



Conflict Minerals Regulation: Mapping International Initiatives and Challenges Ahead

Just Castillo Iglesias
Osaka University, Japan

Abstract

Recent years have seen the development of a vast array of regulatory frameworks, codes of conduct and other regimes aiming at regulating international trade in so-called ‘conflict minerals’, mostly originating from the Democratic Republic of Congo (DRC). National governments, international institutions and industry have contributed to a substantial development of standards that, however, appear to be built on an inadequate understanding of the causes that link conflict and minerals. This paper reviews the main existing initiatives from the perspective of their goals, scope and shortcomings, and contrasts them with the criticisms voiced by Congolese and international experts who are better in tune with the local reality. With this, this paper aims to discuss the fact that the current focus placed on perfecting existing regimes is carried out at the margin of local stakeholders, which renders existing initiatives inefficient at addressing the problem of conflict minerals and have perverse side effects for the local mining communities.

Why regulating conflict minerals?

The so-called 3TG minerals found in areas of instability in the Democratic Republic of Congo (DRC) – tantalum, tin and tungsten and gold – are widely classified as conflict minerals. This classification is due to the links identified between the extraction of these minerals and the existence of armed conflict. An important share of the global production, at least in the case of tantalum, is believed to come from the conflict-ridden Democratic Republic of Congo (DRC), although numbers regarding this proportion fluctuate, and seem to be at times lacking in credibility (Arimatsu & Mistry 2012: 6-7)¹.

The importance of these minerals in the manufacture of consumer electronics such as laptops and smartphones has kept the demand for these minerals high, while at the same time it has contributed to spreading the view that it is necessary to develop regulatory frameworks that

¹ Disputed figures suggest that the DRC and neighboring countries such as Angola and South Sudan constitute approximately 17 percent of the global production of tantalum, 4 percent of the global production of tin, 3 percent of tungsten and 2 percent of gold (Euractiv 2014). See also Nest (2011) for a discussion on the issue of tantalum in particular.

eliminate conflict-related conflict minerals from the international trading lines. This view in favour of international regulation does not only come from international organizations, including the UN Security Council, which has on repeated occasions linked the perpetuation of conflict in the DRC with the illegal exploitation of the country's mineral resources. In parallel, an increasingly conscious consumer base has motivated the electronics' industries to be willing to associate their brand names with responsible and clean trade.

This convergence of interests among international organizations, individual countries and the industry around the objective of regulating the source of conflict minerals has given place to myriad regulatory frameworks, and codes of conduct, among other initiative, at international, regional and domestic levels, aimed at minimizing the impact that the illegal trade in 3TG minerals has in perpetuating conflict in the central African region. Such initiatives mainly target informal or artisanal mining in the identified conflict regions, which is recognized as being a source of financing for local conflict stakeholders.

These existing initiatives, however ambitious and far-reaching, continue to present fundamental challenges that need to be addressed before becoming truly effective tools to mitigate conflict in central Africa. There are four major questions that need to be answered in this regard. Firstly, how can these initiatives ensure that the local communities in the affected areas can actually benefit from regulation of conflict minerals? Secondly, how can existing and future initiatives adapt to the reality faced on the ground, where mining and trade escape governmental control due to the difficulty of enforcing regulation in a conflict-ridden environment? Thirdly, how can it be ensured that the negative consequences or side effects of these initiatives are minimal? In other words, how do we ensure that these initiatives do not push local communities into worse conditions than they were experiencing prior to their existence. Fourthly, are these international efforts adequately addressing the root causes of the conflict mineral problem? That is, is the relationship between conflict minerals and the perpetuation of conflict assessed correctly?

International initiatives towards regulation

As mentioned above, myriad initiatives including regulatory frameworks, guidelines and codes of conduct have emerged in recent years, coming both from public authorities at international, regional and national levels, as well as from industry. The current section shall review the main existing initiatives, their scope and shortcomings.

Major initiatives by the international community

The United Nations

Despite not being the direct promoter of any of the existing regulations of the conflict minerals trade, the UN and particularly the UN Security Council, have played a primary role in shaping the debate and bringing focus to the issue. Some of the currently existing frameworks, particularly that of the Organisation for Economic Cooperation and Development (OECD), have been developed in conformity with the priorities identified by UN institutions, in particular

during the Second Congolese War (1998-2003) through the establishment of a panel of experts on illegal exploitation of natural resources in the DRC. Namely, the UN played a key role in tracing the complex relationship that exists between the perpetuation of conflict and the illicit trade and exploitation of minerals. Illicit mining and trade contributed to the continuation of conflict by financing criminal networks that were finding in this a way to circumvent the restrictions imposed internationally through embargos and other sanctions.

