is confusing, contradictory and lacks transparency. The presence of artisanal miners on industrial concessions, for example, is often tolerated by state services, despite being illegal. Furthermore, some of the sites are in national parks, where mining activities are also illegal.¹⁸⁰ Formalisation should help to create a new artisanal and small-scale mining sector founded on a more solid ground. However, this is impossible while controversies surrounding titles and concessions persist, and ZEAs are ill-defined.

The Mugogo trading centre, on the Banro concession, illustrates these issues. In February 2012, SAESSCAM was taxing miners who operated illegally in Banro's concession,¹⁸¹ thus avoiding the broader question of exploration and exploitation permits. A potential project to negotiate artisanal mining of cassiterite in this area is currently being discussed by the Ministry of Mines, Banro and Ecomin (a smaller company that also holds a permit).¹⁸² Overcoming the obstacle of concessions is a prerequisite for trading centres to function properly.

In addition, improving the safety and livelihoods of artisanal miners will require the roads to and from trading centres to be properly secured.¹⁸³ Safe access to the trading centre is crucial for the success of the entire initiative, otherwise informal taxation and corruption may jeopardise formalised mineral trade.

177 This relates closely to water consumption and pollution; mining operations tend to occur as close to water sources as possible, and these sources are contaminated by mineral washing, notably by mercury in the vicinity of gold mines.

178 More specifically, the short-term objective is to increase the level of income diggers save from their work (micro-saving), while the long-term goal is for diggers to build up micro-savings to allow them to access formal micro-credit schemes that are already up and running.

179 De Koning R., *Conflict minerals in the Democratic Republic of the Congo*, SIPRI Policy Paper, 27, June 2011, pp. 36- 37.

180 OECD/IPIS (May 2012), *op. cit.*, p. 8.

181 IPIS interview with PPA and Enough Project in Goma, February 2012.

182 PPA (2012), *op. cit.*

183 MONUSCO's security mandate encompasses: 1) security of mine sites, 2) escorting minerals from mines to trading centres, 3) providing security in and around the centres themselves, and 4) escorting minerals from trading centres to trading houses. The security checks should cover a 25 km radius around the five trading centres.

The lack of state control over transport routes between mines, trading centres and export hubs is still a major problem in the eastern DRC. This leads to a number of hazards, including the imposition of illegal taxes.¹⁸⁴ Plans to train and deploy units from the mines police have, so far, proved ineffective. The most striking example of this is at Bisie, the largest cassiterite mine in North Kivu. The mine has been alternately controlled by the FARDC and the rebel group Maï Maï Cheka. Currently under FARDC control, the government has been unable to ensure a hand over to the mines police.¹⁸⁵

6.2. Certification initiatives

6.2.1 Certified Trading Chains in the DRC and Rwanda

Certification of high-value minerals, such as the 3Ts, could create islands of legality, where transparent trade plays a role in preventing conflict, sustaining livelihoods, increasing tax revenues, and improving supply security for end users.¹⁸⁶ ‘Certified islands’ are supposed to expand gradually, as they represent the only option for downstream players (e.g. the electronics industry) to buy much-needed minerals from the African Great Lakes region without risking their reputation.

The CTC programme was conceived in a way that would, in the long term, deliver more than just certificates, by fostering the development of socioeconomic and environmental best practices in the mining industry. Since the programme has been up and running in Rwanda since 2008, it is possible to assess its impact in areas beyond certification, such as transparency of mineral flows and associated payments, working conditions, security and human rights, and community consultation and gender.

It is important to highlight the role played by technical assistance processes put in place by BGR, together with specialised consultants. After baseline audits had determined how companies, unaided, performed against CTC standards, further guidance was provided to those most in need of assistance. Companies were advised on how they could upgrade their operations in key areas. Five consultancies were provided, focusing on traceability, corruption, gender, work safety and the environment.¹⁸⁷

Taking the example of corruption, companies scored particularly low with regard to CTC Standard 1.4 (‘actively oppose bribery and fraudulent payments’); although it has been argued that these low scores (level 2 out of 4 possible levels) can be attributed to the absence of formal anti-corruption policies.¹⁸⁸ Following these findings, a workshop tailored to the needs of the pilot companies was held by a BGR-contracted expert, who briefed executives on anti-corruption standards, presented a

184 IPIS interview with representatives of the civil society platform GATT-RN, Goma, February 2012. GATT- RN is the French acronym for the Support Platform for Traceability, and Transparency in the Management of Natural Resources (Groupe d’Appui à la Traçabilité et la Transparence dans la Gestion des Ressources Naturelles)

185 IPIS interview with civil society organisations in North Kivu, February 2012.

186 BGR/ BMZ (German Federal Ministry for Economic Cooperation and Development), *In focus: BGR support for mineral certification in the African Great Lakes Region*, February 2012, p. 11.

187 BGR Project Review (March 2011), *op. cit.* p. 45.

188 It is noteworthy that the Government of Rwanda made significant strides towards achieving a corruption-free administration, as demonstrated by the country’s ranking in Transparency International’s Corruption Perception Index, where Rwanda is 49 out of 182 nations: (<http://cpi.transparency.org/cpi2011/results/>).

model policy, and delivered a set of hands-on tools to guide executives through the implementation stages.¹⁸⁹

CTC has also improved the control over production and tax payments of participating companies. However, it should be noted that even though CTC audits still monitor CTC Standard 1.3 ('publish all payments made to government according to internationally accepted standards'), this is excluded from the average calculation for certification. This is because Rwanda is not a member of EITI,¹⁹⁰ hence companies do not have to divulge royalties, taxes and other payments made to their host governments according to EITI standards.

