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Mineral Warfare: The Dark Side of Technology and International Mediation

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Mineral Warfare:

The Dark Side of Technology and International Mediation

In Partial Fulfillment of the Requirements for the Degree

MASTER OF ARTS
in
INTERNATIONAL STUDIES

By **Priyanka Basnyat**

May 26, 2018

UNIVERSITY OF SAN FRANCISCO

Under the guidance and approval of the committee, and approval by all the members, this thesis project has been accepted in partial fulfillment of the requirements for the degree.

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Mineral Warfare

THE DARK SIDE OF TECHNOLOGY AND INTERNATIONAL MEDIATION



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*MASTER OF ARTS IN INTERNATIONAL STUDIES | SENIOR THESIS
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Abstract

Conflict surrounding the extraction and trade of natural resources is not an uncommon phenomenon. Especially in the case of the Democratic Republic of Congo (DRC), which has historically suffered from the negative impacts of the resource curse since their mineral wealth was first discovered by their Colonial administrators. The importance of Congo's minerals has fluctuated over the years but has peaked during recent times, as their use in technological advancements are becoming more vital. The global demand for these mineral ores have skyrocketed and consequentially, the largely informal trade has benefitted certain rebel groups, playing a pivotal role in the ongoing violence of Africa's War. There have been many strategies employed to break the tie between minerals and armed conflict in the DRC, yet violence is still prevalent.

Despite the heightened media attention on the region, the development and enforcement of new international regulations and the creation of industry-led initiatives to tackle the problem, this issue continues to persist. This thesis attempts to understand why this is. It argues that the dominant Western narrative on these minerals and its links to the ongoing violence is limited, as it neglects the historical context of the onset of the fighting, as well as the voice of local miners and grassroots organisations in formalisation efforts. I argue that this simplistic account and understanding of the conflict, has impeded current efforts as it overlooks and fails to solve the fundamental and underlying causes of the conflict. Ultimately, I trace the development of Congo's mineral sector and analyse case comparisons of the various legal mechanisms, initiatives and schemes created in response to the growing demand for the conflict minerals, suggesting that a more holistic and inclusionary bottom-up approach is required.

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Abbreviations and Acronyms

3TG	Tin, Tungsten, Tantalum and Gold
3Ts	Tin, Tungsten and Tantalum
AFDL	Alliance des forces démocratiques pour la libération du Congo-Zaire
ASM	Artisanal and Small-Scale Mining
AU	African Union
BGR	The German Federal Institute for Geosciences and Natural Resources
CCCMC	Chinese Chamber of Commerce of Metals Minerals & Chemicals Importers & Exporters
CDM	Congo DongFang International Mining
CNDP	Congrès National pour la Défense du Peuple
CRG	Congo Research Group
DRC	Democratic Republic of Congo
EP	Enough Project
EU	European Union
CNDP	Congrès National pour la Défense du Peuple
EITI	Electronic Industry Transparency Initiative
EICC	Electronic Industry Citizenship Coalition
FDLR	Forces Démocratiques de Libération du Rwanda
GESI	Global E-Sustainability Initiative of the Electronics Industry
GSRM	‘Guidelines for Social Responsibility in Chinese Outbound Mining Investment
HRW	Human Rights Watch
ICGLR	International Conference on the Great Lakes
IPIS	International Peace Information Service
KPCS	Kimberley Process Certification Scheme
LBMA	London Bullion Market
LRA	Lord’s Resistant Army
MOFCOM	Ministry of Commerce for the Government of the People’s Republic of China
MONUC	United Nations Mission in the Democratic Republic of Congo
NGO	Nongovernmental Organization
OECD	Organisation for Economic Co-Operation and Development
PWYP	Publish What You Pay
RPF	Rwandan Patriotic Front
RBA	Responsible Business Alliance
RMAP	Responsible Mineral Assurance Program
RMI	Responsible Minerals Initiative
SEC	Securities and Exchange Commission
UN	United Nations
UNGPs	United Nations Guiding Principles on Business and Human Rights
UNSC	United Nations Security Council
ZEA	Zones d’exploitation artisanale (Artisanal Mining Zones)

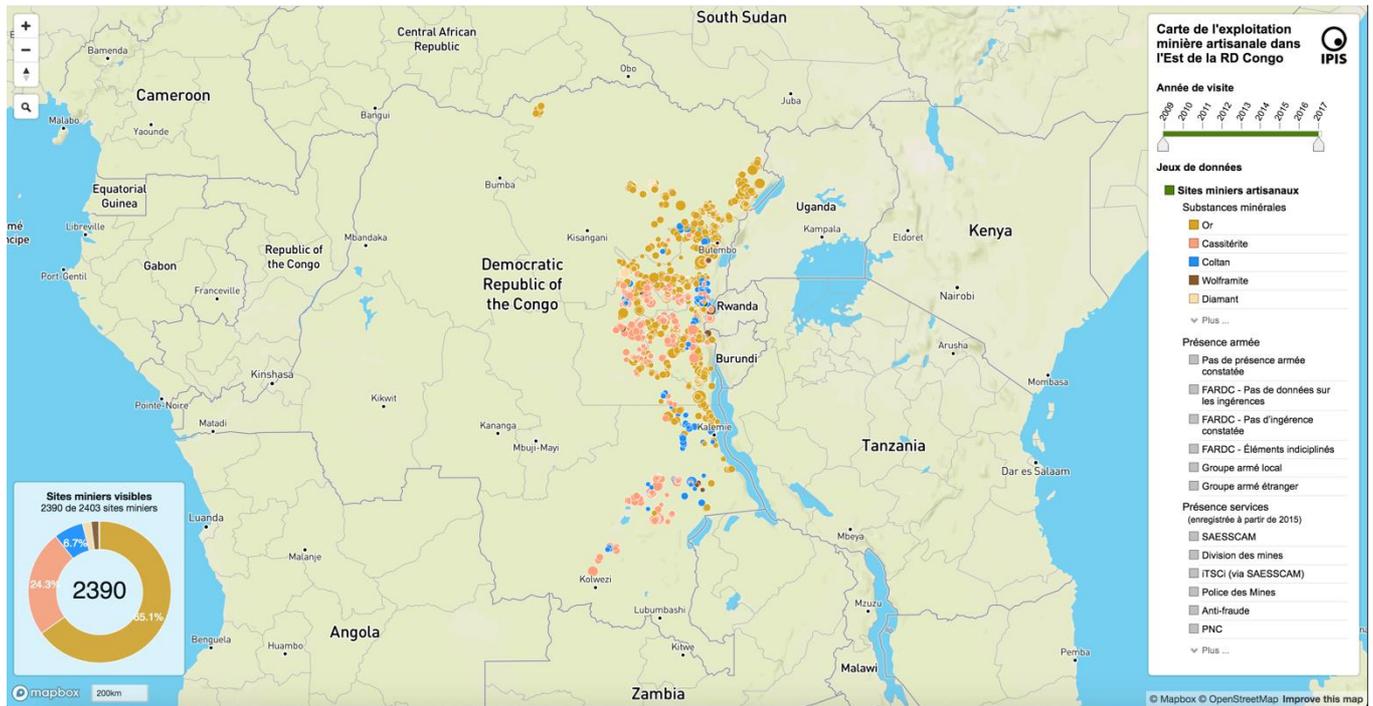
Figure 1: Regional Map of the DRC and its surrounding countries (Google Maps)



Figure 2: Political Map of DRC and its provinces (Ezilon)



Figure 3: Map of 3TG Mining Sites in DRC (Snapshot taken from IPIS Interactive Map)



Introduction

The struggle for access and control of natural resources has often played a large role in the nature of armed violence since colonial times. An abundance of the resources is problematic, especially in regions with weak institutional capacity, as it allows groups to compete for control of them and then reap the rewards. The likelihood of resources leading to conflict is dependent on whether extraction is labour intensive or capital intensive, as Dube and Vargas note, “the price of natural resources (which are capital intensive) are positively related to conflict: when the price rises, conflict rises”¹ according to the regions that produce more natural resources. The Democratic Republic of Congo (DRC) represents a situation where the labour-intensive extraction of its precious metal ores, has been routinely manipulated by stronger parties in the region for personal agendas. Without proper control over the sector, struggles over resource governance have inadvertently contributed to and maintained a level of violence during the Great Congo Wars.

In the case of the Congo, it is an extremely mineral rich state, with supplies of diamonds, zinc, copper, cobalt and coltan. These precious metals in theory should give the Democratic Republic of Congo a comparative advantage over other nations as they are relatively easy and cheap to source, yet the revenue from the mineral trade rarely benefits the local population. The ‘Enough Project,’ an American NGO in 2009, popularized the plight of these Congolese miners² and soon their campaign caught worldwide attention. In order to combat the stories of continuing instability and injustices facing the Congo that the increased attention brought, there have been many international, regional and local efforts established. Nevertheless, despite all these new legal mechanisms and supply chain monitoring schemes developed, the problem continues to

¹ Dube, O. and Vargas, J. (2013). *Commodity Price Shocks and Civil Conflict: Evidence from Colombia*. Pp.2-3

² The Enough Project. (2017). *Raise Hope For Congo - The Enough Project*.

persist. This thesis seeks to evaluate why current efforts to improve resource governance in the Congo have failed, as well as illuminate what these strategies have frequently missed.

For the past two decades, conflict and armed struggles have plagued the Democratic Republic of Congo, which has facilitated an endless cycle of poverty and violence on the region. Currently there are over 70 armed groups remaining active and the situation is highly complex. For a country that has a history of unstable governance, corruption and ethnic hostilities stemming from its colonial legacy and maintained by its successive leadership, this fragmentation of armed groups is to be expected. Without any legal or accountability mechanisms, the abundance of natural resources has attracted and financed many local and regional armed groups into prolonging the conflict. The Eastern Congolese economy is highly dependent on the mineral trade, with the sector contributing to around a fifth of the country's GDP³. Tin, Tungsten, and Tantalum Ores and gold (3TGs) are mined across the region and are routinely sold and smuggled through other countries to be processed into valuable metals. Coltan (the raw form of tantalum) in today's society is a highly-valued mineral, primarily due to its use in many modern-day electronics. The demand for the mineral has seen unprecedented growth in the last few decades, and with Congolese armed groups controlling some of these mines, along with other factors has perpetuated an unstable climate for development in the DRC.

In 2009, a movement initiated by the influential NGO the Enough project, garnered huge international attention and influenced many advocates to take up the cause. Advocates focused much of their attention on the human rights abuses related to mining, including forced child labour and sex slavery to help create awareness for the cause. While before this new-found attention, conflict minerals seem like a distant problem; however, the campaign tied western consumerism and technological advances, to the perpetuation of this issue in the Congo, turning it into an accountability problem. By initiating a consumer driven movement, Obama's

³ IMF (2015). *Democratic Republic of the Congo*. IMF Country Report. Pp. 20

administration responded by adopting the 1502 Dodd-Frank Consumer Protection Act, which requires companies that may be using conflict minerals, to register with the US Securities and Exchange Commission and disclose full transparency of their supply chain. Yet as the legislation was enforced in 2010, the effects on the ground are only now being felt and there is backlash on its effectiveness. Recently, there has been a great debate that the law is now punishing the wrong people, and the Trump administration is considering overturning the Dodd-Frank Act, especially its conflict-free minerals component.⁴

The existing approaches to tackle the governance of minerals in Congo have been unsuccessful in formalising the sector, primarily because they have overlooked fundamental causes of the instability in the country. International and regional laws have been created and applied in response to armed actor involvement in the mineral trade, however, it is clear now that these have neglected to first understand the broader implications before coming into practice. The premature application of global legal standards and the de facto ban that occurred in response, was detrimental to those who depended on the DRC mineral trade, as their steady livelihood strategy disappeared overnight. The sector became unpredictable thereafter, as the Congolese government began amending their domestic laws to include new mining regulations and natural resource management became a part of the regional political agenda. When these efforts became limited in its scope, industries that use the 3T's, companies and NGOs groups across the globe, all took it upon themselves to solve the crisis in the Congo and began developing their own governance strategies and due diligence schemes for ethical consumerism.

These various projects while set out with good intentions, have not been as effective as one would have hoped mainly because they have been created and implemented with minimal local involvement. While an international approach is helpful for an effective resource governance, the lack of local knowledge and understanding of all the interlinking dynamics that

⁴ Rappeport, A. and Flitter, E. (2018). Congress Approves First Big Dodd-Frank Rollback. *The New York Times*.

effect the mining industry in Congo has hindered the progress of these campaigns. The majority of current initiatives are primarily top-down approaches, designed by leading industry organizations and governments, which have a narrow-minded and result orientated attitude towards mineral governance. While this approach appeared successful for the case of ‘blood diamonds’, a copy-paste solution of supply chain monitoring has not worked in the DRC as it fails to address the localised underlying cleavages of conflict, such as ethnic frictions and land rights.

With the story of Congo’s minerals being so pivotal and intricately tied in to Western technological advancements, it is clear that we cannot just continue to fashion laws to solve such a complex issue. While the link between technology, globalisation and conflict has been highly publicised in modern media, there is a need for this to be academically researched and analysed. This leads me to the basis of my paper, which aims to understand why resource conflicts, particularly in the context of the DRC, continue to persist despite garnering worldwide awareness, improvements in international law and increased stakeholder involvement in its regulation. I wish to examine and unpack the unintended consequences of international intervention and law implementation on the mineral trade of the Congo, especially in relation to the Western technology sector. I argue that natural resource governance within the Congo is in need of a more holistic approach to understand the conflict and is likely to be unachievable without first rebuilding trust and transparency in the reigning state, as well as strengthening the local governing structures tasked with this.

I seek to explore the issue of ‘conflict minerals’ and natural resource governance via a comprehensive case-study of the Congo. Employing a historical and institutional analysis of the nation and expansion of the mineral industry, by tracing the creation and development of these key structures over time. I will conduct a case comparison of laws, treaties and other initiatives designed to formalise the artisanal mining (ASM) sector in the country, by documenting both the changes to laws and provisions which have stayed the same. My research process will trace the

various procedures over time, and evaluate the effectiveness of these schemes, in attempts to recognise the short comings of current mining regulations. The weaknesses of international mediation that are uncovered by this paper, I hope will provide insight into future theories of high-valued resource governance in historically weak states.

This thesis begins by first introducing the leading aspects of the current literature on the resource curse and its relationship to armed violence. I assess the role that natural resource wealth has played in the past, and how these tie in to the narrative of the conflict in the DRC. The literature review explores the rise of foreign accountability norms that have arisen due to aggressive advocacy campaigns and summarise the various policy outcomes. Next, Section 1 will outline the story of conflict minerals through the Congolese account. Chapter 1 will dissect the evolving nature of the conflict in the Congo. It will uncover the origins of the violence and highlight the key sources of protracted instability throughout the region. This chapter will also examine the influence of Congo's colonial past in its development and regional volatility which are equally responsible for the country we see today. Chapter 2 will then go on to trace the rise of Congo's mineral wealth, providing an opportunity for us to acquaint ourselves with the ores that are the focus of the paper. It then follows the development of the ASM sector in the country, emphasising the importance and use of these precious resources in the global context. Chapter 3, still concentrating on the extraction and supply chain of the minerals, explores how a weak rule of law and institutional capacity can easily trigger militarization of minerals and how it continues to permit criminalisation of the trade. This includes current institutional pitfalls that has riddled the Congo and its governing elites, despite improvements in domestic laws and creation of new bodies to combat this.

I will then move into the second part of my paper where I will unpack how the topic came into the international public sphere, how it was included on the political agenda for international organisations, and the various initiatives created as a result of this heightened attention. It begins with Chapter 4, which follows the rise of Congo's mineral fame amongst the international

narrative, how it became such a ‘hot topic’, the birth and adoption of ethical consumerism and why this issue in particular will continue to dominate headlines. Chapter 5 outlines and critically evaluates one of the most famous pieces of legislation enacted by the Obama administration to tackle this in 2010, the Section 1502 Dodd-Frank. Chapter 6 then seeks to outline the other initiatives that have arisen as a result, whether it be industry driven, company enacted or intergovernmentally agreed. I will then conclude my paper with a discussion on these strategies, aiming to uncover the missing link between them and analysing the significance of such a broad and fragmented approach in natural resource governance.

Literature Review

Between 2001 and 2013, a large body of literature examining the relationship between natural resources and civil war has been explored by many academic researchers⁵. The term ‘resource curse’⁶ was first coined by the economist Richard M. Auty in 1993, as he noted that countries with rich natural resources often tend to develop more slowly, with more violence, corruption and with more authoritarian governments than others. This ironic phenomenon peaked world-wide interest and caused many scholars to explore this relationship in greater depth and with regards to different types of resources. Sachs and Warner⁷ build upon Auty’s theory and introduces the notion of ‘Dutch Disease’, by which the discovering of natural gas reserves in Holland, increased foreign currency reserves in the country and thereby the increased demand for guilder (former currency). The change in demand thus strengthened the currency which led to more expensive Dutch exports in the international market, rendering them uncompetitive and negatively affected other parts of the economy. Additionally, there is also the insinuation that

⁵ Ross, M. (2015). What Have We Learned about the Resource Curse? *Annual Review of Political Science*

⁶ Auty, R. (1993). *Sustaining development in mineral economies: The Resource Curse Thesis*. pp.1

⁷ Sachs, J.D. and Warner A.M, (1997) “Natural Resource Abundance and Economic Growth.” Working Paper for Center for International Development and Harvard Institute for International Development.

countries with large amounts of resource wealth undergo less economic development or innovation than those which are less reliant on the resource trade.

Collier and Hoeffler⁸ took the previous theories of the resource curse and built upon them by examining the phenomenon in relation to civil conflict. The authors suggest that there is a link between civil conflict and natural resource wealth, and their explanation for this relationship falls into one of two categories. They state that natural resources such as oil and minerals, can lead to war by either using profits to finance war or are the motive for civil war. The theory behind their hypothesis is that natural resources that do not require a large amount of machinery for extraction can be a great source of funding for armed groups as the industries tend to be location specific. If rebels were to attack and extort money from other types of businesses, it is likely that they will re-locate to an area more stable. Mineral and oil extraction however, are not able to move and so rebels are able to extort these for a cut. Rebels are able to use the profits from this racketeering to buy arms, hire soldiers and initiate a rebellion. The authors findings seem to confirm that primary commodity exports substantially increase the risk of conflict, they attribute this correlation to the resources providing opportunities for extortion which can be used to prolong conflict and also acts as an incentive to engage in conflict.

Furthermore, another early argument made by the scholars in the natural resource- civil conflict literature, explored the notion of resources creating a ‘grievance mechanism’⁹. This suggests that the presence of natural resources create instability and unrest among the local population surrounding the extraction by either disproportionate land expropriation, environmental hazards, insufficient job opportunities or other social disruptions associated with economic inequality. These factors suggest that injustice and inequality is enough of a motivator to trigger violence and civil conflict around natural resource areas. However, this should mean that armed groups target the resource sector and violence should be directed and contained

⁸ Collier, P. and Hoeffler, A. (2004). Greed and grievance in civil war. *Oxford Economic Papers*

⁹ Ibid. pp.570

towards these industries not prevalent throughout the country. Scholar's following this line of thought have so far, not proved this to be a very substantial basis of natural resource-conflict theory.

Many subsequent studies have used Collier and Hoeffler's initial ideas on the "looting mechanism"¹⁰ and tested their theory in line with more recent conflicts as well as exploring the relation of conflict to different types of natural resources. Some feel that those studying this topic fail to recognise that civil war may have begun before the first act of violence has been committed. There could have been many years of low-level hostilities prior to the civil war, which may have indirectly contributed to the unstable environment allowing natural resource extraction to be exploited in times of warfare. This includes studies on how civil war and resource dependency could be caused by weak governmental, economic and legal systems. There have been conflicting discourses on the role of governance and the exploitation of mineral resources. Some academics¹¹ view illegal natural resource exploitation as a by-product of frail establishments, yet another theory is that the weak public infrastructure make the state dependent on their natural resource exports. This reverse causality theory assumes that political power is therefore hinged on the control of these resources, which in turn can act as an incentive for armed groups who see natural resource control and political power as synonymous¹². Hence, conflict waged by armed militias in order to control these key resources were seen as an act of defiance and political grievance. The control of minerals and other natural resources, therefore, become a symbol of power, as it represented a vital source of the reigning government's income which could be wielded as a political bargaining chip.

¹⁰ Ross, M. (2004). How Do Natural Resources Influence Civil War? Evidence from Thirteen Cases. *International Organization*.

