

MEMORANDUM

TO: File No. S7-40-10

FROM: Lesli L. Sheppard
Counsel to Commissioner Elisse B. Walter

DATE: March 2, 2011

RE: Meeting with Global Witness Regarding the Specialized Disclosure of Use of Conflict Minerals under the Dodd-Frank Act

On February 3, 2011, Commissioner Walter and I met with Corinna Gilfillan, Annie Dunnebacke, and Jana Morgan of Global Witness. We discussed their comment letter, which is posted on our website at: <http://sec.gov/comments/df-title-xv/specialized-disclosures/specializeddisclosures-30.pdf>. We were also provided with copies of the attached documents.



global witness

December 2010

'The Hill Belongs to Them'

**The need for international action
on Congo's conflict minerals trade**

Contents

Summary	2
Recommendations	4
Key findings of the November 2010 UN Group of Experts report (S/2010/596).....	5
'The hill belongs to them'	7
Doing the sums: military earnings from Bisie	8
Gruelling conditions	8
Mass rape	9
Spooks in the mines.....	10
Mining ban.....	11
The role of Rwanda	12
Minerals Supply Africa, Rwanda's biggest mineral exporter.....	12
Rwanda's place in the global tin trade: production hub or laundering centre?.....	13
From minerals to metal: the role of international smelters	14
Malaysia: no. 1 processor of Congolese cassiterite.....	14
China: no. 1 importer of Congolese coltan	15
K-salt – a potential loophole needing to be closed.....	16
From metal to mobile: the role of electronics companies	16
International initiatives to tackle the trade in conflict minerals	17
International due diligence standards.....	17
UN Security Council and Group of Experts on Congo	17
OECD.....	20
UN sanctions and peacekeeping operations in Congo.....	20
Legislating against conflict minerals.....	21
Minerals certification – an investment for the region's future	21
Congo's donors: a help or a hindrance?	22
Private sector initiatives: beyond business as usual?.....	22
Conclusion	26
Endnotes	27

Summary

- In eastern Democratic Republic of Congo (DRC), rebel groups and senior commanders of the national army are fighting over and illegally profiting from the country's minerals sector. These groups, responsible for mass rape and murder, enrich themselves through international trade. This report, based on recent findings of the UN Group of Experts and Global Witness's research over the past year, discusses this crisis. Our report looks at the measures that are needed to end the "conflict minerals" trade – and to ensure that eastern Congo's mines help rather than hinder development.
- Cracking the conflict minerals trade requires rapid action by companies and governments alike. Companies need to comply with the due diligence standards set by the UN Security Council and those being finalised by the Organisation for Economic Cooperation and Development (OECD). Governments – including major powers such as the UK, US and China – need to make sure that this is being done. International aid donors to the Great Lakes region must start using their influence to ensure that governments in Congo and Rwanda start facing up to their responsibilities.
- A UN Security Council sanctions resolution, dating from 29 November 2010, endorses new standards of due diligence that companies should undertake to exclude conflict minerals from their supply chains. The Security Council resolution means that companies must stop buying those minerals that finance not only "illegal armed groups" and people subject to UN sanctions, but also "criminal networks and perpetrators of serious violations of international humanitarian law and human rights abuses, including those within the national armed forces".
- By explicitly stating for the first time that criminal elements and human rights abusers within the national army should be taken out of the minerals trade, the UN resolution now places increased pressure on companies to carry out proper due diligence. The companies using eastern Congo's minerals have so far largely overlooked the actions of national army units. For example, a major tin industry "traceability" scheme, which aims to trace minerals from the mine to the refinery, risks rubber-stamping conflict minerals coming from mines controlled by national military units.
- The main user of the kinds of minerals mined in eastern Congo – notably tin and tantalum – is the electronics sector. Given that over 40 per cent of the world's tin and around 60 per cent of the world's tantalum, also known as coltan, is used in electronics goods, it is highly likely that many consumer items such as laptops and mobile phones contain conflict minerals from Congo. As the electronics industry accounts for much of the demand for eastern Congo's minerals, it should do its utmost to clean up its supply chain.
- Malaysia was the top destination for official tin ore exports from the two provinces in eastern Congo most affected by conflict, North and South Kivu, in the first half of 2010. Almost all the tantalum ore officially exported from the Kivus in the first half of 2010 went to Chinese companies.

- The second biggest export destination for Congolese tin ore, according to official statistics, is Rwanda. The Rwandan government appears content to let its territory be used as a transit point for conflict minerals, despite the enormous human cost this imposes on the population of eastern Congo. Rigorous due diligence by companies in Rwanda on the ores they are buying would go a long way towards stopping the conflict minerals trade in its tracks.
- Global Witness wrote to six of the biggest electronics companies – Apple, Intel, HP, Dell, Research In Motion and Hewlett Packard – asking them to comment on the tin industry “traceability” scheme, and notably its failure to tackle the issue of the national army. None of the companies directly addressed our concerns over the illegal involvement of the army in the minerals sector.
- Some companies using the types of minerals fought over in eastern Congo are making steps in the right direction on the conflict minerals trade, others are dragging their feet and none appear to have due diligence measures in place that meet the standards put forward by the Security Council on 29 November.
- On the basis of the most recent data available, Global Witness estimates that military units and officials were getting between \$14 million and \$29 million a year from the Bisie mine in early 2010. Those profiting from the mine include former rebels, who used to belong to the *Congrès national pour la défense du peuple* (CNDP). The CNDP forces formally became part of the national army after an early 2009 peace deal.
- The FDLR rebel group (*Forces démocratiques pour la libération du Rwanda*) also control many mines in eastern Congo. A UN investigation has found that the FDLR and allied rebel groups were responsible for at least 303 rapes in a cluster of villages from 30 July to 2 August in eastern Congo. The attacks were a stark reminder of the threat posed by the FDLR. UN investigators have linked the attacks to competition over the minerals trade.
- The UN Group of Experts’ report of 29 November 2010 says that there is an “operational coalition” between the FDLR and the ex-CNDP army units, and describes further examples of collaboration between other rebel groups and army units. These alliances are aimed at sharing the spoils of the minerals trade.
- There is a serious risk that armed groups, including the ex-CNDP, are using the money from the minerals trade to buy weapons. The ex-CNDP is largely controlled by former rebel commander General Bosco Ntaganda, wanted by the International Criminal Court for alleged war crimes. The loyalty of his troops to the state is very much in question and there is a serious risk they could return to war against the government.
- The Congolese government banned mining in eastern Congo from September 2010. However, NGOs and journalists in Congo say that national army units have ignored the ban, and even tightened their grip on the mines since it was imposed.

Recommendations

- Locally-based companies and foreign trading firms, smelters and manufacturers (including electronics companies) should carry out due diligence on their suppliers to make sure they are not buying conflict minerals from eastern Congo. They should terminate business with anyone who risks supplying them with conflict minerals.
- This supply chain due diligence must meet the standards set by the UN and the Organisation for Economic Cooperation and Development (OECD). Companies using minerals from Congo or neighbouring countries need to base their due diligence on on-the-ground assessments that identify not only mines of origin, but also the risk of extortion by rebels or military units from the mine to point of export. Their due diligence should be subject to independent third party audits and companies should report publicly and in detail on the measures they are taking.
- Governments must make sure that companies based in their jurisdictions meet these due diligence requirements.
- Congo's international donors should do far more to pressure Congolese authorities to take soldiers out of the mines and away from the minerals trade. Non-humanitarian aid, especially to the country's security forces, should be made conditional on progress on this issue.
- Donor countries should also use their influence to ensure that the government of Rwanda lives up to its responsibilities to help curb the conflict minerals trade.
- UN Security Council resolutions, including the latest one (S/RES/1952), have called on governments to impose asset freezes and travel bans on individuals or companies sourcing minerals in a way that supports armed groups in eastern Congo. However, no action has been taken. It is essential that governments implement these sanctions.
- The governments of China and Malaysia – as major importers of Congolese minerals – need to show far more leadership on the conflict minerals issue. Both should state publicly what measures they are going to take to ensure that companies based in their jurisdictions implement the due diligence standards announced by the UN Security Council on 29 November.
- In July 2010, the US passed the Dodd-Frank Wall Street Reform and Consumer Protection Act, which contained provisions requiring companies to report on how they are checking their supply chains for conflict minerals from Congo. Other jurisdictions should follow the lead of the US and adopt legislation to stop the international trade in conflict minerals.
- The Congolese government and military authorities should launch an immediate investigation into allegations of involvement of senior army officials in the minerals trade.
- The mining ban in eastern Congo is causing greater hardship for civilians, while military figures are tightening their grip on the minerals trade, according to NGOs and journalists in Congo. If the ban on mining remains in place, the Congolese government should take concrete measures to regulate the sector properly, rather than abandon it.

Key findings of the November 2010 UN Group of Experts report (S/2010/596)

The Group of Experts' report shows how the national army and rebels are profiting from the minerals trade. The report's main findings, with quotes, are summarised below.

- The involvement of the Congolese national army in the natural resources trade is “an important cause of insecurity and conflict” in eastern Congo. The “prioritisation of personal economic interests” by some Congolese army officers has led them to neglect the protection of civilians.
- Congolese army units are competing among themselves for control over mineral-rich areas. “Not only has this led to collusion with armed groups in order to attack rival FARDC [Congolese army] commanders, but it has given both national and foreign armed groups free reign over large swaths of uncovered territory.”
- Congolese army units made up of former rebels of the *Congrès national pour la défense du peuple* (CNDP) have gained control over large areas rich in natural resources in North and South Kivu provinces. In Walikale territory, the part of North Kivu richest in cassiterite (tin ore), control of the minerals trade was “awarded” to the CNDP to encourage it to integrate into the Congolese army, as agreed in an early-2009 peace deal.
- The former CNDP controls its own arms caches and has been opposing orders by the official army command to redeploy to areas outside of the Kivus. The Group of Experts identified three “hidden” battalions that are absent from official Congolese army organisational structures and under the exclusive command of ex-CNDP officers. There are fears the ex-CNDP could go back to war against the Congolese army.
- The leader of the ex-CNDP, General Ntaganda, is deputy commander of the Congolese army's anti-rebel *Amani Leo* operation, which receives logistical support from the United Nations peacekeeping force MONUSCO. General Ntaganda is wanted by the International Criminal Court for alleged war crimes.
- General Ntaganda has been directly involved in the minerals trade throughout the territory of Masisi, in North Kivu. The Group of Experts found in the first half of 2010 that the ex-CNDP was running a parallel administration in Masisi, and that some of its taxation revenues were going to General Ntaganda. Although the system has since changed, the ex-CNDP still controls much of the administration in Masisi.
- While rebel groups have been forced out of the main mining sites in the Kivus, “they continue to control smaller mines in more remote areas and have increasingly relied on intermediaries and predatory attacks to profit from the mineral trade”.
- The FDLR (a rebel group linked to Rwanda's 1994 genocide) has been increasingly working with other armed groups to attack and loot civilian and military targets. The report says there is an “operational coalition” between the FDLR and the ex-CNDP.



- The minerals trade remains an “important source” of the FDLR’s income, through ambush attacks against minerals traders.
- There has been intense competition over eastern Congo’s main tin mine, Bisie. The ex-CNDP has troops at the mine who have put in place their own tax regime. A rival Congolese army commander also has troops

there, who report directly to him and are “outside the regular command structure” of the army.

- The report says that other top army figures are profiting from Bisie, including regional commanders and the commander of Congolese army land forces, General Amisi Kumba. The report describes a similar tussle over the nearby Omate gold mine, involving General Amisi, other senior army officials and the ex-CNDP.

'The hill belongs to them'

The new report from UN experts provides disturbing details about how national army units and rebels alike are profiting from their control of many of eastern Congo's mines. In the wake of this report, the UN Security Council has passed an important resolution to ensure the international minerals trade does not fund armed groups.

It is now time for companies to assume their responsibilities and clean up their own practices – and for Congo, together with other UN member states, to ensure they are doing their utmost to put the minerals trade under civilian control.

Much of eastern Congo's minerals trade is controlled by former rebels of the *Congrès national pour la défense du peuple* (CNDP) who became part of Congo's national army after a March 2009 peace deal. But while their uniforms have changed, their loyalty to the government is shaky. They answer a parallel command structure headed by General Bosco Ntaganda, a general indicted by the International Criminal Court for alleged war crimes relating to his days as a rebel commander. They run parts of the country as their own fiefdoms and, according to the latest Group of Experts report, control their own stockpiles of weapons.¹ The Group of Experts said that these former rebels are collaborating with present-day rebels who are officially their enemies.

When Global Witness researchers visited the eastern Congolese cassiterite mine of Muhinga, in early 2010, a miner spoke in fatalistic terms about the ex-CNDP-run army unit in control there. "The hill now belongs to them," he said, referring to the mine. "They have a right to everything."

Despite the predations of such official army units, the main plan by the tin industry to address the

"conflict minerals" issue focuses almost exclusively on rebels (or, in the jargon, "illegal armed groups"). The question of profiteering and abuses by army units – including those made up mostly of ex-rebels – gets barely a mention in the January 2010 summary of the scheme, led by tin industry body ITRI.²

This is a major omission. The UN Group of Experts report shows that the huge tin mine of Bisie is a source of revenues for units of the national army, some of whom are in direct competition with each other.³ In the first half of 2010, official figures show that Bisie produced two thirds of Congo's recorded cassiterite exports, according to the Group of Experts report. In all, the cassiterite mines in Congo – mainly eastern Congo – supply the raw material for an estimated 4 per cent of the world's tin.⁴ The metal is used in a range of products, with about 40 per cent of the world's tin used to produce solder for electronic circuit boards.⁵ Eastern Congo is also an important source of other minerals, including gold and tantalum – a metal used in the defence industry and to make miniature electronics components.

Global Witness has collected data from government officials, industry sources, activists and others on Bisie, relating to production at the site in early 2010 – before the Congolese government banned mining in eastern Congo. Using this data, Global Witness estimates that in early 2010, the military was getting \$14 million to \$29 million a year from the mine (see box below). These findings are significant not only because of the danger that much of this money was being used to buy weapons – weapons that could be used in a new round of warfare – but also because the mining ban may even have allowed the military to extend its control over mining in eastern Congo.

Doing the sums: military earnings from Bisie

based on data from January and February 2010 ⁶

1. Mineral production of 250 tonnes per month going through the military – from mines under the *de facto* ownership of military commanders as well as traded by soldiers from mines they do not own – **\$1.14 million to \$2.25 million per month.**⁷

2. Taxes on diggers outside mineshafts in Bisie: \$45,600 to \$90,000 per month

Global Witness estimates that in early 2010 the military was collecting at least 10 tonnes of cassiterite monthly, of a value between \$45,600 and \$90,000. Standing outside the shafts not owned by military officials, soldiers were levying at least 1 kg of cassiterite out of every 50 kg taken out of the mine,⁸ or at least 10 tonnes a month, claiming it is for military rations⁹ or for the “war effort”.¹⁰

3. Taxes on porters going to Bisie: \$3,300 to \$16,800 per month

Global Witness estimates that \$3,300 to \$16,800 per month was being collected from porters returning to Bisie to collect minerals at military barriers, in addition to unknown sums paid by traders passing through these checkpoints.¹¹ In early 2010 there were at least three checkpoints along the way from Njingala (the main departure point for Bisie) to Bisie: at Njingala itself; Mafilifili; and Kaniama.¹² Each person going to Bisie had to pay between 300 Congolese francs¹³ (34 US cents) and 1,500 Congolese francs (\$1.68)¹⁴ once a day at these checkpoints in total, with the money going to the top military intelligence officer of the 8th military region (which covers North Kivu).¹⁵ People received receipts for their payments.¹⁶

TOTAL FROM ALL KNOWN SOURCES PER MONTH: \$1.2 million to \$2.4 million

TOTAL PER YEAR: \$14.4 million to \$28.8 million

(The real amount may be higher, given there may have been further taxes or systems of extortion of which Global Witness is not aware.)

Gruelling conditions

Alongside the profiteering by armed groups, the working conditions of miners at Bisie and of the porters who carry the ore are of great concern. Reports by NGOs and journalists from early 2010 painted a disturbing picture. They talked about miners who were nicknamed *les hiboux* (“the owls”) because they spent so long in the dark mineshafts, often working two or more days at a time in dark, damp holes pervaded by the smell of human sweat and excrement.¹⁷ Porters would carry the cassiterite for days through the surrounding forest to the

nearest trading point, with each adult hauling a 50 kilogram sack – child porters split the sacks into 25 kilogram loads.¹⁸ Some porters have died from exhaustion along the way.¹⁹

The cassiterite from Bisie and other mines is sold to middlemen who then sell on to minerals export houses, called *comptoirs*. *Comptoirs* have used military officers as their buyers, as they can buy large quantities of ore quickly and are in a position to avoid paying official or unofficial taxes.²⁰ In early

2010, sources told Global Witness about one such officer, Captain “Zidane”.²¹ At that time, some *comptoirs* were pre-financing Captain Zidane to buy cassiterite, according to an official of the *Police des Mines* (the national mining police). According to the UN Group of Experts report and a source who has researched Captain Zidane’s operations, Captain Zidane is working for the former ex-CNDP commander Lieutenant Colonel Mbhoneza, who used to be the top military official in Walikale, with authority over Bisie.²²

“One of the most notorious soldiers involved, according to mining officials, FARDC [Congolese army] officers and traders, is Captain Zidane, whom they accuse of commandeering numerous pits from other operators,” writes the Group of Experts. “For the past year, according to multiple credible sources, Zidane has directly overseen the mineral investments of Mbhoneza and his deputy, Colonel Hassani.”²³

Documents from the military prosecutor’s office from May 2010, published as an annex to the November 2010 Group of Experts report, clearly illustrate the lawlessness at Bisie. One of the documents is an arrest warrant for Captain Zidane for “desertion, association with criminals, possession of an enormous quantity of arms and munitions of war and harbouring criminals”. The document states that he “benefits from the protection of the commander-in-place” and another military official, both of whom it accuses of “the most blatant arbitrary actions, rather than taking care of the security of people and goods”. Another document from the military prosecutor says that Bisie “has become a pandemonium because of the presence of certain people who hold arms and munitions in contempt of the law”.²⁴

Things seem to have become even more troubled at Bisie since July, when Lieutenant Colonel Mbhoneza’s official superior in the Congolese army, Colonel Chuma Balumisa, tried to replace Mbhoneza’s brigade with a brigade loyal to himself. Colonel Chuma’s troops arrived in Bisie, but those loyal to Lieutenant Colonel Mbhoneza refused to depart. The result is

that troops from rival factions of the Congolese army are present in and around Bisie.²⁵

The interests of other top army commanders complicate matters even further in Bisie. The November 2010 Group of Experts report says that senior army figures profiting from Bisie include regional commanders and the head of Congolese army land forces, General Amisi Kumba.²⁶ The report describes similar jockeying for position over the nearby Omate gold mine, involving General Amisi, other senior army officers and the ex-CNDP.²⁷

Mass rape

While the situation in and around Bisie is a matter of grave concern, the situation elsewhere in Walikale territory – the part of North Kivu where the mine is located – is even more serious because of marauding rebel groups that also profit from the minerals trade. Chief among these figures the *Forces démocratiques pour la libération du Rwanda* (FDLR), a rebel group linked to the 1994 Rwandan genocide.

