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The project to end genocide and crimes against humanity

# Why a Certification Process for Conflict Minerals is Urgent

A View from North Kivu

John Prendergast, Fidel Bafilemba and Ashley Benner February 2011

**Editor's note:** The growing movement to bring a long overdue end to the crisis in eastern Congo is approaching a make-or-break decision point. The international architecture needed to bring transparency and accountability to the minerals trade in the Great Lakes region of Africa is taking shape in the form of U.S. legislation, a U.N. Security Council resolution, and an emerging norm for due diligence on purchasing minerals. These are enormous accomplishments, but unless these standards are accompanied by an international certification process with independent monitoring and enforceable penalties on the ground, as well as comprehensive reform of the Congolese Army, they will do little to end the conflict minerals trade in Congo or bring a measure of security and genuine economic opportunity to the lives of Congolese civilians.

This report, based on interviews conducted by John Prendergast and Fidel Bafilemba in North Kivu in November 2010, provides an overview of the extent to which the minerals trade from eastern Congo today remains dominated by a mafia network of military, political, and business interests in Congo, its neighbors, and within the supply chains that connect the mines to international markets. These actors have benefitted enormously from Congo's protracted, violent status quo and they are deeply threatened by the possibility of a shrinking market for their minerals. So it should come as no surprise that some of the fastest-moving efforts to trace and audit mineral supply chains are actually being driven by many of the same commercial actors and regional governments that have been indiscriminately purchasing Congolese minerals for years, as documented by U.N. investigators.

Going forward, there are significant conflicts of interest embedded in industry-driven traceability schemes or regional certification efforts owned wholly by the same governments that continue to have a stake in a tainted system. Because profit is the primary motivator for these actors, we believe they will engage in a peaceful minerals trade, if the benefits of complying with international standards outweigh the costs of continuing the violent status quo. Current in-region sourcing and regional certification systems do not meet those standards. Both businesses and governments should be involved in the development of a new certification system, but the current framework of allowing them to own it wholly will do almost nothing to transform the mineral trade from a driver of conflict to an enabler of peace.

Instead, the United States government and its allies, as well as responsible companies at the end of the supply chain with an interest in cleaning up the trade in critical raw materials, should partner with the region to help develop a certification process that includes robust checks and penalties needed to make sure that behavior actually changes. The international community needs to take a stake in how these measures are implemented, recognizing all of the challenges therein. Enough will soon be releasing a series of papers and briefings that detail our own approach to this vexing but crucial chapter in the road to a conflict-free Congo.

*—David Sullivan, Enough Research Director*

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## Walikale, Incorporated

In the context of the horrific atrocities perpetrated in eastern Congo, a large mineral deposit in the Walikale area of North Kivu has become an illustrative driver of political and security developments in the East. This past summer, the mass rape of over 300 women in Walikale was a shocking reminder of the humanitarian implications of the unregulated minerals trade in Congo, and the failure of the state to protect its citizens.<sup>1</sup> Until there is a certification system that takes the profits from illegally and violently extracted minerals out of the hands of the armed groups and begins to channel them toward security and economic opportunities for local communities, the incentive structure will remain biased towards impunity, conflict, and a predatory state.

The calculations of the main players in eastern Congo are influenced in large part by their attempts to access and control the extraction, taxation, transport, and trade of the minerals in Walikale and other places like it. This report is not intended to provide an in-depth analysis of all of the stakeholders in Walikale, but to outline the vast commercial enterprise that has had and continues to have disastrous effects on the people of eastern Congo.

A tantalum mine in North Kivu. Without an on-the-ground monitoring system, commanders continue to operate mines and export minerals today.