¹¹ Cuvelier, J., Vlassenroot, K. and Olin, N. (2014). Resources, conflict and governance: A critical review. *The Extractive Industries and Society*

¹² Tsabora, J. (2014). Fighting The 'Resource Wars' in the Democratic Republic of the Congo: An Exploratory Diagnosis of the Legal and Institutional Problems. *The Comparative and International Law Journal of Southern Africa*

Other scholar's such as Michael Ross note that there have been many disagreements over the correlation between natural resource and conflict, especially in regards to which resources are significant and which dimension they influence¹³. He notes that it is important to first distinguish which mechanisms are at play as policies will depend on the role of natural resources in the conflict. Ross uses the previous literature on natural resources and civil war in *How do natural resources influence civil war? Evidence from Thirteen Cases* to examine which causal mechanisms have been most significant over recent resource related conflicts. He explores nine hypotheses relating to three suspected relationships; resource and the cause of conflict, resource exploitation prolonging conflict and the intensity of war attributed to the accessibility of resources. In his research, he confirms a connection between natural resource and conflict, but also through examining thirteen different cases of conflict, he notes the resources seem to contribute to the outbreak of conflict in ways unpredicted by the hypotheses. He finds that in the two cases of conflict in the Democratic Republic of Congo (1996 and 1997-1999), natural resource wealth prolonged the conflict through the incentive method¹⁴. Ross recognised that the continuation of conflict in the DRC was due to two previously unseen or overlooked mechanisms in the standard literature, the emergence of a "booty future" market and the intervention of foreign state actors in the conflict.

Foreign intervention and accountability is another aspect of conflict mineral literature which has been heavily studied and publicised in recent times. The literature has progressed from seeking to establish a link between conflict and minerals, towards a framework examining who is responsible, determining the basis of my thesis. The contemporary dialogue now addresses the many ways western states are adopting policies to address the issue of conflict minerals and calling for their companies to become more transparent in their supply source of minerals. Norms have arisen lately which promote foreign accountability to confront issues arising in resource-

¹³ Ross, M. (2004). *How Do Natural Resources Influence Civil War? Evidence from Thirteen Cases. International Organization* pp.36

¹⁴ Ibid. pp53

led conflict areas abroad¹⁵. Advocacy groups and NGO's have aimed to push companies to be held more accountable and to conduct due diligence, hoping that information sharing will lead to consumer condemnation and companies will act more responsibly. This push, in relation to conflict minerals mined in the DRC has led to the 2010 adoption of article 1502 Dodd Frank in U.S. legislation, which was largely a consequence of the Enough Project's strategy paper, '*Can You Hear Congo Now? Cell Phones, Conflict Minerals, and the Worst Sexual Violence in the World*'¹⁶.

The rise of foreign accountability and the implementation of Dodd Frank has shown the discourse in DRC's conflict-mineral literature shift towards examining the repercussions of foreign responses to problems abroad. There has been backlash on the legislation and western advocacy efforts, as while enforced with good intentions, the effects of it on the ground are only just being seen and felt. Nicknamed 'Obama's Law'¹⁷, the implementation in DRC is having very negative unintended consequences. Another recent trend in the conflict mineral literature has moved away from its role in civil conflicts and towards observing resource mining and its link to human rights violations. As human rights issues have become more dominant in contemporary political debates, many scholars have explored this link causing many advocacy groups to emerge blaming western electrical companies as largely responsible. Researchers have discovered a link between artisanal mining and the increase of rape in the DRC¹⁸, arguing that these abuses have been permitted in mining regions which are largely militia controlled.

¹⁵ Partzsch, L. and Vlaskamp, M. (2016). Mandatory due diligence for 'conflict minerals' and illegally logged timber: Emergence and cascade of a new norm on foreign accountability. *The Extractive Industries and Society*

¹⁶ The Enough Project Team with the Grassroots Reconciliation Group (2009). *A Comprehensive Approach to Congo's Conflict Minerals*.

¹⁷ Seay, L. (2012). What's Wrong with Dodd-Frank 1502? Conflict Minerals, Civilian Livelihoods, and The Unintended Consequences of Western Advocacy. *Centre for Global Development*

¹⁸ Rustad, S., Østby, G. and Nordås, R. (2016). Artisanal mining, conflict, and sexual violence in Eastern DRC. *The Extractive Industries and Society*

The issue and abuses surrounding ‘conflict minerals’ has gained popular international attention in the media in recent times, primarily after the 2002 war in DRC, which led to a mountain of advocates and human rights lawyers from taking up the cause. Many NGO’s and international organizations were created aiming to tackle this issue, following enough project’s claim that those in the West were unknowingly perpetuating the conflict in the Congo and leading to the death of many civilians. This claim was huge and eventually more protesting led to the government adopting the 1502 Dodd Frank legislation. This was the turning point as we now 8 years later are finally realising the real implications of “Obama’s Law”. A critique of all these evolving narratives on natural resources and conflict in the DRC, is that they fail to incorporate the views of the current government and local actors. The recent debates on the resource curse are too focused on the international aspect of pin pointing blame and responsibility in mineral mining, that they fail to understand the global, regional and national interaction of the industry and nature of the trade.

Understanding the nature of the resource curse itself is crucial and “thus, the investigation and delineation of the role of law in tempering or preventing such resource curses is vitally important given the emergence of new forms of legal institutions that directly regulate these relationships”¹⁹. Similar to the issue of ‘Blood diamonds’, conflict minerals have garnered the same media attention today, that The Kimberley Process was born from in 2000. Since its implementation, the law has been referred to by some scholars, NGOs and governments as a “model for the governance of other commodities for which there is significant inadvertent funding of conflict”²⁰. The Kimberley Process was founded from a push by leading civil rights organisations, who were concerned about the damaging social effects of the ongoing illegal diamond trade. Their campaigns and concern succeeded in getting the issue taken seriously by

¹⁹ Wexler, L. (2009). *Regulating Resource Curses: Institutional Design and Evolution of the Blood Diamond Regime*. Pp.1718

²⁰ The World Bank (2018). *Ian Bannon & Paul Collier, Natural Resources and Conflict: What We Can Do, in Natural Resources and violent Conflict: Options and Actions*. The International Bank for Reconstruction and Development. Pp.13

the international community, allowing it to be included on the 55th session of the UN General Assembly in Kimberley, South Africa. They “recommended that the international community develop detailed proposals for a simple and workable international certification scheme for rough diamonds, based primarily on national certification schemes and on internationally agreed minimum standards.”²¹

The Kimberley Process was therefore established as an international certification scheme in an attempt to regulate the trade in ‘rough’ diamonds, that is diamonds that were believed to be illegally mined by armed actors, financing wars against governments and linked to human rights abuses. The process is unique in that it is not an international organisation or agreement, but it is “implemented through the national legislations of its participants.”²² Today there are 54 participants, which represent 81 countries and claim to “actively prevent 99.8% of the worldwide trade²³”. Nevertheless, as the process is now actively running in its 17th year, there have been many growing concerns and flaws recognised by experts and scholars alike.

Wexler²⁴ is one scholar who examined the regulation of natural resources with particular emphasis on the diamond certification process. He notes that there is a need to curb negative effects of the resource curse as it often leads to “poor economic growth and vulnerability to economics shocks, authoritarianism, corruption (and other forms of poor governance)”²⁵ and civil conflict. He highlights that natural resources are not just an issue for illegal mining by armed actors, but also that the possibility of high rewards from such resources tempt those in positions of power increasing corruption and discouraging democracy. Narrowing this down to the diamond trade, he expresses that it is not only a singular state problem as many neighbouring

²¹ Shaik-Peremanov, N. (2014). Ten years on, the Kimberley Process Certification Scheme and Zimbabwe's Marange and 'Conflict diamonds': Lessons to be learnt. *PER: Potchefstroomse Elektroniese Regsblad* pp.330

²² Kimberleyprocess.com. (2018). *The Kimberley Process (KP)*.

²³ Ibid.

²⁴ Wexler, L. (2009). *Regulating Resource Curses: Institutional Design and Evolution of the Blood Diamond Regime*.

²⁵ Ibid. Pp.1723

countries are also complicit, via smuggling or backing of militia-controlled mines. Exploring this multi-faceted issue, he suggests that “when multiple states need to be regulated, a commodity tracking system might provide a more sustainable approach.”²⁶ With the successful involvement of international NGO groups and organisations, Wexler concludes that “The Kimberley Process provides compelling evidence to suggest that NGOs can simultaneously influence both states and business cartels to address the problems posed by resource curses,”²⁷ and how these “efforts can be channelled into and through quasi-legal institutions.”²⁸

As the Kimberley Process continues in its implementation, many other Scholars²⁹ have begun to realise its shortcomings in governing diamond trade and diminishing the associated human rights violations. Shaik-Peremanov distinguishes that a major limitation with the Kimberley Process Certification Scheme (KPCS), is that it focuses mainly on “non-state actor abuses while ignoring state and corporate abuses... [suggesting that] the international community acts to deny resources to rebel groups regardless of the nature of the underlying conflict.”³⁰ Additionally, viewing the scheme through a Zimbabwean case study, he suggests that it “risks becoming irrelevant and ineffective if it adheres to a narrow interpretation of its original core mandate and limits its human rights focus to human rights abuses committed by non-state actors.”³¹

The history with the Kimberley Process is eerily similar to the backlash we are now experiencing with the current laws governing conflict minerals in the US. There has been growing concern to repeal the 2010 Dodd Frank legislation with the Treasury Department

²⁶ Wexler, L. (2009). *Regulating Resource Curses: Institutional Design and Evolution of the Blood Diamond Regime*. Pp.1723

²⁷ *Ibid.* Pp.1779

²⁸ *Ibid.* Pp.1779

²⁹ Shaik-Peremanov, N. (2014). Ten years on, the Kimberley Process Certification Scheme and Zimbabwe's Marange and 'Conflict diamonds': Lessons to be learnt. *PER: Potchefstroomse Elektroniese Regsblad*

³⁰ *Ibid.* Pp.353

³¹ *Ibid.* Pp.354

releasing a new report urging Congress to repeal several policies mandated by the 2010 law.³² It is advocating to get rid of the provision which requires that companies disclose whether they use "conflict minerals" acquired from the Democratic Republic of Congo and the surrounding region afflicted by war. Like the KPCS, media outlets and academics alike are now realising and understanding the true implications and unintended implications on the ground in the DRC.

Advocates of the Dodd-Frank believed that due diligence was a necessary step to combat mineral-led conflicts, yet in hindsight it is clear that they failed to account for or offer support for any possible negative repercussions. The announcement of the law in 2010 and the heightened international media attention, generated mixed reviews and widespread confusion, but led to other governments and industries scrambling to showcase their commitment to the cause. Congo's government immediately responded by enacting a six month ban on any Congolese mineral exports between September 2010 and March 2011, and soon after the US Electronic Industry Citizenship Coalition (EICC) created a de facto embargo by refusing to buy minerals from the DRC that were not tagged as 'conflict free'. The abrupt enforcement of these two policies left a sixth of the country, whose livelihood depends on mining, without any other way of generating income. Ironically in some cases, the lack of income alternatives for locals has pushed them into join militia groups. While it's true that in many mining areas the presence of armed actors has decreased, but in other areas Congolese army officials have stepped in pushing native miners off the land and keeping the profits for themselves. The embargo itself also did not curb Congolese mineral exports as expected, instead bribery, extortion and smuggling increased, pushing the trade it wished to formalise deeper underground. It is due to these adverse unforeseen outcomes on the very local residents the legislation was aimed to protect, which has now caused the new US administration to re-evaluate section 1502.

³² Lawler, J. (2017). Treasury Department recommends deregulation of stock and debt markets. *The Washington Examiner*.

This intervention into the literature and examination of the local dynamics of war are imperative in understanding resource governance in the DRC, as their institutions and societal barriers to formalisation have been shaped by their history. Yet, the existing literature and explanations to the resource curse are unable to capture the complexity of the continuing violence in the Congo, as they do not account for the historical development of the trade, nor the local dynamics of war. While the issue is primarily a domestic problem, there are multiple tiers which need to be addressed simultaneously; that is the interaction between the village, regional and national levels. The current approaches glance over indigenous cleavages such as ethnic disputes and land rights, which has inherently lead to localised conflict. Moreover, there has been little research conducted on the political economy of resource curse³³, its relationship to political accountability and the quality of domestic institutions. This thesis seeks to remedy these and offer a contribution to the prevailing studies of the resource curse, through the Congolese context.

The conflict in the Democratic Republic of Congo is unique, in that the resource wealth has attracted many other players into the arena making it a very complex problem. I aim to address this by examining conflict minerals through the lens of neighbouring countries and their motives for getting involved in the ongoing ‘Africa’s War’, as well as, evaluating international and technological involvement as the best way to help bring stability to the Congo. The topic is growing in importance as the technology industry is rapidly expanding. With the sector constantly advancing and finding new ways to be efficient, there is an urgent need for conflict minerals to be thoroughly explored. With electric cars rumoured to be the next ‘big thing’, it is now more important than ever to find a viable national and international solution to the regulation of conflict minerals as the demand for cobalt is set to surge in the future. My paper therefore aims to dissect the transforming role of conflict minerals in creating, prolonging and attracting foreign intervention in the ongoing conflict in the DRC.

³³ Torvik, R. (2009). Why do some resource-abundant countries succeed while others do not? *Oxford Review of Economic* Pp. 254

SECTION 1: CONGO'S STORY

Chapter 1: The Evolving Nature of Congo's War

The great Congo war has been internationally portrayed as a power, land and resource-led struggle over control of the nation's precious minerals. Yet while many attribute the conflicts as being a by-product of the resource curse, blaming it on the very nature of the region, which is a very narrow-minded interpretation. There are so many underlying internal battles and hostilities contributing in some way to the violence, which are imperative to understand before we can analyse the role of minerals amidst this. Fighting in Congo's war has been prevalent since the 1990's. Now over 25 years on, it is not impractical to assume that the nature and cause of war has changed dramatically over the years, however, the fundamental causes of conflict still remain unaddressed. What makes the Congolese war different from any other conflict of the continent, is the vast number of actors and armed groups regionally and domestically involved.

The continuation of the war itself today, has "no overarching narrative or ideology to explain it"³⁴, but yet involves many ordinary people fighting as combatants for numerous causes. It leads us to question the motives behind these groups and what the core disputes are primarily about. Throughout this section, I argue that in contrast to the dominant global narrative of Congo and its minerals; local disputes over land, ethnicity and identity construction have had a crucial part to play in the onset of violence tormenting the Democratic Republic of Congo today, whose formation and role is best understood through a historical analysis. I then go to explore how these small-scale disputes have tended to get swept under the carpet and overlooked during peacebuilding efforts, which left unresolved, have had the capacity to develop into full blown regional conflicts.

Colonialism

Congo's ongoing war is multifaceted and multi-layered, the violence has swelled and expanded into containing wars within wars. Nevertheless, the persistent instability of the DRC

³⁴ Khün Von Burgsdorff, E. (2017). *The Congo: A Generation of Lost Voices*.

and the surrounding region is not a new phenomenon, it has deep seeded roots from its historical rule and has been cultivated by its unequal development. Congo has explicitly been plagued by a pattern of exploitation and authoritarian rule stemming from its colonial era under King Leopold II. Leopold claimed Congo for himself in 1885, launching the Congo Free State directly under his control. He ruled as a dictator until 1908, where the nation was then sold over to Belgian rule. The colonial empire founded administration and was also pivotal for the establishment of the mining industry in Congo, as they focused their attention to extracting resources from the country. Like most colonial rulers of the time, the Belgian's maintained a realm of segregation amongst the local administration, ensuring white supremacy overpowered the elites.

The Belgians were also somewhat responsible for the now apparent and significant friction between the Congolese population and those of Rwandan heritage in the nation. During their reign, the Belgian government focused their attention on extracting rubber and minerals from the DRC and were in desperate need of labourers to meet their demands. Between 1937-1957 they imported around 175,000 Rwandans under the 'Mission d'Immigration des Banyarwanda'³⁵, having always admired them for their hardworking spirit. Following the disruption during Rwanda's independence, a further 100,000 more fled into the country and by 1970, Rwandans living in Congo "made up over 70 percent of the population"³⁶ in the Masisi region. Land was taken and expropriated to the foreigners and soon "Hutu farmers and Tutsi ranchers came to dominate the local economy"³⁷. Furthermore, the colonizers assigned the higher administrative positions to those with Rwandan ancestry than the indigenous Congolese community, giving them access to more political and economic power. This undoubtedly led to the foundation of some tensions between the newcomers and the local Congolese Hunde community who had lived there for generations, which would later play a pivotal role in the wars

³⁵ Stearns, J. (2011). *Dancing with monsters*. New York: PublicAffairs. Pp.72

³⁶ Ibid. Pp.72

³⁷ Ibid. Pp.72

that followed. The uneasy relationship was further aggravated in the years following Congo's Independence, due to the questionable governing tactics of Congo's next kleptocratic leader.

Mobutu Rule – 1965 – 1997

The authoritarian rule of President Mobutu Sese began when the Belgian colonial reign ended in 1960, and the intermediary leader, Patrice Lumumba, was ousted in 1965 by a joint CIA-backed coup. Mobutu's leadership drove the country into economic chaos, developing policies which hindered economic development, encouraged corruption and benefitted political elites while thwarting any potential political rivals. The strength of the Congolese state and its institutions declined during Mobutu's presidency, leaving the country largely to fend for itself. He misdirected funding and resources away from the army and public establishments, which heavily stifled the growth and development of the nation. Despite robbing the country to satisfy his own personal agenda, Mobutu was able to maintain his hold on the country for thirty-two years, renaming the country Zaire in 1971. His regime weakened all governing bodies, diminished the rule of law throughout the nation and aggravated ethnic tensions, setting up a perfect storm of conditions which allowed the administration to crumble when a disturbance in the neighbouring country of Rwanda permeated into the DRC.

Rwandan Genocide – 1994

Restlessness amongst the Eastern side of the DRC was primarily triggered by and flourished during 1994, whereby the spill over effects from the genocide occurring in Congo's smallest neighbour, sparked a huge humanitarian crisis in the region. The vast repercussions of the ethnic cleansing crossed the border into the Congo, as over a million Hutu's, civilians and militia men fled the bloodshed. Congo experienced the continuation and extension of the Rwandan civil war, as the Rwandan armed forces (FAR), a predominantly Hutu militia group, allegedly used the border as protection to regroup and devise attacks back in their home soil. Fighting amongst the border continued as fleeing Rwandan's set up camps in Goma and around Lake Kivu which were a mere few miles away from their home territory. Refugee settlements

unexpectedly grew along the border, which were largely ill managed and ill equipped to handle the sheer numbers fleeing to safety.

The biggest dilemma and destabilizing feature to Eastern Zaire during this time came from the endangerment caused by Rwandan militia men, who camouflaged themselves amongst civilians in refugee camps. This threat alone maintained a constant air of violence and insecurity in the region, while political elites in Kinshasa either underestimated the risks posed by this or had no interest in mediating nor dissipating the danger. This allowed Paul Kagame, Rwanda's new leader, to use this to his advantage and as justification for the consequent invasions of the refugee camps by his army. The militarization of the refugee camps provided globally acceptable 'just' cause for the consequential attacks in eastern Zaire, as the Rwandan army invaded the region and provided support for Congo's anti-Mobutu movement led by the rebel group, Alliance for Democratic Liberation (AFDL).

The mass forced displacement of refugees and armed rebels alike into the Congo, exacerbated local grievances that were festering prior to the crisis. Local ethnic tensions were bubbling, due to the influx of Hutu's into a predominantly Tutsi area. In the months following the genocide, Mobutu was seen by the region as supporting the FAR over the Rwandan Patriotic Front (RPF) who were in power in Kigali. His allegiance to the FAR was primarily down to the close personal friendship he had with Habyarimana, Rwanda's former president, before his plane was shot down under mysterious circumstances. As the warfare waged on, Mobutu's loyalty and partnerships with Western allies and militia groups angered his neighbours. Throughout the mid-1990s, many African leaders grew to dislike and distrust Mobutu. He was viewed as supporting their enemies, refusing to separate soldiers from the refugees, and also failed to use his diplomatic position to negotiate an understanding. Nation heads of Uganda, Rwanda, Zimbabwe, Eritrea, Ethiopia and Tanzania were unified by their common hatred for the Congolese dictator, making it easy for Kagame and his Ugandan ally, President Yoweri Museveni, to launch a regional quest to overthrow Mobutu.

