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Multi-stakeholder regulation of conflict minerals in the Democratic Republic of Congo: The challenges to include missing voices from the DRC.

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ABSTRACT

The Eastern Democratic Republic of Congo (DRC) is endowed with valuable minerals that are critical for many industries, specifically the electronics industry. However, the area has been plagued with violent conflict and insecurity since 1996. The conflict is often explained with “resource curse” theory and is largely attributed to the profits derived from the trade in these minerals, hence the name “conflict minerals.” As the demand for these minerals remains strong, even in the stagnant global economy, and the minerals trade continues to drive the conflict, various initiatives to curb the trade in conflict minerals have been developed. Given the complex supply chains of these minerals and weak governance of the DRC state, the initiatives increasingly adopt multi-stakeholder processes. This article aims to examine the recent development of these multi-stakeholder processes to regulate conflict minerals in global supply chains. It identifies a number of challenges in their implementation and reflects the externally driven agenda of responsible supply chains, and the lack of participation by local stakeholders. Furthermore, the article highlights some obstacles to meaningful participation of local stakeholders.

Introduction

This article seeks to examine the multi-stakeholder processes to regulate conflict minerals, originating from the Democratic Republic of Congo (DRC), in global supply chains. Eastern DRC is endowed with valuable minerals, such as tantalite, tin, tungsten and gold. These minerals have wide ranging applications and the demand for them has grown rapidly since the 1990s, particularly within the electronics industry. This part of the DRC has been plagued with violent conflict and insecurity since 1996 and the situation is regarded as one of the worst humanitarian crises that has claimed more than 5m people's lives and caused approximately 1.7m Internally Displaced Persons (IDPs),¹ as well as 491,500 Congolese refugees.² The country has also been labeled as "rape capital of the world" by the United Nations (UN).³

The conflict is often explained by prominent "resource curse" theories and largely attributed to the profits derived from the trade in the above minerals. These minerals are increasingly called "conflict minerals" as financial benefits from the control, exploitation, trade, taxation, or protection of these minerals contribute to armed conflict, or actors involved in the mineral exploitation benefit from the context

1 UNHCR, "UNHCR country operations profile - Democratic Republic of the Congo," <http://www.unhcr.org/pages/49e45c366.html>

2 UNHCR, "UNHCR Global Trends 2011: A Year of Crises," 2011, <http://www.unhcr.org/4fd6f87f9.html>

3 BBC News, "UN official calls DR Congo 'rape capital of the world,'" 28 April 2010, <http://news.bbc.co.uk/1/hi/8650112.stm>

of armed conflict.⁴ As the demand for these minerals remains strong, even in the stagnant global economy and trade in conflict minerals continues, the issue has drawn global attention and prompted numerous investigations and campaigns over the last decade.

A series of investigations and reports made by the UN Panel of Experts between 2001 and 2003⁵ was notable in pointing out the role of business in fuelling the DRC conflict and for the first time named the list of companies which were involved in the illegal exploitation of natural resources in the DRC. These investigations were followed by numerous studies on the role of minerals exploitation and trade in driving the conflict⁶ as well as NGO campaigns to advocate the cause of the DRC conflict and to call for action.⁷

End-user companies of conflict minerals, such as electronics companies, have been persistently targeted by these campaigns. Given their vulnerability to reputational risk from being associated with any human rights abuses within their supply chains, the management of global supply chains has become a key strategic management issue.⁸ In response to the growing need to address the business and human rights

4 P. Le Billon, "Getting It Done: Instruments of Enforcement," in Ian Bannon and Paul Collier (eds), *Natural Resources and Violent Conflict: Options and Actions*. Washington, DC: World Bank, 2003, pp. 215-286, 216.

