

FROM CONGO WITH ~~NO~~ BLOOD:

Recent developments relating to the sourcing of conflict-free minerals from the Democratic Republic of Congo



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From Congo with (no) blood: Recent developments relating to the sourcing of conflict-free minerals from the Democratic Republic of Congo

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A camp set up by the Congolese army (FARDC) in the North Kivu province. Taken on 11/07/2012.
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Executive summary

The Democratic Republic of Congo (DRC) is blessed with abundant natural resources. Several minerals used in electronic devices, especially tin, tantalum and tungsten (3Ts), can be found there in large quantities.

However, rather than promoting societal development in the eastern DRC, the trade in these minerals has added fuel to the armed conflict that is the cause of much poverty and human rights violations, including indiscriminate killings, mass rapes, mutilations and forced child soldier recruitment by various armed groups and members of the Congolese military. In 2011, the Democratic Republic of Congo was the last of the 187 countries listed on the United Nations Development Programme's (UNDP) Human Development Index.

After a period of relatively positive developments, the human rights situation began to worsen in April 2012, following the rise of the rebel group M23, initially formed by a few hundred defectors from the Congolese army. By the end of November the M23 had managed to take over Goma, the capital of the mineral-rich North Kivu province and home to a million people, and to recruit thousands of combatants.

Due to the negative effects of the trade in minerals on state-building and livelihoods in the DRC, various actors – ranging from the UN, OECD and EU to individual countries, industry initiatives and civil society – have in recent years required companies that source minerals from the country to adopt measures to ensure that their purchases do not promote conflict, human rights abuses and other crimes.

The Dodd-Frank bill passed in the United States in 2010 and the related regulations issued by the US Securities and Exchange Commission (SEC) in August 2012 demand that mineral-using companies listed in the US undertake a “reasonable country of origin inquiry” to determine whether the minerals in their supply chain originate in the DRC or adjoining country and if they do, exercise due diligence to find out if the minerals have directly or indirectly contributed to conflict. The said law also requires US-listed mining and oil companies to report on their activities on a country-by-country and project-by-project basis, which makes it harder to transfer profits illicitly through false accounting. The EU's accounting directive, which is to be finalised in early 2013, contains similar provisions. Widely endorsed guidelines issued by the OECD and UN also require companies to exercise human rights due diligence throughout their supply chains.

The purpose of the present report is to provide an overview of recent developments relating to the Congolese conflict mineral issue at different levels. The focus is on initiatives aiming to improve human rights and due diligence practices. Towards this end, a questionnaire was sent to 31 electronics companies whose products contain 3T minerals. 13 of them ultimately submitted a response. Based on these responses, it can be stated that a number of companies have taken active measures towards conflict-free supply of minerals from the DRC. While this, and recent legislative reforms in key jurisdictions, is an encouraging signal, a lot of considerable obstacles still remain. The fact that 18 companies decided not to contribute to this report, despite numerous reminders and requests, does not send a very encouraging signal of their commitment to responsible supply chain management.

1. Introduction: looking for ways out of the minerals-conflict nexus

The 20th and 21st centuries have seen significant technological advances to the point that human lives can no longer be dissociated from the use of various electronic and hi-tech devices. Business and other day to day activities would be greatly hampered in the absence of mobile phones, computers, tablets, home stereos and so on. Many of the metals that are used in the production of these devices, such as tin and tantalum, are extracted in the eastern parts of the Democratic Republic of Congo (DRC).

However, rather than promoting societal development in the eastern DRC, the trade in these minerals has added fuel to the armed conflict that is the cause of much poverty and human rights violations, including indiscriminate killings, mass rapes, mutilations, and forced child soldier recruitment. The fighting has resulted in the death or displacement of more than five million people due to violence, famine and disease.¹ In 2011, the Democratic Republic of Congo was the last of the 187 countries listed on the United Nations Development Programme's (UNDP) Human Development Index.²



1 Reuters 2011.

2 UNDP 2011.

Most of the profits from the mineral business do not benefit the local population or the public sector. The International Monetary Fund has estimated that in 2009 the value of the DRC's mineral and oil exports were USD 4.2 billion.³ The taxes collected by the Congolese government the same year were estimated at USD 155 million – less than four percent of the minerals' value.⁴ Multinational companies, corrupt officials and leaders of armed groups all use highly developed tactics involving tax havens, accounting tricks and financial secrecy practices to siphon off the proceeds (rebel groups also use the money from the mining operations they have seized to buy weapons).

There are four main minerals mined in the DRC: cassiterite (the ore for tin), coltan (the ore for tantalum), wolframite (tungsten ore), and gold. This makeITfair study focuses on the first three (tin, tantalum and tungsten), generally referred to as the three T's.

Due to the negative effects of the trade in minerals on state-building and livelihoods in the DRC, various actors – ranging from the UN, OECD and EU to individual countries, industry initiatives and civil society – have in recent years required companies that source minerals from the country to adopt measures to ensure that their purchases do not promote conflict, human rights abuses and other crimes. Such checks or strategies are referred to as “due diligence”. A due diligence based approach to sourcing minerals ensures that business does not foster conflict and other forms of human suffering.

