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# Congo's minerals trade in the balance

Opportunities and obstacles to demilitarisation



A report by Global Witness, May 2011



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# Executive Summary

The trade in tin, tantalum, tungsten and gold has been fuelling the conflict in eastern Democratic Republic of Congo (DRC) for over a decade. Rebel groups and members of the Congolese national army have made millions of dollars through illegal control of mines and trading routes, while inflicting appalling suffering on the local population.

On the ground research by Global Witness in March and April 2011 shows that in many areas the men with guns maintain a firm grip over the trade. The main beneficiaries of a recent six month mining ban imposed by the Congolese government appear to have been senior military commanders who have been able to consolidate their hold on extortion and smuggling rackets.

Other Global Witness findings, however, suggest there are now unprecedented opportunities to source conflict free minerals from demilitarised areas of eastern Congo. These opportunities are localised, fragmented and may not last. Some, however, are potentially very significant and need to be capitalised on as a matter of urgency by all those who have a stake in cleaning up the trade. Most noteworthy are the shifts taking place at Bisie, the region's largest tin ore mine. The Congolese army, which has occupied Bisie and illegally controlled the mining there for over five years, finally withdrew from the site in March this year.

This movement on the ground comes at a point when international standards on due diligence – the supply chain controls – that companies using tin, tantalum, tungsten and gold should undertake, have been completed and adopted by the United Nations (UN) Security Council and the Organisation for Economic Co-operation and Development (OECD). The essence of these standards is the requirement that companies must assess the risks of their minerals purchases benefiting rebels and army units in the DRC, take action to exclude any conflict minerals from their supply chains, have their due diligence measures independently audited and report publicly on what they have done.

The US Congress passed landmark legislation in July 2010 requiring companies to conduct due diligence on their mineral purchases from DRC and neighbouring countries, in order to detect conflict minerals in their supply chains. The Securities and Exchange Commission (SEC) regulator is due to announce, at some point between August and December this year, exactly what due diligence companies will need to undertake to comply with these provisions. Global Witness is calling on the SEC to incorporate the UN/OECD due diligence standards directly into their regulations and to publish these at the earliest opportunity.

International standards for supply chain due diligence are now in place and stand to be consolidated further in the coming months. What is so far absent is implementation of these standards by companies – either those firms that trade and process the raw mineral concentrate or those that use the refined metal in manufacturing. At the time of writing, Global Witness is not aware of any company that has complied in full with the requirements set out by the UN Security Council and the OECD or even come close.

This lack of implementation by businesses is holding up efforts to break the link between minerals and armed violence in eastern Congo. It is also preventing the establishment of a legitimate minerals trade that enables the local population to enjoy the full benefits of their region's natural wealth. Until mineral traders and smelters focus on sourcing their materials from demilitarised mining areas and apply the international due diligence standards in full, downstream manufacturers will be reluctant to buy and the talk of a de facto embargo risks becoming a reality.

Breaking through this impasse requires rapid and concerted action by companies, both national and international, the Congolese government, the governments of Rwanda and other neighbouring countries, international donor countries and the UN peacekeeping force MONUSCO (United Nations Organisation Stabilisation Mission in the Democratic Republic of Congo). The key steps that need to be taken include the following:



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Sacks of tin ore being loaded onto a plane near Bisie, for transportation to Goma. Companies sourcing minerals from eastern Congo must carry out comprehensive supply chain due diligence in line with international standards to ensure they are not fuelling conflict or abuse through their purchases.

- Local and international companies using minerals must implement the due diligence standards endorsed by the UN Security Council and OECD in full and without further delay.
- Governments of countries where minerals are traded, processed and used in manufacturing should incorporate these standards into national law and ensure that companies are applying them. It is particularly important that Rwanda, as a major conduit for conflict minerals from DRC, takes this step immediately.
- The Government of the Democratic Republic of Congo should remove army units engaged in illegal activities in and around mining areas and prosecute the senior officers involved. It should ensure that areas that become demilitarised, such as Bisie, are not re-occupied by the army or other armed groups.
- The UN Security Council should reiterate, in the new MONUSCO peacekeeping mandate to be adopted in June, an explicit requirement that the peacekeepers help to secure key mine sites in the east of DRC.

A full list of recommendations is on page 23.

# Due diligence, traceability and certification: an introduction to supply chain control speak

The international debate on conflict minerals has spawned a lexicon of terms such as 'due diligence', 'traceability' and 'certification' and a range of international initiatives to put these concepts into practice. What does the jargon actually mean, and how do the different schemes relate to each other?

The good news is that the concepts and all the main initiatives currently being developed are potentially complementary. Policymakers and companies nonetheless need to recognise the significant differences between them in terms of their importance, scope and speed of impact, and must prioritise accordingly.

## Due diligence

Due diligence is the process by which companies take responsibility for ensuring that they are not trading conflict minerals. The key advantage of supply chain due diligence as a means of dealing with the conflict minerals trade is that it addresses all types of transactions that benefit warring parties and is therefore comprehensive in scope. In addition, it targets only harmful parts of the trade, thus protecting legitimate business, and it is quicker and less costly to initiate than complex certification schemes.

In 2010 the OECD – through a working group of governments, NGOs and companies – and the UN Security Council – through its Group of Experts on DRC – developed frameworks for companies to carry out due diligence on their supply chains. As defined by the UN Security Council and the OECD, this supply chain due diligence consists of five elements:

- Strengthening company management systems, including tracing minerals to mines of origin.
- Identifying and assessing supply chain risks; specifically risks of financing rebels or army units.

- Designing and implementing strategies to respond to identified risks, in other words taking action.
- Commissioning independent audits of the company's due diligence.
- Publicly disclosing what steps the company has undertaken, including its risk assessments and audits.

The UN and OECD due diligence standards are presented as 'guidance'. Businesses that choose to ignore it should not be under the illusion that there can be no consequences, however. The UN Security Council will take account of companies' compliance with the due diligence standards when it assesses whether to impose sanctions on those whose mineral trading activities support armed groups in eastern DRC.<sup>1</sup>

Moreover, carrying out due diligence is the central demand that the Dodd Frank Act makes of companies using minerals from the Great Lakes Region. The Securities and Exchange Commission (SEC), which is developing the regulations by which the law will be implemented, is likely to use the UN Security Council and OECD standards as the basis for its definition of the due diligence companies are expected to perform.

In the meantime, the OECD guidance has been endorsed by the regional grouping the International Conference on the Great Lakes Region (ICGLR). There is thus a range of inter-locking endorsements and emerging legal requirements.

The guidance provided by the UN Security Council and the OECD is clear, detailed and practical. There is no excuse for companies to further delay implementation.