From 30 July to 2 August 2010 – according to the UN – the FDLR joined forces with two smaller rebel groups to attack 13 villages in Walikale territory. At least 303 women, men and children were raped.²⁸ Global Witness has seen a summary of the findings of a UN Joint Protection Team field investigation into the attacks. The team, which visited the affected villages from 13 to 17 August, linked the attacks to the minerals trade. The report says that the UN Civil Affairs Section in Goma had gathered information from rebels that they had taken over the cluster of villages and that “they sought to block off the transport of minerals to Bukavu and Goma, as well as to force the return of FARDC troops from the mining areas”.

The most affected village – Luvungi, where over 103 people were raped – was a major target because it is a mining hub, the report noted: “its closeness to gold mines (07 km north of Luvungi) made it the most lucrative of the targets as most of the victims raped and looted were miners and traders.”

The team also reported: "It is worth noting that the attacked villages were vulnerable as all FARDC soldiers left in July 2010 to participate in 'lucrative' military operations in Omate and Bisie mining area."²⁹

A separate report, published jointly by MONUSCO and the United Nations High Commissioner for Human Rights (UNHCHR) on 24 September, underlined the horror of the attacks and gave more details about the strategic interests of the armed groups in the area.³⁰

Of the 303 rape victims, it says, 235 were women, 13 men, 52 girls and three boys. "These figures could be revised upwards because several victims have not made themselves known to this day, notably because of the weight of local traditions and the risk of rejection and abandonment by their communities." Nearly half the villages' inhabitants "are still living in the forest" out of fear, including some of the rape victims, said the report. Over 100 civilians were kidnapped for forced labour.

Summarising the strategic interests of the armed groups in the area, the report says:

"In the absence of state authority, several armed groups, notably the FDLR, Mai Mai Cheka, as well as armed elements of Colonel Emmanuel Nsengiyumva, have established their bases in the forests of Walikale and reign as the masters there. They control certain mines which are in abundance there, as well as the roads which lead there." Colonel Nsengiyumva is the leader of a rebel group who deserted the Congolese army in early 2010.³¹

"The exploitation of mines by armed groups allows them to finance their movements," the report says. As well as seeking to profit from the mines, the groups also wanted to demonstrate their capacity to harm civilians, in order to force the Congolese government to negotiate peace with them.

The report goes on to point a finger at the local administrative and military authorities. "Motivated by their greed and reassured by the impunity they benefit from, they develop hidden links with the armed

groups operating in their zones of deployment or leave these zones to go to mining sites, leaving civilian populations without security." The latest Group of Experts report came to the same conclusion, talking explicitly of an "operational coalition" between the FDLR and the ex-CNDP, while also stressing the cooperation between the ex-CNDP and the Mai-Mai Cheka, which was also involved in the mass rapes.

The MONUSCO/UNHCHR joint report ends with a recommendation to the international community to support the Congolese authorities in regulating natural resources and to "combat the militarisation of mines and the racketeering of certain authorities which have a negative impact on the combined efforts of MONUSCO and the FARDC to protect civilians".

Addressing the UN Security Council in October, the UN's Special Representative on Sexual Violence in Conflict, Margot Wallstrom, said: "The mass rapes in Walikale demonstrate a nexus between the illicit exploitation of natural resources by armed elements and patterns of sexual violence."

"It is evident that communities in lucrative mining areas are at particularly high risk," she said, adding that the mass rapes should "be investigated from the angle of the competition over mining interests as one of the root causes of conflict and sexual violence".³²

In early October UN peacekeepers arrested the chief-of-staff of the Mai Mai Cheka, Sadoke Kokunda Mayele, for allegedly coordinating the attacks of 30 July to August 2.³³ A North Kivu military prosecutor has opened a judicial inquiry for crimes against humanity, rape and looting against alleged perpetrators, including "Cheka et al."³⁴

Spooks in the mines

It is encouraging that arrests have been made over the mass rapes and that awareness is growing about the link between competition over minerals and the violence in eastern Congo – but these developments are, of course, not enough to turn

the situation around. Among the other sections of Congo's security forces which have been illegally profiting from the minerals trade is the national intelligence service, the *Agence Nationale de Renseignements* (ANR) – an agency that reports directly to the president. During research in Congo in early 2010, Global Witness heard accounts from diggers of the widespread presence in the mines of the ANR.

The UN Group of Experts' November 2009 report reproduces a document obtained from government mining officials, claiming that out of 2,000 Congolese francs (\$2.24) taxed on a 50 kilogram sack of minerals, the military took 30 to 40 per cent and the ANR 10 per cent.³⁵

Mining ban

On 11 September 2010, the Congolese authorities announced a ban on mining activity and trade in the three provinces of North Kivu, South Kivu and Maniema. A statement announcing the decision said the ban was necessary because mining was being carried out by "mafioso groups" which cause "recurrent insecurity". The statement denounced "the evident implication of certain local authorities – both civilian and military – in the illegal exploitation and the illicit trade of minerals".³⁶

The ban was followed by new military offensives in Walikale territory which appeared to be to a large extent aimed at the FDLR.³⁷ In late October, Minister of Mines Martin Kabwelulu said that the ban would remain in place until the Congolese army managed to stabilise the area around Bisie.³⁸ Congo's military Chief-of-Staff, Lieutenant General Didier Etumba, vowed to arrest any soldier involved in mining or the minerals trade.³⁹

An interministerial commission recommended a series of 'supporting measures' to bring order to the mining sector once the ban was lifted. It was unclear how serious an effort would be made to implement these recommendations, which were announced on 5 October but had

not yet been implemented as this report went to press.⁴⁰ The recommendations included deploying mining police to ensure the security of mines and ensuring state and non-state mining companies were properly regulated and put on a sound legal footing. Another, more problematic, recommendation was that the Congolese army should reinforce its control of mining areas – a recommendation that failed to take into account the implication of the army in the illegal minerals trade.⁴¹

Global Witness gave a conditional welcome to the ban soon after it was announced, saying that the measure could pave the way for fundamental reform, while also expressing concern that it could be the prelude to military offensives in which civilians would suffer a new wave of abuses. However, we are concerned that the supporting measures have not been put in place, and that, while many of eastern Congo's civilians are suffering greater economic hardship, the military appears to be tightening its grip on the minerals trade.

Delly Mawazo Sesete, the head of a respected NGO in eastern Congo, CREDDHO, told Global Witness that the aims of the mining ban had not been met and that military control of mines had intensified, with forced labour on the rise.⁴²

"The main aim was to get the armed groups out of the supply chain. It didn't work – the biggest mine, Bisie, is still under army control and they continue to exploit the mine... Everyone is still where they were before the measure was imposed," said Mr Sesete.

"As for the rebels, the government hasn't taken back control of any mining site. We are asking ourselves what was the point of the ban, other than simply improving Congo's image."

Mr Sesete, whose NGO carries out investigations into the mining sector, added: "There has been an enormous impact on the local population. The main

consequence is that forced labour has increased. As they've forbidden civilians from mining, soldiers have begun to capture civilians and put them in army uniform to work in the mines. So, to continue mining, the soldiers have enslaved people."

The eastern provinces have become even more impoverished, he said, because, with many minerals traders having withdrawn their business, far less cash is in circulation. Some minerals are still being sold, but at very low prices, while much of what is mined is being stored in preparation for when the

mining ban is lifted, according to Mr Sesete.

So far, then, the latest attempt by the Congolese government to end the conflict minerals trade has brought with it a new set of problems. Mining ban or no mining ban, men with guns remain in control of the mines. The aim must be to bring the mines under civilian control. But as long as companies continue to buy conflict minerals, and governments close their eyes to the extent of the problem, the abuses will continue. Concrete measures are now needed to end the cycle of profit and plunder.

The role of Rwanda

Much of eastern Congo's mineral output passes through Rwanda. Rigorous due diligence on the ores entering the country would go a long way towards stopping the conflict minerals trade in its tracks. However, traders in Rwanda are reluctant to take responsibility for doing this. For its part the Rwandan government appears content to let its territory be used as a transit point for conflict minerals, despite the enormous human cost this imposes on the population of eastern Congo.

Minerals Supply Africa, Rwanda's biggest mineral exporter

Rwanda's largest mineral exporter is Minerals Supply Africa (MSA). MSA is owned by Swiss stock corporation Cronimet Central Africa AG that is, in turn, majority owned by a German company, Cronimet Mining GmbH. MSA told Global Witness that it sources cassiterite from Bisie⁴³ and that it supplies all the minerals it processes to Malaysia Smelting Corporation via Cronimet.⁴⁴

MSA says that it requires its suppliers to sign contracts and "ethical fundamentals" in which the latter agree to abide by the standards set out in the ITRI traceability initiative (discussed below).⁴⁵ The company also told Global Witness that it relies

on *comptoirs'* assurances for information regarding whether armed groups are present at the mines, as well as on "information provided by the UN Group of Experts and other stakeholders". However, these measures are not, in Global Witness's view, sufficiently rigorous to avoid sourcing minerals in a way which benefits the warring parties in eastern Congo. It does not appear that the company conducts its own on-the-ground assessments or commissions third party audits as called for by UN Security Council, for example.⁴⁶

With regards to Bisie, MSA said in a February 2010 interview with Global Witness that it had been told by its suppliers that the site was "clean".⁴⁷ In a letter to Global Witness in August 2010, MSA elaborated on this earlier statement, saying that it was aware from the UN Group of Experts' work that a Congolese army unit was levying taxes on miners in Bisie and that it "is awaiting a final assessment from the UN Group of Experts on (Congo)".⁴⁸ It was unclear why MSA was expecting a "final assessment", given that the experts' report of November 2009 unequivocally detailed the control exerted over Bisie by the Congolese army units drawn from the ex-CNDP.⁴⁹ The presence of ex-CNDP and other army units in and around Bisie was confirmed by the new Group of Experts report published in November 2010.

Rwanda's place in the global tin trade: production hub or laundering centre?

Although the Rwandan government's published data shows that most of its cassiterite exports are of Rwandan origin, information provided to Global Witness by officials suggests that the proportion of the ore coming from Congo is actually significantly higher than the numbers indicate.

Calculations by Global Witness on the basis of official statistics put Rwanda's cassiterite exports at 5,615 tonnes in 2009, of which 1,346 tonnes were classified as re-exports, i.e. not of Rwandan origin.⁵⁰ Given the pattern of regional trade and production, it can be assumed most re-exports are Congolese. That leaves 4,269 tonnes of exports which are declared to be of Rwandan origin, which roughly tallies with the official annual Rwandan production figure of 4,205 tonnes.⁵¹ In the absence of disaggregated data setting out production within Rwanda on a mine by mine basis, it is difficult to tell whether the production figure is credible, however.

One Rwandan official gave Global Witness alternative figures showing that 36 per cent of minerals exported from Rwanda were in fact Congolese.⁵² Another said that 50 per cent of mineral exports from Rwanda were re-exports of ore from other countries.⁵³ A company representative, meanwhile, informed Global

Witness that 75 to 80 per cent of the cassiterite analysed by the only quality-control agency in Rwanda is in fact Congolese.⁵⁴ In previous years statistical data obtained by Global Witness has indicated that Rwanda has made annual exports of cassiterite more than five times the volume of its total production.⁵⁵

Part of the problem appears to relate to the issuing of certificates of origin. An official in the Rwanda Geology and Mines Authority told Global Witness that the government issues certificates of Rwandan origin for re-exports, as long as the value of the original material has been increased by at least 30 per cent by processing.⁵⁶ This means minerals of Congolese origin are being sold on the world market as if they came from Rwandan mines. Global Witness has sought comment from Rwanda's mining minister on this and other issues without success.⁵⁷

Rwanda has yet to acknowledge its role as the region's main conduit for conflict minerals. International aid donors to Rwanda should use their influence to ensure that the authorities in Kigali face up to their responsibilities and take effective measures to stop these materials passing through their territory. For its part, the UN Security Council should monitor closely Rwanda's compliance with its call on governments to urge companies based in their jurisdictions to carry out thorough due diligence on any minerals that they purchase.

From minerals to metal: the role of international smelters

After transiting through Rwanda or other neighbouring countries, eastern Congo's minerals are processed by international smelting firms. They are then sold on as refined metal to manufacturers of electronic components and consumer goods. These companies are under increasing pressure to carry out thorough due diligence on their supply chains. Some are making steps in the right direction, others are dragging their feet, and none appear to have due diligence measures in place that meet the standards put forward by the Security Council on 29 November. This section briefly profiles two of the key destinations for tin and tantalum ore from eastern Congo.

Malaysia: no. 1 processor of Congolese cassiterite

Congolese government data obtained by Global Witness suggests that Malaysia Smelting Corporation (MSC) was the destination for around 67 per cent of the 6,658 tonnes exported from North and South Kivu between January and June this year.⁵⁸ MSC is the world's third-largest tin smelter. In November 2010, it was reported that between 85 and 90 per cent of tin in London Metal Exchange warehouses globally was produced by MSC.⁵⁹

Malaysia Smelting Corporation has recently stated that tin mined in Congo constituted less than 15 per cent of its tin production in 2009.⁶⁰ This figure is similar to an estimate given to Global Witness by one of MSC's suppliers in 2009.⁶¹ Another supplier to MSC told Global Witness that the company had a detailed understanding of the origins of the cassiterite it used and that a senior member of MSC's procurement staff was famous within the industry for his capacity to identify mines of origin by examining samples of the ore.⁶²

Global Witness wrote to MSC in August 2010, to ask the company about its use of minerals from eastern Congo. MSC's reply was of a general nature, saying that for reasons of confidentiality it could not answer specific questions on its supply chain at present. It did, however, state that "MSC was and will continue to be mindful of events in DRC and, as early as 2004 after the publication of the UNSC [UN Security Council] report on DRC, we took the initiative to write to all suppliers of DRC concentrates seeking written clarification and legitimacy of their trading operation."

MSC went on to state that it participates in various mineral traceability initiatives, such as the ITRI project and the Electronics Industry Citizenship Coalition (EICC) and Global e-Sustainability Initiative (GeSI) smelter validation scheme, both of which are discussed below. It also said that it is assessing the scope for carrying out industrial-scale mining in Congo and Rwanda. The company's increasing attention to supply chain control measures is encouraging. The smelter validation scheme is not yet fully operational, however, and Global Witness has serious doubts about the effectiveness of the ITRI scheme as a means by which companies can be sure that they have excluded conflict minerals from their supply chains.

In November 2010, the trade publication *Metal Bulletin* published an article citing concerns from tin industry insiders that US companies might be forced to cease purchases of MSC-produced tin following the passage of the Dodd-Frank act which contains provisions on conflict minerals.⁶³ In a response, extracts of which were printed by *Metal Bulletin*, the company stated that the new law would not affect its capacity to sell its products.⁶⁴

The Malaysian government was contacted by the UN Group of Experts during 2010 in connection

with the conflict minerals trade, but does not appear to have taken a public position on the issue. Global Witness believes that it should spell out how it intends to implement the UN Security Council's latest sanctions resolution on Congo, including the specific measures it will take with respect to due diligence by Malaysian companies.

China: no. 1 importer of Congolese coltan

China imported 60 per cent of North and South Kivu's coltan in 2009 according to official data from the Congolese Ministry of Mines *Division des Mines*. Official data also shows that companies in China bought all but seven tonnes of the 106 tonnes of coltan exported from the Kivus from January to June 2010.⁶⁵ A company called Fogang Jiata Metals was the top importer in 2009, according to the official statistics, and continued to buy coltan from North Kivu in 2010, along with at least two other Chinese companies – Star 2000 Services and Unilink Trading Hong Kong.⁶⁶ Like the Malaysian government, the authorities in Beijing appear to have made few public comments on the conflict minerals trade, their own responsibilities and those of companies under their jurisdiction. Global Witness is calling on China to explain publicly how it plans to meet these responsibilities and to play a leadership role in ensuring that the new UN Security Council resolution on sanctions and due diligence by companies is fully implemented.

Chinese state-owned company CNMC Ningxia Orient Nonferrous Metal Group is one of the top three tantalum smelting and producing companies in the world.⁶⁷ Its products are bought by one of the world's largest capacitor manufacturers, AVX of the US, which in turn supplies some of the world's biggest electronics firms, including Hewlett-Packard, Dell, Intel and Research in Motion (RIM, the maker of the Blackberry). When asked by electronics companies and others about its sourcing practices at an industry meeting in October 2009, the Ningxia representative present stated that the origin of the tantalum ore the firm uses is nobody else's business.⁶⁸

In discussion and correspondence with Global Witness, one electronics company said that they believe Ningxia is not currently using coltan from Congo. Another company, Hewlett-Packard, said in its letter to Global Witness: "Representatives of EICC have interacted directly with Ningxia (CNMC) on their procurement processes and found them to be transparent in their efforts to address conflict minerals."