The Dodd-Frank bill passed in the United States in 2010 and the related regulations issued by the US Securities and Exchange Commission (SEC) in August 2012 demand that mineral-using companies listed in the US undertake a “reasonable country of origin inquiry” to determine whether the minerals in their supply chain originate in the DRC or adjoining country and if they do, exercise due diligence to find out if the minerals have directly or indirectly contributed to conflict. This rule, which will be implemented gradually over the course of the next four years, is known as Section 1502 of the Dodd-Frank act.

Section 1504 of said law requires US-listed mining and oil companies to report on their activities on a country-by-country and project-by-project basis, which makes it harder to transfer profits illicitly through false accounting. The EU's accounting directive, which is to be finalised in early 2013, contains similar provisions.

The purpose of the present report is to provide an overview of recent developments relating to the Congolese conflict mineral issue at different levels. The focus is on initiatives aiming to improve human rights and due diligence practices. The information contained herein has been gathered from previous studies, official sources, news articles and company responses to our questionnaire (see appendix 1). This publication also serves as a follow-up to the makeITfair report “Voices from the inside”, published in October 2010.

A questionnaire was sent to 31 electronics companies whose products contain 3T minerals. Despite numerous requests and reminders, only 13 of them ultimately submitted a response. Based on these responses, however, it can be stated that a number of companies have taken active measures towards conflict-free supply of minerals from the DRC. While this, and recent legislative reforms in key jurisdictions, is an encouraging signal, a lot of considerable obstacles still remain. Measures taken by corporations are described in chapter four.

3 IMF 2011. Democratic Republic of the Congo. Second Review of the Three-Year Arrangement Under the Extended Credit Facility and Financing Assurances Review. Published 22 November 2011.

4 The tax revenue estimate is based on an unpublished World Bank PROMINES project appraisal document from 2010.

2. Recent political and human rights developments in the DRC

Fighting in the DRC did not stop at the end of the 1997– 2003 civil war. In recent years, there have been continuous conflicts involving the Congolese military and various rebel groups.

In its resolution 2021, passed unanimously in November 2011, the United Nations Security Council reiterated its "serious concern regarding the presence of armed groups in the Democratic Republic of the Congo, including the provinces of North and South Kivu and Orientale Province, which perpetuate a climate of insecurity in the whole region" as well as "the support received by these armed groups from regional and international networks". The Security Council was also worried about the killing and displacement of "significant numbers" of civilians, the use of child soldiers and widespread raping and sexual violence.

The Congolese military, often referred to by the abbreviation FARDC (Forces armées de la République Démocratique du Congo), have also continued to abuse civilians. Of particular concern has been the considerable power wielded by former commanders of the Congrès national pour la défense du peuple (CNDP), which integrated into the national army in 2009, within the Congolese army and over the country's mineral resources.⁵ The M23 rebel group, which has taken over key areas in eastern DRC recently, is largely run by former CNDP operators.

President Joseph Kabila, who has held power since the assassination of his father in 2001, was re-elected in December 2011 amid wide accusations of fraud. During the elections, at least 33 people were killed, 86 wounded and 285 arrested by government security forces in the capital Kinshasa alone.⁶ Kabila's new government has initiated some significant reforms, including the obligation for companies active in the mineral sector to conduct due diligence analysis on their supply chain.

The human rights situation has taken a negative turn since spring 2012. In May, the number of internally displaced persons exceeded two million for the first time in almost three years, primarily due to increased violence in North and South Kivu, Orientale and Katanga.⁷

During the autumn of 2012, violence has continued to be on the increase. According to the BBC, over 500,000 fled their homes between April and late November.⁸ The UN has estimated that in November alone, the number of displaced persons increased by 140,000 in North Kivu and by 10,000 in South Kivu, as a result of the escalation of the M23 uprising.⁹

The M23 was formed by several hundred soldiers who defected from the Congolese army in March 2012 in response to president Kabila's plan to hand in Bosco Ntaganda, the leader of the M23 rebel group, to the International Criminal Court.¹⁰ In October and November 2012, the M23 allegedly recruited thousands of new fighters.