Now that companies' responsibilities are established, there are two steps that governments around the world need to take to reinforce the due diligence-

based approach. One is to follow the direction taken in the United States and incorporate the UN/OECD standards into legislation to make them legally binding. This is something which the EU in particular – as a major consumer of the minerals concerned – needs to start work on as a matter of urgency.

The other step, which also needs to be taken very quickly, is the creation of a robust system of independent monitoring and reporting on companies' implementation of the UN/OECD standards. This monitoring body would need to be established under the auspices of an intergovernmental body such as the OECD, UN or ICGLR. A proposal for what this should look like is included in the annex on page 24.

## Traceability

Tracing of minerals to mine of origin is an important part of supply chain due diligence, but represents only one element of the international standards companies need to meet. Tracking minerals to source helps buyers avoid mines that are openly controlled by armed groups or the military. However it does not detect either extortion of minerals along transportation routes or the use by armed elements of civilian intermediaries to carry out illegal business activities on their behalf. These are both crucial sources of financing for the warring parties in the Kivus and can only be identified through rigorous on the ground assessments. Consequently, company supply chain control schemes based solely on traceability will not meet the due diligence standards set out by the UN and OECD.

Commenting on the industry-led iTSCI minerals tagging 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."<sup>2</sup>

## Certification

A system of certifying minerals sourced from the eastern DRC and the surrounding region is being developed under the auspices of the International Conference on the Great Lakes Region (ICGLR). The intention is to establish a regional control system whereby consignments of minerals that are 'conflict free' and mined and traded in a manner that meets certain social, environmental and legal standards, are certified as compliant.

Whereas the due diligence standards established by the UN and OECD place responsibility for excluding conflict minerals from supply chains on the companies concerned, implementation of the certification scheme will be led primarily by ICGLR member governments. This should result in a control system built on a strong institutional framework. The need to build up institutions in a region where state capacity is weak also means that the certification regime will take much longer to institute than supply chain due diligence, however. Whereas companies can start implementing the UN and OECD guidance now, it could be some years before the ICGLR certification system is fully operational.

While due diligence and certification thus apportion responsibilities differently and operate on different time frames, they can nonetheless complement one another. The ICGLR certification scheme, for example, specifically requires companies to conduct due diligence on their supply chains, in line with OECD standards. Indeed, this requirement is crucial to ensuring that the scheme addresses conflict financing in a holistic way and transcends the limitations of a pure traceability programme highlighted above. At the same time, the establishment of an effective certification scheme will help companies fulfil some of their due diligence responsibilities, for instance when it comes to demonstrating control of their supply chain and third party auditing.

# Opportunities for demilitarisation

## Unclenching the army's grip on the Bisie mine

The cassiterite (tin ore) mine of Bisie, located in North Kivu's Walikale territory, has been under the control of various factions of the Congolese national army (FARDC) for over five years.<sup>3</sup> Bisie is hugely significant because it accounts for 70% of the cassiterite produced in the province of North Kivu. FARDC troops, most recently former *Congrès national pour la défense du peuple* (CNDP) rebel forces, have made millions of dollars per year through illegal mining and extortion of the trade from that mining area alone. These revenues have been collected at the expense of diggers and mining communities, not to mention the Congolese state. They provide a major incentive for elements of the army to foment conditions of violence and instability as a pretext for their continued presence in mining areas.

The dynamic in Bisie may be shifting, however. Global Witness researchers visited the nearby trading towns of Njingala and Mubi in early April 2011 and gathered numerous credible reports that FARDC units had vacated the Bisie mining area and that illegal taxation barriers usually manned by the military had been taken down.<sup>4</sup> This move appears to be part of a province-wide restructuring of the army, where troops have been withdrawn from operational zones in order to undergo training before being redeployed in new regiments.<sup>5</sup> A small number of mining police have now been stationed at Bisie.<sup>6</sup>

This change presents a real opportunity. It is the first time since 2006 that Bisie has not been occupied by FARDC forces illegally mining and extorting the trade. If a major mining area like Bisie and the trade routes running out of it could be permanently demilitarised, this would open the way for companies to purchase



Senior officers in the Congolese army (FARDC) make millions of dollars per year by controlling mine sites and extorting from the minerals trade. These illegal activities are accompanied by serious abuses by FARDC troops against the local population.

## Why is it a problem for the Congolese army to be involved in the minerals trade?

- Military involvement in mining activities is illegal according to Congolese law.<sup>7</sup>
- In North and South Kivu provinces, members of the FARDC (*Forces armées de la République démocratique du Congo*, Congolese national army) make millions of dollars per year through control of mine sites and extortion along mineral transportation routes. In carrying out these illegal activities, FARDC elements commit serious abuses against the local population including murder, rape, assault, use of forced labour and extortion.
- The financial incentive to maintain control over mines and trade routes has meant that FARDC units remain deployed in areas they do not need to be in, contributing to the over-militarisation of certain parts of the Kivus.
- In some areas the FARDC have prioritised pursuing economic interests over protection of civilians and have colluded with abusive armed groups. A UN team investigating the mass rape of over 300 civilians by the FDLR (*Forces démocratiques pour la libération du Rwanda*) and other militia in Luvungi, Walikale territory, over four days in August 2010 pointed to 'hidden links' between the military and local armed groups – and FARDC interests in mining – as one of the reasons the population was left unprotected.<sup>8</sup>
- The involvement of men with guns in the mines creates instability and insecurity and discourages responsible foreign investment in the sector.
- Extortion of the minerals trade provides significant income to members of the military, including former rebels who have not fully integrated into the national army and maintain their own command structure and political allegiances. The UN Group of Experts found last year that the *Congrès national pour la défense du peuple* (CNDP) controls its own arms cache, highlighting the risk that they could return to war.<sup>9</sup> There is little doubt that if the group did now go back into insurgency, it would be endowed with a very substantial war chest courtesy of the profits it has generated from the minerals trade.

minerals in a way that conforms with international due diligence standards developed by the United Nations (UN) Security Council and the Organisation for Economic Co-operation and Development (OECD) and endorsed by the regional intergovernmental body the International Conference on the Great Lakes Region (ICGLR).<sup>10</sup>

Establishing conflict free production of cassiterite from Bisie would bring a number of major benefits:

- Protection of the livelihoods of artisanal miners, porters, traders and others whose income is derived from mining in Bisie.
- Cutting off a significant source of funding to criminal networks within the FARDC, which is a primary objective both of DRC President Joseph Kabila and the UN Security Council.

- Securing a very important source of revenue for the DRC central and provincial authorities – mining accounts for around 35% of provincial revenues in North Kivu.<sup>11</sup>
- Demonstration of the potential for conflict free production of minerals from eastern DRC. Showing that it is possible for companies to meet international due diligence standards while sourcing from Bisie would give a massive boost to efforts to apply these standards to mining areas elsewhere in the Kivus.

