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COMING CLEAN

How supply chain controls can stop
Congo's minerals trade fuelling conflict

A report by Global Witness, May 2012

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EXECUTIVE SUMMARY

Global Witness research in eastern Congo highlights efforts by companies and Congolese officials to lay the foundations of a conflict-free minerals trade in the shadow of entrenched military control and impunity.

For nearly 15 years abusive armed groups, including factions of the Congolese national army, have preyed on the trade in tin, tantalum, tungsten and gold to fund a brutal war in eastern Democratic Republic of Congo (DRC). The region's natural resource wealth is not the root cause of the violence, but competition over the lucrative minerals trade has become an incentive for all warring parties to continue fighting. The local population in North and South Kivu provinces have borne the brunt of a conflict characterised by murder, pillage, mass rape and displacement.

The metals mined in eastern DRC enter global markets and make their way into products such as mobile phones, cars, planes and jewellery. Recent international efforts to tackle the trade in conflict minerals have focused on getting companies sourcing from Congo to do checks on their supply chains – known as due diligence – to make sure

they are not supporting abusive armed groups through their purchases.

The Organisation for Economic Cooperation and Development (OECD) has facilitated the development of comprehensive due diligence guidance for companies using tin, tantalum, tungsten and gold and the UN Security Council has issued similar guidelines. In 2010 the US Congress passed the Dodd Frank Act, which contains a provision requiring US-based companies using minerals from DRC to carry out supply chain due diligence. The US Securities and Exchange Commission (SEC) has not yet issued the final rules to accompany the law's section on conflict minerals, however, and as a result the law's implementation has now been delayed for over a year.

While the failure of the SEC to complete Dodd Frank has hampered moves to clean up supply chains internationally, Global Witness field research carried out in March 2012 in eastern DRC highlights some significant progress on the ground. Building on reforms introduced last year, the DRC government passed a law in February requiring all

A miner holds cassiterite from Zola zola mine, South Kivu. A law introduced in Congo in February 2012 requires companies mining or trading minerals to undertake supply chain checks – known as due diligence – to ensure that they are not financing armed groups, or else face sanctions.



mining and mineral trading companies in Congo to carry out due diligence in line with OECD standards. In May 2012 the Congolese government began implementing this law with the suspension of two export houses which it claims have failed to comply. Private sector attitudes in North and South Kivu appear to be changing; one example is how local traders have recently launched an initiative to train those working in the mining sector in how to carry out due diligence.

These positive moves by the Congolese authorities and some local companies come against the backdrop of continued military and militia control of mining areas and a new insurgency led by an army general who has been running a major minerals smuggling racket. Bosco Ntaganda, nicknamed 'Terminator', previously fought with the CNDP rebel group until his defection to the government in 2009 and is wanted by the International Criminal Court for alleged war crimes. In recent years he has exercised de facto control over all Congolese army operations in eastern DRC. In April 2012 General Ntaganda and other poorly integrated ex-insurgents staged a mutiny. The fighting which followed has displaced tens of thousands of people.

Bosco Ntaganda's deep involvement in the minerals trade reflects a wider pattern of militarisation that obstructs reform of eastern DRC's mining sector and threatens peace and stability across the region. However, by applying the OECD due diligence guidance, particularly its on the ground risk assessment component, companies buying minerals from the Kivu provinces can navigate this challenge and avoid conflict goods.

Governments have a crucial role to play here too. The Congolese government needs to move further and faster to tackle the criminal elements in its army that are trading conflict minerals. This should include the prosecution of those senior officers responsible, the rotation of recalcitrant units out of the Kivus, and the establishment of a remuneration system that delivers adequate pay to the rank and file. For their part, governments of neighbouring countries, notably Rwanda, need to ensure that their efforts to address the conflict minerals issue allow trade in clean Congolese materials, while ending impunity for politically-connected smugglers and fraudsters.

International donor governments and intergovernmental bodies should support such efforts to bring reform and build accountability. The donors have significant influence with the governments of the Great Lakes region and they



Gacombe mine, North Kivu. While there are emerging opportunities for conflict-free sourcing, many mines in North and South Kivu remain under the control of rebels, militias and mafia networks within the Congolese army.

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should use it in a more coordinated and effective manner. Many of the same donor governments have large mineral-using companies based in their jurisdictions. They should follow Congo's example and make application of the OECD and UN due diligence standards a legal requirement. The EU, which earlier this year indicated it might consider a measure of this kind, needs to show leadership and start putting the necessary regulation in place.

The main priorities for action can be summarised as follows:

- Companies should carry out due diligence in line with OECD and UN standards.
- The DRC government should demilitarise mining areas and hold to account those members of its army involved in illegal activities.
- The DRC government should fully enforce its law on due diligence.
- Other governments – both within the region and internationally – should pass laws making OECD and UN due diligence standards compulsory and then enforce them.
- International donors should use their influence with the Congolese authorities, and their counterparts in Rwanda and other neighbouring countries, to ensure that the measures required to establish a clean minerals trade are put in place as a matter of urgency.

A full list of recommendations can be found on page 32.

WHAT IS SUPPLY CHAIN DUE DILIGENCE?

Much of the debate around how companies can avoid trading in conflict minerals and help establish a clean trade in materials mined in eastern DRC, has centred on due diligence. Due diligence is the process by which companies take responsibility for ensuring that they are not contributing to conflict or human rights violations through their mineral purchases.

The Dodd Frank Act, passed by the US Congress in July 2010, requires US-registered companies using minerals from DRC and neighbouring countries to show that they have done due diligence on their supply chains. Guidance developed by the UN Security Council and the Organisation for Economic Cooperation and Development (OECD), which was published just a few months after the US law, spells out for companies what this due diligence on mineral supply chains should consist of.¹ The main elements can be summarised as follows:

- 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.

What about traceability and certification?

Tracing minerals to the mine of origin is a crucial part of the first of these five components, but is not an end in itself. Companies are required to know not only where the minerals are from, but also the conditions in which they are mined, transported and traded. This is particularly important in North and South Kivu provinces, where armed groups and the military derive much of their ill-gotten gains from extortion of diggers, minerals theft and use of civilian intermediaries, as well as through the control of particular mine sites and transportation routes.

Certification of minerals can play an important part in companies' efforts to carry out due diligence. For example, the regional certification scheme being established by member states of the International Conference on the Great Lakes Region (ICGLR), could provide valuable information to international traders, smelters and manufacturers on the provenance of the minerals they are purchasing and the conditions in which they are produced. The ICGLR system requires trading companies in the region to meet OECD due diligence standards as a condition for having their minerals certified.

Although individual firms retain ultimate responsibility for meeting international standards, a functioning, government-led certification scheme could help companies to fulfill their due diligence obligations.

The need for full implementation

Due diligence for mineral supply chains has now been clearly defined and endorsed by governments, industry and civil society groups; however actual implementation

SECTION ONE

DUE DILIGENCE – THE CASE FOR IMMEDIATE IMPLEMENTATION IN THE KIVUS

Many of eastern Congo's mines remain under the control of military units, rebels and militias. Clashes in April and May 2012 between the Congolese army (Forces armées de la République Démocratique du Congo or FARDC) and mutineers drawn from the Congrès national pour la défense du peuple (CNDP) led to massive population displacement in some districts of eastern Democratic Republic of Congo (DRC) and instability in certain mining areas. The events underscore the urgent need for the Congolese government to deal with parallel command structures within the army, but should not be taken by companies as grounds to disengage completely from North and South Kivu provinces. The fighting is largely localised. Moreover, growing support for due diligence among local traders and improvements to the Congolese legal framework mean that the scope to source conflict-free minerals from the region is increasing. It is crucial that companies, the Congolese government and international donors coordinate to take these opportunities.

Why do companies need to exercise due diligence on the minerals in their supply chains?

The minerals trade has been one of the main factors fuelling violence and unrest in eastern DRC throughout the brutal conflict that has wreaked havoc in the region for nearly 15 years. Although not the root cause of the war, competition over control of this lucrative resource base has been an incentive for all parties to continue fighting.

In eastern Congo's mining areas, civilians suffer directly from the control exerted by men with guns over the mining sector. Diggers are frequently forced to hand over a proportion of their mineral production to soldiers, or are obliged to pay illegal taxes to the military in order to access mine sites. Communities are displaced and subject to abuse as a result of clashes between armed groups vying for control of mineral-rich zones. But competition over

the minerals trade is also linked to a wider pattern of instability and violence outside of the mines themselves. It is one of the factors which, if not dealt with properly, risks fuelling abuses and displacement across the Kivus for many years to come.

Proceeds obtained through illegal control of the minerals trade, often running into the tens of millions of dollars per year, have helped to keep armed groups operational and have lined the pockets of Congolese national army officers – often former rebels themselves. These perverse incentives have resulted in troop deployments being driven by individual commanders' efforts to control mineral-rich areas rather than the Congolese population's security needs. The funds are not just for personal gain; they are also a source of off-budget cash that insurgents who have been poorly integrated into the army can use to finance new rebellions.

The CNDP's April 2012 mutiny provides a striking illustration of the risks involved in allowing warlords with a history of rebellion access to vast mineral resources. Since integrating into the national army in 2009, General Bosco Ntaganda and his cronies have made millions of dollars by illegally controlling some of eastern DRC's most lucrative mining areas. It is very likely that the recent insurgency has been funded by proceeds from the minerals trade. By doing due diligence on their supply chains, companies purchasing minerals from eastern DRC can help reduce the cash going to warring parties, making it harder for groups like the CNDP to finance rebellions in the future.

Military and rebel control over the minerals trade persists in many areas of North and South Kivu provinces. Section two of this report outlines the major obstacles that need to be overcome in order to end the harmful involvement of armed groups in the trade. It is important to recognise, however, that alongside these challenges there are encouraging signs of progress in efforts to clean up eastern DRC's minerals sector.