5 Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo

6 For example, DFID, *Trading for Peace: Achieving security and poverty reduction through trade in natural resources in the Great Lakes area*, Research Report, October 2007, London: DFID, 2007; INICA, *Natural Resources and Trade Flows in the Great Lakes Region, Phase 1 Report*. Kigali: INICA (Initiative for Central Africa), 2007; N. Garrett and H. Mitchell, *Trading Conflict for Development: Utilising the Trade in Minerals from Eastern DR Congo for Development*, April 2009, London: Resource Consulting Services; UNSC, *Final Report of the Group of Experts on the Democratic Republic of the Congo. S/2008/773*, 12 December 2008

7 For example, Global Witness, *makeITfair* and *Enough Project*.

8 M. Shtender-Auerbach, "The Top 5 Socio-Political Business Risks for 2010," 13 January 2010, www.huffingtonpost.com/michael-shtenderauerbach/the-top-5-socio-political_b_421466.html

issues, the UN “Protect, Respect and Remedy” Framework, comprising three core principles, “the State duty to protect against human rights abuses by third parties, including business, the corporate social responsibility to respect human rights, and the need for more effective access to remedies,” was developed in 2008.⁹ The second principle of the framework states that the corporate responsibility to respect human rights is the “basic expectation society has of business,” which requires due diligence,¹⁰ “a process whereby companies not only ensure compliance with national laws but also manage the risk of human rights harm with a view to avoiding it” and hence “to do no harm.”¹¹

As such, the human rights due diligence concept has become a corner stone in the discussion around - and the efforts to address - conflict minerals in global supply chains. While the traceability of minerals is essential in applying due diligence, it is enormously challenging to achieve, owing to the extensive minerals supply chains in the global economy and the complex networks of artisanal mining and the informal economy in eastern DRC.¹² Nevertheless, performing human rights due diligence has become a requirement, following the enactment of the US Dodd-Frank Wall Street Reform and

Consumer Protection Act in July 2010.¹³ The Section 1502 of the Act,¹⁴ known as the conflict mineral provision, requires listed companies to disclose whether their product contains tantalum, tin, tungsten, gold or their derivatives originated from the DRC or its neighboring countries and to provide an independent audited report on due diligence undertaken on the chain of custody. To comply with the conflict mineral provision, companies have to trace the origin of minerals that were used in their products throughout the entire supply chains across the globe. In this context, various initiatives to establish the traceability of minerals and to control conflict minerals in supply chains have recently emerged. Given the complex supply chains of minerals, the initiatives increasingly adopt multi-stakeholder processes.

The human rights due diligence concept has become a corner stone in the discussion around - and the efforts to address - conflict minerals in global supply chains

9 J. Ruggie, “Protect, Respect and Remedy,” Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. Human Rights Council, A/HRC/8/5, 7 April 2008. A new set of Guiding Principles for Business and Human Rights, which outlines how the UN “Protect, Respect and Remedy” Framework should be implemented, was endorsed by the United Nations Human Rights Council on 16 June 2011. See UNOG, “UN Human Rights Council endorses new guiding principles on Business and Human Rights,” 16 June 2011, [http://www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/3D7F902244B36DCEC12578B10056A48F?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/3D7F902244B36DCEC12578B10056A48F?OpenDocument)

10 Ibid, p. 5.

11 Ibid, p. 9.

12 According to the World Bank, Democratic Republic of Congo: Growth with Governance in the Mining Sector. Report No. 43402-ZR, May 2008, Oil/Gas, Mining and Chemicals Department, AFCC2, Africa Region, an estimated 90% of minerals are produced artisanally. In addition, DFID, op. cit. found that more than half of natural resource exports from the DRC are not officially recorded, owing to undeclared exports for tax evasion and the lack of capacity and weak governance within the state institutions.

This article is structured in three sections. It sets out to briefly review the development of six multi-stakeholder processes to help regulate conflict minerals in global supply chains. In the first section it focuses on the objectives, participants, structures and implementation. It then discusses the progress and challenges of these processes, and points out local conditions and perspectives that are largely excluded in the multi-stakeholder processes. The third section introduces some “missing voices” from the ground and highlights the challenges

13 United States of America, SEC (Securities and Exchange Commission), Dodd-Frank Wall Street Reform and Consumer Protection Act. 2010, <http://www.sec.gov/about/laws/wallstreetreform-cpa.pdf>

14 KPMG, Conflict Minerals Provision of Dodd-Frank: Immediate implications and long-term opportunities for companies, August 2011, New York: KPMG, 5

The benefit of the OECD Guidance is limited to providing a useful starting point, as the OECD Guidance does not explain how supply chain due diligence can be carried out

to involve wider local stakeholders in the multi-stakeholder processes.

