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CCDP Working Paper

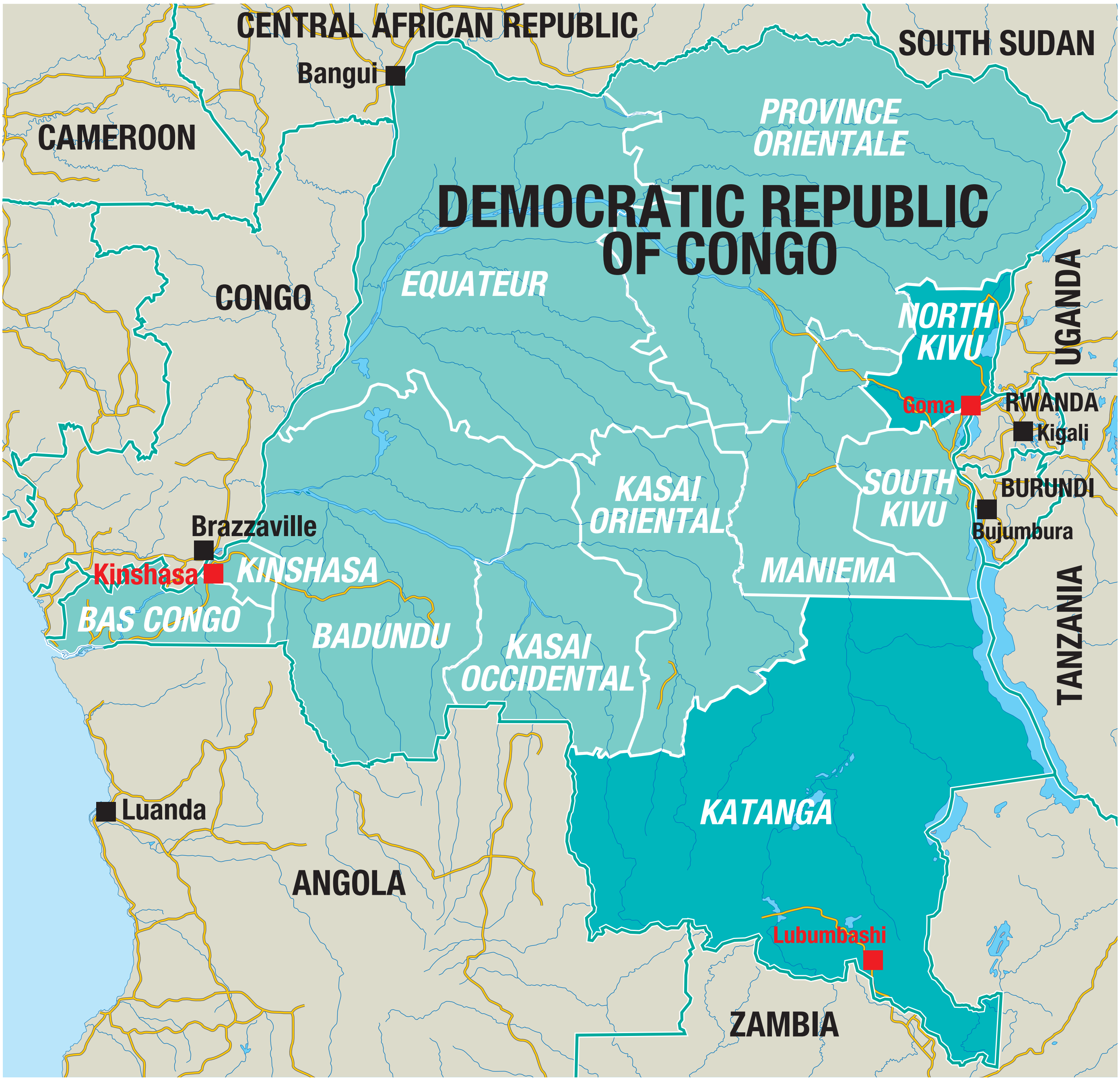
Natural Resource Governance in Hybrid Political Orders: The Cases of North Kivu and Katanga

Lara Atanasijevic

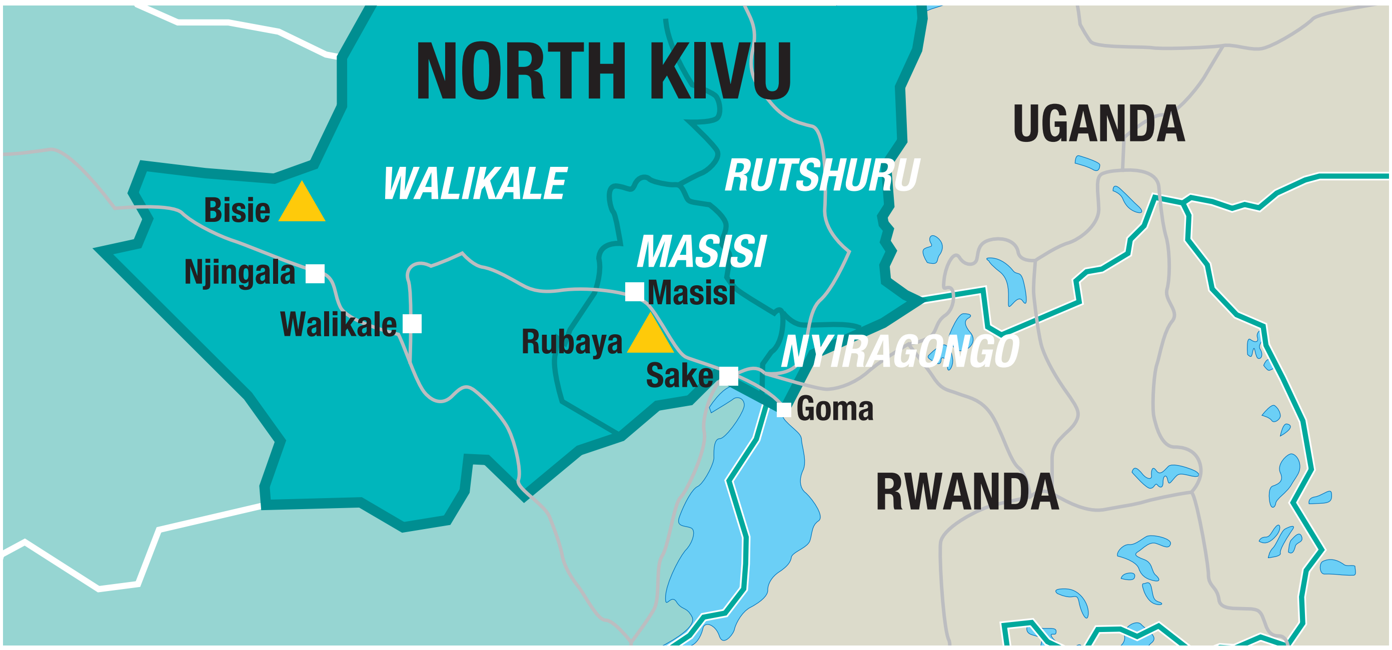
THE GRADUATE INSTITUTE GENEVA

CENTRE ON CONFLICT, DEVELOPMENT AND PEACEBUILDING

Map 1 – DRC and Neighbouring Countries



Map 2 – North Kivu Province



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Executive Summary

Over the past decade various practical guidelines, schemes and tools have been developed with the aim of improving the governance of natural resources in conflict-affected and fragile states. Yet many of these initiatives are state-centric and targeting formal corporations, which tends to exhibit a certain disconnect from the governance reality observed in such challenging environments. The latter are often characterized by overlapping, competing and interlinking forms of power and authority where the state shares the control, legitimacy and capacity to function and provide essential services with a variety of informal networks, strongmen or traditional institutions.

Given the scant evidence on how such initiatives play out in hybrid political contexts, this CCDP Working Paper contributes much-needed insights on *de facto* natural resource governance and the implementation of such initiatives. Drawing on in-depth fieldwork conducted by Lara Atanasijevic in 2013 and 2015 in the Democratic Republic of Congo (DRC), this publication analyses the governance of "3T minerals" (tin, tantalum and tungsten ore) in the provinces of North Kivu and Katanga. These areas have recently witnessed the implementation of a variety of national, regional and international initiatives such as the OECD Due Diligence Guidelines, Section 1502 of the Dodd-Frank Wall Street Reform Consumer Protection Act (Dodd-Frank Act), the Tin Supply Chain Initiative (iTSCi), and the IGCLR Regional Certification Mechanism (RCM).

This CCDP Working Paper distinguishes different modalities of hybrid political order in the two provinces. In North Kivu, where power, authority and extractive revenues are shared, interlinked and marked by active competition across a multitude of stakeholders, *de facto* governance of 3T minerals in the artisanal mining sector is characterized by a reasonably well-organized system of cooperation, coordination and hierarchical attribution of roles amongst various actors – including customary societal entities, traditional authorities, state officials and armed groups. Traceability and transparency initiatives in this context were found to be largely inefficient or entirely dysfunctional.

In northern Katanga, by contrast, a number of factors such as its geographical location, the degree of regional interference and insecurity as well as provincial policies have led to a significantly different development of 3T governance since the Second Congo War (1998-2003). Instead of the trading centre supply chain in North Kivu, the closed pipeline supply chain in northern Katanga involves a predetermined and limited number of stakeholders that are directly linked to each other and primarily operated under the auspices of Mining Mineral Resources (MMR). In governing their own sphere of influence, sharing power and authority with other actors, managing security and engaging in dispute settlement, MMR becomes part of the hybrid political order and at times fulfils classical state tasks – to the point where local governance is literally "outsourced" to MMR by the provincial authorities.

Lara Atanasijevic's research efforts highlight the importance of focusing on the governance reality in order to conceive strategies towards a peaceful management of precious minerals in an intricate social, political and economic context such as eastern DRC. Making sense of this reality is not only crucial for meaningful engagement with existing "legitimate" authorities, but also to anticipate potential challenges regarding "illegitimate" actors or "spoilers" that may emerge. Indeed, while much attention has been paid to how natural resource governance can lead to social and economic development, the centrality of natural resource governance in state-and peacebuilding has arguably been underestimated.

The CCDP Working Paper suggests that more encompassing approaches might entail increased engagement with the actors (such as traditional authorities) that make up the hybrid political order observed, as well as an amplified sensitivity to the *de facto* roles different stakeholders may inherit or obtain in governing natural resources. Furthermore, investigating the roles and responsibilities of mining companies in such orders might not be sufficient, and while the socio-economic and security situation in eastern DRC is also influenced by broader national and international developments such as national elections and mineral price fluctuations on global markets, more consultation and engagement with local populations would appear to be a crucial ingredient to effective governance.

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Prof. Keith Krause
CCDP Director

Prof. Gilles Carbonnier
CCDP Faculty Associate and Project Lead

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List of Acronyms

3T/3TG	Tin, tantalum and tungsten ore/gold
ABM	Alphamin Bisie Mining
ADF	Allied Democratic Forces
AFDL	Alliance of Democratic Forces for the Liberation of Congo
ANR	*Agence Nationale de Renseignement*
APCLS	*Alliance des patriotes pour un Congo libre et souverain*
BSP	Better Sourcing Program
BGR	*Bundesanstalt für Geowissenschaften und Rohstoffe* (German Federal Institute for Geosciences and Natural Resources)
CARF	*Centre Arrupe pour la Recherche et la Formation*
CCDP	Centre on Conflict, Development and Peacebuilding
CDMC	*Coopérative Des Artisanaux Miniers du Congo*
CdN	*Centre de Négoce*
CFSP	Conflict-Free Smelter Program
COOPERAMMA	*Coopérative Minière des Exploitants Artisanaux de Masisi*
CEEC	*Centre d'Evaluation, d'Expertise et de Certification*
CIFOR	Center for International Forestry Research
CNDP	National Congress for the Defence of the People
CST	*Comité Spécial du Katanga*
CTC	Certified Trading Chain Initiative
DGM	*Direction Générale des Migration*
DRC	Democratic Republic of Congo
EITI	Extractive Industries Transparency Initiative
FARDC	*Forces armées de la République démocratique du Congo*
FDLR	Democratic Forces for the Liberation of Rwanda
GAO	US Government Accountability Office
ICGLR	International Conference on the Great Lakes Region
ICMD	*Logiciel de Certification des Minerais Désignés*
IOM	International Organization for Migration
IPIS	International Peace Information Service
ITOA	*Initiative Traçabilité de l'Or Artisanal*
ITRI	International Tin Research Institute
iTSCi	International Tin Supply Chain Initiative
M23	*Mouvement du 23 Mars*
MSC	Malaysia Smelting Corporation
MHI	Mwangachuchu Hizi International
MLC	*Mouvement de Libération du Congo*
MMR	Mining Mineral Resources
MONUSCO	United Nations Organization Stabilization Mission in the Democratic Republic of the Congo
OECD	Organization for Economic Cooperation and Development
PAC	Partnership Africa Canada
PdV	*Point de Vente*
PwC	Pricewaterhouse Coopers
RCD-G	*Rassemblement Congolais pour la Démocratie-Goma*
RCM	Regional Certification Mechanism
SAESSCAM	*Service d'Assistance et d'Encadrement du Small Scale Mining ou Production Minière à Petite Échelle*
SMB	*Société Minière de Bisunzu*
SfH	Solutions for Hope
UNHCHR	United Nations High Commissioner for Human Rights

Introduction

Over the past decade, an increasing number of actors have recognized the potential of natural resources – if managed properly – to contribute to social and economic development. As exemplified by Norway and Chile, elements include strong public institutions, equitable redistribution of revenues, transparency measures and a stable security environment. By contrast, natural resource wealth in conflict-affected and fragile environments, where these resources tend to be poorly managed, harbours the potential to weaken the state further (Thies 2010) by constituting a catalyst for the escalation of violence, prolonging armed conflict (Le Billon 2012; Schrijver 2010; Fearon 2004; Collier and Hoeffler 2004), and/or contributing to an expansion of conflict in the region (Buhaug and Gates 2002). According to the OECD (2013), about one in four fragile states is mineral or fuel dependent, and the United Nations (UNEP 2009) estimates that about 40% of intrastate conflicts are linked to or fuelled by natural resources. National and international efforts, such as export bans or private-public certification schemes, have thus often focused primarily on breaking the link between natural resources and armed conflict. Yet little attention has been paid to natural resource governance as a central element in the discourses of state- and peacebuilding.

The majority of governance mechanisms for primary commodities in conflict-affected and fragile contexts are state-centric and business-oriented in nature, and largely neglect *de facto* governance of precious resources in the complex realities of hybrid political orders. Such orders are characterized by the co-existence and overlap of conflicting claims to legitimacy and economic resources. The state is not necessarily the only provider of security, welfare and representation, but shares authority, legitimacy and capacity with a variety of networks, strongmen or traditional institutions. The governance of natural resources in such contexts therefore lies in the hands of a variety of stakeholders, through which power and authority are established and exercised.

In light of this disconnect, current mechanisms to incorporate natural resource management into peacebuilding processes are largely deficient. While fitting well into statebuilding, understood as the achievement of a Weberian state model that somehow “presupposes the participation of states that can – or wish – to provide security, welfare and representation to resident populations” (Carbonnier and Wennmann 2013:208), they are not so well equipped to address the peaceful management of valuable resources within the governance realities observed on the ground.

The empirical research project that has led to this CCDP Working Paper focuses on natural resource governance in situations of hybrid political orders. There is scant evidence on how initiatives aimed at improving the governance of extractive resources play out in hybrid political orders, despite the fact that they tend to prevail in resource-rich fragile states. This project contributes to filling this gap. It examines *de facto* natural resource governance and the implementation of local, regional and global resource governance initiatives and laws in two provinces of the Democratic Republic of the Congo (DRC): North Kivu and Katanga. Examples of initiatives are the Tin Supply Chain Initiative (iTSCi) launched by the International Tin Research Institute (ITRI), the multi-stakeholder *Centre de Négoce* initiative, the closed pipeline initiative Solutions for Hope (SfH), or the ICGLR Great Lake’s Regional Certification Mechanism (RCM).