Mines in Walikale territory are particularly rich in tin ore (cassiterite) and tantalum ore (coltan), as well as gold, and are almost exclusively under the control of various armed groups, including the Democratic Forces for the Liberation of Rwanda, or FDLR, the Mai Mai Cheka militia, and units of the Congolese army, or FARDC. The commanders of these armed groups, who claim to be fighting each other to protect the interests of their respective ethnic groups, have become business partners in Walikale, earning millions of dollars per month from extracting, heavily taxing, transporting, and trading minerals. Militias representing the interests of Tutsi, Hutu, and other Congolese ethnic groups, especially the Mai Mai groups who claim to protect non-Rwandophone Congolese groups, that have previously fought now collaborate for the spoils of war.<sup>2</sup> Rwandan traders purchase minerals from the same armed group that helped perpetrate the Rwandan genocide. Congolese “civil defense” Mai Mai militias in the area get protection from the army while at the same time working directly with the rebel groups. Congolese army officers as high as the Deputy Army Commander personally control whole mines. As the United Nations Group of Experts report stated in November 2010, “Military involvement in Bisie [Walikale’s main mine] had become so institutionalized that a civilian... arrived recently from Maniema and purchased a weapon and a military uniform to facilitate his involvement in the trade.”<sup>3</sup> At the same time, all of the mining in Walikale is artisanal, rather than industrial, and carried out by thousands of miners, making organization, safety, and security nearly impossible to control.



Tantalum ore and gold. Up to \$1.3 billion worth of these minerals are exported from Congo yearly.

This huge commercial enterprise, which some Congolese have unofficially dubbed “Walikale, Incorporated,” is overseen for the most part by Congolese army officers. The United Nations reported last month that it had received credible evidence that an entire sector of the army in 2010 “was created for the explicit purpose of benefiting from the mineral trade. Its deployment follows the outlines of one of the Province’s main cassiterite and gold zones.”<sup>4</sup> The majority of these officers are part of the former Rwanda-backed rebel group CNDP, who, after having reached a deal with the Congolese government in 2009, have been subsumed into the national army. Although they now wear Congolese army insignia on their shoulders, they remain an autonomous cohesive unit within

the larger army with separate command structures. They have also resisted efforts to be redeployed outside the Kivus and have actually doubled their troop numbers over the past year from 5,200 to 11,000 soldiers. For example, the military sector set up to expressly control the minerals trade reports to ex-CNDP Col. Claude Mucho, who directed the recruitment of child soldiers between 2003 and 2009.<sup>5</sup>

This collection of high ranking armed officials acts as a kind of Board of Directors for Walikale, Inc., and has been “looting and burning entire villages and torturing and raping civilians in the course of their operations [in 2010],” according to local civilians reporting to the United Nations.<sup>6</sup> Mining in Walikale has led to competing chains of authority within the army, as different officers compete for control over mines and retreat from villages where they were sent to protect civilians. These personal rivalries render army reform, one of the most critical elements needed to help end the war, much more difficult.

CNDP officers have secured three-quarters of command posts and minerals operations in Walikale through several armed battles that have pushed the FDLR and Mai-Mai groups out of the area. At the same time they have struck unnatural alliances with elements of leadership of their long time enemies, the FDLR. That has been the case for ex-CNDP Lt. Col. Yusuf Mboneza, whose 212<sup>th</sup> FARDC brigade stood by while a Mai Mai militia allied with the FDLR raped over 300 women in Luvungi village in Walikale in the summer of 2010. In fact, internal disputes over which units could control the mineral trading routes in the area led the army to abandon its posts at Luvungi and the surrounding area of Mubi-Ndjingala, in order to move to mines.<sup>7</sup> Lt. Col. Mboneza’s troops reportedly vacated their positions repeatedly before Mai Mai attacks on mineral sites in Walikale in 2010. The head of the former CNDP and indicted war criminal, Bosco Ntaganda, has also involved himself in this alliance, rescuing Mboneza from arrest last year and partnering with him in minerals deals, despite his links to the Mai Mai Cheka militia and FDLR.<sup>8</sup> Army and CNDP officers also tax the FDLR’s minerals that transit through their areas of control, and Ntaganda remains deputy commander of the Amani Leo “peacekeeping” operations.