Another advantage CTC has brought to mining dynamics in Rwanda is the encouragement of collective action at mine sites— notably through cooperatives and formal companies relying on artisanal miners as subcontractors. Although having artisanal miners organised in a cooperative or corporate structure is not a prerequisite for certification, it is definitely a necessity in the broader CTC framework. Standards such as those relating to working conditions¹⁹¹ undoubtedly benefit from some form of miner organisation. The fact that some social cohesion of this kind existed in Rwanda before CTC is highly relevant; in fact, for the purposes of the pilot, it was better to concentrate on artisanal and small-scale mining scenarios where workers associations were already established.¹⁹² This indirect link with CTC standards further encouraged worker organisation, and improved the livelihoods of diggers.

The CTC programme has proven effective in meeting several targets of formalisation and has helped pave the way for subsequent schemes. For instance, through its baseline and compliance audits, it has tested the viability of auditing procedures in an artisanal mining context. Furthermore, the working partnership between BGR and the GMD has improved the way in which Rwandan officials' deal with issues such as checking revenues generated by the artisanal and small-scale mining sector or addressing corruption. Lastly, CTC standards and procedures have provided a useful template for the mineral tracking and certification scheme developed by the ICGLR in the RINR framework.

6.2.2 The International Conference of the Great Lakes Region and the Regional Certification Mechanism

It is too early to assess whether the RCM will be able to deliver on its main objective of ensuring that mineral products being sold on international markets do not fuel conflict in the African Great Lakes region.

Since the ICGLR scheme was only enshrined in DRC legislation in February 2012, and in Rwanda in April the same year, mainstream implementation has not yet started. Once integrated into the extraction and trade processes, the RCM could prove effective in addressing a wide array of challenges. Through its chain of custody and tracking provisions, it could significantly contribute to

189 *Ibid.*, pp. 47 - 48.

190 Country-specific reporting standards can only be developed through a multistakeholder working group as part of a formal EITI process.

191 All those linked to Principle II – 'The company does not use child labour and ensures fair remuneration and work conditions as well as continual improvement of health and safety measures for all employees'.

192 BGR Project Review (March 2011), *op. cit.* p. 24.

the recording of all payments made along the value chain, and eventually to increasing revenues generated at export.

The ICGLR scheme has the potential to reduce corruption across the region, notably informal taxation along the production chain, since traders and exporters in participating countries are required to keep track of all fees, royalties and other payments they are subject to.¹⁹³

Another advantage of the scheme is that the information collected will be kept in a Regional Database on Mineral Flows designed under the ICGLR Regional Initiative against the Exploitation of Natural Resources.¹⁹⁴ This would make it possible to analyse and compare data coming from different countries, thus tackling broader patterns relating to cross-border smuggling.

The RCM could also have a profound impact on the rights and safety of diggers. The scheme demands that companies assess and declare how they aim to mitigate the adverse impact of mining operations on the rights and health of miners and on the environment. Companies are also required to provide basic social services at mine sites.

Furthermore, the creation of a whistle-blower mechanism under the RINR could have a positive impact on a range of issues including corruption, livelihoods and inclusion of marginalised groups. This mechanism could have even greater potential if designed according to PAC's recommendation: with the Coalition of the Civil Society of the Great Lakes Region against the Illegal Exploitation of Natural Resources taking the lead and being able to share the information received with the IMCA.

The IMCA is also due to play a vital role in initiating independent investigations into issues such as the involvement of armed groups in the mineral chain, thus shedding light on the risks of predatory taxation and the financing of conflict by mineral exploitation and trade in the region as a whole.¹⁹⁵

The IMCA will collate information provided by a wide range of actors – local CSOs, MONUSCO and confidential informants – making sure that all voices are heard and avoiding the risk of favouring the most powerful actors. At the same time, such comprehensive information analysis, coupled with field investigations conducted by the IMCA on a needs basis, will help identify flaws and potential threats to formalisation in the region.

In addition, the fact that the ICGLR is a regional body, committed to finding a regional response to the conflict minerals dilemma, could bring a different perspective to the formalisation debate. One of the criticisms frequently levelled by economic and governmental actors in the region is that industry initiatives and international legislation (such as iTSCi and the Dodd-Frank Act) do not recognise the need for multistakeholder governance.¹⁹⁶ It has been argued that positive outcomes for regional actors are not guaranteed in top-down initiatives that do not incorporate those stakeholders' views and needs.¹⁹⁷ In this sense, the ICGLR RCM could give greater legitimacy to the formalisation process as a whole.

193 ICGLR (November 2011), ICGLR Regional Certification Mechanism (RCM) – Certification Manual, pp. 17-20.

194 ICGLR website, last accessed on 18 May 2012 (https://iglr.org/IMG/pdf/THE_SIX_TOOLS_OF_THE_RINR.pdf).

195 ICGLR Regional Certification Mechanism (RCM) – Certification Manual, p.31.

196 IPIS interview with representatives of mining companies and traders in the DRC and Rwanda, January and February 2012.

197 *Ibid.*

Lastly, given the conditions on the ground and the confusion that has been generated by the rollout of numerous formalisation initiatives, the ICGLR RCM could bring other schemes operating in the region under a common standard. This is illustrated by the fact that the RCM is harmonised with the OECD due diligence guidance – for instance, audits carried out under the RCM will qualify as risk assessment under Step 2 of the guidance.¹⁹⁸ There is also room for RCM cooperation with the CTC; it has been suggested that ICGLR certificates be issued on the basis of CTC certificates, meaning that some indicators that were used to issue CTC certificates will be the starting point for assessment under ICGLR scheme. However, since Rwandan mines that are CTC-certified (such as Nyakabingo and Rutongo) passed their audits at least 3 years ago, they will need to undergo new inspection.¹⁹⁹ As of June 2012, only Rutongo had been inspected; data on their performance and compliance with ICGLR standards have not yet been made public.²⁰⁰

Traceability tools such as the one developed by ITRI could also fit into this scheme, since it meets the criteria set by the ICGLR certification manual. There is also the potential for collaboration on data sharing; talks on a possible interplay between the iTSCi and ICGLR databases are underway.²⁰¹

6.2.3 National certification in the DRC

On February 29, the DRC minister of mines signed a ministerial decree on nation-wide implementation of the ICGLR RCM.²⁰² The decree obliges any actor involved in the chain of custody in the DRC to adopt and respect the OECD-compliant standards of the ICGLR RCM.