Taking the gun out of the mining sector in eastern Congo will be an incremental process; it will not be possible to bring all mineral producing and trading areas up to international standards simultaneously. National and international policymakers and companies need to focus on establishing conflict-free trade from key mine sites and trade routes, thereby

changing the dynamic of the trade and generating pressure for areas which remain under the control of armed groups to be demilitarised. Bisie, as the region's most significant mine site, is the best place to start this process.

The window of opportunity must be used quickly, however. The urgency is underscored by the brief incursion into Bisie on 26 April 2011 by members of the Mai Mai Cheka, an armed group involved in a series of mass rapes in Walikale in July and August 2010.<sup>12</sup> If Bisie is not swiftly claimed by the civilian authorities, the private sector and United Nations peacekeepers as an island of 'clean' mineral production, there will be more incursions by armed groups. These, in turn, will provide FARDC commanders with an excuse to reoccupy the mine. Given that, in the words of the UN Group of Experts, "Mai Mai Cheka is a creation of a criminal network within FARDC", it is possible that the group's recent raid on Bisie was executed with precisely this purpose in mind.<sup>13</sup>

A number of steps therefore need to be taken now in order to make the most of the opening in Bisie:

- The Congolese government needs to deploy additional trained mining police to Bisie.<sup>14</sup> It should monitor closely their performance and discipline any members found to be illegally involved in or extorting from the trade.
- The government and FARDC's senior command should ensure that the redeployment of troops to military posts in Walikale territory, where Bisie is located, does not result in a return of the military to mining areas and a resumption of illegal and

abusive behaviour. Bringing to justice those members of the FARDC who have been involved in such activities will discourage future abuses.

- MONUSCO (United Nations Organisation Stabilisation Mission in the Democratic Republic of Congo) peacekeepers should help to secure Bisie and other mining areas and deter interference by armed groups in the mineral sector, as previously mandated by the Security Council. (See box on page 12 for more details.)
- The governments of DRC and adjacent transit countries, notably Rwanda, must compel local mining and trading companies to conduct due diligence on their supply chains.
- International companies should support the trade in clean minerals from eastern Congo by being ready to buy materials sourced from demilitarised areas in line with international due diligence standards.
- The UN Group of Experts and MONUSCO's Joint Mission Analysis Cell (JMAC) should monitor the implementation of the due diligence guidance by local and international companies sourcing minerals from Bisie.

Ensuring that companies involved in this trade conduct due diligence on their mineral supply chains is vital to making the most of opportunities like the one that has arisen at Bisie. Due diligence – as defined by the UN Security Council, OECD and ICGLR – involves companies identifying the origin of the minerals they buy, ascertaining the conditions of mining, trade and transportation through on the ground assessments, and excluding from their supply chains any materials that are benefiting warring parties. Companies must also have their due diligence measures independently audited and report publicly on what they have done.<sup>15</sup>

A due diligence-based approach is not about imposing an embargo; it is about helping to create a mining sector that brings benefit to local communities in eastern DRC by ensuring that the minerals trade does not perpetuate armed violence and serious human rights abuses. Due diligence is particularly suitable in this context precisely because it is flexible, can be put in place quickly, does not depend on state capacity and targets only the harmful parts of the trade without punishing legitimate mining and trading activities.



Bags of cassiterite from Bisie being weighed by the government SAESSCAM agency near Njingala. The demilitarisation of Bisie could open the way for companies to buy conflict free minerals from one of eastern Congo's biggest mines.

It is now nearly six months since the UN and OECD published detailed guidance on how companies should undertake due diligence on their supply chains. So far no companies are fully compliant with the standards, however. The governments of DRC, Rwanda and other countries in Asia and Europe where Congolese minerals are traded and processed, should address this problem by making implementation compulsory for businesses operating in their jurisdictions. For its part, the UN Security Council, needs to actively promote the due diligence standards and call to account any member states that fail to report on their application.

The process of incorporating international due diligence standards into national laws will begin in the US later this year, when the Securities and Exchange Commission (SEC) announces regulations to accompany the July 2010 Dodd Frank conflict minerals legislation. These regulations, which will be published at some point between August and December, will specify what due diligence companies covered by the law are required to carry out. The SEC has already indicated that it will use the OECD guidance as a principal point of reference, suggesting that a significant number of international companies – and by extension their suppliers – will very soon be legally required to meet these standards. Some of the implications of the Dodd Frank Act are explored in more detail on page 17.

## New initiatives by the Congolese government

The changes on the ground in Walikale reflect a wider shift in government policy that may signal a growing appetite in Kinshasa to tackle the conflict minerals problem in a more meaningful way. Between 25 February and 1 March 2011, President Kabila held a series of consultation meetings with mining sector stakeholders and a range of government ministries, including Foreign Affairs, Justice, Interior, Defence, Transport and Mines. The objective of these sessions was to secure the commitment of key players to implement a set of reforms of the minerals trade, ahead of the lifting of a six-month ban on mining in the east of the country on 10 March 2011.<sup>16</sup>

The new measures include requirements for all artisanal miners to register and form cooperatives, for *comptoirs* (trading houses) to add value to minerals prior to export through basic sorting and processing, and restrictions on the transport of minerals between provinces. The government has



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UN peacekeepers have a key role to play in curtailing the trade in conflict minerals. The government of North Kivu Province has requested that MONUSCO troops deploy to Bisie to help ensure that the newly demilitarised mining area is maintained under civilian control.

also published mandatory procedures for mineral traceability, setting out specific responsibilities for all actors in order to ensure traceability from the mine to the point of export. The expectation is that these procedures will be implemented in conjunction with iTSCI, the ITRI (International Tin Research Institute) Tin Supply Chain Initiative, a project spearheaded by the international tin industry.<sup>17</sup> Traceability of minerals cannot on its own address the problem of armed groups deriving financing from the minerals trade. The government's attention to this issue is nevertheless an encouraging sign.

Commissions bringing together representatives of the provincial governments, FARDC, mining police, the private sector and UN organisations have been established in North and South Kivu to monitor implementation of the mineral traceability initiative and the wider reforms. According to North Kivu's finance minister, who is currently the acting provincial minister of mines and head of one of the commissions, this has already produced results. He told Global Witness that the group helped to facilitate discussions between the FARDC and mining police

## Mine sweepers: how MONUSCO peacekeepers must help take the gun out of the minerals trade

The loosening of the military's grip on a key mining area like Bisie has opened the space for a trade in conflict free minerals that meets international standards. This space could quickly be filled by a new cast of armed actors, however, and the opportunity lost for months or years to come.