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### Proliferation and Fragmentation of Armed Groups

At the same time, there is also a proliferation and fragmentation of armed groups in eastern Congo. The Tutsi-dominated CNDP, which remains the most powerful military actor in the east, has it both ways: the CNDP was officially “integrated” into the FARDC in 2009 but in reality is in direct operational control of large areas of land and vast amounts of resources, maintaining its own command and control structure as a separate force within the government army. The CNDP is expanding its reach, from Beni in the northeastern Province Orientale to Fizi near the Burundi-Tanzania border. The core issue for the CNDP is the protection of Tutsi economic interests and refugee return. They are fragmented, but this factionalization is exaggerated.

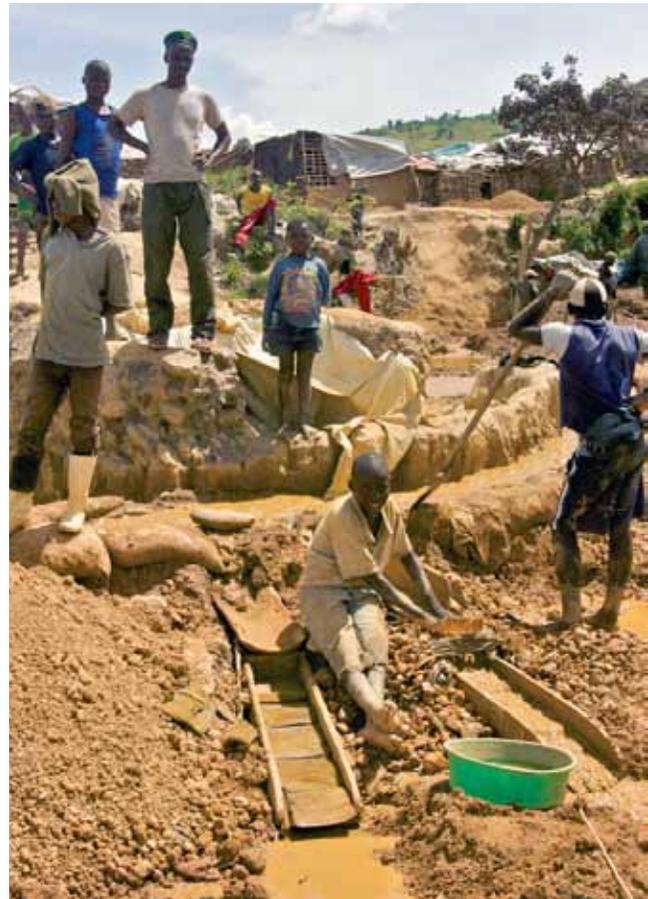


More troubling than intra-CNDP conflicts is the extent to which breakaway CNDP elements are aligning with other groups opposed to Rwanda, the CNDP's former sponsor. Ex-CNDP elements that remain loyal to their former leader Laurent Nkunda, including Colonel Emmanuel Nsengiyumva, as well Gadi Ngabo's forces have been reported to be part of the growing constellation of armed groups opposed to both Rwanda and the Government of Congo in the Kivus. This is also reported to include a number of Mai Mai groups and FDLR units, and is rumored to be connected to Rwandan dissidents Lieutenant General Faustin Kayumba Nyamwasa and Patrick Karegeye, whose activities are described below. These groups are based in Rutshuru territory, between Virunga National Park and Uganda's Bwindi Park, and are reportedly responsible for the attack on Virunga park rangers on January 24, 2011.

A CNDP checkpoint in North Kivu, where minerals traders are forced to pay bribes to armed commanders. Similar armed checkpoints exist in Walikale.