Ethnicity and a sense of national identity when directed and contorted by political elites, has played a huge role in conjuring up violence not just in the Congo, but all over Africa. It was a tactic used to maintain control during the Colonial administration, and for the case of Rwanda, racial prejudices were exacerbated by a popular rhetoric convincing the dominant Hutu population that the Tutsi minority would soon become a threat if nothing was done. Similarly in the Congo, as Mobutu's power was declining throughout the 80's, he conjured up old grievances and ethnic hostility in attempts to maintain his hold on the presidency. The DRC has had an overwhelming history of violence, suspicion and scapegoating manipulated by leaders to maintain and generate support. Particularly, Mobutu's continual mistreatment of the Banyamulenge, a small Tutsi community that settled previously in Zaire, fostered an anti-Tutsi sentiment in the country which he used to enhance his popularity. The Banyamulenge group and other members of Rwandan descent were mainly spread out in the Southern Kivu province, leading to instability throughout the region in 1981, when Mobutu publicly reversed the blanket citizenship law, ten years after its implementation. This created hostility between the indigenous residents and the newly branded immigrants, many of which had settled in the area for generations.

Additionally, this political manoeuvre was acutely risky as tensions between the varying ethnicities were heightening across the entire region. Both Rwanda and Burundi at the time were also going through their own clashes between their Hutu and Tutsi populations. Therefore, ostracising the 'alien settlers' due to their Rwandan heritage triggered many of the youths to join the RPF rebellion in Rwanda, further reinforcing the divide in Congo once the battle progressed over the state boundary. The Kivus region felt the full impact of the Rwandan civil war, as the fighting transpired into the locality "driving a wedge between communities."³⁸

³⁸ Stearns, J. (2011). *Dancing with monsters*. New York: PublicAffairs. Pp.75

Congo War I – 1996-1997

Anti-Tutsi ideology was at the forefront of most of the violence erupting in 1996, as the “successive leaders on both sides of the ethnic divide have only cynically fanned these flames.”³⁹ Ethnic prejudice flourished, partly due to the poor economic conditions rampant under Mobutu. Congo faced low economic development, poverty, rising inflation and inequality, which provided fertile terrain for racial discrimination to act as a scapegoat. The autocrat’s strategy of divide and conquer worked well up until his paranoia eventually overtook his judgement. Mobutu’s mistrust in his own officers led him to misdirect resources away from the national army, instead funding separate paramilitary units. He “cannibalised his own state” and kept the army weak, which largely enabled the success of the 1996 invasion by the Alliance of Democratic Forces for the Liberation of Congo-Zaire (AFDL). Many Congolese welcomed the insurgency, tired of the conditions under Mobutu’s selfish rule, refer to this as the ‘War of Liberation’. The army commanded by low-level officers, who inherited the position after independence, crumbled under the invasion. They were decaying from years of being under funded and ill equipped, causing many to defect, selling whatever supplies they could muster. The AFDL rebels, spearheaded by Laurent Kabila arrive in Kinshasa on May 17th, 1997 seizing control of the state, yet he is only able to hold on to power for a year before Congo’s Second War begins.

Congo War II – 1998-2003

Kabila’s previous close ties with the region deteriorated during his presidency, his former allies Rwanda and Uganda became alienated. Feeling threatened, he too stirred the ethnic hostility pot, reviving the anti-Tutsi sentiment and causing Rwanda to retaliate to their defence. Rwanda’s government, expressed that they only invaded Congo in 1998 to pursue those behind the Rwandan genocide, who they believed were hiding out across the border. The conflict ensued until 2003, by which it had escalated to become Africa’s War, earning “its name because at the

³⁹ Stearns, J. (2011). *Dancing with monsters*. New York: PublicAffairs. Pp.80

height of the war eight African nations and over 25 militias were in the combatant mix”⁴⁰. Due to varying causes the region was split; Rwanda, Uganda and Burundi against Angola, Namibia, Chad, Zimbabwe and Congo. Kabila’s repressive command frustrated a large majority of his citizens, glad to be rid of the former dictator, his replacement seemed to be no different. There was little economic development in the months following Kabila’s inauguration, causing a number of ordinary people to become combatants and join one of the many groups in the resistance. It is here, during Congo’s second war, where the mineral resource abundance of the nation became more apparent and is linked to financing the violence. Rebel groups controlled large parts of fertile mining territory and for most of the states involved, “economic interests played a role but were woven into a complex web of domestic and regional, political and corporate considerations”⁴¹. In a large number of cases, mining heads signed deals with the rebels over the government, transitioning the trade into an informal economy. The incapacity and absence of the relevant authorities in these areas allowed the markets to operate outside the sphere of influence, and also left local disputes between chiefs, ethnic groups and disagreements over land rights to fester, ultimately destabilising any attempts at natural resource governance.

Between 1999 and 2003 there were numerous attempts at a peace negotiation, with rebels profiteering off the persistent instability. The Lusaka ceasefire agreement, was signed by the heads of Angola, DRC, Namibia, Rwanda, Uganda, Zambia and Zimbabwe in 1999. Yet its failure to halt the fighting, caused the UN Security Council to establish MONUSCO (Mission de l’Organisation des Nations unies pour la stabilisation en République démocratique du Congo), which is “the UN’s largest and most expensive peacekeeping operation”⁴² for the Congo. Some warlords built rebel movements and controlled large parts of territory during this time, using political motivations as a smokescreen for their mineral wealth gains. For politicians and states involved, “economic interests played a role but were woven into a complex web of domestic and

⁴⁰ Toward Freedom. (2008). *Inside Africa's PlayStation War*.

⁴¹ Stearns, J. (2011). *Dancing with monsters*. New York: PublicAffairs. Pp. 285

⁴² Coleman, K. (2017). *The Dynamics of Peacekeeping Budget Cuts: The Case of MONUSCO*.

regional, political and corporate considerations.”⁴³ Kabila was rumoured to have struck many deals in the area, using mines and resources to finance the war, trading them for military assistance. Similarly, Rwanda and Uganda have been condemned for doing the same during their occupation of Eastern Congo, using their takings to fund operations. This is the narrative that soon came to dominate western media’s understanding of the second war, stories of mineral exploitation, rape and murder in the Congo which brought attention to the plight of Congolese miners, but over simplified the root origins of the fighting.

Achieving peace during this time was always going to be a turbulent mission. Congo faced weak and corrupt governance led by elites, seeking to fulfil their personal agendas above the nations. Its institutions and infrastructure were failing due to the onset of violence, which hindered any potential investment and development. Additionally, the continued volatility over decades in the region, had created a huge refugee and internal displacement strain on DRC’s economy, which policymakers manipulated into aggravating ethnic tensions. These issues were made even more difficult by the conventional ‘top-down’ peacekeeping approach adopted by international actors in attempts to remedy the war. Head way was seen to be made after Joseph Kabila took power following Laurent Kabila, his father’s assassination in 2001. His style of governance immediately differed from his predecessor’s, by resuscitating the stalled peace process and seemingly eager to comply with the UN.

Transitioning towards peace & democracy – June 2003-Dec 2006

Once Joseph Kabila came into power, he ousted and replaced almost the entire cabinet that governed alongside his father and began focusing on pleasing the international ties previously neglected. Starting in 2002, inter-Congolese dialogue was facilitated between political parties and the various rebel factions but excluded some Rwandan affiliated groups. By the end of 2002 due to international pressure, Rwanda and Uganda both withdrew their troops from Congo and a regional settlement to set up a transitional government in the DRC was reached.

⁴³ Stearns, J. (2011). *Dancing with monsters*. New York: PublicAffairs. Pp.285

They agreed that the new transitional government would share power between the former government and rebels, with democratic elections vowed to be held within two years after enactment. This was sworn into action in July 2003, where Joseph Kabila was affirmed as the new provisional president, splitting the power between four vice-presidents, of which two were former rebel leaders⁴⁴.

Maintaining peace and control during this transition period was still a bumpy road. There were still pockets of interim fighting and conflict persisting throughout the nation, despite reaching national and regional deals. Joseph Kabila faced three main threats to peace during this time; General Laurent Nkunda who launched a rebellion in the Kivus region, the Bas-Congo Province in Western Congo, who were rallying for the right to self-determine, and those loyal to former vice-president Jean-Pierre Bemba. As aforementioned, it is clear that disagreements and grievances at the local level easily fed into larger conflicts that had the potential to undermine peace keeping efforts. Additionally, it was not helped by Joseph Kabila's response to the various challenges as he reacted with unproportioned brutal force, echoing the repressive regime experienced at the hands of Congo's former leaders.

Nevertheless, on gaining power Joseph Kabila's commitment to democracy remained strong, he held 'free and fair' elections in 2006, eventually winning the presidency in the run-off voting with "58 percent of the national vote"⁴⁵. He was sworn in again as president on December 2006 and began incorporating warlords and many armed groups into the national army. Yet his main opponent, Jean-Pierre Bemba, was openly very critical of Kabila's governance following his defeat, and he accuses Kabila of vote rigging. Tensions between the supporters of both parties remained high, especially as there were sporadic events of violence directed towards Bemba's camp in the lead up to the deciding election. Additionally during this political turbulence, Laurent Nkunda, a Tutsi rebel leader in North Kivu supposedly backed by Rwanda, defected from joining

⁴⁴ Human Rights Watch. (2009). *DR Congo: Chronology*

⁴⁵ Stearns, J. (2011). *Dancing with monsters*. New York: PublicAffairs. Pp.322

the national army as agreed upon, instead choosing to fight them and expand his territory. His rebel troops, a part of the CNDP (Congrès National pour la Défense du Peuple) maintained their arms worried about Kabila's support of the Rwandan Hutu forces FDLR (Forces Démocratiques de Liberation du Rwanda) against them. As illustrated, ethnic based hostility is one of the main causes of the continuation of violence during this transitional period and were detrimental to any attempts at peaceful negotiations.

Local Ethnic Rivalries and Land Disputes

Much of the recent violence in the DRC “has been driven by local grievances exacerbated by uncertainty at the national level.”⁴⁶ Ethnic rivalries and tension in the DRC have predominantly occurred between the indigenous Congolese community and those of Rwandan descent. It has been fostered by society and intensified by politics and rights of citizenship. The origins of this can be traced back to colonial rule, particularly the Belgian Mission for the Immigration of the Banyarwanda. As mentioned previously, tens of thousands of Rwandan's were imported into Congo by the colonisers, to provide the state with labour for mining and working on plantations. The Banyarwanda, a name now associated with all people with Rwandan ancestry, were favoured by the ruling elites. They were given authoritative roles in administration and special privileges, that were otherwise denied to the native Congolese. Friction between the two groups heightened following Congolese independence in 1960, as indigenous communities sought to re-establish their control of their territory. The Banyarwanda were stripped of their land and political power, using their lack of citizenship as just cause, which lead to the 1963 war of Kanyarwanda; “the first open conflict between Banyarwanda and indigenous Congolese.”⁴⁷

The divide in Congolese society was furthered by Mobutu's partisan treatment of the Banyarwanda during his presidency. He supported and favoured ethnic minorities as a way to maintain his popularity without chancing a potential threat. Similar to the colonial regime, he too

⁴⁶ Livingston, I. (2018). *Understanding the constitutional crisis in Congo*.

⁴⁷ Autesserre, S. (2010). *The Trouble With the Congo*. Cambridge: Cambridge University Press.

promoted individuals of Rwandan lineage into top governmental positions, enabling them to push policies that promoted the interests of their community. Blanket citizenship was granted to Rwandans in 1972 to those who came to Congo before 1950, and in 1973, the general property law increased the territory under Banyarwandan control. These legislations heavily changed the dynamics of the region as citizenship enabled Banyarwanda's to become the majority in some areas, increasing their economic, social and political influence over some main districts.

However, this was short lived. In 1972, citizenship was revoked and only “those who could prove that their families were in Congo before 1885”⁴⁸ maintained their rights. There was widespread distrust and fear throughout the country, hostility was maintained between the native Hunde groups and the ‘immigrants’ through complaints of corruption and access to political forums. Additionally, tension grew between the Hutu and Tutsi's within the Banyarwanda community loosely reflecting the ongoing disturbances between the groups in Rwanda and Uganda. Micro-level conflicts spread from province to province, peaking during the Rwandan genocide. To Congolese nationals, the split in Banyarwanda Hutu's and Tutsi's was advantageous, presenting them with an opportunity to exploit this friction to solidify their stance in the provinces. Low-level incidents of violence between the two groups erupted in 1991, multiplying to engulf all of North Kivu by 1993⁴⁹. Local conflicts such as this soon became large enough to be self-sustaining and autonomous, destabilising the region for extended periods of time.

Land scarcity and distribution is another factor fuelling low level conflicts in the DRC as over time, legitimate claims to the land have become skewed and it is hard to distinguish the rightful owner. Due to the very little bureaucracy and functioning state systems in place, there is little evidence to support these assertions. Despite the sheer size of the Congo, land is extremely valuable as it provides opportunities and sustainability for people's livelihood. Owning land not

⁴⁸ Autesserre, S. (2010). *The Trouble With the Congo*. Cambridge: Cambridge University Press. Pp. 137

⁴⁹ Ibid. Pp. 141

only provides agricultural prospects but also mineral wealth, crucial to farmers and miners alike for making a living. Land was politicised during Mobutu's reign, as he bestowed land to groups and officers as a reward for loyalty, especially in the Kivus region where land is especially valuable. This is also somewhat responsible for adding to the ethnic tensions mounting in the province too, as many Banyarwandans were given land that was taken away from customary chiefs. The problems surrounding identity construction and citizenship also became a lot more prized, as identity determined access to land and other benefits.

Local agendas have really influenced Congolese history and "have been intertwined with macro-level dimensions"⁵⁰. With the vast size of Congo comparable to the land mass of Eastern Europe, it is no wonder that it has faced so many secessionist and separationist attempts by various states and provinces. In 1960, the Eastern Katanga province launched a movement to detach itself from the Congo state and maintain the spoils from its rich copper wealth. The leaders responded with force and brutality as they deemed it as a challenge to their power, the fighting subsided, but the animosity remained.

Ongoing Congo War III – 2008

Eventually with all the violence transpiring between the many combatants, a peace deal was negotiated and signed in January 2008 between the government and 22 armed groups, including the political armed militia group CNDP established by Nkunda. Yet this is short lived as by July, both sides have engaged in violent clashes against each other and thus, the third Congo War begins. Nkunda and the CNDP movement magnifies, now with the purpose of overthrowing Kabila's administration. Furthermore, there is continual and unresolved encounters with the Ugandan Rebel group LRA (Lord's Resistance Army) in northern Congo. A second election was held in 2011, but due to multiple claims of fraudulence in the electoral process and growing

⁵⁰ Autesserre, S. (2010). *The Trouble With the Congo*. Cambridge: Cambridge University Press. Pp. 128

dissatisfaction with Kabila's rule, the result is widely disputed and it was unclear as to who the legitimate winner was⁵¹.

The foundations behind the persistent fighting during this time reflect a number of varying causes and ideologies. It is now deemed as one of the largest humanitarian crisis of all time⁵² by UN chief Antonio Guterres, with huge numbers of human rights violations occurring in recruitment and during insurgencies, with almost all rebel groups and parties complicit. Unnecessary mass killings, reports of rape, recruitment of child soldiers and mineral exploitation are amongst the main components of the lens that international communities view the war raging in the Congo, prompting a global response despite many unobvious civil, political and economic motivating factors.

Current Situation

Currently in the DRC, President Joseph Kabila's term officially ended in 2016. But his refusal to step down and delaying of elections has permitted him to still be in office today. He is accused of reinterpreting the constitution wrongly, arguing that with no presidential elections, the president in office is permitted to remain in power indefinitely⁵³. The international community has largely overlooked and ignored the obvious rule breaking, despite getting involved in a similar case in Ivory Coast. It leads us to question, why is Congo undeserving of international pressure? Jason Stearns, a former coordinator of the UN DRC Group of Experts has noted that nature of DRC's violence is somewhat different to that experienced in current times. The root causes are extremely complex yet they are often interrelated, "with conflicts sitting inside conflicts sitting inside conflicts"⁵⁴. Therefore, it is no wonder that with such a weak

⁵¹ Nossiter, A. (2011). Congo Leader Is Declared Winner in Disputed Vote. *The New York Times*.

⁵² UN News. (2018). *Donors pledge over \$500 million to tackle growing needs in DR Congo; UN warns humanitarian crisis cannot be ignored.*

⁵³ Livingston, I. (2018). *Understanding the constitutional crisis in Congo.*

⁵⁴ J. Stearns as cited in Rothenberg, D. and Radley, B. (2014). *"We Miners Take Our Lives in Our Hands Save Nothing and Believe Only in Luck": The Lived Experience of Human Rights and Labor Violations in Select Artisanal Mining Sites in North and South Kivu.* Pp. 9

government, rule of law and institutional capacity, how civil conflicts have been allowed to fester until reaching a national or regional outbreak. By the time peacekeepers can intervene, the situation has tended to progressively worsen beyond mediation. This vital flaw in Congo's governance and its lack of effective accountability mechanisms has enabled and essentially maintained the exploitation of its natural resource wealth for generations.

The fundamental causes of Congo's unending conflict as outlined in this section, is multifaceted and has little to do with its natural resource deposits. The majority of the large-scale disputes have their roots primarily derived from ethnic rivalries and disagreements over land ownership, stemming from the Colonial era. These antagonisms have been skilfully manoeuvred by political elites and have been instrumental in shaping the governance of Congo's natural resources. Subsequently, we cannot seek to understand how resources are managed without fully understanding the historical and institutional context. Examining the local dynamics in mineral rich regions of the country are essential to wholly comprehend all the interconnected factors of the industry, and motivations behind the strategies developed to control them.

Chapter 2: The Rise of Mineral Wealth

The DRC's natural resource wealth has been apparent since their colonial rule in 1908, where the "Belgian colonial administration rapidly established and developed industrial, large-scale mining (LSM) during the first half of the twentieth century,"⁵⁵ searching for copper, tin and gold. In 1906, the Belgian government gave the 'Société générale de Belgique', a company closely linked to the state, a 99-year monopoly on mining rights of 13,000 square miles of mining tract in Katanga⁵⁶. The Société générale, was responsible for creating three powerful companies

⁵⁵ Rothenberg, D. and Radley, B. (2014). *"We Miners Take Our Lives in Our Hands Save Nothing and Believe Only in Luck": The Lived Experience of Human Rights and Labor Violations in Select Artisanal Mining Sites in North and South Kivu*. Pp. 5

⁵⁶ Stearns, J. (2011). *Dancing with monsters*. Pp. 288

under them; Upper Katanga Mining Union which was later nationalised by Mobutu in 1967, the Bas-Congo to Katanga Railroad Company and the International Forest and Mining Company. LSM eventually declined when the nation gained independence in and the Belgian mining companies were nationalized under President Mobutu.

Artisanal mining (ASM), that is small-scale “mining by hand,”⁵⁷ has had a long history in the DRC. It first began in the early 1970’s, with participation heightening following its legalization in 1983. It is currently defined in the 2002 DRC Mining Code as:

“any activity by means of which a person of Congolese nationality carries out extraction and concentration of mineral substances using artisanal tools, methods and processes, within an artisanal exploitation area limited in terms of surface.”

ASM became a livelihood strategy for many due to the minimal need of machinery and easy processes of extraction. It grew in popularity when the largest state-owned mining company, Gécamines, collapsed during the 1990s⁵⁸, and is now regarded as “one of the most important forms of employment in the DRC”⁵⁹. When President Mobutu Sese Seko seized power in 1965, he nationalised the mining industry, creating the state mining company, Générale des Carrières et des Mines S.A. which was a rebranding of the former Upper Katanga Mining Union. However, he strategically placed family and friends in charge of governing its activity. The corrupt structures of power he developed to control Congo’s natural resources, allowed his inner circle and select elites to embezzle billions through the trade. The president used the mining company to finance his personal wealth, as well as fund his patronage networks, forcing all mineral exports to be sold through a state mineral board. During its peak in the 1970s and 80s, the Gécamines was the largest source of employment and income in the country, it “employed some 34,000

⁵⁷ Amnesty International (2016). *This is What We Die For* Pp.14

⁵⁸ Ibid. Pp.5

⁵⁹ Rothenberg, D. and Radley, B. (2014). *"We Miners Take Our Lives in Our Hands Save Nothing and Believe Only in Luck": The Lived Experience of Human Rights and Labor Violations in Select Artisanal Mining Sites in North and South Kivu*. Pp. 6

workers, ran farms, hospitals and schools for their benefit, and was the largest contributor to the state treasury”⁶⁰.

When Mobutu’s rule collapsed in 1990, as did the functionality of the Gécamines and the company began dissipating as a result of this and in conjunction with plunging world copper prices. Additionally, the rising instances of violence around the industry caused many expert staff to desert the company, causing severe managerial and production problems. Following this decline, Mobutu encouraged his prime minister, Kengo Wa Dondo, to begin privatising the mining sector in 1995, as the function of the official economy was coming to an alarming halt.