Developed against the backdrop of the Second Congo War (1998-2003), however, many of these mechanisms, schemes and initiatives in eastern DRC suffer from a substantial lack of effectiveness. Minerals fuelling conflict, or so-called “conflict minerals” (tin, tantalum, tungsten and gold, usually referred to as “3TG”), have become the “dominant narrative”, to put it in the words of Séverine Autesserre (2012) – the underlying assumption of this narrative being that extractive resources are the primary cause of the conflict in eastern DRC and that the main solution is strengthening state authority. As a consequence, initiatives have tended to treat natural resource governance primarily as a "technical matter, requiring a technical solution" (Geenen 2012:325). Broader socio-economic, institutional and political aspects of the complex conflict setting and the *de facto* governance reality have been neglected by narrow, state-centric, top-down policy measures (Autesserre 2010; Geenen 2012; Seay 2012; Open Letter 2014[1]).

North Kivu Province, in particular, exhibits large deficiencies in the implementation of such initiatives, mostly due to continued armed conflict and institutional weakness. The *de facto* natural resource governance of tin, tantalum and tungsten (the "3Ts") involves a large variety of stakeholders, with the state being only one amongst them. This is contrasted by Katanga Province (and in particular by today's Tanganyika Province),[2] which is institutionally more stable, less insecure and has developed an effective 3T closed pipeline supply chain in which actors are limited, pre-determined and linked to each other. Natural resource governance is, conversely, quasi outsourced by the state and thus exhibits a different modality of hybrid political order. Interestingly, both provinces similarly experienced the large-scale looting of natural resources during the Second Congo War and portray intricate conflict dynamics, political hybridity, and a strong dependence on artisanal mining, but developed different governance mechanisms in the post-transition period.

Building on extensive fieldwork conducted in the DRC in 2013 and 2015, this research project seeks to contribute to defining and understanding the relationship between natural resource management and hybrid political orders by focusing on the 3T artisanal mining sector in the provinces of North Kivu and Katanga. This CCDP Working Paper offers insights on the *de facto* governance of natural resources in their respective contexts, and examines how current mechanisms play out in these settings. This is illustrated by the examples of a closed pipeline supply chain in northern Katanga operated by Mining Mineral Resources (MMR), and a trading centre supply chain in Rubaya (Masisi Territory) in North Kivu. Furthermore, the research investigates pragmatic approaches for coming to grips with the governance of valuable resources in hybrid political orders. Ultimately, this working paper examines the potential for hybrid political orders to open new perspectives on peacebuilding processes that encompass natural resource management as a central element.

Following this introduction, Chapter 2 offers an outline of the research process including details on methods, processes and limitations. Natural resource governance in the context of hybrid governance and conflict is then discussed in Chapter 3, before presenting the reader with the specificities of natural resource governance in the DRC (Chapter 4), as well as of current transparency and traceability schemes (Chapter 5). Chapters 6 and 7 then analyse the hybrid political context and natural resource governance in the provinces of North Kivu and Katanga. An analysis with major findings, conclusions and outlook is then offered in the last two chapters of this CCDP Working Paper.

1 Open letter by various stakeholders on conflict minerals, 30 October 2014, available at https://ethuin.files.wordpress.com/2014/10/09092014-open-letter-final-and-list-doc.pdf.

2 On 16 July 2015, Katanga Province was divided into four *Provincettes* (Haut-Katanga, Lualaba, Haut-Lomami and Tanganyika) within the framework of a larger decentralization plan that redivided the DRC from 11 into 26 Provinces. This paper will speak of the "Katanga Province" throughout to avoid confusion. Similarly, when using "northern Katanga" the paper will mostly be referring to the Tanganyika Province.

Research Process

The main aims of this research project were to:

- Distil new insights on *de facto* natural resource governance in North Kivu and Katanga;
- Gain a more comprehensive and refined understanding of the linkages between natural resource management and hybrid political orders in these settings;
- Examine how initiatives and guidelines geared towards promoting transparency and traceability play out in these contexts; and
- Investigate the potential of such initiatives for inclusion into broader peacebuilding processes.

Specifically, the project focused on **3T minerals** in the **artisanal mining sector**. What are the relevant *de facto* governance structures in the two provinces, and how do current initiatives relate to and shape these hybrid political orders? The research worked from the starting observation that the state-centric, technical nature of current initiatives aiming to generate a transparent and traceable supply chain in eastern DRC, as well as the normative approach(es) underlying such efforts, may be related to the operational deficiencies that can be discerned, along varying modalities, in the artisanal mining sectors of the two provinces.

Case study relevance
North Kivu and northern Katanga are particularly conducive to an investigation of the different modalities of political hybridity and natural resource governance schemes. They are similar with regard to their inherent social, political and economic dynamics, yet they have also developed different natural resources governance mechanisms that remain largely disconnected from the central government in Kinshasa. Compared to North Kivu, which represents an extreme case of state fragility, Katanga is also institutionally more stable. Given the abiding negligence of Katanga's small-scale mining management and the shortage of research conducted on *de facto* natural resource governance in North Kivu, the present project contributes to a much needed comprehensive understanding of the linkages between natural resource management and hybrid political orders in conflict-affected settings.

The research focused on the extraction of the 3Ts: tin ore (cassiterite), tungsten ore (wolframite) and tantalum ore (tantalite/coltan[3]). As most of the current initiatives target the 3T sector and given that 3T mining sites are generally more accessible, gold was excluded from the analysis. However, this CCDP Working Paper does examine the gradual shift from 3T to gold and discusses planned gold sector initiatives. The 3Ts are predominantly extracted through artisanal mining, which refers to "mining by individuals, groups, families or cooperatives with minimal or no mechanization, often in the informal (illegal) sector of the market" (Hentschel, Hruschka and Priester 2003:5-6).

Process and Methods

Given the sensitivity and complexity of the research topic, as well as the dearth of available data, this project is based on qualitative field research involving in-depth interviews, field observations and document analysis. Intensive interviewing entailed semi-structured interviews as well as narrative conversations, depending on the identity of the interlocutor. The aim was to generate comprehensive and contextual responses that map (and ultimately

3 Coltan (short for columbo-tantalite) is a local name for ore containing the minerals columbium and tantalum.

question) the experiences, perceptions and pre-conceived views of stakeholders on the issue of natural resource management. Interlocutors were chosen from four main categories: 1) civil society actors (community-based organizations and local/national NGOs); 2) international actors (staff members and consultants working for regional and international organizations, as well as bilateral donors); 3) government actors (state and public service officials at the local, provincial and national levels); and 4) private sector actors (artisanal miners, traders, members of cooperatives and buying houses, companies, as well as informal actors involved in the supply chain).

The author undertook qualitative field research in the DRC in 2013 and 2015, and preliminary findings were published as a two-part blog post in early 2014 for the Stockholm International Peace Research Institute (SIPRI), in collaboration with the United States Institute of Peace (USIP) and the Economists for Peace and Security (EPS) blog (Carbonnier and Atanasijevic 2014). Between 1 February and 31 March 2013, 49 semi-structured interviews were conducted in Kinshasa and North Kivu Province, with Goma as the research base from where two field trips to Rubaya in Masisi Territory (one day) and Walikale Centre in Walikale Territory (four days) were organized. Between 25 October and 1 December 2015, a further round of 60 semi-structured interviews was conducted, with the author based in Kinshasa, Lubumbashi (Katanga Province) and Goma, and including another field trip to Rubaya. In total, the research thus involved 109 interviews: 29 with civil society, 30 with international actors, 31 with government officials, and 19 with individuals from the private sector. For reasons of confidentiality and given then sensitivity of the topic with specific requests by interlocutors, only selected names, locations or dates are listed in this CCDP Working Paper.

The research also involved direct observation, given the importance of producing an account of the natural, societal and discursive setting in which stakeholders are embedded. Observation allows capturing relevant aspects of the complex conflict setting, characteristics and collaborative modalities of hybrid political orders, and *de facto* governance practices in the extractive sector that might be withheld (deliberately or unconsciously) by interlocutors. Such observation encompasses various aspects of observable human experience such as day-to-day activities, interpersonal interaction, as well as organizational or community processes.

Limitations

Undertaking field research on artisanal mining in the DRC is a complicated endeavour, and at times practical considerations outweighed methodological preferences. Thus it was not possible to interview as many private sector actors as originally hoped, largely as a result of logistical obstacles, access constraints to mining sites, time restrictions and the sensitivity of the interlocutor category. For example, it was not feasible to visit northern Katanga and the mining sites located there. Also, and although it was possible to access the mining area in Rubaya and Walikale Centre, access to the mining sites themselves was denied. Furthermore, in light of the fact that parts of eastern DRC continue to suffer from armed conflict, field trips to the territories of Walikale and Masisi were relatively brief and conditions did not always allow for the foreseen meetings with interlocutors to take place. This CCDP Working Paper thus does not aspire to giving a representative analysis of the entire artisanal mining sector in the two provinces. Every territory, and even every mining area, has different contexts and dynamics, and this paper hopes to convey some of these nuances to the reader.

Making Sense of Natural Resource Governance

Over the past decade, an increasing number of actors have recognized the potential of natural resources (if managed properly) to contribute to social and economic development. As exemplified by Norway and Chile, elements include strong public institutions, equitable redistribution of revenues, transparency measures and a stable security environment. By contrast, the tendency of states with abundant non-renewable resources (such as oil and metals) to experiencing stagnant economic growth is also captured by the "resource curse" thesis or the "paradox of plenty" – also suggesting a link between states dependent on such natural resources and armed conflict. In that sense (the revenues of) natural resources can constitute a catalyst for the escalation of violence or the prolongation of armed conflict (Le Billon 2012; Schrijver 2010; Fearon 2004; Collier and Hoeffler 2004) and/or contribute to an expansion of conflict in the region (Buhaug and Gates 2002). Natural resource wealth in conflict-affected environments, where such resources are poorly managed, harbours the potential of weakening the state further (Thies 2010). According to the OECD (2013), about one in four fragile states is mineral or fuel dependent, and the United Nations (UNEP 2009) estimates that about 40% of intrastate conflicts are linked or fuelled by natural resources.

Natural resources in armed conflicts, in settings such as Angola, the DRC, Indonesia, Liberia and Sierra Leone, have thus been captured in the concept of "conflict minerals." High-value resources become conflict resources "when their control, exploitation, trade, taxation or protection contributes to, or benefits from, armed conflict" (USAID 2005). National and international efforts to curb this trend have included export bans, transparency and traceability schemes, and legal reforms. One prominent example is the Kimberley Process Certification Scheme for the diamond trade in Sierra Leone and Angola during the 1990s. Other examples are the global practical guidelines, schemes and tools such as the Extractive Industries Transparency Initiative (EITI) and the OECD's Due Diligence Guidelines related to extractive industries operating in conflict-affected and high-risk areas.

Despite these efforts focusing on breaking the link between natural resources and conflict, little attention has been paid to natural resource governance as a central element in the discourses of state- and peacebuilding. Carbonnier and Wennmann (2013) have argued that the main deficiency of these multi-stakeholder frameworks and guides is their theoretical and practical disconnect from existing political orders. In other words, while such initiatives are based on a Weberian state model that presumes the state to be capable and willing to provide security, welfare and representation, they are not so well equipped to address the peaceful management of valuable resources within the governance realities in place.

Acknowledging these limitations, an increasing number of scholars have proposed a re-conceptualization of the Weberian state model towards a more practice-oriented perspective that seeks new entry points for peacebuilding policies. Rather than conceiving states in terms of their ability to fulfil core functions and provide basic services (and thus labelling them as weak, fragile or collapsed if they fail to do so), perhaps the observed reality should be taken for what it is: as "ungoverned spaces" (Menkhaus 2010; Clunan and Trinkunas 2010), "pockets of effectiveness" (Leonard 2008), "political marketplaces" (De Waal 2012), "open and closed access orders" (North, Wallis and Weingast 2009), "problem-driven iterative adaptation" (Andrews 2013) or simply as "hybrid political orders" (Boege et al. 2008; Carbonnier and Wennmann 2013). Indeed, as an OECD report argued in 2011, the "majority of states in the global South can (...) be described as hybrid political orders" (OECD 2011:25), understood as "places in which diverse and competing claims to power and logics of order co-exist, overlap and intertwine" (Boege et al. 2008:10).

Natural resources in environments of political hybridity and conflict are most commonly managed by a variety of interlinked, overlapping and competing authorities. The governance and management of natural resources is consequently not solely under the control of the state, but in the hands of multiple authorities. Rather than applying specific governance models or replacing governance orders, "it is about the coalitions between local stakeholders and communities, central governments, domestic and multinational companies, and the international community that nurture a fusion of traditional, informal, and new governance components through a progressive transformation process" (Carbonnier and Wennmann 2013:215).

In the context of hybrid political orders, so-called "diffuse resources," such as tin, tantalum and tungsten, gold or alluvial diamonds, are particularly relevant (Le Billon 2001:570).[4] Diffuse resources are spread over a vast area and labour-intensive to extract but are relatively easy to loot since individuals and small groups can extract them with simple tools. Given the immense challenge for governments to control vast, inhospitable land, as well as the difficulties of tracing minerals, these resources are *de facto* controlled by powerholders and non-state authorities in circumstances where the state is either partially or entirely absent (Carbonnier and Wennmann 2013).

4 "Diffuse resources" stand in contrast to "point resources" (such as oil or gas) that are capital intensive and geographically concentrated, the extraction of which usually requires large investments by national or international private or state-owned firms.

Governing Natural Resources in the Democratic Republic of Congo

As the largest state of sub-Saharan Africa, around two thirds the size of Western Europe, the DRC is inherently challenged to exert effective state authority and control over its vast and mineral-rich territory. State governance is also marred by an intricate political geography, historically rooted ethnic tensions, as well as perpetual land disputes. Most of the tensions are concentrated in the east of the country, where natural resource wealth and persistent violence are symbiotically tied to state weakness (Autesserre 2006; Stearns 2012; Tull 2003).

The main minerals in the DRC are copper, cobalt, zinc, diamonds, columbo-tantalite (coltan) as well as cassiterite (tin ore), gold, wolframite and uranium. In 2012, the extractive sector accounted for 99% of total Congolese exports, 64% of the government budget, 24% of formal employment, and 13% of GDP (EITI 2012). At the same time the DRC was ranked 44 out of 58 in the Resource Governance Index (RGI), which measures the quality of governance in the country's oil, gas and mining sector (Revenue Watch Institute 2013). Although highly difficult to trace, it was estimated that lost revenues due to informal trade of gold in 2012 amounted to USD eight million per year (EITI 2012).

Especially the artisanal or small-scale mining sector poses significant governance challenges to the central government in Kinshasa. An estimated 500'000 to two million Congolese exploit diffuse minerals, such as gold, diamonds, tin, tantalum and tungsten, in remote and often conflict-affected hybrid political contexts.[5] As each artisanal miner supports up to five dependents, the artisanal mining sector is an important source of livelihood for an estimated 8 to 10 million Congolese across the country (World Bank 2008). The artisanal mining sector received significant attention during the two Congo Wars (1996-2003). Under the conditions of increasing state fragility, impunity and violence, widespread looting and illicit exploitation of natural resources flourished in the war-torn eastern provinces, and vast quantities of natural resources were leaked into the DRC's neighbouring countries (Turner 2007:24). But informal mining also continued after the war – both in state-held areas and in territories controlled by armed groups, and with the involvement of government officials as well as a variety of non-state actors.

In 2001, a United Nations Panel of Experts demonstrated the link between natural resources and the continuation of armed conflict in the DRC.[6] However, as argued by Nest et al. (2006) and Ross (2004:52), the initial reason for actors to enter the war in 1998 was not economic interests, but instead a complex interaction of different local, national and regional motives. In fact, local political, economic and social agendas – such as local hostilities over land, natural resources, and administrational and traditional power – had already been at the heart of conflict and violence in eastern DRC before the 1990s (Autesserre 2006; Nest et al. 2006). It is estimated that a mere eight percent of the conflicts are over access to and control over natural resources (Autesserre 2012:211). The economic agenda was thus a function of war rather than the cause of war.