Miners and traders operating in DRC are now required under Congolese law to meet international supply chain due diligence standards and commitment among local traders to due diligence is increasing. Some firms using tin, tantalum, tungsten and gold have already started putting due diligence measures in place and setting up 'closed pipe' supply chains – by which the company is involved from mine to manufacturing plant – from certain parts of DRC. There is broad consensus around standards and ample guidance available to industry in Congo and abroad, and companies can and should do due diligence now and buy minerals from areas in eastern DRC that are not controlled by men with guns. By claiming demilitarised mines for legitimate trade, companies will help to limit the cash going to abusive armed groups and create opportunities for development in mining areas.

Changes to Congo's legal framework

Locally-driven efforts to clean up the minerals trade have been bolstered by recent changes to the Congolese legal framework. The government passed a law in February 2012 making it a requirement for all mining and mineral trading companies operating in DRC to meet OECD due diligence standards 'to ensure that they do not contribute to human rights violations or conflicts in DRC'.² The law also sets out the domestic regulatory framework for Congo's

implementation of the regional mineral certification mechanism developed by the International Conference on the Great Lakes Region (ICGLR). The requirement for operators in the DRC's minerals sector to carry out due diligence has been in place since a ministerial directive was passed in September 2011, but its explicit inclusion in the February legislation signals an increased commitment to reform on the part of the Congolese authorities.

The DRC government followed through on this commitment in May 2012 when it announced the suspension of two Chinese-owned comptoirs (mineral export houses) operating in North Kivu, TTT Mining (exporting as CMM) and Huaying Trading Company, for failing to carry out due diligence. The government also instructed the provincial authorities to launch an investigation into mineral purchases made by the two companies.³ The decision was prompted by evidence published by the UN Group of Experts on DRC in their November 2011 report, indicating that TTT Mining and Huaying were buying minerals that had benefited armed groups and criminal networks within the Congolese army.⁴ Global Witness research carried out last year yielded similar findings.⁵

In making this move the Congolese authorities have sent a strong signal to mining and mineral trading companies operating in DRC that the new legislation will be enforced. They must now ensure that provincial



Congolese law prohibits the national army from engaging in the minerals sector. However, senior members of the military are making millions of dollars a year from the trade in conflict minerals.

mining and law enforcement agencies in the east of the country implement the suspension and that the findings of the investigation are made public. The government should consider designating a state body responsible for monitoring implementation of the new law, and task that body with carrying out spot checks on the due diligence done by mineral trading companies in the east of the country.

The Congolese authorities will also need to address the political dynamics that underpin the role of the military and armed groups in the minerals trade and international donors should use their influence to ensure this happens. The UN Security Council and members states can reinforce the Congolese government's efforts by imposing targeted sanctions on individuals and companies whose minerals purchases benefit armed groups.⁶

International donors and UN Security Council members should also be ensuring that the UN peacekeeping mission fulfils its mandate, which calls on United Nations Stabilisation Mission in the Democratic Republic of Congo (MONUSCO) to 'support the relevant Congolese authorities in preventing the provision of support to armed groups from illicit economic activities and illicit trade and natural resources, including to carry out spot checks and regular visits to mining sites, trade routes and markets, in the vicinity of the five pilot trading counters.'⁷ While

MONUSCO's Joint Mission Analysis Cell has carried out some useful monitoring work, peacekeeping troops have declined to help secure or even visit mining areas once these have been freed from military or armed group control.⁸ The consequence is that crucial opportunities to claim mining areas for clean trade, notably the demilitarisation in early 2011 of Bisie, the region's most important tin ore mine, have been lost.

Securing local buy-in for due diligence

Global Witness research in North and South Kivu provinces in March 2012 found that understanding of due diligence and support for its application among members of the private sector appears to be growing. Traders told Global Witness that workshops carried out in the Kivus recently by the OECD, research organisation IPIS and non-profit group Pact have contributed significantly to building up local knowledge and expertise in this area.⁹ In North Kivu in particular, representatives of certain comptoirs and negociants (intermediary traders) have gained a more detailed understanding of the OECD due diligence standards. Some have gone a step further and are working to raise awareness among other local mineral traders.

According to UN and OECD standards, due diligence for traders based in North and South Kivu consists

Miners at Bayosa mine, North Kivu. The establishment of a clean trade in Kivus minerals will provide better working conditions for miners and will cut funding to marauding armed groups and military units.



of finding out the origin of the minerals they buy, ascertaining how the goods were produced and transported, and whether any armed groups or abusive factions of the army benefited at any stage. Due diligence should be a fairly straightforward exercise for these companies. The supply chain between the mine site and export is extremely short; comptoirs and negociants are often only one or two steps along the supply chain from the point at which armed group involvement is likely to take place. Local traders also tend to be familiar with transport routes and intermediaries involved in the trade and often send representatives to the mining areas.

A notable example of local efforts to promote due diligence is the launch, by a group of Goma-based traders and local civil society representatives, of an initiative called Save Act Mine DRC. The project aims to raise awareness among those involved in the minerals trade about OECD due diligence, to ensure that the concepts are understood and relevant documentation is readily accessible, and to build local capacity for implementation of the standards. The first activity planned by Save Act Mine is a workshop in Goma for comptoirs, negociants, mining cooperatives and mineral transporters. The sessions will also involve mining sector officials and representatives of the army and mining police.¹⁰

Save Act Mine aims to extend these awareness-raising activities to mining areas throughout the Kivus and eventually to monitor the implementation of due diligence. Projects like this have the potential to boost the commitment and capacity of local actors to carry out credible supply chain controls, and should be supported by Congolese authorities and by international donors.

The fact that local businesses are starting to recognise their role in cleaning up the minerals trade represents a welcome shift. Throughout the conflict in eastern DRC, comptoirs have been exposed in UN and NGO reports for buying minerals that have benefited armed groups.¹¹ Few have acknowledged, and fewer still have been held to account for, the support they have provided, directly or indirectly, to warring parties. Persuading mineral traders operating in the Kivus to take responsibility for their purchases is a critical step in establishing conflict-free supply chains from eastern DRC, and cutting off a source of cash for belligerents.



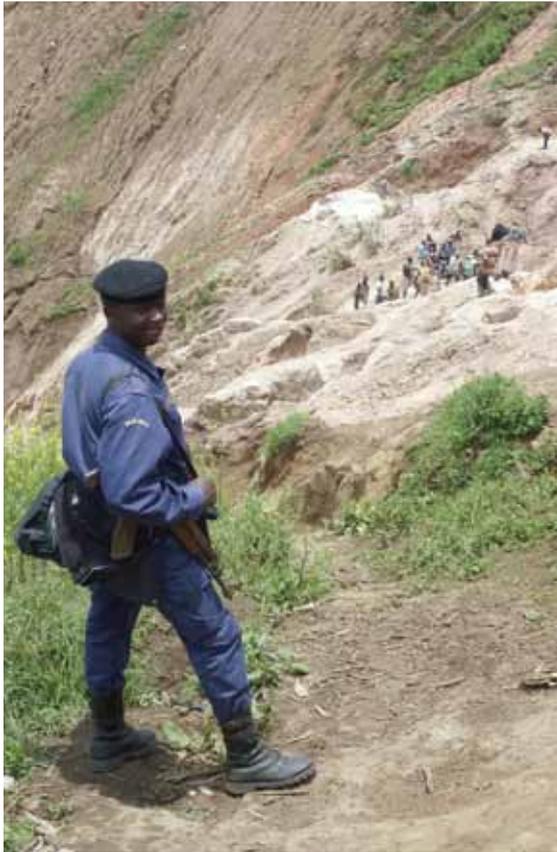
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An important part of a company's due diligence is undertaking on-the-ground risk assessments. These can help to ensure that armed groups and military units are not controlling mines or levying illegal taxes along transportation routes.

Not all local businesses have expressed willingness to commit to more responsible mineral sourcing practices, however. Some comptoirs in Goma and Bukavu are adamant that carrying out due diligence is impossible for them as long as the market for minerals from the Kivus is limited. Official tin exports in 2011 were at around 28 percent of 2009–2010 levels¹² and the downturn led some comptoirs to suspend operations. US-based end-users are preparing to implement the Dodd Frank Act's conflict minerals provision, which requires companies sourcing minerals from DRC and neighbouring countries to carry out due diligence on their supply chains (see section on 'SEC delays and international supply chain' for more details). Until local firms demonstrate that they can help companies further downstream discharge this obligation, trade is likely to remain slow.

The Save Act Mine coordinator, comptoir representative Jamal Useni, says that the initiative stems from a recognition that local traders' ability to continue exporting minerals hinges on convincing foreign buyers and observers that they are meeting international due diligence standards. Credible due diligence carried out by local traders will underpin the efforts of companies all the way down the supply chain, and help to generate confidence in minerals from the Kivus. As Mr Useni put it, "there is an imperative to get the trade going".¹³

A member of the mining police in North Kivu. The mining police have a crucial role to play in bringing demilitarised mines under proper government control.



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in monitoring the mining sector. Global Witness has concerns, however, about the timing of the validation process and the way in which the information is gathered.

The validation teams visited a series of mine sites in North and South Kivu in June and August 2011. The reports from the visits were then passed on to the Ministry of Mines in Kinshasa for review and approval. Over nine months after the first visits, on 23 March 2012, the Ministry issued two decrees confirming the teams' findings and the ratings for each mine site inspected – although the full validation reports have not been made public.¹⁴ The considerable delay means that information about the involvement of armed groups or members of the military at these sites is now out of date and possibly useless. It raises questions about the efficacy of relying on a formal ministerial decree for a scheme that is supposed to feed into a process of continual assessment. The fact that the mine site validation often involves large, sometimes high-profile, groups and heavily publicised inspection schedules is also a limitation. It means that the snapshot taken during the visit does not necessarily correspond to reality.