In keeping with the OECD guidance, Article 8 of this ministerial order requires these actors to exercise due diligence to ensure that they do not contribute to human rights abuses or conflict in the DRC. Article 9 states that third party audits will be conducted in accordance with the standards and procedures of the ICGLR Certification Manual and annexes I, II and III of the OECD guidance.

In October 2012, the first meeting of the ICGLR Audit Committee took place in order to launch the committee activities and elaborate an operational plan of action on identifying auditors, dispatching them to the field, receive audits, and make the results publicly available.

The national certification scheme does not operate on a geographical basis; therefore, it will not exacerbate the tensions relating to concessions and illegal use of private property- unlike the trading centres initiative. However it remains to be seen whether an agreement with those holding exploration and exploitation permits can be reached.

198 It should be noted that this processes cannot qualify as an audit under Step 4 of the guidance, since the latter only envisages smelter audits.

199 IPIS interview with BGR in Kigali, August 2012.

200 *Ibid.*

201 IPIS interview with representatives of GIZ and of the ICGLR Secretariat in Bujumbura, February 2012.

202 Arrêté ministériel portant mise en oeuvre du mécanisme régional de certification de la Conférence Internationale de la Région des Grands Lacs, 29 February 2012.

6.3. Supply chain management initiatives

6.3.1 The ITRI Supply Chain Initiative in the DRC and Rwanda

This industry-led scheme has a number of clear benefits including an improvement in the potential for legal taxation, the generation of more accurate statistics on mineral trade, and a crackdown on fraud.

Some of these substantive changes are spelled out in a ministerial letter supporting the renewed memorandum of understanding between the DRC Ministry of Mines and ITRI.²⁰³ The letter also includes a brief evaluation of the activities conducted by ITRI in Katanga and provides some insights into the next steps planned by the Government of the DRC. The following benefits were singled out by the minister:

- The iTSCi project in Katanga has restored the confidence of end users in buying minerals from the DRC.
- All actors in the supply chain have been obliged to implement international norms concerning security, environmental and management strategies.
- Transparency and good governance have benefited greatly from the introduction of iTSCi traceability.
- Improvement in the governance structure has led to an increase of tax revenues from the artisanal and small-scale mining sector, in Katanga and nationwide.

An assessment carried out by IPIS in 2012,²⁰⁴ suggests that formalisation through traceability has achieved its crucial aim of increasing transparency to allow downstream buyers to purchase minerals from the African Great Lakes region without fuelling conflict.

Before iTSCi implementation, the largest users of 3T materials had stopped buying from smelters that could not prove that they do not source from the DRC's conflict regions.²⁰⁵ The two main electronic lobby groups – the US Electronic Industry Citizenship Coalition (EICC) and the Global e-Sustainability Initiative (GeSi) – withdrew from the region, causing a *de facto* embargo on minerals from Central Africa. However, with the introduction of iTSCi tagging, mining and trade activities in Katanga resumed rapidly.

A similar situation can be observed in Rwanda, where mining activities flourished after the implementation of traceability measures. Rwanda was the first country in the African Great Lakes region to implement iTSCi nationwide, in order to curb illegal trade and cross-border smuggling of 3T materials coming from the DRC. On 10 March 2011, the Rwandan Ministry of Forestry and Mines issued a set of regulations forbidding the import of untagged minerals from neighbouring

203 OECD/IPIS (May 2012), *op. cit.*, p. 8.

204 IPIS took part in meetings of the iTSCi Steering Committee in Lubumbashi, Katanga (held in January and August 2012). Several stakeholders (namely SAESSCAM, four companies and three cooperatives) actively participated in a debate aimed at identifying strengths and challenges of the iTSCi system. They all agreed with the points presented by the minister in his letter.

205 Conflict minerals rules to pressure Congo miners, in: *Reuters*, 1 April 2011.

countries²⁰⁶ and, since then, Rwandan authorities have seized several shipments of untagged mineral bags coming from the DRC.²⁰⁷

Despite this real progress, iTSCi seems to have missed broader targets that are inherent to formalisation, i.e. improvement of governance structure and livelihood support. However, these targets were not adequately emphasised in ITRI's agenda in the first place. The traceability scheme is purely the result of international pressures on the tin industry, and has not been conceived as a comprehensive strategy to address the social, development and environmental concerns that may arise in artisanal and small-scale mining.

In addition, it is of note that iTSCi is not operational in the Kivus, where long-term social and economic instability have resulted in the proliferation of mining sites with little or no respect for worker's rights and the human rights of the wider communities whose livelihoods are indirectly linked to the miners (notably, women and children).

Even in the Katanga sites where it is operational, iTSCi tagging has little impact on social and environmental standards and sometimes has even become a source of discrimination between powerful and less powerful economic actors. Several Lubumbashi-based trading houses told the IPIS team that since iTSCi started operating in the province, sharing of benefits from the 3T sector was altered in favour of large mining and exporting companies. They argued that levies charged by iTSCi for their tags are too high and could potentially force them out of business.²⁰⁸ Economic actors in Rwanda also advanced similar critiques. Rwandan companies would welcome more feedback from ITRI concerning the financial aspects of the iTSCi programme.²⁰⁹ It should be noted that levies are supposed to cover the costs of a broader due diligence exercise, and not just of tags.²¹⁰

The letter presented by the minister of mines also identified the following weaknesses:

- The Steering Committee, as well as the Follow-up Committees, have not been functioning as planned.
- Training sessions, capacity building and transfer of knowledge have not taken place as foreseen.
- ITRI has not passed on any statistics of the minerals they bagged and tagged to the Ministry of Mines.