The qualitative data for this article was collected from relevant literature, news and reports as well as fieldwork carried out in Rwanda in 2009.¹⁵

Multi-Stakeholder Initiatives to Control Conflict Minerals in Global Supply Chains

This section introduces the six most established multi-stakeholder initiatives (MSIs) to help control conflict minerals in global supply chains.

The Organisation for Economic Co-operation and Development (OECD) Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas

The OECD developed the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas¹⁶ in 2011 to provide a practical guideline for companies wishing to purchase minerals without violating human rights or contributing to conflict through their mineral or metal purchasing decisions and practices. The OECD

¹⁵ The fieldwork was conducted in Rwanda by the author as part of PhD research, "Conflict coltan: Local and International dynamics in the Democratic Republic of Congo," between 2007 and 2011.

¹⁶ OECD, OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, Paris: OECD, 2011a

Guidance was developed to be practical with collaborative constructive approaches through offering a multi-stakeholder process with in-depth engagement from stakeholders.¹⁷

Currently, there are approximately 50 stakeholders involved in this multi-stakeholder process. They include the OECD, World Bank, the UN Group of Experts on the DRC (UN GoE), the UN Organization Stabilisation Mission in the DRC (MONUSCO), the International Conference on the Great Lakes Region (ICGLR), industry and trade groups such as Electronic Industry Citizenship Coalition (EICC), Global e-Sustainability Initiative (GeSI), International Tin Research Institute (ITRI), Responsible Jewelry Council, World Gold Council, LBMA and International Council on Mining & Metals, companies such as Ford, Thaisarco, Malaysia Smelting and Anglo-Gold Ashanti, the Congolese Ministry of Mines, SAESSCAM,¹⁸ artisanal mining cooperatives, trading houses, civil society and international NGOs such as Global Witness, Revenue Watch and Enough Project.¹⁹ These stakeholders were involved and contributed to the elaboration of the OECD Guidance and are fully supportive of it. Moreover, they continue working through the multi-stakeholder forum for conflict-free mineral supply chains, convened by the OECD, ICGLR and UN GoE, to ensure the effective dissemination and implementation of the OECD Guidance.²⁰

The OECD Guidance established a widely accepted definition of due diligence and standards for risk-based due diligence in the conflict mineral supply chain by taking into consideration the complex operating environments in the DRC, as well as the due diligence guide-

¹⁷ OECD, "A Joint letter to U.S. Security and Exchange Commission," dated 29 July 2011, 2011b, <http://www.sec.gov/comments/s7-40-10/s74010-282.pdf>

¹⁸ Service d'Assistance et d'Encadrement du Small Scale Mining (Technical Assistance and Training Service for Small-Scale Mining) is the DRC government authority responsible for organizing and supervising the artisanal mining sector.

¹⁹ T. Gillard, "The OECD Due Diligence Guidance for Guidance for Conflict-Free Mineral Supply Chains," power point presentation for 20 September 2011, LBMA (LPPM) Precious Metals Conference 2011

²⁰ OECD 2011b, p.2, para.1, above n7

lines provided by the UN GoE.²¹ Nonetheless, the benefit of the OECD Guidance is limited to providing a useful starting point, as the OECD Guidance does not explain how supply chain due diligence can be carried out.²²

ICGLR Regional Certification Mechanism (RCM)

The aforementioned ICGLR,²³ is a regional body of 11 African country members²⁴ launched in 2003 under the auspices of the UN and the African Union (AU). It recognizes that the illegal exploitation of natural resources constitutes a violation of the state's right of permanent sovereignty over their natural resources and represents a serious source of insecurity, instability, tension and conflict in the region.²⁵ It therefore aims to promote peace, security, democracy and development in the Great Lakes Region through the concerted effort of the member countries.