Mine validation and tagging initiatives

The recent publication of the results from a series of mine site 'validation' visits carried out last year has raised a number of questions about the way in which military or armed group interference in mining areas is assessed and designated.

The mine site validation process is a joint initiative involving the Congolese authorities, MONUSCO, local civil society groups and businesses, and several international organisations such as the German research institute BGR. Mine sites are checked according to a set of criteria, including the presence of armed groups or the military and the prevalence of child labour. The mines are then given a rating of green, yellow or red. According to DRC government directives, green sites are considered conflict-free and open for trade while yellow and red sites are considered no-go areas. All mining areas in eastern DRC are supposed to receive a validation visit every three months.

The validation process has the potential to generate useful information which companies can use to complement their own due diligence activities. It also serves to bolster the participation of the Congolese authorities and other key stakeholders

Global Witness spoke to diggers at a mine site in Masisi territory, North Kivu, listed as green in the March 2012 ministerial decree, who said that every Sunday they were forced to hand over their day's mineral production to the FARDC.¹⁵ This kind of discrepancy between the validation team findings and realities on the ground is problematic – whether it results from the delay in the decrees' publication or inaccuracies in the information the team gathered in the first place.

The hold-up in the publication of the ministerial decrees generated a lot of complaints within the local private sector and among provincial authorities in eastern DRC. For the validation process to be useful for companies and support the establishment of clean supply chains, the mine site visits must take place on a regular basis and the teams need to be less conspicuous and more nimble. The decision to publish the list of validated mine sites in a ministerial decree may also need to be reviewed in favour of a more rapid and flexible option. Ideally, the information gathered by the teams should be used in real time and regularly reviewed. The DRC government should also publish the validation reports in full so that companies and observers can use their more detailed findings to help assess levels of risk.

Perhaps most importantly, companies must treat the information generated by the validation process as a tool to support their own risk assessments, rather than a definitive basis for their mineral purchasing decisions. Armed group control of mining areas can shift quickly and reliance on static checklists or maps can be misleading. Moreover, the validation process is limited to mine sites and does not cover mineral transportation routes, where armed group and military extortion is commonplace. Supply chain due diligence is a dynamic process and companies must be prepared to identify and respond to changing circumstances.

Delays in getting mineral bagging and tagging systems up and running are another source of consternation in the Kivus, particularly because tagging is increasingly seen as a requirement for certain international buyers to resume sourcing from eastern DRC. The international tin industry body ITRI has announced that the iTSCi initiative, previously billed as a mineral bagging and tagging scheme, has been expanded and will now assist member companies in discharging various aspects of their due diligence responsibilities as defined by the OECD guidance.¹⁶ This broadening of the iTSCi programme's mandate is a very welcome step. As the scheme is not operational in the Kivus, however, it is not yet possible to assess its effectiveness on the ground in conflict-affected areas.

In interviews with Global Witness, trading companies and mining sector officials in eastern DRC and Rwanda expressed various concerns about the iTSCi's functioning. A common complaint was ITRI's reluctance to make available to regional governments and to member companies the production and trade data generated by the scheme. Another source of disquiet related to conflicts of interest. Risk assessments and independent audits for the iTSCi programme have both been carried out by one consultancy firm, Channel Research. This means that the same organisation that evaluates the risks of involvement of armed groups and the military in a company's mineral supply chain then makes a determination on the quality of these assessments. Questions were also raised regarding Channel Research's capacity to carry out the work effectively given its limited staffing and presence in the region.¹⁷ Addressing these points in a transparent manner will enable ITRI to build more confidence in the iTSCi programme.

The iTSCi scheme has been up and running in Rwanda and in DRC's Katanga province since 2011, and ITRI recently signed an agreement with the

DRC government outlining the framework for implementation of the programme in North Kivu, South Kivu and Maniema provinces.¹⁸ Although iTSCi tags are not yet being issued in the Kivus, ITRI's implementing partner organisation, Pact, has launched promising community-level capacity building activities in eastern DRC. These include local stakeholder committees tasked with collecting information and highlighting problems that arise in the mineral supply chain. The committees will operate around the UN-backed trading centres as well as in mining areas and information they generate will support companies' due diligence.

Openings on the ground

The recent clashes between the CNDP rebels and the FARDC highlight how volatile eastern DRC remains, and how scrupulous companies will need to be in carrying out due diligence on minerals sourced from the region. At the same time, a range of developments in the past year demonstrate the scope for demilitarising mining areas and claiming them for clean trade. This is a key short-term priority for the Kivus. Establishing clean sourcing areas will deny revenues to armed groups and military gangs and generate income for the local government. It can also have a powerful demonstrative effect; encouraging investment and boosting confidence in the region's future as a minerals producer.

It is important to recognise that it will not be possible to demilitarise all mines in the Kivus at once. Companies, the government and international donors must be ready to seize opportunities when they arise; and events of the past year have repeatedly shown how promising openings frequently do not last. The three cases outlined below exemplify the fluidity of the situation and the importance of capitalising quickly on positive shifts.

In March this year Global Witness visited mining areas around the town of Nzibira, in South Kivu's Walungu territory. There are a number of mines accessible from Nzibira, mostly producing cassiterite, and goods from these sites are generally brought to town to be sold and transported to Bukavu for export. In past years, some of these mines have been occupied by the Forces Democratiques pour la Liberation du Rwanda (FDLR) or, more commonly, subject to FARDC extortion. In 2010, Global Witness interviewed diggers in one such mine site who were forced to hand over a day's worth of production per week to the local military commander and pay soldiers fees to use dynamite and stay in the

Bisie is the region's most important tin mine. The Congolese government, international donors and companies should prioritise permanent demilitarisation of Bisie and establish it as a source of conflict free minerals.



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mine shafts overnight – or risk beatings.¹⁹ This year Global Witness researchers were told that FARDC interference in the mines around Nzibira had decreased in recent months, in part due to campaigning and awareness raising activities by Congolese and international civil society groups.²⁰

Local civil society representatives also explained that the FDLR had recently vacated the nearby Lukoma cassiterite mine following clashes with the FARDC and the Raia Mutomboki local defence group. The day before Global Witness's visit in March 2012, around 250 artisanal diggers had departed to Lukoma to resume work in the mine. Recently, production in the site has been around 50 to 100kg per day, but diggers expressed hope that if the security situation in and around the mine improved in the long term, production would rise to previous levels of 700 to 1000kg per day.²¹ The situation in the Lukoma site remains volatile, however, following clashes between the FDLR and Raia Mutomboki in mid-May.²²

The Kalimbi mine near Nyabibwe in Kalehe territory, South Kivu, could also offer scope for setting

up conflict-free mineral supply chains. Kalimbi has the advantage of being close to a town and very accessible from the main road that runs between Goma and Bukavu, making it fairly easy for companies wanting to purchase minerals from there to carry out risk assessments. Global Witness researchers visited Nyabibwe several times in 2011 and 2012 and did not hear any reports of military or armed group presence in the mine site. The military are said to be involved in the transport of minerals along the Goma-Bukavu road and across Lake Kivu to Rwanda, however; a problem which will need to be addressed by the Congolese government and military authorities if minerals from Nyabibwe are to meet international standards.²³

The situation in Bisie, eastern DRC's largest tin ore mine, is less straightforward. The mine was demilitarised in early 2011 after five years under the control of abusive FARDC brigades.²⁴ Unfortunately, the Congolese authorities and mining companies failed to seize the opportunity to claim the area for clean trade and in August 2011 the notoriously violent Mai Mai Sheka armed group occupied the site.²⁵ In February 2012 the army re-took control of

the mine – ostensibly to chase the Mai Mai Sheka out. Global Witness received reports in March 2012 that the FARDC regiment was still present in Bisie and illegally taxing the minerals production, rather than securing a perimeter and allowing the mining police to do their job in the mine itself.²⁶

The DRC government should make demilitarising Bisie a priority. Setting up clean supply chains from such a significant mining area would shift the dynamic of the trade towards greater civilian control, and prevent the site from relapsing to a military fiefdom. Current circumstances in Bisie may not be conducive to conflict-free sourcing, but the military is now under more pressure to vacate mining areas, and efforts should be made to build on the precedent-setting removal of troops from the area in 2011.

The recent shifts in Bisie illustrate how positive developments in eastern Congo's mining areas tend to be fragile and localised, and opportunities must be acted upon quickly. Companies have a key role to play in making the most of these openings to establish a trade that meets international due diligence standards. The risk of military and armed group involvement in the minerals sector remains significant and commitment by the Congolese government and donor countries is critical too. All players with a stake in eastern DRC's mining sector should better coordinate efforts to clean up the trade and adopt a common strategy of claiming sites as soon as the military's grip is loosened. The next section looks at some of the international supply chain initiatives which might help to spur this kind of coordination.

Formalising the gold trade

The gold trade in eastern DRC presents a different set of challenges to the trade in tin, tantalum and tungsten, largely due to the fact that gold is easy to conceal and fungible. Much of the trade takes place informally and there are no reliable statistics for gold production in DRC. Gold is a key earner for the notorious FDLR rebels, and in 2011 also provided an important source of cash for ex-CNDP members.²⁷ It is vital that firms sourcing from the region do so responsibly to ensure they are not supporting the activities of abusive armed groups. Detailed OECD due diligence guidance tailored to the gold supply chain is now available to companies, and some steps are also being taken by the DRC government to formalise the trade.