Ningxia did not respond to a letter from Global Witness asking about its sourcing practices, however, and does not appear to have issued any kind of public statement on conflict minerals. As in the tin industry it is vital that leading processors in the tantalum sector publicly commit to and implement the standards of supply chain due diligence endorsed by the UN Security Council.

K-salt - a potential loophole needing to be closed

One tantalum industry expert who has visited Ningxia's main plant in China told Global Witness that he believes that much of the tantalum metal that the company produces is derived from 'K-salt' sourced from smaller refiners in southern China.⁶⁹ K-salt is tantalum ore that has been chemically refined to make a compound called potassium tantalum fluoride. A number of mining and electronics industry representatives have told Global Witness that they suspect K-salt production may be being used to hide or obscure the origins of tantalum coming from Congo.⁷⁰ All supply chain control regimes – whether established by intergovernmental bodies like the UN or by the OECD or legislators and regulators at the national level – should require checks on the origin of K-salt. Where the K-salt is derived from Congolese coltan, the companies producing or using it must carry out comprehensive due diligence on their supply chains to exclude any materials that may have benefited armed groups or the military.

From metal to mobile: the role of electronics companies

The refined tin and tantalum produced by smelters such as those profiled above is used in the production of everything from steel alloys, packaging and chemicals to cars, planes and pharmaceuticals. The manufacturing sector that has been most in the spotlight over the conflict minerals issue is the electronics industry, which uses over 40 per cent of the world's tin and around 60 per cent of the world's tantalum.⁷¹

Tin is used in solder, which is found in all electronic devices. Tantalum is used in capacitors and semi-conductors which control the flow of electricity within electronic devices such as mobile phones and computers. Leading capacitor manufacturer AVX – which buys from Ningxia⁷² – provided Global Witness with an informative set of responses about its approach to conflict minerals. The company told Global Witness that it had banned the use of Congolese tantalum in its products and that it was carrying out direct on-site audits of the smelters it bought from. It said that it double-checked its suppliers in China by looking at Chinese import records showing the importing company and the country of origin of the material.

AVX also said that it took measures to ensure it did not purchase Congolese material that transited via other countries, although it was unclear from its letter what these measures consist of. According to AVX, its due diligence on its supply chain has resulted in “three existing or proposed suppliers being dropped from our approved vendor list as a result either of incomplete data or suspicious data that AVX could not verify.”

One of AVX's customers, Intel, holds a dominant role in the manufacture of semi-conductors. A representative of Intel told Global Witness that the

firm makes 80 per cent of all semi-conductors and that 75 per cent of its manufacturing operations take place within the US.⁷³ Intel's largest customers are Hewlett-Packard and Dell, who accounted for 21 per cent and 17 per cent respectively of Intel's net revenue in 2009. Intel also supplies Apple.⁷⁴ Intel has published a white paper describing how it surveyed its suppliers and carried out “on-site reviews” of 11 smelters in six countries, all with the aim of determining whether its supply chain was “conflict-free” or not.⁷⁵

Consumer electronics manufacturers such as Intel customers Dell, Hewlett-Packard and also RIM have all told Global Witness that they are committed to conflict-free products, although Apple declined to answer any questions about its sourcing practices. None of these firms however, provided sufficient data about their supply chains to enable conclusions to be drawn about precisely what controls they currently have in place to ensure that their commitments are implemented in practice.

All the manufacturers mentioned in this report expressed support for industry initiatives aimed at improving transparency in the minerals and metals supply chain, two of which are profiled briefly in the last section of this report. One of these initiatives is the planned smelter validation scheme coordinated by industry bodies the Electronics Industry Citizenship Coalition (EICC) and the Global e-Sustainability Initiative (GeSI). This aims to assess the supply chain due diligence undertaken by the companies processing the minerals into metals and is spearheaded by Intel and Motorola.

The other scheme is run by the tin industry body ITRI, which aims to trace minerals from mines in eastern Congo to the point of export. Global Witness

raised questions with the manufacturing companies it contacted about the capacity of the ITRI initiative to address adequately the problems of extortion by armed groups along transport routes and the illegal involvement of the military in the minerals trade. None of the companies responded directly to the

specific concerns raised in Global Witness' letters, however. Global Witness is calling on the companies involved in or supporting the ITRI scheme to make a public commitment that they will ensure that the minerals they use have not benefited the warring parties – whether government army or rebels – in any way.

International initiatives to tackle the trade in conflict minerals

The increasing attention on the trade in conflict minerals from eastern Congo has prompted a range of initiatives by foreign governments and intergovernmental bodies to deal with the problem. A number of these schemes centre on setting supply chain control standards for companies using minerals or metals originating from eastern Congo. This section discusses some of the most important of these.

International due diligence standards

Supply-chain due diligence involves companies identifying the precise origin within Congo of the minerals they use and finding out about the conditions of mining, trade and transportation, including illegal taxation by armed groups. Having done this, they need to exclude from their supply chains any materials that are benefiting the warring parties and show the public at large that they have these controls in place. The companies thereby check and demonstrate that their purchases are not fuelling conflict or abuses. To use the phrase coined by the UN Special Representative on Business and Human Rights John Ruggie on company due diligence, they need to “know and show”.

The main advantages of supply chain due diligence as a means of dealing with the conflict minerals trade are that companies can undertake due diligence immediately, it is a corporate concept that they understand, it targets only harmful parts of the trade and it is a relatively low cost option.

As set out in the July 2010 report *Do No Harm – Excluding Conflict Minerals from the Supply Chain*,⁷⁶ Global Witness argues that due diligence by companies using minerals from eastern Congo and neighbouring countries should consist of:

- A clear conflict minerals policy
- Supply-chain risk assessments, including on-the-ground checks on suppliers
- Action to deal with any problems identified
- Independent third-party audits of their due diligence measures
- Public reporting

UN Security Council and Group of Experts on Congo

On 29 November 2010 the UN Security Council passed a new sanctions resolution (S/RES/1952) in which it responded to sets of proposals from the UN Group of Experts on Congo on the standards of due diligence that companies sourcing minerals from the region should be required to meet. The Security Council opted to back due diligence standards aimed at preventing companies' purchases from benefiting not only “illegal armed groups” and individuals and entities on the UN sanctions list, but also “criminal networks and perpetrators of serious violations of international humanitarian law and human rights abuses, including those within the national armed forces.”

What this means is that companies sourcing minerals from eastern Congo must show that they are not benefiting any warring parties or human rights abusers, regardless of what armed group – state or non-state – they may be affiliated to. This welcome shift away from an exclusive focus on the role of the FDLR and other non-state militia and rebel movements reflects the realities of the conflict minerals trade as documented by the Group of Experts, Global Witness, The Enough Project and others over the past three years.

The UN due diligence guidance consists of five elements that are essentially the same as those developed by the OECD and Global Witness. The Security Council and the Group of Experts define these as: (i) strengthening company management systems; (ii) identifying and assessing supply chain risks; (iii) designing and implementing strategies to respond to identified risks; (iv) conducting independent audits; and (v) publicly disclosing supply chain due diligence and findings.

Strengthening company management systems, as defined by the Group of Experts, involves companies devising supply chain policies governing purchases of minerals that originate from eastern Congo or countries that are known transit points in the region. In these policies, companies should declare that they will not tolerate any direct or indirect support – through their purchase of minerals – to rebels, sanctioned persons, criminal networks or human rights abusers, particularly members of the national army.

Where the risk of such support is detected, the guidance makes a distinction between the types of action the company should take, depending on whether the warring party concerned is a rebel group or persons subject to UN sanctions on the one hand, or members of the armed forces on the other. If the risk concerns support to illegal armed groups or people under sanctions, the company should immediately suspend or discontinue purchases from the suppliers concerned. Where the risk is of support to members of the armed forces,

the company can engage in attempts at mitigation aimed at ensuring that their illegal involvement in the trade and extortion progressively ceases. If these mitigation measures do not yield “measurable and substantial improvements” within six months, then the company should suspend or discontinue purchases for a minimum of three months.

Research by the Group of Experts, Global Witness and others has repeatedly shown that trying to draw a distinction between the abusive behaviour of non-state armed groups on the one hand and the national army on the other is itself extremely risky. In the context of company due diligence, Global Witness is concerned that the emphasis on mitigation where there is a risk of criminal networks or human rights abusers in the army profiting from the minerals trade may enable companies to continue purchasing practices that are clearly harmful.

As the Group of Experts themselves point out, moreover, it is illegal under Congolese law for the national armed forces to be involved in the minerals trade. Thus, while the UN guidance implies that companies can knowingly engage in purchases of minerals that facilitate corruption or other crimes, albeit on a temporary basis, firms that choose to do this may find themselves at risk of serious reputational damage or even legal action.

In its guidance on identifying and assessing risks in the supply chain, the Group of Experts, like the OECD and Global Witness, distinguishes between the responsibilities of ‘upstream’ companies, meaning ones that extract, trade or process minerals ores and ‘downstream’ companies that use processed metals. In the case of upstream companies, the emphasis is on carrying out on-the-ground assessments aimed at determining where exactly the minerals they use are mined, traded, handled and exported and the risks of their purchases benefiting the warring parties, human rights abusers or people subject to sanctions. Downstream companies, meanwhile, should focus their risk assessment on an evaluation of the due

diligence controls put in place by the smelters that refine the metals that they use. Global Witness has published detailed recommendations on how these supply chain risk assessments could be carried out in its *Do No Harm* report. The Group of Experts guidance allows for companies to carry out joint supply chain risk assessments but makes it clear that companies remain individually responsible for identifying the risks that their purchasing practices may pose.

The section of the guidance on independent third-party audits gives overwhelming attention to the auditing of smelters. Broadly speaking, this makes sense, given that the number of major international smelters of tin and tantalum, for example, is fairly small and they represent a key bottleneck in the global supply chain. The guidance details the kinds of credentials required of those carrying out smelter audits and the nature of the checks they should undertake. These include on-site investigations, including at the smelter itself, at a sample of its suppliers, and, if necessary, at all other points on the supply chain back to the mine of origin.

With regard to audits of other companies in the supply chain, the guidance states that if smelter audits “capture insufficient information to justify imposing sanctions on individuals and entities that have not complied with due diligence, it may also be desirable for individuals and entities trading minerals from red flag locations [Congo or known transit countries] from the level of *comptoir* to the smelter or refinery to be independently audited in this regard.” The intent here is that an international body such as the Group of Experts or evaluators appointed by the OECD will assess whether these extra audits are required.⁷⁷ Either way, Global Witness believes that companies at all points in the supply chain should be commissioning independent third-party audits of their supply chain due diligence as a matter of course. It is worth noting that the recent US legislation on conflict minerals – profiled below – states that all those companies required to report to regulators on their supply chain due diligence must have these submissions independently audited.

The section of the UN guidance on public disclosure of supply chain due diligence and findings sets out the types of data that the companies concerned should publish: supply chain policies, details of their control systems and risk assessments and the information that these processes generate. Importantly, there is a particular emphasis here on releasing information gathered on payments made or suspected to have been made to illegal armed groups, sanctioned persons, criminal networks and perpetrators of serious human rights abuses, particularly within the state armed forces. The guidance also calls for disclosure of risk mitigation strategies and their implementation.

Smelters are specifically directed to publish the audits of their due diligence systems, except for information concerning pricing and supplier relationships. The removal of data about pricing is a reasonable concession to genuine concerns about commercial confidentiality. The absence of data on supplier relationships could be far more problematic, however, as it is only through transparency about who is who and who deals with whom in the trade in eastern Congo’s minerals that the harmful elements can be highlighted and excluded.

The Group of Experts’ due diligence guidance is generally clearly laid out and appears reasonably robust. The fact that the Security Council recognised the need for companies to address the risk of their purchases benefiting army units as well as “illegal armed groups” is also a major step forward. The endorsement of the guidance from the Council was disappointingly weak, however. In its previous resolution on sanctions and Congo (S/RES/1896), passed in November 2009, the Council called on governments to “ensure that importers, processing industries and consumers of Congolese mineral products under their jurisdiction exercise due diligence on their suppliers and on the origin of the minerals they purchase [emphasis added].” In Resolution 1952, by contrast, governments are called upon merely to “urge” companies to apply the new guidelines or equivalent guidelines.

Global Witness does not believe that this dilution of governments' obligations in any way detracts from companies' responsibility to implement the new guidelines. However, it does mean that the Security Council, especially the "P5" members – China, France, Russia, UK and US – will have to make additional efforts to ensure that the resolution is fully implemented by member states and that the Council can continue to play a leadership role on the conflict minerals issue internationally. Global Witness is calling on the Security Council to carry out regular checks on governments' implementation of the resolution and compliance by companies over the coming year and to report on its findings publicly.

OECD

The Organisation for Economic Cooperation and Development (OECD) is a group of 31 mostly

Western countries that promotes trade and has a role in setting standards for businesses. At the end of 2009, the OECD convened a working group of governments, companies, NGOs and other participants to develop guidelines on due diligence for companies sourcing minerals from conflict-affected regions.

The OECD's own due diligence standards take the form of "guidance" to companies which goes to a greater level of detail than that endorsed by the UN Security Council. As this publication went to print, the OECD was completing its consultations on its draft guidance and was hoping to have it signed off by a meeting of the OECD Council in February 2011.

The standards set by the UN Security Council and the OECD could help significantly reduce the trade in conflict minerals. The question now is the extent to which companies can be persuaded or

UN sanctions and peacekeeping operations in Congo

The Security Council resolution that endorses the new due diligence standards for companies also allows the Council to impose asset freezes and travel bans on anyone supporting armed groups in Congo via the minerals trade. This targeted sanctions framework has been in place for two years now and has yet to be put to use, despite abundant evidence provided to the Security Council members by the Group of Experts, Global Witness and others of the activities of companies engaged in the conflict minerals trade. The fact that some of these firms are based in the same countries passing the sanctions resolutions makes this inaction all the more shameful.

Within Congo itself, the UN Peacekeeping force MONUSCO, has been carrying out monitoring and inspections of minerals consignments at transportation hubs in the Kivus. While a good start, the effectiveness of these efforts is limited by difficulties peacekeepers have experienced in cooperating with their Congolese government counterparts and the fact that they have no law enforcement powers.⁷⁸

The peacekeepers are also helping set up *centres de négoce*: hubs intended to facilitate trade and reduce insecurity. The UN is providing funding for the five pilot sites: three for cassiterite and coltan, and two for gold.⁷⁹ This scheme has real potential but it also runs the risk of providing a means of laundering conflict minerals if the UN and the Congolese officials do not ensure that the materials entering the centres are 'clean'. The most effective way of addressing this risk would be for UN peacekeepers to deploy at the designated mines that supply the *centres de négoce* and along the transportation routes connecting them in order to deter interference or extortion by rebels, militia or army units.

compelled to abide by them. One way of ensuring this is by effective international monitoring and public reporting on compliance and Global Witness is advocating that the UN, the OECD or another intergovernmental organisation mandate a team of specialists to do this. We are also calling on countries and regional bodies to pass these due diligence standards into law.

Legislating against conflict minerals

Legislators in the US Congress have played a pioneering role in efforts to tackle the links between commerce and conflict in Congo, by including in the July 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act provisions concerning conflict minerals. These require all companies that are registered with the official regulator, the Securities and Exchange Commission (SEC), and whose products contain cassiterite, coltan, wolframite or gold, to disclose whether these minerals originate from Congo or adjoining countries.

Those firms whose products do contain minerals of these types originating from the Great Lakes Region must submit annual reports to the SEC. These reports need to set out the due diligence measures the companies have taken, the smelters that processed the minerals and the companies' efforts to determine the mine of origin. They also need to contain a description of any products which are not "DRC conflict free", i.e. products that contain conflict minerals. These reports to the SEC must be subject to an independent private sector audit and the companies must publish the information that they contain on their websites.

The passage of the law is a major milestone. Key elements of the law on companies' responsibilities still need to be further developed by the SEC however, through a rule-making process which should be completed by spring 2011. In particular, the SEC needs to produce regulations setting out what kind of supply chain due diligence companies need to undertake and how this should be audited. Global Witness is advocating that the SEC adopt the same five-point framework for due diligence

as that endorsed by the UN Security Council and the OECD. The SEC should also insist on rigorous third party audits that include spot checks on the supply chain of the company concerned. These recommendations are detailed in a submission to the SEC which can be downloaded from our website.

It is crucial that lawmakers in other countries now follow the lead of the US and introduce equivalent legislation. Given the public commitment of many European governments to eradicating the conflict minerals trade, the European Commission, in particular, should now initiate this process without further delay.

Minerals certification – an investment for the region's future

The regional intergovernmental body the International Conference on the Great Lakes Region (ICGLR) has endorsed the OECD due diligence guidance and is leading efforts to develop minerals certification in Congo and neighbouring countries. Using a blueprint devised by the NGO Partnership Africa Canada (PAC), the ICGLR plans a system of tracking minerals within Congo and internationally that would involve issuing minerals bags with certificates at the mines of origin.⁸⁰ If true to PAC's well thought-through template – which provides for robust systems of auditing and oversight – the ICGLR initiative will prove an excellent investment for the region's future, in terms of strengthening natural resource governance.⁸¹ Meanwhile, another certification system financed by the Federal Institute for Geosciences and Natural Resources (known by its German acronym, BGR) is already being piloted in South Kivu and is intended to complement the ICGLR plan.⁸²

The ICGLR and BGR projects hold a great deal of promise. At the same time, Global Witness believes that minerals certification of this kind should not be confused with the rapid-impact measures required to tackle the conflict minerals trade in the short-term. One of the reasons that government-driven certification schemes take a long time to set

Congo's donors: a help or a hindrance?

International donor governments – notably the US and the UK – spend about \$2 billion on aid to Congo every year.⁸³ This money underwrites a range of state agencies and government programmes, not least reform of the security services. It gives the donors substantial influence with the government of President Kabila.

When Global Witness staff asked a Congolese government representative earlier this year what single factor could improve the situation in the minerals sector, he said without hesitation, “the donors need to call on the president to get the military out of the mines”.⁸⁴ This is not happening, however. Donors are much more willing to give sums of money than they are to expend political capital that ensures the cash actually delivers results that matter.

This has to change. Channelling aid marked for development and good governance is pointless if the government receiving it is not prepared to rein in an army that is undermining these objectives.