The MONUSCO peacekeeping operation has a crucial role to play in ensuring newly demilitarised mining and trading areas are maintained under legitimate civilian control. There are two ways in particular that the peacekeepers can do this:

- Providing a physical presence – in the form of military personnel in mining sites, along key transportation routes and at the newly established *centres de négoce* (UN-backed mineral trading centres) – to deter any renewed attempt by FARDC or rebels to control or otherwise profit illicitly from the minerals trade. In the case of more remote locations like Bisie, where establishment of a permanent base might prove logistically challenging, MONUSCO should consider regular patrols and short stays at the site.<sup>18</sup>
- Reinforcing the monitoring and inspection work led by MONUSCO's Joint Mission Analysis Cell at trading and transport hubs such as the *centres de négoce* and airstrips. These information-gathering activities should be expanded to encompass law enforcement operations in conjunction with the UN and Congolese police.

Neither of these sets of activities requires major revisions of the MONUSCO mandate. The UN Security Council has previously tasked the peacekeeping operation in DRC with

“Helping the Government of the Democratic Republic of the Congo to restore its authority in... areas freed from armed groups and key mining areas; [and] carrying out enhanced efforts to prevent the provision of support to armed groups, including support derived from illicit economic activities and illicit trade in natural resources.”<sup>19</sup>

The Council has also directed peacekeepers to “use [their] monitoring and inspection capacities

to curtail the provision of support to illegal armed groups derived from illicit trade in natural resources.”<sup>20</sup>

Moreover, breaking the links between the minerals trade and armed violence is a strategically critical element of the wider efforts to protect Congolese civilians, which is MONUSCO's primary responsibility.

The provincial government in North Kivu has requested the peacekeepers' deployment in Bisie, but there continue to be disagreements within MONUSCO in this regard.<sup>21</sup> Global Witness has seen an internal MONUSCO document relating to this request, stating that deployment at key mineral trading centres is the force's 10<sup>th</sup> priority.<sup>22</sup>

The challenges MONUSCO faces are widely recognised and there are real limits on its capacity. However, at this crucial juncture in efforts to control the minerals trade in eastern DRC, it is essential that it takes a much more assertive and proactive interpretation of its mandate.

For its part, the UN Security Council should reinforce those aspects of MONUSCO's mandate relating to the minerals trade when it adopts a new resolution on peacekeeping in DRC in June this year, placing a particular emphasis on the two sets of activities proposed above.



The UN-backed *centre de négoce* (trading centre) in Isanga, near Bisie. The newly-built mineral trading centres – and the routes leading to them – must be monitored and protected to prevent extortion by armed groups, otherwise they risk becoming laundering centres for conflict minerals.



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The DRC government's recent moves to clean up the minerals trade are encouraging, but lasting change will require a sustained personal commitment from President Joseph Kabila.

around plans to withdraw the military from key mining sites such as Bisie and deploy the police.<sup>23</sup>

According to the commission's vice-president, North Kivu Private Sector Federation President John Kanyoni, the commission planned to send monitoring teams into mining areas to verify whether *négociants* (middlemen) are making payments to the military or purchasing from mines under armed control.<sup>24</sup> This would be an important step forward and one which could usefully dovetail with due diligence verification measures carried out by companies themselves. Any findings from such monitoring, whether undertaken by the private sector or the government, will need to be made public, in line with UN and OECD standards.

These initiatives by national and provincial levels of government are encouraging and need to be reinforced, notably by increasing the participation of Congolese civil society. The unanswered question is whether the plans and the rhetoric will translate into lasting results, however. Given the extent of the vested interests senior military and political figures have in the minerals sector it is difficult to see how change can be delivered without sustained backing from the highest level. President Kabila, in particular, needs to throw his weight publicly behind the reform efforts

and lay out a coherent strategy for the permanent removal of the FARDC from the minerals trade.

The Congolese authorities also need to ensure that planned new measures do not have unintended consequences. The UN-backed *centres de négoce* (trading centres), for example, must be carefully managed as they come on-stream to prevent them from becoming laundering sites for conflict minerals. These trading hubs are intended to facilitate and centralise trade and reduce insecurity in the mining sector. In order to fulfil that objective, the Congolese authorities and MONUSCO will need to secure and closely monitor not only the trading centres themselves, but also the mines and transportation routes that supply them. If this does not happen, there is a serious risk that tagged minerals from 'clean' mine sites will be illegally taxed by armed groups or soldiers as they are transported from mine to trading hub and then labelled by the *centre de négoce* as being 'conflict free'. Companies that purchase minerals from the trading centres must play their part by conducting due diligence on the materials in line with international standards.

In April 2011 Global Witness visited two *centres de négoce* that had just been constructed and were awaiting inauguration. Numerous mining sector officials and traders voiced concerns to Global Witness about the location of the centres and the fact that only a handful of such sites must service a vast territory, rendering access to them impractical for some.<sup>25</sup> For example, traders from Nyabibwe in South Kivu explained that they will need to transport goods 75km in the wrong direction to the centre in Numbi (near the border with North Kivu), and then travel back to Bukavu to export them. Crossing the provincial border and heading to Goma in North Kivu to export the goods is not permitted under the new regulations, which aim to keep revenues from the minerals trade in the province of origin.<sup>26</sup> The *centre de négoce* initiative has obvious potential, but poses risks too. The incentive to defraud the system will be considerable if additional official trading centres are not provided quickly, and conflict-free trade routes opened up and protected.

### The continued impunity of the military mafia

The opportunities for demilitarising the minerals sector in the Kivus and regulating the trade effectively are significant but they are also highly localised.



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The entrance to the Kalimbi mine in Nyabibwe. FARDC troops are heavily involved in mining activities in the nearby Hauts-Plateaux area.

Much of the minerals trade in North and South Kivu remains in the grip of military or rebel groups and demilitarisation will need to be pursued more systemically if progress is to be sustained.

Global Witness researchers visited Nyabibwe town and Kalimbi mine in Kalehe territory in late April 2011 and obtained numerous accounts of FARDC involvement in mining activities in the nearby Hauts-Plateaux.<sup>27</sup> Some of the conflict minerals mined in this area reach export markets via Nyabibwe, where the iTSCi scheme was piloted last year, and it is likely that these flows of tainted materials will soon be routed towards the *centre de négoce* at Numbi.<sup>28</sup>

Several well-informed individuals whom Global Witness interviewed in April 2011 highlighted the risk of FARDC officers pursuing their illegal activities through civilian proxies, even after they have withdrawn from mining areas. For example, civil society representatives who conducted research in Numbi in mid-March 2011 reported that military personnel involved in mining are increasingly wearing civilian clothes rather than uniforms and only identifiable by the weapons they are carrying.<sup>29</sup> The Congolese government, and in particular the armed forces, need to demonstrate to international mineral buyers and the public at large that the changes observed in places like Bisie are more than

cosmetic. They will need to ensure, through political, military and judicial means, that it is not just a shift from open military control to a less visible system of state looting.