These concerns are part of a broader issue concerning local ownership of formalisation processes, and raise delicate legitimacy questions. The issue of data publishing and sharing is especially problematic; critics assert that the overall results of the programme are hard to assess, since ITRI did not publish any data or results from this project, and did not allow any outside oversight of their methods and procedures.²¹¹ Inevitably, this limitation somewhat undermines the credibility of the whole system, since iTSCi data cannot be checked or questioned by external parties. A number of

206 Ministerial Order No.003/MINIFOM/2010

207 As an example, see the joint press release by PACT and iTSCi on 15 March 2012, following an incident in Kigali: http://www.pactworld.org/cs/pact_urges_responsible

208 IPIS interview with representatives of trading houses in Lubumbashi, January 2012.

209 IPIS Interview with mining companies and traders in Rwanda, February 2012.

210 IPIS interview with representatives of exporting companies in Rwanda, February 2012.

211 Blore S. & Smillie I., *Taming the resource curse: Implementing the ICGLR Certification Mechanism for Conflict-prone Minerals*, March 2011.

economic actors interviewed by the team in Katanga and Rwanda expressed unease with this aspect.²¹²

As far as the functioning of the iTSCI committees is concerned, interviews conducted by IPIS show that the marginalisation of some groups appears to be commonplace in Katanga. Interviewees representing small and medium-sized processing entities openly complained about the Steering Committee participation mechanism, which seems to favour the most powerful mining company and cooperatives, excluding all other economic actors from crucial decision making processes.²¹³ A noninclusive committee could become fertile ground for corrupt practices, such as bribery and nontransparent agreements with large companies, thus jeopardising iTSCI's achievements.

6.3.2 Efforts at enhancing private sector accountability: Due diligence recommendations by the UNGoE and the OECD

Although the due diligence guidelines drafted by the UNGoE and those of the OECD are essentially the same, their potential impact varies considerably. The UN Security Council Resolution 1952 obliges the Sanctions Committee to sanction individuals and entities that do not comply with the due diligence requirements set forth in the group's guidelines.²¹⁴ On the other hand, adherence to the OECD guidance is entirely voluntary in principle. It is of note, though, that since the adoption of the ministerial decree of 6 September 2011, implementation of the guidance has become mandatory in the DRC.²¹⁵

The decree obliges all mining operators in the country to exercise, at every level of their supply chains, due diligence as defined in resolution 1952 and in the OECD guidance. Quoting extensively from the UNGoE's guidelines, the decree requires companies to comply within 45 days of its enactment or face a suspension of their activities.²¹⁶ This development caused a significant change in how the guidance is perceived in the Kivus and Katanga: companies no longer pledge to comply with the OECD 5-step framework as part of a voluntary exercise, as compliance is now obligatory.

Economic actors in the upstream part of the supply chain in the DRC are willing to expend the necessary resources to implement the guidance. This became especially evident through the OECD pilot project. During the first reporting cycle, companies questioned the need to implement due diligence. During the second cycle, carried out immediately after the adoption of the law enshrining the guidance, the OECD consultants encountered much less scepticism towards due diligence and a wider awareness of the legal requirements.²¹⁷ Another factor that seems to have contributed to this attitude change is the naming of some noncompliant companies in the final report of the UNGoE.²¹⁸ However, implementation is happening only progressively, meaning that considerable progress has

212 IPIS interviews with company representatives in Katanga (January 2012) and Rwanda (February 2012). See also, Mitchell H. & Paget D., *op. cit.*, p. 9.

213 IPIS focus group interview – processing entities and cooperatives in Lubumbashi, January 2012.

214 However, it should be noted that the actual effectiveness of sanctions rests on the willingness of UN member states to sanction their nationals and/or companies.

215 Note circulaire n°001/CAB.MIN/MINES/01/2011 de 06/09/2011.

216 *Ibid.*

217 OECD/IPIS (November 2011), *op. cit.*, p.6; to compare the results and the attitude change, see also: OECD/IPIS (May 2012), *op. cit.*, p.12.

218 S/2011/738, *op. cit.*, p. 112.

been made with Step I (adoption of a due diligence policy), while a full understanding and a thorough implementation of the other steps is still lacking.²¹⁹

Collection and disclosure of financial transactions data remains problematic, and adequate risk management in line with Step III of the OECD guidance is not taking place. The same can be said of the essential reporting requirement under Step V – no company has made their reports publically available concerning implementation of the guidance. Therefore it is difficult to assess the impact of the guidance on specific aspects of mineral extraction and trade that formalisation should address, such as curbing corruption or increasing state revenues.

Corruption is still a major challenge in the DRC,²²⁰ and not enough time has passed since the enactment of the ministerial decree to fully evaluate its effects. Moreover, economic actors on the ground could play a crucial role, since the government does not seem to have the means to adequately address instances of corruption in the eastern provinces.

One initiative working to eliminate corruption is Save Act Mine/DRC (SAM/DRC), a nonprofit organisation operating in North Kivu that aims to raise awareness and understanding of the OECD due diligence guidance and the relevant initiatives of the ICGLR among actors in the mining sector. The office consists of people from different groups involved in mining activities (processors, the association of traders, cooperatives and association of carriers) and civil society, and intendeds to help the actors to voluntarily perform mining due diligence.²²¹

However, the OECD guidance has already proved to be effective in stopping economic actors that operate illegally in the country, especially in the Kivus. Recently, the DRC Minister of Mines, Martin Kabwelulu decided to suspend the activities of two Chinese-owned trading houses that were not implementing due diligence and were allegedly sourcing from conflict areas.²²² Both trading houses had already been named in the 2011 UNGoE report.²²³ The two trading houses, Huyaing and TTT Mining, had allegedly been buying cassiterite from militarised mine sites in North Kivu (namely, from the Bisie mine) and exporting it to China, where due diligence measures are not enforced.