Donors should link further non-humanitarian assistance to the Congolese government removing its armed forces from the minerals trade in the Kivus. That does not mean a sudden cessation of existing funding, but donors should make it clear to the Congolese authorities that they need to live up to their own responsibilities to the country's population if they are to continue being cushioned by international aid.

up in countries like Congo is because they hinge on weak state institutions (whose weakness is one of the reasons why the certification is called for in the first place) becoming strong enough to administer and oversee the process effectively. This already significant challenge is massively amplified when the area in which the minerals are supposed to be certified is plagued by armed conflict.

Successful minerals certification in Congo would also be dependent on governments in the Great Lakes region forging international agreements, and passing new regulations and policies at a national level. When one then considers that some of the governments concerned benefit substantially from the trade in conflict minerals continuing in its current form, the obstacles to short-term success become all the more formidable.

Ultimately, it is difficult to avoid the conclusion that an effective certification system in the Great Lakes region could take root only after the conflict

is already over, at which point it could play a very valuable role in strengthening management of the resources concerned but be less relevant as a means of cutting funding to armed groups.

The urgency of the situation in eastern Congo demands changes to mineral trading practices that take place within months rather than years and that is why Global Witness believes that supply-chain due diligence by companies should now be the primary focus of efforts by policymakers and the private sector.

Private sector initiatives: beyond business as usual?

International tin industry body ITRI announced the creation of the ITRI Tin Supply Chain Initiative (iTSCi) in mid-2009 and has since lobbied policymakers to accept it as a recognised international standard for supply-chain due diligence. ITRI has listed 15 companies from

the level of the smelter up to the *comptoir* as participating in the scheme.⁸⁵ Six of them were shown by the UN Group of Experts' 2008⁸⁶ or 2009⁸⁷ reports to have bought minerals which came from areas controlled by rebel groups: Malaysia Smelting Corporation⁸⁸, Thaisarco⁸⁹, Traxys⁹⁰, Trademet⁹¹, World Mining Company (WMC)⁹² and Huaying Trading Company (HTC).⁹³

These six companies are not shown to be buying from rebel groups in the 2010 Group of Experts report and two of them – Thaisarco and Traxys – have announced suspensions of purchases of minerals from Congo. Global Witness maintains, however, that all companies trading minerals or metals sourced from Congo must demonstrate, via supply chain due diligence, that they are not doing harm. This due diligence needs to meet the standards that have been recently set by the UN Security Council and those soon to be published by the OECD. The question of whether reliance on the iTSCi scheme enables traders, smelters and manufacturers to meet those standards is one that policymakers, regulators and law enforcement agencies will need to give particular attention to in the months ahead.

The iTSCi plan has three main phases. The first phase consists of checking that *comptoirs* are legally registered, have export licences, are paying taxes and have told the international buyers that the minerals they are selling are from legitimate sources. The second phase is “designed to introduce traceability to provide verifiable information on the exact source of minerals and the opportunity to assess and mitigate the security and other conditions of mine operation and mineral transport”. This involves tagging bags of minerals at the site at which they are mined to enhance traceability. The third phase is intended to “develop certification of additional factors such as health and safety and environmental issues” and according to ITRI is “not yet fully described”.⁹⁴

Global Witness has recently exchanged letters with ITRI about the iTSCi scheme and this correspondence is published on the Global Witness

website. ITRI has answered some questions about its plans but not others and Global Witness remains concerned that the scheme may not be an effective means by which companies can exclude conflict minerals from their supply chains.

Based on the information provided by ITRI in its letters to Global Witness and its public statements, it is not clear how the iTSCi scheme will address the problem of illegal taxation of minerals by the warring parties. Illegal taxation of mineral consignments – by soldiers or rebels at roadside checkpoints, for example – does not generally leave a paper trail; neither does it necessitate visible interference with a tagging system of the kind ITRI is developing. As a result it will be perfectly possible for consignments of minerals bagged and tagged in compliance with iTSCi standards as publicly described to continue to generate funding for armed groups, with the same very harmful consequences. Global Witness' own research in eastern Congo suggests that extortion of this kind is one of the primary means by which rebel groups and army units are deriving financing from the minerals trade. It is vital that due diligence by companies addresses it directly.

Commenting on the iTSCi scheme, the November 2010 UN Group of Experts report notes that “Tagging contributes to traceability but does not address conditions at the site where tagged material comes from and along the transport routes it passes from the site down the supply chain. It gives no indication, in itself, about which armed groups and/or FARDC [national army troops] may or may not be illegally benefiting. For this reason, while the tagging process can contribute to due diligence, it will need to be supplemented by on-the-ground assessments.”⁹⁵

Interviewed by a journalist in March 2010, a spokesperson for ITRI said: “If we can find a way to collect information along the trading route we will, but spot checks are not practical... We're not going to go off into the jungle and ask the army what they are doing.”⁹⁶ In recent correspondence, however,

ITRI has stressed that it will be addressing the issue of illegal taxation and has said that Global Witness could obtain answers to the specific questions it posed from a consultant organisation ITRI has hired to design a methodology for on-the-ground assessments and auditing.⁹⁷

Given how important addressing the extortion problem is to companies’ efforts to show themselves in compliance with UN Security Council resolutions, OECD standards and US legislation, Global Witness believes that any industry body developing a due diligence system on behalf of its members and funders should be able to articulate how it will meet this challenge. Global Witness is calling on ITRI to publish a statement explaining clearly and precisely how it intends to do this.

A second, related concern about the iTSCi scheme is how the scheme will address the problem of units of the national army benefiting illegally from the minerals trade. As illustrated by the first half of this report and the recent Group of Experts findings, this is crucial to breaking the links between natural resources and armed conflict in Congo. The conflict minerals problem is not associated only with rebel groups.

ITRI has sent Global Witness a statement saying that “While ITRI does consider that illegal armed group involvement should be treated in a different way to involvement of the national army this does not imply that either circumstance will not be addressed. Phase 2 [of the iTSCi] introduces a method to control the supply chain, sourcing and purchases in order to allow widespread issues of concern by any group to be addressed by immediate action or gradual mitigation; suitable reaction will be decided upon discussion with the local and international community as the project develops.”⁹⁸

ITRI has subsequently stated that this position is fully in line with expected OECD guidance to companies.⁹⁹ The draft OECD guidance – which ITRI has seen – sets out specific measures that companies should take if they find that members

of the military are benefiting illegally from their purchases of minerals, together with a time frame for action. There is no mention of deciding at a later date how to react.

More importantly, ITRI’s statement does not amount to a clear commitment on the part of its members to tackle the problem of government armed units’ illegal involvement in the minerals trade. Global Witness put this point to ITRI, together with the following questions:

- Please could you state clearly what is the policy of ITRI / iTSCi members regarding minerals that have financially benefited members of government army units illegally?
- Are ITRI / iTSCi members currently trading in minerals that have financially benefited members of government army units illegally? If so, please describe the extent of this problem and the measures that ITRI / the iTSCi is taking to address it.
- One of the sites where iTSCi is piloting its Phase 2 is Bisie in Walikale District, where much of the mining area is controlled by government soldiers. Global Witness research has found that government soldiers are also levying illegal payments from minerals traders along the transportation routes out of Bisie. Recent reports from the UN and other sources suggest that there is collaboration between government soldiers in Walikale and the FDLR armed group. Which ITRI members are currently purchasing minerals that originate from Bisie? Does ITRI consider that purchasing minerals originating from Bisie is acceptable? If so, please explain why.

ITRI’s only response to these points has been to say that “Questions regarding ITRI members should be referred directly to those companies.”¹⁰⁰

ITRI wants its scheme to be accepted as a means by which participating companies can comply with

international due diligence requirements set by the UN and the OECD. It remains difficult to see how it can achieve this goal if it is unwilling or unable to explain publicly how it intends to deal with the most acute and harmful aspects of the conflict minerals trade in eastern Congo, however.

Manufacturing companies including Apple, Dell, HP, IBM, Intel, Microsoft, Motorola, Nokia, Philips, Research In Motion, Sony and Xerox have provided financing or other forms of support to the iTSCi.¹⁰¹ Many of these same manufacturing

companies are also involved in the development of a system of auditing the supply chain controls of smelters producing tantalum and tin, under the auspices of industry bodies the Electronics Industry Citizenship Coalition (EICC) and the Global e-Sustainability Initiative (GeSI). As of November 2010, this smelter validation scheme was in a pilot phase. As with the iTSCi, the test facing the EICC/GeSI scheme is whether it can enable companies to comply with the standards set by the UN Security Council, the OECD and the US legislation.

Conclusion

Since war broke out in 1996, Congo's mineral riches have been fought over by a host of armies and rebel groups, at the cost of millions of lives. Eastern Congo's citizens continue to bear the brunt of this warfare. Murder and rape are committed daily. Villagers are ordered into forced labour. Miners – many already deeply in debt – have to hand over a large proportion of their meagre earnings to armed men. Legitimate trade and agriculture are stifled in an area that should be a regional breadbasket.

The challenge of changing things for the better in eastern Congo remains immense. As the latest UN Group of Experts report and Global Witness's own findings make clear, eastern Congo is being devastated by intense rivalry over its mineral riches. Congolese army units are competing between themselves, says the Group of Experts. The Experts – citing "credible information" from military and government sources – even say that one army unit, the 51st Sector, was set up explicitly to benefit from the minerals trade.

Global Witness, the UN Group of Experts and others have documented how Bisie, the largest tin mine in eastern Congo, is controlled by national army units, including former CNDP rebels who are now officially part of the Congolese army. Companies that have bought cassiterite from Bisie could have inadvertently helped finance the ex-CNDP to continue their illegal activities and possibly even prepare for a future war against the Congolese government. Yet, the international tin organization ITRI and the Congolese government have chosen the huge mine as one of just two pilot sites for a scheme aimed at ending the conflict minerals trade. The illegal military exploitation of Bisie highlights the need for the ITRI scheme to include robust, verifiable

measures to guard against illegal profiteering by army units – and not just rebels.

The role of the region's governments in resolving the situation is ambiguous. Congo's rulers say they want to end the militarisation of mines but their own army is a key part of the problem, while Congo's own intelligence agents also enrich themselves from the minerals trade. Rwanda and other nations have profited hugely from the conflict minerals passing through their borders.

Cracking the conflict minerals trade requires rapid action by companies and governments alike. Companies need to comply with the due diligence standards set by the UN Security Council and the OECD and governments need to ensure that this is happening. Governments also need to make sure that conflict minerals traders are subject to UN sanctions. International aid donors to the Great Lakes region must start using their influence to ensure that governments in Congo and Rwanda start facing up to their responsibilities. The governments of China and Malaysia should state publicly what measures they are going to take to ensure that companies based in their jurisdictions implement due diligence standards.

It is clear what needs to be done. Policymakers and company representatives must now show that they can turn warm words into action that changes conditions for the better. The hills of eastern Congo should belong to the country's citizens – not to dangerous groups of rebels and soldiers who dictate their rules at gunpoint.

Endnotes

- 1 Final report of the Group of Experts on the Democratic Republic of the Congo, S/2010/596, 29 November 2010, paragraph 156. See also: Final report of the Group of Experts on the Democratic Republic of the Congo, S/2009/603, 23 November 2009, paragraph 187.

- 2 See ITRI: 'ITRI Tin Supply Chain Initiative ('iTSCi'): a phased and constructive approach towards improved due diligence, governance and traceability in co-operation with the Ministère des Mines, République Démocratique du Congo'. This outline of the scheme, dated January 2010, is the latest with which Global Witness has been supplied. Global Witness has corresponded further with ITRI about the scheme, and the army's illegal army involvement in the minerals trade: see page 23.

- 3 Final report of the Group of Experts on the Democratic Republic of the Congo, S/2010/596, 29 November 2010, paragraphs 188 to 196 and Box 4.

- 4 US Geological Service, Mineral Commodity Summaries, January 2010: <http://minerals.usgs.gov/minerals/pubs/commodity/tin/mcs-2010-tin.pdf>, last accessed 9 July 2010.

- 5 ITRI, 'ITRI Reports New Data on Global Tin Use and Recycling', <http://www.itri.co.uk/SITE/UPLOAD/Document/Ref%2008-14%20Tin%20Consumption%20Review-%20FINAL.pdf>, last accessed 1 October 2010. According to the data, electronic solders accounted for 44 per cent of all refined tin usage in 2007.

- 6 On the basis of Bisie monthly production at 500 tonnes throughout 2010. See Final report of the Group of Experts on the Democratic Republic of the Congo, S/2009/603, paragraph 202. The 500 tonnes figure was recently confirmed by a Global Witness telephone interview with *Division des Mines* official in Goma, 14 October 2010.

- 7 Based on prices for cassiterite in eastern Congo of between \$4.56/kg and \$9/kg, the range of prices that Global Witness was given by three sources in February 2010. For the amount of minerals traded directly by the military: Global Witness meeting with mining company staff members, Goma, 8 February 2010; Global Witness meeting with researcher who visited Bisie, February 2010.

- 8 One kilogram according to the Pole Institute, 'Soixante-douze heures dans le carré minier de Bisie', January 2010, last accessed 9 July 2010 at <http://www.pole-institute.org/site%20web/echos/echo132.htm>. One kilogram for the Congolese army and one kilogram for the military intelligence officer for the 8th military region, known as T2, according to a Global Witness meeting with researcher who visited Bisie, February 2010.

- 9 Pole Institute, 'Soixante-douze heures dans le carré minier de Bisie', January 2010.

- 10 Global Witness meeting with mining company staff members, 8 February 2010, Goma.

- 11 Cassiterite is mainly transported in 50kg bags, so about 10,000 trips are needed to carry 500 tonnes every month. Figures in dollars are calculated at an exchange rate of 1,000 Congolese francs = \$1.12. We have not factored in payments by other goods vendors or *négociants*.

- 12 Pole Institute, 'Soixante-douze heures dans le carré minier de Bisie', January 2010; Global Witness meeting with researcher who visited Bisie, February 2010.

- 13 Pole Institute, 'Soixante-douze heures dans le carré minier de Bisie', January 2010.

- 14 Global Witness correspondence with researcher who visited Bisie, February 2010.

- 15 Global Witness meeting with researcher who visited Bisie, February 2010. The military intelligence officer is known as T2.

- 16 Global Witness meeting with researcher who visited Bisie, February 2010.

- 17 *Nouvel Observateur*, 'Les mineurs de l'enfer', Christophe Boltanski, 1 April 2010; and Pole Institute, 'Soixante-douze heures dans le carré minier de Bisie', January 2010.

- 18 Global Witness, 'Faced With a Gun, What Can You Do?', July 2009, page 30.

- 19 Pole Institute, 'Soixante-douze heures dans le carré minier de Bisie', January 2010.

- 20 Global Witness meeting with traditional chief from Walikale, 20 February 2010, Goma.

- 21 Global Witness meeting with *Police des Mines* official, 3 February 2010, Goma. Global Witness meeting with traditional chief from Walikale, 20 February 2010, Goma.

- 22 Global Witness communication with researcher who visited Bisie, August 2010.

- 23 Final report of the Group of Experts on the Democratic Republic of the Congo, S/2010/596, 29 November 2010, paragraph 192.

- 24 Final report of the Group of Experts on the Democratic Republic of the Congo, S/2010/596, 29 November 2010, annex 29.
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- 25 Final report of the Group of Experts on the Democratic Republic of the Congo, S/2010/596, 29 November 2010, paragraph 43.
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- 27 Final report of the Group of Experts on the Democratic Republic of the Congo, S/2010/596, 29 November 2010, paragraphs 197-205.
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- 28 MONUSCO and UNHCHR, ‘Rapport préliminaire de la mission d’enquête du Bureau Conjoint des Nations Unies aux Droits de l’Homme sur les viols massifs et autres violations des droits de l’homme commis par une coalition de groupes armés sur l’axe Kibua-Mpofi, en territoire de Walikale, province du Nord-Kivu, du 30 juillet au 2 août 2010’, 24 September 2010, paragraph 1.
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- 31 MONUSCO and UNHCHR, ‘Rapport préliminaire de la mission d’enquête du Bureau Conjoint des Nations Unies aux Droits de l’Homme sur les viols massifs et autres violations des droits de l’homme commis par une coalition de groupes armés sur l’axe Kibua-Mpofi, en territoire de Walikale, province du Nord-Kivu, du 30 juillet au 2 août 2010’, 24 September 2010, page 2 (footnote 1).
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- 32 Transcript of the 6,400th meeting of the UN Security Council, 14 October 2010, S/PV.6400.
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- 33 United Nations Joint Human Rights Office in the DRC (UNJHRO), ‘Analysis of the Human Rights Situation in September 2010’. Bloomberg, ‘Congo Rebel Leader Arrested After Civilians’ Mass Rape’, Michael Kavanagh, 5 October 2010.
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- 34 United Nations Joint Human Rights Office in the DRC (UNJHRO), ‘Analysis of the Human Rights Situation in September 2010’.
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- 35 Final report of the Group of Experts on the Democratic Republic of the Congo, S/2009/603, 23 November 2009, annex 67.
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- 36 Congolese Ministry of Mines, ‘Communiqué du ministre des mines en rapport avec la décision du Président de la République sur la suspension de l’exploitation minière’, 11 September 2010.
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- 37 By 7 October 2010, Bloomberg was reporting that a renewed military offensive had already been going on for three days. See: Bloomberg, ‘Congo Army Commander Vows to Arrest Soldiers Involved in Mining’, Michael Kavanagh, 7 October 2010. Before this, statements by Congolese authorities indicated that the FDLR would be the target of such operations. See: Agence France-Presse, ‘Congolese army launches operation in mining territory’, 14 September 2010; and Radio Okapi, ‘Walikale: accusées de verser dans l’exploitation minière, les FARDC démentent’, 30 September 2010.
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- 38 Bloomberg, ‘Congo Extends Mining Ban in Three Eastern Provinces’, Michael Kavanagh, 25 October 2010.
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- 39 Bloomberg, ‘Congo Army Commander Vows to Arrest Soldiers Involved in Mining’, Michael Kavanagh, 7 October 2010.
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- 40 La Prospérité, ‘Martin Kabwelulu invite les entreprises minières à la responsabilité sociale’, 7 October 2010.
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- 41 Ibid. Le Potentiel, ‘Suspension des activités minières à l’est – le vrai problème demeure’, 7 October 2010.
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- 42 Global Witness telephone interview with Dely Mawazo Sesete, *Centre de Recherche sur l’Environnement, la Démocratie et les Droits de l’Homme*, 23 November 2010.
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- 43 In a letter to Global Witness, dated 4 August 2010, MSA wrote: “MSA does not directly buy materials at the Bisie mine, but part of the material MSA buys from their suppliers (comptoirs) origins from such mine (sic). Therefore, MSA is currently not in a position to specify exactly which amounts of materials its suppliers directly or indirectly get from the Bisie mine.”
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- 44 In a letter to Global Witness, dated 4 August 2010, MSA stated that “the owner of Minerals Supply Africa [has as] its sole beneficial shareholder CRONIMET Central Africa AG (100%), a stock corporation duly formed under Swiss law having its legal seat in Steinhausen, Switzerland. CRONIMET Central Africa AG is in turn beneficially held jointly by CRONIMET Mining GmbH, Karlsruhe, Germany (60%), Mr. David Bensusan (20%), Mr. Georges M. Hermann (10%) and Mrs. Candida Owens (10%).”
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- 45 MSA letter to Global Witness, 4 August 2010. Referring to ITRI, the company wrote: “MSA does not only support this exemplary initiative which may serve as a key model for the whole minerals trading sector with the DRC, but has, for example, already ensured in MSA’s standard contractual documentation as well as in the Ethical Fundamentals to be signed by MSA’s suppliers that each and every of our suppliers is obliged to follow the ITRI Standards in order to implement these standards into the trading practice as soon as possible.” MSA also told Global Witness in its letter that it cooperates closely with the UN Group of Experts and stressed that it abstains from doing business where there are indications that suppliers are associated with the Congolese army or other armed groups.