5 UN Security Council 2011; Global Witness 2011c.

6 Security Council Report 2012a.

7 UN Group of Experts on DR Congo (UNGoe) 2012.

8 BBC 2012c.

9 UNHCR 2012a; Al Jazeera 2012a.

10 UN Group of Experts on DR Congo (UNGoe) 2012; Global Witness 2012c; The Guardian 2012a and 2012b.

The linking of the Rwandan and Ugandan governments to rebels inside the DRC has caused international turmoil. In the aftermath of the launch of the UN Expert Group's interim report in June 2012, the United Kingdom, United States, Netherlands and Germany decided to cut or delay aid payments to Rwanda. In particular, the Rwandan government has been accused of supporting the M23 rebel group and its leader Bosco Ntaganda.¹¹

In a confidential report that was leaked to media in October, UN experts stated that Rwanda's defence minister James Kabarebe was effectively commanding the Congolese rebellion.¹² On 12 November, the UN and US added M23 commander Sultani Makenga to the list of warlords under sanctions for "serious violations of international law", such as killing and maiming women and children, sexual violence, abduction, forced displacement and recruiting child soldiers.¹³

On 20 November, M23 took control of the city of Goma, the capital of the North Kivu province and home to a million people close to the Rwandan and Ugandan borders, and threatened to march to the capital Kinshasa to topple the Kabila government. The 19,000 UN troops present in the country have not been able to prevent the escalation of violence.¹⁴

After calls from the UN and the governments of the DRC, Uganda and Rwanda, the M23 agreed on 26 November to withdraw from Goma if their conditions are met. Many believed their demands, which included the release of political prisoners and the disarming of all DRC government troops in the M23-controlled region, would be impossible for the Kabila government to yield to.¹⁵

This was the situation at the time of the publication of the present report in the beginning of December 2012.

2.1 DUE DILIGENCE IN THE DRC

Proceeds from and competition for stakes in the illegal mineral trade have fuelled the conflict and kept armed groups and rogue elements within FARDC operational. It is likely that the recent insurgency in eastern DRC has also benefited from illicit mineral trade. Through rigorous due diligence checks on their supply chains, companies could considerably reduce the amount of money going to such groups.¹⁶

In the context of eastern DRC, due diligence comprises finding out the minerals origin, ascertaining the production and transportation methods and conditions of the products, and determining whether any armed groups or abusive army groups have benefited in the process.¹⁷

In its report in 2011, the UN Group of Experts on the Democratic Republic of the Congo noted that the impacts of due diligence requirements with regard to tin, tantalum and tungsten differed

11 See, eg, the Guardian 2012a and 2012b: Enough Project 2012. The United States has gone as far as threatening the Rwandan leadership with an investigation and prosecution by the International Criminal Court.

12 BBC 2012a. Rwanda defence chief leads DR Congo rebels, UN report says. Published 17 October 2012 at <http://www.bbc.co.uk/news/world-africa-19973366> (22 Nov 2012).

13 See UN Security Council 2012b. Sanctions Committee Concerning Democratic Republic Of Congo Adds One Individual to Assets Freeze, Travel Ban List. UNSC document SC/10812. Published on 12 November 2012 at <http://www.un.org/News/Press/docs/2012/sc10812.doc.htm> (22 Nov 2012); Enough Project 2012c. US and UN Target M23 Commander with Sanctions. Published 15 November 2012 at <http://www.enoughproject.org/blogs/us-and-un-target-m23-commander-sanctions> (20 Nov 2012).

14 BBC 2012b. DR Congo's M23 rebels threaten to march to Kinshasa. Published 21 November 2012 at <http://www.bbc.co.uk/news/world-africa-20427682> (22 Nov 2012).

15 BBC 2012d.

16 Global Witness 2012c.

17 Ibid.

depending on the area. While mineral production and exports had increased in northern Katanga, where the ITRI Tin Supply Chain Initiative tagging system (see section 3.3.1) was in place and export houses were able to work with smelters involved in the Conflict-Free Smelter audit programme¹⁸, production and (official) exports had continued to fall in the Kivu and Maniema regions where such traceability systems did not exist. In the latter two regions the involvement of military and other armed groups had also got stronger as a bigger proportion of trade had become criminalized.¹⁹

The UN has also connected at least three export houses, called TTT Mining²⁰, Huaying Trading and Donson International, to mines in North Kivu that have been “ indirectly financing armed groups and criminal networks within FARDC”.²¹

In 2012, production and exports in Kivu have increased, reaching about a third of the levels preceding the mining ban²² declared by president Kabila in 2010 in the year’s first trimester, compared to only a fifth in 2011. The number of active export houses also doubled from three to six.²³ However, in May 2012, the Congolese Ministry of Mines suspended the activities of Huaying and CMM²⁴ in North Kivu because they had not fulfilled the due diligence obligations required of all mining operators active in the DRC as of February 2012.²⁵

On a more positive note, the activities of the Congolese government and the fact that it does compel mining companies to conduct due diligence checks in their supply chain in accordance with the OECD guidance, introduced in 2011 to curtail the use of conflict minerals, is a welcome development – as is the fact that some companies operating in or sourcing from the DRC have already started implementing such controls and buying from conflict-free sources (for more on the OECD guidance, see 3.2.1). Local knowledge of and support for due diligence in North and South Kivu has also increased considerably.²⁶

A key catalyst for company actions has been the US Dodd-Frank Act, although some of its short-term initial impacts may have been negative (see section 3.1.2 for more on this).

It remains to be seen, however, how the escalation of violence in the autumn of 2012 will affect companies’ ability to conduct due diligence – or guarantee conflict-free sourcing – in the areas affected by the M23 insurgency.