The Rwandan Hutu FDLR has been undergoing a political and military transition. However, the FDLR is still a powerful force, kept alive by the exploitable resources in eastern Congo and its ready supply of arms from past alliances and weapons deals with the Congolese army. The FDLR has suffered some losses to demobilization/reintegration efforts, with force numbers down to 3,500 fighters from an estimated 5,800 in 2007. However, the militia's command structures are largely in place, with few to no mid- or high-level defections. Moreover, it is heavily recruiting combatants in Masisi and Rutshuru in North Kivu, mostly child soldiers, and re-recruiting demobilized FDLR fighters.

The FDLR has been pushed back from fixed positions around bigger mines and has become more localized and connected to local allies, with some places the sites of major crimes against humanity. The period of the FDLR as a large army occupying huge areas was a short-term phenomenon, but it continues to survive, its command and control largely intact. The FDLR wants to morph into a new organization, recognizing that it is currently not an appealing “brand.” In fact, its links with the political leadership in Europe have weakened, as many fighters have become disillusioned with the European-based leaders who never see the battlefield. In recent years, FDLR commanders on the ground in Congo have been sending money to political leaders in Europe but getting little in return. The arrests of FDLR external leaders Straton Musoni, Ignace Murwanashyaka, and Callixte Mbarushimana in 2009 and 2010 in Germany and France have thus not had a crippling effect on the group. The armed FDLR commanders see themselves as a legitimate political opposition to Rwanda, despite the crimes they have been responsible for in Congo and Rwanda. Any deals they can do with General Nyamwasa or other Rwandan opposition serve their purposes. They want somehow to forge new political alliances, protect some of the veteran FDLR leaders, and create a new organization that distances itself from the FDLR’s sordid past. At the same time, the Rwandan army has been increasingly crossing the border in response to the growing anti-Rwandan coalition.



Militias at the mines. A CNDP commander stands over young miners as they work.

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## Regional “Shareholders”: Rwanda and Uganda

### Rwanda

The role of Rwanda in Walikale, Inc. is complicated and difficult to document but undeniable.<sup>9</sup> Moreover, recent military developments indicate that this role may escalate in the coming months. Although the Government of Rwanda privatized the military-industrial complex that systematically extracted tantalum ore and other resources from eastern Congo during their occupation of that region from 1998-2003, private business interests with high-level connections to the government remain heavily invested in this trade.<sup>10</sup> Rwandan business interests work directly with CNDP and FARDC units to purchase minerals in Walikale, using their military protection to avoid taxation. For example, a Rwandan trader and former bodyguard to a renegade Congolese Army commander is the largest buyer of tin ore from Bisie and, according to the U.N. Group of Experts, he works directly with Bosco Ntaganda and the Congolese army to get around all official government taxes.<sup>11</sup> Rwanda needs Congo economically, given that its plans for future economic development rely on mineral profits from the Congo. Rwanda is determined to control a share of the minerals supply chain, in order to ensure that a

large portion of the minerals continue to transit through Rwanda for processing and export. Moreover, smuggling to Rwanda is still rampant, exemplified this past December by the uncovering of a new minerals smuggling network across Lake Kivu to Rwanda facilitated by officers of the Congolese navy.<sup>12</sup>

During the run-up to Rwanda's deeply flawed elections in August 2010, a series of incidents indicated that political battles in Rwanda are being fought in eastern Congo, this time within the Tutsi community, with repercussions for Rwanda, Congo and the wider region. A coalition of former senior Rwandan officials previously part of Kagame's inner circle is growing around Nyamwasa and Karegeye, the former head of Rwandan intelligence, exiled in South Africa. South Africa is furious about the recent assassination attempt against Nyamwasa, who is attempting to build a broad-based coalition of parties and militias, from the FDLR and the breakaway group, Rally for Unity and Democracy, or RUD, on the one hand, to former senior Rwandan government officials on the other.<sup>13</sup>

Senior officials from Congo, Rwanda, and Burundi met in mid-January to discuss this rebel alliance, and official orders to assemble a company of 120 soldiers to carry out joint operations against the rebel allies have been leaked in the media but have not yet been confirmed by Kinshasa.<sup>14</sup> If this operation goes forward, it would likely have disastrous consequences for civilians living in these areas, given the appalling human rights records of these militaries.