Neighbouring countries also have a key role to play in curbing the trade in dirty Congolese gold. Most gold produced in eastern DRC is smuggled into Uganda and Burundi before being re-exported. Global Witness researchers spoke to a gold trader operating in the region who said that when exporting gold from Uganda the authorities there asked him to declare the origin of the gold as being from South Sudan, even though they knew the

gold came from DRC. They provided him with copies of export documents from a major Uganda-based gold trader, so that he could fill in the same misleading information on his forms.²⁸

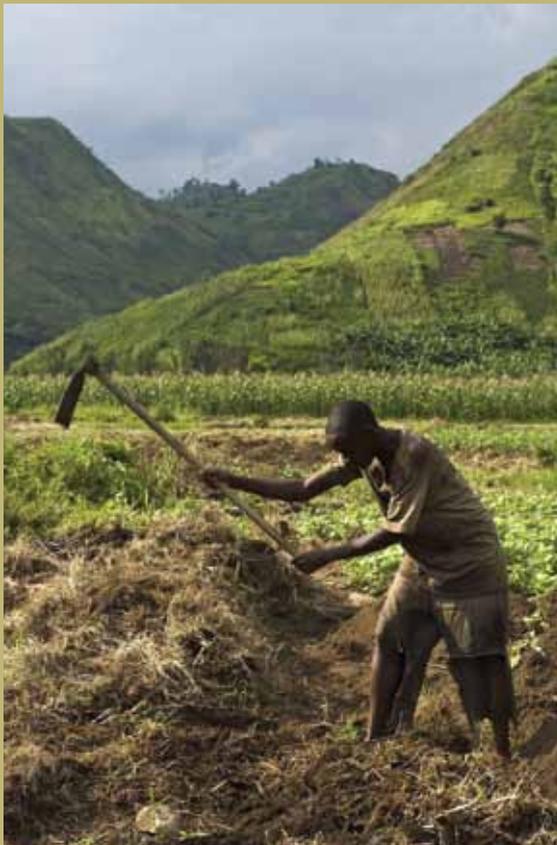
Last year the Congolese authorities lowered the export tax for gold from over five percent to two percent, a positive move that should go some way to encouraging legitimate traders to set up businesses in Goma and Bukavu. But a number of things still need to happen before communities in eastern Congo start to see benefits from the region's gold trade. The Congolese government must step up efforts to formalise gold production in artisanal mining areas and create incentives for diggers and middlemen to sell to legitimate businesses rather than smuggle the gold into neighbouring countries. At a regional level, meanwhile, DRC, Uganda and Burundi need to coordinate much more closely in their efforts to control the gold trade. International donors have an important role to play here too; both in providing technical support and in exerting political pressure on the governments of Uganda and Burundi to stop their territories being used as laundering hubs for conflict gold.

Insecurity: the main threat to artisanal mining communities

The situation in artisanal mining communities in eastern Democratic Republic of Congo (DRC) has often been inaccurately represented in the international conflict minerals debate. One of the main myths about Dodd Frank Section 1502, for example, is the idea that the legislation – which has yet to be completed, let alone implemented – is responsible for impoverishing the population of eastern Congo, in particular mining communities. Recently published baseline surveys of artisanal mining communities in eastern DRC, however, paint a much more nuanced picture of the role of the minerals trade in local economies.

Seven assessments of artisanal mining communities in North and South Kivu provinces undertaken between August 2011 and January 2012 reveal that local communities perceive insecurity, rather than a decline in mining activity, as the main reason for sustained or increased poverty.

Activities of armed groups in and around mining areas prevent people from selling agricultural goods at local markets. Access to local markets is often critical to household income in North and South Kivu.



The studies found that other interconnected factors, including population displacement and access to land and markets, also contribute to poverty and hardship.

The reports were authored by three international non-governmental humanitarian organisations: Catholic Relief Services (CRS), Catholic Committee Against Hunger and for Development (CCFD), and Solidarités International; together with a Congolese organisation, the Episcopal Commission on Natural Resources of the DRC Bishops' Conference (CERN). The studies, based on fieldwork and comprising quantitative data and interviews with local people, evaluate a range of factors that affect mining communities in eastern DRC, including the impact of industry response to the Dodd Frank conflict minerals law. The main findings are as follows:

Insecurity was the main reason for sustained or increased poverty over the past two years

71 percent of participants surveyed in South Kivu where household income has remained constant or decreased in the past two years blamed their increased poverty on insecurity.²⁹ Insecurity has a negative impact on movement of goods and on community access to markets.³⁰

The communities surveyed are isolated and economically disadvantaged because of the presence of armed groups, including those in mining sites, and a lack of basic infrastructure

Some armed groups active in the Kivus continue to fight for control over mineral-rich areas.³¹ Lack of infrastructure in turn makes it harder to establish state authority.³² Without security and an ability to rid the mines of armed groups, mining communities remain isolated and possibilities for economic development are extremely limited. In the areas surveyed in South Kivu, 80 percent of the population

SEC delays and the international supply chain

International pressure has catalysed changes in the Kivus, and due diligence frameworks developed under the auspices of the OECD and the UN have provided a road map for companies to engage in eastern Congo's minerals trade in a way that brings benefits to the local population, rather than doing harm. However, there is now an urgent need to align those international initiatives that are still in development, notably the US Dodd Frank Act, with implementation of the OECD and UN due diligence standards and the efforts now being made in the Kivus.

Efforts to set up conflict-free mineral supply chains from eastern DRC risk being undermined by the US Securities and Exchange Commission's (SEC) lengthy delay in issuing the rules to accompany the Dodd Frank conflict minerals provision. Section 1502 of the Dodd Frank Act was passed by the

US Congress in July 2010 and requires companies using tin, tantalum, tungsten and gold from DRC or neighbouring countries to carry out due diligence on their supply chains. Companies are also required to report publicly on their due diligence and to have the reports independently audited. The statute gave the SEC a deadline of 15 April 2011 by which to issue the final rules. The regulator is now over a year late and the delays are causing uncertainty in the supply chain and deterring some firms from buying minerals from eastern DRC.

The SEC has justified the hold-up publicly by citing unfamiliarity with mineral supply chain issues and a backlog of rule-making work.⁴⁷ The Commission has also had to spend time re-assessing the costs of implementing the provision, given the strong industry pushback against the rule.⁴⁸ The Chamber of Commerce, the largest industry lobby group in the US, has been working to derail the regulations, claiming that it is too burdensome

Costs and benefits to companies of the Dodd Frank Act Section 1502

The costs and benefits for US industry of Section 1502 of the Dodd Frank Act have been hotly debated since the bill was signed into law in July 2010.

In January 2012 Global Witness commissioned Green Research, a US-based consultancy organisation, to undertake research into companies' perceptions of the likely impacts of the law. Green Research carried out in-depth interviews with more than 20 firms in a range of industries, including electronic components manufacture, health care and the automotive sector.⁴⁹

The companies' responses suggest that many of them do not consider Section 1502 to be as costly and burdensome as some industry lobbyists are claiming. In fact the study found that the more familiar companies were with the detail and requirements of the law, the more manageable they perceived the costs of compliance with Section 1502 to be.

Responses from the companies interviewed indicate that:

- Businesses can reap a wide range of benefits by complying with Section 1502, including better risk management, improved supply chain performance and new innovation opportunities.
- The cost of compliance will vary dependent on company size and supply chains but overall appears to be manageable for all company sizes.
- Many companies interviewed expect compliance with Section 1502 to have a negligible to positive impact on competition, as the regulations will tend to level the playing field.

The study also pointed out that companies should recognise Section 1502 as an opportunity to move towards greater supply chain transparency and accountability in their businesses, and improve the design of their processes and systems over the long term.



President Obama and SEC Chairwoman, Mary Schapiro. The SEC is now over a year late in publishing the regulations to accompany Section 1502 of the Dodd Frank law. President Obama should instruct the regulator to publish the rules without further delay.

and costly for American companies to trace their supply chains.⁵⁰ Independent research into the costs of implementing Section 1502 shows that the figures put forward by some industry players are exaggerated, however. For example, the one-time compliance costs estimated by the National Association of Manufacturers at US\$1.2 to US\$25 million per company, were refuted by other studies. Tulane University cites US\$210,000 to US\$1 million per company, while Claigan Environment, a consultancy, estimates the same costs at US\$21,000 to US\$813,000, depending on company size.⁵¹ (See box on 'Costs and benefits to companies of Dodd Frank 1502' for more detail.)

The Chamber of Commerce has indicated that it will consider legal action against the SEC if the rules for Section 1502 do not 'show any benefits to investors, increase efficiencies for the marketplace or capital formation.'⁵² This thinly disguised threat has alarmed the SEC and paralysed the rule-making process, with extremely negative consequences for the minerals trade in eastern Congo. The Chamber's opposition is misguided, both from a business and from an ethical standpoint. Putting in place due diligence systems will carry a cost, but in most cases this will decrease over time and will bring other business benefits to companies such as improved risk management and better supply chain performance.⁵³ At the same time, the notion that multi-billion dollar American brands can continue

to source raw materials in a way that exposes Congolese citizens to rape, murder, enslavement and impoverishment is morally indefensible and unlikely to satisfy end consumers.

Some of the companies covered by Dodd Frank have been more responsive to the legislation and have already put in place measures to do due diligence. Last year the Electronics Industry Citizenship Coalition (EICC) and the Global e-Sustainability Initiative (GeSI), two electronics industry associations, launched the Conflict-Free Smelter (CFS) programme, an auditing scheme for tin, tantalum and tungsten smelters and gold refiners. A total of 93 mineral processors are currently taking part in the scheme and 22 audits have been completed, though participation across industries appears to be uneven with significantly less engagement from tungsten smelters.⁵⁴

The CFS programme is one of the more progressive industry-wide initiatives, but questions remain regarding its unwillingness to disclose certain information and its impact on the trade from eastern Congo. While the CFS audit protocols are publicly available, the programme does not publish the full list of companies participating in the scheme, nor does it disclose which firms failed the scheme's audit. Public reporting is a key aspect of the OECD and UN due diligence frameworks. The trade in conflict minerals is a matter of high public

interest and the CFS scheme and its members would gain in credibility if it was more transparent.