Another aspect worth noting concerns livelihoods. The OECD guidance clearly states that, in order to be due diligence-compliant, companies should refrain from profiting from all forms of forced labour, the worst forms of child labour, and avoid all direct and indirect support to nonstate armed groups and public or private security forces throughout the entire supply chain.²²⁴ This translates to carrying out a risk assessment and putting in place a risk management strategy. Although those two passages

219 IPIS interviews with representatives of mining companies, processing entities and exporters in the DRC, January and February 2012.

220 IPIS interviews with CSO representatives in Goma and Bukavu, as well as with representatives of trading houses in Lubumbashi, January and February 2012.

221 Save Act Mine/DRC, *Acte Constitutif*, annexed to OECD/IPIS (May 2012), *op. cit.*, pp. 89-92.

222 Goma, le Ministre des Mines suspend les activités de deux comptoirs de minerais, in *Radio Okapi*, 21 May 2012 (http://radiookapi.net/regions/nord-kivu/2012/05/21/goma-le-ministre-des-mines-suspend-les-activites-de-deux-comptoirs-des-minerais/?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A%20radiookapi%20Factu%20%28Radiookapi.net%29).

223 S/2011/738, *op. cit.*, p. 112.

224 OECD Guidance, *op. cit.*

have not been thoroughly implemented yet, some progress has been made in the field of risk management regarding adverse impacts for artisanal miners.

IPIS has observed two examples of best practices in this domain. Firstly, a Katanga-based cooperative that will soon start working in collaboration with the large mining company CHEMAF, has put in place some risk mitigation measures, in order to improve the health and social conditions of diggers.²²⁵ All artisanal miners working for the cooperative will receive a registration card, and all tunnels/pits will be covered by an on-site supervisor, who will report daily to a coordinator, thus ensuring that all people responsible for personnel management are promptly alerted in case accidents occur.

Most notably, this cooperative has included a social security service in its risk management plan. In order to access the service, the miners need to have a valid registration card from the Mines Division, as well as their registration cards from the cooperative.

The second example of best practice comes from Rwanda, where, despite the fact that the OECD guidance is not enshrined in legislation, IPIS has observed due diligence practices. The largest mining company in the country, TINCO, has been working on a risk mitigation plan regarding safety and the social environment of miners since 2006.²²⁶ In the vast Rutongo concession, TINCO has deployed an expert on safety in mine sites, who supervises the activities of an on-the-ground team in charge of miners' safety. A remarkable feature of this system is that the members of this team all come from the neighbouring villages and belong to the local communities, thus increasing the integration of the Rutongo mining operations with the local community and encouraging local ownership and sustainability.

225 IPIS interview with representatives of cooperatives in Lubumbashi, January 2012.

226 IPIS interview with the supervisor of TINCO's safety programme in Rutongo concession, February 2012.

7. Conclusions: What lessons could be applied to the FLEGT Action Plan?

This report has described a broad range of initiatives developed in 2010–2012. These initiatives target both the ‘conflict minerals’ problem and the level of informality within the African Great Lakes region’s mining sector, particularly that of the DRC. To evaluate the individual impact of each effort is extremely difficult – the initiatives’ effects overlap, both contradicting and supporting each other, at times prior even to implementation. Consequently, none of the initiatives’ impacts can be assessed in isolation, but necessitate collective analysis.

Before formulating specific lessons learned from the artisanal mining sector, it is pertinent to evaluate the impact of the heightened attention and combined initiatives as a whole on the situation on the ground. The issues described in this report are avidly debated between various stakeholders, yet often the nuances are lost or overlooked. The consequence can be that certain impacts are attributed to one initiative, rather than the phenomenon being considered as a whole.

Current discourse ranges between two assertions. On the one hand, broad claims are made that formalisation efforts and conflict mineral initiatives have chased consumers and the world market away from the DRC, seriously affecting local communities’ livelihood strategies. On the other, these measures are claimed to have decreased conflict funding from mineral extraction and trade. Few of these assertions are based on in-depth field research. The 2012 final report of the UNGoE, however, was mandated by the Security Council ‘to include, in their evaluation of the impact of due diligence, a comprehensive assessment on the economic and social development of the relevant mining areas in the DRC’.²²⁷ The report endorses both assertions, describing the negative socioeconomic consequences in some mining zones, and confirming that conflict financing has decreased.²²⁸

An important issue within this debate is the concern that local livelihoods are seriously affected by the formalisation efforts. This seems a valid concern – 3T trade and export has indeed plummeted in 2012, depriving many miners of their income and causing economic hardship to mining communities. However, this is sometimes contradicted by those who question the extent to which the mineral sector has actually contributed to people’s welfare in the past. Furthermore, actual mineral production and trade has not decreased in line with official figures, leading to the argument that these initiatives have contributed to pushing miners even further into the informal sphere.

It is unreasonable to lay blame at the door of every initiative. However, the actors behind formalisation initiatives could well have foreseen that their initiatives would contribute to the conflict mineral controversy and, as such, have the potential to contribute to the *de facto* embargo described in the previous pages. Likewise, the misinterpretation by end-user companies of concepts such as due diligence could have been anticipated. Nonetheless, it should be recognised that the creation of some initiatives involved more purposeful planning than others. Some include smarter

227 Resolution 2021 (2011) adopted by the UN Security Council (29 November 2011), *UN Doc. S/RES/2021* (2011), p. 3.

228 Final report of the Group of Experts on the Democratic Republic of the Congo, 15 November 2012, *UN Doc. S/2012/843*, p. 5.

provisions, which address informality and the conflict minerals problem, whilst leaving sufficient room for artisanal mining and trade to continue.