At the same time, the climate of insecurity and absence of law perpetrated by the conflict itself provided the optimal environment for these activities to flourish, thereby creating a vicious cycle of violence and conflict. Hence, the question of how to break this vicious cycle became a central one, particularly taking into account the added difficulty of implementing and enforcing legislation in the context of a failed state. In its 2003 report, the panel of experts appointed by the UN proposed a seemingly simple solution to that question: considering the difficulties of operating in the framework of the weak Congolese institutions, regulations would target individuals and companies along the mineral trading lines and aim at regulating their activities both in central Africa and throughout the manufacturing process. The remaining question of how to distinguish legitimate from illicit trade would be solved through observing compliance with the OECD's Guidelines for Multinational Enterprises (MNE), dating back to 1976 (OECD 2014b).

In 2004, the UN Security Council adopted resolution 1533 that, besides foreseeing sanctions for violations on the embargo, substituted the OECD's Guidelines with Congolese law provisions as the agreed reference benchmark. In 2008, at the same time that the Security Council extended its sanctions provisions to companies and individuals, further reports by the group of experts presented evidence that conflict minerals were being exported regularly through companies based in European countries, China, Russia, South Africa, the UAE and India, among others. It is in this context that the Security Council spoke of a 'Due Diligence' framework for the first time, as a framework encouraging the international community to combat the trade on minerals of unproven conflict-free sources. The UN Due Diligence guideless did not go further than encouraging states and relevant organizations to "raise awareness and take appropriate steps" to urge importers, industries and consumers of DRC minerals to exercise diligence in observing the recommendations. The five points contemplated in the UN Due Diligence guidelines are:

- 1) Strengthening company management systems
- 2) Identifying and assessing risk in the supply chain
- 3) Designing and implementing a strategy to respond to identified risks
- 4) Ensuring independent third-party audits
- 5) Publicly disclosing supply chain due diligence and findings.

Observing the above points, and taking into account that no direct enforcement mechanisms were introduced, one can argue that the role of the UN has been limited to raising awareness and presenting arguments proving the close relationship between conflict perpetuation and illicit minerals trade. However, it is also true that sanctions may be adopted against companies that do

not observe the requested diligence, giving the guidelines an indirect but enforceable legal effect. Nonetheless, one of the main criticisms that have been voiced against the UN Due Diligence is the little attention that has been dedicated to evaluating the potential unintended impact that its application could have on the local communities living in conflict areas who are dependent on the mining industry for their livelihoods. In this regard, and as it will be further discussed below, it remains to be seen how the implementation of the Due Diligence guidelines goes along with other objectives in areas such as development, human rights and peacebuilding.

The OECD

In recent years, the OECD has taken a central position when it comes to providing a regulatory framework for conflict minerals. For some observers, this centrality derives from the moment that the panel of experts designated by the UN referred to the OECD MNE Guidelines as the criteria to follow to evaluate the behaviour of businesses operating in conflict areas (Arimatsu & Mistry 2012: 20).

Despite the fact that the OECD guidelines are not directly legally binding, the organization has become an important normative source for conflict minerals regulation. As introduced above, the MNE Guidelines have provided a framework for evaluation since 1976² that, for businesses based in OECD Member States became indirectly mandatory at the risk of being reported to the domestic National Contact Point, the body in charge of observing and reporting compliance issues. The MNE Guidelines, have not, however, been exempt of controversy, particularly before 2011 and particularly in relation to how companies should engage with rebel and unrecognized authorities in conflict zones³.

In 2011, the OECD published both an update of the MNE Guidelines and the OECD Due Diligence Guidance⁴, which contained the organization's recommendations on how to secure responsible supply lines and trade chains for 3TG minerals. The OECD Due Diligence Guidelines target all trade originated by a company or an individual under the jurisdiction of any of its Member States and to non-OECD countries that have adhered to the regime. In addition to the Due Diligence Guidelines, the OECD has included an annex designating specific criteria for trade in tin, tantalum and tungsten, known as the TTT Supplement, and has extended the geographical scope of its action beyond the DRC with a broad definition of risk areas understood as "areas or political instability or repression, institutional weakness, insecurity, collapse of civil infrastructures and widespread violence" (OECD 2013).