Since the official end of the conflict in 2003, the interception of the conflict-mineral supply chain in eastern DRC became the major priority of the international community in its

5 See EITI homepage for details: https://eiti.org.
6 See reports from the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo, 12 April 2001 (S/2001/357), 22 May 2002 (S/2002/565), 16 October 2002 (S/2002/1146), 23 October 2003 (S/2003/1027) plus other addendums.

efforts to facilitate post-conflict reconstruction and reinforce state capacity. In pursuing this aim, different transparency initiatives, traceability schemes and normative guidelines were developed by an array of stakeholders including governments, regional and international organizations, and the extractive industries themselves. Examples include the OECD Due Diligence Guidelines, the Tin Supply Chain Initiative (iTSCi) launched by the International Tin Research Institute (ITRI), *Centre de Négoce* initiated by IOM and MONUSCO, the German Federal Certified Trading Chain Initiative (CTC), and the ICGLR Regional Certification Mechanism (RCM).

Previous research (Seay 2012; Geenen 2012; Autesserre 2012) has shown that many initiatives are highly technical in nature and focused solely on achieving a transparent, traceable, formal and "conflict-free" mineral supply chain. As argued by Geenen (2012:325), existing initiatives treat natural resource governance in conflict-affected eastern DRC primarily as a "technical matter, requiring a technical solution" – the simplistic narrative being that natural resources are the sole cause of persistent violence in eastern DRC and that armed groups therefore only fight because of the minerals (Autesserre 2006; Seay 2012; Johnson 2013; Nest et al. 2006). In exhibiting this focus, the initiatives largely neglect local politics and power relations in hybrid political contexts and the socio-economic ramifications for miners and their families who depend on artisanal extraction revenues for their survival.

One example is Section 1502 of the US Dodd-Frank Wall Street Reform and Consumer Protection Act (2010), which requires US-registered companies to undertake due diligence measures to "ensure that their supply chains do not contribute to conflict or human rights abuse" (U.S. Department of State) in the Great Lakes Region. While the legislation raised awareness to address negative aspects of the mining industry in eastern DRC and sped up the process and implementation of transparency and traceability mechanisms, it also had negative impacts in that region. It led to the imposition of a national mining ban between 9 September 2010 and 10 March 2011 that had severe consequences for the regional economy and the livelihood of the Congolese (Geenen 2012; Cuvelier et al. 2014), even if informal trade continued.[7] This ban was followed by a *de facto* embargo on "conflict-minerals" in the spring of 2011, starting with one of the largest buyers of tin from eastern DRC, Malaysia Smelting Corporation (MSC), refusing to purchase minerals from the country (Seay 2012). Seay (2012) estimates that up to two million artisanal miners were put out of work by this decision, which in turn had a substantial impact on the livelihood of those workers, their dependents and the local economy. Due to a lack of alternatives, many had to turn to other sources of income such as farming or joining armed groups.[8] In fact, a recent study by Parker and Vadheim (2015) claims that violence in the DRC increased by 143 percent and looting by 291 percent as a result of the Dodd-Frank Act. Nevertheless, as pointed out by Cuvelier et al. (2014), it is difficult to establish direct links between the legislation and the current security and socioeconomic conditions.

7 IPIS research found proof using a set of satellite pictures showing mining activities during the ban (Zingg and Hilgert 2011:8).

8 This perspective is also reflected in the interviews conducted by the author in North Kivu Province in 2013.

Box 1: Conflict Minerals? Evacuation of the *stocks résiduels* from Walikale

Walikale territory (North Kivu) was seriously affected by the *de facto* embargo triggered by Dodd-Frank 1502 and a national ban imposed by President Kabila in 2010. As a consequence, large cassiterite stocks (or *stocks résiduels des minerais*) that were not approved as "conflict-free" remained in the mining area. In order to sell a total of 1260 tons of cassiterite stock, government agencies, together with ITRI and other regional and international stakeholders, are currently determining whether the stocks are indeed "conflict-free", so that they may be sold to treatment entities and buying houses through the *Centre de Négoce* in Njingala. The official reception of the *Centre de Négoce* as well as the launch of the stock evaluation took place on 13 October 2015 in Njingala, with the presence of the Provincial Minister of Mines, Anselme Kitakya.

This evaluation process means that every mineral bag is traced back to the period of exploitation, through which it is possible to determine whether these minerals contributed to conflict or not (a process that raises questions *per se* regarding its feasibility). Several state agencies and buyers mentioned that it is not problematic to get this assurance as the main challenge has always been the access road and not the exploitation site itself.[9] Civil society organizations, on the other hand, argued that this is yet another expression of how misleading the whole "conflict debate" actually is. As one interlocutor stated, "how can minerals that, according to Dodd-Frank, already contributed to conflict become suddenly conflict-free by declaration?"[10] Although they are aware of the practical necessity to evaluate and remove these stocks, many members of civil society interviewed in 2015 pointed to the absurdity of the dispatch approach of the "*Loi Obama*".

9 Interviews with members of the *comité de suivi* and international stakeholders, North Kivu, November 2015.
10 Interlocutor from a local civil society organization working in the Walikale territory, North Kivu, November 2015.

Overview of Transparency and Traceability Schemes

Transparency and traceability schemes have been developed by different initiators operating at various stages of the supply chain. These initiatives are at times in parallel, overlapping, consecutively dependent on each other, and/or in competition on the local, national, regional and international levels. All this makes cooperation and harmonization extremely challenging. For example, a mining site must first be validated and qualified by a Joint Assessment Team according to the requirements of normative guidelines and laws. Only then can the certification and supply chain management initiatives that are required for the regional certification and international export regulations be implemented.

Overall, there has been little progress in the traceability and due diligence in the artisanal mining sector. Until today, only 140 out of 1'574 mining sites in the five eastern provinces have been validated (by the multi-stakeholder Joint Assessment Teams) and are operational (OECD 2015). Significant challenges remain, such as smuggling and the presence of armed groups. According to the UN Group of Experts and interviews conducted, the FARDC, various armed groups as well as state officials continue to be implicated in the illicit trade and taxation of minerals. A study conducted by IPIS (Spittaels et al. 2014; OECD 2015) found that non-state armed groups or public security forces are present in 61% of gold mines (524 out of 850) and 27% of 3T sites (59 out of 200) in eastern DRC.

Developments since 2013 include the preparation and launch of new Due Diligence Guidelines (DDG) from China and the European Union Conflict Minerals Law, as well as the design and creation of traceability and transparency mechanisms in the artisanal gold sector. Furthermore, the DRC became a compliant country to EITI in July 2014.

OECD Due Diligence Guidelines, Dodd-Frank Act and SEC

The OECD Due Diligence Guidelines for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas provides a detailed guidance for companies on how to implement supply chain due diligence processes on trading minerals from eastern DRC. The guidelines were developed as a collaborative initiative among governments, international organizations, the extractive industry and civil society. They have become the foundation and common reference for all transparency initiatives, suppliers and stakeholders in the eastern DRC mineral supply chain.

Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act requires US-registered companies to implement supply chain due diligence in accordance with the OECD guidelines. It requires US-registered companies to undertake due diligence measures "to ensure that their supply chains do not contribute to conflict or human rights abuse"[11] in the DRC and the Great Lakes Region. As mentioned earlier, this law had devastating consequences in practice as the complexity of the context had not been taken into consideration prior to its implementation.

Following the Dodd Frank Act, the Security and Exchange Commission (SEC) issued a conflict minerals disclosure rule in August 2012, according to which companies are required

11 U.S. Department of State. (2012). Final Rules for Dodd-Frank Sections 1502 and 1504, *Media Note*, 23 August 2012, accessible at http://www.state.gov/r/pa/prs/ps/2012/08/196882.htm.

to file under the rule for the first time by 2 June 2014 and annually thereafter on 31 May. The first company disclosure review by the US Government Accountability Office (GAO) was published in August 2015, including 1'321 companies (out of 6'000 estimated companies that could possibly be affected by the rule). It showed that about 94% of the companies reported exercising due diligence on their mineral supply chains, including identifying the source of potential "conflict minerals." However, 67% of these were unable to determine the specific country of the Great Lakes Region their minerals came from, and none of them could assure that the minerals did not finance or benefit armed groups in those countries (GAO 2015).

Following the recommendation of the OECD, the DRC developed local multi-stakeholder initiatives, such as the monitoring *comités de suivi* and *comités provinciaux*, which were designed to ensure the effective monitoring of initiatives. They facilitate the communication and engagement among various actors, including civil society, community organizations, state authorities, the industry and international actors. While the sharing of information, concerns, risks, advice or reform are highly valued amongst participants, there have been complaints about the long procedures and the politicization of the committees. Other examples are the *Observatoire Gouvernance et Paix* (OGP) traceability warning system, and the ICGLR whistle-blowing scheme of the Congolese NGO Save Act Mine.

Box 2: European Conflict Minerals Law

The European Conflict Minerals Law is still in work in progress. So far the European Parliament has adopted the first reading position of the law on 20 May 2015.[12] The next step will be for the EU Council to adopt their position. The so-called "general approach" is expected to start in the first half of 2016. Subsequently, the legislative *trilogue* between the European Parliament, the Council, and in the presence of the EU Commission, will seek consensus on the legal text.

Since 2010, the European Parliament called in several resolutions to set up an EU system of self-certification for responsible importers of tin, tantalum, tungsten and gold into the EU. With more than 400 importers accounting for about 35% of the global trade, the EU is one of the largest global markets for 3TG minerals (EU Commission 2014). This scheme is built along the lines of the US Dodd-Frank Act and based on the OECD guidelines.[13] It would therefore entail a third-party audit system, certification system for downstream companies, reporting, and so on. Compared to Dodd-Frank 1502, the EU scheme would be on a global scale (albeit limited to European importers) but focusing on the same minerals.

Certification Schemes: CTC and ICGLR RCM

The Certified Trading Chains (CTC) is a certification mechanism created by the German Federal Institute for Geosciences and Natural Resources (BGR). The project provides support to governmental institutions (CAMI, CEEC, *Division des Mines* and SAESSCAM) in terms of certification and good practices in mining, and engages with the mining industry operating in the region. In addition, it aims to improve the dialogue between authorities, mining companies and civil society. Since 2013, the project's second phase foresees an extension into eastern DRC.[14] CTC standards have been integrated into the ICGLR Regional Certification Mechanism (RCM), which provides for a set chain of custody tracking

12 See European Parliament, Union system for self-certification of importers of certain minerals and metals originating in conflict-affected and high-risk areas, P8_TA-PROV(2015)0204.

13 European Parliament, Resolutions on 7 October 2010 (P7_TA(2010)0350), 8 March 2011 (P7_TA(2011)0082), 5 July 2011 (P7_TA(2011)0307) and 26 February 2014 (P7_TA-PROV(2014)0159).

14 See BGR website: http://www.bgr.bund.de/EN/Themen/Min_rohstoffe/CTC/Mineral-Certification-DRC/Implementation/implementation_drc_node_en.html.

standards to monitor transparent and traceable supply chains in the region. The RCM was implemented in the DRC in early 2012[15] and the ICGLR certificate replaced the national certification regulation (*Certificats d'origine*) on 20 January 2014.[16]

Validation and Qualification of Mining Sites

The validation and qualification of mining sites is based on the OECD Due Diligence Guidelines and constitutes the foundation for all other initiatives to be implemented. So far, 178 mining sites have been qualified in the provinces of Katanga, Maniema, North Kivu and South Kivu – 141 of these sites were declared conflict-free.[17] The process is funded by USAID and BGR, and the multi-stakeholder Joint Assessment Teams are led by the IOM and include representatives from the DRC government, civil society, the UN and the extractive industry. Within the Responsible Minerals Trade (RMT)[18] framework, the IOM is currently working on certifying 15 to 20 more mines while placing a particular focus on Bisie (Walikale), where there are problems for diggers to work in the ABM concession.

In a complex and fast-changing environment, it is highly normative to assume that a one-time static validation and qualification of a mining site is sufficient to ensure that the site remains "green." Furthermore, the process is irregular and time-consuming, and only around 10% of the 1'574 sites have been verified so far. The envisaged tri-monthly validation schedule turned out to be unrealistic, primarily due to the volatile security situation, budgetary restraints, challenging weather and road conditions as well as geographical distance. An additional challenge is that, once verified, these sites are not monitored by the team – moreover the sites themselves can be warned of their impending arrival. According to the interviews conducted with various stakeholders in 2013 and 2015, the politicization of the process is of added concern: as representatives of the government usually prioritize the qualification of the mining sites, there is a risk of favouring certain personal and political agendas.

Supply Chain Management Initiatives

Compared to certification schemes, supply chain management initiatives focus on the technical and logistical organization of different steps along the mineral supply chain. There are three principal schemes, the international Tin Supply Chain Initiative (iTSCi), the rather traditional trading centre scheme (*Centre de Négoce/Points de Vente*) and the closed pipeline scheme.

International Tin Supply Chain Initiative (iTSCi)

iTSCi is a due diligence system developed by the International Tin Research Institute (ITRI) that is in line with the requirements set out by the OECD Due Diligence Guidelines, the RCM and the laws of the DRC. iTSCi was implemented in South Kivu in 2010, in Katanga in 2012, and in North Kivu in 2013. In total it is now implemented in four eastern DRC provinces (Katanga, Maniema, South and North Kivu). So far the initiative has had a designative impact on transparency and traceability in the region's 3T sector, especially in the province of Katanga that is widely quoted as the role model. Despite the positive effects observed, however, the mechanism is increasingly being criticized by various stakeholders,

15 Arrête Ministériel N.0057.CAB.MIN/MINES/01/2012.

16 Decision by the National Minister of Mines, communicated to eastern provinces in a letter dated 12 January 2014 by the General Director of the CEEC and his deputy.

17 An overview list is available at http://enoughproject.org/files/CF%20Mines%206.25.15.pdf.

18 See IOM's Validation des sites miniers à l'Est de la RDC dans le cadre du projet Responsible Minerals Trade (RMT) : http://www.drcongo.iom.int/pbn/validation-des-sites-miniers-%C3%A0-l%E2%80%99est-de-la-rdc-dans-le-cadre-du-projet-responsible-minerals.

particularly with regard to North and South Kivu (See Box 3). Competing systems are already being implemented, such as the Better Sourcing Program (BSP) and GeoTraceability.

Box 3: iTSCi

Since its implementation began in North Kivu, iTSCi has expanded its programme along with the developments in validation and qualification of the mining sites. By the end of 2014, iTSCi had increased its programme in the Masisi territory to 15 sub-sectors covering 15 sites (4'250 active miners) (ITRI 2014). In March 2015, iTSCi announced the launch of its programme in Lubero territory (North Kivu) and Walikale territory (North Kivu). The historical mine of Bisie, however, is not included in the programme due to the planned industrial exploitation by Alphamin Bisie Mining (ITRI 2015).

The success of this initiative can mainly be attributed to the confidence iTSCi could build up with consumers, thus adding credibility to the existing traceability mechanism (DRC certification/RCM). Its credibility was furthered by the bridge it managed to establish between international initiatives and state institutions, which had resulted in information sharing amongst the institutions concerned.

A major challenge of iTSCi is that it does not properly check the traceability information of 3T minerals passing through Rwanda and Burundi, which leaves room for illicit trade. Several interlocutors from international, state and civil society circles mentioned in November 2015 that there are only very few staff members in the entire province (e.g. six in North Kivu) and that they were themselves involved in the illegal trade of minerals. Moreover, tags (that are being attached to the mineral bags in order to trace them) are sometimes sold to diverse stakeholders (as iTSCi staff can easily move from site to site), and even from non-validated mining sites (so-called "red sites laundry"). Finally, and as mentioned by the UN Group of Experts Report (2015b), staff members have been known to ask for additional fees for the tags.

Aside from such internal and public accountability issues, companies and buying houses perceive iTSCi to be an expensive undertaking. According to interviewees from the private sector in November 2015, the export of one metric ton of tin amounted to USD 480. These corporate expenses are reflected in the purchasing prices of the artisanal miners, thus encouraging fraud. As iTSCi inherits a monopolistic position, however, there is as yet no option other than to collaborate with it.

The alternative is on the way: GeoTraceability and the Better Sourcing Program (BSP)
An alternative mechanism, GeoTraceability from PwC in partnership with the private sector initiative BSP, is expected to become operational soon. While GeoTraceability will deliver the technology (traceability with bar codes, mobile phones and Global Positioning Systems), BSP will be responsible for guaranteeing due diligence and conflict-free exportation of the minerals.