## Uganda

Uganda's role and influence in the battle for market share in Congo's natural resources remains significant. Uganda's primary focus is north of Walikale in the Ituri region, where it is vying to maximize benefits from the oil reserves discovered underneath Lake Edward, as well as serving as a major hub for the gold trade. Congolese authorities cite that 80 percent of the gold sold in Bunia is sold to Kampala, and Congolese army officers profit illicitly from gold sales there, exacting bribes and arresting those who refuse to pay.<sup>15</sup>

Uganda's economic interests in eastern Congo are interconnected with the political rivalry between Ugandan President Museveni and Rwandan President Kagame. Although historically allied with Kagame's regime, Uganda famously clashed with Rwanda over Congolese resources during their occupation of the country, notably fighting for the diamond-trading hub at Kisangani in 2002. Museveni appears to be threatened by the détente between Kabila and Kagame, and recent events suggest a growing rift. Museveni conspicuously absent from Kagame's inauguration on September 6, 2010, and sources in the region allege support from the Ugandan government for Nyamwasa and breakaway CNDP General Gadi Ngabo. Although Uganda did arrest Ngabo in June 2010, he was subsequently released, reportedly through the intervention of Museveni's brother, Salim Saleh, and Ngabo's forces are collaborating with a variety of militias in North Kivu.

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## Politics in Kinshasa, Played Out in the Kivus

Kabila has limited ability to control the situation in Walikale and much of the rest of eastern Congo. The army has loyalty elsewhere, and all that Kabila has in the east is his new alliance with Kagame, as the Congolese president has lost much of his political support in the Kivus since the 2006 election. In 2006, eastern Congo voted overwhelmingly in favor of Kabila, a move that was widely interpreted more as a repudiation of the rebels who had controlled the region rather than a passionate endorsement of the president.

Since then, Kabila has done little to deliver on his promises of security and development in eastern Congo, and the alliance between Kinshasa and Kigali has not prioritized the interests of eastern Congolese. Now, as the electoral campaign season kicks into full gear, Kabila will face a significant challenge from Vital Kamerhe of South Kivu. When Kamerhe visited Goma and Bukavu in December, security forces fired on his supporters and blocked Kamerhe from holding rallies. Although the Congolese opposition remains fragmented, Kabila's political insecurity has created a moment of considerable uncertainty in eastern Congo.

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## Examining the Ban

The ban imposed by Kabila in September on mineral exports from three eastern provinces (North Kivu, South Kivu, and Maniema) was put in place to target what President Kabila referred to as “a kind of mafia” involved in Walikale, Inc., following significant international attention on conflict minerals. The U.S. conflict minerals legislation combined with actions by end-user electronics companies to rigorously trace and audit the sources of their minerals worried Kinshasa. Kabila understood that the direct connection between FARDC and conflict minerals caused a major image problem internationally and within the Kivus.

Mining, however, has not stopped and the ban has resulted in a windfall for the commanders of armed groups, mainly Congolese army officers, some of whom have hijacked trucks full of minerals and are moving coltan out of Walikale by truck. Many Congolese equate the “ban” with Kabila's earlier “zero tolerance” policy for sexual violence, referring to both measures as “zero tolerance, zero consequence!” Rebel groups and other militias still control mining deposits in less accessible areas, and commanders of all armed groups are increasingly controlling mines through their agents and brokers. For example, Deputy Army Commander General Gabriel Amisi Kumba forcibly installed a gold company at a major gold mine in Walikale called Omate, while he is a 25 percent stakeholder in the company.<sup>16</sup> The general also controls at least three mining pits at



Robert, 11 years old, is one of thousands of child miners working in eastern Congo's mines.

Bisie.<sup>17</sup> Gold has also been unaffected and has gone down one level of opacity, with little or no official exports being reported from the Kivus, Uganda, or Burundi, where there was at least some transparency previously.