The ICGLR developed "the Regional Initiative against the Illegal Exploitation of Natural Resources" in order to break the link between mineral revenues and rebel financing by adopting six tools, namely a Regional Certification Mechanism (RCM), harmonization of national legislation, formalization of the artisanal and small-scale mining sector, a regional database on mineral flows, promotion of the Extractive Industries Transparency Initiatives (EITI) and a whistle-blowing mechanism. The RCM is the

21 The guidelines is provided in UNSC, "Letter dated 15 November 2010 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council," S/2010/596, 29 November 2010, http://www.un.org/ga/search/view_doc.asp?symbol=S/2010/596, and adopted in UNSC, Resolution 1952 (2010), S/RES/1952 (2010), 29 November 2010, http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1952

22 KPMG, p. 7, above n14.

23 www.icglr.org/

24 The member countries include Angola, Burundi, Central African Republic, the DRC, Kenya, the Republic of Congo, Rwanda, Sudan, Tanzania, Uganda and Zambia.

25 ICGLR, "Pact on Security, Stability and Development in the Great Lakes Region," 14 and 15 December 2006, Article 9

key tool of this initiative and will validate that minerals were mined under acceptable standards, in areas free of conflict and that they have exited their country of origin legally. The ICGLR supports the OECD Guidance and harmonized the RCM standards and audits with the OECD Guidance as well as the Certified Trading Chains below. The ICGLR Steering Committee created an audit committee, which includes government, industry and civil society members from the ICGLR multi-stakeholder group and they will be responsible for accrediting independent third party auditors as well as overseeing the audit system.

Certified Trading Chains (CTC)

The Certified Trading Chains (CTC) concept was developed by the German Federal Institute for Geosciences and Natural Resources (BGR)²⁶ out of two research projects carried out in 2006 in order to establish systems to provide assurance of the origin of tantalum and of production standards.²⁷ The CTC standards, drafted by the BGR, were consulted through multi-stakeholder processes²⁸ and finalized to include five principles in 2009. The CTC aims to foster traceability, transparency and responsible production standards in the artisanal and small-scale mining sector and includes performance monitoring, through third party baseline audits and compliance audits, to provide the base for potential certification at a national level. It started to support the DRC Ministry of Mines in its effort to strengthen transparency and control in the mining sector through Min-

26 www.bgr.bund.de

27 BGR, "Mineral Certification at the BGR," http://www.bgr.bund.de/EN/Themen/Min_rohstoffe/CTC/Home/CTC_node_en.html;jsessionid=9D214EA0D26CB7B286445EA3D89606E7.1_cid289; BGR, "Mineral Certification: Certified Trading Chains (CTC) and the Analytical Fingerprint (AFP)," Newsletter 01/2012, http://www.bgr.bund.de/EN/Themen/Min_rohstoffe/CTC/Downloads/newsletter_01_2012.html

28 Pre-Conference Technical and Collaborative Sessions Workshop 7: "Update on the BGR Pilot Certification Programme," the 8th CASM Annual Conference, 7 October 2008; Fatal Transactions and Bonn International Centre for Convention's Conference "Digging for Peace – Private Companies and Emerging Economies in Zones of Conflict" in Bonn, 21-22 November 2008."

eral Certification in 2009. In addition, most CTC standards have been incorporated into the ICGLR RCM as progress criteria.

Conflict Free Smelter (CFS) program

Two electronics industry associations; Electronic Industry Citizenship Coalition (EICC)²⁹ and Global e-Sustainability Initiative (GeSI),³⁰ view responsible sourcing as a priority for their members and aim to extend their influence beyond their immediate suppliers to improve social and environmental conditions throughout their extensive supply chains. They created the EICC and GeSI Joint Extractives Workgroup³¹ in 2005 and encourage other companies and sectors to join their activities to improve transparency in supply chains, though there is a fee to join.

The EICC and GeSI Joint Extractives Workgroup developed the Conflict Free Smelter (CFS) program³² for tin, tantalum, tungsten and gold in 2010 in order to enable companies to source conflict-free minerals. The CFS is a voluntary program in which an independent third party assesses smelters to determine whether they demonstrated that all the materials they process are from conflict-free sources. This is done based on business process and material analysis reviews. The CFS certifies the conflict-free status of minerals up to the smelters level and supports other processes, such as the ITRI Tin Supply Chain Initiative below, to validate upstream activities.