- 46 Global Witness meeting with MSA, 25 February 2010, Kigali; Letter from MSA to Global Witness, 4 August 2010.
- 47 Global Witness meeting with MSA, 25 February 2010, Kigali.
- 48 MSA letter to Global Witness, 4 August 2010.
- 49 For example, page 3 of the report: "CNDP military officers deployed as part of FARDC Kimia II operations have profited from their deployment in mineral-rich areas, notably at the Bisie mine in Walikale, North Kivu, and in the territory of Kalehe, in South Kivu. In both these areas, the FARDC commanding officers on-the-ground are former CNDP officers."
- 50 Global Witness reviewed data from the National Bank of Rwanda for 2009. The figure of 5,615 tonnes is the sum of 4,269 (the figure given for cassiterite "exports" for the year) plus 1,346 tonnes (the figure given for cassiterite "re-exports" for the year). We are assuming that, as the data for re-exports and exports are presented separately by the National Bank, they are distinct classifications (i.e. "re-exports" in the data are not a subset of "exports").
- 51 Figures on exports and production provided to Global Witness by the National Bank of Rwanda, February 2010.
- 52 Global Witness interview with an official overseeing the mining sector, Kigali, February 2010.
- 53 Global Witness interview with an official overseeing the mining sector, Kigali, February 2010.
- 54 Global Witness meeting with company representative, 25 February 2010, Kigali.
- 55 See Global Witness, 'Undermining Peace', June 2005, p.24-25.
- 56 Global Witness meeting with Rwanda Geology and Mines Authority staff, 22 February 2010, Kigali. Information from the UN Group of Experts' November 2009 report also indicates Congolese cassiterite was being exported from Rwanda certified as being of Rwandan origin. See paragraph 209 of the report, referring to exports by Minerals Supply Africa: "Mr. Bensusan claimed that roughly 30 per cent of what he exports normally is sourced from Rwanda and the rest is sourced from the Democratic Republic of the Congo. The Group has nevertheless obtained certificates of Mr. Bensusan's exports from Rwanda this year, all but two of which are documented as having Rwandan certificates of origin."
- 57 Global Witness fixed an appointment with the mines minister. Unfortunately the minister was unable to meet the Global Witness researchers as his plans changed at the last minute.
- 58 This figure is based on statistical data from the Ministry of Mines *Division des Mines* covering exports of cassiterite from North and South Kivu over the period January to June 2010, as well as a Global Witness telephone interview with a representative of *Division des Mines* staff in November 2010. It assumes that Minerals Supply Africa (MSA) has continued to supply all its cassiterite to Malaysia Smelting Corporation (MSC). MSA told Global Witness in February 2010 that they exported all their cassiterite to MSC.
- 59 Metal Bulletin, 'Tin market awaits outcome of smelter audit at MSC', 12 November 2010.
- 60 Metal Bulletin, 'MSC dismisses tin acceptability issues', 23 November 2010.
- 61 Global Witness interview with a supplier to MSC, 2009.
- 62 Global Witness interviews with tin trade broker, 2009.
- 63 Metal Bulletin, 'Tin market awaits outcome of smelter audit at MSC', 12 November 2010.
- 64 Metal Bulletin, 'MSC dismisses tin acceptability issues', 23 November 2010.
- 65 Coltan exports from North Kivu totalled 80.4 tonnes from January to May 2010, according to *Division des mines* statistics. The January to May data sheet did not, however, provide destinations. Separate data for just May 2010 showed that 41.4 tonnes of coltan was exported from North Kivu in that month, all of which went to Chinese firms (Fogang, Unilink and Star 2000). There were no recorded coltan exports from South Kivu in January to May.
- 66 These companies are not shown in the November 2010 UN Group of Experts report to be buying minerals from areas controlled by armed groups.
- 67 CNMC (Ningxia) Orient Nonferrous Metal Group Co., Ltd, 'Business and Products', <http://www.cnmc.com.cn/Page/417/SourceId/1102/InfoID/1624/default.aspx>, last accessed 10 December 2010. CNMC stands for China Nonferrous Metal Mining (Group) Co., Ltd.
- 68 Global Witness interviews with representatives of two mining company representatives and one electronics company representative, April 2010.
- 69 Global Witness interview with tantalum industry expert, April 2010.
- 70 Global Witness communications with electronics industry representatives, March-May 2010; Global Witness interview with tantalum industry expert, April 2010.
- 71 ITRI, 'ITRI Reports New Data on Global Tin Use and Recycling', <http://www.itri.co.uk/SITE/UPLOAD/Document/Ref%2008-14%20Tin%20Consumption%20Review-%20FINAL.pdf>, last accessed 8 December 2010; Cabot, 'Tantalum: High performance metal from Cabot supermetals', <http://www.cabot-corp.com/Tantalum>, last accessed 8 December 2010.
- 72 Global Witness meeting with representative of AVX, April 2010.
- 73 Global Witness meeting with representative of Intel, April 2010.
- 74 Intel 2009 Annual Report, p.9, Apple, 'Intel in Macs', <http://www.apple.com/intel/>, last downloaded 8 December 2010.

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- 76 Global Witness, 'Do No Harm: Excluding Conflict Minerals from the Supply Chain – a Guide for Companies', July 2010, http://www.globalwitness.org/sites/default/files/pdfs/do_no_harm_global_witness.pdf.
- 77 Personal communication from member of UN Group of Experts, December 2010.
- 78 Comment on cooperation between MONUSCO and Congolese government counterparts from personal communication from a MONUSCO representative, September 2010.
- 79 UNDP, Multi-Donor Trust Fund Office, Project Factsheet, 'Création des Centres de Négoce à l'Est de la RDC, 1ère Phase', <http://mdtf.undp.org/factsheet/project/00074614>, last accessed 11 October 2010.
- 80 International Conference on the Great Lakes Region, 'Results of the Second Meeting of the Steering Committee of the Regional Initiative against the illegal exploitation of Natural Resources (RINR) in Bujumbura, Burundi, April 12-15, 2010', 23 April 2010.
- 81 Partnership Africa Canada, 'An ICGLR-based Tracking and Certification System for Minerals from the Great Lakes Region of Central Africa', Shawn Blore and Ian Smillie, March 2010.
- 82 BGR, 'Projekt: Einführung und Umsetzung eines Zertifizierungssystems für mineralische Rohstoffe', http://www.bgr.bund.de/cln_109/nn_327772/DE/Themen/TZ/TechnZusammenarbeit/Laender/kongo_dr.html, last accessed 10 December 2010.
- 83 Statistics from www.aiddata.org, last accessed 20 April 2010.
- 84 Global Witness interview with a Congolese government official, 2010.
- 85 ITRI, 'Supply chains unite to start iTSCi mineral traceability project in DRC', 19 March 2010, http://www.itri.co.uk/pooled/articles/BF_NEWSART/view.asp?Q=BF_NEWSART_318425, last accessed 23 November 2010.
- 86 The UN Group of Experts carried out most of the research in Democratic Republic of the Congo for its December 2008 report between August and November 2008.
- 87 The UN Group of Experts carried out research in Democratic Republic of the Congo for its November 2009 report between March and October 2009.
- 88 Final report of the Group of Experts on the Democratic Republic of the Congo, S/2009/603, 23 November 2009, summary page 2, paragraphs 165-171 and 174.
- 89 Final report of the Group of Experts on the Democratic Republic of the Congo, S/2008/773, 12 December 2008, paragraphs 78, 79, 86, 88; Final report of the Group of Experts on the Democratic Republic of the Congo, S/2009/603, 23 November 2009, summary page 2, paragraphs 165, 166, 173 and 178. In September 2009, Thaisarco announced that it would suspend all purchases of cassiterite from the Democratic Republic of Congo.
- 90 Final report of the Group of Experts on the Democratic Republic of the Congo, S/2008/773, 12 December 2008, paragraphs 78, 79, 85, 86 and 88. In May 2009, Traxys announced that it would suspend all purchases of cassiterite from the Democratic Republic of Congo.
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- 94 ITRI, 'Statement of facts relating to Global Witness comments on the ITRI tin supply chain initiative', 10 September 2010.
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Global Witness is a UK based non governmental organisation which investigates the role of natural resources in funding conflict and corruption around the world.

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Global Witness
6th floor
Buchanan House
30 Holborn
London
EC1N 2HS
United Kingdom

mail@globalwitness.org

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A GUIDE FOR COMPANIES

DO NO HARM

Excluding conflict minerals
from the supply chain

CONTENTS

- | | |
|--|---|
| 2 EXECUTIVE SUMMARY | 15 CONCLUSION |
| 4 INTRODUCTION
Mapping the supply chain for tin from eastern DRC | 16 ANNEX A: On the ground assessment by companies sourcing minerals from the Great Lakes Region |
| 8 KEY COMPONENTS OF SUPPLY CHAIN DUE DILIGENCE
1. Conflict Minerals Policy
2. Supply chain risk assessments
3. Remedial action
4. Audits
5. Public reporting | 20 ANNEX B: Manufacturer's assessment of smelter's supply chain controls
Flowchart showing main steps in assessment |



global witness

EXECUTIVE SUMMARY

International companies' demand for minerals and metals is fuelling one of the world's most vicious and intractable conflicts.

Global Witness, the UN Group of Experts and others have published numerous detailed reports highlighting how rebels and government soldiers have hijacked the trade in mineral ores from eastern Democratic Republic of Congo (DRC), while subjecting the civilian population to massacres, rape, extortion, forced labour and forced recruitment of child soldiers.

The warring parties finance themselves via control of most of the mines in the region that produce tin, tantalum and tungsten ores and gold. They also generate substantial sums through illegal 'taxation' – i.e. extortion – of the minerals trade along transportation routes.

Congo's 'conflict minerals' are laundered into the global supply chain by exporters in the east of the country before being transformed into refined metals by large international smelting firms.¹ The metals are then used in a wide range of products, including consumer electronic goods such as mobile phones and computers. Some of the world's most famous brands are now coming under scrutiny to address their role in this devastating trade.

Nobody forces companies to purchase minerals or metals mined in war zones. It is their choice. Those that source minerals or metals originating from eastern DRC need to show the public that they have procedures in place to prevent direct or indirect involvement with serious human rights abuses and other crimes. This is what is called 'due diligence'.

Despite the mounting pressure on companies that use minerals and metals to carry out due diligence, few are actually doing this. Some companies claim that it is too complicated or too

difficult for them to do. *Due diligence is not rocket science, however.* It is a process that all reputable companies understand and employ on a regular basis to address risks ranging from corruption to environmental damage. Given the long-established link between minerals and human rights abuses in eastern DRC, it is something that international companies buying from the region should have implemented years ago.

At its core, the due diligence that companies using minerals or metals from the DRC need to undertake consists of:

- A conflict minerals policy
- Supply chain risk assessments, including on the ground checks on suppliers
- Remedial action to deal with any problems identified
- Independent third party audits of their due diligence measures
- Public reporting

By putting these measures in place, companies can help to create a mining sector in eastern DRC that brings real benefit to the people who live there. A due diligence-based approach to sourcing minerals is not about imposing blanket bans on trade; it is about ensuring that business does not perpetuate armed violence, serious human rights abuses and other crimes on the ground in conflict affected regions.

At the same time, a key message to companies that runs through this paper is that if they choose to use metals originating from eastern DRC they have a responsibility to demonstrate – by doing due diligence – that their activities are not causing harm. If they cannot do this, they must seek their supplies elsewhere.



global witness

INTRODUCING GLOBAL WITNESS



Global Witness is a UK-based non-governmental organisation which investigates the role of natural resources in funding conflict and corruption around the world.

In Cambodia, in our first ever campaign, our investigations helped shut down the illegal timber trade financing the Khmer Rouge. In Angola, we documented how the rebel group UNITA underwrote its operations via diamond trading, in defiance of UN sanctions. We also campaigned against conflict diamonds in West Africa, and helped to establish the Kimberley Process to remove such diamonds from global markets. We were co-nominated for the 2003 Nobel Peace Prize for this work.

Global Witness successfully campaigned to break the link between the timber trade and conflict financing in Liberia and exposed the role of the international cocoa trade in fuelling conflict in Côte d'Ivoire. Our current work includes promoting equitable sharing of oil revenues as a means of preventing renewed civil war in Sudan and developing solutions to the economic dimensions of the conflict in eastern DRC.

Global Witness was one of the earliest proponents of the Extractive Industries Transparency Initiative (EITI), an international initiative to combat corruption in the oil, gas and mining sectors, and is a member of the EITI board.

INTRODUCTION

Carrying out supply chain due diligence is one way that companies can ensure that they are not causing harm.

It involves identifying problems, addressing them and showing, in a transparent manner, how they have done this. In the case of eastern DRC, the problem that companies need to identify and address is the link between their purchasing of metal ores and the financing of rebel and government armies that commit serious human rights abuses such as killing, rape, torture, recruitment of child soldiers and other crimes.

In eastern DRC, there are two main means by which abusive armed groups generate cash from the mineral trade. One is by controlling mines, which entails extortion or theft from the miners and in some cases soldiers mining themselves. The other is by illegally taxing (in other words,

extorting from) the trade at all points between mine and point of export.² Companies' due diligence needs to address both problems. Simply identifying or certifying the mine of origin will not be enough. Companies need to know and show that the conditions of trading were legal and legitimate at all times.

The steps involved in undertaking due diligence are fairly simple, but it is not a box-ticking exercise. Companies are responsible for ensuring that adequate due diligence is conducted and cannot use the weak performance of Congolese government agencies as an excuse for their own failings. Verification and traceability schemes managed by industry bodies may be an

Eastern Congo's militarised minerals trade

Much of the minerals trade in eastern Congo is controlled by units of the Congolese army, militias and the Forces démocratiques de libération du Rwanda (FDLR), a group led by individuals allegedly involved in the 1994 genocide in Rwanda.

Recent research by Global Witness shows that former rebels from the Congrès national pour la défense du peuple (CNDP) have established mafia-style extortion rackets covering some of the most lucrative tin and tantalum mining areas. The ex-CNDP rebels, who

joined the Congolese national army in a chaotic integration process during 2009, have taken advantage of United Nations-backed military offensives to displace the FDLR from profitable mine sites.

They have gained far greater control of mining areas than they ever enjoyed as insurgents and are making tens of thousands of dollars a month from illegal taxes imposed on civilian miners. This represents a serious threat to the region's stability, not least as the ex-CNDP commanders have a history of reverting to rebellion when peace no longer suits their interests.

This militarised control of the minerals trade, which has continued in one form or another for twelve years now, is not only financing armed groups and robbing the state of much needed revenues, it also condemns miners to atrocious conditions characterised by armed violence and extortion. Global Witness has found evidence of miners being beaten for not handing over their winnings to the military and of systematic theft by soldiers of up to 30% of everything miners produce. The burden of illegal taxation is such that some miners fall into a cycle of debt in which they lose more than they earn.³

important source of information for companies' due diligence, but do not absolve them of their responsibility to ensure that their own activities and purchasing decisions do no harm.

Companies should see the conduct of due diligence not only as a part of their responsibility, but also as an opportunity to help resolve the Great Lakes region's cycle of armed violence. Supply chain due diligence, properly conducted, has the potential to have a much quicker impact in tackling the conflict minerals trade than some of the other options currently being proposed, such as certification of minerals.

Certification schemes may ultimately provide strong and comprehensive regulation of the minerals trade across the region. But our

experience with the Kimberley Process for conflict diamonds and other certification schemes makes clear that the establishment of the necessary regulatory frameworks and institutional infrastructure takes years, even in the best case scenarios.

Creating a certification scheme will also involve high level government cooperation and institution-building, but these are not viable options in conflict zones when the state is contested and rule of law largely absent.

Given the urgency of the situation in eastern DRC, these are major drawbacks. By contrast, supply chain due diligence is something that companies can start doing right away. There is no need, and no excuse, for waiting.