The mechanism will be in line with OECD guidelines, the ICGLR's Regional Certification Mechanism, US requirements (Dodd-Frank 1502) and the upcoming EU directive. Furthermore, the aim is to improve the technological component of the tracing mechanism, aiming for the real-time electronic tracing of mineral shipments and data availability prior to export.

All the interviewees apart from government officials were of the opinion that GeoTraceability and BSP would be beneficial to the minerals trade in North Kivu, as it would break the monopoly established by iTSCi. A competitive system would improve today's prices as well as the efforts made by the traceability companies. Another advantage of GeoTraceability compared to iTSCi is that it also intends to encompass artisanal gold mining.

Despite such optimism, two interlocutors from the private sector in North Kivu (November 2015) claim that the state authorities prevent the initiative from becoming operational. They also identified market access (especially for tin) to be a major obstacle as long as there are no smelters involved. Moreover, GeoTraceability can only be implemented in areas not controlled by iTSCi. That means that the verification and qualification process of the mines should be accelerated, as qualified mines are now operated by iTSCi.

Trading centre (Centre de Négoce) *model*

This initiative, launched by the DRC government together with MONUSCO and IOM, is based on the traditional concept of trading centres (*centres de négoce,* CdN) whereby minerals are traded in a certain location. The "conflict-free" CdN pilots are buildings through which minerals from qualified and validated mining sites within a radius of 25 kilometres would pass through. In the building the minerals are identified by a photospectometre, weighed, and tagged by the mining authorities before moving further along the supply chain.
The centre would allow miners and traders to benefit from a competitive market, and the supply chain would be transparent and traceable. Initially five pilot centres were planned in North and South Kivu. Faced by security concerns, concession ownership issues, embargos and geographical obstacles, the implementation of these projects suffered substantially. Moreover, the major tasks in the governance of these minerals (including the provision of security and the enforcement of traceability) are handed over to state authorities, which are often just as implicated in the informal trade as other stakeholders. Although three buildings were inaugurated, none of them has ever been operational. The temporary instalment of so-called *Points de Vente* (selling points) was used as an alternative. Instead of a building it consists merely of a table, a scale and tags located directly on the mining sites.

Closed pipeline scheme

Compared to the *centre de négoce*, the closed pipeline scheme is an industry initiative that started in 2011. The closed pipeline supply chain is a sealed-off supply chain that involves a limited and pre-determined number of actors that are directly linked to each other. The material passes from one mine to one trader, and then from one exporter to one smelter, and is sold to a pre-determined company for a pre-determined price (Jorns and Chishugi 2015:13). The first closed pipeline initiative was the Motorola and AVX Corporations pilot project Solutions for Hope (SfH).[19] Announced in July 2011, it brought together multiple supply chain stakeholders and exported the first "conflict-free" tantalum from its pilots in Katanga. SfH expanded to North Kivu in January 2015, with first reports on sourcing from Rubaya. Another initiative was launched by KEMET's Partnership for Social and Economic Sustainability. With its plan to establish a vertically integrated supply chain, it increased control and reduced price fluctuations. The Conflict-Free Smelter Program (CFSP), which links upstream with downstream companies, and iTSCi provided the due diligence service and therefore the means for the implementation of the closed pipeline model.

19 Solutions for Hope: http://solutions-network.org/site-fhtantalum/.

Box 4: Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains[20]

The Chinese Due Diligence Guidelines (DDG) were launched by the Chinese Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters (CCCMC) on 2 December 2015. They are based on the OECD guidelines and are applicable to all Chinese companies involved at any point along the mineral supply chain. While the initial focus was set on 3TG minerals, the guidelines apply to all mineral resources as well as to all countries and regions, although they remain voluntary. Given that China is the DRC's number one export partner and Chinese trading houses buy and export the majority of minerals produced in the artisanal mining sector,[21] this is a significant development. During the *de facto* embargo that followed the US Dodd-Frank Act, it was primarily China that continued buying minerals from eastern DRC.

Table 1: Overview of Transparency and Traceability Schemes

Guidelines and Legislations	Certification Schemes	Supply Chain Management Initiatives	Validation and Qualification of Mining Sites
• OECD DDG • Section 1502 Dodd-Frank Act • Chinese DDG	• CTC (BGR) • RCM (ICGLR)	• Closed Pipeline Supply Chain (Kemet & SfH) • Trading Centre Supply Chain (CdN & PdV) • iTSCi (ITRI)	

Initiative	Initiator	Principal Aim	Type
Centre de Négoce (2009)	MONUSCO	Formalizing the mineral supply chain	Supply Chain Management
Certified Trading Chains (CTC) (2008)	BGR	Support responsible mining practice and good governance in the artisanal mining sector, stop conflict financing and illegal exploitation, increase tax revenues	Certification
Dodd-Frank Act Section 1502 (2011)	US Government	Prevent the trade of conflict minerals	Legislation
iTSCi (2009)	ITRI	Stop conflict financing, encourage responsible mining and sourcing from the Great Lakes Region, increase traceability and tax revenues	Supply Chain Management
ICGLR Regional Certification Mechanism (RCM) (2010)	ICGLR	Responsible mining, sourcing and traceability of conflict-free supply chains in the Great Lakes Region	Certification
OECD Due Diligence Guidelines (2010)	OECD	Stop conflict financing, improve risk management in the industry, and enable responsible mining and sourcing from the Great Lakes Region	Guidelines
Solutions for Hope (2011)	Motorola, AVX, etc.	Closed supply chain initiative	Supply Chain Management
KEMET's Partnership for Social and Economic Sustainability (2011)	KEMET PSES	Closed supply chain initiative	Supply Chain Management

20 The document can be retrieved at http://www.oecd.org/daf/inv/mne/CCCMC-Guidelines-Project%20Brief%20-%20EN.pdf.

21 See EITI homepage for details: https://eiti.org.

North Kivu Province

The province of North Kivu shares a border with Rwanda and Uganda. It is characterized by complex conflict dynamics, and the state is but one amongst many actors laying a claim to and exercising power and authority. It is heavily dependent on artisanal mining, through which vast amounts of precious minerals are extracted. North Kivu received significant attention during the Second Congo War, when in particular the territories of Masisi, Rutshuru, Nyiragongo and Walikale – known as the *Petit Nord* – were arguably the epicentre of the armed conflict (Autesserre 2006; Stearns 2012; Tull 2005).

Conflict Dynamics and Political Hybridity

Conflict dynamics in North Kivu are highly complex because they involve local, national and cross-border dimensions as well as a multiplicity of social, ethnic, political and economic grievances. One of the key elements is ethnic tension between Hutu and Tutsi populations, which traces its roots to the period of Belgian colonization (1885-1962). Belgian rulers encouraged the influx of Banyarwanda people from Rwanda to North Kivu for the purpose of providing the Belgian settlers with a source of cheap labour (and also to address Rwanda's high population density). This led not only to tensions between the *autochthones*, the indigenous Congolese, and the Banyarwanda, but also created deep-rooted conflict dynamics based on nationalistic, land and identity grievances (Nest et al. 2006; Stearns 2012; Autesserre 2006).

The post-independence period was characterized by a shift in the local economy, an increased dependence on patronage, and new land laws that exacerbated land disputes in the overpopulated region further. Combined, these factors formed a prelude to the conflict that erupted during the 1990s into widespread armed violence within the territories of North Kivu, including the Masisi War in 1993, the massacres in the refugee camps following the Rwandan Genocide in 1994, and the two Congo Wars (1996-2003) (Lemarchand 2009; Prunier 2009; Stearns 2011; 2012).

North Kivu was one of the provinces most affected by looting activities and informal trade of minerals during the Second Congo War (1998-2003). Indeed, during that period looting activities predominantly "financed" the absence of state authority in the east: "first, by reinforcing the reluctance of many local strongmen to work in good faith with the central authorities; and second, by depriving the transitional government of important resources that could have helped it extend its authority" (Autesserre 2006:10). Rwandan, Ugandan and Burundian armed forces were involved in the exploitation of natural resources while the entire military and political hierarchy, from ordinary soldiers to the presidency, profited from the resource extraction (Nest et al. 2006; Autesserre 2010:64; Global Witness 2005:13). Proxy armed groups did not leave North Kivu after the Second Congo War but continued to control large areas of North Kivu (Autesserre 2010:64; Global Witness 2005:4, 20-21). In fact, it was only with the defeat of the M23 rebels and its allies two years ago that Rwanda, for the first time since 1996, no longer has a serious ally in eastern DRC (Stearns and Vogel 2015).

The retreat of the M23 spiked hope for stabilization in the region: numerous armed groups surrendered and continued military operations by the DRC government and their international partners weakened the armed group presence in North Kivu. Various interlocutors in Kinshasa and North Kivu (October and November 2015) repeatedly emphasized the "fluid dynamic of FARDC units chasing armed groups wherever they are and move to." Yet two years after the M23 surrender the overall results appear to be meagre, and a wide range of security concerns persists. As of December 2015, at least 70 armed groups remain active in eastern DRC, with the FDLR being the strongest amongst them (Stearns and Vogel 2015). According to the commanding officer of the *34eme Région Militaire* based in Goma, interviewed in November 2015, the current strategy of the national army focuses on cutting the link between its own units and the FDLR as well as their involvement in the smuggling and illicit taxation of minerals.

Governance of Natural Resources

The 3TG artisanal mining sector in North Kivu counts 401 active mining sites (OECD 2015) employing more than 55’000 artisanal miners – almost 13’000 of whom extract tin, tantalum and tungsten. Between April and June 2015, North Kivu produced on average 150 tons of 3T minerals per month.[22]

The combination of easily exploitable natural resources and the proximity to Rwanda and Uganda significantly facilitates the mineral trade from North Kivu. Already in the pre-colonial period and during colonial rule, North Kivu formed an important trading point for various goods (Tegera and Johnson 2007). Vlassenroot and Romkema (2002) demonstrate that informal local economy networks, often based on and controlled by ethnic communities, have a long history and were already in practice before the outbreak of the Congo Wars. The lack or sheer absence of state capacity in eastern DRC did not just mean that the formal economy was substituted by a parallel economy, but economic activity almost ceased entirely. Eastern DRC formed the junction of regional trading patterns to the extent that an unofficial market integration beyond the state developed. The network spanned a variety of stakeholders that included not only local entrepreneurs but also “private businesses, transportation companies, and tax-collecting bureaucracies throughout the region” (Mwanasali 2000: 140, as quoted in Vlassenroot and Romkema 2002:3). As argued by various scholars (Nest et al. 2006; Ross 2003; Vlassenroot and Romkema 2002), economic agendas were the function of the Congo Wars and informal trade that previously existed only increased as a result of the conflict. Instead of changing local trade patterns, parties to the conflict worked with the existing system.

Today, *de facto* governance of natural resources in North Kivu still relies on many different actors that form a reasonably well-organized system of cooperation, coordination and hierarchical attribution of roles amongst each other. Such actors range from customary societal entities, traditional authorities and state officials to armed groups and national military units. Local and provincial authorities are only one among a whole host of stakeholders implicated in the informal mineral trade. Although it was attempted to shape the supply chain in specific mining areas through the *Centre de Négoce*, minerals continue to be processed through informal trading networks.

Depending on the mining areas, and thus to varying degrees, traditional forms of power and authority appear to play an important role.[23] The sphere of influence of customary chiefs ranges from undisputed control via shared authority with state actors to (forcible) replacement by other forms of power and authority (mainly armed groups). Interlocutors in the Masisi and Walikale territories (2013 and 2015) agreed that customary chiefs enjoy the

22 DRC Ministry of Mines, Statistiques Minières harmonisées et consolidées par la Commission Interministérielle du 2e trimestre 2015.

23 Customary chiefs are not, in effect, non-state actors, or actors working outside of the contours of the state even though they try to gain political and administrative autonomy. Their authority is recognized by the Congolese Constitution (Art. 3) and formally integrated into organic law, and they often work within rather than outside the formal state apparatus. However, their role has become blurred in the power struggle, and they are thus considered non-state actors by many Congolese people.

highest level of legitimacy amongst the population, even if state actors are present. Yet their influence may vary starkly from location to location, and their overall role in mining areas thus remains ungeneralizable and ambiguous. Interviewees listed the involvement of chiefs in taxing the mining population, holding rituals in mining sites, getting involved in the digging themselves, administering the mining sites (including deciding who is allowed to dig), and in settling disputes related to the land that is being exploited.

Rubaya – Exploitation on Disputed Lands

Rubaya is a 3T-rich area in the territory of Masisi, North Kivu Province, located about 60km northwest of Goma. Masisi is a territory of approximately 4'734km^2, and land disputes have been at the heart of the conflict in the territory for more than two decades. In Rubaya, specifically, conflict has been spurned by a number of factors, including the traditional concept of land ownership as part of customary law, the national legislation of land appropriation, ethnic diversity, and the fact that mining concessions are owned by both national and international firms.[24] These factors combine to create a delicate balance that is also reflected in the complicated modalities of natural resource governance.

Firstly, Rubaya has a significant unresolved legal dispute between the owner of the mining concessions *Société Minière de Bisunzu*, SMB (formerly Mwangachuchu Hizi International, MHI) and artisanal miners working in those concessions, represented by *Coopérative Minière des Exploitants Artisanaux de Masisi* (COOPERAMMA). The dispute between SMB and COOPERAMMA is at once legal, political and ethnic in nature. MHI is the formal holder of the concession rights,[25] but the cooperative claims to be the initial occupant of the sites. The mining company MHI (now SMB) received an exploration license in 1999 and a full mining license in August 2006, which was subsequently renewed until 7 November 2022 (BGR 2012). These concessions are close to Rubaya and have been validated as "green" by the DRC's Ministry of Mines in 2012.[26] According to an interview conducted in Kinshasa (2015) with a staff member of an international organization working on the Rubaya supply chain, SMB currently counts between 700 and 800 employees, while COOPERAMMA, which only became formalized on the national level in 2012, even though the provincial decree had already been signed four years earlier, entails more than 3'000 diggers. The ethnic dispute goes back to Tutsi-Hutu tensions and their association with armed groups. While the Mwangachuchu family is of Tutsi origin and often associated with the former *Congrès National pour la Défense du Peuple* (CNDP)[27] and the M23, Robert Habinshuti Seninga, the head of COOPERAMMA, is of Hutu origins and is frequently linked with the Nyatura, a complex cluster of armed factions.

On 28 November 2013, the two parties signed a *Protocole d'Accord de Collaboration* under which COOPERAMMA is allowed to exploit SMB's concessions but is obliged to sell all the extracted materials to SMB. Only Bibatama is exploited by SMB itself; all the other sites are worked by artisanal miners embedded in COOPERAMMA, with SMB subsequently purchasing the materials. Since the agreement, there has been an advance in transparency

24 Search for Common Ground (2012:26) found that local residents in Rubaya and other villages deemed the main conflict drivers to be land disputes (53%), ethnic conflict (11%), economic conflicts (9%) and conflicts related to armed groups (7%).

25 The mining sites on the MHI concession are Bibatama1, Mataba, Bibatama2, Gakombe, Luwowo/Gasasa, Kyoi, Bunjali and Bishasha.

26 Arrêté Ministériel 188/CAB.Min/Mines/01/2012.

27 The owner of MHI, Edouard Mwangachuchu, was a senator of the former CNDP, an armed group consisting mainly of Tutsis who were controlling the area before the FARDC (assimilated ex-CNDP forces) came to power.

and traceability,[28] as reflected in a multi-stakeholder baseline study conducted in 2014 as well as in the visible development of the location compared to 2013 (BGR 2014). Tensions started building up again since mid-2015, however, in the face of accusations that both parties were unable to adhere to the terms of the agreement – with negative consequences for the transparency and traceability of the supply chain.

3T minerals pass from different concessions through Rubaya and further along the supply chain to Goma (North Kivu) or Bukavu (South Kivu). These entail minerals exploited directly by SMB, minerals exploited by the COOPERAMMA from SMB concessions (that mainly pass through the *Centre de Négoce*), and minerals from surrounding, mostly unqualified or unverified mining sites.