The OECD Due Diligence Guidelines also consisted of five points, basically adding more detail to the UN ones. In this regard, both the UN and the OECD's guidelines pursue the basic objective of guiding the industry to avoid perpetrating conflict in those regions through their

² The guidelines have been reviewed five times since their first publication in 1976 (OECD 2014b).

³ Such as in the case of *Global Witness vs. Afrimex*. See also OECD Watch (2007).

⁴ Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (OECD 2012).

mining sources and to increase transparency along international mineral trading chains. Specifically, the OECD's five points are:

- 1) To establish strong company management systems. Companies should adopt their own policy regarding conflict minerals and a code of action to verify that their supply chains are not containing conflict minerals from the affected areas. Companies should also enable mechanisms to make verification possible throughout the supply chain, e.g. collaborating with partner companies along the supply chain to support due diligence. In addition, companies are encouraged to establish transparency control mechanisms over the supply chain, for example through the adoption of custody or traceability and transparency mechanisms. Whenever possible, companies should strengthen their engagement with suppliers in the direction of establishing a supply chain policy, incorporating due diligence requirements into contracts or agreements. According to the OECD, the adoption of such mechanisms should lead to industry-wide mechanisms of risk assessment allowing early warning.
- 2) To identify and assess risk along the supply chain. Companies should assess the potential risks and negative impacts of their adopted policy, particularly in the sense that the adoption of control mechanisms does not lead to abuses in the extraction stages of the supply chain or to direct or indirect support to non-state armed groups in the affected regions.
- 3) To design and implement strategies to respond to identified risks. Companies are requested to report regularly on findings of the supply chain assessment and adopt risk management plans, contemplating the possibility of adopting mechanisms to build leverage and increase influence on suppliers that do not verify the clean origin of minerals. Such mechanisms may range from temporary suspending trade with suppliers deemed risky in order to force them to mitigate risk and take steps towards effective prevention.
- 4) To carry out independent third-party audits of due diligence along the supply. Companies should identify points along their supply chain, which should be audited by independent parties in a verifiable manner.
- 5) To report on supply chain due diligence. Companies are required to report publicly on their supply chain due diligence practices, thereby creating the need to expand their corporate responsibility policies (OECD 2012: 17-19).

Hence, under both the UN and the OECD guidelines, companies are responsible for the identification of the origin of the minerals they buy and make an assessment of the conditions throughout its supply chains, excluding minerals of a doubtful origin or when there is a certainty that its trade could benefit armed or criminal groups.

The guidelines are intended to be checked at different stages of the supply chain, with the aim of ensuring a continuous revision of compliance: so-called 'upstream' companies, i.e. from the mine to the smelters and refiners, are in charge of keeping the minerals in custody and to enforce traceability schemes, being required to identify risk-prone locations and to constantly perform on-the-ground reviews in these areas. On the other hand, 'downstream' companies, i.e.

from smelters and refiners to the manufacturers and final retailers, are in charge of reviewing due diligence in the supply chain. Both steps together are meant to ensure a solid and credible scheme of custody. Nevertheless, this level of detail observed in the guidelines rapidly gave origin to one of its main criticisms: compliance necessarily demands the allocation of resources, something that the smaller enterprises and especially the local ones may find considerable difficulties in achieving. Hence, as with the case of the UN guidelines, the OECD's Due Diligence scheme carries the associated risk of excluding local businesses and producing adverse impacts on the local communities. These negative potentialities are recognized by the OECD, who insists that the guidelines are an adaptive and in-the-making framework and that concerted efforts will be needed in order to ensure that the measures to be taken are not excessively burdensome on the local business that operate largely in an informal setting (Arimatsu & Mistry 2012: 22; OECD 2012: 17).

United States' Dodd-Frank Act

After the US Congress failed to pass the Congo Conflict Minerals Act in 2009, which targeted electronics manufacturers to prove conflict-free sources in their used minerals, similar provisions were introduced in section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which was passed in July 2011.