The nature of mining operations throughout the Congo has changed drastically over the last few decades. What started as large-scale industrial operations, operated by a single company and usually involving heavy machinery, is now controlled by groups of Congolese and international firms, with artisanal mining continuing in parallel. In 1999 Mobutu’s replacement, Laurent Kabila, took steps to restore order to the mining sector, by establishing The Service d’Assistance et d’Encadrement du Small Scale Mining (SAESSCAM), a government body to oversee the industry. In an attempt to regulate and effectively harness the royalties from the mining sector, the government along with civil society and industry participants⁶¹ developed and published a new mining code in 2002, hoping to attract foreign investment. The code established special zones, “Zones d’exploitation artisanale (Artisanal Mining Zones or ZEAs) where industrial or semi-industrial mining is not viable”⁶². This enticed many Chinese and western mining companies to capitalise and take over former Gécamines sites. Yet due to a substantial lack of these ZEA sites country-wide the majority of mining is conducted informally.

The main minerals mined in the DRC are the 3TGs; Coltan, Tin, Tungsten and Gold. The importance and demand of each mineral has fluctuated dramatically over the years primarily in

⁶⁰ Amnesty International (2016). *This is What We Die For*. Pp.16

⁶¹ UN Dispatch. (2018). *Why You Should Care About More Than Just "Conflict Minerals" in the Congo* / UN Dispatch.

⁶² Amnesty International (2016). *This is What We Die For*. Pp.5

line with trending technological and electronic advancements. Below is a table of the minerals ores regarded as ‘conflict minerals’ and sourced from the DRC, their refined product and uses.

Table 1 – Minerals Mined in the DRC, Facts and Figures

Mineral Ore	Refined Product	% of world production in DRC	Primary Uses	Main Location/Provinces⁶³
Cassiterite	Tin	6-8% ⁶⁴	Solder, Cans, Automotive Parts	Manemia (Kalima, Kailo, Lubutu) North Kivu (Walikale-Bisie Mine), South Kivu (Kalehe Territoy), Katanga
Coltan (Columbite-Tantalite)	Tantalum	15-20% ⁶⁵	Capacitors, Alloys, Glass, Memory Chips	Katanga (Manono, Kisengo, Sango) North Kivu (Masisi) and South Kivu
Wolframite	Tungsten	2-4% ⁶⁶	Air & Spacecraft, filaments	Maniema (Kailo), South Kivu
Gold	-	>1%	Jewellery, Wiring	Maniema, Katanga, North and South Kivu, Ituri

General Mining Supply Chain

Mining strategies adopted and the tools required vary upon the various minerals themselves, however, sourcing the 3TG’s in the DRC is typically undertaken via artisanal and small-scale methods. The simplicity and accessibility of ASM mining techniques is what caused it to gain popularity in Congo during the coltan rush, as well as offering civilians one of the largest employment opportunities since the decline of the agricultural sector. Despite being a largely informal market with little governmental oversight, the production of minerals is somewhat organized favouring micro-investments. Generally speaking, the supply chains begin

⁶³ Using Data from: IPIS. (2018). *Carte de l'exploitation minière artisanale dans l'Est de la RD Congo* and IPIS (2013). *'Conflict Minerals' initiatives in DR Congo: Perceptions of local mining communities*.

⁶⁴ Resolution:Possible. (2018). *Tin, Tantalum and Tungsten*.

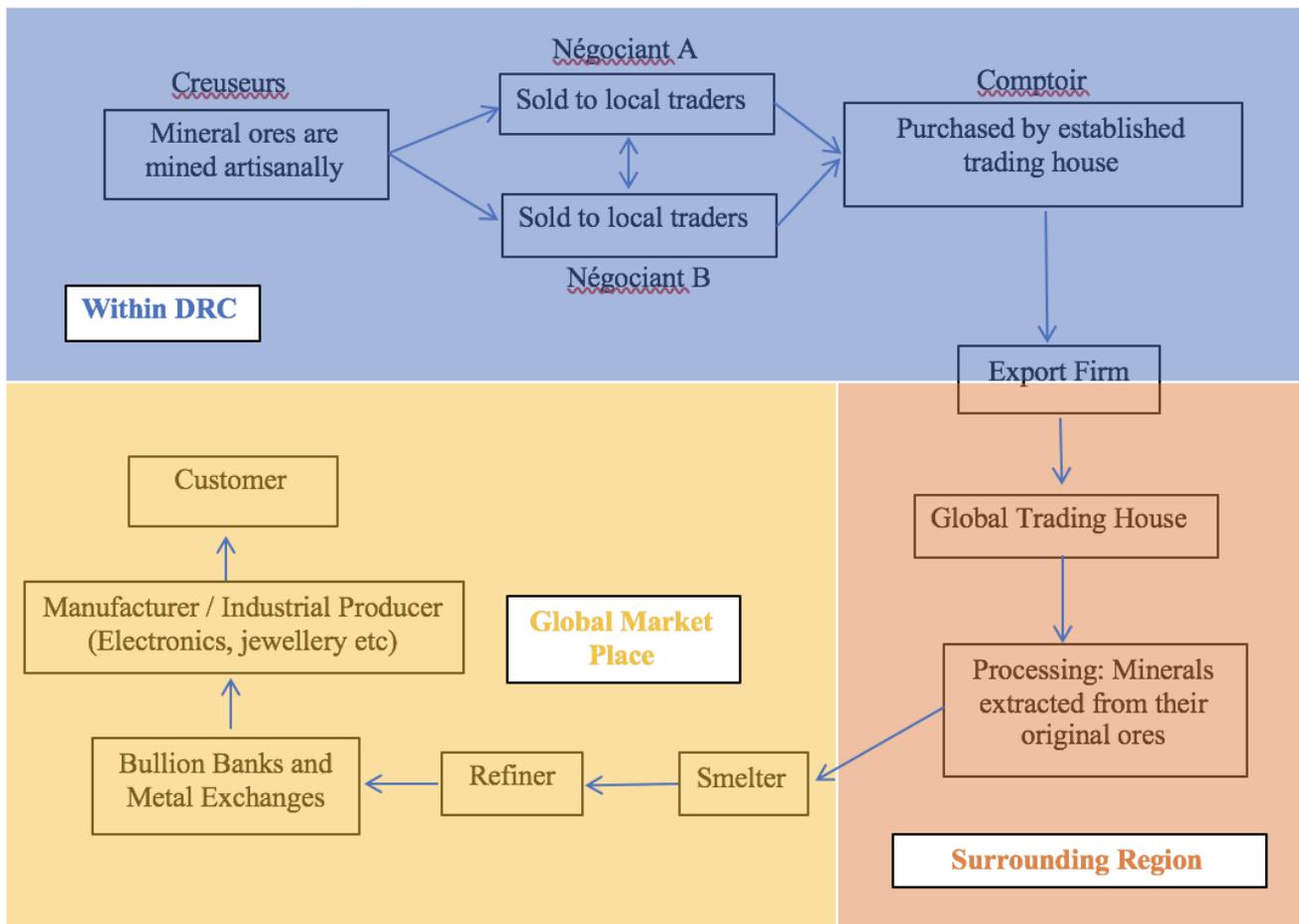
⁶⁵ Ibid.

⁶⁶ The Enough Project. (2018). *A Comprehensive Approach to Congo's Conflict Minerals - Strategy Paper - The Enough Project*.

with the miners, *creuseurs* as they are locally called, who extract mineral ores. The miners obtain the resource by using inexpensive tools, often by hand or using very basic tools such as shovels, chisels, hammers and picks to search for the ores typically in make-shift mines. The rocks containing the precious mineral ores are then washed, sifted and sorted, often by women and children, before they sell their loot to traders or intermediaries. Water is a large and necessary component of the extraction process as it is required to separate the ores from the dirt and other components from the grounds. With little oversight governing proper mining procedures, constructing mines has numerous negative environmental effects, which erode the agricultural properties of the land and include deforestation, soil erosion and is detrimental to the wildlife. Although the chain is very labour intensive, global demands for the minerals ensure that small quantities of the minerals bear high rewards.

The minerals are then transferred usually by hand, as mines tend to be geographically secluded, to local '*négociants*' middle men. The *négociants* are typically situated in small towns and are the *creseurs* only access to the market. The minerals may travel through numerous *négociants*, before eventually being purchased by a mineral trading firm known as *comptoir*, which markets the spoils to larger companies. These trading hubs are usually situated in large towns, scattered throughout the eastern border and are more politically powerful, purchasing minerals at prices set by them. They maintain their purchasing power as they are a major source of revenue for the relative authorities. Here the precious stones are sorted and processed before being traded with global mineral trading firms. These trade deals are often based on long term pre-agreed contracts based on price and quantity. However, for the case of coltan, the mineral can also be sold via spot markets which are open and facilitated by specialist broking firms. The prices fluctuate freely and are advantageous to the *négociants* as the transaction and payment is immediate. At trading houses, the minerals are mixed with others from all over the world and are processed by plants mainly in Europe, Asia and North America into components, which are used to manufacture the final end products such as mobile phones and other hand-held electronics.

Figure 3: General Mineral Supply Chain in the DRC



Coltan

ASM particularly grew in popularity and significance during Kabila's reign and the Second Congo War (1998-2003), where neighbouring countries conspired with Congolese rebels to overthrow the newly appointed leader. Kabila began cracking down on large foreign companies when he gained power and encouraged locals to mine for their livelihood as he saw little scope of reviving the mining industry. It is here where the importance and desirability of columbite-tantalite, a black metallic abbreviated to coltan, entered into effect. Raw coltan has found its worth through the digital age, as its presence in technology is becoming increasingly common at the expense of the locals who mine it. It is often mined in the DRC through ASM and small-scale methods, in order to meet shifting demand. After refinement, the ore is processed into a faded blue powder named tantalum which is used in many handheld technological devices

due to its many multi-functional properties. Tantalum is primarily used in the production of capacitors, it is a great conductor of electricity, has a high melting point and only small amounts are required⁶⁷. The international price of Tantalum has fluctuated along with global demand, experiencing two sharp price spikes in 1980 and 2000, seeing its demand peak during the release of SONY's PlayStation console mid-2000⁶⁸. Coltan found its fame during this time, where many journalists linked it to warlords and the ongoing violence in DRC. The increased attention that Coltan drew, fuelled the surge in advocacy efforts and campaigns directed towards the region.

Technology Boom

The boom of mineral wealth in eastern DRC really materialised hand-in-hand with the rise of global technological developments. As the world is getting more conscious about renewable energy and creating reusable products to limit waste, people are starting to rely on rechargeable batteries. Cobalt is a crucial component in these lithium-ion rechargeable batteries, which is required for many portable electronic devices such as phones, laptops, tablets and electric cars. In the current climate, "more than half of the world's total supply of cobalt comes from the Democratic Republic of the Congo"⁶⁹, with 20% of this cobalt coming from creuseurs (artisanal miners) in the southern region. The majority of the time the product moves through a variety of routes, it ultimately ends up in the possession of Congo DongFang International Mining⁷⁰ (CDM), a subsidiary Chinese company to Zhejiang Huayou Cobalt Company Ltd. (Hauyou Cobalt) and one of the largest cobalt producers in the world. CDM has been operating in Congo since 2006, they buy cobalt from traders, who buy directly from the miners. CDM smelts the ore at their site in the DRC before exporting it to their other smelting plants in China before they are sold to battery manufacturers.

⁶⁷ Nest, M. (2011). *Coltan*. Cambridge: Polity. Pp. 8

⁶⁸ Toward Freedom. (2008). *Inside Africa's PlayStation War*.

⁶⁹ Amnesty International (2016). *This is What We Die For*. Pp. 4

⁷⁰ C. Frankel, T. (2016). The Cobalt Pipeline. *The Washington Post*.

Regulation

Nowadays, the sheer scale of artisanal mining is astounding, with recent estimates suggesting that 20% of DRC's exported cobalt is mined by 110,000 miners in Katanga⁷¹. The rise of mineral wealth in the nation has drawn a huge number of locals to the industry. There is "an estimated 750,000 to 2,000,000 artisanal miners in the DRC,"⁷² but it has also attracted criminalization and corruption, which currently runs rampant throughout the mineral trade in DRC. Domestic and international pressures in reaction to this, resulted in the creation and implementation of the 2002 mining code. The code outlined specific provisions for order and protections of those that work in the mining industry, as well as introducing miner permits, with requirements on who can mine. It sets out a list of approved mining sites and requirements on how to obtain legal mining authorisation from Ministry of Mines. The main aim of this new legislation was to attract foreign investors into the industry and it was followed a year later by the 2003 Mining Regulations, which sought to build upon and clarify its predecessor. Nevertheless, the consequences to these laws have made mining by the local population more difficult, more expensive and encouraged a large majority to go around the red tape, causing many to criticise the 2002 Mining Code for "favouring foreign investors at the expense of the local economy."⁷³

There were proposals submitted to parliament during 2015 to revise the planned mining codes, President Joseph Kabila sought to "increase revenues from the industry by doubling taxes and royalties for miners"⁷⁴. Yet these plans were foiled later that year, as commodity prices sharply declined and it was predicted that the new mining code would cost the country billions, potentially doing more harm than good. Investors and many other business officials, were worried that revising the 2002 code would be tricky, as many international investments were

⁷¹ Amnesty International (2016). *This is What We Die For*. Pp.16

⁷² Nest, M. (2011). *Coltan*. Cambridge: Polity. Pp.37

⁷³ Daily Mail (2018). Cobalt prices soar, but Congo's small miners see little of the gain.

⁷⁴ Jamasmie, C. (2015). *Congo's planned mining code changes 'too risky': miners* | *MINING.com*.

conducted on the basis of that code. The lack of government presence or regulation in these mining regions is one of the main reasons as to why the industry has fallen into the hands militias and armed actors. Additionally, the mineral wealth of the nation has historically been used by political elites of the country and regional actors for generations, to enrich their personal fortune and fund their own motives. While international advocates call for more regulation in the mining sector, as we will see in the next chapter, it is important to first understand how the mineral trade in Congo was established, thereby giving more clarity on how best to tackle its susceptibility to criminalization.

Chapter 3: Criminalization of the Mining Sector

Criminalization of the mining sector in the DRC has occurred gradually over time and has been largely aided by the very government instated to protect it. With the country in prolonged instability throughout the 1990's, the Congolese governmental officers were preoccupied warding off rebels and protecting the presidency, which meant that the expansion of the sector was generally left ungoverned. Furthermore, many top politicians and those in high offices used their positions to use the country's mineral wealth to satisfy their own greed. The former dictator of Zaire Mobutu Sese Seko, accumulated enormous wealth by selling off the country's resources, "he sold the minerals extracted through harsh labour conditions and kept the money for himself and his close supporters."⁷⁵ The lack of authority and rules surrounding the industry allowed it to develop inconsistently, pushing the profession into the informal market. The absence of regulation and the nature of the mining industry has enabled many armed groups and regional actors to become involved in the trade of Congo's natural resources, each pursuing

⁷⁵ Subrick, R.J. (2018) *The Political Economy of Black Panther's Wakanda*. Pp.13

their own motivations. This next section explores the development of the mining industry and how it was so easily susceptible to corruption and criminalization.

When minerals were first discovered in the DRC, the colonial empire began a reign of extraction and exploitation for personal gain, which has continued into the modern age. The “political elite used the sale of the country’s natural resources to enrich themselves and impoverish the rest of society”⁷⁶, they got away with this by creating intricate economic networks to funnel the money through and keeping the mining trade relatively ungoverned. Before the Great Congo Wars started, the industry was beginning to become formalised and was largely owned by the state-run company SOMINKI, which was a large producer of gold, diamonds and cassiterite. Eventually production was halted during the 1990s, collapsing after the insurgency began against Mobutu. As the war raged on, Kabila’s administration and many other neighbouring actors traded Congo’s precious natural wealth for military assistance with their regional allies. Congo leveraged its copper, cobalt and diamond mines for Zimbabwean support against the Rwandan rebellion, while the RCD and Rwandan forces traded gold, coltan, tin and diamonds to fund their operations⁷⁷. The Congolese government has been notorious for using mineral wealth as a bargaining chip with surrounding countries and foreign mining companies. Mining was disregarded by policing thereafter, as reoccurring violence and instability began seeping into the country. But the opaque nature of artisanal mining and the lack of transparency surrounding trade deals, enabled shady arrangements to resume occurring at the top.

The “continuous state of conflict in the DRC benefitted armed rebels immensely”⁷⁸ and there have been numerous claims dominating the international narrative that the Second Congo War, which lasted between 1998-2003, was financed by mineral resource revenue. Thanks to “economic networks that had been established ... during the first years of the Congo War, mineral

⁷⁶ Mehlum, H., Moene, K. and Torvik, R. (2006). Institution and the Resource Curse. *The Economic Journal*, As cited in: Subrick, R.J. (2018) *The Political Economy of Black Panther's Wakanda*. Pp.13

⁷⁷ Stearns, J. (2011). *Dancing with monsters*. Pp.297

⁷⁸ Ibid. Pp.114

traders and military officers were perfectly placed to funnel it out of the country.”⁷⁹ These networks were often incorporated by governmental actors under the guise of instability, as it was simpler to join them instead of setting up their own. Additionally, it was during this time that “forces from Rwanda and Uganda, along with numerous Congolese militia groups, established control of the production and trade in minerals throughout the Kivu provinces.”⁸⁰ With the lack of state authority governing these parts, militia groups replaced customary chiefs and soon engaged in profiteering from the mining cycle. Rwandan and Ugandan illegal occupation of Congolese territory, made illicit exportation an increasing problem as it became common for surrounding countries to have a boost in mineral output, despite having questionable capacity to mine it all.

The artisanal nature of mining minerals in the Congo is a key factor making the trade more vulnerable to armed groups as production can be easily controlled and manipulated by using violence. The natural resources itself are ideal for those looking to exploit it, as small quantities yield high rewards and once mined, the origins are hard to distinguish. Especially in the case of Coltan, there are a few tantalite deposits in Rwanda making it easy for “Rwandan-based exporters to mix tantalite from the Congo and Rwanda and plausibly claiming that the ores all comes from Rwanda.”⁸¹ Due to the fluidity of the trade, mineral trade is lucrative to armed groups and fortunately for the belligerents, a large proportion of Coltan mines are close to the international border with Uganda and Rwanda, making smuggling a relatively untaxing task. Labour in the mines is also fairly cheap and there are no shortage of people wanting to work, as the conflict had rendered it one of the few remaining sources of employment left. Mining is a low skilled operation, making miners dispensable, and therefore mistreatment and human rights abuses towards the labourers were widespread. Additionally, as mining sites are often in remote areas

⁷⁹ Nest, M. (2011). *Coltan*. Cambridge: Polity. Pp.13

⁸⁰ Rothenberg, D. and Radley, B. (2014). *"We Miners Take Our Lives in Our Hands Save Nothing and Believe Only in Luck": The Lived Experience of Human Rights and Labor Violations in Select Artisanal Mining Sites in North and South Kivu*. Pp. 9

⁸¹ Nest, M. (2011). *Coltan*. Cambridge: Polity. Pp.19

the ores are required to be transported by hand. There is frequent exchange and transportation of the rocks, which increases the scope for extortion.

Criminalization of the mining industry has largely occurred due to the lack of capacity of governmental agencies to monitor and enforce safeguards for miners. Although in 1999, the government agency SAESSCAM was created to watch over the artisanal mining industry and improve mining condition, but they only have mandate to operate in the ZEA (authorized mining areas) areas⁸². “One of the manifestations of weak state capacity and conflict in the DRC is mining in areas where it is not permitted under law”⁸³, therefore, as most artisanal mining is conducted outside the ZEA areas, many state officials from various governmental factions control access to these unsanctioned mining sites, benefitting from them by demanding unlawful duty from local miners. The deficiency of enforceable rules on mining strategies make it easy to corrupt and manipulate by higher authorities. While there are instances of militia men working with local miners to provide protection, many including the Congolese Army themselves have benefitted from the trade. The low pay of soldiers, make them more inclined to skim off the top of mining profits and are reason enough as to why some officers continue to try and maintain their control in mines. In militia-controlled territories, authorities stationed there can often get away with exploiting local miners as there are weak legal systems protecting them.

