



INDEPENDENT OVERSIGHT FOR MINING IN THE EASTERN CONGO?

A Proposal for a Third Party Monitoring & Enforcement Mechanism

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I. INTRODUCTION

The Center on International Cooperation (CIC)³ convened a group of leading non-governmental experts, on 3-4 December 2009, in a two-part discussion entitled: *“Practical Mechanisms to Combat the Militarization of Natural Resources in the DR Congo.”*⁴ This workshop aimed to facilitate constructive dialogue on the issue of natural resources and conflict in the DRC. Participants sought to identify common ground regarding existing and potential measures to combat the militarization of mining in the short to medium term. Over the course of these discussions, a clear consensus emerged surrounding the added value of independent oversight in order to both prevent mining from fuelling conflict as well to strengthen state capacity in the eastern Congo. In their most recent report, released days after this CIC event, the United Nations Group of Experts also included a recommendation for the establishment of such a mechanism.⁵ Through this concept note, CIC seeks to further develop how to operationalize this idea within the complex political and economic context of the eastern Congo.

II. OVERVIEW OF THE MECHANISM

Natural resources are closely linked to conflict in the eastern Congo. All armed actors, including units and commanders of the Congolese army, profit from mineral trade, either through taxation rackets or dealing directly in minerals. The militarization of the mining sector fuels the conflict and prevents effective security sector reform, undermining sustainable peacebuilding efforts.

Recently, numerous initiatives have focused attention on the linkage between conflict and the mineral trade in the Congo. NGOs such as Global Witness⁶ and ENOUGH⁷ have led campaigns urging governments and companies to take action. The United Nations Group of Experts on the DRC has released several reports documenting in detail how businesses, armed actors and government actors are involved in the mineral trade. These initiatives have had an impact. Two bills have been introduced in the US Congress that would promote corporate responsibility with regard to Congolese minerals. The OECD is developing similar guidelines, and the European Union is leading a task force of

the Great Lakes Contact Group to study various aspects of natural resources and conflict in the Congo. The German government is working with the Congolese ministry of mines to set up a certification scheme, while the British and Dutch governments are examining how to support customs harmonization between the DRC, Burundi, and Rwanda.

These initiatives have focused on three avenues of dealing with the problem: due diligence, certification and reinforcing local institutions. **Due diligence**, as suggested by Global Witness and ENOUGH, advocates making companies responsible for determining the conditions under which minerals are mined and brought to market. Under an international regulatory framework, companies would have to carry out rigorous internal audits to document their entire supply chain, and an independent international monitoring mechanism would be set up to verify their compliance. While companies could begin conducting such audits immediately, absolute certainty could only come through comprehensive **certification** of minerals at the source. Bags of cassiterite, coltan or wolframite would have to be sealed at the mine and labeled as conflict-free, so that traders, auditors and international mining companies would be able to distinguish between legal and illegal product.

Eventually, due diligence and certification will be pivotal in reforming the Congolese mining sector. However, comprehensive certification would require reliable agents to be deployed at thousands of pits, mines and streams throughout the eastern DRC, requiring considerable time and resources to set up. Due diligence, on the other hand, remains mostly focused on international trade. In the short run, as long as armed actors control mines and mineral traffic routes, they will find ways to benefit and to get the product onto the international market.

The **reinforcement of local institutions**, as recommended by Resource Consulting Services,⁸ would help Congolese institutions such as customs agencies, the ministry of mines and the mining police to fulfill their constitutional mandates. While field research by Global Witness and the Group of Experts has demonstrated extensive capacity within these institutions, they remain significantly weak and easily susceptible to political manipulation, conflict of interests, corruption, and most importantly intimidation from armed actors and military units themselves. As such, pending the increase in impartiality and capacity of such institutions, only a robust third party mechanism would be able to galvanize change in the short to medium term.