The fact that some initiatives are more likely to contribute to the *de facto* embargo of the artisanal mining sector, is often inherent in both their analysis of the problem and their stated purpose. For example, when creating a clean supply chain becomes an aim in itself, there is a risk that companies ignore the situation beyond the well-guarded mine sites. Minerals from high-risk areas are barred, in order to create 'clean' products and avoid any reputational damage and, as a result, the situation for people outside of these islands of security is neglected. This is a weakness of many industry-led schemes, as companies naturally tend to look for cost-effective solutions. Therefore, it is important to have some government involvement in these initiatives. In this regard, it will be interesting to see if and how the private sector will exercise due diligence when sourcing from timber producing countries that have not concluded a voluntary partnership agreement (VPA) with the European Union.

This also raises the issue of responsibility for governments of third countries, who need to ensure that companies based in their jurisdiction understand that due diligence involves more than refraining from a region, or a certain country, in order to have a clean supply chain. Governments should sensitise companies on due diligence and consider incorporating due diligence requirements into their national legislation.

Another misconception that has contributed to ill-considered initiatives is an overemphasis on the causal connection between conflict minerals and insecurity in the eastern DRC. Minerals do constitute an important factor in the continuation of insecurity in the country, which needs to be addressed. However, conflict minerals are not the cause of the problem, nor the only explanation for continued conflict. In order to be sustainable in the long run, all formalisation and conflict minerals initiatives need to be integrated into a wider framework of conflict resolution initiatives. This wider framework should include security sector reform. Section 4 of this report describes misconduct within the national army, the FARDC. If these wrongs are not addressed urgently, any initiative to formalise the artisanal mining sector is bound to fail.

'Formalisation' must also be interpreted broadly. Conflict minerals initiatives should not be limited to the issuing of certificates or the mainstreaming of tagging and bagging practices. Positive impacts on the environment or on the livelihoods of those working in the sector – such as a reduction of child labour in the mines or an increase in the security of women in mining areas – will only be achieved through programmes that adopt a multifaceted approach. In practice, this translates into programmes that have a larger scope than just securing access to markets through transparency and traceability systems. When formalising the market, it is also important to provide incentives for the artisanal miners to engage in the process and to remove barriers to include them in a legal framework. Also, in the timber sector, it is essential to ensure that efforts to reduce the informal market do not result in an indiscriminate clamp-down on artisanal actors that unduly undermines local livelihood options.²²⁹

229 CIFOR, *Introducing Pro-Formal: Policy and regulatory options to recognise and better integrate the domestic timber sector in tropical countries*, Project Brief, January 2011.

Capacity building is another issue requiring significant attention. In order to successfully formalise the artisanal mining sector, the capacity of local state agencies urgently needs to be developed. Specific state agencies in charge of managing the mining sector, such as the CEEC, SAESSCAM, and the Mines Division, are expected to supervise the artisanal mining sector in a vast area with insufficient personnel, few vehicles and inadequate technical training. Furthermore, coordination between these services needs to be improved, as communication gaps and inadequate information-sharing could impair formalisation. Another state actor that should be reinforced is the mines police, who are charged with ensuring security at mining sites. This has proved to be very difficult in the current conflict situation.²³⁰

This security issue also raises the issue of the extent to which formalisation efforts can be implemented in outright conflict situations such as in the Kivus. Some initiatives have been quite successful in Rwanda and the province of Katanga, where a reasonable level of security prevails and a fairly solid governance structure is in place. These conditions are, however, lacking in the Kivus, the place where the conflict minerals problem is most pressing. Due diligence could possibly offer a solution here, as it allows companies to address the issues of the informal and criminalised mining sector in a comprehensive way. A due diligence process requires companies to be diligent about their supply chains, instead of simply requiring tagging or certification.

Increased input of local perspectives could considerably assist the development of formalisation efforts with a larger scope. Furthermore, formalisation initiatives must secure local buy-in in order to effectively take root. Several local stakeholders, for example, raised issues concerning the legitimacy of industry-led initiatives. Lack of disclosure of internal processes, data and outcomes could impair the results of the various initiatives. Transparent multistakeholder processes, with real local ownership, are the only way to achieve long-term results.

Formalisation initiatives with a regional dimension – such as the ICGLR – can help to bring local actors to the forefront of the debate, and consequently increase local ownership. Furthermore, concerted efforts are urgently needed to put an end to fraudulent practices that have a regional dimension, such as cross-border smuggling.²³¹ The RINR tools of the ICGLR, such as the creation of a regional database and the harmonisation of national legislation, for example, seek to address this. It is essential to have all regional actors on board with formalisation efforts. In the case of the DRC's 3T sector, for example, a true Rwandan commitment to the success of the process is indispensable.²³²

Another regularly voiced concern that ICGLR has tried to address is the need to harmonise formalisation initiatives. This is a necessary undertaking in order to guarantee sustainability in the long run and to cut the costs of formalisation once the launch phase is over and schemes are up and running. The ICGLR regional certification mechanism has the potential to play this harmonising role – it will draw from CTC standards, is fully harmonised with OECD and UNGoE due diligence, and its mineral-tracking requirements can be met through iTSCi traceability.

230 In April 2011, for example, Māi Māi Cheka and FDLR elements, jointly occupied Bisie. Apparently, the rebels were able to occupy the site without any resistance from the mines police, who retreated from the scene. The local police authority at Bisie stated that the mines police do not have the means to secure the area properly. (Source: Zingg Wimmer S. & Hilgert F. (28 November 2008), *op. cit.*, p. 10.)

231 S/2011/738, *op. cit.*, p. 103

232 Global Witness recently wrote on Rwanda's commitment in more detail: Global Witness (May 2012), *op. cit.*, pp. 28–31.

The cost-price of all these initiatives is remarked on by several up-stream actors, although such criticisms are not always well-founded.²³³ However, some initiatives can be costly and/or unsustainable in the long run. Regarding iTSCi, for example, small Rwandan companies have already complained about the levies ITRI charges for tags.