Another problematic aspect of the CFS scheme is the fact that it does not appear to accept mineral purchases from the Kivus by its members. Indeed, the slowdown in exports from North and South Kivu has been due in large part to the misinterpretation by certain end-user companies of the Dodd Frank requirements. EICC and GeSI members initially refused to buy minerals from Congo that were not guaranteed as being conflict-free by a 'credible in-region sourcing program'.⁵⁵ This despite the fact that Dodd Frank requires due diligence, rather than certification or written guarantees. The industry associations subsequently amended their policies to clarify that they would buy minerals from suppliers who had met OECD due diligence standards.⁵⁶ In practice, however, the EICC and GeSI companies have not been willing to buy Congolese minerals that are not tagged. The absence of any tagging schemes in the Kivus has meant that firms have not taken the opportunities to source conflict-free minerals and levels of trade have remained low.

Companies can use mineral tagging schemes to help establish traceability in their supply chain and complement the risk assessment component of due diligence, but tagging is not essential to due diligence. In the absence of tagging, firms can review chain of custody documentation in order to trace mine of origin, for example. Companies involved in the CFS programme should pay more than lip service to the idea of accepting minerals from the Kivus that are sourced in line with OECD standards. The case for translating the rhetoric into action is strengthened by indications from the SEC that the 1502 rules will designate application of the OECD standards as a 'safe harbour' means of companies meeting their obligations under the law.⁵⁷

Increased engagement on the part of local traders and shifts in the pattern of military and armed group control over certain mining areas have already created openings on the ground. Rather than placing an undue emphasis on tagging, companies should make the most of opportunities to source minerals from eastern DRC that have not benefited rebels or the Congolese army.

Time for the European Union to show leadership

The Congolese government has passed a law requiring that all mining and mineral trading companies carry out supply chain controls to OECD standards and US regulators should soon be defining companies' due diligence responsibilities under the Dodd Frank Act. Other governments that host businesses using minerals in processing and manufacturing urgently need to follow suit. This is crucial to efforts to support the steps now being taken by the Congolese authorities and to provide a global solution to the global trade in conflict minerals. Coordinated international action by regulators is also needed to level the playing field for companies; so that that businesses required by their governments to act responsibly do not find themselves undercut by others that are not.

As one of the biggest markets worldwide for products containing tin, tantalum, tungsten and gold, the European Union

has a vital leadership role to play here. In a promising first step, the European Commission published a Trade and Development Communication in January 2012 that included a commitment to making supply chains more transparent. The Communication stated that the EU would advocate greater use of the OECD due diligence standards. The EU should now act on this pledge and follow Congo's lead in making due diligence a legal requirement.

A European law based on the OECD Guidance would harmonise EU and American regulatory standards and protect the reputation of European businesses. It would also engender a much greater coherence in EU policy towards eastern DRC; ensuring that the activities of European companies do not harm Congolese citizens and undermine aid programmes to the region funded by EU taxpayers.

SECTION TWO

DISPLACING THE MEN WITH GUNS

While opportunities for conflict-free sourcing from eastern DRC are emerging, many mining areas remain under the control of armed men. This is a significant threat to the stability and prosperity of the region. The most graphic illustration of the problem is the role of General Bosco Ntaganda, a career warlord who joined the government army in 2009, and used his position to take control of a substantial portion of the Kivus' minerals trade. In April this year the general and around 600 of his men mutinied from the Congolese national army.⁵⁸ It is highly likely that this latest insurgency is being financed with money made via Ntaganda's illegal involvement in the minerals business.⁵⁹

The Bosco Ntaganda case underscores just how crucial it is that all Congolese and international efforts to clean up the minerals trade focus on eliminating payments to the government army, and not just so-called 'illegal armed groups'. International attention tends to concentrate on the activities of rebel groups in Congo. However, the majority of militarised mines are in the hands of what the UN Security Council has termed 'criminal networks within the Armed Forces of the Democratic Republic of the Congo'.⁶⁰

Military involvement in the minerals trade - a systemic problem

In North and South Kivu, members of the national army – made up in part by poorly integrated former rebels – make millions of dollars per year through controlling mine sites and mineral transportation routes. The involvement of the military in eastern DRC's minerals trade is deeply problematic for several reasons. It is against Congolese law⁶¹ and communities living in mining zones controlled by the military are frequently subject to extortion and serious human rights abuses. Moreover, military control of the minerals trade creates instability and insecurity across the region, which in turn hinders efforts to formalise DRC's mining sector and attract responsible investment.

The incentive to draw profit from the minerals trade has frequently led FARDC units, and particularly those dominated by former CNDP rebels, to deploy to mineral-rich areas rather than prioritise the protection of civilians. In North Kivu, military officers have gone a stage further, helping to establish the



May 2012: members of the Congolese national army participating in an offensive against rebels led by Bosco Ntaganda and other ex-CNDP commanders. The new insurgency has displaced tens of thousands of people.

brutal militia Mai Mai Sheka,⁶² which has raided and terrorised mining areas of Walikale territory and whose leader was placed on the UN sanctions list in November 2011. In recent months, army commanders have used incursions by the Mai Mai Sheka into Bisie, the region's most important mine, as a pretext to reoccupy it and exploit it illegally.⁶³

Access to revenue from the minerals trade provides FARDC officers, including former rebel commanders, with a financial basis for setting up their own fiefdoms or even, as the Bosco Ntaganda case shows, rebellions against the government. The pattern of illegal control of mine sites, minerals trading and smuggling is deeply entrenched. Breaking it will take concerted reform of the military, as well as due diligence by companies purchasing minerals.

Increased scrutiny of the conflict minerals trade has made it less acceptable for men in uniform to be seen in the mines. However, over the past two to three years, the military have developed new and less visible ways to remain engaged in the minerals trade. These include the use of intermediaries, smuggling and developing new business interests in the sector. Global Witness research carried out in March this year reveals how in some cases, army commanders employ civilian proxies at mine sites to maintain access to mineral profits, while remaining 'invisible' in the mines themselves.⁶⁴

In North Kivu's Bisie mine, for example, senior military officers no longer stationed on site have used family members as intermediaries to ensure continued control over specific mine shafts.⁶⁵ Global Witness also heard that FARDC commanders regularly use the monies intended for their battalions' salaries to buy up minerals, transport them from mining areas using military vehicles and sell them on at a profit. They then use part of the proceeds to pay the troops, albeit two to three weeks late.⁶⁶ Companies doing business in North and South Kivu – and Rwanda – must be especially alert to these risks when undertaking their due diligence.

Bosco Ntaganda - a personification of the minerals-conflict nexus

When the CNDP, a powerful Rwanda-backed rebel group, joined the Congolese government army following a March 2009 peace treaty, the full terms of its assimilation were kept secret. What quickly became apparent, however, was that the deal gave the CNDP control over some of the region's most mineral-rich areas. Despite the semblance of integration, the group maintained its command structure and political agenda and operated as a shadow armed force within the national army.⁶⁷

The main beneficiary of these shifts in allegiance and control was General Bosco Ntaganda. Ntaganda

General Bosco Ntaganda is wanted by the ICC for alleged war crimes. His April 2012 mutiny and the ensuing insurgency is likely funded by the millions of dollars the general has made through trading conflict minerals.





Residents of Goma, North Kivu, vote in the 2011 presidential election. Former members of the CNDP rebel group carried favour with President Kabila by forcing civilians in the Kivus to vote for him. After joining the Congolese army ex-CNDP members maintained parallel command structures within the DRC's army and took control over some of the region's most valuable mine sites. In April 2012 some of the most powerful ex-CNDP commanders embarked on a new rebellion.

© Corbis

is nicknamed 'the Terminator' on account of a well-documented track record of violence over the course of a career that has spanned two decades, two different countries and three separate insurgent groups. Ntaganda was indicted by the International Criminal Court (ICC) in 2006 for allegedly recruiting child soldiers. In March 2012 the ICC convicted his former boss, the warlord Thomas Lubanga, on similar charges.⁶⁸

Following the CNDP's integration into the FARDC, Bosco Ntaganda was appointed as a general in the Congolese army and from 2009 he exercised control over all military operations in North and South Kivu. At the same time, he has built up a substantial business empire founded on illegal involvement in the minerals trade. The UN Group of Experts, Global Witness and other NGOs and journalists have all documented Bosco Ntaganda's minerals trafficking and in March 2012 Global Witness conducted follow-up research in the Kivus into his activities.

Global Witness heard from a number of credible sources that General Ntaganda successfully hijacked an army regimentation process in 2011, aimed in part at displacing certain commanders from

mineral-rich areas. Ntaganda used his influence to ensure that loyal officers were stationed in strategically critical and mineral-rich areas throughout North and South Kivu.⁶⁹ As one senior FARDC officer told Global Witness, "Since 2009, ours has been an army of component parts. Certain posts in the east have been 'up for hire' and made available to powerful former CNDP commanders."⁷⁰

Evidence gathered by Global Witness during field visits to mining areas in March 2012 confirms these accounts of ex-CNDP members' power and impunity. At a mine site in Masisi territory, North Kivu, for example, miners told Global Witness that they were forced to work without pay each Sunday for the local FARDC unit – headed by a former member of the CNDP – who recoup the minerals via an intermediary and sell them in Goma.⁷¹ In another case, ex-CNDP commander Colonel Innocent Habarugira has been forcing local inhabitants and internally displaced people to dig for him at a cassiterite mine in Mpati, North Kivu, since January 2012. The Colonel buys the ore for up to US\$2 per kilogramme less than the current market price, justifying the rake-off as payment for the "security" provided to the diggers by him and his men. Military

The continued menace of the FDLR

The threat to stability currently posed by Bosco Ntaganda and the CNDP has been widely reported on internationally. However, it is important that companies and policymakers maintain sight of the range of other armed groups active in the Kivus. Many of these generate significant income from their illegal involvement in the minerals trade, inflicting human rights abuses on local civilians as they do so.