III. STRUCTURE & FUNCTIONING

A third party oversight mechanism would be an independently-funded entity that investigates the links between armed actors and the mineral trade. It would provide concrete incentives to the Congolese government to prevent armed groups and military units from benefiting from the mineral trade. The oversight mechanism would function much like the UN Group of Experts has, with several key differences.

Mandate

- ☑ It would be set up with an **official mandate from the Congolese government** to monitor the mineral trade. The close collaboration with the Congolese government is crucial, as this will help encourage support from local and national institutions and will help the mechanism to be sustainable.
- ☑ The mechanism would **establish a norm together with the Congolese government** that would provide a definition of illegal trade in minerals. Options could include: “Buying minerals from mines controlled by armed actors is illegal,” “buying minerals that you *know* come from areas controlled by armed actors is illegal,” “buying minerals in direct collusion with armed actors is illegal,” or any other definition established with the government. Ideally, trade in minerals coming from any mine controlled by armed actors, including Congolese government units, would be illegal, although the mechanism would lay out different degrees of abuse and matching sanctions. Illegality should also include minerals taxed on trade routes by armed actors and should take into consideration how abusive the military units are.
- ☑ The investigators would ascertain which traders are violating this norm. It would rely on documentary evidence and eyewitness testimony based on clear evidentiary guidelines spelled out in the mechanism’s mandate.
- ☑ The Congolese government would **designate an institution that would be charged with sanctioning individuals** who violate this norm, including government officials and army commanders. Ideally, sanctions would be administrative, such as a fine or the suspension of mining or export license, as this would lower the burden of proof and expedite investigations. This institution should be independent and able to act swiftly; an independent magistrate, special court or review board are possible arrangements. The oversight mechanism would also monitor the application and enforcement such sanctions.
- ☑ The mechanism would be backed with an official mandate from the UN Security Council. It would submit its reports to the Congolese government, to the United Nations Security Council and to select donors.
- ☑ The mechanism would conclude a Memorandum of Understanding (MoU) with regional governments, especially Burundi, Rwanda and Uganda, for information sharing and support in the enforcement of sanctions applied by the Congolese government.
- ☑ It would receive a preliminary mandate of 12 months.
- ☑ Its remit would be the three Kivu provinces: North Kivu, South Kivu and Maniema and include gold, cassiterite, coltan and tungsten. If successful, the model could then be extended to Ituri and northern Katanga.

Mapping Capacities

- ☑ In order to provide clear guidance to traders about which mining sites are considered to be off-limits, the mechanism would include a **mapping cell**. This cell would establish public maps of mining sites in the three Kivus provinces. Regularly update versions of these maps would be readily available on the internet.
- ☑ This mapping capacity would indicate the location of mines, armed actors, trade routes, roadblocks and airfields. It would also include information on mining-related human rights violations by the FARDC and armed groups. **Dynamic and inter-active maps** would contain expandable text boxes explaining graphics as well as provide both qualitative and quantitative information on precise locations.
- ☑ This mapping cell would consist of a central unit that processes intelligence it receives from collaborating organizations in the field. These sources would include members of Congolese public agencies and human rights observers from existing civil society organizations. They would be based in approximately nine key towns throughout the Kivus, and each being lead by an official coordinator.
- ☑ The cell would also work together with the United Nations Joint Human Rights Office (UNJHRO) to determine particularly abusive units. The mapping instrument would serve as an important database for the investigations of the oversight mechanism. Human rights violations and other transgressions recorded through field investigations would be captured and displayed geographically.
- ☑ The valuable efforts and expertise of the **International Peace Information Service (IPIS)**, whose maps are already provided to political and humanitarian actors, should serve as a strong foundation upon which to build.⁹

Funding and Composition

- ☑ The mechanism would be **funded by international donors**. Ideally, its members would be appointed by the United Nations Secretariat in consultation with the Congolese government. If a UN mandate is not forthcoming, it could be set up through the International Conference on the Great Lakes Region (ICGLR) and funded by outside donors, such as the European Union.
- ☑ It would be crucial, nevertheless, to preserve the **financial and substantive independence** of the mechanism. While accountable financially to donors and collaborating closely with the Congolese government, the mechanisms would enjoy a large degree of independence in setting investigative priorities and in executing its mandate.
- ☑ It would be led by approximately fifteen international and Congolese thematic experts with extensive experience in complex and sensitive field investigations. The mapping cell would comprise an additional twelve staff members, most of whom would be hired locally from the Kivus.