The growing international demand for due diligence

In November 2009, the United Nations (UN) Security Council called on governments to make sure that businesses based in their jurisdictions 'exercise due diligence on their suppliers and on the origin of the minerals they purchase', to stop them financing armed groups in the DRC.⁴

This ties in with two key messages of the UN framework for business and human rights being developed by the UN

Secretary-General's Special Representative John Ruggie: that it is the responsibility of companies to conduct business in a manner that does not harm the rights of others; and that due diligence is the principal means of fulfilling this responsibility. Professor Ruggie argues that due diligence is about companies 'knowing and showing' that they are respecting human rights.⁵

Failure by companies to carry out supply chain due diligence can damage their reputations and make them legally liable.⁶ In 2008, the UK government

upheld a complaint lodged by Global Witness against Afrimex, a British mineral trading company active in eastern DRC, under the framework of the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises. The UK government's investigation found 'that rebel soldiers extracted money from (Afrimex's) supply chain, helping them fund their campaign... through its lack of diligence, the firm failed to contribute towards ending the use of child labour and forced labour'.⁷

Mapping the supply chain for tin from eastern DRC

This diagram illustrates the conflict minerals trade from mines to manufacturer.

Cassiterite – the ore from which tin is made – is the main mineral export from eastern DRC, both in terms of volume and value. The trade in cassiterite generates millions of dollars a year for the warring parties. Internationally, tin is used in everything from mobile phones to packaging materials. Over half of all tin is used in solder, which goes into electronic circuit boards.

MINE SITE

Cassiterite is extracted by artisanal miners and sold to intermediaries (managers, négociants or representatives of comptoirs) at or near the mine site.

- Armed groups and army units steal and extort cash or cassiterite from miners at the mine site on a systematic basis.
- Miners are often forced to work at gunpoint in incredibly dangerous and difficult conditions. They are beaten if they fail to hand over the quantities of cash or mineral ore demanded.
- Top military commanders loot cassiterite from the mines in a highly organised manner. Commanders may seize control of specific mine shafts, sometimes even naming them after themselves.

TRANSPORTATION

The ore is transported by foot, truck, and aeroplane to the capitals of North and South Kivu Provinces: Goma and Bukavu.

- Rebels and army units extort money from traders and intermediaries at all stages of transportation between mine and point of export.
- These illegal 'taxes' are typically extracted at checkpoints set up along footpaths, main roads and airports.
- For some groups, notably the Congrès national pour la défense du peuple (CNDP) former rebels, illegal taxation is increasingly important to their illicit revenue generation.

EXPORT

Cassiterite is sold by intermediaries to government-licensed comptoirs or export houses based in Goma and Bukavu. Comptoirs have contracts to sell the minerals to foreign companies.

- Cassiterite that has come from militarised mines, or whose transportation has been facilitated by pay-offs to soldiers or rebels, is laundered into the legal supply chain by comptoirs.
- Comptoirs claim publicly that because they are licenced and pay taxes, therefore all the cassiterite they export must be conflict-free. In reality, their purchases are bankrolling abuses and instability in the region.

TRANSIT COUNTRIES

A proportion of the cassiterite is traded, and sometimes partially transformed, in neighbouring countries such as Rwanda.

- Traders in transit countries, notably Rwanda, are importing consignments of cassiterite from militarised areas of eastern DRC and are not carrying out checks on the conditions of trade.
- Governments of these neighbouring countries have not acknowledged the issue and have not implemented successive UN Security Council resolutions calling on them to ensure companies do proper due diligence.

SMELTERS

Cassiterite is sold by comptoirs or intermediate traders to international smelters. The main smelters of cassiterite from eastern DRC in recent years have been the world's 3rd and 5th biggest tin producers: Malaysia Smelting Corporation and Thaisarco.

- Some major cassiterite trading and processing companies have been named (in some cases repeatedly) by the UN Group of Experts as purchasing minerals from mines held by armed groups and the military.
- Trading and processing firms are not carrying out rigorous due diligence on their supply chains. Some have initiated a traceability programme via the International Tin Research Institute (ITRI). However, this programme takes no account of either conflict financing via illegal taxation, or abuses by the national army, and does not constitute credible due diligence.

MANUFACTURERS

Refined tin is used to make components by manufacturers. Refined tin may pass through the hands of two or more component manufacturers before being incorporated into an end product.

- Component manufacturer and end users using tin, including major manufacturers of electronic goods like Apple, Dell, HP, Intel and Nokia do not have due diligence measures in place to exclude conflict minerals from their supply chains.
- Some of these firms have chosen to back the ITRI scheme, despite being warned repeatedly that it is not credible. There are also efforts underway by some electronics companies, notably Intel, to devise an industry-led 'smelter validation' scheme; however these are still at the planning stage.

Which companies should be carrying out due diligence on their supply chains?

Companies that use mineral concentrate or refined metals may or may not be aware that their supply chains contain minerals from eastern DRC. The following checks should raise 'red flags' which tell companies that they need to do comprehensive due diligence for the presence of conflict minerals in their supply chain:

- The minerals used by the company originate from or have been transported via a country in the Great Lakes region. These are the Democratic Republic of Congo, the nations which border it – Angola, Burundi, the Central African Republic, Republic of the Congo, Rwanda, Sudan, Uganda, Tanzania and Zambia – and Kenya.⁸ The point here is that the conflict in eastern DRC has a trans-boundary nature. Moreover, all conflict minerals from Congo pass through neighbouring countries before leaving Africa and it is well established that mis-declaration of conflict minerals as originating from other Great Lakes region countries is occurring on a large scale.⁹

- The stated origins of the minerals in question are countries that have limited or no capacity to produce them, raising the possibility that the materials are in fact of Congolese origin.

- The company or its suppliers have relationships or a history that links them to the Great Lakes region, for example if the company or one of its suppliers is known to have sourced minerals from the region in the past.

- The minerals supplied to the company are recycled or part-refined. (Part-processing of illicitly-sourced raw materials is a tried and tested means of evading supply chain controls internationally.)¹⁰

The point of identifying red flags is not to exclude countries or regions from trade but to focus a company's due diligence investigations. If a company's supply chain raises any of these red flags or any other grounds for suspecting that some of its materials may originate from eastern

DRC, it should be carrying out the due diligence measures outlined here. Ignorance is not an excuse.

Do all these companies undertake the same due diligence measures?

All companies in the minerals and metals supply chain should be basing their due diligence around the same five components:

- A conflict minerals policy
- Supply chain risk assessments
- Remedial action to deal with any problems identified
- Independent third party audits of their due diligence measures
- Public reporting

With regards to the information-gathering component – the supply chain risk assessment – there is a distinction to be drawn between the measures taken by 'upstream' companies that trade or smelt raw mineral concentrate and 'downstream' manufacturers that use the refined metals. Supply chain risk assessments by upstream firms should be based primarily around on the ground assessments. They should also include compilation and analysis of chain of custody data. Downstream manufacturers, by contrast, should focus their supply chain risk assessments on verifying that the smelters that produce the refined metal that they use have proper controls in place.

Why the difference in the responsibilities of upstream parties using raw mineral concentrate and downstream companies using refined metal? This distinction recognises that it is at the point of transformation – where minerals are smelted into metals – that the most comprehensive mixing of materials from different regions takes place. It is always going to be simpler to establish the provenance of raw mineral concentrate than refined metal. The traders, smelters and others that handle the raw minerals are – in supply chain and often geographic terms – closer to the original source. For them, the process of identifying the mine the materials came from

and assessing the conditions of trade is fairly straightforward.

For their part, all manufacturers that use refined metal can very easily find out which smelters their metals come from.¹¹ Moreover, when it comes to producing metals like tin and tantalum, for example, the number of major smelters around the world is surprisingly small. The smelters are a key bottleneck in the global supply chain and a logical focus for manufacturers' efforts to exclude conflict minerals.

Some manufacturers draw attention to the fact that they do not currently have direct contractual relationships with smelters; but this should not constitute a barrier to checking on the smelters' supply chain controls.

If eliminating the deadly trade in conflict minerals requires a change in the relationships between international companies and a shakeup in assumptions about their responsibilities to the people of eastern DRC and their obligations to each other, then this would seem an extremely modest price to have to pay.

Key components of supply chain due diligence

1. Conflict minerals policy

The company should publish a clear policy setting out its commitment to respect human rights in all its activities. It should undertake to abide by domestic and international law and UN sanctions and should set out how it will assess its own operations and those of its suppliers all the way up the supply chain against these standards.

The policy should state explicitly that it will not engage in any purchases that generate revenue for armed groups or army units that perpetuate serious human rights abuses or other crimes. In other words it will not trade in conflict minerals.

The company should also commit to showing, via credible evidence, the exact origin of its supplies (mine site), the conditions in which they were produced and the identity of those involved in extracting, trading, transporting and taxing them.

The company will need to assign responsibility to a director or other senior member of staff for making sure that the company lives up to its policy. Whoever it is will need to have access to the company's board. This is in line with broader principles of good corporate governance that require that the board be made aware of information vital to the companies interests.¹²

Having developed its policy, the company will need not only to publish it, but also to make its expectations clear to its own suppliers. 'Suppliers' here means not only the person or entity from whom the company purchased the minerals directly, but also others further up the supply chain who are involved in the sequence of transactions that transmits the minerals from the mine site to the company.

The company should communicate the policy to all suppliers and encourage them to adopt policies on conflict minerals that are in line with its own. The company should build specific provisions into its contracts requiring its suppliers to meet the standards set out in the company's conflict minerals policy and cooperate with its due diligence measures. One way of doing this would be via a standard suppliers' declaration which would be attached to contracts.

2. Supply chain risk assessments

Regular supply chain risk assessments are the central element of the company's due diligence.

For upstream companies that handle mineral concentrate these supply chain risk assessments should involve on the ground assessments to verify the origin of the minerals and the conditions of trade.

For downstream manufacturing companies, the supply chain risk assessments should focus more on verification of the due diligence systems of the smelter supplying the refined metal, than on field investigations into the conditions of trade in eastern DRC.

This section provides an overview of how these assessments should be carried out. More detailed guidance on how to carry them out is provided in Annex A (On the ground assessment by companies sourcing minerals from the Great Lakes region) on page 16 and Annex B (Manufacturer's assessment of smelter's supply chain controls) on page 20.

i) Supply Chain risk assessments by companies using mineral concentrate

Supply chain risk assessments by upstream companies should have two main components which are outlined here in order of priority:

- On the ground assessments
- Review of chain of custody data

These two components fit together. The on the ground assessments provide a comprehensive and in-depth profiling of the conditions of trade. They are the only way that a company can accurately assess the risk of its activities fuelling conflict and human rights abuses. The chain of custody data supplements this, through documentation on individual consignments of mineral ore purchased by the company.

On the ground assessments

Companies should undertake on the ground assessments, involving individuals with specialist knowledge of the region and the trade, as the main information-gathering element of their due diligence. These assessments should be quarterly, but should be brought forward in cases in which problems are detected through the chain of custody documentation or other sources. The company should not notify its suppliers in advance when these assessments are taking place.

The main steps involved in the on the ground assessment, all of which are elaborated in Annex A, are:

- Establishing the scope
- Appointing the right people to carry out the work, with the right terms of reference
- Carrying out preparatory research
- Field research
- Writing up findings and recommending actions by the company

The relationships between the company and conflict and human rights abuses – if they exist – are likely to concern armed groups benefiting financially from its activities, particularly through control of the actual mines from which the company sources its goods or illegal taxes levied on the minerals as they move from mine to point of export. Ascertaining whether there is a risk of these kinds of relationships occurring should be the main focus.

Sending people to eastern DRC to gather information is an idea that many companies using minerals and metals balk at. Some appear to believe that due diligence begins and ends with compilation of a limited amount of chain of custody documentation; despite the fact that active data collection is integral to the due diligence carried out by reputable businesses in other sectors. Others cite the difficulties of research in eastern DRC. However, work by the UN Group of Experts, NGOs, journalists and others has repeatedly demonstrated that it is possible to research the conditions of trade in the region.

Ensuring the security of the company's staff or consultants is a very serious consideration that can reinforce, rather than obstruct, an on the ground assessment. Where a company finds that the area it is sourcing from is so dangerous that no one can go there to gather data on the supply chain, it has probably obtained all the information it needs: if conditions are that bad, there is a good chance that its own purchasing practices will be contributing to the cycle of plunder and violence and it should seek its supplies elsewhere.

Once in the region, the assessment team's activities will consist primarily of site visits, interviewing people and reviewing documentation. The visits should be to the operational sites where the company or its suppliers are active. That means, for example, mines of origin, trading locations (such as markets), transportation routes and points of export, as well as nearby settlements.

The range of people whom the assessment team should interview is broad and should include individuals working in the mineral trade, officials and civil society organisations.

The review of documentation should focus primarily on cross-checking data gathered through the company's own chain of custody management system with documents available in eastern DRC and the region.

Having undertaken these information-gathering activities, the assessment team should write up its findings and make recommendations. This should centre on the question of whether there is any risk of a relationship between the company's supply chain and human rights abuses and other crimes. It should also provide recommendations on actions that the company should take. It should be submitted to the company's senior management and – as explained in the section on public reporting on page 13 – its findings should be made public.

Review of chain of custody data

Reviewing chain of custody data is an important component to the due diligence companies carry out on their supply chains. It does not on its own constitute due diligence, however. Firstly, chain of custody data does not provide any information about illegal taxation or the conditions of trade more generally. For example, the fact that a traceability scheme might identify the mine from which particular consignments originate does not tell the company whether or not the transportation of these same materials has generated illicit payments to soldiers or rebels. In other words, knowing the mine of origin,

important though it is, is not the same as knowing whether purchasing the minerals produced there is fuelling conflict and human rights abuses.

In addition, conditions in conflict-affected areas, where the rule of law is weak, are not conducive to the seamless implementation of a control system based on documentation alone. There is a very high risk of the chain of custody tracking system becoming corrupted and generating misleading data.

What chain of custody information can do, if it is comprehensive and subject to rigorous review, is provide an important complement to the company's on the ground assessments. To this end, the company should obtain precise documentary information on each consignment of minerals it buys that shows how it has made its way along the supply chain.¹³ This documentary information will need to show the following:

- The minerals' exact origin (mine site), the date of extraction and the identity of the individual or organisation that did the mining.
- The locations at which the minerals were subsequently traded, the dates on which the trade occurred and the identity of those involved in these transactions.
- The means and routes by which the minerals were transported from mine of origin to the company, the dates on which the different stages of the transportation occurred and the identities of the person or organisation doing the transporting. (This should include export and import documentation.)
- The locations at which the minerals were taxed, the dates in question and the identity of the organisation or individual to whom the taxes were paid.
- A description of the minerals (type, weight, purity) and information pertaining to any transformation, even partial, of the minerals at the different points along the supply chain.

Some of this information may be contained in documents produced by Congolese government agencies. Forms issued by provincial Ministry of Mines bodies SAESSCAM, Division des Mines and CEEC provide partial information on the mine

to export supply chain. Documents issued by customs and revenue agencies OCC and OFIDA at the point of export also contain useful data.¹⁴ Wherever possible, companies should incorporate government-issued documentation into their chain of custody system.

However, government agencies charged with regulating the minerals sector in eastern DRC are not always able to function effectively and reliably, not least given the militarisation of the trade and other impacts of the conflict. This should not come as a surprise. Companies that choose to source minerals from conflict-affected areas should be aware that there is a high probability that one of the early casualties of the violence will be the capacity of the state to function effectively. They should build this assumption into their supply chain due diligence from the start.

When sourcing from conflict-affected areas like eastern DRC, doing effective due diligence is the responsibility of the company and cannot be passed over to the state or another party.

Companies sourcing minerals from eastern DRC will therefore need to introduce their own system of chain of custody data collection to fill the gaps in the documentation issued by government agencies. This could ultimately take the form of 'bagging and tagging', bar-coding, or a chip-based tracking system. However, getting a high-tech traceability mechanism in place should not prevent companies from introducing a more basic paper trail system in the short term. Whichever form it takes, the system will need to be proofed against tampering, forgeries and false declarations.

Making the chain of custody control system work as an element of the due diligence framework hinges not just on the company's ability to get the data flowing, but also on its capacity to respond to it. The company should therefore assign responsibility for checking and analysing the chain of custody documentation on a continuous basis and ensuring that any problems detected are acted upon. The person(s) responsible for reviewing the chain of custody data should be asking of it such questions as:

- Is the documentation complete?
- Is there evidence of irregularities or tampering in the documentation itself or the way in which it has been completed?
- What changes are there in the pattern of extraction, trade, transportation and taxation laid out in the chain of custody data? What accounts for these changes?

What to do when problems and irregularities are detected is the basis of the next element of the due diligence system – remedial action – which is addressed over the page.

ii) Supply chain risk assessments by downstream manufacturers using refined metals

Whereas for the upstream trader or smelter of minerals, the main information-gathering component of the due diligence is a supply chain risk assessment that involves sending an assessment team to the ground to check on the conditions of trade at source, for the manufacturer it is checking on the controls in place at the point of transformation from minerals to metal by smelters. They amount to the same thing: verifying, through a rigorous assessment, the claims made by suppliers. Each smelter should be assessed at least once a year.

Given that each smelter supplies a wide range of manufacturing firms with refined metal, manufacturers could consider pooling resources to carry out assessments of the smelters' supply chain controls. Each individual company would still need to take responsibility for ensuring that such joint assessments were carried out to a high standard, however.

As explained in more detail in Annex B, the assessment of smelters' supply chain controls consists of the following main steps:

- Establishing the scope
- Appointing an assessment team
- Carrying out preparatory research
- Visiting the smelter and verifying its due diligence
- Writing up findings and making recommendations

When it comes to visiting the smelter and verifying its due diligence, the approach proposed here is based around two levels of assessment. The first, what we call a Level 1 evaluation, is aimed at ascertaining whether the smelters that supply the manufacturer are sourcing minerals from the Great Lakes region. If the smelters are definitely using such materials, or are likely to be, then a more detailed Level 2 evaluation will be required. The Level 2 evaluation aims to deduce whether the smelter's purchasing practices are fuelling human rights abuses and other crimes and to gauge the robustness of their due diligence.

The need for a Level 2 evaluation may only become clear through the Level 1 enquiries, so the initial scope of the assessment may need to be flexible.

The Level 1 evaluation involves carrying out interviews with company staff, reviewing documentation and inspecting the smelter's on-site minerals stockpiles. The assessment team should look out for red flag indicators that suggest that minerals from the Great Lakes region may have entered the company's supply chain. These are the same red flag indicators set out at the start of this paper concerning which companies should be carrying out due diligence.