ITRI Tin Supply Chain Initiative (iTSCi)

International Tin Research Institute (ITRI), an industry association, developed a chain of

29 www.eicc.info/

30 www.gesi.org/

31 EICC and GeSI, "Join the EICC and GeSI Joint Extractives Workgroup: A multi-sector effort to enable responsible sourcing of materials," 2012, www.eicc.info/documents/ExtractivesWorkgroupWhitepaper.pdf

32 www.conflictreesmelter.org/; www.eicc.info/CFSPProgram.shtml

custody and due diligence system, the ITRI Tin Supply Chain Initiative (iTSCi), in 2008.³³ The iTSCi aims to support upstream companies, from mine to smelter, in adhering to the OECD Guidance at a practical level. It includes a chain of custody data collection through a "bag and tag" system, which adds unique bar-coded mine tag and middleman processor tag to the bag of minerals to provide data and records for purpose designed log books, risk assessment and independent third party audits. The iTSCi has been implemented by the DRC government and is monitored by multi-stakeholder committees, while all members in the upstream supply chain are audited by an iTSCi auditor to provide the information required by the aforementioned CFS.

The iTSCi has been implemented in Rwanda and Katanga Province of the DRC and will expand to include the whole Great Lakes Region. Furthermore, the iTSCi is used by the closed-pipe supply chain for tantalum by the Solution for Hope Project³⁴ and will cooperate with the ICGLR to set up the RCM for tin.

Public-Private Alliance for Responsible Minerals Trade (PPA)

The Public-Private Alliance for Responsible Minerals Trade (PPA)³⁵ was launched in 2011 as a joint effort between the US State Department, the US Agency for International Development (USAID), NGOs and companies/industry organizations to support supply chain solutions to the conflict minerals challenges in the DRC and the Great Lakes Region. Its aim is to support the development of responsible and conflict-free supply chain systems and provide a platform for coordinated, productive communication and collaboration among all supply

33 ITRI, "iTSCi Project Overview," www.itri.co.uk/index.php?option=com_zoo&view=item&Itemid=189

34 The Solution for Hope Project was launched by Motorola Solutions Inc. and AVX Corporation as a pilot initiative to secure conflict-free tantalum from the DRC in July 2011. It uses a closed-pipe supply line and a defined set of key suppliers in Katanga Province to source minerals in the region. For more information, see <http://solutions-network.org/site-solutionsforhope/>

35 www.resolve.org/site-ppa

chain initiatives and participants to help develop harmonized systems. The PPA encourages interested organizations to become members.

The Progress and Challenges of the Multi-Stakeholder Regulation of Conflict Minerals

The Multi-Stakeholder Initiatives reviewed in the preceding section achieved the goal of developing mechanisms to help control conflict minerals in global supply chains. The OECD Guidance and CTC provide standards, elaborated through multi-stakeholder consultations, and the ICGLR, CTC, CFS and iTScI use independent third party audits to certify the fulfillment of their specific conditions. The PPA offers a multi-stakeholder platform to facilitate the harmonization and coordination of these different mechanisms. While the participation to these multi-stakeholder processes is by and large open, it is normally international companies that are encouraged to participate by paying fees or attending workshops in Washington D.C., thereby excluding some potentially important local stakeholders.

While it is premature to evaluate the effectiveness of these mechanisms as they have only just started, to date their effectiveness in controlling conflict minerals in global supply chains has been questionable. This is partly owing to the complex supply chains, the confidentiality of contracts and a shortage of minerals to meet the current global demand.³⁶ However, it is also due to local conditions at the upstream supply chain in the DRC that are not fully considered in the design of the mechanisms.