Transparency and Traceability

Due to its wealth of 3T deposits, Rubaya was significantly affected by the national ban and the *de facto* embargo. In early 2013 the OECD due diligence sensitization processes and qualification and validation of the mining sites were at their earliest stages, with informal trade continuing[29] along a supply chain that was controlled by armed groups such as the Nyatura, APCLS and the FARDC. The legal and ethnic dispute between MHI/SMB and COOPERAMMA posed a significant challenge to the implementation of transparency initiatives, and to make matters worse, the *Centre de Négoce* was supposedly constructed in this conflict-ridden concession. The initial idea of the CdN was to re-direct minerals from surrounding "green" sites through the building. Due to the unresolved legal question and various technical and logistical obstacles that the constructors of the building did not account for, the centre never became operational. Such obstacles include the distance of the centre from the surrounding mining sites and the related security concerns along the roads, as well as the conditions of the roads themselves. Moreover, the risk of mineral laundering from surrounding non-validated sites remains a concern, to the CdN as well as to SMB and COOPERAMMA. This risk is linked to the (rather slow) validation and qualification of surrounding mining sites. Currently, the building is used as office space for government agencies (SAESSCAM/Mining Division) that tag and register the minerals. These agencies maintain that only SMB minerals exploited by COOPERAMMA presently pass through the centre.

According to interviews conducted in 2015, towards the end of 2013 the agreement reached between SMB and COOPERAMMA as well as the defeat of the M23 had a positive bearing on the implementation of transparency initiatives and the temporary improvement of the security situation. The CTC baseline audit was conducted, iTSCi was implemented in March 2014 and the RCM was standardized. In January 2015, the Solutions for Hope initiative then issued its first reports on sourcing from SMB concessions, and the armed groups along the supply chain were replaced by state officials. Presently there are 17 qualified and verified mining sites in the territory of Masisi.[30] Seven out of these 17 are in the concessions of SMB. Out of these seven, two are mined semi-industrially by SMB and five are exploited by COOPERAMMA but the minerals sold exclusively to SMB.

The current tensions between SMB and COOPERAMMA, which started to build up again since early 2015, leave ample space for the illicit trade of minerals from Rubaya. In addition, there is an economic advantage of selling to buyers other than SMB: the UN Group of

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28 Based on interviews with international organizations implementing transparency initiatives, as well as private sector actors. Kinshasa, Goma and Masisi, October and November 2015.

29 The UN Group of Experts states that there is a significant production of tantalum ore but hardly any formal tantalum ore exports from Goma since May 2012. The major part of the produced minerals is either stockpiled or smuggled out into neighbouring countries (See UN Group of Experts 2012:§229).

30 Arrêté Ministeriel Nr. 0078/CAB.MIN/MINES/01/2014 and various interviews conducted in 2015 in North Kivu.

Experts (2015b) found that SMB pays around 20% less than the buyers in Rwanda. Indeed, one interviewee from an international organization in Kinshasa (2015) estimated that 20 to 40% of all the minerals produced in Rubaya are sold in Rwanda. While production continues, there has been a fall in the quantity of material registered, and registered exports have dropped from an average of 100 to about five tonnes per month. In October 2015, the total registered material slightly increased to 9.1 tonnes.[31] Numerous accounts and internal reports, including from the UN Group of Experts (2015), document informal trade from Rubaya, which involves a variety of stakeholders including the FARDC, a range of state authorities (*Police des Mines*, ANR, SAESSCAM, *Division des Mines*), and intermediaries such as transporters. The involvement of COOPERAMMA and Nyatura was indicated by multiple interlocutors but their exact role along the supply chain remains unclear. Despite the defeat of the M23 militia, the security situation remains volatile in the province as a whole and in Masisi territory in particular. Accounts of hidden arms in and around Rubaya[32] as well as the most recent shooting by the FARDC of COOPERAMMA members in Rubaya on 13 January 2016 (Radio Okapi 2016) reflect a delicate security equilibrium. Current initiatives and mechanisms appear to be insufficiently geared to face this highly conflictual and volatile environment, and are severely undermined by the persistent informal trade.

31 October 2015 statistics shown to the researcher during interviews with SAESSCAM and Ministry of Mines in Rubaya, November 2015.

32 Interviews conducted with international and civil society actors, North Kivu, November 2015.

Katanga Province

Katanga, the southeastern province of the DRC, is known as the country's most mineral-rich province and the heartland of national politics – not least because it has produced several DRC presidents. Compared to other eastern provinces, northern Katanga received little attention with regards to the large-scale looting of precious minerals during the Second Congo War. Northern territories of Katanga as well as North and South Kivu were similar and closely interlinked in trading precious minerals from artisanal mining in a similar conflict-affected environment.

Box 5: Division of Katanga Province and the Upcoming Elections

On 16 July 2015, Katanga Province was divided into four *Provincettes* (Haut-Katanga, Lualaba, Haut-Lomami and Tanganyika) in the framework of a larger decentralization plan that redivided the DRC from 11 into 26 provinces. This splitting up of provinces is seen by many as part of a strategy by the incumbent head of state to postpone the presidential elections due to be held in 2016. Constitutionally, the redivision of provinces should have been implemented before 2011, but instead the process was rashly enforced in July 2015 without any budgetary provisions or the organization of gubernatorial elections for the newly-established provinces.[33] Consequently, no one has formally been in charge after the dismissal of the former governors and the creation of representative provincial assemblies has been put on hold. Instead, provincial governments are being replaced by special commissioners and two deputies (one for economic and one for political questions) for a transitional period of up to two years. As of 16 November 2015, however, only five out of 21 *Commissaires Spéciaux* had taken up their posts in the newly created provinces (Radio Okapi 2015a). This process is seen as a centralization mechanism by the Kabila administration, as the commissioners are appointed (rather than elected) and hierarchically subordinated to the Interior Minister (Radio Okapi 2015b).

Almost all interviewees in Lubumbashi (November 2015) concurred that these rushed changes are having negative impacts on regional governance and may lead to further political disorder, social tensions, economic uncertainty and renewed insecurity. Only a small minority mentioned that the decentralization will have a positive impact mainly because of the proximity of state institutions to the local population.

Many interviews conducted in Kinshasa, Katanga and North Kivu in 2015 revealed concerns about the impact that the upcoming elections could have on the country and its stability – not just economically but also regarding its security situation.

Conflict Dynamics and Political Hybridity

Conflict dynamics in Katanga Province are primarily defined by difficult relations with the central government in Kinshasa. These are mostly expressed through the province's historical separatist tendencies driven both by economic grievances in light of its profitable mining industry and complex ethnic antagonisms (Autesserre 2008; Turner 2013).

Katanga's secessionist tendencies can be traced back to its particular status during the colonial period. Under the Congo Free State, the Belgian King left the colonial administration of Katanga to the privately owned *Comité Spécial du Katanga* (CSK) until 1910, thereby conferring a high degree of autonomy to the political authorities of the province. The CSK also held a monopoly over mineral exploitation rights from the copper belt that spanned across the southern parts of Katanga. Copper mining in the province began in 1906 with the establishment of the well-known *Union Minière du Haut-Katanga* (UMHK), a joint venture

33 Letter of the G7 to President Kabila, 14 September 2015. Available at: http://www.tshangu.com/Voici-la-lettre-estocade-du-G7-a-Jospeh-Kabila_a1574.html.

by the Belgian *Société Générale de Belgique* and the British Tanganyika Concessions Limited. UMHK, which was nationalized in 1967 and renamed *Gécamines*, exerted quasi-state powers in governing its security and administration together with the colonial authorities. The increasing demand for labour led to the recruitment of a large number of foreign workers from southern Africa, as well as thousands of inhabitants who originally came from the Kasaï Province to the northwest of Katanga. The latter soon became part of increasing economic grievances and tribal antagonisms with the "authentic" Katangans, who have continuously been incited and reinforced under the successive regimes of Mobutu and Kabila (Fetter 1976; Lemarchand 1962; Ndikumana and Emizet 2003; Rubbers 2006).

At the time of independence, these tensions – combined with Belgium's continued economic interests – resulted in Katanga's effective but short-lived secession under Moïse Tshombe's leadership. Indeed, as Lemarchand (1962:415) wrote, to the white settlers "the idea of secession [was] both economically attractive and politically meaningful." Since then, and although Katanga was fully reintegrated into the DRC's national territory in 1963, these secessionist tendencies periodically re-emerged and consequently helped sustain ethnic cleavages, both under Mobutu and later Kabila's regime. This is reflected, for instance, in the two Shaba Wars of 1977 and 1978 (Katanga was renamed "Shaba" by Mobutu) and in the most recent secessionist upsurge of the Maï-Maï Kata Katanga (literally "cut off Katanga") in Lubumbashi in March 2013.

Due to its long history of civil unrest and political grievances, Katanga – and especially its northern part – displayed similar features to those of North Kivu, especially as the Second Congo War unfolded. The region became entangled in a complex and scattered structure of armed groups such as the Rwandan-backed *Rassemblement Congolais pour la Démocratie – Goma* (RCD-G) along with some units of Jean-Pierre Bemba's *Mouvement de Libération du Congo* (MLC) who notably fought against numerous Maï-Maï groups in northern Katanga (De Koning 2010:9). Contrary to the Kivus, most foreign armed groups left northern Katanga as the war ended in 2003 and the influence of regional and national cleavages gradually faltered. Dissatisfied with the *status quo,* however, local Maï-Maï groups brought their remaining political and economic grievances to the battlefield and continued to fight each other as well as the FARDC. The events of 2005 are a case in point, when northern Katanga became the setting for "total impunity for human rights violations and illegal actions" (Autesserre 2010:171). On the territory or village level, each party to the conflict aimed to maintain their hold over the areas they had conquered during the war in order to maintain the administrative and customary authority needed to control mining sites, determine land ownership, and impose taxes on the population (Autesserre 2008, 2010). As in the Kivu provinces, these objectives overlap and intertwine with ethnic, tribal and clan tensions, so for instance the hatred towards Pygmy tribes and Kasaïans or the north-south tensions, on the district and provincial levels (Autesserre 2010). The most recent upsurge of violence in northern Katanga, which was largely ignored due to the on-going fight against M23, occurred towards the end of 2013 and into 2014. An estimated 600 homes were destroyed and more than 400'000 people were displaced in Katanga as a result of Maï-Maï aggression[34] in the so-called "Triangle of Death" (the area between Manono, Mitwaba and Pweto). According to interlocutors in Kinshasa and Lubumbashi (November 2015), the security environment has largely improved since then, although the situation remains volatile.

34 Statement of the Special Representative of the UN Secretary-General, Martin Kobler, to the Security Council, "Building on the Momentum," 14 March 2014.

Traditional authorities

Just as in North Kivu, traditional forms of power and authority still play an important role in Katanga, although the modalities vary from one mining area to another. Often, they share influence with armed groups, mining companies or state agents. Their authority and legitimacy are rooted in a long ancestral family lineage that defines them as the *propriétaire de la terre*, mystified by traditional sagas and superstitions. In the past, Maï-Maï militia would kill the customary chiefs in order to break the family lineage and take over the role as *propriétaire de la terre* or in order to mitigate the superstitions in order to exploit the minerals. As a consequence, customary chiefs used to flee and leave the community (temporarily) out of fear of being killed and/or in order to preserve the family lineage. Temporary shifts in power and authority are thus not uncommon. Several interlocutors stated that, in non-MMR concessions, these customary chiefs are also implicated in the extraction of resources, in the allocation of land, and the levying of customary taxes.[35]

According to the interviews conducted, artisanal mining practices are also affected and shaped by various beliefs – including the idea that the minerals will disappear or sickness and death will befall the artisanal diggers if strangers or women enter the mining sites. The customary chiefs hold traditional rituals and ceremonies to steer the superstitious consequences regarding the minerals, and may well do so if a mining company tries to extract minerals from a mining site without their approval.

Governance of Natural Resources

During the Belgian colonial period, most of the resource extraction in Katanga focused on (semi-)industrial mining in the well-known copper belt in the south of the province. Coltan and tin ore were then discovered in northern Katanga in 1932, and industrial exploitation lasted from the 1960s until the mid-1990s, when a combination of "falling commodity prices, a lack of foreign investment and the economic mismanagement of state-owned companies" (De Koning 2010:4) led to its eventual demise. It was increasingly replaced by artisanal mining involved in trading centre supply chains mostly traded through the Kivu provinces. One example is Kisengo (Nyunzu territory), which became the trading centre for most of northern Katanga's coltan production in 2007 (De Koning 2010). Today, according to a high-ranking SAESSCAM official interviewed in 2015 in Lubumbashi, the artisanal mining sector in northern Katanga (mainly in the territories of Manono, Nyunzu, Malemba-Nkulu and Bukama) accounts for 113 active sites employing over 25'000 artisanal miners, almost 8'000 of which work in the extraction of 3T minerals. The monthly 3T production is currently estimated to be around 350 tonnes.[36]

Just as North Kivu, the northern territories of Katanga Province were affected by armed conflict and witnessed an intensive trade in precious minerals during the Second Congo War. Since then, however, Katanga's provincial authorities have transformed the trading system in its northern territories in a way that is markedly different from North Kivu. In order to omit the complications arising from the trading centre model, the government of Katanga has promoted a vertical integration of production: the closed pipeline, a strategy made feasible by the presence of a relatively strong provincial government as well as a comparatively stable security situation.

35 Interviews with civil society, local NGOs, international actors and state agencies, Lubumbashi, November 2015.
36 DRC Ministry of Mines, Statistiques Minières harmonisées et consolidées par la Commission Interministérielle du 2e trimestre 2015; OECD 2015; and interviews in Katanga, November 2015.

Measures taken to that end by the provincial government have included, in November 2008, the prohibition of all unauthorized security services in mining areas,[37] and, in 2012, the prohibition of security services to be involved in mineral exploitation and illegal taxation, as well as an *arrêté provincial* that requires a processing facility from all exporters as a condition for authorizing exports (ITRI 2012:11). In order to "cut off" Katanga from other provinces and deviate all the trade to Lubumbashi, the former Katanga governor imposed a tax of USD 5/kg on transfers of cassiterite and its by-products to the neighbouring provinces (CIFOR 2012; ITRI 2012). At the same time the provincial government introduced a monopolistic model in which the Indian-owned company Mining Mineral Resources S.P.R.L (MMR) became the preferential partner in the 3T sector in Northern Katanga.[38] The Solution for Hope initiative started two pilot projects (Mai Baridi and Luba) on the concessions of MMR in July 2011 (concluding in late 2012). Also on MMR concessions, KEMET's Partnership for Social and Economic Sustainability launched its initiative in Kisengo.

The Closed Pipeline Operated by MMR and CDMC

MMR was founded in 2009 and engages in the exploration and production of 3T minerals. The company is based in Lubumbashi, partnered with Malaysia Smelting Corporation (MSC), and part of the global network of Vinmart Group registered in Tanzania. MSC buys all of MMR's tin; its coltan ends up in several countries including the US, UK, Germany and China (MMR 2014). MMR pre-financed a total of USD two million in order to set up the traceability schemes (in Mai Baridi, Luba and Kisengo) that were later reimbursed from levies.[39] It has exclusive access to four artisanal mining sites in the Tanganyika District of Katanga Province.

MMR works closely with the supplying mining cooperative *Coopérative des Artisanaux Miniers du Congo* (CDMC). This cooperation is based on a contract between MMR and the provincial government of Katanga in which MMR is granted exclusive rights and responsibilities for the "supervision of artisanal miners and the purchase of minerals."[40] According to interviews with staff members, CDMC works as an "outsourced service provider to MMR" in production and the first step of processing the minerals – it is, technically, a sub-contractor of MMR. In addition, it is responsible for organizing the diggers and thus functions as an intermediary between the artisanal mines and MMR. CDMC has the exclusive right to acquire the minerals from the artisanal miners working on MMR concessions and MMR has the exclusive rights to buy the minerals from CDMC.

As determined in the contracts between the provincial authorities and MMR, mineral prices are fixed and adjusted, based on the current market price, between the Mining Division, SAESSCAM, MMR and CDMC.[41] MMR pre-finances CDMC and thereby takes its own share amounting to about USD 1.10/kg. MMR also has a contract with the *Police Nationale Congolaise* in which MMR is obliged to pay officers from the *Police des Mines* directly. It was often mentioned during the interviews[42] that at times MMR had also financed other state agents in the past – such as SAESSCAM, for instance.