The main aim of section 1502 of this Act is, similar to the previous ones, to prevent the continuation of conflict in the DRC by providing some mechanisms to ensure that minerals trade does not serve as a funding source for armed groups in the region. The Dodd-Frank Act regulates trade in columbite-tantalite (coltan), cassiterite, gold and wolframite, as well as their derivatives. Under the provisions of this law, all companies reporting to the Securities and Exchange Commission⁵ must report on an annual basis if any quantity of the designated minerals has been sourced from the DRC or a neighbouring country⁶. This means that companies are required to perform verifications of the origin of the minerals they use, which must come from an independent auditor, and produce a disclosure report that must be publicly available. Such annual reports must also include an account the efforts adopted to determine the origin of the minerals, which must follow the guidelines of an internationally agreed framework, such as the OECD Due Diligence guidelines. According to the audit results, companies can label their products as 'DRC conflict free' in the cases where this is verifiable, although the Act provides an adaptation period of two years, and four years for SMEs, for those companies that are unable to verify the origin of the minerals they used.

The final version of the Act complements and is designed to work together with the OECD's Due Diligence guidelines. Despite this, and in contrast to the previously reviewed frameworks, there are two main new requirements in the Dodd-Frank Act. Firstly, there is a requirement to publish the audit reports and secondly, there is a labelling requirement. For some observers,

⁵ Companies registered on the US stock market.

⁶ The Dodd-Frank Act provisions also apply to nine adjoining countries: Angola, Burundi, Central African Republic, the Republic of Congo, Rwanda, Sudan, Tanzania, Uganda and Zambia.

these two new requirements are additional measures of pressure on companies – in order to fulfil the requirements of the Act, full compliance for their business partners down the supply chain is also a necessity.

The Dodd-Frank Act has also been the object of criticism for similar reasons as the two previous frameworks. Stakeholders in central Africa feared that the difficulty of determining without any margin of doubt that a mineral is conflict-free according to the labelling requirements, would provide sufficient motivation for companies to source the said minerals from outside of the region. This, in turn, could carry the negative consequence of a *de facto* embargo on the region's resources, something that according to some direct observers in Congo, has been happening (Drajem et al. 2011).

EU

The European Union (EU) has also shown interest in developing its own conflict minerals scheme. In contrast to the American Dodd-Frank Act, the EU framework would remain of voluntary application. The former trade commissioner De Gucht formally made the proposal in February 2014, which contains provisions to regulate trade in the 3TG minerals, although its scope of application may also extend to conflict-prone regions outside of Africa, such as Myanmar and Afghanistan.

To date, the EU's initiative remains a proposal in draft stage. According to some sources, lobbying by large German extraction firms has been the reason behind the delays in the EU's proposal, which allegedly should have been started around mid-2013 (Euractiv 2013). Nevertheless, the complex EU mechanisms involved in adopting legislation certainly suggest that the final transformation of this proposal into a firm scheme will take long time given that the Commission's proposal still would need to be approved by the majority of the European Parliament and afterwards incorporated into the domestic legal system of each of the 28 Member States. In practical terms, however, the adoption of an EU framework could do little more than adding a few elements to the already existing schemes. Taking into account that the EU is already a member of international initiatives such as the Kimberley Process⁷ and that most of its Member States are either OECD Members or non-Member signatory parties of the Due Diligence Guidelines, the introduction of an EU scheme could only be significant if it foresaw the introduction of labelling requirements or some sort of certification scheme to regulate the import of minerals from conflict-prone areas. According to EU sources, however, only a scheme of voluntary compliance is currently being envisioned (Euractiv 2014). In addition, it has been reported that a substantial part of the debate in the EU has focused on the arguably excessive implementation costs of the Dodd-Frank Act provisions and on how a potential EU framework could avoid repeating mistakes such as the *de facto* embargo on DRC minerals whose origin is difficult to verify.

⁷ The Kimberley Process targets the extraction and trade of conflict diamonds. It has become a known framework due to its initiative in 2000 to create an internationally recognized certification scheme which was supported by the United Nations General Assembly (Kimberley Process 2014).

China

China remains a relatively new player with regards to the issue of conflict minerals, as with many other aspects of resource-related investments in Africa. However, due to its important and rapidly increasing share as an importer of raw materials from Africa, China has quickly become a relevant stakeholder. Considering the importance of African minerals and resources for Chinese industry, and the country's position as a manufacturing hub for many multinational corporations, being able to count China as a stakeholder in conflict minerals regulation is considered by some observers as a significant milestone towards the universalization of due diligence practices (Global Witness 2014: 4; OECD 2014a).