At the extraction stage in eastern DRC, minerals are often extracted illegally by artisanal miners in remote areas where poverty is rife, and infrastructure is lacking, and they are then transported and traded largely within an extensive informal sector. There are also important questions about security conditions in

36 S.B. Young, "Social and Environmental Responsibility in Metals Supply to the Electronic Industry," June 20 2008, <http://www.eicc.info/PDF/Report%20on%20Metal%20Extraction.pdf>

While it is premature to evaluate the effectiveness of these mechanisms, to date their effectiveness in controlling conflict minerals in global supply chains has been questionable

the area and the political will of local actors for implementing these mechanisms in the DRC. These situations are shaped by some fundamental governance issues in the country. Firstly, there is an issue of mine ownership conflicts, resulting from the duplications and complexities of mine ownership, governed by contradicting laws in the DRC,³⁷ as well as the lack of government control of territories.³⁸ Secondly, artisanal mining is largely informal and illegal albeit pervasive partly because of the inadequate provisions of the current Mining Code,³⁹ which encourages fraud and leaves the artisanal mining sector illegal and unregulated without providing any legal protection for artisanal

37 They are the Mining Code of 2002, the General Property Law of 1973 and customary law. For more details, see Chris Huggins et al., "Conflict in the Great Lakes Region – How is it linked with land and migration?," *Natural Resource Perspectives*, 96, March 2005, London: Overseas Development Institute (ODI) and Mahmood Mamdani, "Understanding the Crisis in Kivu: Report of the CODESRIA Mission to the Democratic Republic of Congo, September 1997," text of report to be submitted to the General Assembly of the Council for the Development of Social Research in Africa (CODESRIA), Centre for African Studies, University of Cape Town, Dakar, 14-18 December 1998, www.ukzn.ac.za/ccs/files/mamdani.kivu.pdf

38 J. Cuvelier (ed.), *The complexity of resource governance in a context of state fragility: The case of eastern DRC*, November 2010. London: International Alert; PPA, "PPA Governance Committee Members Summary Trip Report – Feb 4-8th, 2012 – M. Loch, J. Celorie, S. Lezhnev, F. Bafilemba, R. Robinson," <http://www.resolv.org/site-ppa/files/2011/09/In-region-Trip-Report-Kivu-Leg.pdf>

39 The Government of the Democratic Republic of Congo, LAW No. 007/2002 of JULY 11, 2002 RELATING TO THE MINING CODE, www.unites.uqam.ca/grama/pdf/DRC2002.pdf

mining communities.⁴⁰ Thirdly, there is a huge gap between law and enforcement, exemplified by smuggling, undervaluation to evade tax, secrecy and extensive corruption, owing to the weak internal controls within the DRC.⁴¹ This is caused by the lack of government control and security⁴² as well as insufficient incentives, resources and capacity.⁴³

The participation of wider stakeholders from the upstream supply chain communities is lacking; local actors demand their voices be heard and be included in the decision making processes

Without embracing these local conditions, the multi-stakeholder mechanisms may negatively influence the socio-economic and environmental conditions of the artisanal mining community in the DRC,⁴⁴ such

40 N. Garrett, The Extractive Industries Transparency Initiatives (EITI) & Artisanal and Small-Scale Mining (ASM): Preliminary Observations from the Democratic Republic of the Congo (DRC), Draft Report 22 October 2007, http://eiti.org/files/Garrett_EITI_10_2007.pdf

41 PAC and CENADEP, Diamond Industry Annual Review: Democratic Republic of the Congo 2005. Ottawa: PAC (Partnership Africa Canada) and Kinshasa: CENADEP (Centre National d'Appui au Développement et à la Participation Populaire); PAC, Diamonds and Human Security Annual Review 2009, October 2009, Ottawa: PAC (Partnership Africa Canada)

42 J. Burbank, The effect of the Kimberley Process on Governance, Corruption, & Internal Conflict, The Fund for Peace Globalization & Human Rights Series, Spring 2006. Washington DC: The Fund for Peace

43 Rachel Perks and Koen Vlassenroot, "From Discourse to Practice: A Sharper Perspective on the Relationship between Minerals and Violence in DR Congo," in J Cuvelier (ed.), The complexity of resource governance in a context of state fragility: The case of eastern DRC, November 2010. London: International Alert, pp. 64-69; Email communication, DRC National Coordinator for the ICGLR, 20 March 2010