This is all the more important given the failure, so far, of the Congolese authorities to tackle the impunity enjoyed by army officers involved in the minerals trade. Global Witness was told by sources in the police and military that any conflicts related to minerals are settled “internally” within FARDC ranks, rather than by the military justice system, particularly problems involving former CNDP elements.<sup>30</sup> Mining police representatives in two different territories in North Kivu said that complaints submitted to their superiors about military involvement in mining activities were either ignored or resulted in them being threatened by the very people they had reported on.<sup>31</sup> A senior FARDC officer told Global Witness that decisions had been made at the highest levels of government not to pursue military commanders guilty of offences in the mining sector.<sup>32</sup>

Two break-outs from Goma’s military prison in late 2010 provide a stark illustration of just how powerless the military justice system is – or chooses to be – against FARDC members, especially former CNDP troops. In both cases FARDC soldiers reportedly attacked the prison to spring their commanders, one of whom had been incarcerated for illegal

involvement in mining activities.<sup>33</sup> The senior FARDC officer who recounted these incidents to Global Witness said that the army's military justice bureau is now reluctant to detain former CNDP elements at the prison in Goma for fear of further attacks.<sup>34</sup>

The invulnerability of former CNDP commander General Bosco Ntaganda, wanted by the International Criminal Court for alleged war crimes, is one of the most extreme examples of the impunity afforded ex-CNDP elements. Bosco hit the international media headlines in February 2011 when he was implicated in an attempt to smuggle hundreds of kilograms of gold through Goma airport.<sup>35</sup> It seems unlikely that this is his only connection with the minerals sector. A well-connected government official showed Global Witness a series of detailed records, based on first hand observations by his staff, of cassiterite smuggling operations through one of Bosco's Goma properties located on the Rwandan border. The official claimed that this smuggling involved the movement of 10-13 tonnes of tin ore at a time and was carried out with the involvement of well-known *comptoirs* on both the Congolese and Rwandan sides of the border. He expressed frustration at the fact that his reports of these incidents had received no response from his superiors.<sup>36</sup> Global Witness has not

yet been able to corroborate this official's reports or obtain comment from Bosco, but believes that the allegations warrant further investigation.

The main consequences of unchecked military engagement in the minerals business are abuses against civilians in and around mining areas and continued instability across the Kivus, as different factions and partially integrated rebel groups enhance their power and their capacity to challenge state control. Some Congolese traders – worried about the taint of military involvement driving away their international buyers – recognise the threat this poses to their interests. As one *comptoir* owner whom Global Witness interviewed in Bukavu observed, with reference to the military, “impunity is the biggest problem”.<sup>37</sup>

Small steps have been taken towards increased accountability, for example through the establishment of *chambres foraines* (temporary military courts) in Walikale,<sup>38</sup> but so far no cases relating to military involvement in the mining sector have been brought forward.<sup>39</sup> Until the senior commanders who are benefiting the most from the illegal trade are brought to justice, efforts to break patterns of military gangsterism on the ground are likely to founder.



Members of the Congolese national army illegally involved in the minerals trade, in particular the ex-CNDP rebels, do so with complete impunity. Until the Congolese government holds these individuals to account, eradication of the conflict minerals trade will remain an uphill struggle.

# Trade at a crossroads

As eastern Congo emerges from a six month ban on mining and prepares to face the requirements of the US Dodd Frank Act, the short-term prospects for the minerals trade in the region are extremely uncertain.

## The Congolese government mining ban: a missed opportunity

The DRC government's current push for reform in the mining sector is a very positive development. However most individuals connected to the minerals trade whom Global Witness interviewed in Congo in April 2011 perceived the government's September 2010 to March 2011 ban on mining as extremely counterproductive. The ban was introduced by President Kabila as an attempt to deal with what he described – in admirably direct terms – as “mafia-like networks” within the FARDC.<sup>40</sup> While the President's analysis of the problem cannot be faulted, the ban did

not bring about any substantive improvements on the ground, mostly because no action was taken against the military elements it was intended to target.

Indeed, there are indications that, during the period of ban, the FARDC actually consolidated its grip on parts the minerals trade. Congolese civil society researchers reported that in some mining sites in Shabunda civilians who continued to work had to pay 50% of their earnings from minerals to the military, compared to the 1/6<sup>th</sup> they were forced to pay in normal times.<sup>41</sup> In the Mukungwe gold mine in South Kivu, groups of miners told researchers that they had to pay the military \$80 per day during the ban just to access the site.<sup>42</sup>

The damage the ban caused, meanwhile, to the livelihoods of those that depend on the mining sector, was substantial. Diggers interviewed by Global Witness in April 2011 described the struggle they faced to find alternative sources of income, and the lack of access to goods that were previously flown into remote locations by the planes sent to carry the minerals out. Meanwhile, the three provinces – North Kivu, South Kivu and Maniema – that were affected by the measures, lost out on a significant amount of tax revenue.<sup>43</sup> North Kivu's finance minister told Global Witness that the province's monthly income dropped from \$600,000 to \$400,000 between September 2010 and March 2011.<sup>44</sup>

The biggest missed opportunity was the delay in the development of various initiatives underway to clean up and regulate the minerals trade. A German government-funded mine site certification project, the Certified Trading Chains, was stalled.<sup>45</sup> The tin industry's iTSCI bagging and tagging pilot scheme in Nyabibwe was interrupted and funding for the project, part of which came from *comptoirs*, ceased because they were not exporting any goods.<sup>46</sup> Global Witness has previously raised questions regarding the iTSCI scheme's capacity to address the conflict financing problem in the Kivus in a comprehensive manner and has made recommendations on how it could be further developed to meet international due diligence standards.<sup>47</sup> However, the ban reduced the scope to improve the scheme and valuable time has been lost.



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A sack of cassiterite at a trader's house in Nyabibwe. The government-imposed mining ban created hardship for communities that depend on the minerals trade and allowed the army to consolidate its grip on certain mining areas.

## The Dodd Frank Act, the electronics industry's response and the wait for the SEC

The legislation passed by the US Congress last July as part of the Dodd Frank Wall Street Reform Act, requires companies to conduct supply chain due diligence on any minerals sourced from Congo or neighbouring countries, to have their due diligence audited, to report to US government regulators on measures taken and to disclose this information publicly. The law is a major step forward and could, if implemented correctly, lead to an improvement in the humanitarian situation in eastern Congo by raising the cost of trading in conflict minerals and cutting off financing to warring parties.