If the assessment team encounters red flags or any other grounds for suspecting that some of the smelter's materials may originate from the Great Lakes region, they should automatically proceed with the Level 2 evaluation of the smelter.

A Level 2 assessment is a much more in-depth assessment of the smelter's supply chain controls. It aims to assess whether the smelter has excluded conflict minerals from its supply chain and undertaken due diligence to the standards set out in the first part of this paper that is addressed to traders and smelters. This will involve reviewing all documentation relevant to that due diligence (for a list see Annex B) and further interviews with staff.

If, at any point during the Level 2 assessment, the smelter is unable to show evidence of effective due diligence; for example if documentation

contains gaps, contradictions, or evidence of failure to act on problems identified, then the assessment team should conclude that there is a high probability of conflict minerals being present in its supply chain. The assessment is now complete, because under these circumstances the company will have no choice but to exclude the smelter from its supply chain. Further information-gathering is therefore redundant.

If on the other hand, the smelter's due diligence appears to be strong, the assessment team should complete their information-gathering with selected spot checks on at least two points in the smelter's supply chain, one of which should be the mines of origin.

After completing its information-gathering, the assessment team should write up its conclusions and make recommendations on actions the manufacturer should take. The manufacturer should use this, together with any other data it may have gathered, to assess the risk of its supply chain causing harm to people in eastern DRC.

3. Remedial action

While intensive information-gathering is crucial to robust due diligence, the company must keep in mind that collecting data is not an end in itself but a precursor to action. If the company finds at any time that, through the minerals it is using, it is associated with, or risks being associated with, serious human rights abuses and other crimes, its response should be immediate, decisive and unambiguous: it should put a stop to these transactions and end its relationship with the suppliers in question.

The need for companies to take a zero tolerance approach to conflict minerals in their supply chains should be self-evident: trading these materials helps perpetuate one of the world's worst wars. In other sectors and other parts of the world, companies are sometimes encouraged to prioritise engagement with wayward suppliers to help them meet accepted standards concerning labour, the environment and so on. But in the case of the DRC, the risks to people of purchasing

from unscrupulous operators are too great and the company must take a much more cautious approach.

In cases in which a company finds that a supplier has very minor procedural weaknesses in its supply chain controls, but there is no evidence that these have resulted in conflict minerals being transacted, then there may be a case for the company helping the supplier improve its practices. The company should keep in mind, however, that it has to be able to demonstrate that its operations are in no way associated with human rights abuses and crime and that a lapse, even if unintentional, by its supplier, may cause it serious reputational damage.

4. Audits

For companies' supply chain due diligence procedures to have credibility, they will require third party audits. Like other aspects of supply chain due diligence, commissioning audits is something companies know how to do. Just as any well-run business commissions regular audits to reduce the risk (and the perception) of financial mismanagement, companies that source minerals and metals originating from the Great Lakes region should be subjecting themselves to audits to guard against the possibility that their due diligence activities are failing to detect ways in which the supply chain is contributing to serious human rights violations and other crimes.

The audit should review all elements of the company's due diligence. It should assess whether there is any evidence that the company is sourcing minerals in a way that finances rebel and government armies that commit serious human rights abuses such as killing, rape, torture, extortion, recruitment of child soldiers and other crimes. It should also reach a conclusion as to whether the due diligence measures that the company is taking are sufficient to prevent such problems occurring in the future.

Minimum criteria for an auditor should be:

Independence: The auditor should be entirely independent of the company and its suppliers, meaning that it should not be connected with them in any way, via financial relationships (such as share or equity holdings) or other business relations. In addition, the auditor should not have undertaken an audit of the company or any of its suppliers for a period of at least 24 months. This is to avoid the auditor developing a long-term business relationship with the company that gives it a vested interest in the company's commercial viability. (24 months is the disengagement period proposed by the Fair Labor Association's criteria for external monitoring.)¹⁵

Professional qualifications and capacity: The auditor should meet the professional criteria of Chapter 7 of ISO 19011 on Competence and Evaluation of Auditors. They should also have specialist knowledge and skills necessary to carry out this specific type of audit effectively. That means capacity not only to review paperwork, but also to cross-check the data generated by the company's on the ground assessment: verifying that the assessment took place as described, recorded data accurately, and reached conclusions that can be supported. To do this, the auditors will need to visit a selection of operational sites, including mines of origin.

The findings of the audit should be reviewed by company senior management alongside the data generated by the company's own supply chain risk assessment. Like the company's internal controls, the external integrity check provided by the auditor must be seen as a basis for action; notably action to terminate supplier relationships that may be fuelling violence. The audits will need to be published, along with a range of other information on the company's due diligence, as explained in the next section on public reporting.

5. Public reporting

The trade in conflict minerals is a matter of high public interest. Businesses at all points in the international supply chains for the minerals and metals concerned are coming under increasing pressure to show that their activities are not causing harm.

To show that it is implementing supply chain controls that are effective, the company will need to report publicly on the due diligence measures that it has taken. Indeed, the credibility of the company's due diligence measures is directly linked to its transparency. If a company undertakes rigorous due diligence on its supply chain but never reports on it, its claims of good practice will be met with scepticism. It may also miss out on a significant opportunity to add to the value of its brand.

Reporting on due diligence should take the form of a twice-yearly publication made available through the company's offices and its website. It should cover, at a minimum, the following areas:

CONFLICT MINERALS POLICY: the public reporting should state clearly what the company's policy is, whether it has changed since the last report and if so, why.

SUPPLY CHAIN RISK ASSESSMENTS: set out what these consist of, for example, how has the company carried out its on the ground assessments / assessments of smelters' supply chain controls and what have been the findings? Also, what chain of custody controls does the company have in place and what information have these generated over the reporting period?

REMEDIAL ACTION BY THE COMPANY: explain what actions the company has taken to deal with problems identified in its supply chain risk assessments. Has it excluded from its supply chain suppliers who were found to be trading in conflict minerals or who did not carry out adequate due diligence?

SUPPLIERS: The report should set out who all the suppliers are back to mine of origin, what commitments they have given the company regarding their policies on conflict minerals and what due diligence measures they are undertaking.

AUDIT: state who carried out the most recent audit and their qualifications for the assignment. Publish the audit and details of the company's response to its findings.

SUPPLY CHAIN MAP: the company should also publish a supply chain map setting out:

- The exact mines from which its materials are sourced
- The points at which the minerals are traded, mixed or processed
- The transportation routes taken
- The taxes paid: where, how much, and to whom
- The identity of all players along the supply chain: mine operator, traders, exporters, transportation companies.

All of this information must be published on a disaggregated basis: the company cannot fulfil these requirements by publishing data compiled by industry bodies about the collective activities of their members, for example.

At all times, companies must apply a precautionary principle: if in doubt, do not buy. With regards to the trade in minerals, the risks of irresponsible purchasing practices doing harm to civilians living in eastern DRC are simply too great.

CONCLUSION

Many of the companies using the minerals and metals exported from eastern DRC are very large international corporations that make very substantial profits. Having benefited – in some case for many years – from a trade that damages so many people in Congo, they must now begin facing up to their responsibilities.

Due diligence is a well-established business concept which is readily applicable to supply chain management in the minerals trade. The aim – identifying and addressing risks of harm resulting from companies' activities – and the means – gathering information as a basis for taking remedial action – are essentially the same as any other kind of due diligence. Where companies undertaking due diligence encounter obstacles, for example in gaining safe access to certain mine sites, this is a signal that they need to change their sourcing practices, not that doing due diligence is too difficult.

ANNEX A

On the ground assessment by companies sourcing minerals from the Great Lakes region

An on the ground assessment of the conditions of trade is the cornerstone of the company's due diligence. This section sets out one way in which it can be carried out.

i) Establish the scope

The on the ground assessment is the principal means by which the company can find out whether its activities and purchasing practices may be fuelling killings, rape, extortion, forced labour, and other abuses.

In its most stripped-down form, the assessment should be aimed at answering the following questions:

- What is the pattern of serious human rights abuses and other crimes in the region from which the company is sourcing its materials?
- What does the company's supply chain in that region look like?
- Where do the two intersect?

These overarching questions can be broken down into a series of more specific ones, examples of which are set out in the box below:

Guiding questions for the on the ground assessment

Serious human rights abuses and other crimes:

- **What kinds of abuses are occurring in the areas from which the minerals that the company purchases originate? Where exactly are they occurring and who is involved?**
- **What laws are being violated? In many cases this may seem obvious, but the company should find out whether international crimes, such as pillage, may be occurring. Violations of national law are also relevant, given the legal prohibition in the DRC on soldiers getting involved in mining activities, for example.**

The supply chain and the way in which the materials the company sources are extracted, transported, traded and taxed

- **What is the precise origin of the minerals (the specific mines)?**
- **Who owns the rights to the mines or concessions in which minerals are mined?**
- **What are the conditions in which the minerals are extracted? For example, is there forced labour, child labour or any kind of coercion involved?**
- **How are the minerals transported and by what routes? Who provides the transportation services? How long does the transportation take? Do the authorities provide any official oversight or inspection? If so, what form does this take?**
- **Where are the minerals traded and how is trading carried out? Are the trading sites secure, or is there scope for coercion, fraud, introduction of materials from other sources etc?**

Do the authorities provide any official oversight or inspection at this point? If so, what form does this take?

- **At what points in the supply chain are the minerals inspected or taxed by government authorities or any other parties? What form does this take? Are any documents or receipts issued? How much money is paid in taxes and who does this money go to?**

■ **Do the transactions and other activities observed on the ground match with the patterns of activity set out in the chain of custody documentation?**

- **Can the miners, traders and intermediaries show records of previous transactions for specific consignments of minerals which tally with chain of custody records held by the company?**

Guiding questions for the on the ground assessment (continued)

Suppliers

■ Who are the company's suppliers at each tier of the supply chain (i.e. all the mines of origin, traders and intermediaries in the supply chain, from point of extraction onwards, not just the company's immediate supplier)?

■ What are the various suppliers' policies on conflict minerals?

■ Do the suppliers have the necessary authorisations and permits to operate?

■ Is there any evidence of the suppliers themselves being involved in serious human rights abuses or other crimes?

■ Who are these suppliers' beneficial owners?

■ What relationships, if any, do the suppliers or their beneficial owners have with other traders, state or non-state armed groups or criminal elements?¹⁶

Armed groups

■ Are state or non-state armed groups controlling the mine or the surrounding area or otherwise present? If so, what is their relationship to the mineral trade?

■ Are state or non-state armed groups directly or indirectly involved in the extraction, trading, transportation or taxing of the minerals?

■ Are these groups acting within the bounds of national and international law? Are any of them involved in serious human rights abuses or other crimes?

■ Are state or non-state armed groups benefiting in any way from extraction, trading, transportation or taxing of minerals being carried out by other parties? In other words, are they making money out of transactions that superficially do not appear to involve them?

ii) Appoint an assessment team

It is the company's responsibility to carry out this on the ground assessment, as part of its due diligence. This should not prevent the company from drawing on external expertise where needed. Companies that buy from, but do not operate in, the Great Lakes region may wish to consider the option of hired help in conducting due diligence. At the same time they may feel that there are advantages to involving their own employees in the process directly, with an eye to building up their in-house capacities. There are pros and cons to both approaches.¹⁷

Whatever the team's composition, its members must be mandated to ask difficult questions, pursue leads and follow up on unexpected information that they may come across as they go along. They need to be aware that the kind of data they are looking for will be primarily qualitative and empirical. This will complement the more procedural information that the company will receive through its chain of custody system.

The assessment team must be given clear terms

of reference and plan their work carefully. They need to understand that they cannot reduce the exercise to a questionnaire-filling or box-ticking exercise. What is set out here should be seen as a framework and the minimum set of steps that a company should take, not a limit on what a company assessment team should do.

The assessment team should be required, under contract, to meet appropriate evidentiary standards for the research that they carry out. These evidentiary standards could be modeled on those used by UN panels of experts, for example. Whatever standard of evidence is used, it must be remembered that the point of due diligence is to detect risk, not support a case in a court of law. Risks are, by definition, sometimes difficult to pin down as fact and risk assessments must assume 'imperfect knowledge'. For example, it may be difficult to determine the precise details of a particular series of human rights abuses, but if there are reliable reports, or reports from several sources, no team should exclude reporting such events for lack of 'hard evidence'. Rather, the team should be careful to communicate to company decision-makers the nature of the information by which a risk is identified.

iii) Carry out preparatory research

The first step to answering the questions listed above is to carry out a desk-based review of available documentation. This will likely include reviewing the following:

- National and international laws, codes of conduct, good practice guidance or other standards for businesses relevant to the region in question. Having established a conflict resources policy that refers to these standards, the company should have many of these documents already.
- Reports by the UN, governments, the International Criminal Court, NGOs, media and others on the conflict, associated human rights abuses and crimes, and on the trade in the Great Lakes region. As part of this desk review process, the assessment team should get in touch with the organisations or individuals that have produced the publications reviewed to follow up with them on particular points that are relevant to the assessment.
- Contracts with suppliers, so that the team can go into the assessment knowing what commitments the suppliers have given the company with respect to their sourcing practices
- The chain of custody documentation gathered by the company since the last on the ground assessment

iv) Field research

Having completed the desk-based research, the assessment team will need to go to eastern DRC and possibly neighbouring countries in order to

- Gather first-hand information on the conditions of trade, with a particular focus on problems such as illegal taxation, which chain of custody documentation cannot detect.
- Cross-check the data that the chain of custody documentation can provide, for example by inspecting mines, visiting trading centres and export points and mapping out transportation routes.

This on the ground element of the assessment should include the following types of information-gathering:

Site visits:

- **The operational sites** where the company or their suppliers are active: mines of origin, trading locations (such as markets), transportation routes, points of export and other places. This means all the sites for each part of the supply chain. In practice, visiting the mines of origin will simultaneously enable the assessment team to inspect most of the relevant transportation routes and visit sites along the way where trading and taxation occur. If there are additional key transportation routes for the minerals, the assessment team should inspect these also. The assessment team should not give advance warning of these site visits.

- **The nearest settlement** to each of these sites. People living in the vicinity of these various sites are likely to have information about the conditions of the trade and may be able to speak more freely than those on site who may be under the scrutiny of supervisors or soldiers.

- **Provincial capitals**, in order to visit the company head office, government offices, NGOs etc.

Interviews:

At each of the locations visited, the assessment team should carry out a minimum of four separate interviews, with a cross-section of people from the following broad categories:

- People involved in the mineral trade: diggers, porters, intermediary traders (e.g. négociants) and exporters (i.e. comptoirs)

- Government officials, including local Ministry of Mines bodies SAESSCAM, Division des Mines, CEEC and customs and revenue authorities OFIDA and OCC

- Members of the security forces, such as

- **Local residents:** people living in or around the key sites at which mining, trading, transportation and taxation take place, traditional chiefs and other community leaders

- **Civil society:** NGOs, unions, journalists, church groups

Not all of these categories of interviewees will be present at each location. However, at every operational site visited, it is essential that, within the minimum four interviews, the assessment team interview at least two people directly involved in the activity taking place. That means, at each mine site, a minimum of two diggers; on a transport route at least two porters, drivers or middlemen; at a market where minerals are traded, two traders; at a taxation point, a minimum of two people carrying out the taxation and so on. At each site, the team should endeavour to interview at least one official from one of the Congolese agencies involved in regulating the mineral trade.

Where the assessment team encounters conflicting accounts or ambiguous information, they should carry out additional interviews.

In the visit to the provincial capital, the assessment team must make sure they interview at least two people from each of the categories listed above and all of the state agencies concerned with regulating the minerals sector: SAESSCAM, Division des Mines, CEEC and customs and revenue authorities OFIDA and OCC.

Review of documentation:

- **Laws and regulations** (if not already obtained during desk-based research)

- **Official permits:** licences of each exporter or trader in the company's supply chain

- **Documents accompanying individual shipments** concerning source, quantity, purity of minerals, e.g. bills of lading, customs declarations, documents issued by government agencies. These documents can be cross-checked against

data generated through the chain of custody tracking system.

The assessment team must try to trace all consignments of minerals originating from eastern DRC that the company has purchased back to the mine of origin. That will require them to cross-check details of these consignments, or the individual bags (colis) that make up these consignments, with the records held by the individual exporters and intermediary traders in the supply chain. Wherever possible, the team should try to obtain copies of the documentation held by the exporters and traders concerned for the company's own records.

v) Write up the assessment and make recommendations

Having completed its information-gathering activities, the team should write up its findings. It should set out the pattern of abuses in the region and profile the company's supply chain, the activities involved and conditions in which they take place, the players involved, and their patterns of relationships. It should draw conclusions as to whether the pattern of abuses and the company's own activities and associations intersect. Is there is a relationship between the company and abuses, or a risk of there being one? If so, what is it? What are the consequences for the parties abused and for the company? Is the company liable under national and international law or industry standards? Is it in compliance with its own conflict minerals policy?

The assessment should provide recommendations on action the company should take to address problems identified and suggestions as to how it can improve its due diligence. If the assessment team finds grounds for suspecting that the company could be complicit in abuses, or reason to think that it is not possible to eliminate this risk, then it should recommend that the company discontinue its existing purchasing practices.

ANNEX B

Manufacturer's assessment of smelter's supply chain controls¹⁸

When it comes to carrying out a supply chain risk assessment, the manufacturer should focus on verifying the controls exercised by the smelter that supplies the refined metal that it uses. This annex proposes a means of doing this.

i) Establish the scope

The approach proposed here is based around two levels of assessment. The first, what we call here a Level 1 evaluation, is aimed at ascertaining whether the smelters that supply the manufacturer are sourcing minerals from the Great Lakes region. If the smelters are definitely using such materials, or are likely to be, then a more detailed Level 2 evaluation will be required. The Level 2 evaluation aims to deduce whether the smelter's purchasing practices are fuelling human rights abuses and other crimes and to gauge the robustness of their due diligence.

The need for a Level 2 evaluation may only become clear through the Level 1 enquiries, so the initial scope of the assessment may need to be flexible.