18 The Conflict-Free Smelter programme has been set up by two electronic industry organisations, the Electronic Industry Citizenship Coalition and the Global e-Sustainability Initiative (GeSI) to help companies meet the reporting requirements of the Dodd-Frank Act. For more information, visit <http://www.conflictreesmelter.org/>.

19 UN Group of Experts on DR Congo (UNGoe) 2011.

20 According to Congolese officials, TTT has changed its name to Congo Minerals and Metals (CMM). However, CMM, however, maintains that it is a new entity that just happens to operate in the same premises as TTT.

21 UN Group of Experts on DR Congo (UNGoe) 2012, p. 35

22 See section 3.1.1 below.

23 UN Group of Experts on DR Congo (UNGoe) 2012.

24 See footnote 5 above.

25 UN Group of Experts on DR Congo (UNGoe) 2012, pp. 35-36.

26 See, for example the Government of the Democratic Republic of the Congo 2011. Note circulaire 002/CAB.MIN/MINES/01/2011; Global Witness 2011b, 2011c and 2012

FOREIGN AND CONGOLESE ARMED GROUPS ACTIVE IN THE DRC

While the M23 rebellion has largely dominated news coverage in recent months, there are in fact over two-dozen other foreign and Congolese armed groups acting inside the DRC.

The most important foreign armed groups involved in the conflict mineral business include the Allied Democratic Forces (ADF), the Forces démocratiques de libération du Rwanda (FDLR) and the Forces nationales de libération (FNL).

- **ALLIED DEMOCRATIC FORCES (ADF).** According to the UN, the ADF is a rebel group based around the Rwenzori Mountains of North Kivu and led by Ugandans. In the first half of 2012, the ADF has conducted several attacks against FARDC and even the UN MONUSCO peacekeeping force, while also targeting civilians suspected of not respecting “business arrangements” or providing intelligence to the Congolese government.
- **FORCES DÉMOCRATIQUES DE LIBÉRATION DU RWANDA (FNL).** The Burundian rebels of the FNL are primarily active in South Kivu. The FNL continues to recruit within the Burundian security services and is allegedly receiving weapons from Tanzania. The UN has also obtained information suggesting that the FNL has partially merged with FRONABU, another Burundian-led group.²⁷
- **FORCES DÉMOCRATIQUES DE LIBÉRATION DU RWANDA (FDLR).** The FDLR is the most prominent Rwandan Hutu group operating in the Eastern DRC. In late 2011 and during 2012 its relations with local armed groups deteriorated as the latter killed several key FDLR actors. In response to MONUSCO-FARDC operations against FDLR in the first half of 2012, the group retaliated by attacking local civilians. It has also succeeded in capturing many mining sites and strategic positions from FARDC after the ex-CNDP mutiny within FARDC that led to the formation of the M23.²⁸

Some of the most important Congolese armed groups include the Front de défense du Congo (FDC), Mai Mai Raïa Mutomboki, Forces de résistance patriotiques en Ituri (FRPI), Alliance des patriotes pour un Congo libre et souverain (APCLS), Mai Mai Yakutumba (Forces armées alléluia), Nduma Defence of Congo (NDC) and the above-mentioned M23 that has powerfully challenged DRC government troops in the autumn of 2013 and that is at the time of writing the subject of international peace negotiations and sanctions.

- **FRONT DE DÉFENSE DU CONGO (FDC).** Originally created as local defence organization against FDLR and supporters of FARDC operations, FDC emerged in early 2012 as an important force along the border of western Masisi and eastern Walikale. The FDC leader Butu Luanda, a self-declared ex-CNDP officer, is said to cooperate closely with General Bosco Ntaganda, a known war criminal and leader of the M23.
- **MAI MAI RAÏA MUTOMBOKI.** Raïa Mutomboki was established as a self-defence group based in Shabunda. The name now refers to semi-autonomous groups in the Kabare, Kalehe, Mwenga, Walungu and Walikale territories, some of which include FARDC deserters. According to UN sources, Raïa Mutomboki groups have conducted “violent attacks against FDLR combatants and their women and children, and committed pillaging, arbitrary arrests, illegal taxation and sexual violence”. The groups increased operations in South Kivu and attacks on FDLR and FARDC have contributed to increasing instability. They are also linked to illegal mining of gold, tin, tantalum and tungsten.²⁹

In November 2012, the UN expert group accused Raïa Mutomboki and the FDLR of killing over 260 civilians in remote areas of North Kivu.³⁰

There also continue to be other criminal elements within the Congolese military FARDC that aim to exploit the country’s mineral wealth to their own gain. The most recent example of this was the dismissal of General Gabriel Amisi, a commander of the land forces, because he was accused in late November by the UN of overseeing a network that provided weapons and ammunitions to several criminal groups.³¹

27 UN Group of Experts on DR Congo (UNGoE) 2012.

28 UN Group of Experts on DR Congo (UNGoE) 2012.

29 UN Group of Experts on DR Congo (UNGoE) 2012.

30 Al Jazeera 2012b.

31 Al Jazeera 2012b.

3. Overview of mining sector reform initiatives relating to the eastern DRC

More than a decade has passed since the United Nations Security Council first expressed concern about the negative effects of the trade in minerals in the DRC. In recent years there has been an increased emphasis on securing human rights in the mining of minerals and on the accountability of companies purchasing minerals from the DRC and the Great Lakes region in general.