The potential for positive impact, however, risks being lost if foreign companies buying goods from Congo choose to go beyond the law's requirements and demand standards that legitimate mineral exports cannot currently meet. In anticipation of the law, two leading industry associations, the Electronics Industry Citizenship Coalition (EICC) and the Global e-Sustainability Initiative (GeSI), developed the Conflict Free Smelter (CFS) scheme, which audits the due diligence carried out by mineral processors.<sup>48</sup> In September 2010, EICC and GeSI communicated to suppliers the requirements for mineral processing companies wanting to be accredited to the programme. The policy stated that, with effect from 1 April 2011, smelters sourcing from DRC and neighbouring countries and wishing to be 'CFS compliant' would need to show written documentation from a credible certification or tagging scheme stating that the minerals in question were 'conflict free'.<sup>49</sup>

The Conflict Free Smelter programme is one of the more progressive industry initiatives to emerge from the conflict minerals debate and the policy that EICC and GeSI announced was no doubt well-intended. Moreover, the industry associations could not have anticipated and cannot be blamed for the disruption caused by DRC government's mining ban. At the same time, the demand for a written conflict-free guarantee or certificate goes some way beyond what the Dodd Frank Act requires. In addition, the industry associations were well aware that there is no certification or tagging system in Congo capable of guaranteeing minerals as being conflict free and no prospect of one being established anytime soon. Indeed, the establishment of the necessary regulatory framework and institutional infrastructure envisaged

by the ICGLR, the regional body that is leading certification efforts, could take years.

The unintended consequence of the electronics industry's smelter accreditation approach was a frenzied scramble by traders to export their mineral stocks from the Kivus between the lifting of the mining and export ban on 10 March and the EICC and GeSI's April 1 deadline.<sup>50</sup> The insistence on a written conflict-free guarantee, and the ambiguity this created regarding electronics industry's willingness to buy Congolese minerals, continued to generate profound anxiety in mining areas in the Kivus throughout April 2011. In a series of meetings with Global Witness, diggers, porters, and traders expressed their dismay at how, after withstanding a six month mining ban, they could see no clear path ahead to the resumption of mining and exporting.<sup>51</sup>

On 22 April 2011 EICC and GeSI announced an adjustment to their policy, stating that mineral processors whose sourcing practices comply with the OECD due diligence standards would now be eligible for the Conflict Free Smelter programme and therefore be in a position to sell to electronics manufacturers.<sup>52</sup> Global Witness welcomes this shift, in particular the emphasis on the OECD standards and the implicit recognition that the Dodd Frank Act requires due diligence, rather than mineral certification. It remains unclear, however, how willing leading manufacturers will be, to buy from smelters that use Congolese materials in a manner that complies with the OECD standards and therefore the CFS programme.<sup>53</sup>

Companies taking a strong stand on the issue of conflict minerals should be applauded rather than discouraged and the electronics industry is right to be cautious about sourcing minerals from Congo, particularly when upstream suppliers have made little tangible progress towards implementing international due diligence standards. Equally, downstream companies in all sectors need to be mindful of the fact that supply chain due diligence, unlike a commodities sanctions regime, is about ending harmful trade while rewarding business that is legitimate and under civilian control. The recent demilitarisation of Bisie presents the best chance in a decade to export clean minerals from eastern Congo, but it will be hard for anyone to do this if there is no international market for them.

The US regulatory body the Securities and Exchange Commission (SEC) will publish the final rules on



The US Securities and Exchange Commission (SEC) is due to announce what due diligence companies covered by the US conflict minerals law are required to carry out. The SEC should ensure its published rules are in line with the international due diligence standards developed by the UN and the OECD.

conflict minerals accompanying the Dodd Frank Act sometime between August and December this year and will specify what the law means by 'due diligence'. It is crucial that the regulators state unequivocally that the due diligence requirements of the Dodd Frank Act are exactly the same as those set by the UN Security Council and the OECD.<sup>54</sup> To fall short of this would undermine these international initiatives by providing less scrupulous businesses with an excuse not to implement them.

The SEC should issue the rules as soon as possible, preferably before the August to December period it has slated for publication of its final regulations. At a minimum, the commission should make its views on due diligence known before August, for example by stating publicly that the law's due diligence requirements will be aligned with the UN and OECD standards. This would put to rest any claims by companies that they cannot begin to carry out due diligence until the final regulations are published.

While not a substitute for a clear signal from the SEC, the US State Department can help push companies to start implementing rigorous supply chain controls by issuing its own guidance on due diligence and

making it clear that this is one and the same as the standards developed by the UN and OECD. This issuing of guidance to businesses is something that the State Department is directed to do by the Dodd Frank Act. As long as companies are able to plead uncertainty about what their due diligence responsibilities are, the conflict minerals trade, with all its devastating consequences, will continue and the scope for clean mineral exports from eastern DRC will remain minimal.

The question of how to legislate against the trade in conflict minerals has been dominated so far by the passage and elaboration of the Dodd Frank Act. Attention is now shifting, however, to the role of the EU, as the other major western market for goods that contain tin, tantalum, tungsten and gold. EU member governments and the European Commission, which is the body that develops EU-wide legislation, need to start showing some leadership on the conflict minerals issue by finding ways of putting their international commitments, as members of the UN and the OECD, into law.

# Rwanda: ready to be part of the solution?

Rwanda has long been the main conduit for conflict minerals passing out of eastern DRC and into the global supply chain. The government in Kigali has yet to acknowledge its role and adopt a comprehensive approach to cleaning up its lucrative minerals trading sector, however. In recent months there have been some hopeful signs that this might change. In particular, the Rwandan government has shifted from a position of total denial about problems in its minerals trade to support for traceability programmes, which are one component of supply chain due diligence.

This, on its own, will not be sufficient, however. What the government urgently needs to do is acknowledge that Rwanda has had, and will have, a key role to play in the trade in Congolese minerals and commit to playing this role in a way that benefits rather

than harms its neighbour. At the same time it must translate this commitment into Rwandan law. That means compelling businesses based in Rwanda to implement the UN and OECD standards which Rwanda, as a member of the ICGLR regional grouping, has publicly endorsed.

## A mixed bag: Rwanda's mineral control regime

With the passage of the US Dodd Frank Act, which targets the minerals trade from DRC and neighbouring countries, Rwanda has come under increasing pressure to demonstrate that its mineral supply chain is clean. In response, the government introduced new regulations on 11 March this year that require traceability in all Rwandan mineral production and trade.



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A sack of minerals tagged and ready for inspection by Rwandan authorities at a mineral trading office in Kigali. Rwanda's efforts to establish mineral traceability are a welcome development, but tagging alone will not address the problem of conflict minerals. To meet its international commitments, the Rwandan government must go further and insist that local companies carry out comprehensive due diligence on their supply chains.



Workers shovel cassiterite and coltan into sacks at a cooperative in Kigali. The Rwandan government has an important part to play in tackling the conflict minerals trade. To do this it needs to be transparent about the exact origin of its mineral exports.