44 Young et al, p. 127, above n36.

as creating a *de facto* embargo on sourcing minerals from the region⁴⁵ and unintended tensions within the mining community.⁴⁶ Moreover, they are not likely to delink mineral extraction and trade from the violent conflict in eastern DRC because of the complex relationship of the conflict and mineral extraction and trade.⁴⁷

Challenges to include missing voices from the DRC

It can be argued that the disregard of the local socio-economic and political conditions above and the narrow technical focus of the multi-stakeholder mechanisms are the consequences of the externally driven nature of the conflict mineral agenda to secure responsibly sourced conflict-free raw materials.⁴⁸ The participation of wider stakeholders from the upstream supply chain communities is evidently lacking; local actors demand their voices be heard and be included in the decision making processes.⁴⁹ They express that many existing local initiatives on the ground have been ignored and are not offered the means and resources to be sustainable. They demand communication and information sharing between local and international groups. Congolese civil society representatives request the decision making processes not only to involve local stake-

45 N. Garrett and H. Mitchell, M. Smith, "Intel Plans Conflict-Free Tantalum Microprocessors," Tantalum Investing News, Articles, 7 June 2012; Steven B Young et al. , 136

46 PACT, PROMINES Study: Artisanal Mining in the Democratic Republic of Congo, June 2010. Washington DC: PACT, 9

47 Perks and Vlassenroot, above n43, Miho Taka, "Coltan mining and the conflict in the eastern Democratic Republic of Congo (DRC)," in Malcolm McIntosh and Alan Hunter (eds), New Perspectives on Human Security, Sheffield: Greenleaf Publishing, 2010; M. Taka, "Conflict Coltan: Local and International Dynamics in the Democratic Republic of Congo," unpublished PhD thesis, 2011

48 M.Taka, 2011, above n 47.

49 P. Pöyhönen et al., Voices from the Inside: Local views on mining reform in Eastern DR Congo, October 2010. Helsinki & Stockholm: Finnwatch & Swedwatch

holders but also to include their viewpoints in order to integrate local concerns.⁵⁰

However, there are challenges in consulting with these local stakeholders to include their concerns, which would help formulate effective policies and measures to improve the conditions on the ground. For example, most of the artisanal miners are not organized to voice their issues and concerns freely and constructively,⁵¹ and where there are some artisanal mining cooperatives, these cooperatives have different purposes and do not necessarily protect the interests of miners.⁵² There is also a question as to whether they have the capacity and resources to organize themselves so that they can express their views to influence the policies and measures which affect them.⁵³ Moreover, it is not realistic to consult armed groups despite their significant influence on local conditions, since companies cannot be seen to be engaging them. Meaningful participation of key local actors is also essential in providing them the ownership of initiatives to enhance their commitment.

This article suggests that the inclusion of local perspectives in designing and implementing multi-stakeholder mechanisms could lead to sustainable and responsible management of mineral resources in the long run. However, by disregarding the local socio-economic and political contexts, the national laws and local arrangements around mining, the multi-stakeholder regulation of conflict minerals can have an adverse impact on the conflict and local communities. Although there are obstacles to include all key local stakeholders in the multi-stakeholder processes, the progress of the multi-stakeholder mechanisms ultimately rely on how openly and constructively local stakeholders can be engaged with, in

50 SOMO, Roundtable on Conflict Minerals Legislation: Towards prevention of trade in conflict minerals and promotion of trade in clean minerals from Congo, European Parliament, Brussels, 26 May 2011. London: SOMO

51 N. Garrett, "Observations from the DRC," *African Analyst*, 3 (1), 2008, pp. 79-97

52 PACT, above n46, Miho Taka, 2011, above n47.

53 Garrett, above n51.

order to build consensus on the issues which affect the local conditions.

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- BGR, "Mineral Certification: Certified Trading Chains (CTC) and the Analytical Fingerprint (AFP)," Newsletter 01/2012, http://www.bgr.bund.de/EN/Themen/Minrohstoffe/CTC/Downloads/newsletter_01_2012.html
- C. Huggins et al., "Conflict in the Great Lakes Region – How is it linked with land and migration?," *Natural Resource Perspectives*, 96, March 2005, London: Overseas Development Institute (ODI)
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