The section below provides an overview of some of the most important initiatives by governments, international organisations and business groups.

3.1 GOVERNMENT INITIATIVES

3.1.1 Measures by the government of the DRC

The Congolese government has sought to alleviate the problems relating to the mining sector through a number of initiatives, including new legislation, a mining ban, a post-conflict stabilisation programme and safe mineral trading centres.

New legislation

In February 2012, the Congolese government passed a new law that requires all mining and mineral trading companies operating in the DRC to meet the OECD due diligence standards and “to ensure that they do not contribute to human rights violations or conflicts in DRC”. The law also defines the domestic regulatory framework for the implementation of the regional mineral certification mechanism of the International Conference on the Great Lakes Region (ICGLR, see section 3.2.4 below).

The due diligence requirement for mineral sector actors has been in place since the passing of a ministerial directive in September 2011, but its inclusion in the new law shows an increased commitment by the Congolese government. The fact that Congo suspended the activities of two Chinese export houses in May for failure to comply with due diligence requirements, as noted above, can be seen as proof of this.³²

That being said, given the present turmoil, the scarcity of the DRC government’s resources, and rampant corruption, it remains to be seen how effectively the new legislation can be enforced. It is very likely that the government alone does not possess sufficient capacity for this.

³² Global Witness 2012c.

Mining ban

On 11 September 2010, the Congolese Ministry of Mines announced President Kabila's decision to suspend all exploitation and export of minerals from the DRC provinces of North Kivu, South Kivu and Maniema until further notice. The statement explained that the ban was intended to put a stop to the illegal exploitation of natural resources and the militarization of mineral trade in the DRC.

The DRC government displayed a lack of capacity to adequately monitor the embargo and enforce the rule of law. There are indications that during the ban, criminal elements within FARDC tightened their grip on the mining sector (most often to their personal benefit) and failed to check the continued presence and dominance of non-state armed groups in other mines.³³

Artisanal miners and mineral buyers faced important financial losses, and farmers supplying the mining areas with food products also saw their revenues dwindle as a result of lower demand among the artisanal mining population. Additionally, the mining ban indirectly led to a decline in the availability of hard currency. Until then, mineral exports had been by far the most important earner of foreign exchange in this part of the DRC. The provincial governments also faced severe revenue losses. Due to a general economic slowdown, children's enrolment at school dropped as parents were unable to provide for school fees.³⁴

When the mining ban was lifted on 10 March 2011, the general feeling among actors in the artisanal mining sector was that it had not prevented mineral smuggling or military involvement in the mineral business and that, on the contrary, a lot of valuable time had been lost. Small miners believed that the ban had prevented organizations such as ITRI (see section 3.2.1 below) from making headway with the implementation of measures to render the mining business more transparent and less corruption-ridden.³⁵

Stabilisation and Reconstruction plan (STAREC)

In an effort to solve humanitarian problems and to kick-start socio-economic recovery, the Congolese government launched the Stabilization and Reconstruction Plan for War-Affected Areas, or STAREC, in 2009. The programme is due to be implemented in several areas in eastern Congo, including North and South Kivu, Maniema, Haut-Uele, Bas-Uele and Ituri.

The plan has a security component, a humanitarian and social component, and an economic component.

The restoration of state authority over the minerals sector is an objective associated with the security component. The aim is to have the official Congolese security forces exercise permanent supervision over mining sites exploited by armed groups, to deploy a number of state agencies at the provincial level and to set up checkpoints in the vicinity of airstrips and roads leading to mining areas.

It is hard to say how much progress the programme has yielded. Some small STAREC-related initiatives were announced in 2010 and 2011. For instance, in December 2010 the Congolese newspaper *La Prospérité* reported that members of the Congolese army would have to start following a new Code of Conduct and that 10,000 copies of it had been distributed as part of a

³³ Sematumba 2011, p.13; UNGoE 2010, p.3

³⁴ Sematumba 2011.

³⁵ Sematumba 2011; Vircoulon 2011.

STAREC programme to reduce sexual violence.³⁶ At the time of research in August 2012, however, no information on recent activities was available, except that STAREC representatives had received training from UNDP and the UN Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) in June 2012.³⁷

Safe trading centres

As part of STAREC, a plan was launched at the end of 2009 to set up five mineral trading centres (*centres de négoce*) in eastern Congo through a pilot project between the DRC government and UN-MONUSCO.