233 According to a Green Research study, the more familiar companies are with Section 1502 of the Dodd-Frank Act, the more manageable they perceived the costs of compliance with the law. (Source: Global Witness (May 2012), *op. cit.*, pp. 18–19)

Annex 1. The Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan

The purpose of the European Union's Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan is to ensure that EU import standards meets the broader EU policy of fighting illegal logging, defined as, 'the harvesting of timber in contravention of the laws and regulations of the country of harvest.'²³⁴ The root aim is to address the adverse impacts illegal logging can have on society, which the EU states is:

a global problem with significant negative economic, environmental and social impact[s]. In economic terms illegal logging results in lost revenues and other foregone benefits. In environmental terms illegal logging is associated with deforestation, climate change and a loss of biodiversity. In social terms illegal logging can be linked to conflicts over land and resources, the disempowerment of local and indigenous communities, corruption and armed conflicts. Illegal activities also undermine the efforts of responsible operators by making available cheaper but illegal timber and timber products in the market place.²³⁵

The FLEGT initiative first codified the EU's policy to fight illegal logging in November 2003, when an action plan was adopted to cover both the supply and demand of illegal timber. Over the past decade, the initiative has evolved and led to two key pieces of legislation.

The first, referred to as the 'FLEGT Regulation',²³⁶ sets out details of voluntary partnership agreements (VPAs); these create a bilateral agreement between the EU and timber producing countries. VPAs are voluntary in the sense that countries are not under obligation to enter into them. However, once they do, they are legally bound to meet particular obligations, specifically to only trade wood that is legal.

As of October 2012, the EU has entered into VPAs with Cameroon, the Central African Republic, Ghana, Indonesia, Liberia, and the Republic of Congo (Brazzaville).²³⁷ The agreements include rules on the establishment of a 'legality assurance system', wherein the partner country takes responsibility for verifying the legal source and production of wood. Once in place, all timber coming from a country that has entered into a VPA must be verified according to this system.²³⁸ However, it could be argued that this country then has easy access to EU markets, as other import requirements are eased.

Drafting of VPAs should involve transparent and inclusive stakeholder consultation, the relevant findings of which the partner country should take into account, preceding negotiations with the EU.

234 European Commission, *Illegal logging/FLEGT Action Plan*, last accessed on 1 October 2012 (http://ec.europa.eu/environment/forests/illegal_logging.htm).

235 *Ibid.*

236 Council Regulation (EC) No 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community.

237 EU FLEGT, *Voluntary Partnership Agreements*, last accessed on 1 October 2012 (http://www.euflegt.efi.int/portal/home/vpa_countries/).

238 EU FLEGT, *VPAs – The goal*, last accessed on 11 October 2012 (http://www.euflegt.efi.int/portal/home/vpas/the_goal/).

Within the partner country, a legality assurance system should be put in place, so that each timber product shipment from a country to the EU is accompanied by a FLEGT license.²³⁹

The second piece of legislation, known as the 'EU Timber Regulation', was adopted in 2010 'to complement and strengthen the FLEGT VPA initiative and to improve synergies between policies',²⁴⁰ and will come into effect on 3 March 2013. This legislation prohibits the placing of illegal timber onto the EU market, moving from a position that encouraged easy access to the EU market for timber from VPA states, towards one that aims to exclude illegal timber entirely.

The EU Timber Regulation places a responsibility onto EU traders (or 'operators') to take steps to minimise the risk of illegal timber entering the market through operating due diligence. Economic operators are also obliged to keep records of customers and suppliers in order to facilitate traceability of timber products in the supply chain.²⁴¹

The European Commission adopted detailed rules on due diligence on the 6 July 2012, however they broadly define it as a process to 'minimise the risk of placing illegal timber or products containing illegally harvested timber onto the EU market'.²⁴² Three key elements of due diligence are identified:

Information: The operator must have access to information describing the timber and timber products, country of harvest, species, quantity, details of the supplier and information on compliance with national legislation.

Risk assessment: The operator should assess the risk of illegal timber in his supply chain, based on the information identified above and taking into account criteria set out in the regulation.

*Risk mitigation: When the assessment shows that there is a risk of illegal timber in the supply chain that risk can be mitigated by requiring additional information and verification from the supplier.*²⁴³

The regulation covers a wide range of timber products and applies to both domestic and imported products. Importantly, Article 4 of the Timber Regulation states that 'Existing supervision systems under national legislation and any voluntary chain of custody mechanism which fulfil the requirements of this Regulation may be used as a basis for the due diligence system.'²⁴⁴ In essence, economic operators sourcing from countries who have entered into a VPA with the EU are exempt from the due diligence obligations.

The regulation provides for private entities, known as 'monitoring organisations' to be recognised by the European Commission, which will provide operators with due diligence systems. Operators are free to choose between using their own system or a monitoring organisation, provided they comply with the definition of due diligence set out in the European Commission regulation. The above-mentioned 6 July 2012 legislation also includes details on the frequency and nature of checks that

239 EU FLEGT, VPAs – *The process*, last accessed on 11 October 2012 (http://www.euflegt.efi.int/portal/home/vpas/the_process/).

240 Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market. Text with EEA relevance, preamble § 8.

241 *Ibid.*

242 European Commission, *Timber regulation*, last accessed on 11 October 2012 (http://ec.europa.eu/environment/forests/timber_regulation.htm).

243 *Ibid.*

244 EU. No 995/2010, *op. cit.*, § 4.

member states are obliged to conduct on monitoring organisations, to ensure that the regulation is uniformly implemented.

In addition to these pieces of legislation, the EU has introduced complementary private and 'green public procurement'²⁴⁵ policies that give preference to legally harvested timber products. In the public sector, these form part of broader 'green public procurement policies' by EU member states, who pass laws requiring or encouraging legally harvested timber. Furthermore, private actors, such as trade and retail federations, companies and banks, are increasingly adopting policies and codes of conduct to address illegal imports of timber. Efforts via the EU development corporation also endeavour to help nongovernment organisations and the private sector engage in legislative and administrative capacity building in developing countries.