The FDLR (*Forces démocratiques pour la libération du Rwanda*), a rebel group, control several mining zones in North and South Kivu and have maintained a strong hold over parts of the gold trade in particular. The December 2011 UN Group of Experts report describes how the FDLR impose taxes of up to 10 percent of the gold mined in certain sites. In other areas under FDLR control in the Kivus, FDLR-owned shops are stocked with goods that are paid for in gold by the rebels.⁷²

The FDLR's capacity to derive financing from the gold sector has been enhanced by high prices globally, which have pushed the mine site price in the Kivus up to US\$60 per gram.⁷³ The group's control of mining areas has severe consequences for the local populations. Those working in the mines are often forced to dig for the FDLR, and civilians living in the surrounding areas are subject to sexual violence and other abuses. Given their value, gold mines have also become the venue for armed clashes between the FDLR and their rivals. A recent report by Goma-based civil society organisation ASSODIP, for example, describes fighting in January 2012 between the FDLR and another armed group over control of Omate, a lucrative gold mine in North Kivu.⁷⁴

The impacts of the gold trade sustaining the group go well beyond the mining areas, however: the FDLR is a notoriously brutal organisation with a long history of massacring civilians. Its activities are one of the most serious sources of destabilisation across the region and the December 2011 UN Group of Experts report describes the group as the 'most militarily strong and politically significant rebel force in the Kivus'.⁷⁵

Developments in the first quarter of 2012 suggested that the FDLR might be weakening. UN demobilisation experts told Global Witness in March 2012 that the FDLR was losing 50-60 combatants per month as a result of military operations and demobilisation programmes. They estimated there to be around 2000 FDLR troops in North Kivu and only 500 in South Kivu.⁷⁶

The rebellion by former CNDP members in April has caused the redeployment of Congolese army troops responsible for containing the FDLR, however, and this appears to have provided the group with opportunities to regain lost ground. In mid May, the UN humanitarian agency OCHA accused the FDLR of killing at least 50 civilians in South Kivu.⁷⁷ A week later, the UN radio station in Congo carried separate reports of the FDLR killing over 100 in Masisi, North Kivu alone.⁷⁸ The killings form part of what one leading Congo expert has termed a pattern of 'tit-for-tat massacres' perpetrated in turn by the FDLR and a local militia known as Raia Mutomboki.⁷⁹ Both sides have targeted civilian populations suspected of supporting the other.

vehicles evacuate the minerals to Goma where they are sold by civilian intermediaries at a profit of up to US\$2 per kilogramme.⁸⁰ According to provincial mining officials, the mine produces up to 500 kilogrammes of cassiterite daily. A representative of the mining authorities who tried to intervene was intimidated and has since fled the area.⁸¹

Global Witness gathered information regarding another recent case of civilian officials being obstructed by the former CNDP, which occurred in March 2012 in Kamituga, a gold-rich area of South Kivu. Here, an official delegation organised by the provincial Ministry of Mines and including representatives from provincial technical mining

services, attempted to visit a mine and was intercepted by ex-CNDP soldiers at a roadside checkpoint and forced to turn back. Global Witness heard from a provincial mining sector official how soldiers approached the officials, claiming that they wished to greet them, but behaving in a manner that the visitors found intimidating. One of the soldiers present recognised a relative amongst the delegation and signalled to him that the group was not welcome and should immediately leave.⁸² The UN Group of Experts documented extensive FARDC involvement in the minerals trade around Kamituga in 2010 and 2011.⁸³ According to a Congolese mining sector official Global Witness spoke to, the military continue to buy almost all of the gold produced in Kamituga.⁸⁴

In Goma, meanwhile, General Ntaganda has established highly profitable smuggling networks across the DRC-Rwanda border. Over the past year, Global Witness has gathered several detailed accounts of minerals being systematically moved across the border via property owned by Ntaganda. The 2011 UN Group of Experts report estimates that these activities earn him around US\$15,000 per week.⁸⁵ As a minerals trader in Goma put it, "Bosco is never visible but he controls all the networks. You can't get anything across [the border] without [his] facilitation".⁸⁶ Congolese traders operating in eastern DRC do not want the military to be involved in the minerals sector, but they feel powerless to stop them. One told Global Witness that "we know that Bosco is involved in smuggling. But no one can speak out against him; to do so would be to risk losing your head".⁸⁷

From rebel to army commander and back again

Bosco Ntaganda consolidated his position in the Kivus in the run-up to Congo's presidential elections in November 2011, when the ex-CNDP coerced people into voting for President Kabila.⁸⁸ This appeared to increase his bargaining power with Kinshasa and further diminish any prospect of action to curtail his illegal involvement in the minerals trade. By late April 2012, however, Ntaganda had broken with the government, leading a mutiny of some 600 of his followers which resulted in armed clashes with government forces and the displacement of thousands of civilians.⁸⁹

The mutiny appears to have been prompted by a combination of factors, including renewed calls from the ICC and other international observers to arrest Ntaganda, and moves by President Kabila to redeploy certain ex-CNDP officers outside the

Kivus.⁹⁰ Another source of disgruntlement within the CNDP is the perception that the government has not met the terms of the 23 March 2009 peace agreement. On 6 May 2012, the CNDP issued an official statement announcing the creation of a new sub-group, the '23 March Movement' or M23, with the explicit mandate of reviving the government's commitment to the 2009 deal.⁹¹

As this report went to print, the implications of the CNDP's latest relapse into insurgency – and Ntaganda's role – remain unclear. From the perspective of the minerals trade, and its interplay with military violence in the Kivus, however, two main observations emerge. One is that insurrections, new or long-standing, always require money, and it is almost certain that Ntaganda's current activities are being financed through the funds he has been allowed to amass over many years via the minerals trade. Global Witness, the UN Group of Experts and others have warned on numerous occasions of the implications for regional stability of allowing Ntaganda and other ex-CNDP commanders to profit illegally from the minerals sector. While the danger has previously been acknowledged, indirectly, by President Kabila, in his public denunciation of 'mafia groups' within the army, no practical steps have been taken to address the problem.

The other is that this latest upheaval may put a dent in the confidence of international buyers considering sourcing ores from the Kivus, in the short term at least. This, needless to say, would have negative implications for the nascent efforts to establish a trade in conflict-free minerals. Beyond the short term, however, the loosening of the CNDP's grip could provide the basis for a comprehensive demilitarisation of the sector. The question is whether the Congolese government would be willing to take such an opportunity, or whether the current round of fighting will end with the same kind of opaque and misguided deal-making that installed Bosco Ntaganda as the Kivus minerals kingpin three years ago.

Turning a crisis into an opportunity for change

The Congolese government's attitude towards the illegal involvement of the military in eastern DRC's mining sector has evolved over the past two years. Shifting away from their previous position of outright denial, senior officials – including the president – have acknowledged the problem publicly in a direct manner. The military themselves can be under no illusions as to where the boundaries lie; indeed, in October 2011, Lieutenant General Didier Etumba, the army Chief

of Staff, issued a letter to all military commanders in the armed forces reiterating the fact that soldiers are prohibited from being posted in mine sites.⁹² Some of this rhetoric has begun to generate small signs of change on the ground in the Kivus. In South Kivu, for example, members of the 10th military regiment have initiated a project to raise awareness among troops of the legal prohibitions on their involvement in the minerals trade.⁹³

The shifts in the public discourse within DRC are a very important first step, but cannot substitute for the actual removal of the military from the minerals trade. As this report shows, rhetoric alone has not prevented Bosco Ntaganda and other powerful commanders from continuing to profit handsomely from the Kivus' mineral wealth. Ntaganda's return to insurgency presents a very immediate security threat to the Kivus; however the dismantling of his minerals trafficking and patronage networks that may follow could present an important opportunity for change. The main actions that the Congolese authorities need to undertake to move the demilitarisation process forward include:

- Removal of FARDC units engaged in illegal activities in and around mining areas and along mineral transportation routes.
- Prosecution of members of the FARDC who are illegally involved in, or extorting from, the

minerals trade. Given the prevailing culture of impunity, it is crucial that the judicial authorities prioritise the prosecution of senior officers found to be implicated.

- Dismantling of parallel command structures within the army, particularly those of the former CNDP in Kivus. This can only be achieved by a genuine integration of former rebels into the ranks and a regular rotation of units and commanders, including redeployment to areas outside of the Kivu provinces, to prevent the establishment of military fiefdoms.
- Reform of the way in which the FARDC is paid. The objectives here must be to prevent commanders from pocketing the wages of actual or 'ghost' soldiers and to ensure that rank and file troops actually receive a salary sufficient for them to live on.
- Deployment of mining police to mining areas that have been demilitarised, in sufficient numbers, and with adequate institutional support so that they are able to play their role effectively.

For their part, international donors to the DRC should better coordinate their support of FARDC reform and make non-humanitarian aid contingent upon the Congolese government undertaking the necessary actions highlighted here.

Congolese army barracks in Goma, North Kivu. Senior commanders frequently siphon off the pay of the units under their command, leaving ordinary soldiers impoverished.