In addition, the instructions call for consignments of minerals entering the country (with the exception of sealed transit goods) to arrive with “required trade documents” and to be “certified and tagged by competent authorities”. Minerals transported within Rwanda outside of designated mining concession areas must be tagged with the mine of origin identified. Furthermore, mineral trading is restricted to specific areas of the country and traders are asked to submit monthly reports of purchases and sales to the government.<sup>55</sup>

Most concession holders and traders in Rwanda have welcomed these new directives. Several told Global Witness that they support the traceability measures as a means to protect the interests and reputation of the Rwandan mining sector. Some said that the tagging had helped reduce theft of minerals from their concessions.<sup>56</sup> Not all mining sector operators affected by the regulations are happy, however. Some of the smaller companies told Global Witness that compliance was proving expensive and overly burdensome.<sup>57</sup> Meanwhile, traders who source minerals from Congo, or from artisanal mining areas in Rwanda not yet covered by the new tagging system, are feeling the pressure as competition over Rwanda’s still limited domestic mineral output increases. The incentive for fraud – cross-border or within Rwanda – is considerable.

Two businessmen involved in the minerals trade described separate recent incidents in which tags were either stolen or illegally sold. Global Witness has not been able to verify either of these accounts but believes they reflect genuine concerns within the trade about potential loopholes in the new system.<sup>58</sup>

An additional challenge to the effectiveness of the new regulations is capacity. The agency tasked with implementing the tagging system, Rwanda’s Office for Geology and Mines (OGMR), is underfunded and understaffed. Graduate recruits hired to take on the key role of overseeing tagging at mine sites and mineral trading offices are sometimes poorly trained and unfamiliar with the process. During its visit to Rwanda in April 2011, Global Witness observed a case where an OGMR official verifying goods at a trading office became confused and had to repeatedly ask company representatives what to do next.<sup>59</sup>

Rwanda’s new regulations are a welcome step towards establishing greater traceability and government oversight within the country’s domestic mining sector, but their effectiveness as a set of measures for tackling the regional trade in conflict minerals is limited. Tagging alone does not address the problem of warring parties financing themselves through extortion of the minerals trade. In eastern Congo diggers or traders

transporting sacks of minerals sealed, tagged and bar coded can be illegally taxed by armed groups just as easily as those carrying untagged bags.

Carrying out comprehensive due diligence – which includes but is not limited to establishing mineral traceability – is currently the only credible way for companies to assess whether armed groups have interfered with and benefited from the trade at any point along the supply chain. The field assessment component of due diligence is particularly critical if companies are to identify extortion or situations where members of the military are using civilian proxies to represent their interests in the minerals trade. Allowing the import of Congolese minerals on the proviso that they are tagged will not, on its own provide Rwanda, or companies buying from Rwanda, any real assurances that those materials are conflict free.

Moreover, by prioritising mineral traceability over supply chain due diligence and closing its borders to goods that do not have the right tag, Rwanda is pursuing a policy that risks impeding any legitimate trade in Congolese minerals. There is currently no mineral tagging being undertaken in the Kivus. This means that, in the short term at least, Rwanda's new regulations will make it impossible for any minerals from eastern Congo – including those from demilitarised areas – to reach international markets. By instead adopting a due diligence-based approach, Rwanda could live up to its responsibility to curb the flow of conflict minerals through its territory, while

supporting those parts of the Congolese minerals trade that are legitimate and under civilian control.

The Rwandan government is quite aware of its international obligations and the steps it needs to take. The Minister of Mines, Christophe Bazivamo, was quoted in a Reuters article on 27 April 2011 saying that instructions had been issued to government departments to carry out “rigorous due diligence on any ores entering Rwanda from conflict areas”.<sup>60</sup> This was the first time the government explicitly stated that it would require due diligence on material from Congo, and appeared to signal a welcome shift in position. However, the Minister subsequently confirmed to Global Witness by email that he was in fact referring to the 11 March regulations, which make no mention of due diligence and fall a long way short of the controls he described in his interview.<sup>61</sup>

Global Witness has recommended to the Minister that the government issue an addendum to the March regulations to bring them in line with his public call for due diligence. This addendum should clarify that companies importing minerals from conflict-affected areas and adjoining countries are required to carry out due diligence in line with the UN and OECD standards. The UK and the US, as Rwanda's major donors, should encourage the government to take this step as a priority. They should also urge the authorities in Kigali to report to the UN Security Council on their implementation of the Council's Resolution 1952 which covers conflict minerals and due diligence.

## Exported from Rwanda, mined in Rwanda?

Developing Rwanda's domestic mineral sector has been a priority for the government since the privatisation of state-owned Redemi mining concessions in 2006. This push to increase production is driven by the desire to maximise returns from what some believe to be significant mineral reserves. It is also intended to overturn the perception that all Rwandan mineral exports are from Congo.

There is no doubt that Rwanda produces minerals, though the government's refusal to publish comprehensive production data makes it difficult to assess accurately the scale of the sector. Statistics obtained by Global Witness from the Central Bank of Rwanda put total cassiterite exports in 2009 at 5,615.4 tonnes, with 1,346.3 tonnes classified as re-exports, i.e. not of Rwandan origin.<sup>62</sup> Given that Congo is the main provenance for mineral imports into Rwanda, these figures suggest that approximately 24% of Rwanda's cassiterite exports were mined in Congo. In 2010, the official figures indicate that the share increased to 40%.

Information gathered from industry representatives in Kigali, however, paints a rather different picture. Global Witness was told by a company directly involved in the minerals transit trade that up to 80% of Rwandan mineral exports were in reality Congolese. Several other mineral traders in Kigali also expressed the view that the majority of Rwandan mineral exports were of Congolese origin, but were not able to provide specific figures.<sup>63</sup>

## Conclusion

For over ten years, abusive armed groups and members of the Congolese national army have lined their pockets and funded their fighting with profits from eastern Congo's minerals trade. The local population has borne the brunt of this violent competition to control the region's richest mines. Findings from Global Witness research in the Kivus in April 2011 indicate that there may now be more scope to establish a trade in conflict free minerals from eastern Congo. Bisie, North Kivu's largest tin-ore mine, is free from military control for the first time in five years.

Progress on the ground is limited in scope and remains fragile, however. Rebels and FARDC troops still occupy numerous mining areas in North and South Kivu and the Congolese government has yet to tackle the impunity of those illegally involved in the minerals trade.

A lucrative mining area like Bisie will not remain free of negative elements for long unless the space is claimed by legitimate actors – civilian authorities, peacekeeping troops, a responsible private sector – committed to breaking the links between minerals and armed violence and supporting a trade that benefits the Congolese people.

To achieve this, companies sourcing minerals from the region must implement without delay the supply chain due diligence guidelines developed by the United Nations and other international bodies and begin to source from mines free from armed control. Countries where these companies are located, particularly the Congolese and Rwandan governments, must make the standards law and closely monitor their implementation.



Cassiterite is placed in 50kg bags in Bisie. Minerals like cassiterite should be a source of prosperity for the population of eastern DRC, rather than a driver of conflict and insecurity.