The conflict and instability due to domestic and regional disputes in eastern DRC, further aides misconduct in the sector and also conveniently provides a smokescreen for all these illegal operations to continue thriving. The capacity of state services to oversee the artisanal mining sector has been extremely limited, which has not only permitted criminalisation, but also created opportunities for armed actors to profit. The state is inhibited to effectively govern due to widespread corruption, lack of jurisdiction clarification and its inability to cover the vast territory of the Congo, lacking means, personnel, resources and technical knowledge. Armed militia’s in

⁸² Amnesty International (2016). *This is What We Die For*. Pp.7

⁸³ Nest, M. (2011). *Coltan*. Cambridge: Polity. Pp.45

mining areas can easily access the mining routes and have typically raised money for themselves through four distinguishable methods; theft, control of mining sites, taxation/extortion or control of trade/smuggling routes. Theft is easy for armed groups residing near mines, as miners usually operate individually and is a quick short-term way of making money. Moreover, as institutional capacity is inadequate, bureaucracy and data on the trade is largely unreliable and inaccurate. Information deficiency and discrepancy in the mineral business, makes it easier for companies to under-report production, avoiding taxation and helps armed groups get away with pillaging mining zones and smuggling their loot to surrounding countries. Mineral exchange and transactions are usually conducted in the absence of written contracts making them risky, if one party fails to uphold their end of their deal, there are often no repercussions. Controlling mining territory or setting up road blocks along smuggling routes is another way for militias to profit, they can control entry in and out of the mines while taxing the export of natural resources. Uncertain land rights and unenforceable property law in the DRC, deters any resistance to the occupation of the mining territories by these combatants and some state elites, as previously mentioned, either turn a blind eye in return for an under-the-table pay off, or actively engage in the unlawful exploitation themselves. Some rebel groups may also directly own or become affiliated with certain *comptoirs*, enabling them to cut out the middle man, set the buying rates of the minerals or take a cut from the final profits.

Much of the mining conducted in Congo today is largely informal and is deemed ‘illegal’. Presently, as stated in the 2002 mining code, “artisanal mining can only take place in designated Artisanal Mining Zones (AMZs) to be regulated and protected by the Service d’Assistance et d’Encadrement du Small Scale Mining (SAESSCAM)”⁸⁴. Nevertheless, due to high demand for the ores and inadequate numbers of AMZ sites, much of the mining is conducted in unauthorized areas, trespassing on land owned by industrial mining companies. These unofficial mining areas

⁸⁴ UN Dispatch. (2018). *Why You Should Care About More Than Just "Conflict Minerals" in the Congo* / UN Dispatch.

operate outside the sphere of influence, without any government influence and so it is easy for human rights violations to occur under the radar and for mine conditions to be extremely poor. Abuses such as extrajudicial killings, forced labour and child soldiers increased around rebel controlled mining areas, also giving rise to new illegal economies such as prostitution. The “absence of state authority in the eastern provinces reinforced the appeal of violence and deprived local actors of established avenues for peaceful resolution of existing antagonisms”⁸⁵ unaffiliated to the war. Miners are also routinely cheated out of being offered fair prices for their loot, their lack of collective bargaining power, access to information on global prices, as well as the ability to determine the tantalite content of their ores, puts them at a huge disadvantage, making them susceptible to intimidation by combatants and local authorities. Moreover, the vast increase in child labourers enticed into the mining trade when the industry boomed, signifies state failure and a lack of governmental emphasis on education. Children who are often recruited to mining, usually do so because they cannot attend school, either due to it being too expensive or they lack one close enough to their homes to attend. Some desperate families may also encourage their children to drop out of school and help make a livelihood for the rest of the family as the jobs were available for the unskilled and wages were decent. When mineral prices and demand rose dramatically, it also attracted many young children towards the trade as they believed it offered better opportunities than staying in education.

As highlighted in this section, the militarization of minerals in the Congo has developed since their vast resource wealth was first discovered under Belgian rule and has since, become intrinsic to the growth of the industry as a whole. The issue was brought to the international forefront as global demand for coltan skyrocketed during the early 2000s due to the IT bubble, but the local price fell. This was a clear indication that artisanal mining was on the rise, as the market became flooded with cheap artisanal coltan. Large international companies opted out

⁸⁵ Autesserre, S. (2010). *The Trouble With the Congo*. Cambridge: Cambridge University Press. Pp.176

from trading with industrial mines, as the artisanally mined minerals were significantly lower priced, attracting new players seeking to profit from the illicit trade somehow. Since then, the unpopular political governance, various regional and domestic disputes, as well as poor state influence, have fostered a prolonged unstable climate throughout Eastern DRC. The volatility and violence which affected the country, has in fact significantly helped the mineral trade continue to operate informally. Legitimate trading companies have avoided establishing offices and investing in the DRC due to fears of violence and looting, relying on intermediary traders, despite how corrupt their operations might be. Mining heads began signing deals with rebels instead of the Congolese government. Nevertheless, it was not long before advocates began linking natural resource exploitation to the perpetuation and continuation of the war in Africa. Their campaigns implicated international technology companies and western consumers as partially complicit to the horrors unfolding in the DRC, which caused a whole reevaluation and restructuring of corporate accountability.

**SECTION 2: CONGO’S INTERNATIONAL MINERAL
FAME**

Chapter 4: How ‘Conflict Minerals’ became a hot topic and its current relevance

The topic and debate surrounding conflict minerals has been very nuanced and complex since it first hit the media limelight in the early 2000’s. The conflict and war itself has been ongoing for the last thirty years, yet it has only recently caught worldwide attention in the last decade or so. Throughout the 2000’s, “a global human rights advocacy movement was mobilized to raise awareness of how certain raw materials in electronics came from mines controlled by armed groups in eastern Congo.”⁸⁶ Highlighting the link between these natural resources and continuation of violence birthed the term, ‘conflict mineral’, which has taken over the Western collective consciousness in recent years. Despite the relationship between armed actors and conflict prevalent for many years before this, the awareness gained traction as consumers were now in the firing line, but the dominant narrative also placed them uniquely at the “heart of the solution.”⁸⁷

Generally speaking, within the human rights paradigm, international concern typically arises when there is a threat to the internal peace and security of a nation, which escalates when conflicts have the potential of crossing borders.⁸⁸ The origins of the “conflict minerals” campaign itself can be traced back to 2001, where a panel of UN experts “recommended an immediate embargo on the trade in minerals from the eastern DRC due to their systematic exploitation by armed groups as a means to finance their activities”⁸⁹. The subject then entered the mainstream spotlight when the American non-governmental organization (NGO) The Enough Project, funded by the Center for American Progress, adopted the cause in 2008 with their *Raise Hope*

⁸⁶ UN Dispatch. (2018). *Why You Should Care About More Than Just "Conflict Minerals" in the Congo* | UN Dispatch.

⁸⁷ Radley, B. (2016). *The West’s campaign against conflict minerals is doing more harm than good.*

⁸⁸ Shaik-Peremanov, N. (2014). Ten years on, the Kimberley Process Certification Scheme and Zimbabwe’s Marange and ‘Conflict diamonds’: Lessons to be learnt. *PER: Potchefstroomse Elektroniese Regsblad* pp.333

⁸⁹ Radley, B. (2016). *The West’s campaign against conflict minerals is doing more harm than good.*

for Congo campaign. The organization set out to educate the public and shift attention towards the ongoing conflict in the Congo, which had been largely absent in popular media coverage. They focused their efforts on establishing the “role of conflict minerals funding the conflict, and the effects of sexual violence as a weapon of war,”⁹⁰ seeking to end violence by armed groups, by tightening regulation and restrictions on the trade of tin, tungsten, coltan and gold. The movement sought to follow in the same footsteps of the successful blood diamonds campaign, which saw its popularity rise in 1998. NGOs often face the dilemma of whether to invest in creating large-scale public awareness campaigns, or to strategically focus on influencing the main policy-makers. Yet, the impact of the blood diamond initiative “suggests that public awareness is what gives strategic policy efforts room for manoeuvre”⁹¹. Those bringing blood diamonds to the forefront of western attention, saw really high response in public engagement following their lead, which contributed to the swift and effective implementation of the Kimberley Process Certification Scheme (KPCS) five years after the issue was first discussed.

However, the global arena for justice is hugely saturated, and garnering attention towards Congo’s minerals was initially a large struggle as competition to be the most influential humanitarian issue of the year is tough. Unlike the blood diamonds campaign, the majority of the 3T minerals are relatively unexciting and lack the allure and charm of precious stones. Advocates understanding this, took an alternative approach while trying to put mineral mining on the global agenda. They began tying natural resource exploitation to the current rising trend in alleviating human rights issues in the region connecting the impact of coltan fever during the 1990’s to the rise of child labour in the region. In conjunction with the rising human rights movement and drive for ethical sourcing of natural resources, international attention was then primarily directed to stopping the widespread stories of rape and child soldiers, which dominated

⁹⁰ The Enough Project. (2017). *Raise Hope For Congo - The Enough Project*.

⁹¹ Babcock, K. and Chulich, M. (2007). *Blood Diamond: Evaluating The Impacts*. *School of Public Policy and Administration Carleton University, Prepared for the Annual Conference of the Canadian Evaluation Society*. Pp.19

the DRC story. This also worked hand in hand with the emerging ideology originating from the effects of globalisation, whereby there was a more prominent call by global consumers to ensure that the products they use in their day to day lifestyle, conform to certain ethical and environmental standards. Many of the organizations involved in campaigning about conflict minerals were already engaged with issues affecting the Congo, and fiercely adopted the cause once concern for the Congo grew.

As international attention and advocacy grew, more and more organisations began conducting their own research on the ground. They uncovered a whole array of human rights violations in cobalt mines including forced child labour, lethal health hazards and lack of government protection for workers and illegal taxation by state officials⁹², which then became the premise of the international campaigns. Children from poor families are often recruited to the mines as they are easily exploited, often made to work long hours in conditions extremely hazardous to their health and safety, all the while getting underpaid. Humanitarian issues involving the exploitation of poor and vulnerable children is the perfect cause to garner widespread international sympathy. It was easy to place this as the face of the Congo war, where child recruitment is a common by-product of an unstable state that is unable to protect its citizens and provide viable alternatives. Additionally, as interest peaked on the violence in Congo, the emotional response it ignited caused attention to grow on the mining industry, the unfair conditions of trade for the miners and its link to the west. The trade itself is conducted informally with small marketplaces determining the going prices of each mineral daily, and therefore miners have no option but to accept the rate despite if it is below market value.

There were four main approaches taken by advocacy efforts to place conflict minerals on the political agenda; education, pressure, responsibility sharing and environmental appeal. Groups sought to educate governments, consumers and companies alike about these relatively unknown minerals and their contribution to the perpetuation of conflict in the DRC. Once

⁹² Frankel, T.C. (2016). The Cobalt Pipeline. *The Washington Post*.

informing the international communities about the issue, organisations were perfectly positioned to put pressure on the same three groups to make informed and conscientious decisions, as well as shaming governments and companies for knowingly and unknowingly trading with war criminals. Campaign representatives directly lobbied politicians, governments and corporations. Responsibility was shared out between these groups, persuading them reevaluate their supply chains and trading regulations, while also encouraging individual consumers to boycott or hold electronic companies using these minerals accountable for the effects of their practices abroad. Fourthly, some European and Australian based NGO's, decided to tackle the environmental and ecological consequences to ungoverned mining⁹³. The majority of these campaigns targeted university students and young people in Western countries, who were encouraged to petition their campus heads and politicians to support conflict-free initiatives and laws. They achieved this by distributing information through various multimedia outlets, engaging celebrity endorsement and ultimately targeting young people, due to their "importance as consumers of electronic devices and their enthusiasm for action"⁹⁴.

During this conflict, there has been a rise in a new type of foreign accountability norm, which "considers it 'normal' for extractive industries to be held accountable for harmful practices abroad."⁹⁵ There has been a noticeable shift in global thinking, with responsibility being shared amongst all the shareholders and ethical consumerism taking over. Once DRC's plight was adopted collectively we began discussing the cost-benefit assessment of mining, the players and the stakeholders involved in the whole process. Companies are now being held morally, politically and legally accountable for their activities and are being persecuted or shamed for any connection to illegal mining activity. With the sheer amount of US celebrities and athletes all rallying behind the cause and personally advocating for the campaigns, increased the influence

⁹³ Nest, M. (2011). *Coltan*. Cambridge: Polity. Pp.130

⁹⁴ Ibid. Pp.122

⁹⁵ Partzsch, L. and Vlaskamp, M. (2016). Mandatory due diligence for 'conflict minerals' and illegally logged timber: Emergence and cascade of a new norm on foreign accountability. *The Extractive Industries and Society*. Pp.984

and popular opinion towards the issue directly leading to the development of the Dodd Frank Legislation. The widespread use of these minerals involves numerous different industries, and with major revenue at stake, the mining industry began working with governments and NGO's soon after it was adopted into US law, by Obama's administration in 2010. Coltan has now "become symbolic of how ordinary people on the other side of the world, through their consumption habits, are implicated in conflict and injustice"⁹⁶ thousands of miles away, a downside to globalisation.

Since Congo and its vast mineral reserves have been a topic of worldwide debate, the changing nature of the conflict has also influenced NGO strategies, which have adapted to this progression. During Michael Nest's exploration on advocacy efforts governing coltan, he notes that there is a stark lack of initiatives focusing on upstream production, that is the mining of the mineral ores⁹⁷. He justifies this by stating that NGO's primarily "concentrate their efforts on trying to change corporate and consumer demand because this is where [they] have the most leverage and experience."⁹⁸ This observation uncovers a great hole in international advocacy efforts, as they seem to be bypassing the real problem in the Congo; local cleavages, state incapacity and including the voice of DRC miners during the formalisation process. This is a fundamental issue in global natural resource advocacy and management, as it is common for international efforts, while set out with good intentions, to miss the local context. Western organizations who were tasked with research made short trips to the Congo, primarily engaging with the government, businesses and other elites in the country. Overlooking the input of local experts, meant that the process of state-building and formalization is disruptive and incomplete as the whole community is not engaged. There is a noticeable gap between international efforts and localised grassroots efforts, which undermines the formalization process. The interaction between global and local initiatives needs to be more streamlined, in order to become more

⁹⁶ Nest, M. (2011). *Coltan*. Cambridge: Polity. Pp.104

⁹⁷ Ibid. Pp.108

⁹⁸ Ibid. Pp.108

effective and avoid unnecessary overlap. The Enough Project realising this, broadened its efforts in 2015 to tackle some of the underlying issues they discovered while conducting research over the last few years. Its focus moved away from solely emphasizing on minerals, towards understanding and strategizing to challenge the high corruption prevalent in Congolese society, believing that this and its link to violence is the real cause of conflict.

Relevance

In many Congolese economies, “artisanal mining makes important contributions to socio-economic development by providing employment and injecting money directly into the local economy.”⁹⁹ Henceforth a key livelihood strategy for many, demands a vigorous restructuring of the laws and regulations surrounding it; too many people depend on natural minerals for it to be left to its own devices and vulnerable to exploitative practices. Furthermore, with the exponential growth of the technology industry in recent years, there is even more urgency on establishing formal laws to govern the natural resource extraction. Each of the main minerals mined in the DRC have individually seen their limelight and relevance peak over the last few decades, and it appears as if now Cobalt is in the firing line.

Uniquely, the importance of cobalt has only recently become significant, due to the electric vehicle revolution. The shift in car manufacturers towards electric vehicles (EV) has caused the demand for cobalt to sky rocket in recent years, as has the price which “has reportedly more than tripled in the past 18 months to more than \$80,000 per metric ton”¹⁰⁰. As of now, cobalt is not included under the umbrella of ‘conflict minerals’, but there are calls for it to be treated as such and predictions¹⁰¹ that it will soon be encompassed in the Dodd-Frank Act. But before this comes into action, there is uncertainty surrounding the future of the law and particular

⁹⁹ Rothenberg, D. and Radley, B. (2014). *"We Miners Take Our Lives in Our Hands Save Nothing and Believe Only in Luck": The Lived Experience of Human Rights and Labor Violations in Select Artisanal Mining Sites in North and South Kivu*. Pp.6

¹⁰⁰ Dormehl, L. (2018). *Apple wants to buy crucial iPhone battery metal direct from miners*.

¹⁰¹ Thomas, D. (2016). *Cobalt and Conflict Minerals - 3TG and C?*

negative consequences resulting from the US law which needs to be addressed in a local capacity before introducing other metals to the regulation, which will be discussed in the next section.

Chapter 5: A Critical Analysis of Dodd-Frank

In recent times, the “international debate on the ongoing crisis in the East of the Democratic Republic of the Congo has concentrated on the presumed link between the continuation of conflict and the continuation of mineral exports.”¹⁰² Advocacy campaigns spearheaded by the Enough Project and The Global Witness, first highlighted the link between western consumerism and the prolonging and financing of Congo’s conflict. The campaigns focused on technological advances which have and are developing and an exponential rate, while also bringing up uncomfortable questions on the role of Western accountability.

The campaigns were hugely successful throughout 2009, garnering wide international attention and soon many advocates, politicians and consumers themselves, were calling for enforceable laws and standards to combat the violence millions of miles away. It is because of this advocacy-led effort, the Obama administration began developing and including the notion of ‘conflict minerals’ in their Dodd-Frank Wall Street Reform and Consumer Protection Act. The law, named one of “the most far reaching Wall Street reform in history”¹⁰³ was in part aimed to ensure that a financial crisis like that experienced in the autumn of 2008, is never felt again. The act sought to reform and create a more stable US financial sector, by regulating new and existing financial firms, as well as keeping a tighter control on Wall Street, and holding them more accountable¹⁰⁴. Supporters of the law lobbied that it would weaken militia groups and armed actors in the DRC as companies would have to ensure and prove that their minerals are sourced

¹⁰² Pole Institute (2010). Blood Minerals. The Criminalization of the Mining Industry in Eastern DRC. Pp.22

¹⁰³ The White House President Barack Obama. (n.d.). *Wall Street Reform: The Dodd-Frank Act*.

¹⁰⁴ Ibid.

without any armed actor involvement. Therefore, this increased policing and attention to Congo's mines would be expected to eventually cut off the rebel's revenue generated by mining, as stricter monitoring of the minerals would be in place, limiting the potential for their profits.

Thus, the Dodd-Frank Act was born and signed into action by Obama on July 21st, 2010. Out of its entirety, the final few pages focus on the use of conflict minerals and responsible sourcing of them. The administration acknowledged that many minerals originating from and being sourced in the Democratic Republic of Congo, are being exploited and "helping to finance conflict characterized by extreme levels of violence in the eastern Democratic Republic of the Congo"¹⁰⁵. The law requires US stock listed companies that use or may have reason to use conflict minerals "necessary to the functionality or production of their goods"¹⁰⁶, to disclose information surrounding where their minerals are sourced from, and to make conscious efforts to ensure that they are mined without involving armed actors or militia. The term 'conflict minerals' is defined by the Securities and Exchange Commission (SEC) to encompass the 3T's (tin, tantalum and tungsten) and the mining of gold:

columbite-tantalite, also known as coltan (the metal ore from which tantalum is extracted); cassiterite (the metal ore from which tin is extracted); gold; wolframite (the metal ore from which tungsten is extracted); or their derivatives; or any other mineral or its derivatives determined by the Secretary of State to be financing conflict in the Democratic Republic of the Congo or an adjoining country¹⁰⁷.

The Obama administration premised the law on publicly 'naming and shaming' companies that use conflict minerals, believing that this would urge them to clean up their supply chain for fear of losing global reputation and consumer loyalty. Companies implicated are expected to file various forms and paperwork to the SEC, compile evidence to support their 'conflict free' claim, as well as publishing an annual 'Conflict Minerals Report', accessible to the public. In order to comply with these new regulations, companies were expected to examine

¹⁰⁵ Ayogu, M. and Lewis, Z. (2011). *Conflict Minerals: An Assessment of the Dodd-Frank Act*.

¹⁰⁶ Sec.gov. (2018). *Disclosing the Use of Conflict Minerals - Fact Sheet*.

¹⁰⁷ Sec.gov. (2018). *Final Rule: Conflict Minerals*. Pp.6

their supply chains, pin pointing the source of the various minerals and reporting their findings publicly.

Section 1502 covers Democratic Republic of Congo and the surrounding sub-region which presently includes the nation states of Angola, Burundi, Central African Republic, Congo, Malawi, Rwanda, South Sudan, Tanzania, Uganda, and Zambia¹⁰⁸. These countries are included in the law, due to their geographical location and connection to the illegal trafficking and plundering of the minerals sourced from Congo. Due to this broad stipulation, the law was expected to affect a whole variety of differing industries including but not limited to technology, electronics and communications, aerospace, automobiles, jewellery, healthcare and manufacturing¹⁰⁹. For the purpose of this paper, I will be explicitly focusing on the technology and electronic industry and its role in the battle for conflict-free mineral extraction. This is because, as mentioned in the previous section, the rise of Congo's mineral importance goes hand in hand with the increased worldwide technological advancement. They are becoming an essential component of modern day technological devices and their significance is only expected to grow in the future.