In October 2014, China's Chamber of Commerce for Minerals, Metals and Chemicals Importers and Exporters (CCC MC), a government-affiliated entity in the country, published China's first guidelines for mining and mineral trading companies operating overseas. The guidelines adopted by the CCC MC were drafted in cooperation with Germany's Development Agency (GTZ-GIZ) and the NGO Global Witness. According to Global Witness, the guidelines should become a significant turning point in helping Chinese companies elaborate corporate responsibility strategies measurable to international standards, contributing to ensure that Chinese sourcing does not entail risks of social instability and conflict in target locations such as the DRC. In addition, the adoption of the Chinese guidelines came together with the signature of a memorandum of understanding between the CCC MC and the OECD in order to cooperate with technical implementation of the due diligence guidelines (OECD 2014a).

The CCC MC guidelines are built upon the normative basis provided by previously existing schemes such as UN Security Council recommendations and the OECD Due Diligence guidelines (Brautigam 2014), something which is reflected in the five points enumerated by the CCC MC. Under the guidelines, Chinese companies are expected:

- 1) To enable company management systems and to use them to assess whether minerals used or traded originated from conflict affected and/or high-risk areas,
- 2) To identify and assess risks in the supply chain,
- 3) To design and implement a strategy to respond to identified risks,
- 4) To commission independent third-party audits of due diligence practices on an annual basis,
- 5) To report publicly on supply chain due diligence on an annual basis.

Despite the relevance of China's guideline adoption, both international and Chinese experts expect that the speed of implementation will be slow, and that divergences of interpretation of international standards are likely to exist (Davis 2014). Nonetheless, as a non-OECD country, the existence of a framework to link China-bound trade with the Due Diligence framework should be regarded as a positive development.

DRC Government Due Diligence Law (2012)

In May 2012, the DRC government passed a national law requiring that companies trading within its territory certified that they were not purchasing conflict minerals. The predecessor of this law was set in September 2011 through a government directive urging international corporations operating in the DRC to implement the OECD guidelines for supply-chain due diligence (Global Witness 2012).

Despite the inherent difficulties in ensuring that the law is being implemented in the high risk-zones, given that the affected mining sites are mostly artisanal and operate in regions where law enforcement capacities are often very weak or non-existent, this piece of legislation adopted by the DRC government is also an important step in ensuring that international due diligence standards become of mandatory implementation. At the very least, the legislation should become an additional deterrent to companies not implementing due diligence in their supply chains, that could face sanctions for not doing so under DRC law.

One example of such a deterrent effect can be seen in the case of two Chinese mineral trading companies, TTT Mining⁸ and Huaying Trading Company, which were suspended by the DRC government in May 2012 after accusations of buying minerals without performing checks on their supply chains. The UN Group of Experts on the DRC later confirmed that the activities of the two Chinese companies had been indirectly financing armed groups and criminal networks in the east of the country. According to some international observers, including Global Witness, this suspension had a significant impact in the adoption of China's CCCMC guidelines reviewed above (Global Witness 2012; 2014: 13). However, one of the major challenges with regard to the DRC Law remains the lack of enforcing mechanisms in the risk areas of the country where the presence of the State is weak and corruption is widespread.

Other regimes and initiatives

In addition to the international conduct guidelines and regulatory frameworks reviewed above, there are myriad additional regimes, codes of conduct and industry-led indicatives that build up the normative puzzle addressing the issue of conflict minerals. Among the most relevant, it is worthy to note the following:

The UN Global Compact

Established in 2000, the United Nations Global Compact is a UN initiative asking corporations and business from all over the globe to adopt corporate policies of social responsibility and sustainability and to report on their implementation. Its guidelines are set in the form of ten principles covering issues such as working and human rights, environmental protection, development and the fight against corruption (UN Global Compact 2014). As such, the initiative is not limited to sustainable and conflict-free mineral supply chains, but this is one of its coverage areas.

⁸ Listed as CCM Mining.

As such, the UN Global Compact is not an enforceable regulatory framework but rather a forum of discussion that gathers representatives from governments and international institutions, labour organizations and other civil society organizations as well as businesses.