37 Province of Katanga. (2008). Lubumbashi, Note Circulaire no. 2631 sur les mesures d'encadrement des activités miniers pendant cette période de crise financière internationale, 26 November 2008.
38 Contract between MMR and Katanga Province: 06/1331/CABMIN/MAF/KAT/2009. Mining Permit of 5 December 2011: Arrêté Ministériel No.1033/CAB.MIN/MINES/01/2011.
39 Interview with CDMC, Lubumbashi, November 2015.
40 Contract between MMR and Katanga Province: 06/1331/CABMIN/MAF/KAT/2009.
41 As of early November 2015, the price for coltan was between 27'000 and 28'000 Congolese Francs, or roughly USD 30/kg.
42 Various interviews with MMR, CDMC and state actors conducted in Lubumbashi, November 2015.

Transparency

In the Province of Katanga a total of 24 3TG mining sites out of an estimated 113 (OECD 2015) have been verified and qualified "conflict-free."[43] The UN Group of Experts (2011:§475) highlighted that MMR "has established an effective system of control and transparency over the mineral supply chain." Several baseline audits were conducted in 2011-2012 such as by ITRI, IPIS/OECD Due Diligence and BGR. MMR became an iTSCi member in 2012, which means that the bagging, tagging and recording procedure is handled by the mining authorities (SAESSCAM, *Division des Mines* and CEEC) and MMR and monitored by the iTSCi team from the minerals extraction pit, to the point of export (MMR 2014). In addition, MMR has a contract with the Mining Police that often controls the sites with the MMR *Garde des Sites*. These MMR guards are unarmed private guards that have been trained by the cooperatives but respond to MMR.[44]

For every mine there are three different representatives of the cooperative present to guarantee a flawless supply chain: 1) one responsible for *stock du contrôle de la qualité* (collects the minerals in the mine), 2) a *chargé de la traçabilité* (responsible for the tagging process), and 3) another responsible for *administration et comptabilité*.[45] Furthermore, in order to guarantee a closed pipeline from the production site to the smelters, MMR organizes all the transport itself (with self-owned pick-ups and trucks) from the mining pit to CDMC transfer stations, and then to the MMR depots. Additionally, there are regular visits by evaluation teams to make sure that the mining sites remain "green." According to the interviews conducted in November 2015, the security situation regarding both the absence of armed groups and safe working conditions has significantly improved in the mining sites controlled by MMR, compared to non-MMR sites.

Challenges

At the same time the monopolistic position of MMR and its preferential relationship with the Katanga provincial government leaves ground for concerns. As a high-ranking official from SAESSCAM put it, "*MMR sont les champions.*" Other international trading houses and national actors stand little chance of survival alongside MMR, both in terms of financial resources as well as political support. In 2011, the UN Group of Experts reported on the involvement of military forces in executing the agreement between the company and the Katanga authorities. Furthermore, these forces were reported to ensure the traceability of the minerals. This enforcement included the tracking down of traders (UN Group of Experts 2011: §475 and §476).

One interlocutor from the private sector mentioned in November 2015 that his company tried to work in Northern Katanga but had to give up after several months because of the predominance of MMR, as well as due to problems with the provincial authorities. The company was, for instance, asked to pay a "special contribution" that ultimately amounted to almost USD 500'000; in the meantime the minerals were prevented from being exported.

Another worrying aspect is on-going tensions between MMR, CDMC and the artisanal miners that led to violent clashes in Kisengo in January 2012. Civil society interlocutors explained that many diggers prefer the option of negotiating and selling to alternative buyers rather than exclusively to CDMC/MMR. Apparently the financial situation of miners working outside the concession of MMR is better. Since the prices are already set by MMR and enforced by CDMC, the diggers are left with no other option than to sell to whatever price is imposed. It was also mentioned that there is no entity or mechanism for artisanal miners to hand in complaints or negotiate. Furthermore, civil society interlocutors stated

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43 Arrêté Ministériel Nr. 0700/CAB.MIN/MINES/01/2014; Arrêté Ministériel Nr. 0143/CAB.MIN/MINES/01/2014.
44 Interview with MMR staff in Lubumbashi (November) and Kinshasa (October) 2015.
45 Interview with CDMC staff, Lubumbashi, November 2015.

that the artisanal miners were not sufficiently supported by CDMC, as they have to provide for their own equipment – this stands in stark contrast to the statements made by MMR and CDMC staff members during the interviews. Part of the challenge is the strong migratory movement of artisanal diggers, which makes it difficult for them to form a strong movement against the price policy of MMR and CDMC as well as for the concession holders to register the miners.

While cooperatives are usually an independent institution that should be primarily focused on the concerns and requests made by artisanal miners, CDMC is widely seen as the sole product of MMR. At the request of the provincial authorities, MMR had to establish a cooperative to organize the miners in order to gain the concessions in 2009. CDMC became a pre-financed sub-contractor of MMR and acts as an intermediary between miners and the concession holder.

Major Findings and Analysis

The *de facto* supply chain

The *de facto* supply chain exhibits substantial differences between the provinces of North Kivu and Katanga. Disputed land and concession rights linked with deep-rooted social, ethnic and political conflict dynamics with a regional component, seriously challenge the transparency and traceability mechanisms in the case of Rubaya. The informal trading network involves a wide array of stakeholders that also encompasses state agencies and national army units. This is contrasted by largely undisputed concessions and a contracted – and, at times, enforced – collaboration between MMR, CDMC and the provincial government without accounts of informal trade. The closed pipeline model entails a clearly defined number of stakeholders that operate predominantly under the auspices of MMR. Moreover, while the security situation in North Kivu remains volatile, security concerns in northern Katanga remain at a much lower level.

Table 2: Different Dynamics in Today's 3T Natural Resource Governance in North Kivu and Katanga

	North Kivu	Northern Katanga
Location and regional interference	Regional trading point, high degree of regional interference through deep-rooted economic, political and social linkages	Little to non-existent regional interference through a closed pipeline model, low risk of underlying conflict dynamics affecting the supply chain
Security situation	Volatile security situation, trans-border tensions, disputes over land and concessions, residual risk of involvement of state and non-state armed groups	Calm security situation, low-risk of armed group involvement
Supply chain model	Trading centre model	Closed pipeline model
Provincial authorities	Weak provincial government and few incentives to "clean up" natural resource governance	Strong provincial government that supports the implementation of and investment in sourcing of minerals over the past years[46]

North Kivu

The research finds that *de facto* governance of 3T minerals in North Kivu is characterized by an ever-evolving but reasonably well-established system of cooperation, competition, coordination and hierarchical subordination involving actors such as traditional leaders, state outposts and their representatives, the military, non-state armed groups and customary societal entities. These coalesce in a variety of operational, logistical and taxation arrangements in fluid systems that evolve in parallel with moving spheres of influence in mining zones and along trading routes. Formal and informal trade coexist, intertwine and overlap in the same economic sphere.

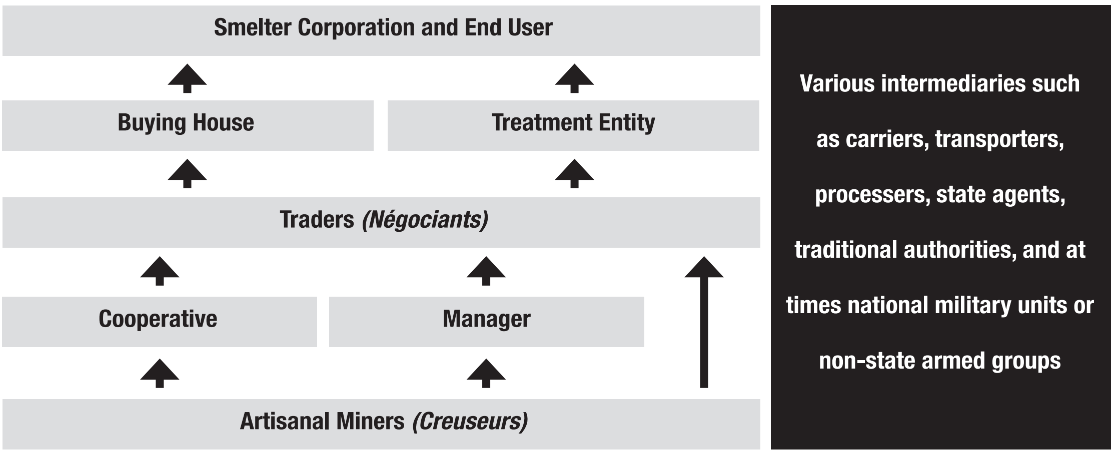
46 This might potentially change with the redivision of the province in July 2015.

Concrete cases: Walikale Centre and Rubaya

According to the field research conduced in 2013 and 2015, artisanal miners (at times also other stakeholders such as FARDC or non-state armed groups) extract the minerals and pack them into bags. Either the minerals are bought directly by traders or pass through the cooperative or via a manager. Depending on where the mining site is located, the minerals need to be moved or processed in between by carriers, transporters, processers, etc. These intermediaries can be civilians, traditional authorities, state actors and/or armed groups. Then the minerals are brought to a depot (of traders or cooperatives) and from there they are moved to Goma (North Kivu) or Bukavu (South Kivu) by car or truck. This process can also involve civilians, state actors and/or armed groups. There, they are stored by buying houses, treatment entities, or cooperatives before being transported through Rwanda, Uganda or Burundi to the seaports of Mombasa (Kenya) or Dar es Salaam (Tanzania). From there the minerals are shipped to smelter corporations in Malaysia, China, India and elsewhere.

Depending on each mining site and the particular circumstances (embargoes, the security situation, local disputes, the weather, and so on) there is informal, semi-informal or formal certification of minerals. An informal supply chain does not involve any sourcing mechanism, while semi-informal involves a partial recording or certification (for example recording and tagging only some percentage of the minerals transported) that is not sufficient to constitute a formal supply chain in accordance with official regulations and laws.

Figure 1: The *De Facto* Supply Chain in North Kivu Province



Supply chain taxation

One illustration is the tax system along the mineral supply chain from Rubaya to Goma. The research revealed that taxes collected have varying degrees of informality. In Rubaya there are minerals from verified and non-verified sites, and depending on their place of origin (or, again, the momentary circumstances with regards to security, embargos, etc.) different forms of taxes are collected. Those from verified mining sites are more likely to be registered and formally taxed. Often, however, it is not the whole quantity that is registered and formal taxes are intertwined with informal taxes. Such informal levies can also include "overhead taxes" that are fixed and based on formal taxes (see Box 6). Minerals from non-verified mining sites are either non-registered and therefore mainly subject to informal taxes, or fed into verified supply chains.

In addition, there are so-called "*tracasseries*." The expression comes from the French word *tracasser*, which means "to annoy" or "cause problems." It is typically used by the Congolese population to define the many strategies of extraction "tricks" used by state officials and the FARDC, which often involve the exchange of negotiated amounts of money. The difference between *tracasseries* and other informal taxes is that they can be imposed (and negotiated) at any time or place, on both goods and services without receipts. A mineral transporter can, for example, be stopped in the middle of the road by a state official or soldier and be asked for money.

Box 6: Illustration of Taxes from Rubaya to Goma[47]

There are three official check points (listed from Goma to Rubaya):

1. Mubambiro (FARDC, Police);
2. Sake (FARDC, *Police des Mines*, other police departments, *Division des Mines,* SAESSCAM, *Commando Garde présidentielle* Sake et Mubambiro, *Agence Nationale de Renseignement* (ANR); and
3. Bihambwe (*Police de la Circulation Routière*).

Formal taxes

Guichet Unique **SAESSCAM:**

- 10% of the initial mineral value for the artisanal diggers amounting to USD 1.00
- 1% of the value of the transaction per trader amounting to USD 0.2/kg

Guichet Unique **EAD/Province:**

- 1% of the value of the transaction per trader amounting to USD 0.2/kg
- 0.05% mineral transportation authorization for ATM (*Autorisation de Transport des Minerais*)

Total: 12.05% amounting to USD 1.45/kg

Informal taxes

Traders card USD 300 instead of USD 200
Diggers card USD 35 instead of USD 25
Tagging USD 5 in Rubaya
Fee on filling out documents USD 20
Fee on police assistance in the office USD 5
Parking fee USD 10 per vehicle in Sake
Tourism tax USD 5 per person in the vehicle in Sake

Tracasseries

Along the supply chain from Rubaya to Goma

Power and authority are in part dependent on military strength and political influence, which translate into the allocation of varying revenue shares. The field research conducted in 2013 and 2015 would suggest that FARDC forces and armed groups receive the greatest amount of revenue. Depending on their military strength, armed forces also share revenues amongst themselves. In 2013, for instance, FARDC, APCLS and Nyatura shared checkpoints along the supply chain from Rubaya to Goma. The nature of the collaboration among them was presumably competitive and based on rational choice considerations in which collaboration is at times more profitable (from an economic perspective) and less risky (with regard to the delicate power balance) than confrontation. This seemingly applies to state officials and intermediaries as well, who at times share a portion of the taxes raised with either non-state armed groups or the military – or both. The collaboration with armed groups can also lead to an increased share of revenues: interviewees suggested that the Mining Police obtained the second highest revenues due to their collaboration with the FARDC in "escorting" the minerals.

47 Internal document shared with the author in 2015, compared with data gathered from interviews in Goma and Masisi.

The internal hierarchy of the actors collecting taxes along the mineral supply chain is unclear, and answers were mostly inconclusive given the delicate nature of the topic. There were, however, narrations of a so-called *rapport* or *rapportage*.[48] Schematically, Actor 1 collects the share (pre-defined by the informal distribution key) for his agency (for example FARDC) and calls his superior (Actor 2), informing him of the exact amount (apparently they do not lie about that amount). Actor 1 takes his share (defined by his superior) and passes the amount to Actor 2. Actor 2 then does exactly the same with his superior (Actor 3) and so forth until it reaches the highest level of the hierarchy. In that process, Actor 1 knows Actor 2 and might be able to identify Actor 3, but can only speculate on who the end-receiver might be – the same is valid for the highest actor that might not know (or care) who is at the bottom of the hierarchy. It appears that this system is functional with all the different stakeholders (FARDC, *Police des Mines*, the National Police, SAESSCAM, *Division des Mines*, etc.) in North Kivu Province. This practice has been described by Stearns, Verweijen and Eriksson Baaz (2013:47) within the ranks of the FARDC. They describe the *rapportage* as a reciprocal scheme of expectations: "Just as subordinates are expected to deliver to their superiors, so they too are supposed to provide something in return: protection, advice, mitigation of punishments, promotion, leave, and training."

The research found that communication between stakeholders in the informal supply chain is based on intermediaries or electronically through phone calls or messages.[49] Orders can entail details about who to tax, the taxation amount, who to allow passage, and so forth. As various interlocutors from civil society and the mining population stated, all the actors involved are aware of the functionality and hierarchy of the system, even though it may not be visible. Some interlocutors even named the actors involved and the exact locations where taxes are imposed.