The announcement of the Dodd-Frank Act, was met with many mixed attitudes and opinions amongst its stakeholders. Many championed the bold move, including former U.S. Secretary of State, Hilary Clinton who praised the law saying that:

“they do bring together labor, civil society, and business to create the broadest possible consensus behind them. This is truly the work of a global policy network in action”¹¹⁰

Policy makers, business experts and advocates alike saw the SEC's regulations as a step in the right direction, but then the question became one of enforcement and implementation.

¹⁰⁸ Sec.gov. (2018). *Final Rule: Conflict Minerals*. Pp.6

¹⁰⁹ Ayogu, M. and Lewis, Z. (2011). *Conflict Minerals: An Assessment of the Dodd-Frank Act*.

¹¹⁰ Hilary, C. As quoted in: Ayogu, M. and Lewis, Z. (2011). *Conflict Minerals: An Assessment of the Dodd-Frank Act*.

Initial reservations to the law came from lobbyists and local activists, who were concerned that the new law would in fact create a de facto ban as businesses could easily decide to boycott Congo and source elsewhere. Moreover, with due diligence standards relatively lenient in the past, adherence to the new law was predicted to be a very long and expensive procedure for the U.S. businesses involved. The National Association of Manufacturers initially estimated “compliance costs [to] fall between \$9 billion and \$16 billion, which are significantly higher than the SEC estimate of \$71 million.”¹¹¹ Some suggested that the law would be a positive development as it forces those profiting from mining activities to bear the costs of trade, while also encouraging local miners and armed factions to participate in trade without violence. Supporters viewed it as an important step in the right direction to help formalise the mining industry of Eastern Congo.

However, despite the numerous good intentions behind Dodd-Frank, the law itself has been proven to fall short and a little too optimistic. After its implementation in 2012, it has “set off a chain of events that has propelled millions of miners and their families deeper into poverty”¹¹². There have been many accounts of unplanned negative consequences affecting local artisanal miners on the ground, attributed to the law being based on a partial analysis of the dynamics of conflict in Congo. The very law that was developed and implemented to protect poor Congolese mineworkers and locals, has backfired and is in fact hindering the process of legitimizing the entire sector. The initial announcement of the law pressured Congolese President, Joseph Kabila, to take action in his own country to show his support and compliance of the cause. He declared a Congolese-imposed export ban on minerals between September 2010 and March 2011, which caused detrimental effects on the local population who were ill prepared for an embargo, let alone a self-inflicted one. Although the legislation did not explicitly call for

¹¹¹ Ayogu, M. and Lewis, Z. (2011). *Conflict Minerals: An Assessment of the Dodd-Frank Act*.

¹¹² Raghavan, S. (2014). Obama’s conflict minerals law has destroyed everything, say Congo miners. *The Guardian*.

an export ban, the Congolese government no doubt, felt the pressure and that they needed to respond to show support and aid in the implementation of the law.

The repercussions from the law has had a detrimental effect on the DRC. Once the official Congo-state led embargo was lifted, the Electronic Industry Citizenship Coalition (EICC) in the US imposed a *de facto* embargo¹¹³, refusing to buy minerals from the Congo that have not been tagged or traced¹¹⁴. While many support the spirit of the Dodd-Frank legislation, the subsequent bans have caused job losses, loss of livelihood strategies and have instead benefitted select military elites in the Kivus region. The World Bank estimates¹¹⁵ that before Dodd Frank, approximately 16% of the country relied on artisanal mining in some way, after implementation the miners were stuck with loss of jobs, no support or other alternatives. Ironically, the creuseurs are instead now more susceptible to joining an armed group as a result¹¹⁶. Foreign companies have avoided buying the minerals, leading to a drop in global price of minerals and miners lack other options for labour and money. The Eastern provinces of DRC have been notorious for having very little state authority or presence, which remained the case after the law came into effect and so permitting human rights violations to continue despite this improvement. Nicknamed '*Loi Obama*' - Obama's Law¹¹⁷ in the region, its adoption soon allowed the little to none governance to benefit many army officials, who took over and stayed in control of the mines. While in some areas, militia men did abandon their hold on some of the mines, in many other areas the army seized control. They used their authority to force local diggers out of many informal mining sites, stepping in to make money themselves by controlling and taxing miners that extract at their location.

¹¹³ Congo Research Group. (2011). *Interview with Eric Kajemba on Conflict Minerals*.

¹¹⁴ Congo Research Group. (2011). *Thoughts about conflict minerals*.

¹¹⁵ World Bank. (2008). Democratic Republic of Congo: Growth with Governance in the Mining Sector, The World Bank Oil, Gas, Mining and Chemicals Department AFCC2 Africa Region Report No. 43402-ZR.

¹¹⁶ Raghavan, S. (2014). Obama's conflict minerals law has destroyed everything, say Congo miners.

¹¹⁷ Ibid.

The swift execution of the ban left many exporters with large amounts of mineral stock already mined and with no way of selling. Mineral exporting did not cease, however. Officers were able to get around the embargo by bribing, smuggling and transporting the untagged minerals out of the country, and selling them through Rwandan and Ugandan markets, where there was no ban. Bribery, fraud and corruption amongst the region has increased as a result of the law, directly helping Congolese army men and some militia groups to profit. These groups can capitalise as they have the relevant authority and networks in place to continue mining and profiteering while the embargo was in place. “Adjoining countries also knowingly fuel[ed] the crisis by exporting products originating within the borders of their neighbours”¹¹⁸, thus providing armed groups with relatively secure transport routes and access to the global market to sell the DRC tainted products. Paradoxically it has pushed the very trade it wished to regulate underground, making it harder to trace and monitor. In places where militia have abandoned mines for revenue, they have often switched to selling other commodities such as palm oil and charcoal for income.

An array of international and local initiatives aimed at decriminalise the mining sector in DRC were already in progress before the embargo, which we will discuss in the next chapter. Yet, due to lack of funding from their mineral exports, they have now slowed down their efforts and been rendered ineffective as a result of Section 1502. Another unforeseen consequence of the ban left some remote mining areas and communities severely worse off. The majority of the local population in these zones relied heavily on aircrafts, which routinely flew in with goods to serve the local population and flew out with mineral exports. Without any minerals to pick up the planes decreased in frequency, and left many areas deprived of food and goods essential for survival. Critiques of Dodd-Frank were also quick to highlight after adoption, that the law itself is very loose and non-binding to be truly effective. Legal definitions as stated in Section 1502(e)(4) of the Act is accused of being too narrow, in fact providing a substantial loophole for

¹¹⁸ Ayogu, M. and Lewis, Z. (2011). *Conflict Minerals: An Assessment of the Dodd-Frank Act*.

mining and technology companies who use cobalt instead of either of the 3TGs. Cobalt is not included in the limited definition as it was not initially thought to be funding wars and “currently, no country legally requires companies to publicly report on their cobalt supply chains.”¹¹⁹ Yet, the importance of cobalt has increased dramatically in the last few years and is expected to continue rising, with special thanks to the advancement and demand of electric vehicles. Without proper regulation expanding to include Cobalt, it is likely that exploitation and abuses concerned with artisanal mining of the mineral will increase exponentially as predicted global demand and price increases.

The law as of now, hinges on the punishment of a tarnished global reputation for those companies that do not comply. There is no penalty or price facing public U.S. companies who continue to engage in using conflict minerals, except public shaming. To remedy this, the law could incorporate financial consequences to charge companies that fail to conform, while enlisting the help of local nongovernmental organizations to help monitor and whistle blow on those that continue to engage in shady activity. This would give companies more of an incentive to conduct due diligence on their supply chains, but it is still likely to be insufficient to prevent conflict reoccurring on the ground and allow conditions to be stable enough to establish a secure market for minerals. Another limitation of the legislation, is that it only confronts companies at the end of the supply chain, whereas a “coordinated pressure along the entire illicit value chain of conflict minerals would be more effective than a standalone intervention aimed solely at the extractive stage.”¹²⁰ Governance should be streamlined across all levels of mining process, with all stakeholders and intermediaries of the mineral supply chain from the DRC held accountable for their actions and they should be prepared to do their part in eradicating mineral-led conflicts.

Furthermore, adherence to the current law is restricted to just U.S. public companies, which although is a good start, is not enough to tackle such a large scale intercontinental problem.

¹¹⁹ Amnesty International (2016). *This is What We Die For* Pp. 10

¹²⁰ Ayogu, M. and Lewis, Z. (2011). *Conflict Minerals: An Assessment of the Dodd-Frank Act*.

The Chinese mining and smelting market has somewhat capitalised on this, by offering a substitute market during the provisional trade embargo. While this does help generate little money for the local miners, with limited alternatives they are typically forced to accept extremely unfair prices. The “lack of a binding global due diligence regime leaves a gap in the fight to end the crisis”¹²¹, and all other attempts to remedy the situation is likely to fail if we do not have a unified solution.

It is clear now, that Dodd-Frank was developed and implemented too prematurely in response to pressures from global advocate groups, and without consulting local experts to fully comprehend the wider implications. Many academics and experts alike complain that the fundamental reason as to why Obama’s law has not seen the desired effects, is because it does not tackle or even begin to tackle the underlying causes of the conflict in the DRC. While the legislation had honourable intentions, by the time former president Obama signed the law, “the conflict had moved into a different phase”¹²². Contrary to popular western beliefs, the conflict in the Congo is largely driven by local grievances over land and ethnicity, passed down from the colonial period. These tensions, largely neglected by the domestic and international policy agenda, has historically held the capacity to develop into full blown war, often pulling in involvement from regional actors. The lack of strong governance and political will by the current Congolese president, has aided the violence as the affected regions are riddled with poor and unenforceable rule of law. With such a large array of stakeholders, militia groups and local authorities, each with their own agendas tangled in the mess of conflict minerals, it seems far-fetched and naïve of the international community to believe that enforcing malleable laws would be the ultimate solution. Henceforth, the international and regional dynamics of the mineral trade, in conjunction with the known historical tensions between DRC and its neighbours, is reason enough for there to be a more structured global strategy.

¹²¹ Ayogu, M. and Lewis, Z. (2011). *Conflict Minerals: An Assessment of the Dodd-Frank Act*.

¹²² Aronson, D. (2011). How Congress Devastated Congo. *The New York Times*.

Consequently, the continuous reality of the issue, the cost (both national and internationally) and the challenges being faced in eastern Congo regarding its regulation, has caused the current US government to re-consider a repeal. While Dodd-Frank has succeeded in increasing global awareness to the humanitarian crisis and raising really topical questions about the governance and responsibility surrounding conflict minerals, there are still few key ingredients missing from helping to achieve its purpose. An ongoing conflict of this magnitude and difficulty, requires a unified response both sub-regionally and internationally. Nation heads from the neighbouring countries of Congo need to work together with the African Union (AU) and with local NGO's on the ground to first solve the outbreaks of violence via a bottom up approach. There is a desperate need in eastern Congo to establish safe and secure conditions, which can be achieved by forming strong institutions in conjunction with local authorities and chiefs to uphold the rule of law. Only once the conditions locally, domestically and regionally are stable, can the mining sector be expected to thrive and monitored to remain violence free.

Chapter 6: Other efforts to formalising the mining sector and tackle mining abuses

The story of Congo's minerals has been a fairly turbulent affair, with ever changing policies and strategies created to tackle the various stages of the supply chain. With the rise in foreign accountability, international laws and treaties regarding conflict minerals are not the only response to worldwide calls for more oversight in the mineral trade in the DRC. There have been many other attempts to mitigate the impact of international corporations in poorer countries, schemes to trace and track resources before leaving the country and international standards enforced to reassure potential consumers that their products are conflict-free. Various bodies and groups have rallied together and also independently, in attempts to help formalise the mining industry in the Congo. There have been negotiations and talks between the Congolese state and its neighbouring governments, which has led to the creation of regional bodies and initiatives pledging to jointly tackle the governance of natural resources mined in the encompassed territory.

I will analyse and examine a few of these strategies in the international, regional and local context, as well as their subsequent impact on the mining sector of the DRC.

The following tables are a collection of the past, current and ongoing laws and treaties enacted by international, regional and domestic governments:

Table 2. International & Regional Treaties and Laws Affecting Mining and the DRC

Treaty / Law	Countries/Territories Affected	Date Created	Date Signed	Implementation/Adoption Date in DRC	Legally Binding?
International					
Geneva Convention - 1977 Additional Protocol I and II	196 State parties - 168 State Parties, 3 State Signatories	1949 - 1977	1961 -1982	1961 -2002	Yes
International Covenant for Civil and Political Rights (ICCPR)	74 Signatories, 169 State Parties	1966	-	1976 - Accession Date	Yes
International Covenant for Economic, Social, and Cultural Rights (ICESCR)	71 Signatories, 166 State Parties	1966	-	1976 - Accession Date	Yes
Convention of the Elimination of All Forms of Discrimination Against Women (CEDAW)	99 Signatories, 189 State Parties	1979	1980	1986 (DRC Ratified)	Yes
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	83 Signatories, 162 State Parties	1984	-	1996 - Accession Date Protocol signed 2010	Yes
Convention of the Rights of the Child	140 Signatories, 196 State Parties	1989	1990	1990 (DRC Ratified)	Yes
UNESCO 104 EX/3.3 Procedure for the Protection of Human Rights	UNESCO members	1978	1978	1978	Yes
Section 1502 Dodd Frank	US	2010	2010	2012 - 2017	No
Conflict Minerals Regulation	EU	2017	2017	2021 (expected)	Yes

Table 3. Failed Legal Attempts

Failed attempts		
Treaty / Law	Country Affected	Date - Dismissed
Bill C-486 the Conflict Minerals Act	Canada	2014

Table 4. Regional Treaties and Laws Affecting Mining and the DRC

Treaty / Law	Countries/Territories Affected	Date Created	Date Signed	Implementation/Adoption Date in DRC	Legally Binding?
Regional					
The African Charter on Human and Peoples' Rights (Banjul Charter)	All 53 AU members	1987	1987	1987 (DRC joined)	Yes
Protocol to above	24 signatories, 25 unratified AU members	1998	1999	-currently unratified	Yes
Constitutive Act of the African Union	All 53 AU members	2000	2001	2002	Yes
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa	36 signatories, 15 unratified AU members	2003	2003	2008	Yes
Protocol on the Fight against the Illegal Exploitation of Natural Resources	ICGLR Members	2006	2006	2006	Yes
Pact on Security, Stability and Development in Great Lakes Region	ICGLR Members	2006	2006	2008	Yes
Regional Initiative against the Illegal Exploitation of Natural Resources (RINR)	Members of International Conference of the Great Lakes Region (ICGLR)	2009	2010	2010	Yes
Suspension of all artisanal Mining Activities	DRC	2010	-	Sept 2010- March 2011	Yes
Lusaka Declaration of the ICGLR Special Summit to Fight Illegal Exploitation of Natural Resources in the Great Lakes Region	ICGLR Members	2010	2010	2010	Yes

Table 5. Domestic Treaties and Laws Affecting Mining and the DRC

Treaty / Law	Countries/Territories Affected	Date Created	Date Signed	Implementation/Adoption Date in DRC	Legally Binding?
DRC's Constitution: <ul style="list-style-type: none"> Human Rights Principles Labour & Forced Labour Rights 	DRC	1960	2006 - Revised	2006	Yes
Labour Code	DRC	2002	2002	2002	Yes
Congolese Mining Code	DRC	2002	2002	2003	Yes
Mining Regulations	DRC	2003	2003	2003	Yes
The National Child Protection Code	DRC	2009	2009	2009	Yes
Revised Mining Code 2017	DRC	2018	-	Remains unsigned by President	Yes

Table 6. Organisations and Initiatives aimed at Formalising the Mining Sector in the DRC and reducing the violence

Organisation	Initiative	Date Founded	Countries Affected	Minerals Included	Binding
Human Rights Watch and Congo Research Group	Kivu Security Tracker	2017	DRC	-	-
World Gold Council and Jewellers Association	Conflict-Free Gold Standard	2012 Implementation - 2013	WGC Members	Gold	Yes
OECD	Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas	2013	Countries that are "Conflict-Affected and High-Risk Areas"	3TG	No
UN	Guiding Principles for Business and Human Rights	2011	Signatories of the Geneva Convention	-	No
OECD and ICGLR	Memorandum of Understanding (MOU)	2010	G8 and ICGLR members	3TG	
OECD and CCCMC	Memorandum of Understanding (MOU)	2014	China	3TG	Yes
CCCMC	Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains	2015	China	-	No
CCCMC	Guidelines for Social Responsibility Outbound Mining Investment	2014	China	-	No

Extractive Industries Transparency Initiative (EITI)	The EITI Standard	2013	51 EITI countries	-	Yes
US Electronic Industry Citizenship Coalition (EICC) and the Global e-Sustainability Initiative (GeSi)	Conflict-Free Smelter (CFS) - Conflict-Free Sourcing Initiative = Responsible Minerals Initiative	2011	Electronic and Technology Companies Globally	3TG	Yes
German Federal Institute for Geosciences and Natural Resources' (BGR)	National Certification System in DR Congo & Introducing CTC to DRC	2008	DRC	3TG	-
International Tin Research Institute (ITRI)	Traceability System (iTSCi)	2010	Global Companies sourcing Tin	Tin	-
World Bank and DRC gov- Pact Inc.	PROMINES	2010	DRC		-
MONUSCO and Congolese Government	UN est. Mineral Trading Centre	2010	DRC	3TG	-
Congolese State	STAREC	2009-2012 2015 - new plan	DRC	-	-

Legal Mechanisms

International

The first wave of international liability, built upon the obligations set out in the 2011 UN Guiding Principles on Business and Human Rights¹²³ (UNGPs). These guidelines first set out the responsibility of global companies to ensure that when the state fails or is unwilling, human rights are respected during their operations. Companies are widely expected to warrant that their business practices do not intentionally or unintentionally cause, contribute to, or benefit from armed conflict or human rights abuses, yet the principles in itself are unbinding. They merely offer clarification on the “implications of relevant provisions of existing international human rights standards”¹²⁴, deriving from states’ existing responsibilities under international law. This,

¹²³ United Nations (2011). *Guiding Principles on Business and Human Rights*.

¹²⁴ Aronson, D. (2011). How Congress Devastated Congo. *The New York Times*. Pp.8

in conjunction with the US implementation of Section 1502 prompted the Organisation for Economic Co-operation and Development (OECD) to create the '*Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*'¹²⁵ in 2013. A practical guide detailing a five-step process on how such due diligence should be carried out effectively. While the OECD guide is also not legally binding, it does provide direction on how operations can be conducted in accordance with the UNGPs. It was approved by all 34 OECD Member states, 9 non-OECD states and 11 members of the International Conference on the Great Lakes (ICGLR)¹²⁶.

In March 2013, Canada prompted by America's legal stance against conflict minerals began discussing introducing Bill C-486, a similar legislation to Dodd-Frank targeting the 3TGs originating from DRC and its neighbouring countries. However, this was defeated in parliament in 2014 and did not become law. In October 2014, the OECD signed a Memorandum of Understanding with the Chinese Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters¹²⁷ (CCCMC), to endorse the OECD guidelines in China. The CCCMC, in 2015 launched their own due diligence guidelines¹²⁸ for responsible mineral supply chains, in accordance with the OECD and consulting industry specialists. Additionally, the European Union is also currently considering implementing laws requiring OECD guidance compliance for European companies dealing with 3Ts and Gold. This is expected to come into effect in 2021.

Regional

Amidst the backdrop of Congo's second war, reports of increased child recruitment into the conflict, widespread rape and smuggling of natural resources to finance and prolong the war, it was clear that there was a need for a unified approach. The cross-border complexity of the issue

¹²⁵ OECD (2013), *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Second Edition*.

¹²⁶ Amnesty International (2016). *This is What We Die For*. Pp.44

¹²⁷ Ibid. Pp.44

¹²⁸ Chinese Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters (2015). *Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains*

and destabilising informality of the trade, prompted the establishment of the International Conference of the Great Lakes Region (ICGLR) in 2004. The ICGLR is now the “highest level regional organisation addressing conflict minerals and security issues in eastern DRC”¹²⁹ and its members includes the African governments of Angola, Burundi, Central African Republic, Republic of Congo, Democratic Republic of Congo, Kenya, Rwanda, Sudan, Tanzania, Uganda and Zambia.