Industry-driven initiatives

One of the major existing industry-driven initiatives existing today is known as the Electronic Industry Citizenship Coalition (EICC). The EICC was initiated in 2008 and today comprises about one hundred electronics companies including the largest consumer electronic producers in the world (EICC 2014). The initiative seeks to set an industry-wide code of conduct that is of mandatory application by all of its members.

In relation to conflict minerals, the EICC's approach consists of using intermediate stages in the supply chain, predominantly smelters, in order to enforce due diligence control in the upstream chain, i.e. from mines to smelters. The initiative, materialized under the name of the Conflict-Free Smelter Program (CFSP), is based on the premise that imposing strict regulations on the intermediary stages substantially reduces the number of stakeholders, thereby making it easier to implement audit and revision procedures. According to the EICC, there are fewer than 500 smelters worldwide that can process raw 3TG minerals into metals usable by the industry. In this way, CFSP claims to ensure compliance through the elaboration of auditing guidelines that third-party auditors must implement before giving a green light to a smelter or refiner (CFSI 2014). This approach, however, has been met with harsh criticism by experts in central Africa, who argue that auditing smelters outside of the DRC does not guarantee the conflict-free origin of minerals in a reliable manner (see below).

Another relevant industry-led initiative, in development since 2008 by the UK's tin industry association, is the International Tin Supply Chain Initiative, or iTSCi project. ITSCi is a traceability scheme (bagging and tagging) created to be used by upstream companies, i.e. mining to traders and smelters. ITSCi's aim is to insure that mineral extraction and handling complies with the OECD Due Diligence and UN recommendations (ITRI 2014).

In addition to these, there are other, rather minor, initiatives that have made conflict-free mineral guarantee a marketing point. This is the case with the Netherlands-based 'Fairphone', a company that has developed a smartphone targeting a niche of consumers that are concerned about the social and environmental sustainability of the products they purchase. It produces and sells a smartphone containing certain minerals that are sourced from conflict-free mines in the DRC. Despite the small size of the company, it has implemented direct supervision along the whole supply chain (Fairphone 2014).

Critical views from central Africa: Are existing initiatives tackling the problem correctly?

In September 2014, after some debate within the DRC with regard to the issue of conflict minerals and internationally adopted initiatives, around 70 Congolese and international experts

and observers collectively signed an open letter addressed to governments, companies, NGOs and other stakeholders across the international community (Various 2014).

On the one hand, the open letter acknowledges the ‘success’ of international endeavours in terms of giving shape to a set of policies and codes of conduct. At the same time, however, the letter strongly criticizes international conflict minerals discourse and regimes for “fundamentally misunderstanding the relationship between minerals and conflict in the eastern DRC” (Various 2014). According to the signatories, while it is true that conflict perpetuation and so-called conflict minerals are interrelated, the international community fails to understand that minerals are not the cause of the conflict. Instead, they estimate that only about 8 percent of the country’s conflicts are rooted in mineral extraction. Mineral exploitation does become a source of funding to carry out military operations, but these are linked to conflicts that have a different, more structural nature, involving issues such as land ownership, citizenship, ethnicity and identity.

In addition, the signatories of the letter criticize the fact that the perspectives of few local stakeholders have been taken into account in the drafting of the existing international frameworks and regulations, leading to policy initiatives that do not reflect nor address properly the realities faced by local communities on the ground. As an example, the open letter cites the impossibility to perform regular audits or controls in artisanal mining sites spread over a territory twice the size of France in which the state neither has a strong presence nor the practical capacities to enforce the regulations. As a result of this, coupled with international regulations such as the Dodd-Frank Act, the signatories claim that corporations are incentivized to source in other places thereby imposing a *de facto* embargo on Congolese artisanal mines. This, in turn, has a negative impact on the living conditions of local miners which are pushed into more severe poverty due to international regulations that do not truthfully reflect their reality. This perverse impact, in addition, does not address the illicit funding of armed and criminal groups, who have adapted to the international pressure on conflict minerals by switching to alternative businesses such as charcoal, palm oil or drugs.

In relation to industry-led initiatives, the signatories of the letter have manifested their disagreement with schemes such as the ‘Conflict-Free Smelter Program’, offering criticism that shifting the auditing stage upstream to smelters, located outside of the DRC can easily lead to certifications issued while not actually reflecting the realities of production and handling. In this regard, the signatories of the letter are more inclined to support on-the-ground tagging schemes such as iTSCi, although they recognize that the costly implementation of such schemes is economically damaging to local miners, once again leading to the *de facto* exclusion of many of them from international markets.