The idea was to provide venues where miners and traders could do business without interference from armed groups. Government officials could exert control and levy taxes, traders could make sure they received the necessary paperwork, minerals could be labelled and miners could profit from a competitive market environment to negotiate better prices for their products.

Each centre is supposed to serve the mines located within a 25 kilometre radius. A fixed transport route (by air or land) would link the trading posts to regional hubs such as Bukavu or Goma. The centres would be located in Baraka and Mugogo in South Kivu, as well as Itebero, Isanga and Rubaya in North Kivu. MONUSCO was also tasked with fixing the roads leading to the centres and providing training to the police officers securing the sites and their access roads.³⁸

However, the project's implementation has been slow. In May 2012, all but one centre (Itebero) had been built, but none were operational. This was in part due to delays in mine validation, which had been concluded for only two centres, Mugogo and Rubaya. Of the 25 mines assessed around Mugogo, seven were rated "green" – meaning that they were not controlled by an armed group or security forces and that they respected social rights. In Rubaya, 11 out of 21 sites had received the green rating. It is worth noting, however, that the validations occurred before the mutiny of ex-CNDP units within the Congolese army in April 2012 that led to the emergence of the M23 after which the security situation in areas surrounding Rubaya has considerably worsened. Therefore export houses sourcing from mines in Rubaya and Nyabibwe and other restless areas should undertake additional due diligence risk assessments on the ground.³⁹

There are also questions on the ratings so far. Diggers at one site in North Kivu that had been rated "green" in the March 2012 ministerial decree told Global Witness researchers in March that they were forced to hand over their day's production to FARDC every Sunday.⁴⁰

3.1.2 The Dodd-Frank Act of the United States

In July 2010, the US Senate passed the *Dodd-Frank Wall Street Reform and Consumer Protection Act*. Section 1502 of the Act relates to Congolese conflict minerals. Under this section, any company that offers its securities for sale to the general public in the US – and is thus required to register with the Securities and Exchange Commission (SEC) – and whose products contain coltan,

36 La Prosperité 2010

37 UN-MONUSCO 2012.

38 Verbruggen, Francq & Cuvelier 2011, p. 21. s

39 UN Group of Experts on the Democratic Republic of the Congo (UNGoe) 2012, p. 37.

40 Global Witness 2012c.

cassiterite, gold or wolframite, all categorically defined as “conflict minerals”, will have to disclose on a yearly basis whether these minerals originate from the DRC or an adjoining country.⁴¹

After a two-year delay, the SEC finally issued its rules on the implementation of sections 1502 and 1504 of the Dodd-Frank bill in August 2012.

According to the SEC rules on section 1502, a company that manufactures products that contain or may contain conflict minerals must conduct a due diligence investigation of its supply chain. If it turns out that conflict minerals are used, the company must submit a “conflict minerals report” to SEC in which it describes the due diligence measures carried out. The report shall be audited by an independent third party. Large companies will have two years and smaller companies four years to implement the rules.⁴²

The report must contain “a description of the measures taken by the person to exercise due diligence on the source and chain of custody of such minerals and a description of the products manufactured, or contracted to be manufactured that are not DRC conflict free (‘DRC conflict free’ is defined to mean the products that do not contain minerals that directly or indirectly finance or benefit armed groups in the Democratic Republic of the Congo or an adjoining country), the facilities used to process the conflict minerals, the country of origin of the conflict minerals, and the efforts to determine the mine or location of origin with the greatest possible specificity. The companies’ supply-chain due diligence efforts must also be submitted to a private sector audit”.⁴³

The Dodd-Frank act obliges companies to publish the conflict mineral report and audit results on their websites. By subjecting this information to public scrutiny, the reputational risk towards consumers for companies using conflict minerals will increase. There will be fines for companies that do not do good reporting and auditing. Companies that correctly fulfil the due diligence requirements and report back to the SEC that they are indeed importing conflict minerals will not be fined.⁴⁴

The effects of section 1502 of the Act will spread far beyond the US since the text applies to every company that has listed in the US dealing with conflict minerals – including most major electronic companies, such as Apple, Nokia, Motorola and Vodafone. The US-based Enough Project has estimated that about 6,000 companies will be affected by the law, of which 1,200 will have to submit a report to the SEC.⁴⁵

According to a survey conducted by Green Research in early 2012 and covering over 20 companies from a range of sectors, such as electronic component manufacturers, healthcare and auto industry, many companies believed compliance with section 1502 of the Act would improve their risk management and supply chain performance as well as provide new innovation opportunities. Many respondents expected compliance to level the playing field and to contribute to greater supply chain transparency and better-planned processes.⁴⁶

41 The US Congress 2010.

42 Securities and Exchange Commission (SEC) 2012a; Enough Project 2012d.

43 The US Congress 2010.

44 One common misunderstanding is that the Act “criminalises” or penalises the use of conflict minerals. In reality it merely obliges companies to report the conflict minerals sourced from the DRC or neighbouring countries to the SEC and to describe the due diligence measures taken.