An inside job

On 3 November 2011, the Rwandan authorities returned 68 tonnes of smuggled tin and tantalum ore to the DRC during a highly publicised ceremony at the Goma-Gisenyi border crossing in North Kivu. Rwandan law enforcement agents had seized the materials over the course of 2011, as part of the country's efforts to crack down on cross-border mineral smuggling.⁹⁴ Approximately 13 tonnes of ore were handed over around the same time to Congolese authorities in South Kivu and subsequently auctioned off to a Chinese buyer.⁹⁵

The consignment of minerals returned to North Kivu met with quite a different fate. Following the official handover in early November, Congolese and Rwandan authorities stockpiled the goods at a Goma depot belonging to General Bora, a retired FARDC officer with known ties to Bosco Ntaganda.⁹⁶ The minerals were to be publicly auctioned and the proceeds used to fund mineral traceability initiatives. On 2 December, Congolese provincial mining authorities discovered that the minerals had been stolen.⁹⁷

Global Witness received information from a well-informed source indicating that the stockpiled minerals were illegally removed from the depot in the early hours of 14 November, in the presence of General Ntaganda, the former provincial Minister of Mines for North Kivu Mr Kubuya Ndoole, and members of the Congolese police and intelligence services. The minerals were subsequently smuggled back into Rwanda and sold on to international buyers.⁹⁸

Around the time of the heist, DRC's national Minister of Mines, Martin Kabwelulu, directed provincial Minister of Mines Mr Kubuya to initiate the auction process for the returned minerals. On 15 November, Mr Kubuya sent a letter to Mr Kabwelulu acknowledging the request and stating that he was too busy with his parliamentary election campaign to supervise the minerals auction.⁹⁹

Mr Kubuya further states in the letter that conversations with the German Federal Institute for Geosciences and Natural



Election material of former North Kivu Minister of Mines, Kubuya Ndoole. The text calls for the obligations imposed on companies by the Dodd Frank law to be reduced.

© Global Witness

Resources (BGR), ITRI and USAID had led him to believe that the sale of untagged minerals from North Kivu would compromise traceability efforts underway at the time.¹⁰⁰ Representatives of USAID and BGR told Global Witness that they had never communicated those views to Mr Kubuya. Furthermore, although the letter's cover page indicates that it was copied to USAID and BGR, among others, both organisations denied receiving it.¹⁰¹ In Global Witness' opinion, this raises questions as to whether the letter was ever sent by Mr Kubuya to these organisations.

Global Witness wrote to Mr Kubuya about his alleged involvement in the minerals heist. In his response, Mr Kubuya denies being at the scene of the theft. Moreover, he claims to be fully committed to ensuring that Congolese minerals benefit the population of DRC and the country's development.¹⁰²

The Congolese government should immediately launch an official investigation into this incident. The possible involvement of a senior mining official is directly at odds with the government's reform rhetoric. The auctioning of the seized minerals could have raised hundreds of thousands of dollars to fund initiatives to promote more responsibly managed supply chains. Efforts to clean up eastern DRC's minerals trade will not succeed as long as they are being undermined by the very officials in charge of reform.

SECTION THREE

RWANDA – AN INTERNATIONAL REPUTATION ON THE LINE

In the past two years Rwanda has moved from denial of its role in the conflict minerals trade towards reform of the way minerals are imported, as well as the way they are mined and traded in Rwanda. This is a significant shift, as Rwanda is the major conduit for tin, tantalum and tungsten ore from eastern Congo. Moreover, its government has much greater institutional capacity than its neighbours to control trading activities along and within its borders. If this capacity can be deployed effectively to clean up Rwanda's minerals trading and transit sector, it will substantially advance efforts to build up legitimate mineral production in, and exports from, DRC's North and South Kivu provinces.

Recent research by Global Witness and other organisations shows, however, that these positive developments are being undermined by patchy enforcement and the impunity enjoyed by well-connected traders and Congolese army officers with

close ties to Rwanda. This problem is compounded by the Rwandan government's reluctance, so far, to make it an explicit legal requirement that companies operating within its territory carry out due diligence on their supply chains to OECD standards.

Rwanda passed a law in April 2012 setting out the framework for domestic implementation of the regional ICGLR mineral certification scheme, but unlike its Congolese equivalent, there is no mention of due diligence in the Rwandan regulation.¹⁰³ OECD due diligence is an integral component of ICGLR certification. As such, it is now technically a legal obligation for Rwandan traders to meet OECD due diligence standards.¹⁰⁴ Ensuring compliance, however, will require the Rwandan government to clearly communicate this obligation to traders, and actively disseminate the full OECD guidance. Until this is done, many firms based in Rwanda will refuse to take responsibility for the impact of their purchases, and will continue to exploit weak controls on both sides of the border.

If Rwanda is to shake off its reputation for laundering Congolese conflict minerals, President Paul Kagame's government will need to ensure that exporters carry out rigorous due diligence on their supplies, in line with OECD standards, and publish their findings.



Mined in Congo, laundered in Rwanda

Since 2011, the Rwandan government has prohibited the import of minerals that are not 'certified and tagged by competent authorities'.¹⁰⁵ The only exception to this is minerals that transit through the country in sealed containers. This policy, while well-intentioned, currently makes it impossible to import and trade conflict-free minerals from the Kivus, where there are not yet any tagging systems in operation. If the government had instead required companies to demonstrate due diligence, as defined by the OECD and UN Group of Experts, this would have given responsible traders more latitude to trade in clean minerals while tagging systems were still being established.

Whatever the merits of the policy, it is clear that it is not being implemented effectively. Research conducted by Global Witness in March 2012 revealed that large quantities of untagged Congolese minerals are making their way into Rwandan supply chains,

often in full view of the Congolese and Rwandan authorities.¹⁰⁶ One company directly involved in the mineral transit trade in Rwanda estimated that over fifty percent of the minerals exported from Rwanda were Congolese.¹⁰⁷

Several FARDC officers in Goma told Global Witness that powerful and high-ranking members of the former CNDP, integrated into the Congolese national army since 2009, facilitate mineral trafficking across the Goma-Gisenyi border into Rwanda. These men have attained an 'untouchable' status. One FARDC officer stated that consignments often cross at night and are accompanied by heavily armed ex-CNDP soldiers. Global Witness learned that an attempt by Congolese border police to stop one such shipment resulted in them being heavily beaten by the ex-CNDP escort.¹⁰⁸

Although senior FARDC officers and members of the Congolese military justice system have alerted top military authorities in DRC about the cross-border minerals trafficking on several occasions, Global Witness heard that until now, there has been no official acknowledgement or response.¹⁰⁹ Meanwhile, the Rwanda Revenue Authority (RRA), whose mandate includes combating fraud, claims that it is impossible to find out who is behind the smuggling operations. An RRA official told Global

Witness that enforcement agents had tried to identify the owners of the minerals by questioning those caught transporting the goods from DRC into Rwanda, but to no avail.¹¹⁰

In addition, the smuggling of Congolese minerals into Rwanda may not always take a direct route. Global Witness gathered several eyewitness accounts detailing smuggling between Burundi and Rwanda, whereby untagged Congolese coltan was being shipped into Rwanda via Burundian mine sites and supply chains.¹¹¹ Global Witness has not been able to verify these accounts but believes they need to be investigated by the Rwandan authorities.

Once Congolese minerals have entered Rwanda, they are fraudulently tagged with iTSCi tags, labelling them as of Rwandan origin, and then exported. One trader in Goma described how, "you have to pay US\$1 per kilogramme in Goma to get minerals across [to Rwanda]. You need connections in Rwanda. The minerals are laundered into the Rwandan system through the cooperatives there. You pay US\$2 per kilogramme to get the minerals tagged in Rwanda."¹¹² Global Witness heard an account of minerals bought at mines in Kalima, in DRC's Maniema province, for US\$5 per kilogramme, being smuggled into Rwanda and then sold at US\$11 per kilogramme in Kigali. Even after paying

A model neighbour?

Rwanda has a history of interference in eastern Congo and its capacity to influence the conflict in the Kivus extends well beyond its involvement in the minerals trade. After invading Congo in 1998 in attempt to depose then-President Laurent Kabila, Rwandan troops occupied large swathes of Congolese territory and plundered their natural resources systematically. Direct military intervention gradually gave way to support for proxy rebel groups serving Rwanda's strategic agenda. These included the Rassemblement congolais pour la démocratie (RCD), which controlled the Kivus until the war in Congo officially ended in 2002.¹¹³

Rwandan officials went on to sponsor the activities of the CNDP before

President Paul Kagame and his Congolese counterpart, Joseph Kabila, entered into an uneasy *rapprochement* in 2009. Since then, Rwandan support for armed groups opposed to the Congolese government has been much less visible. Global Witness research suggests that military smuggling rackets across the countries' border continue to be facilitated by long-standing ties between ex-CNDP and contacts in Rwanda, however. As CNDP commanders embark on a new rebellion, there can be little doubt that they will be looking to friends in high places in Kigali for support. For its part, the Rwandan government needs to signal clearly its commitment to stability in the Kivus, both by denying direct assistance and sanctuary to the rebels and by ending the trade in conflict minerals on its territory.

Piece of Rwandan manganese containing coltan. In 2010 mining employed around 35,000 people in Rwanda and mineral exports brought in US\$68 million.



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for transport and the cost of buying Rwandan tags, smuggling untagged material out of DRC and into Rwandan supply chains is still profitable.

Two individuals working in Rwanda's minerals sector in Kigali told Global Witness that they regularly witnessed Congolese minerals being bagged for export in warehouses in Kigali. One eyewitness told Global Witness that 50 kilogramme bags filled with sand and bearing official iTSCi mine tags – describing the contents as ores mined in Rwanda – arrive at a depot, where the sand is then switched for smuggled Congolese minerals. The minerals are brought to the depot on a daily basis by couriers using motorbikes, taxis or trucks displaying either Rwandan or Congolese number plates.¹¹⁴ Global Witness heard other accounts of Rwandan mining enterprises submitting to the authorities lists of fictitious artisanal miners and requesting mine tags for the diggers to use to label the minerals they produce. Once issued, these mine tags are then used to launder illegally imported Congolese minerals.¹¹⁵

Will the law enforcement authorities step up?