The intergovernmental group signed the ‘Pact of Nairobi’ in 2006, to provide a legal framework governing Security, Stability and Development in the region and to promote relations between its signatories. They reconfirmed their commitment to the cause four years later, by launching the ‘Regional Initiative against the Illegal Exploitation of Natural Resources’ (RINR) in 2010, to track the chain of custody of the 3TGs. Commonly referred to as the Lusaka Declaration, the summit created a comprehensive approach to restricting the trade of illegally mined natural resources, and financing of armed actors. The initiative not only encourages dialogue between member states on the matter, it also sets out a set of six strategies to legalise their certification mechanism and synchronise their independent approaches in line with other international regulations already in place. The six tools are:

1. Regional Certification Mechanism (RCM) for cassiterite, wolframite, coltan and gold
2. Harmonization of national legislation
3. Formalization of the artisanal mining sector
4. A regional database on mineral flows
5. Promotion of the Extractive Industries Transparency Initiative (EITI)
6. A whistle-blowing mechanism¹³⁰

The tools are aimed at increasing transparency and implementation of the RCM requires a close supervision and regional tracking of the minerals from mine to site of export via the ICGLR database. This requires regular third-party audits, conducted independently of

¹²⁹Rothenberg, D. and Radley, B. (2014). *"We Miners Take Our Lives in Our Hands Save Nothing and Believe Only in Luck": The Lived Experience of Human Rights and Labor Violations in Select Artisanal Mining Sites in North and South Kivu*. Pp.25

¹³⁰ Ibid. Pp.26

governments, companies and civil society. The implementation of these processes is still undergoing relative evaluations and relevant bodies are still being established. However, progress has been made. In 2011 a certification manual was approved and adopted by member states, and a regional Audit Committee was founded in 2012, with the prominent heads involving individuals from Rwanda, Kenya and the DRC. The regional certification mechanism is in place and also, there is currently a test version of the database operating, “which has already started to gather data on the production and exports of selected natural resources”¹³¹.

A regional strategy or harmonisation of policies and national legislations between the Congo and its neighbouring states is an imperative foundation for a successful approach to mitigating conflict minerals, as trade is so interwoven between the various countries that stand-alone approaches will not be enough. The ICGLR recognises this and openly admits that a “key problem of this predicament is the missing linkage between the supply chain of natural resource and the formal economy of the ICGLR Member States.”¹³² The regional certification mechanism was constructed to alleviate this, it was crafted to be compatible with other available mechanisms governing mineral resources (ITRI/iTSCI, BGR/CTC and OECD guidelines) and places each member state liable for its implementation.

Local

Mining Code 2002 and 2003

The heightened participation of citizens in Congo’s artisanal mining industry during the coltan boom, pushed policy makers in the country to reassess the current laws governing the trade. With little formal and enforceable rules in place until the early 2000’s, most artisanal mining was deemed illegal. Congo’s government then introduced a set of mining codes in 2002, specifically aimed at legalising the trade, offering protections to those working in the industry and outlining health and safety guidelines for safe practices. Unregulated mining was a dangerous

¹³¹ Icglr.org. (2018). *RINR*.

¹³² Icglr.org. (2018). *Natural Resources*.

trade, mines were often handcrafted and excavated by local creuseurs who were unaware of the life-threatening dangers associated with unplanned mining tunnels and the hazardous fumes they could be exposed to during their work. As aforementioned, the state created ‘artisanal exploitation zones’ (AEZ’s) in areas which the site is not suited for industrial mining, enabling ASM to be acceptable.

The 2002 Mining code was long overdue in the DRC, finally recognising and formalising the ASM sector. The code and constitution declare that the state is the owner of all mineral resources in the DRC, but they can grant private parties and individuals the rights to exploit the resources. The enforcement of the code now required miners to obtain authorisation from the state’s Ministry of Mines via a ‘carte d’exploitant artisanal’. Miners are issued permits to allow them to continue legally mining and also outlines the permissible sites where they can continue extracting ores. The aim was to relaunch the industrial mining sector following the two Congo Wars of 1996-2003, opening it up to foreign investors and generating revenue for the state. Although this was one of the first attempts to officially govern and implement rules on ASM, enforceability was another issue in itself. The laws became adopted more like guidelines and were rarely seen to be enforced with authority. Additionally, some of the legal aspects of the code are at odds with local rules and competing powers, as the question of who holds the jurisdiction is blurry. Mining agents, state authorities and local chiefs all hold some say over land and mining activities, yet when there are conflict rights to consent, the code makes it unclear as to who ultimately holds the power.

Consequently, in 2003 an update and revision to the former mining regulations were introduced. Its aim was to build upon the 2002 code, by providing rules to define the legal management of mining activities in the DRC, to offer clarification for the protections and rights of miners as well as the role of the state. The new policies outline the parameters of mining activities and how waste and other negative externalities from the profession can be minimised. The updated mining regulation incorporated information on environmental standards and

highlighted the main administrative entities in charge of mining activities in Congo; these are the Congolese government, Ministry of Mines and the Department in Charge of the Protection of the Mining Environment.

While these legislations do a good job of explaining mining rights and establishing rules for ASM, it did little to benefit the workers themselves. The quantity of approved AEZ sites were limited and are not enough to meet current mining demands, which causes the majority of miners to continue operating ‘illegally’. Bureaucratic red tape makes opening new AEZ sites equally as difficult as it necessitates the approval of at least three differing bodies. The requirement of approval for ASM employees, made it difficult for those already engaging in the trade to formally enter the market. Usually permits and paperwork is recognised and approved only in Kinshasa, which is time consuming and tedious for miners to travel to, as they often reside in the Eastern provinces near secluded mining sites. Moreover, while it was necessary to establish a legal framework to govern ASM activities, the new laws did little to combat pre-existing antagonisms related to mining, land rights and forced displacement. Currently, artisanal and small-scale miners have no property rights under DRC mining laws, they are only permitted to mine if they pay a small fee to the state. Additionally, the rules do not govern mining deals already in place, during the mineral boom many mining companies “signed ‘conventions’ with the DRC government that exist outside of the tax and legal structure.”¹³³

Presently, a new and updated set of mining codes are being discussed, following calls by local NGO’s and civil society to rework the laws promoting Congolese interests. However, it is facing strong opposition from large multinational mining corporations who are against the proposal of a tax increase. In 2015, a set of amendments were submitted to parliament suggesting a 5% tax increase on profits, increasing the government’s stake in new mining projects from 5% to 10% and increasing the royalties from copper and cobalt to 3.5% from 2%¹³⁴. These were

¹³³ Radley, B. (2017). *The DRC is revisiting its mining code. Why reform is long overdue*. The Conversation.

¹³⁴ Ibid.

dropped due to an unexpected decline in commodity prices, but it is feared that the financials surrounding the natural resource will overpower the debate and urgency of more pressing matters.

Strengthening Government Bodies and Regulating Institutions for mining oversight

In response to the expansion of the mining sector in Congo, the DRC has attempted to create institutions and strengthen existing mandates for better oversight over the industry. The Congo's main mining authority is the Ministry of Mines, headed by Martin Kabwelulu as Minister of Mines. It has the task of supervising mining activities at the national level and is responsible for ensuring overall management of the ASM sector, with the authority to determine AEZ sites. It has two technical services, the Technical Unit for Coordination and Planning of Mining (CTCPM) and The Service for Assistance and Organization of Artisanal and Small-Scale Mining (SAESSCAM) to serve ASM employees. The DRC has a number of agencies to monitoring the mining sector:

- National Minister of Mines
- Provincial Authority of Mines
- The Geology Directorate
- Directorate of Mines
- Department in charge of the Protection of the mining Environment

However, these lack “the necessary financial and human resources to successfully perform its functions,”¹³⁵ there is frequent unnecessary duplication and overlapping of roles between the agencies, and also it is unclear as to the hierarchy of power amongst these various institutions. While attempts by the Congo state to formalize the industry have been somewhat commendable, there is constant incoordination between the various bodies leading to inefficiency and ineffectiveness. The constant failure of these regulatory groups to work together has become more of a hinderance to miners on the ground rather than encouraging them to conduct their activities legally. Furthermore, the lack of funding, logistical or technical capacity of these

¹³⁵ Geenen, S. (2012). A dangerous bet: The challenges of formalizing artisanal mining in the Democratic Republic of Congo. *Resources Policy*. Pp.326

structures to fulfil their mandate, fosters conditions making them vulnerable to corruption. Often agents are underpaid making them susceptible to accepting bribes, and also, they are only mandated to oversee the AEZ zones, despite most miners conducting their trade outside these areas.

The biggest barrier to strengthening the mining industry is corruption and bribery, which is rampant and encouraged throughout Congo. Historically, underhanded dealings are the way business has been conducted for generations in the DRC, often at the hands of governmental officers or those in high levels of authority. This poses a great conflict of interest, as individual pursuits have typically tended to trump the needs of the citizens and elites have abused their power for personal enrichment. Examining President Kabila's personal assets and family links to mining activities is a great indication of how fair and transparent natural resource governance may not be top of the agenda for the Congolese state. Research conducted by Congo Research Group (CRG) shows that the majority of the presidential family, including Kabila's siblings, have ties to over 80 companies and businesses within the Congo and overseas.¹³⁶ When elites have a stake in various companies, it makes it easier for them to pursue their own agenda over the nations. This is evident by the leniency shown to Kabila's sister, which is rumored that "Congo's Ministry of Mines has granted a company controlled by the president's sister, Jaynet Kabila, more mining permits than allowed under the country's mining code"¹³⁷. The preferential treatment granted to those close to the President can be viewed as an extension of the selective and kleptocratic practices constructed under Mobutu's reign to finance his personal fortune, which has been mimicked and adopted by the elites that are now in power.

In attempts to overcome Congo's lack of state capacity and political will, international bodies such as the MONUSCO (Mission de l'Organisation des Nations unies pour la stabilisation

¹³⁶ Kavanagh, M. and McCarey, D. (2017). *All the President's Wealth: The Kabila Family Business*.

¹³⁷ Congo Research Group & Pulitzer Center (2017). *All the President's Wealth*. The Kabila Family Business. Pp.2

en République démocratique du Congo), the UN's peacekeeping mission in Congo, has sought to implement independently controlled UN Mineral Trading Centres. Their hopes are that their presence along key transportation routes and trading hubs, will deter any rebels seeking to profit from the trade¹³⁸, thereby breaking the link of minerals to armed violence.

Nevertheless, it is clear that thus far, the efforts made by the government of the DRC to protect its citizens from human rights abuses is not enough. All states under international human rights law have a responsibility to protect the world from human rights abuses, but in the Congo, there are still not enough safeguards in place to defend artisanal miners from mining associated health and safety risks as well as exploitation.

Industry Driven Initiatives

Due Diligence

With increased international media attention on the matter, some technology companies and industry heads have deemed it fit to take the matter and responsibility into their own hands. Apple Inc. has recently reported¹³⁹ that it wishes to purchase cobalt straight from the source; cutting out the middle men and buying directly from miners in Congo. This marks a huge chain in technological company responsibility as the company previously left the purchase of cobalt to the companies that built its batteries. If this drive has come from apple's commitment to corporate social responsibility is unclear, but currently in terms of cobalt supply, we "are in a supply-demand imbalance¹⁴⁰". There are enough resources laying underground in the DRC, but production by artisanal miners is not enough to meet the current demand. "The iPhone maker is one of the world's largest end users of cobalt for the batteries in its gadgets"¹⁴¹, but with the rise

¹³⁸ Global Witness (2011). *Congo's Minerals Trade in the Balance: Opportunities and Obstacles to demilitarisation*. Pp.12

¹³⁹ Farchy, J. and Gurman, M. (2018). Apple in Talks to Buy Cobalt Directly From Miners. *Bloomberg*

¹⁴⁰ Mell, T as cited in Chutel, L. (2018). *Apple wants to buy cobalt directly from miners, in a country where the middleman is in charge*.

¹⁴¹ Farchy, J. and Gurman, M. (2018). Apple in Talks to Buy Cobalt Directly From Miners. *Bloomberg*.

of electric vehicles pending, there is a threat on global supplies. Many large car manufacturers are hurrying to secure long-term cobalt contracts, to ensure that their supplies are maintained in the future.

The drive for companies and industries to accept some responsibility and trace mineral origins have largely come from their consumers. Global advocacy and campaigning has made international consumers feel guilty about not being aware of how their spending habits can cause inadvertent damage abroad, and therefore has altered their preferences towards goods that are and can be proven to be more ethically sourced. In order to earn and maintain trust of their peers, industry heads and businesses alike have strived to conduct due diligence on the origins of the materials used in their products as well as making this information freely available to their peers. I will now examine a few of the leading initiatives currently in place to establish honourable mining extractive practises.

Extractive Industries Transparency Initiatives (EITI)

The need for international transparency and multi-stake holder governance within the natural resource sector, led to the creation of the Extractive Industries Transparency Initiative (EITI) in 2002. It “sets a standard for transparency requiring its participants to disclose revenues generated in oil, gas and mining,”¹⁴² and is applicable to both government and company revenue generated by payments from those in the supply chain of these respective industries, as well as revenue received by the state from the industries themselves. The main aim of this project was to “promote transparency, good governance, and civil society participation and accountability within different extractive industries”¹⁴³. It sought to eliminate the scope for corruption amongst high ranking officials and strengthen faith in governance by encouraging the availability of

¹⁴² United Nations Economic Commission for Africa (2013). *Special report on the “The ICGLR Regional Initiative against the Illegal Exploitation of Natural Resources (RINR) and other Certification Mechanisms in the Great Lakes Region: Lessons Learned and Best practices”*. Pp.36

¹⁴³ SAIIA (2018). *The Extractive Industries Transparency Initiative and Africa's Mineral Governance Regime*. Occasional Paper 266. Pp.7

information regarding the financials of the state and extractive industries. The EITI was developed by a partnership between an array of governments, companies, NGOs, civil society groups, investors and international organisations. The standard is upheld by an International EITI Board and is overseen by the global civil society group ‘Publish What You Pay’, whose campaigning had a large part in its inception.

However, the EITI is voluntary, it currently has 51 implementing member countries¹⁴⁴ with many countries still yet to be assessed against the newer 2016 standard. While membership to the EITI improves global reputation and indicates a commitment to fight corruption, the unbinding nature makes implementation difficult. The voluntary aspect means that the initiative has a limited scope to enforce compliance from its members, easily allowing the EITI to be undermined by governments and other stakeholders. Nevertheless, using a multi-stakeholder governance is unique and proves to be “useful in addressing the divide between the state and society, the state and the private sector, and the private sector and society.”¹⁴⁵ With trust and legitimacy in governmental structures and authority declining in many African states, especially in the DRC, a multi-stakeholder approach could be a solution to alleviate this and restore confidence as it gives civil society a greater voice.

Standardization

Another instrument developed by the international community is standardization of governments, companies and minerals, intended to remove conflict from the extraction of minerals. The ‘Conflict-Free Gold Standard’ which was published in 2012, is a prime example of this in the world of mineral resource management. Similar to the EITI initiative, the Gold Standard promotes transparency within the gold industry and indicates ethical sourcing of the materials to the worldwide consumers. It is designed to be implemented by the members of the World Gold Council via a unified approach, and in harmony with other initiatives. Its primary

¹⁴⁴ Eiti.org. (2018). *EITI Countries*.

¹⁴⁵ SAIIA (2018). *The Extractive Industries Transparency Initiative and Africa's Mineral Governance Regime*. Occasional Paper 266. Pp.13

aim is to “provide assurance that their gold has been extracted in a manner that does not cause, support or benefit unlawful armed conflict”¹⁴⁶ or contribute to human rights abuses, in accordance with the OECD Due Dilligence guidelines and UN Guiding Principles for Business and Human Rights. The standard is similar to certification in that companies applying this, informs consumers that they conform to internationally agreed regulations and aims to increase transparency and trust within the gold supply chain. While the standard is available to any party involved in the extraction of gold, member companies are expected to adhere to a demanding set of practices¹⁴⁷ as well as report publicly on their conformance. It was developed by leading gold miners, refiners, governments members of the supply chain, and unlike the Dodd-Frack legislation, included African involvement. However, they have faced difficulty in the industry as once gold is delivered to a refinery, it is often mixed with gold from all over making it challenging to trace. This complexity, in conjunction with the fact that gold is highly valued for small quantities, makes it susceptible to smuggling.

Certification

The use of a certification scheme in the governance of natural resources is not a new phenomenon. Certifying products and creating a system makes it easy to translate to consumers that the products they purchase are free from conflict and that employees are paid a fair wage. In terms of certifying mineral-based resources, the most prominent and successful endeavour was for the ‘blood diamond’ campaign in which saw the creation of the Kimberley Process Certification Scheme (KPCS) in 2003. It was applauded as the “first and most developed state-based commodity tracking system that directly addresses the link between natural resources and civil wars”¹⁴⁸ underpinned by the UN mandate and backed by leading civil society organisations, which enabled it to be discussed in the agenda of the 55th session of the UN General Assembly.

¹⁴⁶World Gold Council (2012). *Conflict-Free Gold Standard*. Pp.2

¹⁴⁷Ibid. Pp.3

¹⁴⁸The World Bank (2018). *Ian Bannon & Paul Collier, Natural Resources and Conflict: What We Can Do, in Natural Resources and violent Conflict: Options and Actions*. The International Bank for Reconstruction and Development. Pp.112

The Kimberley Process is a traceability scheme set up to limit the flow and trade of conflict diamonds, in conjunction with governments, industry specialists and civil society. It is a quasi-legal binding import-export certification scheme which imposes a set of extensive requirements on its 81-member countries to enable them to certify shipments of rough diamonds as ‘conflict free’. Under the terms of the process, participating members must enact national legislation to apply the scheme, commit to information and data transparency and exchange, as well as meet the minimum set of requirements so their international exports of rough diamonds can be accompanied by a KP certificate. The participants of the KP can only trade with other participants, and implementation is overseen by Australia, who is currently the chair.

The story of conflict diamonds is similar to that of conflict minerals and therefore, implementing a certification system similar to the KPCS, has been a topic widely discussed when strategizing on how to tackle the emerging issue. Taking the lessons and flaws learnt from KPCS, the narrow definitions of certification may dramatically curb the production in minerals and instead allow broader issues such as worker exploitation and forced migration to continue occurring. Additionally, reports by British NGO, Global Witness have characterised the KPCS as providing a “convenient smokescreen”¹⁴⁹ for diamond smuggling and for atrocities to continue. The scheme allegedly authorised exports from two companies operating in Zimbabwe in 2009, which was rumoured to kill around 200 miners in the process, causing the organization to resign as an official observer in 2011¹⁵⁰. The system has also faced difficulty within enforcement as creating a credible third-party organisation to oversee all the components of a fair-trade system and to verify worker conditions and wages has proven to be challenging. Furthermore, the KPCS has faced criticisms in that it overlooks the role of the states involved in the trade as it mainly focuses on non-state actor abuses. It assumes that ending the conflict is

¹⁴⁹ Rhode, D. (2014). The Kimberley Process is a 'perfect cover story' for blood diamonds. *The Guardian*.

¹⁵⁰ Global Witness. (2013). *The Kimberley Process*.

sufficient enough, but does little to regulate how and what undemocratic or repressive governments do with such resources.

Traceability Schemes – Tag and bag, track and trace, finger printing.

ITRI Tin Supply Chain Initiative (iTSCi)

Mineral mining is a very informal trade and its journey from mine to being utilised in a final product has a number of varying components to it, making criminalisation of the trade evitable. Subsequently, this has encouraged many governments, companies and civil society organisations to reassess the current strategies to formalising the industry in DRC and refocus their energy on projects tackling the supply chain. The International Tin Association, formerly the ITRI, pursued this approach in 2009 developing the ITRI Tin Supply Chain Initiative (iTSCi). The scheme is the tin industry's traceability and due diligence programme, aiming to avoid financing armed conflict in the region from extraction of the 3Ts. The program uses three step approach of overseeing the supply chain. Firstly, they trace the origins of the minerals and chain of custody thereafter, secondly they conduct an "independent third party risk assessment of mine sites, transportation routes, companies and the macrolevel situation to identify and manage conflict-related risks"¹⁵¹, and lastly independent audits involving international and domestic companies who have joined the scheme, and often the mines themselves.

Yet in practice, the iTSCi has faced challenges due to its geographical and logistical difficulties when dealing with secluded mining sites, limited funding and inadequacy of local infrastructure¹⁵². Additionally, as the programme is upstream orientated, it does not help or benefit local ASM miners, leaving them with no other option other than accept an unfair price for their goods, or resort to smuggling.