245 European Commission, *Green public procurement*, last accessed 11 October 2012 (http://ec.europa.eu/environment/gpp/index_en.htm).

Annex 2. Mineral trade statistics for the Democratic Republic of the Congo and Rwanda

It is virtually impossible to present accurate figures of the actual production levels of the mineral sectors in the Democratic Republic of the Congo (DRC). Official figures do exist and can be obtained from different state services such as the provincial Mines Division, Service for Assistance and Organisation of Artisanal and Small-scale Mining (SAESSCAM), Centre for Evaluation, Expertise and Certification (CEEC), Congolese Control Office (OCC, *Office Congolais de Contrôle*) and General Directorate of Customs and Excise (DGDA, *Direction Générale des Douanes et Accises*).²⁴⁶ The divergences between the figures offered by these services, however, demonstrates the inaccuracy and unreliability of these statistics. There are a number of reasons for this divergence, including the state services' inability to supervise the artisanal mining sector, the mining enterprises' cult of secrecy, the high number of actors operating within the informal sphere, and the high volume of taxes and paperwork for legal business.²⁴⁷ The DRC export statistics can be found in tables 1 to 4.

Rwandan official export statistics can be consulted on the UN Comtrade database, and are presented hereafter in tables 5 and 6.

Table 1. Export statistics of 3T^a minerals in North and South Kivu (2007–2009)

Exports (in metric tonnes)	2007	2008	2009	2010
North Kivu				
Cassiterite	10,172.0	13,331.0	10,543.0	6,689.0
Coltan	74.0	87.0	281.0	236.0
Wolframite	719.0	548.0	304.0	38.4
South Kivu				
Cassiterite	4,731.0	6,004.0	4,652.0	3,221.0
Coltan	354.0	440.0	187.0	8.7
Wolframite	455.0	168.0	81.0	6.7

a Tin, tantalum and tungsten.

Sources: Mines Division, Goma; Centre for Evaluation, Expertise and Certification (CEEC) and the Mines Division, Bukavu; De Koning R., *Conflict Minerals in the DRC. Aligning trade and security interventions*, SIPRI, Policy Paper 27, June 2011, p. 8.

On 10 September 2010, President Kabila of the DRC imposed a ban on artisanal mining in the Kivu provinces and Maniema, which explains the relatively low figures for that year. To give an idea of the value of these export volumes, tin, tantalum and tungsten (3Ts) exports officially totalled about US\$100 million for both Kivus in the 8 months preceding the ban in 2010.²⁴⁸

246 This is the former OFIDA, the customs agency.

247 Ndungu Mukasa A. & Kilosho Buraye J. (2009), *op. cit.*, p. 228.

248 OECD/IPIS (November 2011), *op. cit.*, p. 54.

Table 2. Export statistics for 3T^a minerals in North Kivu (2010–2011)

Exports (in metric tonnes)	2010 (Jan–10 Sep)	2011 (10–31 Mar)	2011 (1 Apr–31 Aug)
North Kivu			
Coltan	236.0	53.9	27.6
Cassiterite	6,689.0	1,148.0	357.0
Wolframite	38.4	12.1	22.0

a Tin, tantalum and tungsten.

Source: Mines Division, Goma.

Table 3. Export statistics for 3T^a minerals in South Kivu (2010–2011)

Exports (in metric tonnes)	2010 (Jan–10 Sep)	2011 (10–31 Mar)	2011 (1 Apr–15 Sep)
South Kivu			
Coltan	8.7	20.8	0
Cassiterite	3,221.0	293.0	305.0
Wolframite	6.7	0	0

a Tin, tantalum and tungsten.

Source: Centre for Evaluation, Expertise and Certification (CEEC) and Mines Division, Bukavu

Table 4. 3T^a export statistics for Katanga (2010–2011)

Exports (in metric tonnes)	2010	2011 (Jan–Aug)
Katanga		
Coltan	152.0	147.0
Cassiterite	3,345.0	2,309.0

a Tin, tantalum and tungsten.

Source: Mines Division, Lubumbashi

Table 5. Reported tin ore exports, Rwanda (2006–2011)

Year	Export (kg)	Value (US\$)
2006	6,104,415	22,519,854
2007	6,949,763	39,525,530
2008	10,330,688	78,570,053
2009	5,224,100	34,235,286
2010	6,476,868	66,882,486
2011	7,314,178	101,927,040

Source: UN Comtrade, Standard International Trade Classification, Rev.3

Table 6. Reported Rwandan tin ore exports per destination, in kg (2006–2011)

	2006	2007	2008	2009	2010	2011
Algeria					8,000	
Belgium	2,363,774	2,598,726	5,428,651	1,675,277	881,045	1,172,223
Canada		22,500				
China	202,334	25,627	107,897	480,942	916,029	
Cyprus	253,334	69,500				
France						2,805,096
Germany		22,000	44,000		16	
China, Hong Kong	508,682	482,720	44,189	449,165	462,140	154,437
Luxembourg					110,897	88,856
Kenya	63,100		23,250			
Malaysia	302,511	111,045	167,089			305,930
India		49,801	1,403,747	174,590		
Panama					5,651	
Singapore	13,500		48,216			
South Africa		374,000	1,298,110	528,000	235,140	44,063
Swaziland			523,868	1,601,641	1,114,243	
Switzerland				47,979	2,336,807	1,792,553
Thailand		96,835	584,071	216,756		
United Arab Emirates			59,934			
Uganda				24,750		
Ukraine					5,290	
United Kingdom	2,330,676	3,046,945	501,877	25,000	361,367	168,010
Tanzania	22,504	25,000	71,500		40,243	
United States of America	44,000	25,064	24,289			
Unknown						783,010

Source: UN Comtrade, Standard International Trade Classification, Rev.3

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