- ☑ The mechanism would collaborate closely with the UN Peacekeeping Mission in the DRC (MONUC). An MoU would be drawn up to facilitate the provision of logistics and security for the mechanism team when needed.
- ☑ A rough estimate for an annual budget, including international and local travel and other logistics, would be between **\$3-5 million per year**.
- ☑ As part of the same effort, donors should make additional funds available to strengthen relevant Congolese institutions and local NGOs working on the natural resources sector. This will solidify collaboration with the mechanism.

Complementarity

- ☑ The oversight mechanism is complementary to the current efforts of the IOM and MONUC to set up **Mineral Trading Centers** (“*centres de negoce*”) in select towns in the Kivus within the Congolese government’s stabilization plan for the east (STAREC). Information provided by the mechanism would help these centers understand the trade routes and supply chains that pass through them.
- ☑ The work envisaged for this mechanism is ultimately the responsibility of the Congolese Mining Division, the Artisanal Mining Agency (SAESSCAM), and the Mining Police who should investigate the conditions of and provide security for individual mines. However, these institutions are often intimidated and prevented from functioning by local actors. The mechanism would work with them with the end goal of helping them establish their authority.
- ☑ The mechanism would be implemented as part of a comprehensive **strategy of formalizing the mineral trade** in the eastern Congo. Donors would also provide training and funding to Congolese state agencies and NGOs working in the sector in order to improve their capacity and allow the government to sustainably manage mining.

IV. UNIQUE BENEFITS OF THIS MECHANISM

1 – Provide incentives and sanctions in view of formalizing trade

An oversight mechanism would have a direct impact on the mineral trade. By sanctioning spoilers and promoting transparency in concrete ways in the eastern Congo, the mechanisms would provide tangible incentives to traders to stop purchasing from areas controlled by armed actors. This, in turn, would encourage the Congolese government to take control of these sites and to improve transparency in documenting the mineral trade.

2 – Make information available

Most of the mineral trade in the eastern Congo is underground, making it easier for armed actors to profit and depriving the government of vital revenues. The mechanism

would provide detailed information about mineral supply chains and their links to local and regional actors. Regular briefings would be provided to provincial and national Congolese authorities, as well as to donors. Mineral traders could draw on this information in order to know which areas would be off-limits. This information alone, however, would not suffice as due diligence.

3 – Capacity to respond to dynamic trade networks

The economic networks of the Kivus are highly malleable. Attempts to regulate the mineral trade by prohibiting purchases from certain mining zones could have the adverse effect of driving the trade of those minerals into the informal sector and undermine efforts for greater transparency. However, a third party oversight mechanism with geographic mapping tools would be able to anticipate these changes in supply chains. Mineral Trading Centers located in proximity to off-limit zones would be given guidance by the mechanism team members as to how to deter such off-limit minerals from entering their centers.

Gold represents an important challenge given its size and value. With prices at an all-time high on the international market, armed actors are increasingly playing a dominant role in the regional gold trade. For such an easily transportable good, any type of certification scheme would be nearly impossible. As a result, mobile independent monitoring with the capacity to conduct spot checks would constitute the only feasible response to the exploitation and informal traffic of this key mineral.

4 – Anticipate unintended consequences

The mechanism would work with MONUC's Civil Affairs Section (CAS) and the Office for the Coordination of Humanitarian Affairs (OCHA) to preempt retaliatory violence against local communities by armed actors deprived of revenue as a result of the work of the oversight mechanism. In addition, the mechanism would designate targeted Quick Impact Projects (QuIPs) for communities whose local economies are impacted as a result of measures taken against armed actors and their accomplices.