45 Enough Project 2012b. Taking Conflict Out of Consumer Gadgets. Company Rankings on Conflict Minerals 2012.

46 Green Research 2012; Global Witness 2012c. The Green Research study was commissioned by Global Witness.

Section 1504 requires US-listed mining and oil companies to report on their activities on a country-by-country and project-by-project basis, which makes it harder to transfer profits illicitly via, for example, false accounting, such as trade mispricing.

Shortly after the publication of the rules, the US extractives sector, spearheaded by the American Petroleum Institute, the lobbying organisation of major oil companies, and the US Chamber of Commerce, filed a lawsuit against section 1504 and tried to call for a halt to its implementation until the end of the legal proceedings.

On 8 November 2012, the SEC rejected the claim that the additional transparency would be bad for business and denied the request to halt implementation, stating that a stay “would not serve the public interest”.⁴⁷

3.1.3 The German government's certifying programme

Through the operations of the German Federal Institute for Geosciences and Natural Resources (BGR) and the German Technical Cooperation (GTZ, recently renamed GIZ), Germany is one of the most involved EU countries in current DRC mining reforms.

In April 2009, the BGR method of certifying artisanally mined minerals, the Certified Trading Chains (CTC), was introduced to the DRC. In this project BGR collaborates with the GIZ and the Congolese Ministry of Mines.

In February and March 2010, several cassiterite/coltan mining sites in South Kivu were selected to pilot implementation of the project and a BGR office was set up in Bukavu. Workshop reports or data on implementation at these sites are not publicly available, making it difficult to analyse the results of the BGR engagement in the DRC. The data on the BGR website ends in 2011.⁴⁸

3.2 MEASURES TAKEN BY INTER-GOVERNMENTAL ORGANISATIONS

At the level of international organizations, the Organisation for Economic Cooperation and Development (OECD), the United Nations Group of Experts on the DRC (UNGoe), the European Union (EU), the International Conference of the Great Lakes Region (ICGLR) and the World Bank/IMF have been most active.

3.2.1 OECD guidances on due diligence

In 2011, the Council of the Organization for Economic Cooperation and Development (OECD) adopted *The OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*. While not legally binding, the Guidance has gained support from various stakeholders, including all of the OECD's 44 adhering governments, the International Conference of the Great Lakes Region, the German BGR, International Tin Research Institute (ITRI), Electronics Industry Citizenship Coalition (EICC) and several NGOs.

⁴⁷ SEC 2012a; Publish What You Pay USA 2012a.

⁴⁸ Verbruggen, Francq & Cuvelier 2011; BGR website at http://www.bgr.bund.de/EN/Home/homepage_node_en.html (14 Aug 2012)

Another key document is the more general *OECD Guidelines for Multinational Enterprises*, updated for the fifth time in 2011, which is also adhered to by all of the OECD's member states and which has become the global reference text on corporate responsibility and due diligence alongside the UN's Guiding Principles on Business and Human Rights.⁴⁹

Companies sourcing minerals from the DRC (or other conflict-affected regions) that adhere to the minerals guidance pledge not to profit from or contribute to conflicts and human rights violations at any point in their supply-chain. The minerals guidance also describes rigorous and comprehensive due diligence measures to be followed by upstream (mines to smelters/refiners) and downstream (smelters/refiners to retailers) actors.

Local mineral exporters, for instance, must gather and disclose information on all taxes and other payments made along the supply-chain to governments, security forces and armed groups; on the ownership and corporate structure of the exporter; on the mine of mineral origin; on the identity of all intermediaries; on the locations where minerals are traded and processed; and on transportation routes. The minerals guidance further recommends that the information be regularly verified by an assessment team tasked to provide recommendations for risk mitigation.⁵⁰

To ensure an effective implementation of the Guidance, the OECD encourages donor countries and organisations to support efforts to strengthen supply-chain monitoring capacity in the DRC as well as to provide the required assistance to key public institutions involved in the mineral resource sector (for example, the taxation authority, the judiciary and public security institutions).

It must however be noted that the OECD Guidance has no binding character. Cases of violation by companies can be brought to the OECD National Contact Points (NCPs), but the ensuing procedure has no judicial value. The NCPs only play a mediating role between conflicting parties. Proceedings result in a decision from the NCP which is non-binding.

3.2.2 EU improves transparency, lacks conflict-mineral policy

The European Union (EU) is one of the largest importers of raw materials from the DRC. Thus, it can play a major role in preventing the mining–violent conflict–underdevelopment nexus in the country.

In October 2010 the European Parliament adopted a resolution on the “Failures in Protection of Human Rights and Justice in the Democratic Republic of Congo”.⁵¹ From the point of view of the EP, the resolution aimed at a replication of the due diligence requirements specified in Section 1502 of the Dodd-Frank act.