Both levels of evaluation start with a preliminary review of available documentation and then a visit to the smelter.¹⁹

Before that, however, the manufacturer needs to assemble a team to carry out the assessment.

ii) Appoint an assessment team

Unless the manufacturer already knows that the smelter is using minerals from the Great Lakes region, it will begin with a Level 1 evaluation. This will require an assessment team whose knowledge

is primarily industry-based and which is capable of analysing trade data, inspecting mineral stocks and carrying out interviews. The assessors could be auditors appointed by the manufacturer or members of its own staff, or both.

If, through the Level 1 evaluation, it then emerges that the smelter's mineral concentrate sources are likely to include mines in the Great Lakes region, it will become necessary to enlist additional, specialist expertise, almost certainly from outside the manufacturer's own staff.

Like the teams appointed by upstream companies using mineral concentrate, the assessors engaged by downstream manufacturers should be required to meet clear terms of reference and evidentiary standards.

iii) Carry out preparatory research

The assessment team will first need to check who the manufacturer's smelters are, using chain of custody documentation and making enquiries of its immediate suppliers of metal or metal-containing products. They should map out the supply chain between the smelter and the manufacturer.

Next, they should conduct some preliminary research on the smelter. Has the manufacturer had any previous contact with the smelter, for example communications regarding the manufacturer's expectations of its suppliers? Has the smelter featured in a previous supply chain risk assessment by the manufacturer? What do the smelter's own annual reports and website say about its conflict minerals policy and its supply chain due diligence? Is it publishing specific reports on its due diligence measures? Are there any published reports that link the smelter to minerals from the Great Lakes region?

The assessment team members should familiarise themselves with the terms of contracts between the manufacturer and its immediate suppliers, particularly if the immediate supplier is also the smelter. They should review documentation on relevant laws and standards. They need to have

a reasonable working knowledge of the conflict minerals trade and conditions in the Great Lakes region, who is known to be implicated and what are the patterns of activity involved, so that they can cross-reference this with the information they gather about the smelter and draw conclusions about its supply chain.

Lastly, the assessors need to know which countries around the world produce the type of mineral that the smelter processes and what are their known production capacities. They will need a grasp of this information in order to detect any anomalies in the chain of custody data they review when they visit the smelter.

iv) Visit the smelter

Having done the preparatory desk-based research, the assessment team should go and see the smelter. This should be a visit to the site where the smelter actually processes minerals into metals, because this is the place where they will be able to inspect physical stock and where there should be the most complete and up to date records of what materials are coming in and what is going out. Visiting one of the smelter's representational offices at another location is not a substitute. The smelter should not receive more than a day's notification ahead of a visit by the assessment team.

The first thing the assessment team needs to do is to ascertain whether there is a possibility that the smelter is using minerals from the Great Lakes region. The smelter may be quite open about the fact that they do use such materials, in which case the team should proceed directly with a Level 2 evaluation (below). In other cases the smelter may say that they do not use minerals from the Great Lakes region or that they do not know, in which case the team begins with a Level 1 evaluation.

LEVEL 1 EVALUATION

The assessment team should separately interview the smelter's senior management

and its procurement division staff and review documentation about the consignments of minerals that the smelter uses. They should also carry out a physical inspection of the on-site stock and compare it with the smelter's chain of custody documentation. Their enquiries should focus on such questions as:

- What are the types of minerals that the smelter uses and what form (i.e. unprocessed or semi-processed) are they in?

- What are the minerals' exact origins, when were they extracted and who did the mining?

- Where were the minerals subsequently traded, on what dates and who was involved in these transactions?

- What are the means and routes by which the minerals were transported from mine of origin to the smelter, on what dates did the different stages of the transportation occur and who was doing the transporting? What international border crossings did the minerals pass through en route to the smelter?

- Where and when were the minerals taxed? To whom were the taxes paid?

- What were the key characteristics of the minerals (type, weight, purity) at the different points along the supply chain?

The documentation that the assessment team needs to review includes:

- Records of the mineral consignments being extracted and transported out of the mine of origin

- Licence details of traders and exporters

- Transportation records

- Export permits and import permits issued by the relevant state authorities

- Shipping documents, including bills of lading, packing lists, assay certificates

■ Records of stock maintained at the smelter site

The assessment team should look out for 'red flag' indicators that suggest that there is a possibility that such Great Lakes region minerals could have entered the smelter's supply chain.

These red flag indicators are the same as those set out at the start of this paper concerning which companies should be undertaking supply chain due diligence:

- The minerals used by the company originate from or have been transported via a country in the Great Lakes region.
- The stated origins of the minerals in question are countries that have limited or no capacity to produce them, raising the possibility that the materials are in fact of Congolese origin.
- The company or its suppliers have relationships or a history that links them to the Great Lakes region, for example if the company or one of its suppliers is known to have sourced minerals from the region in the past.
- The minerals supplied to the company are recycled or part-refined. (Part-processing of illicitly-sourced raw materials is a tried and tested means of evading supply chain controls internationally.)

If the assessment team encounters red flags or any other grounds for suspecting that some of the smelter's materials may originate from the Great Lakes region, they should automatically proceed with the Level 2 evaluation assessment of the smelter.

If, in the course of its Level 1 evaluation, the team has encountered only consistent and verifiable evidence that the likelihood of minerals from Great Lakes region entering the smelter's supply chain is negligible, then the information-gathering phase of the assessment is complete and they should move on to writing up their findings (see section below on writing up).

LEVEL 2 EVALUATION

Having established that the smelter is sourcing minerals from the Great Lakes region, or that there is a possibility that this may be happening, the assessment team now has to proceed with a more in-depth examination of the smelter's supply chain and control systems.

The types of data that the assessment team will be looking at for this more in-depth evaluation are those that would automatically be generated by rigorous due diligence:

- Conflict minerals policy
- Contracts with suppliers
- On the ground assessments
- Chain of custody documentation
- Records of action taken by the smelter to address problems identified
- Auditors' reports
- Public reports by the smelter

The assessment team will need to supplement its review of documentation with interviews with the smelter's staff, particularly those directly involved in doing the due diligence and the senior management staff ultimately responsible.

If the smelter is unable to offer convincing evidence that it has excluded from its supply chain materials sourced in a harmful manner, for example if the documentation generated by its own due diligence contains gaps, contradictions, or evidence of failure to act on problems identified, then the assessment team should conclude that there is a high probability of such minerals being present in its supply chain. The assessment is now complete, because under these circumstances the manufacturer will have no choice but to exclude the smelter from its supply chain. Further information-gathering is therefore redundant.

If, however, these enquiries of the smelter reveal a picture of strong supply chain due diligence which appears to have excluded conflict minerals and dealt effectively and promptly with any problems, then the assessment team should now proceed with a final verification in the form of spot checks.

COMPLETE THE LEVEL 2 EVALUATION WITH SPOT CHECKS

The aim of the spot checks is to compare the data presented by the smelter with the operations of mine operators, traders, or other intermediaries further up the supply chain. By now, the assessment team will have obtained details of what the smelter's supply chain looks like and will be able to choose particular points to look at in more depth. This guidance recommends that the cross-checks focus on at least two different points in the smelter's supply chain, one of which should be the mines of origin.

Undertaking the cross-checks will involve visits to the site of operations of the miners, traders, intermediaries or others concerned, using the on the ground assessment methods outlined in Annex A (section iv). The assessment team should not give prior notification of its cross-checking visits.

Once more, the focus of the assessment team's enquiries should centre on what evidence the supplier visited can produce to prove that they are not engaging in harmful sourcing practices and the extent and quality of their due diligence. Carrying out this part of the Level 2 evaluation may require the manufacturer to augment its assessment team with additional members who have specialist knowledge, for example of the Great Lakes region.

v) Write up findings and make recommendations

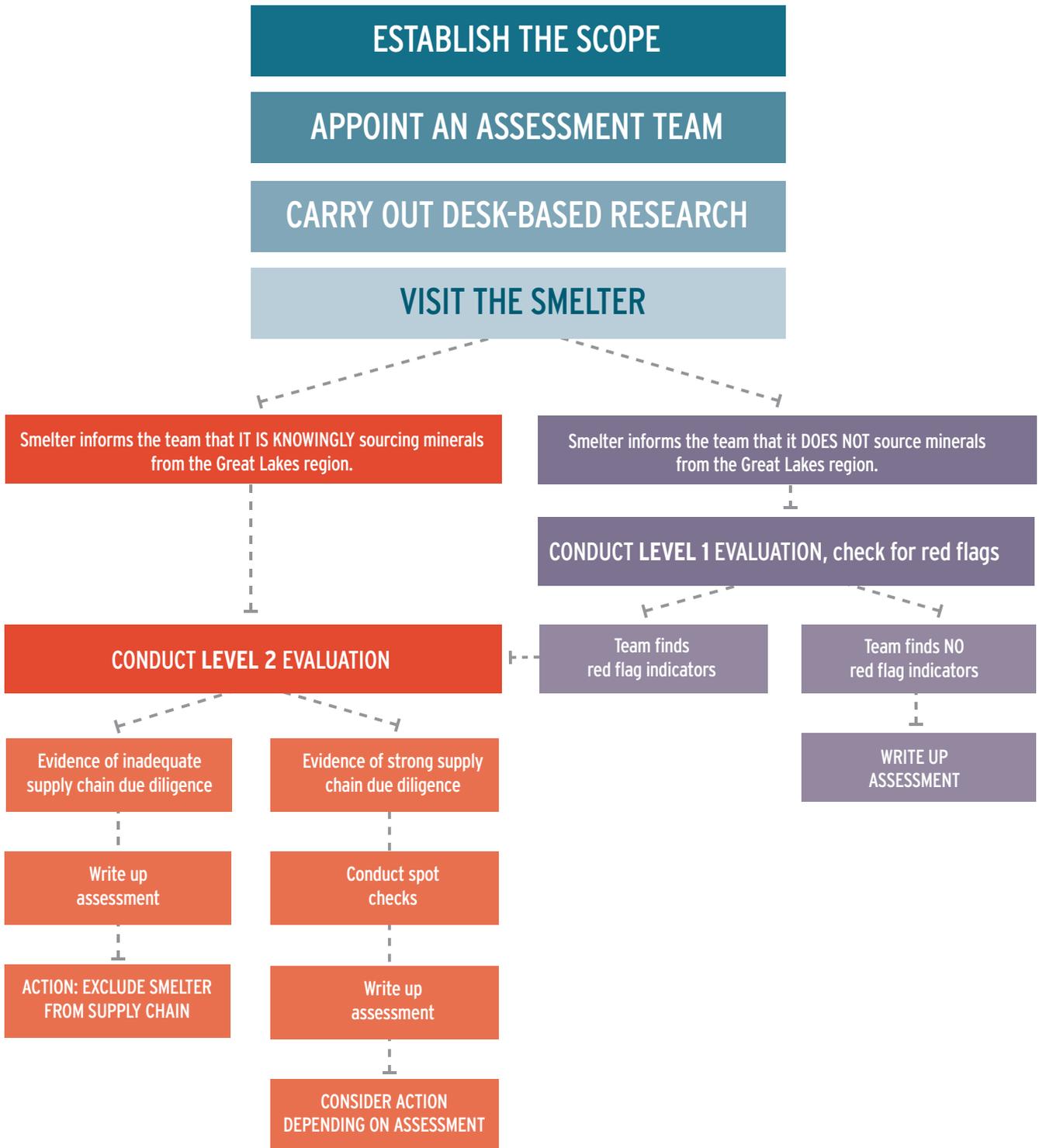
The assessment team should now set out its conclusions in detail. First it should explain whether it decided to undertake a Level 1 or Level 2 assessment or both and the reasons why. In cases where the team decided not to go beyond Level 1, it should set out the basis for its decision in detail.

If the assessment team found reason to carry out a Level 2 evaluation, then it needs to describe precisely what steps it took and lay out its findings as follows:

- Describe the pattern of abuses in the region concerned.
- Profile the smelter's supply chain, the activities involved and conditions in which they take place, the players involved, and their patterns of relationships.
- Draw conclusions as to whether the pattern of abuses and the smelter's own activities and associations intersect.
- If there is such a relationship between the smelter and abuses, describe it in as much detail as possible.
- Assess what are the consequences for the parties abused and for the smelter and also for the downstream manufacturer carrying out the supply chain risk assessment. For example, is either the smelter or the manufacturer liable under national and international law? Are they in compliance with their own conflict minerals policy and industry standards?

The assessment should provide recommendations on action the manufacturer should take to address problems identified and suggestions as to how it can improve its due diligence. If the assessment team finds grounds for suspecting that any of its smelters could be complicit in abuses, or reason to think that it is not possible to eliminate this risk, then it should recommend that the manufacturer source its metals from a different processor.

Flowchart: manufacturer's assessment of smelter's supply chain controls



ENDNOTES

- 1** Global Witness has proposed a definition of 'conflict resources' as follows: conflict resources are natural resources whose systematic exploitation and trade in a context of conflict contribute to, benefit from, or result in the commission of serious violations of human rights, violation of international humanitarian law or violations amounting to crimes under international law. For more details see Global Witness, *Lessons UNLearned*, January 2010 and *The Sinews of War*, November 2006; both are available from www.globalwitness.org.
- 2** Some payments by trading companies (comptoirs) to armed groups could be as much voluntary as forced. For a description of the role of one comptoir in sending money to FDLR representatives in Europe, see Final Report of the Group of Experts on the Democratic Republic of the Congo re-established pursuant to resolution 1857 (2008), submitted to the UN Security Council November 2009, pages 24–25.
- 3** Report of the UN Secretary-General pursuant to paragraph 8 of resolution 1698 (2006) concerning the Democratic Republic of the Congo, 8 February 2007.
- 4** UN Security Council Resolution 1896 (S/Res/1896), adopted 30 November 2009.
- 5** Keynote address by UN Secretary-General's Special Representative John Ruggie 'Engaging Business: Addressing Respect for Human Rights', sponsored by the US Council for International Business, US Chamber of Commerce, International Organization of Employers, Atlanta, 25 February 2010, http://www.hks.harvard.edu/m-rcbg/CSRI/newsandstories/Ruggie_Atlanta.pdf.
- 6** International Alert & Fafo, 'Red Flags: Liability Risks for Companies Operating in High-risk Zones', www.redflags.info.
- 7** UK Government Department for Business, Enterprise & Regulatory Reform (BERR), 'Press release: Mineral Trade Helped Fund Rebels', 28 August 2008; see also BERR, 'Final Statement by the UK National Contact Point for the OECD Guidelines for Multinational Enterprises: Afrimex (UK) Ltd', August 2008; Global Witness, 'Afrimex (UK) / Democratic Republic of Congo / Complaint to the UK National Contact Point under the Specific Instance Procedure of the OECD Guidelines for Multinational Enterprises', 20 February 2007, available from www.globalwitness.org.
- 8** All these countries, including Kenya, are members of the regional governmental grouping the International Conference on the Great Lakes Region. Despite not sharing a border with the DRC, Kenya's role in the trade in Congolese minerals is crucial, as Mombassa is one of the two main ports through which they are shipped out of Africa.
- 9** See, for example Final Report of the Group of Experts on the Democratic Republic of the Congo re-established pursuant to resolution 1857 (2008), submitted to the UN Security Council November 2009, page 51.
- 10** For example tantalum ore that has been turned into k-salt. While there is nothing wrong with recycling or partially refining minerals, companies that mine and use refined tantalum have expressed concerns that these processes are used to introduce tantalum ore from eastern DRC into the global supply chain (Global Witness communications with industry representatives, April 2010). More generally, partial processing is a tried and tested means of laundering conflict resources and other commodities that have been sourced illicitly. For brief summaries of examples from the timber industry, see Global Witness, *Lessons UNLearned*, 2010, p.10 and *Cambodia's Family Trees*, 2007, p. 38, both available from www.globalwitness.org. The Kimberley Process Working Group of Diamond Experts has dedicated a substantial proportion of its time to closing the potential loophole of diamonds being part-polished as a means of evading Kimberley Process controls, which apply only to rough diamonds.
- 11** Communications with manufacturers of electronic components and end user products, 2010.
- 12** The pitfalls of assigning junior staff to take responsibility for ensuring effective due diligence are illustrated by Global Witness's investigations of the role of banks in laundering money stolen by dictators, see Global Witness, *Undue Diligence*, March 2009, available from www.globalwitness.org.
- 13** For a description of the key elements of an effective commodity tracking system, see Global Witness (Corene Crossin, Gavin Hayman & Simon Taylor) 'Where did it come from? Commodity Tracking Systems', in Ian Bannan and Paul Collier, *Natural Resources and Violent Conflicts: Options and Actions*, World Bank, 2003.
- 14** OCC stands for Office congolais de contrôle; CEEC is the Centre d'évaluation, d'expertise et de certification; OFIDA is Office des douanes et accises; SAESSCAM is Service d'assistance et d'encadrement du small scale mining.
- 15** Fair Labor Association Charter, Chapter VIII A, Accreditation Criteria for Independent External Monitors, [http://dev.fairlabor.org/var/uploads/File/FLA%20Charter_3.18.08\(1\).pdf](http://dev.fairlabor.org/var/uploads/File/FLA%20Charter_3.18.08(1).pdf).
- 16** Relationships with criminals are relevant with respect to the national army as well as non-state groups or civilians, not least given the International Criminal Court warrant for the arrest of a senior ex-CNDP rebel commander now integrated into the Congolese armed forces.
- 17** Mark B Taylor, Luc Zandvliet and Mitra Forouhar, 'Due Diligence for Human Rights: A Risk-based Approach', Corporate Social Responsibility Initiative Working Paper N°53, John F Kennedy School of Government, Harvard University, October 2009.
- 18** Manufacturers here means any firm that makes products using refined metals.
- 19** To keep the scenario as simple as possible, we assume in this example that the company has only one smelter supplying it with refined metal. In practice, there could be several.

Global Witness is a UK-based non-governmental organisation which investigates the role of natural resources in funding conflict and corruption around the world.

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Global Witness Limited
6th Floor
Buchanan House
30 Holborn
London
EC1N 2HS
Email: mail@globalwitness.org

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