Rwandan officials interviewed by Global Witness insist that the government is serious about cleaning up its mineral sector. They cite new naval

patrols along the shores of Lake Kivu and rigorous vehicle checks as evidence of the government's determination to give its reforms teeth, as well as the increased daily rotations of Rwandan border police.¹¹⁶

While many of those involved in the regional mineral trade see the Rwandan government's measures as primarily a public relations exercise, traders and authorities in Goma told Global Witness that some enforcement measures have proven effective. When Rwanda recently suspended four mining cooperatives for illegal tagging, this caused an immediate drop in illegal cross-border activity. As one Congolese trader described it, "there was a noticeable drop in activity in Goma. On Friday the cooperatives were suspended. On Monday morning you could see people [involved in the minerals trade] sitting around, arms crossed with nothing to do".¹¹⁷ An FARDC officer confirmed that the suspension had "removed a favourable market" for those engaged in illegal cross-border trade.¹¹⁸ Traders in Goma also acknowledged that the increased rotation of Rwandan border police at the main crossing between Goma and Gisenyi makes it harder to establish relationships and undertake smuggling operations in collaboration with officials.¹¹⁹

On 15 March 2012 Rwanda's Geology and Mines Department (GMD) suspended Africa Primary

Tungsten (APT) a Kigali-based mineral exporter, for suspected illegal activity involving the misuse of official Rwandan iTSCi mineral tags. A letter from the GMD to APT, seen by Global Witness, stated that the company had been 'using mine tags far away from the mine.'¹²⁰ The Rwandan authorities took this action following APT's suspension from the iTSCi tagging programme, and complaints lodged by ITRI, the tin industry body behind the iTSCi scheme.

Photographic evidence seen by Global Witness shows company representatives at the APT processing compound in Kigali placing official iTSCi mine tags, provided by one of their suppliers, on bags containing a large quantity of minerals that had not originated from an APT mine site or from that of the supplier.¹²¹ Global Witness has heard several accounts that strongly indicate that they are of Congolese origin.¹²² The Managing Director of APT, Mr Jean Paul Higiroy, who is alleged to have been complicit in the illegal transactions, has resigned from his position as President of the Rwanda Mining Association.¹²³ The case is currently under investigation by Rwanda's Criminal Investigation Department.

APT is a well-known company in Rwanda and a rigorous investigation and prosecution by the Rwandan authorities would send an important signal that no one is above the law. There is much at stake here. If Rwanda is unable to shake off its reputation as a laundering hub for conflict minerals, its own nascent mining sector is likely to flounder. Given that in 2011 tin was Rwanda's largest foreign exchange earner, this is a risk that the government can ill-afford to take.¹²⁴

A way forward

Rwanda has the potential to play a leadership role in the drive to make the region's minerals trade conflict-free and its government has already taken some important steps in the right direction. The Rwandan authorities need to work more closely with their counterparts in neighbouring countries, however, to reduce smuggling and fraud and to ensure a coherent and coordinated approach. Moreover, the government still has a long way to go in terms of introducing the right policies and regulations within Rwanda and enforcing them effectively. Three areas in particular must be prioritised:

Tackling impunity. For the government to retain credibility, it needs to demonstrate very quickly that it is willing to hold politically powerful companies and individuals accountable before the law, rather

than simply targeting the smaller players. The APT case provides a serious test of the government's will. It is crucial that the judicial authorities investigate and prosecute all those found to be involved in minerals-related fraud.

Increasing transparency. Until Rwanda publishes long-awaited domestic production statistics that are disaggregated on a mine by mine basis, suspicions will remain that a significant proportion of the minerals exported from Rwanda are in fact from Congo. At present, the only minerals statistics that are regularly disclosed to the public cover exports, and there is no way of telling whether these tally with domestic production. Right now few observers in the region, or internationally, are inclined to give Rwanda the benefit of the doubt.

Making due diligence an explicit legal requirement. Some companies in Rwanda have begun making efforts to ascertain the origin of the minerals they use and the conditions in which they were mined and traded. Many have not, however, and claim that this is the government's responsibility rather than theirs. Until this mindset is changed, less responsible companies will concentrate their efforts on trying to undermine the law, and finding new loopholes. The Rwandan government should follow the lead of its Congolese counterparts and issue a regulation that makes explicit the obligation of mineral traders operating in its territory to carry out due diligence to OECD standards.



A mine site in Rwanda. The Rwandan government needs to publish domestic mining production figures so that international buyers can see whether these tally with the country's minerals export statistics.

CONCLUSION

The scope to source conflict-free from eastern Congo is increasing. The UN and OECD have defined detailed due diligence standards to enable businesses to purchase clean minerals from DRC and neighbouring countries. Meanwhile, reforms introduced by the Congolese government, notably the law that makes these due diligence standards compulsory, are laying the foundations for a mining industry run by civilians, rather than men with guns. Within the Kivus, some companies and Congolese officials are making real efforts to put these new measures into practice.

Many of eastern Congo's mines remain under the control of military units, rebels and militias, however. This is seriously undermining the region's stability and development prospects. Ex-CNDP warlord General Bosco Ntaganda's recent mutiny, likely funded by illegally accrued mineral wealth, underscores the risks of allowing members of the national army to prey upon the Kivus' natural resources. Congolese and

international efforts to clean up the mining business must tackle the roles played not only by rebels and militias, but also by the FARDC.

The trade in eastern Congo's minerals is at a critical juncture. There is momentum for reform both locally and internationally; yet the risks of a minerals-fuelled conflict escalating are starkly apparent. What is now required is a concerted effort by governments and companies to claim demilitarised mining areas in the Kivus for clean trade. While it is not realistic to expect the immediate removal of armed groups from all mining areas in the east of Congo, there are opportunities for conflict-free sourcing which must be taken. By establishing a trade in clean minerals that meets OECD and UN standards, governments and companies can deny funding to belligerents, create better working conditions for miners and build investor confidence. While the challenges remain substantial, it is vital that this process now begins.

RECOMMENDATIONS

Companies using tin, tantalum, tungsten and gold from DRC and neighbouring countries should:

- Implement the OECD and UN due diligence standards in full and without delay, including carrying out regular on-the-ground risk assessments.
- Publish details of their due diligence, including findings of on-the-ground risk assessments and full audit reports, in line with OECD standards.
- Publicly support the introduction of regulation that makes OECD and UN due diligence standards a legal requirement.

The Government of the Democratic Republic of Congo should:

- Monitor and enforce implementation of the Congolese law requiring mining and mineral trading companies operating in DRC to carry out due diligence in line with OECD and UN standards. Designate a government body responsible for doing this.
- 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, giving priority to the prosecution of senior officers. Particular attention should be paid to cases of military officers operating illegal business ventures through civilian intermediaries.

- Dismantle parallel command structures within the national army, particularly those of the CNDP, through full integration of former rebels and regular rotation of units and commanders outside of the Kivu provinces to prevent the establishment of military fiefdoms.
- Reform FARDC pay structures to prevent senior officers from stealing the wages of real or 'ghost' soldiers and to ensure all military personnel receive a living wage.
- Deploy mining police to demilitarised mining areas in sufficient numbers, ensuring that they receive enough training, equipment and institutional support to fulfil their duties effectively.
- Step up efforts to formalise artisanal gold production in eastern DRC and create incentives for the establishment of legitimate business.

The Government of Rwanda should:

- Make due diligence an explicit legal requirement by issuing a regulation that clearly outlines the obligation of mineral traders operating in Rwanda to carry out due diligence in line with OECD and UN standards. Actively disseminate the full OECD and UN due diligence guidance.
- Monitor and enforce implementation of OECD and UN due diligence by mining and mineral trading companies operating in Rwanda.
- Investigate and prosecute those involved in minerals-related fraud.
- Publish disaggregated mineral production statistics that clearly display the outputs from each mine.
- Enhance coordination with the governments of DRC and other neighbouring countries to reduce smuggling and fraud.

Governments in the Great Lakes region and governments of other countries where minerals are traded, processed or used in manufacturing should:

- Incorporate OECD and UN due diligence standards into law and ensure that companies operating within their territories implement them fully. Report to the Security Council on implementation of due diligence, in line with Resolutions 1952 and 2021.

The US Securities and Exchange Commission (SEC) should:

- Publish the final rules for the conflict minerals provision without further delay.
- 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.

International donor governments should:

- Better coordinate support of reform of the FARDC; encourage Congolese authorities to end military involvement in the minerals trade and dismantle parallel command structures. Make non-humanitarian aid contingent on progress in these areas.
- Encourage the governments of DRC and Rwanda to monitor and enforce implementation of OECD and UN due diligence within their territories and hold to account companies that do not comply.
- Persuade the governments of Uganda and Burundi to stop their territories being used as laundering hubs for conflict gold.

The UN Security Council should:

- Impose targeted sanctions on individuals and companies whose mineral purchases benefit armed groups, in line with Security Council Resolution 2021.
- Ensure that the UN peacekeeping mission in the DRC, MONUSCO, fulfils its mandate to support the Congolese authorities in preventing the provision of support to armed groups from illicit economic activities and illicit trade in natural resources. As already defined by the Security Council, this support must include spot checks and regular visits to mining sites, trade routes and markets, in the vicinity of the five pilot trading counters.
- Reiterate, in the new MONUSCO peacekeeping mandate to be adopted in June, the explicit requirement that 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.
- Compel member states to report to the Security Council on their implementation of Security Council Resolution 2021 on sanctions.

ENDNOTES

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