# Recommendations

## **Congolese and international companies using tin, tantalum, tungsten and gold should:**

- Implement the UN and OECD due diligence standards in full and without delay.
- Lobby the Congolese authorities and MONUSCO to ensure that demilitarised mining areas are protected from renewed occupation by rebels or FARDC units.
- Be prepared to buy minerals from demilitarised areas of eastern DRC where these are sourced in compliance with the UN and OECD due diligence standards.

## **The United States Securities and Exchange Commission (SEC) should:**

- State unequivocally that the due diligence requirements of the conflict minerals provision of the Dodd Frank Act are exactly the same as those set by the UN Security Council and the OECD. The SEC should make its view on this issue public at the earliest opportunity.
- Publish the final rules for the conflict minerals provisions of the law as soon as possible, ideally before August.

## **The Government of the Democratic Republic of Congo should:**

- Remove FARDC units engaged in illegal activities in and around mining areas and along mineral transportation routes.
- Prosecute members of the FARDC who are illegally involved in, or extorting from, the minerals trade. Prioritise prosecutions of senior officers found to be implicated.
- Incorporate the OECD due diligence standards into Congolese law and ensure that companies implement them.

- Deploy mining police to mining areas that have been demilitarised.
- Ensure that the redeployment of troops to Walikale territory, where Bisie is located, does not result in a return of the military to mining areas and a resumption of illegal and abusive behaviour.

## **The Government of Rwanda and the governments of other countries where minerals are traded, processed or used in manufacturing should:**

- Incorporate the OECD due diligence standards into national law and ensure that companies implement them.

## **The UN Security Council should:**

- Reiterate, in the new MONUSCO peacekeeping mandate to be adopted in June, an explicit requirement that the peacekeepers help to secure key mine sites in the east of DRC and expand their monitoring and inspection of minerals shipments to support law enforcement by the Congolese government.
- Monitor closely implementation of this new mandate by MONUSCO to ensure that the peacekeeping force is moving rapidly and proactively where opportunities arise to secure demilitarised mining areas.
- Make direct representations to member states in the Great Lakes Region and those that have significant processing and manufacturing facilities within their territory to ensure that they are calling on companies to undertake due diligence in line with UNSC Resolution 1952.
- Insist that member states report to the Council on their implementation of Security Council Resolution 1952, with particular reference to this resolution's provisions on conflict minerals and due diligence.

- Direct the Group of Experts and MONUSCO to monitor the implementation of the due diligence guidance by local and international companies sourcing minerals from demilitarised areas of eastern DRC.
- Reinforce the capacity of the Group of Experts on DRC to monitor and report on implementation of the due diligence guidance by providing the Group with the funding to enlist additional personnel to help execute this part of its mandate.
- Impose targeted sanctions on individuals or companies sourcing minerals from eastern Congo in a way that benefits armed groups, in line with Resolution 1952.
- Persuade the government of Rwanda to live up to its responsibilities to help curb the conflict minerals trade, notably by compelling Rwanda-based companies to implement the UN/OECD due diligence standards. Make non-humanitarian aid conditional on progress on this issue.

#### The OECD should:

- Publish a declaration, on the occasion of the ministerial meeting on 25 May, recommending that OECD countries incorporate the due diligence guidance into national law.
- Initiate the establishment of an international monitoring team to monitor and report publicly on implementation of the guidance. This would enhance the effectiveness and credibility of the OECD's work on conflict minerals and reinforce the monitoring by the UN Group of Experts.
- Encourage companies based in OECD countries to purchase minerals from the Great Lakes Region when these have been sourced in a manner that fully conforms to the due diligence guidance.

#### International donor governments should:

- Encourage Congolese authorities to take soldiers out of the mines and away from the minerals trade. Make non-humanitarian aid, especially to the country's security forces, conditional on progress on this issue.

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## Annex

### Proposal for independent monitoring of companies' due diligence

Companies' implementation of the UN and OECD due diligence standards needs to be monitored and reported on publicly by an independent team with a strong international mandate.

Independent third party reporting is the only way to ensure that the public has confidence in a due diligence-based system of supply chain controls. In this sense, it is in the interests of responsible companies to see this kind of monitoring and reporting put in place. It is also to the advantage of the governments of Congo and its neighbours who wish to protect legitimate trade from a general perception that all the minerals coming out of the region are associated with conflict and human rights abuses.

One of the main advantages of an international monitoring team, over more institutionally elaborate methods of verification, is that it can be set up relatively quickly, and will not be particularly expensive to establish or run.

At present, the UN Group of Experts is tasked with reporting to the UN Security Council on the implementation of the UN due diligence guidance. However, the Group has been given very limited resources to undertake this task. Moreover its mandate to undertake this function expires in November and may not be renewed.

There is therefore a need to establish quickly a more robust and long-term system of independent monitoring and reporting to bolster international efforts to tackle the conflict minerals trade through company due diligence.

### What tasks should this monitoring team be mandated to carry out?

The key tasks the monitoring team needs to take on include:

- Review of due diligence by companies all the way along the supply chain, involving review of company documentation, visits to headquarters, to suppliers and operational sites in eastern Congo and internationally.
- Unannounced field visits to verify companies' claims.
- Regular public reporting on the veracity of claims made by companies and the effectiveness of their due diligence.
- Clear conclusions in these public reports as to whether or not the companies assessed are sourcing minerals in a way that is causing human rights abuses or other crimes.
- Recommendations on legal action to be taken against companies or individuals that are involved in human rights abuses and other crimes.
- Liaison with law enforcement officials in the countries concerned.
- Recommendations on due diligence best practice.

### What should be the composition of this monitoring team?

The monitors should be a small number of individuals from a range of countries with the relevant knowledge of both the regions and trading activities concerned and a capacity to carry out field research and audit-type investigations. These people should be free of political or commercial conflicts of interest.

### Who should set it up?

The monitoring body will need a mandate from an intergovernmental body or from a group of governments that are engaged in international efforts to address the conflict minerals trade. There are two main reasons for this:

- To ensure that the public has confidence in the monitor's independence from companies.
- To enable the monitor to gain access to the data it needs to perform its functions effectively.

This official mandate is crucial, if the monitoring team is to do more than simply replicate the kind of work already undertaken in a patchwork manner by local and international NGOs. The mandate should grant rights of access to official records and sites at which mining and trading activity is taking place, and state that government officials have a duty to answer the team's questions.

While the establishment and oversight of the monitoring body will require the involvement of governments or intergovernmental bodies, it is crucial that the way in which it is established, mandated and overseen is transparent and guarantees its independence.

### Who should pay for it?

The costs of establishing and running the monitoring body should be covered by donor governments. A number of donor governments have already participated in the development of the OECD guidance on due diligence and expressed support for its implementation.

# Endnotes

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