With all these factors considered, what is the best way forward? As illustrated in the open letter, there is a strong disagreement in the DRC about the appropriateness of the current internationally-led schemes to achieve the goal of cleaning the country’s mineral sector from criminal groups seeking funds for their activities. In this regard, the signatory experts consider that alongside continued efforts to increase transparency in the mineral supply chains, a different approach should be adopted reflecting better the realities that are met on the ground. The open

letter contains five recommendations that, in view of the experts, should be adopted to make the existing regulations and frameworks more effective and eliminating its most pernicious side effects:

- 1) Improving consultation with local governments and communities before adopting further international initiatives. Congolese voices have not been taken sufficiently into account, and this has become a cause for the incapacity of the existing regimes and initiatives to tackle the problem of conflict minerals effectively.
- 2) Work towards achieving meaningful reform. According to Congolese experts, the processes of auditing should be aimed at truly achieving reform rather than serving as window-dressing for multinational companies. Hence, they recommend the regular auditing of both mines and smelters reducing red-tape and considering waivers where certification is impracticable, in order to avoid pushing local communities into more extreme conditions of poverty.
- 3) Create incentives towards better practice, extending transition periods when necessary and establishing short-term mechanisms to incentivize conflict actors to join conflict-free schemes.
- 4) Promote fair competition, allowing Congolese actors to gain leverage in increasing price schemes, enabling regimes that can support minimum wages in the local mining industry.
- 5) And finally, adopting a more holistic approach. Minerals are linked to conflict, but they are not necessarily its cause. In addition, experts call international stakeholders not to overlook in their initiatives the transformative potential of local artisanal mining as a means to push the communities out of conflict, rather than merely as a source of conflict. Issues such as access to credit, technology transfers and means to palliate environmental degradation and increase labour safety should be addressed by multinational corporations seeking to increase transparency in their supply chains, as these are necessary conditions to better business practices.

Conclusion: Challenges ahead

As exposed in the open letter signed by experts and observers, there are myriad challenges remaining to be addressed in the issue of conflict minerals. The case of conflict minerals is not an isolated one in the pool of international initiatives aimed at tackling peace and security issues in Africa but developed at the margin and without the input from local communities, authorities and experts. In fact, the open letter has become an important input in the conflict minerals debate since it poses the question of whether the concept of ‘conflict minerals’ itself is a debate constructed upon the fundamental misunderstanding of the local reality. Although that might be the case, the open letter provides a valuable input to both governmental/institutional and industry-led initiatives.

Re-shaping the multiple frameworks that currently exist in a way to incorporate the inputs given by the local experts does not appear to be an easy task given the bureaucratization that has

accompanied the implementation of existing regimes over several years and the inertia that this has generated. At the same time, it is likely that asking the industry to relax existing schemes of corporate responsibility, i.e. in the sense of incorporating waivers where necessary, will not be met with enthusiasm, particularly when such corporate policies become an important aspect in their branding and marketing policies.

In this regard, the main challenges seem to remain at the hands of governments and international institutions. With frameworks such as the OECD Due Diligence guidelines, broadly accepted by the international community as the *de facto* international standard to which many national schemes refer to, the creation of new frameworks seems to be the less desirable scenario. With the OECD Due Diligence already accepted as an internationally valid standard, the development of further regulatory frameworks could lead to a growing overlap of regimes and regulations, with the subsequent increase of bureaucracy; something which is precisely against the recommendations given by local experts. For relevant stakeholders such as the EU, currently working on the possibility of making its own regulatory framework, working in partnership with institutions like the OECD and engaging with local stakeholders towards improving the current guidelines and standards could be a better option than establishing a new regulatory framework.

On the issue of conflict minerals, as with other aspects of peace and security in Africa, the input from the local stakeholders cannot be overlooked when aiming at finding a viable and effective solution to eliminate the problem. Otherwise, as it has been seen, there is the risk of adopting policy options based on inadequate understanding of the root causes of a problem, risking the worsening of the living and economic conditions of those who make a living from artisanal mining in the conflict regions.