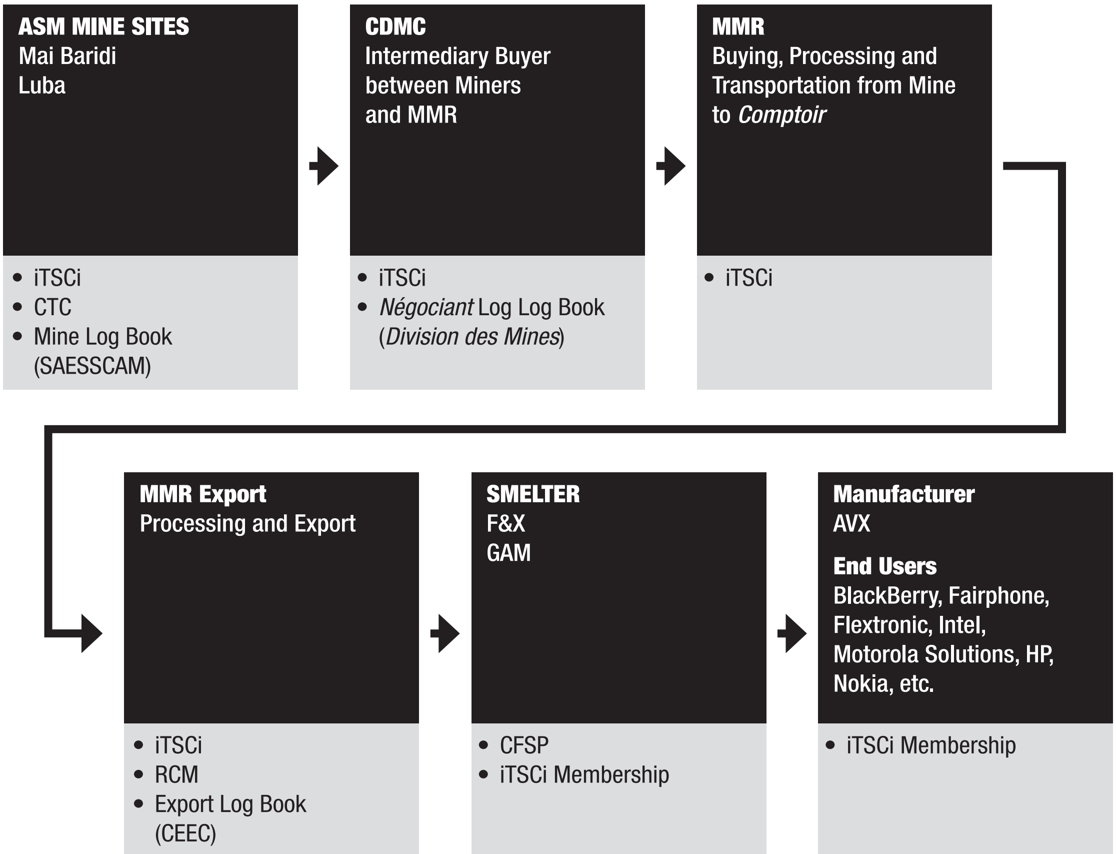
Katanga

The minerals extracted by the artisanal miner are being weighted and tagged directly at the pit by SAESSCAM (mine log book). The miner is paid by the cooperative agent directly at the pit. Then the minerals are transported to the cooperative warehouse where they are stored for further processing. In the warehouse, an agent from the *Division des Mines* counter-checks the data from the supplied minerals (*négociant* log book) before the minerals are transferred to the MMR depot and from there to MMR's main yard at the point of export. There, a government agent from CEEC proceeds with a second counter-check before the minerals are processed and repacked for export (export log book). In addition to the three log book tags, an ICGLR certificate is delivered within the framework of the Regional Certification Mechanism (RCM). The transportation between the different stages is usually provided directly by MMR in order to avoid any intermediaries. The MMR closed pipeline supply chain does not leave much room for informal trade and iTSCi, CTC and RCM were found to be effectively implemented.

48 Interviews conducted with private sector, international and civil society actors, North Kivu, February/March 2013 and November 2015.

49 Based on interviews conducted with private sector, international and civil society actors, North Kivu, February/March 2013 and November 2015, and corroborated with internal reports from NGOs, the DRC government and international organizations shared with or showed to the researcher during the fieldwork period.

Figure 2: MMR Supply Chain (MMR 2014)



Mining Companies in Hybrid Political Orders

Cooperation between mining companies and traditional authorities

According to an MMR employee interviewed in Lubumbashi (November 2015): "if the customary chief does not approve of a mining company then his population, including the diggers, will not approve of the company and that in turn leads to potential problems for the company." The interlocutor added that these traditional beliefs are widely shared amongst the Katangese people even beyond the mining population. One such incident is believed to have happened in the mining site of Bunkeya close to Lubumbashi, where a *Mzungu* (referring in Swahili to a white person with European family origins), in this case a woman of European descent, visited the mine and after she left the minerals were gone. The interlocutor emphasized that it is crucial to include these traditional chiefs "not just out of courtesy but because he is the chief and people listen to him." The majority of interlocutors in Katanga are convinced that the inclusion of the customary authorities is key for operating in the artisanal mining sector. One interviewee from civil society identified the exclusion of traditional authorities by current initiatives and mining companies as the largest deficiency in North Kivu.

In the case of Mai Baridi, for instance, there are two main customary authorities: the customary chief – the so-called *chef de groupement Benzé* or *chef Benzé* – and the *chef de village*. The authority of the *chef Benzé* is well accepted and considered legitimate amongst the (mining) population. Everyone entering his "territory" has to pass through him first. The customary chief is not directly involved in mining activities but plays an important role for mining activities. For instance, he intervenes with traditional rites before the opening of new mines and is an indispensable bridge between the population and MMR: *"(le chef) parle à l'entreprise au nom de la communauté*" (CARF 2014:8). MMR respects the importance of traditional rituals and hands over, as a gesture of respect, a monthly tribute. This can take on various forms such as gifts, money, houses, schools, electricity, water installations, and so on.[50] At times it is also the customary chief who negotiates with MMR a list of community requirements. As one MMR employee stated during the interviews: "MMR does this because they occupy their land, the land of their ancestors."

The example of MMR and their collaboration with customary chiefs exemplifies how important the inclusion of existing forms of authority is. Even though MMR has bought the concessions from the government and possesses all the legal documents required to exploit the soil, it is in their own interest to work with existing actors. As Ganson and Wennmann (forthcoming 2016) put it: "Even if as a legal entity business must align itself with the formal legal order, as an operating entity it needs to work within the specific political order present at a specific investment site."

One example of how the involvement of customary authorities could make a designative impact on the reconciliation process between mining companies and the local population is Bisie mine in Walikale territory (North Kivu). A dispute between Alphamin Bisie Mining (ABM)[51] and the local mining community had started to flare up around the planned industrialization of the cassiterite mine. There were also accounts from civil society interlocutors of violent confrontations between artisanal miners and the FARDC or the Sheka-led militia NDC.[52] Artisanal miners who had been engaged in the exploitation for years were forced to leave the mining site and find work in the surrounding sites – yet this is problematic for the miners because of the limited number of qualified mining sites and the comparably low profitability of those sites compared to Bisie.[53] In order to allay the tensions, a protocol is being drafted between the company and the mining population and their cooperatives. International stakeholders take on the role of intermediaries between the two parties as well as the scheduling of the qualification and validation of additional sites around Bisie as an alternative for artisanal miners. While international and governmental interlocutors are convinced that the tensions will soon be resolved with the current strategy, civil society interlocutors interviewed in 2013 and 2015 criticize the insufficient involvement of the local population and the customary authorities.

According to several interlocutors, the first mistake by ABM was not to respect the role of customary chiefs in that reconciliation process. They inherit a high degree of trust and legitimacy among the local population, and typically are the ones who are the intermediaries to solve such disorders. The *Mwami* ("chief" in Swahili), for instance, traditionally solved inter-family or ethnic tensions and land disputes. Multiple interviews in 2013 and 2015 revealed that family ties and social relations are deep rooted in everyday life, and numerous artisanal miners stated in 2013 that in most of the cases the decision to whom they sell the minerals to is based on social relations and clan ties. Customary chiefs are also involved

50 According to CARF (2014) and interviews with a CARF researcher, 15 November 2015.

51 The Bisie Tin Project (95% owned through ABM's DRC registered subsidiary, ABM SA, and 5% owned by the DRC government) contains two exceptionally high-grade tin deposits, Mpama North and Mpama South located on its mining licence, PE13155, within the Walikale territory. ABM, through its wholly owned subsidiary, Mining and Processing Congo Sprl (MPC), has full legal title over five exploration permits in North Kivu Province: http://alphaminresources.com/the-bisie-tin-project-an-overview.

52 Interlocutors from civil society (interviewed in November 2015 in North Kivu) claimed that the FARDC is occupying Bisie and that one artisanal miner was seriously hurt recently due to accusations that the diggers are hiding weapons in the mine (information not confirmed). Interlocutors interviewed in 2013 in Walikale territory also mentioned the involvement of other armed groups in the tensions between MPC and the miners, such as the Sheka-led armed group.

53 According to interviews with state agencies, international actors and civil society, North Kivu, November 2015.

in the informal supply chain. As there are several hills and land strips that are owned by certain chiefs, they may request a contribution if the minerals pass their land, for instance.

The collaboration between mining companies and the local administration can also have a negative impact on the local population. Interviews in 2013 with a variety of interlocutors in Rubaya consistently described the collaboration between MHI (today SMB) and the local administration (*chef de poste*) in obliging the mining population to build roads. According to these testimonies, the *chef de poste* forced the local population to participate in the so-called *Salongo* (community work). Those who did not participate had to pay a fine to the local administration. When the mining population protested against this form of forced labour on 11 February 2013, national soldiers opened fire on the protesters and killed two people.

Replacement of traditional chiefs

In other cases, traditional authorities lost significant influence over the years and were (gradually) replaced by other actors. One such case is Rubaya where, according to the field research conducted, the head of COOPERAMMA is replacing the customary chief as the highest authority among the population. Civil society actors interviewed explained this shift by pointing to the intermediary position COOPERAMMA maintains between SMB and the local population, from which customary authorities were gradually excluded. What in 2013 was only assumed by some interlocutors was already a clear statement in 2015: this process reflects the dynamic shifts in power and authority in contexts of political hybridity. It also suggests that economic power touts traditional power, and this may signal to companies not to invest in relations with customary chiefs (or even seek to by-pass them entirely), as they might be in the process of losing their influence anyway.

Companies and the outsourcing of local governance

Companies do not just engage with the contextual dynamics of hybrid political order, but are themselves an intrinsic part of it. According to a CARF researcher interviewed in Lubumbashi (2015) who had studied the Mai Baridi mine, the representative of MMR is the most important and powerful actor in that mining area, mainly because he is the main economic power holder. Everyone, including the *chef de groupement* and the *chef de village* as well as all the state services, accept his directives without resistance ("*sans broncher*"). MMR thus becomes one power holder in a certain sphere of influence in which state agents are inferior.

By managing security through the contracting of state police officials and private security guards, and by resolving disputes on their concessions through its outsourced service provider CDMC, MMR is partially fulfilling state functions and therefore managing political orders in its sphere of influence. At the same time, MMR works in close collaboration with the provincial authorities, thereby ensuring that the security contracts are upheld and enforced. In that sense, it could be argued that the provincial authorities quasi outsource local governance to MMR on their concessions.

Hönke (2010) elaborated on this extended role of companies in managing political order in Southern Katanga. She argues that state actors present in mining areas largely pursue private interests and remain mostly absent or dysfunctional when it comes to solving conflicts or providing collective security and social services. Rather they rely "on the companies, amongst others, to fulfil state functions (…) and to finance state institutions. Mining companies in Southern Katanga hence provide their own security, drawing on the services of private security agents. A small in-house security department and a contracted private security provider are, however, also complemented with – equally contracted – state police" (Hönke 2010:9-10). As illustrated by Hönke in Southern Katanga in 2005, companies attempting to solve local conflicts can have fatal impacts on the communities and even create new ones.

State Outposts

Recognizing that the "outposts" of the state are integrated into a hybrid political order that follows its own rules also means acknowledging that state actors and institutions deviate to an extent from the idea of "proper" state institutions. As Boege et al. (2008:4-5) write, they "become the subject of power struggles between competing social groups and their leaders, and are utilized by those groups and leaders for their own benefit, regardless of the needs of the 'nation' or the 'citizenry'." Thus these state actors have been known to abuse their authority for the pursuit of their personal (economic) agenda. While this is certainly linked to the low levels of pay common in such state outposts, the research suggests that state officials and military units may also act through affiliation and loyalty to certain families, clans or kinship structures of the local population. Instead of prioritizing the needs of the government in Kinshasa, state officials and in particular national military forces may be embedded within the hybrid political order in place, and may therefore also become subject to underlying ethnic and kinship conflict dynamics.

Related to the artisanal mining sector, a good indicator for the prevalent pursuit of personal interests in the name of the state is the high number of state officials operating in mining areas without a mandate. According to four interlocutors from civil society in Lubumbashi (2015), this proliferation of state officials increases the complexity of the prevailing tax system and thus risks upsetting the delicate power balance.

At times, state officials become so estranged from their public role that the crimes committed do not vary significantly from those perpetrated by non-state actors. That was often the case with regards to the similarities between FARDC forces and non-state armed groups,[54] primarily because of the loose integration of non-state armed groups into the national military,[55] a lack of accountability and widespread impunity. The research conducted in 2015 suggests, however, that there has been an improvement of the behaviour of FARDC elements towards the local population in North Kivu over the past two years. According to the majority of interlocutors from civil society, local, national and international organizations as well as from state actors interviewed in Kinshasa, Lubumbashi, Rubaya and Goma, atrocities and crimes committed by FARDC elements diminished mainly due to increased law enforcement and legal prosecutions.

In addition, state agencies engage in violent confrontations, as was the case around the Musebe gold mine (northern Katanga) in spring 2014, when clashes between FARDC, the DRC intelligence agency ANR and the national police spread to the village, causing several casualties.[56] As a result, the standard dichotomy between legitimate public security forces and non-state or criminal armed groups becomes blurred, and the behaviour also impacts the credibility and legitimacy of state officials vis-à-vis the local community that is already largely disconnected from Kinshasa. Customary societal entities may be seen as a more legitimate and respected authority in such settings, and local populations might turn to them for the provision of services usually taken to be under the purview of the state.

Current initiatives, relying primarily on state institutions to ensure transparency and accountability, tend not to take these elements sufficiently into account. By strengthening

54 For instance, a report by the UNHCHR and MONUSCO published in May 2013 states that the serious rights violations committed by FARDC soldiers, in particular, were "perpetrated in a systematic manner and with extreme violence" and may constitute international crimes under human rights law, as well as crimes under Congolese criminal law.
55 Created in 2003, the FARDC constitutes the merger of belligerents from the Second Congo War (Stearns, Verweijen and Eriksson Baaz 2015:44).
56 CARF (2014) and interviews with a CARF researcher, Lubumbashi, November 2015.

state outposts, they exert a significant influence on the delicate balance of power prevailing on the ground, yet without necessarily improving the transparency and traceability of the supply chain itself.

A case in point is the *Police des Mines et Hydrocarbures*, the mining police. Created in 2002[57] with a very broad mission that reaches from fighting fraud, poaching, corruption and theft of precious substances, to assisting mining companies in supporting environmental protection and initiatives to conserve nature, it has benefited from considerable training and equipment from USAID and MONUSCO in order for them "to play an appropriate role in mining sector security and replace the role of armed groups and criminal elements of the DRC army in and around mine sites" (USAID 2010:2). In Rubaya, the mining police was dispatched in 2013 and appears to be highly embedded in the existing order just as other state outposts. Various sources confirmed that the mining police is implicated in the informal trade of minerals along the supply chain from Rubaya, and it was repeatedly stated that FARDC and the mining police collaborate closely in smuggling the minerals – e.g. in sharing smuggling cars. The main deficiency of this police force is that there is no direct supervision and no central command or information sharing. One mining police officer in North Kivu stated during the interview in 2015: "*voilà le mal, il n'y en a pas* [direct supervision] – *même au niveau national il n'y en a pas – alors il peuvent faire ce qu'ils veulent!*" The division of the mining police into six squadrons (one in each territory in North Kivu) means that more than one squadron is involved in the same supply chain without sharing information or following coherent orders. This raises the question of what practical impact such state outposts have on the transparency and traceability of the mineral supply chain. This question also appears to be valid with regards to the "exchange" of non-state actors with state officials along the supply chain from Rubaya to Goma. Contrary to 2013, when the check points from Rubaya to Goma were under the (shared) control of APCLS, Nyatura and FARDC, the supply chain is now controlled by state officials. Yet this exchange of "illegitimate" actors with "legitimate" ones did in fact not have any significant impact on the transparency and traceability of the supply chain.

Another initiative that has been widely criticized by many interlocutors from civil society is the so-called "Islands of Stability", which aims to strengthen state authority and security in remote areas of eastern DRC. In some aspects it constitutes a parallel mechanism to existing strategies targeting the securization and formalization of the artisanal mining sector. The initiative was launched by MONUSCO and is part of a larger strategy "to neutralize and disarm Congolese rebels, foreign armed groups"[58] through the creation of a Force Intervention Brigade (FIB) – the UN's first-ever "offensive" combat force. The "restoration" of state authority in selected, limited and remote geographic locations is embedded in and surrounded by a complex hybrid political order. Thus rather than producing islands of stability, the ongoing power reshuffling could result in "swamps of insecurity", or "overlapping and hybrid, non-state governance arrangements and disaggregated, negotiated oligopolies of violence" (Vogel 2014:2).