5 – Facilitate the strengthening of Congolese institutions

Close collaboration between Congolese authorities deployed at Mineral Trading Centers, and this mechanism could also generate confidence amongst donors to increase their financial and in-kind support for Congolese mining institutions with a view towards facilitating the progressive handover of the responsibilities mandated for this independent oversight. Congolese members of the mechanism would also eventually play a key leadership role in this process. In the medium term, the team could also provide the Mining Ministry's key international partners, such as the World Bank, the UK, and Germany, with assessment reports on the strength, needs, and impartiality of such Congolese institutions on the ground. Finally, this mechanism could also facilitate ad hoc and/or formal training and mentoring in investigative practices for Congolese authorities.

V. CONCLUSION

Despite the challenges of monitoring the dynamics mineral trade in the eastern Congo, watchdog NGOs and the UN Group of Experts have demonstrated that through exhaustive investigative practices, it is possible to corroborate links between armed actors and traders throughout the supply chain. This extensive experience can serve as the crucial foundation upon which to structure an independent oversight mechanism.

However, in recent years these groups have observed that nefarious actors in the mineral trade have begun to adopt more clandestine practices to hide any collusion with armed actors. Moreover, before penalties can be assessed by the UN Sanctions Committee, individuals and companies named by the UN Group of Experts often transform their operations on the ground into new front companies. These trends render the vital work of external monitoring bodies all the more challenging.

As such, an expanded, institutionalized, and mobile field-based team would dramatically improve the response to the militarization of the mineral trade in this constantly shifting environment. Furthermore, the inclusion of Congolese experts, close collaboration with national authorities, and the critical application of administrative sanctions - in the Congo and not from New York - would considerably enhance the prospects of turning the tide on this urgent issue. Beginning to loosen the grips of the pervasive mafia networks and predatory armed actors involved in the mineral trade would ultimately prove vital to unleashing the full potential of all other peacebuilding efforts - including security sector reform - in the eastern DRC.

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³ For more information on the Center for International Cooperation’s work on the DR Congo, see: http://www.cic.nyu.edu/peace_ssr/congo.html

⁴ This event was hosted and supported by the Permanent Mission of Germany to the United Nations and the Open Society Institute (OSI). For more information, see: http://www.cic.nyu.edu/drc_conference/index.html

⁵ “In the short term, the Group recommends that the Security Council endorse the establishment of an independent monitoring team by the Democratic Republic of the Congo authorities, with the support of the international community. Such a team would have a mandate to conduct spot checks of mineral shipments, in cooperation with MONUC and the Group of Experts, and would act on the basis of a clear definition of what constitutes an illegal trading activity. Specific sanctions for illegal mineral trading activity should also be identified.” Para. 8, p. 89. UN Group of Expert Final Report, 23 November 2009, S/2009/603. <http://daccess-dds.ny.un.org/doc/UNDOC/GEN/N09/601/43/PDF/N0960143.pdf?OpenElement>

⁶ Global Witness, “Faced with a gun, what can you do? War and the Militarization of Mining in Eastern Congo,” July 2009. <http://www.globalwitness.org/fwag/>

⁷ The Enough Project, “Congo’s Conflict Minerals: Our demand for electronics fuels the world’s deadliest war.” <http://www.enoughproject.org/conflict-minerals>

⁸ N. Garrett and H. Mitchell, “Beyond Conflict: “Reconfiguring approaches to the regional trade in minerals from the eastern DRC,” September 1, 2009.
http://www.resourceglobal.co.uk/index.php?option=com_docman&task=doc_download&gid=74&Itemid=41

⁹ Steven Spittaels & Fiilip Hilgert, “Interactive Map of Militarised Mining Areas in the Kivus,” August 2009.
<http://www.ipisresearch.be/maps/MiMiKi/Areas/web/index.html>