References

- Arimatsu, L., & Mistry, H. (2012) ‘Conflict Minerals: The Search for a Normative Framework’, *International Law Programme Paper Series ILPP2012/01*, Chatham House, <http://www.chathamhouse.org/sites/files/chathamhouse/public/Research/International%20Law/0912pparimatsu_mistry.pdf>, accessed 28 December 2014.
- Brautigam, D. (2014) ‘China and Conflict Minerals: Constructive Cooperation’, *China in Africa: The Real Story. Digging into the myths and realities*, 24 October. <<http://www.chinaafricarealstory.com/2014/10/china-and-conflict-minerals.html>>, accessed 15 January 2015.
- CFSI. (2014) ‘Conflict-Free Smelter Program’ <<http://www.conflictreesourcing.org/conflict-free-smelter-program/>>, accessed 28 December 2014.
- Davis, B. (2014) ‘Chinese Mining Group Sets Guidelines for Overseas Interaction’, *The New York Times*, 25 October, <<http://www.nytimes.com/2014/10/25/business/international/chinese-mining-group-sets-guidelines-for-overseas-interaction.html>>, accessed 28 December 2014.

- Drajem, M. et al. (2011) 'A Rule Aimed at Warlords Upends African Mines', *Bloomberg Businessweek Magazine*, 04 August, <<http://www.businessweek.com/magazine/a-rule-aimed-at-warlords-upends-african-mines-08042011.html>>, accessed 17 December 2014.
- EICC. (2014) 'Conflict Minerals' <<http://www.eiccoalition.org/initiatives/conflict-free-sourcing-initiative/>>, accessed 29 November 2014.
- Euractiv. (2013) 'EU conflict minerals law hangs in the balance', *Euractiv*, 18 November. <<http://www.euractiv.com/development-policy/eu-conflict-minerals-law-hangs-b-news-531698>>, accessed 28 December 2014.
- Euractiv. (2014) 'EU readies voluntary conflict minerals scheme', *Euractiv*, 6 February. <<http://www.euractiv.com/development-policy/eu-readies-voluntary-conflict-mi-news-533314>>, accessed 28 December 2014.
- Fairphone. (2014) 'About Fairphone' <<http://www.fairphone.com/about/>>, accessed 28 December 2014.
- Global Witness. (2012) 'Congo government enforces law to curb conflict mineral trade' <<http://www.globalwitness.org/library/congo-government-enforces-law-curb-conflict-mineral-trade>>, accessed 7 January 2015.
- Global Witness. (2014) *Tackling Conflict Minerals. How a new Chinese initiative can address companies risks*. London: Global Witness.
- ITRI. (2014) 'Conflict Mineral Framework' <https://www.itri.co.uk/index.php?option=com_zoo&task=item&item_id=2193&Itemid=191>, accessed 28 December 2014.
- Kimberley Process. (2014) 'The Kimberley Process Certification Scheme' <<http://www.kimberleyprocess.com/en/kp-participants-and-observers>>, accessed 5 December 2014.
- Nest, M. (2011) *Coltan*, Cambridge: Polity.
- OECD. (2012) *Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*, 2nd Ed., Paris: OECD.
- OECD. (2013) 'Upstream Implementation of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. Final Report on one-year pilot implementation of the Supplement on Tin, Tantalum, and Tungsten. January 2013' <<http://www.oecd.org/corporate/mne/DDguidanceTTTtpilotUpstreamJan2013.pdf>> accessed 28 December 2014.
- OECD. (2014a) 'China and OECD to co-operate on promoting the responsible sourcing of minerals' <<http://mneguidelines.oecd.org/china-oecd-cooperation-responsible-sourcing-of-minerals.htm>>, accessed 7 January 2015.
- OECD. (2014b) 'Guidelines for multinational enterprises' <<http://www.oecd.org/corporate/mne/>>, accessed 28 December 2014.
- OECD Watch. (2007) 'Global Witness vs. Afrimex' <http://oecdwatch.org/cases/Case_114>, accessed 29 November 2014.

UN Global Compact. (2014) 'United Nations Global Compact. The Ten Principles' <<https://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html>>, accessed 17 January 2015.

Various. (2014) 'Open Letter on Conflict Minerals in DRC', Pole Institute, <<http://www.pole-institute.org/sites/default/files/pdf-news/09092014-open-letter-final-and-list.pdf>>, accessed 7 October 2014.

Biographical Note

Just Castillo Iglesias holds a PhD in International Public Policy by the Osaka School of International Public Policy (OSIPP) of Osaka University. He is also a lecturer at the East Asian Studies program of the Open University of Catalonia.