¹⁵¹ United Nations Economic Commission for Africa (2013). *Special report on the "The ICGLR Regional Initiative against the Illegal Exploitation of Natural Resources (RINR) and other Certification Mechanisms in the Great Lakes Region: Lessons Learned and Best practices"*. Pp.33

¹⁵² Ibid. Pp.34

BGR's Certified Trading Chains (CTC)

Seeking to fill the void that other 3TG certification systems missed, the German Federal Institute for Geosciences and Natural Resources (BGR) established the Certified Trading Chains (CTC) scheme in 2008. They attempted to curate a scheme that works with mineral-rich governments and incorporates broader social, environmental and labour specific issues that many programs previously overlooked. Its main objective is to “certify responsible mining practice or ethical production and trade of minerals,”¹⁵³ emphasising process in the ASM capacity, focusing on five core principles:

1. Traceability & Transparency
2. Labour and Working Conditions
3. Security
4. Community Development
5. Environmental Protection

The CTC program seeks to ensure that information on mineral origins, quantities and payments to governments are openly available supporting the OECD Due Diligence Guidelines mentioned above. It was first piloted in Rwanda during 2009-2011 and extended to the DRC in 2009-2016,¹⁵⁴ working closely with national authorities in both countries as well as the ICGLR. The BGR have also been working on an analytical fingerprint (AFP) technology since 2006, which will provide the means for determining mineral ore origin of the 3Ts. While this cannot be used as a stand-alone mineral traceability system, it “serves to verify the integrity, and thus credibility”¹⁵⁵ of tagging.

Conflict-Free Smelter Program (CFS)

Another industry driven program was developed in 2009 by members of the Responsible Business Alliance (RBA), formerly known as the Electronic Industry Citizenship Coalition (EICC), and the Global e-Sustainability Initiative (GeSI). They intended to implement the Conflict-Free Smelter Program (CFS) and ensure compliance at the smelting and refining stage

¹⁵³ Bgr.bund.de. (n.d.). *BGR - Certified Trading Chains*.

¹⁵⁴ Ibid.

¹⁵⁵ Bgr.bund.de. (n.d.) *BGR - Introduction to the Analytical Fingerprint*.

of the mineral supply chain. This part of the chain is crucial, as it is the point at which the ores are all compiled and mixed with others mined all over the country, making the mineral origins indistinguishable thereafter. Furthermore, it is the first point after extraction where there are relatively few actors, enabling better oversight and regulation. Due to the development of other mineral governance frameworks following its implementation, the CFS program was restructured in 2017 to be more aligned with international standards such as the OECD. It was also renamed to ‘the Responsible Minerals Assurance Process’ (RMAP) and the changes are due to come into effects on 1 June 2018¹⁵⁶. The organization validates conformance of smelters and refiners via an independent third-party audit, ensuring that they meet the RMAP requirements. Currently “more than 360 companies from seven different industries participate in the RMI today,”¹⁵⁷ with the RMI publishing a list of approved smelters and refiners online, as well as providing freely available information and training tools for those wishing to become RMAP compliant.

Summary

Since the birth of the conflict mineral campaign and increasing international pressure to mediate, there have been numerous projects developed to tackle the governance of natural resources, as demonstrated above. Having evaluated a few of the key initiatives and legal mechanisms that have arisen locally, regionally and internationally, it is clear that the industry and global market is ready to accept some responsibility. As I have explored in this section, many stakeholders of the Congolese mineral supply chain are working on strategies to reduce ASM’s relationship to conflict in DRC, which they feel they have perpetuated due to previous negligence.

With the rise of foreign accountability and calls for more ethical business practices abroad, the international community has done a good job of raising awareness and rallying

¹⁵⁶ Responsiblemineralsinitiative.org. (n.d.). *Audit Cross-Recognition*.

¹⁵⁷ Responsiblemineralsinitiative.org. (n.d.). *Initiatives*.

together in attempts to help the plight of Congolese creuseurs. While a strong legal framework to govern natural resources in DRC is greatly needed, the international laws developed thus far, however, have seemingly fallen short. While developed with sound objectives, the Dodd-Frank and OECD guidelines are examples of premature international mediation, that misinterpreted the nature of the conflict in the DRC and failed to grasp the potential wider implications before coming into effect. Additionally, these policies were largely created without the involvement of the very people it was intended to protect, making the de facto embargo that resulted from the law extremely detrimental to the people of eastern DRC who relied on mining as their source of income. While local mining projects and attempts at formalisation have been ongoing in the DRC since ASM became such a key part of the country's livelihood, these strategies have not been well designed or implemented, as it is missing the realities of the trade and voice of civil society. The intercontinental legal mechanisms that were designed to negate this, instead hindered local progress as companies began withdrawing their operations in the Congo, sourcing their minerals elsewhere, proving that a mechanism to formalise the industry and disincentivise criminality was required.

Certification, standardization and other traceability schemes devised by the industry and companies in due diligence efforts, attempted to do just this; filling the gap that legal mechanisms could not address. Seeking to create a system by which companies could prove that the minerals they use are sourced ethically without any armed actor involvement, the various industries embarked on various attempts at formalising and monitoring the mineral trade in Congo. While they seem great on paper, in reality they have been seemingly difficult to separate from the criminalization of the sector. In some cases, particularly in sites where there is little authoritative oversight, these strategies have had the adverse effect, creating a smokescreen for illicit practices and making smuggling more attractive. There is a strong possibility that even if a mineral is certified conflict free, armed groups may still profit from it as bribery and extortion continue to transpire. Furthermore, the unbinding and ostensible voluntary nature of most of these initiatives

makes enforcement difficult, as it solely relies on a company's good faith and fear of a tarnished global reputation as punishment for non-compliance.

All the projects evaluated above, aim to tackle the various challenges posed by the informal ASM sector, but it is evident that they lack interaction and connectivity amongst themselves. It is encouraging seeing the sheer volume of organisations and intergovernmental agencies that have arisen from the topic, yet a stronger harmonisation between the various initiatives is required. Local voices and civil society engagement has been somewhat included, but the attempts at governance are still very fractured. Most of the above approaches have been initiated by a top-down strategy, yet there is a need to finance and provide resources to smaller NGO's and support ASM civil society groups, encouraging a more bottom-up approach. Only these local workers will really know the lay of the land, and given the right support, will have the potential to design and implement projects site-specific and more effectively. A dominant challenge to this and facing formalisation of the mineral trade, is a lack of political and institutional capacity. State weakness and absence of strong authority severely hinders the formalisation process, as it facilitates criminalisation and permits too many loopholes. Corruption amongst those in power, again perpetuates this, leading to a distrust in authority and disregard for the rule of law. When analysing the many programs implemented for better mineral governance in Congo, the complicated, informal nature of ASM makes it is clear that a stronger and more unified local, regional, international alliance is required, paired with state-building programs. Isolated attempts to formalise the DRC mineral industry, without local authority or civil society involvement is futile and as illustrated will make it difficult to achieve the desired outcome.

Conclusion

The conflict in the Democratic Republic of the Congo, as examined in this thesis, has proven to be a very nuanced and complex affair. It has persevered through several decades, manipulated by various leaderships and undergone numerous shifts to those involved and its very core. Contrary to popular belief and western advocacy efforts, it can be now determined that while Congo's mineral wealth once had a role in the instability, it does not currently lie at the heart of the ongoing violence. The natural resource came to importance during Congo's second war, which was driven by political motivations, but the guise of insecurity enabled rebels to maintain control and profit. Yet, despite transitioning from a war-riddled country towards peace and democracy, instability in the region still persists. This leads me back to my original research question; why is it that despite all the international, regional and domestic measures that have arisen to tackle the informalisation of DRC's mineral trade, illicit extraction and armed actor involvement is still apparent throughout the industry? As my research has presented, there is no singular answer. But I have uncovered an array of overarching weaknesses and limitations to those initiatives already in place, which has hindered its overall effectiveness on the ground.

The first of which, has to do with the mislabelling of the fundamental cause of the instability in the DRC. The "politics of natural resources were once determined by corporations seeking profits and governments seeking taxes,"¹⁵⁸ but this has now transitioned into an international approach via an ethically driven framework. We have the shift in collective consciousness and refocusing of ideology, to highlight the importance of human rights issues and strong resource governance to thank for this increased attention on the Congo. While advocacy efforts compiled by The Enough Project and Global Witness were effective in bringing the mining issue in Congo to centre attention, they have been somewhat misleading and one-sided in their approach. Having focused solely on the negative side of artisanal mining, has given policy

¹⁵⁸ Nest, M. (2011). *Coltan*. Cambridge: Polity. Pp.105

makers and the global audience an incomplete picture of the real problem in the DRC and why conflict ensues. Many years after the formal end of Congo's war, violence and conflict is still prevalent. The international narrative generally disregards the pockets of local hostilities due to ethnic conflicts, land disputes and issues with jurisdiction, which have been a key source of instability for many years. These local cleavages when left unaddressed have had the capacity to develop into regional warfare, and continuing to neglect them will only allow them to fester and disrupt any future peacebuilding efforts. This case causes us to reevaluate the role of global activism in pushing for policy change, as the consequential legal mechanisms and industry driven programs developed, negatively impacted the very people it wished to protect.

Secondly, with the nuanced and multifaceted nature of the conflict in the DRC, it is now understood that local voices were largely left out of the debate, as international actors took it upon themselves to generate a solution. The vast majority of international and regional approaches to formalising ASM have been developed with little to no input from the Congolese community, which has caused them to have optimistic expectations on their adoption and typically miss the realities of the trade. This can be especially seen with the creation and implementation of America's Dodd-Frank Law, which in hindsight has proven to be prematurely executed without fully comprehending all the potential effects on DRC. The legislation is widely criticised for its limited definition, unbinding nature and there is still a question of accountability, as the only punishment for noncompliance is a tarnished company reputation. The tedious rules on companies and leniency of the law, caused many of them to simply source their minerals elsewhere creating a de facto boycott, which had severe consequences for the ill prepared creseurs, pushing the trade deeper underground.

Furthermore, what is truly overwhelming when we look at the various strategies implemented to tackle the formalization of Congo's mining sector, is that the majority of them are top-down approaches. These strategies have been moulded by governments; national, regional, international; mining conglomerates; international electronic, technology companies;

each with their own political agenda and set of stakeholders to answer to. This places them in a constant conflict of interest, as in pursuing their own individual desires, the needs of the miners and local mining communities for them are secondary. Therefore, the problem becomes not one of “the unwillingness of the miners, but rather the inappropriateness of the policy measures to their situations,”¹⁵⁹ which can only be rectified if they are included in strategy development. The existing regulations are condemned for being too narrow and technical, overlooking the broader issues and providing very little incentives for miners and traders to join the formalisation project. There is a complex web of socio-economic and political issues at the heart of Congo’s natural resource sector and hence it is clear that an “externally imposed formalization process will not work.”¹⁶⁰ Nevertheless, due to the interconnectedness of Congo’s mineral industry, resource governance cannot be left as a single state problem. As this paper has highlighted, Congo’s neighbours are very much involved and complicit in the illegal smuggling of minerals. Hence, a unified and streamlined regional response is required, with the cooperation and commitment of the surrounding nations.

While a holistic and harmonised international, regional and domestic approach is required for effective resource management in the DRC, there are still internal struggles which left un confronted will greatly obstruct their relevant success. The biggest barrier to Congo’s ASM formalisation and other supply chain initiatives, is its own state weakness and inadequacy of its infrastructure. The absence of a strong state authority and rule of law, has stemmed from Mobutu’s reign, who over the years redirected the state’s resources away from public establishments towards his personal enrichment. His leadership encouraged and fostered an air of corruption, which seeped into many of the structures of governance and has remained there ever since. In the most recent corruptions perceptions rankings, the DRC scored a mere 21,

¹⁵⁹ Geenen, S. (2012). A dangerous bet: The challenges of formalizing artisanal mining in the Democratic Republic of Congo. *Resources Policy*, [online] 37(3), Pp.329

¹⁶⁰ Ibid. Pp.326

ranking 161st worldwide¹⁶¹. This has greatly impacted the mindset of current ruling elites and also the political agendas pursued, as those with affiliations to natural resource companies, due to the potential for high rewards, will have strong incentives to govern in a manner benefitting themselves. Despite transitioning towards democracy, there is little state accountability, which hampers the progress of the many initiatives to stop armed actor involvement in mineral extraction. As stated by Cuvelier et al¹⁶², the illegal natural resource exploitation are generally by-products of frail establishments, which is apparent for the case of Congo, enabling the industry to succumb to militarisation. The ineffective governance has kept the economy weak, vulnerable to external shocks and is its greatest barrier to growth and stability.

The purpose of this study set out to make a theoretical contribution to the studies of the resource curse. What I have uncovered while examining the situation in the Congo is that the curse is in fact originating from localised cleavages and aggravations, rather than the abundance of the minerals themselves; a resource curse from below. Friction between varying ethnic groups and clashes between chiefs for land rights are the key factors maintaining a level of violence in the DRC. While the international, regional and domestic strategies to formalise the mineral trade must be coherent and coordinated, they must first ensure that the climate of the DRC is stable to guarantee their longevity. Until these grassroot disagreements are given priority and are able to reach an understanding, peace cannot be expected to be achieved or sustained in the Congo.

Recommendations

One of the big lessons learned from all these individual initiatives is that “the linkages between natural resources, conflict and wider governance and human rights issues should be addressed simultaneously for a better impact and outcome”. The fragmentation of the various initiatives in nature and applicability is evidence that a uniform strategy is required. Attempting

¹⁶¹ Transparency.org. (2018). *Corruption Perceptions Index 2017*.

¹⁶² Cuvelier, J., Vlassenroot, K. and Olin, N. (2014). Resources, conflict and governance: A critical review. *The Extractive Industries and Society*

to tackle all the issues separately will not be as effective, as they all remain interlinked and rely on one another for successfulness. The various strategies currently in place to govern Congo's mineral wealth have largely been developed independently by international actors and industry experts, without liaising with local specialists. They have not been as effective as required due to poor infrastructure, lack of state capacity and political will. Drawing from the limitations to existing approaches as uncovered by my research, this section aims to present some recommendations for current initiatives and advice aiming to enable the DRC to be more receptive to future endeavours on natural resource governance.

Local

Strengthen Governmental Structures

First and foremost, it is clear that the fragile institutional capacity of Congo's government is a great impediment to any strategy seeking to be operational in the nation. There should be increased emphasis placed on re-establishing trust in Congo's governance, strengthening the current governing bodies and rule of law, with protocols in place to hold those in power accountable. Policies and regulations are more likely to be adhered to and followed, when members of the public have confidence that their leaders are acting in their best interest. This could be achieved by demilitarisation of mining sites, as well as increasing governmental and bureaucratic transparency, which is likely to restore faith in political establishments. State leaders and governing elites should also seek to gain trust and respect from their constituents, which could be achieved by declaring or passing laws requiring them to relinquishing their affiliations to the mining sector, demonstrating that there are no longer ulterior motives in policy discussions.

The present institutions in the DRC are not equipped to handle and enforce the law effectively throughout the entire country, therefore smaller branches of authority predominantly scattered throughout mining areas would be beneficial in restoring order and discouraging illicit trading of minerals. In order for these to be respected and effective, corruptive practices such as

bribes should be closely monitored and punished. Reliable and trustworthy groups of authority with high regard for the rule of law, should be positioned along key trade routes and along the border to deter any smuggling or rebel involvement in mining activities.

Address root causes of instability

The Congolese government should also divert resources to understanding and remedying the underlying causes of instability, which has historically been overlooked. Establishing provincial organisations or working with local NGO's to promote community engagement and peacebuilding campaigns to alleviate ethnic tensions, especially between the Banyarwanda and Hunde groups, could be one way to lower hostilities in the local environment. Additionally, land rights and territorial distinctions should be carefully examined and appropriated in conjunction with local chiefs and settlements. Land is extremely valuable and important in Congo, and therefore it should be delicately negotiated and divided, as to avoid future disagreements.

Empower Miners

ASM is a highly vulnerable trade and therefore, there is a need for more miner protections and safeguards to be implemented. As Greenen notes, “formalization risks to confirm and reinforce the rights of the stronger parties”¹⁶³, which stresses the need for unionization of the miners themselves in order to collectively defend their own rights, bargain for policy changes and have representation in policy discussions. Information sharing and granting free access to daily mineral prices and mineral ore content will help miners from being taken advantage of and should guarantee that they receive fair prices for their commodities.

Reevaluate and implement strategies with local input

In the context of mining regulation, Kabila's administration should revise the mining codes to reflect the evolving realities. As aforementioned, the authorities should create more ZEA mining zones and form multiple smaller branches of the relevant bodies closer to the mineral

¹⁶³ Geenen, S. (2012). A dangerous bet: The challenges of formalizing artisanal mining in the Democratic Republic of Congo. *Resources Policy*, [online] 37(3), Pp.329

deposits, regulating the informal and unauthorised sites, as well as making it easier for miners to obtain required permits and information. This would help establish some support to the local creuseurs and allows state oversight which should protect miners from environmental dangers and deter child labour. To tackle child labour, the state has an obligation to make education free, compulsory and easily accessible, which will limit the volume of children available to mine. Moreover, there should be investment made in developing other alternative livelihood methods, to avoid overmining, economic dependency on its natural resource and offer diversification.

A strong foundation, increased faith and respect in governing institutions are the minimum requirements in the local context for any further policies to be effective. While regional and international mediation in ASM could be advantageous, domestic and local capacity needs to first be expanded, intensified and supported.

Regional

Harmonisation of laws and creation of a regional oversight committee

The mineral market and trade is not confined just to the DRC, as the porous borders allows many of the surrounding nations to actively participate and profit from the sale of Congo's resources. This is why in order to be effectual, the "multifaceted crisis in the DRC requires coordination within the region"¹⁶⁴. Harmonisation of the laws and stipulations across the great lakes region is pivotal for governing success, as it makes it clear that the countries involved are all committed to stopping illegal trade and are responsible to enforce the appropriate measures within their own borders. An alliance and streamlined approach, makes coordination easier and should be reinforced with a regional oversight committee separate from each nation's government, which can facilitate intercontinental dialogue, synchronisation, evaluate and hold accountable each member's strategy implementation.

International

Support Congo's governing structures

¹⁶⁴ Ayogu, M. and Lewis, Z. (2011). *Conflict Minerals: An Assessment of the Dodd-Frank Act*.

While restructuring and strengthening Congo's public institutions are a domestic issue, international pressure could be strategically placed on Congo's current governing elites to execute these. International organisations and donors need to be more aware and responsible for their donations and how it impacts the Congo state. They need ensure that strategies do not make the country reliant on their aid and encourage the state to put its citizens above political and personal motivations. A possible method of ensuring this could be to make political aid contingent on political reforms, with regular outside audits on fulfilment. Donor institutions could also use their influence to help more legitimate and responsible leaders rise to the top and be trusted to take control of state resources for greater good.

Collaborate with local NGO's and grassroots organisations to develop enforceable traceability mechanisms

The international community and various industries with operations in the DRC have been very effective in assuming responsibility on their practices abroad. They have adopted strategies that holds them morally, political and legally accountable and have sought to develop ways in which their activities can be ethically conducted. In response to this, there has been increased focus on establishing supply-side due diligence and tracing schemes for the 3TGs, yet they have been mainly conducted without the input of local knowledge. As a result, the laws and various formalising initiatives have generally followed a top-down approach and failed at cutting off armed involvement, subjecting the nation to an array of unintended negative consequences. From my research, it seems evident that these foreign projects would benefit from collaborating with local NGO's and grassroots organisations to create more bottom-up management schemes. Partnering with local specialists not only would benefit the local economy, but it would also allow global actors to gain valuable insight into the truths of the trade, generating a more targeted operational response.

Evaluate and reorient current legislations and initiatives

The current legislations and initiatives are widely criticised for being too narrow which has impacted its overall value. While there are current talks of amendments and repeals to these, the laws are limited in its application and scope. Since Dodd Frank's creation, the importance of cobalt has risen dramatically and hence there is a need for it to be included as a conflict mineral. Furthermore, the due diligence mechanisms are nonbinding and based mainly on the company's fear of receiving a tainted status. This in itself is not enough to influence businesses into action and to drastically change or alter their operations towards a more ethical framework. There is a need for credible sanctions and financial punishments for non-compliance, which will create incentives for following the rules.

Concluding Remarks

The issue of conflict minerals is multidimensional and highly intricate and therefore, a nuanced approach is best required to alleviate some of the local struggles. Due to the multiple interacting factors and actors, a multi-stakeholder approach and a process that engages surrounding governments, industry, civil society and the international bodies such as the UN is strongly required. With the huge advancement of technological development over the last few years, the exponential rise in demand for electric cars and the growth in demand for ethically sourced products, it is clear that Congo's mining industry is only going to grow in its importance. It is therefore imperative that policy makers acknowledge the complexity surrounding Congo's ASM and work to include equal representation of all relevant parties in future strategy development. Congo's mineral wealth can and should be harnessed for the good of the nation, not treated like a curse.

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