By contrast, MMR developed an effective system of employing various private security and monitoring personnel as well as the mining police, who work together with state officials. This allows MMR to monitor the practices of state actors to a certain extent, and there may also be greater accountability due to the cooperation between MMR and provincial authorities.

57 See Art. 43 of DL Nr. 002/2002, 26 January 2002, and Art. 182 of the Constitution.
58 UN Security Council. (2013). Resolution S/RES/2098, 28 March 2013.

“Illegitimate” Actors

While it is commonly accepted that collaboration between current initiatives and *ad hoc* coalitions encompassing “legitimate” actors (such as traditional authorities and civil society leaders) needs to be promoted, it remains unclear how to deal with “illegitimate” actors such as non-state armed groups.

Beyond the state, governing natural resources in hybrid political orders involves a variety of quasi-state and non-state actors. Conceptually, both armed groups and the state can be considered extractive institutions seeking to maximize revenues from looting or taxing minerals. While looting tends to be associated with short-term benefits, longer-term economic incentives can lead to the pursuit of a more permanent territorial control through taxation. In this framework, statebuilding may involve “roving bandits” mutating over time into “stationary bandits” (Olson 1993), as they acquire a greater interest in administering a territory. This dynamic may include the provision of some essential services to the population (such as the provision of protection or the administration of justice) by state and non-state actors alike.

A recent study by Sanchez de la Sierra (2015) attempts to explain the first stages of state formation by applying optimal taxation theory to the decision of violent actors to establish local monopolies of violence. His investigation of the behaviour of stationary bandits in imposing monopolies of violence and taxation systems in coltan sites in eastern DRC, while frequently delivering essential services to the population, suggest “a similarity between violent organizations and states. Like states, actors who can organize violence can exert coercion in order to expropriate, but also to maintain a monopoly of violence and provide protection. Their strategies might turn in favour of the population when the population can be a profitable tax base, leading potentially to the first stages of state-like structures” (Sanchez de la Sierra 2015:36).

In many areas of eastern DRC, the population regards (provincial/territorial) state actors as illegitimate. Non-state armed groups, that are closely tied to certain communities, ethnicities or kinships they protect in their sphere of influence, might be more legitimate in the eyes of the local population than state military units. Raeymaekers (2014:13) finds that “the question to be answered in such environments, therefore, is not whether armed groups should be regarded as criminal, but how their services may come to underpin *de facto* sovereign rule that meets the demands of certain actors who continue to feel unprotected by state government and its agents.“ While such local assessments might prove highly constructive in broader peace- and statebuilding processes, the feasibility remains questionable in an as fast-changing and complex environment as eastern DRC. Nevertheless, it underlines the importance of gaining a more comprehensive understanding of the dynamics and multifaceted roles inherited by often one-dimensionally defined “legitimate” and “illegitimate” actors in order to anticipate and circumvent problems that might arise.

The Shift from 3T to Gold

Although the shift away from 3T towards gold mining already started in 2009, there has been an increasing trend since 2013 towards awareness raising and development of transparency initiatives encompassing the artisanal gold sector. In fact, the OECD (2015:14) states that “gold mining is currently by far the most important subsector in Eastern DRC’s artisanal mining business, with over three times the number of mines extracting gold than 3T.” It is estimated that less than 20% of artisanal miners in eastern DRC remain in the 3T sector. The majority of them have turned to gold mines (Spittaels et al. 2014). Several interlocutors mentioned that there is a simultaneous trend in armed groups moving away from 3T and into the extraction and trade of gold and other resources such as timber and carbon (UN Group of Experts 2015a; OECD 2015). In 2013/2014, 61% of gold mines showed the presence of non-state armed groups or public security forces, compared to 27% in 3T sites (OECD 2015). Reasons for the shift from 3T to gold are manyfold and include the sinking demand in 3Ts, the growth of a semi-industrial/industrial mining sector and the increased local and international pressure on 3T due diligence.

The gold supply chain is more difficult to control as it is spread all over eastern DRC; gold is also easy to hide and transport discretely. Furthermore, due to the vast geography of the DRC, there are many gold mines that have not been located and registered yet in order to validate or qualify the sites. Moreover, US laws or opinions are not as concerned about gold as they are about the smelters in the 3T sector. Gold has a "high value/volume ratio, narrow price margins and differing taxation levels between Great Lakes countries which leads to strong incentive to engage in contraband and smuggling" (Resolve 2015).[59] Another difference is in the buyers: while there is a limited number of smelters in the 3T sector, there is a vast and diversified web of buyers in the gold sector.

It is estimated that more than 98% of gold extracted through artisanal mining is smuggled out of the DRC (UN Group of Experts 2014:§171). In their latest report the UN Group of Experts stated that "there was virtually no progress in addressing gold smuggling in 2014 in the DRC and Uganda, and scant evidence of interest in traceability and due diligence by those Governments or by the Government of the UAE [one of the main export countries]" (UN Group of Experts 2015b).

Traceability and transparency schemes

Although gold has been, along with the 3Ts, a central part of the conflict minerals debate in the DRC, existing schemes and initiatives are not geared towards it – so far there is no operational traceability or certification scheme for gold in the country. Examples of new initiatives that aim to include the gold sector are 1) the government's ITOA initiative (*Initiative Traçabilité de l'Or Artisanal*); 2) efforts of EITI to incorporate the artisanal mining sector, including gold, into their framework (EITI 2015); 3) joint efforts by the Better Sourcing Program (BSP), GeoTraceability and BGR to experiment with gold traceability mechanisms in Kampene in Maniema Province; 4) PAC (*Partenariat Afrique Canada*) with its "Just Gold/Alimasi ya sawa" trading house initiative[60] that is piloted in Orientale Province; and 5) GoldCare by MineralCare, a technology-oriented system that used to be applied to diamonds in Angola before the Kimberly Scheme, and that now foresees the implementation of a pilot project in Orientale Province. All these initiatives are either already on-going, have begun their pilot projects in 2015, or are previewed to start in 2016.

59 Resolve. (2015). In region/upstream efforts to encourage legal sales of gold. Presentation available at: http://www.resolv.org/site-ppa/files/2015/07/Joanne-Pres-Gold-in-region-efforts-for-PPA-June-9-2015.pdf.

60 Just Gold is the only system that has been tested and evaluated so far.

Box 7: ITOA

The DRC's Minister of Mines, Martin Kabwelulu, signed an *arrêté* to launch the new governmental initiative ITOA (*Initiative Traçabilité de l'Or Artisanal*) on 30 October 2015. The initiative will be implemented in mining sites that have already been qualified as "green" by the qualification team, which consists of various partners including IOM, BGR and government officials. According to interviews conducted with the Ministry of Mines in Kinshasa (October and November 2015), the initiative was expected to be launched in late 2015. ITOA fulfils the international norms of due diligence (OECD and CIRGL) and aims to sell "conflict-free" minerals on the international market. Whereas ITRI covers 3T production, ITOA will work on the gold sector, with a particular focus on the artisanal gold sector. While 3T material is being tagged, gold will be bagged in so-called *sachets inviolables,* a process overseen by the *Logiciel de Certification des Minerais Désignés* (LCMD). These sachets vary in colour and form a) at the mining site, b) at the *Centre de Négoce,* c) at the *Comptoir,* and d) for exportation.

During the interviews, several high-ranking officials in the DRC's Ministry of Mines stated that iTSCi and other initiatives had largely resolved transparency issues in the 3T sector, and that it was now time to concentrate on gold. While this assertion may be largely accurate in the case of northern Katanga, it stands in contrast with the findings of the research in North Kivu, where 3T initiatives suffer from considerable deficiencies. Interlocutors from international organizations and civil society operating in North Kivu stated repeatedly in 2015 that the risks faced by the 3T sector have not been reduced, but have instead been moved from one mineral sector to another – thus the shift of attention to gold mining may have contributed to the "cleaning up" of the 3T supply chain. These statements not only underline the ineffectiveness of 3T mechanisms but also emphasize the need for initiatives that go beyond the narrow, technical horizon to also take into account the complex conflict setting. It also raises the question of how forthcoming initiatives are capable of managing an even more challenging sector when building on existing schemes from the 3T sector. The ITOA initiative, for instance, is a replica of the iTSCi scheme applied to 3T materials. As the research for this CCDP Working Paper has highlighted, there are significant challenges arising from that scheme, and these would potentially be exacerbated by the difficult circumstances to govern the artisanal gold sector. Consequently, it would be crucial for the newly developed initiatives to work in complementarity and synergy in order to improve their effectiveness. One example would be collaboration between ITOA and other schemes such as PAC, MineralCare and/or BSP.

Conclusion and Outlook

This CCDP Working Paper firstly highlighted and contextualized the hybrid governance of precious minerals in the artisanal mining sector in the Provinces of North Kivu and Katanga. It outlined the intricate and deep-rooted nature of social, political and economic dynamics that shape the hybrid political order in place today. Various factors, such as the location, the degree of regional interference and insecurity as well as provincial policies, have contributed to a dissimilar natural resource management in the two provinces after the Second Congo War (1998-2003). The MMR-operated closed pipeline supply chain in northern Katanga and the trading centre supply chain in Rubaya (North Kivu) illustrate these developments.

The paper then examined *de facto* governance of 3T minerals in the artisanal mining sector in those two provinces and analysed how current initiatives aiming at a transparent and traceable supply chain play out in these contexts. The underlying assumption was that these minerals are governed by a hybrid political order and that the implemented initiatives fall short in coming to grips with this order. This was found to be particularly the case in Rubaya, where traceability and transparency initiatives are largely ineffective or entirely dysfunctional. The analysis concludes that there is an essential need for harmonization as there are numerous technical and geographical overlaps, as well as coordination and communication challenges. By contrast, mechanisms and schemes in MMR's closed pipeline in Katanga were found to be far more functional.

De facto governance in North Kivu was often described, by donors and international implementers, as a "chaos of extortion that is impossible and illegitimate to work with," as one interlocutor from an international organization in Kinshasa phrased it during an interview in 2013, because it does not fit the envisaged normative model. Rather than encountering a lack of capacity and an absence of governance and order, the research has found the *de facto* governance of minerals to be characterized by a reasonably well-organized system of cooperation, coordination and hierarchical attribution of roles amongst different actors. Such actors range from customary societal entities to traditional authorities, and from state officials to armed groups and national military units. In the case of North Kivu, power, authority and economic profit are shared, interlinked and competing amongst various actors.

This hybrid governance, which encompasses a deep-rooted history of informal trade networks, poses significant problems to the implementation of state-centred initiatives that combat informal trade mainly through strengthening state capacity. Major security and management tasks are handed over to state agents such as the *Police des Mines*, SAESSCAM and the FARDC. This strategy does not account for the problems arising from "state outposts." Strengthening these stakeholders thus does not tend to lead to the expected and desired outcomes. Acting on misguided expectations can have significant impacts on the balance of the existing order and might result in insecurity without necessarily improving the transparency or traceability of the mineral supply chain. A lack of understanding of the relationship between stakeholders can also lead to wrong assumptions of loyalty, confidence, authority and power – for instance when the local population has more confidence in traditional authorities than in state agents.

Overall, MMR's closed pipeline supply chain, iTSCi and RCM have proven to be highly effective in terms of transparency and traceability of 3T material. The clearly defined and limited number of stakeholders in the closed pipeline supply chain operate primarily under the auspices of MMR. The risks arising from state outposts are mitigated by the deployment of private security personnel that work in cooperation with state agents as well as by contracting state personnel such as the mining police. In governing its own sphere of influence, MMR constitutes part of the existing order, at times sharing power and authority with CDMC, traditional chiefs, local state agents and the provincial government. In managing security and engaging in dispute settlement, MMR fulfils at times classical state tasks. Local governance is to a certain extent quasi outsourced to MMR by the provincial authorities.

The engagement with traditional authorities as part of the peaceful management of natural resources as practiced by MMR offers an interesting approach that may also be fruitful in other hybrid political contexts. The analysis emphasizes the potential and importance of including companies operating in such contexts into broader peacebuilding processes. At the same time, it poses essential questions related to the responsibilities and accountabilities of companies operating in such contexts. A proposition raised in the interviews conducted in 2015 was the creation of cooperatives by traditional authorities, as these authorities are generally viewed as more legitimate in the eyes of the mining population.

Given that this CCDP Working Paper focused solely on the closed pipeline model in Katanga Province, it would be pertinent to also analyse other supply chains in the province in order to gain a more comprehensive understanding of natural resource governance. For both North Kivu and Katanga, but also for other eastern DRC provinces such as South Kivu and Maniema, it would be particularly interesting to study gold, which by its very nature is more challenging to extract. This paper has outlined various deficiencies of current 3T initiatives in the context of North Kivu and determined certain parallels between these initiatives and forthcoming gold initiatives. In that light the research has pointed out the doubtful success of such initiatives. Nevertheless, it remains to be seen how these initiatives play out in practice. Furthermore, this research has focused primarily on local dynamics. Broader national and international developments of course interact in many ways with such local dynamics, including minerals price fluctuations on global markets and national elections that can have dire impact on the security situation in eastern DRC.

One highly necessary improvement is the consultation of the Congolese people. In 2013, interlocutors from civil society in North Kivu shared a certain frustration when it comes to the debate on conflict minerals and "foreign dispatch approaches aimed at easing the guilty conscious of Western people." Others from the private sector were even more opposed to foreign interference as such, leading one interviewee to exclaim in 2015: "Leave the Congo alone. Interference does not allow the Congolese people to do what they should do, what they are supposed to do. Congolese people should find their own solution and not have Western powers impose their systems in the country." Section 1502 of the Dodd-Frank Act has clearly demonstrated that minimal or only one-sided consultation of the Congolese people can have devastating consequences. Another important consideration illustrated by that example is the gradual implementation of laws, mechanisms and initiatives. This would allow for the formation of alternatives in order to avoid dispatch approaches. But also with regard to the informal trade, incentives to trade informally must be removed before measures to enforce legal trade are implemented, such as the DRC's high export taxes compared to neighbouring countries.

Yet another proposition that was mentioned by many interlocutors – and as proposed by the open letter[61] on conflict minerals mentioned in the introduction above – would be to promote competition so that Congolese producers are able to influence local price schemes. Multi-stakeholder platforms that include all the different stakeholders in the supply chain must also be promoted. One approach in that direction are the local multi-stakeholder initiatives *comités de suivi* that have significantly developed since 2013.

61 Open letter by various stakeholders on conflict minerals, 30 October 2014: https://ethuin.files.wordpress.com/2014/10/09092014-open-letter-final-and-list-doc.pdf.

Overall, the research has pointed out that it is essential for the effectiveness of these initiatives to gain a more comprehensive understanding of practical realities – not only for engaging with existing “legitimate” capacity, but also to anticipate potential problems regarding “illegitimate” actors such as those arising from non-state armed groups or state outposts. Perhaps more pragmatic and functional approaches to governance as proposed by Booth (2012) and Olivier de Sardan (2008) may rationalize the complex and ambiguous relationships. In that context it might also be more fruitful to speak of “context-specific governance solutions”, as argued by du Preez (2015), in order to avoid an “any and all” panacea of the idealistic and value-laden “good governance” term. Future research is required on the nexus between natural resource management and hybrid political orders and a more refined understanding of complex environments, such as eastern DRC, is essential for the development of context-specific governance solutions which allow for more encompassing peacebuilding approaches.

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About the Author

Lara Atanasijevic is currently a Researcher with the Graduate Institute's Centre on Conflict, Development and Peacebuilding (CCDP). She holds a master's degree in International Affairs from the Graduate Institute and obtained her bachelor's degree in Political Science and History from the University of Oslo and the University of Lucerne. Prior to joining the CCDP, Lara worked as a journalist and photographer. She has conducted extensive field research in the Democratic Republic of Congo and Colombia on natural resource governance in armed conflict and transparency initiatives in artisanal and large-scale mining.

The author can be contacted via email: lara.atanasijevic@graduateinstitute.ch

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Map 3 – Katanga Province with Territories

Centre on Conflict, Development and Peacebuilding (CCDP)
Graduate Institute of International and Development Studies
Maison de la Paix
Chemin Eugène-Rigot 2
PO Box 136
1211 Geneva 21
Switzerland
E-mail: ccdp@graduateinstitute.ch
Website: http://www.graduateinstitute.ch/ccdp