Paradoxically, although it appeared that Kabila was using this opportunity as an attempt to crack down on CNDP elements which were ordered to be redeployed from the Kivus, the imposition of the ban has actually served to increase CNDP control of mining in the region. For example, miners from the Rubaya area of Masisi territory have told Enough that ex-CNDP officers have taken control of mines previously operated by civilians. Hundreds of miners from Rubaya and neighboring villages have been forced to work in the mines on behalf of the military units in a food-for-work arrangement. The minerals are smuggled in food shipments or transported by military vehicles to Goma, undergo a rough initial processing, and are then smuggled to Rwanda. Rwanda officially suspended its own mineral exports roughly concurrently with the Congolese export ban, claiming that heavy rains had flooded Rwanda's own mines. This suggests that Rwanda is currently stockpiling large quantities of minerals.

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## Endnotes

- 1 MONUSCO, "Preliminary Report of the fact-finding mission of the United Nations Joint Human Rights Office into mass rapes and other human rights violations by a coalition of armed groups along the Kibua-Mpopi road in Walikale, North Kivu, from 30 July to 2 August 2010." Available at <http://www.humansecuritygateway.com/showRecord.php?RecordId=34298>.
- 2 For more information about the collaboration between rebel groups and army units, see U.N. Security Council, "Final Report of the Group of Experts Report on the Democratic Republic of Congo," S/2010/596 (November 2010), Paragraph 196. Available at <http://www.un.org/sc/committees/1533/egroup.shtml>
- 3 Ibid.
- 4 This is the 51<sup>st</sup> Sector of the Government's Amani Leo operation. Ibid, p. 62.
- 5 Ibid, Para. 226. Also see U.N. Security Council, "Final Report of the Group of Experts Report on the Democratic Republic of Congo," S/2009/603 (November 2009), annex 124.
- 6 U.N. Security Council, "Final Report of the Group of Experts Report on the Democratic Republic of Congo," S/2010/596, p. 12.
- 7 Ibid, p. 53.
- 8 Ibid, pp. 53-4.
- 9 U.N. Security Council, "Final Report of the Group of Experts Report on the Democratic Republic of Congo," S/2009/603
- 10 See U.N. Office of the High Commissioner for Human Rights, "DRC, 1993-2003: Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003." (August 2010), pp.349-367. For more on Rwanda's current role, see Global Witness, "The Hill Belongs to Them: The Need for International Action on Congo's conflict minerals trade," (December 2010), pp. 12-13.
- 11 This is Jean Claude Bazungu, and he was former bodyguard to Col. Sammy Matumo of the notorious 85<sup>th</sup> Brigade of the Congolese Army. U.N. Security Council, "Final Report of the Group of Experts Report on the Democratic Republic of Congo," S/2010/596, p. 52.
- 12 This has been led by Congolese naval officer Major Kayumba of the 5<sup>th</sup> Naval Force from Kalehe and Bukavu to Rwanda. Ibid.
- 13 The UN Group of Experts reports that "According to United Nations sources and combatants interviewed by the Group, Kayumba may have sent an emissary to meet with FDLR, FPPLC and Mai Mai leaders in the Democratic Republic of the Congo in February [2010]." UN Group of Experts 2010, p. 44.
- 14 Jason Stearns, "Regional Countries Mull over the possibility of Joint Actions," Congo Siasa, January 23, 2011, available at <http://congosiassa.blogspot.com/2011/01/regional-countries-mull-over.html>.
- 15 U.N. Security Council, "Final Report of the Group of Experts Report on the Democratic Republic of Congo," S/2010/596, Para. 247.
- 16 "Congo general profits from blood gold", *BBC News*, November 10, 2010, available at <http://www.bbc.co.uk/news/world-afri-ca-11722142>.
- 17 U.N. Security Council, "Final Report of the Group of Experts Report on the Democratic Republic of Congo," S/2010/596, p. 52.