On 15 December 2010, the EP repeated this concern in its resolution adopted regarding the future of the EU-Africa strategic partnership. Using stronger wording than two months before, the EP stated that “the adoption of the new US ‘Conflict Minerals’ law is a huge step forward in combating illegal exploitation of minerals in Africa, and that it is of the view that the Commission and the

49 OECD 2011a. The OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. <http://www.oecd.org/daf/internationalinvestment/guidelinesformultinationalenterprises/46740847.pdf> (10 August 2012); OECD 2011b. The OECD Guidelines for Multinational Enterprises, 2011 edition. <http://www.oecd.org/daf/internationalinvestment/guidelinesformultinationalenterprises/48004323.pdf> (10 August 2010); Verbruggen, Françoise & Cuvelier 2011, pp. 7–8

50 OECD 2011a; Verbruggen, Françoise & Cuvelier 2011, p. 8.

51 The European Parliament 2010a

THE CORPORATE RESPONSIBILITY POLICIES OF THE EUROPEAN UNION

In October 2011 the European Commission published a new policy on corporate social responsibility. It states that to fully meet their social responsibility, enterprises “should have in place a process to integrate social, environmental, ethical and human rights concerns into their business operations and core strategy in close collaboration with their stakeholders”.⁵²

The aim is both to enhance positive impacts – for example through the innovation of new products and services that are beneficial to society and enterprises themselves – and to minimise and prevent negative impacts. The new policy puts forward an action agenda for the period 2011–2014 covering eight areas, including:

Improving company disclosure of social and environmental information: the new policy confirms the Commission’s intention to bring forward a new legislative proposal on this issue. Without explicitly referring to it, this demand is similar to Section 1502 of the Dodd-Frank Act, yet not limited to the extractive industries.

Emphasising the importance of national and sub-national CSR policies: the Commission invites EU member states to present or update their own plans for the promotion of CSR by the end of 2012.

Better aligning European and global approaches to CSR: the Commission highlights the OECD Guidelines for Multinational Enterprises, the 10 principles of the UN Global Compact, the UN Guiding Principles on Business and Human Rights, the ILO Tri-partite Declaration of Principles on Multinational Enterprises and Social Policy, the ISO 26000 Guidance Standard on Social Responsibility.

A report on the implementation of this action agenda should be published in time for a review meeting scheduled for mid-2014.

Council should come out with similar proposals to ensure traceability of imported minerals in the EU”.⁵³

In January 2012, during the launch of the EU Trade and Development Communication, the EU commissioners responsible for trade and development made a commitment to make supply chains more transparent.⁵⁴ However, the European commission (EC) is yet to introduce specific regulation obliging companies sourcing minerals to do due diligence checks in their supply chains, as is the case with section 1502 of the US Dodd-Frank law.

In its January 2012 announcement, the European Commission also indicated that it will advocate greater use of the due diligence standards published by the OECD.⁵⁵

The most promising recent development has been the ongoing reform process of the European Accounting and Transparency Directives. Similar to Dodd-Frank section 1504, the new EU legislation would oblige oil, gas, mining and logging companies to publish all the payments they make on a project-by-project and country-by-country basis, so that officials and citizens would be empowered to see that taxes, royalties and other payments are properly paid. Given that mineral-rich poor countries have suffered vastly from opaque deals and illicit financial flows that have benefited a tiny minority at the expense of the wellbeing of the population, such transparency would make a huge difference.

⁵² The European Commission 2011. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A renewed EU strategy 2011–14 for Corporate Social Responsibility. http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr/new-csr/act_en.pdf (15 August 2012)

⁵³ The European Parliament 2010b

⁵⁴ The European Commission 2012a. EU Trade and Development Communication; Global Witness 2012a

⁵⁵ The European Commission 2012a.

At the time of research at the end of November 2012, the precise conditions of the new directives were still being debated, with the European Parliament pushing for wider transparency, stricter rules and lower reporting thresholds than the EU Council, consisting of member state governments. An agreement is likely to be reached in early 2013.

It is worth stressing that in the context of the DRC, where mining is chiefly artisanal and involves a lot of small operators, such financial reporting cannot alone solve the problems of corruption and conflict finance.

Until the EU creates a new directive or other regulation that specifically addresses the issue of conflict minerals in the DRC and the neighbouring countries, and companies' role in it, the most useful way to tackle the issue at the grass-roots level is through the broader corporate social responsibility policies of the EU (see box).

3.2.3 United Nations expert group on DRC

The UN Group of Experts on the Democratic Republic of the Congo (UNGoE) was created to investigate the illegal exploitation of natural resources in the DRC. As per the United Nations Security Council resolutions 1896 and 1857, the UNGoE is competent to “provide guidance to importers, processors and consumers of minerals from the eastern part of the DRC on how to mitigate the risk of providing direct or indirect support to illegal armed groups and/or to individuals and entities that are subject to targeted UN sanctions”.

However, as it became apparent that members of the Congolese army / FARDC were also involved in the illegal exploitation, taxation and trade in minerals, and responsible for various human rights violations in the eastern DRC, the UN Security Council later extended the scope of the due diligence requirements.⁵⁶

The UNGoE was key in conceiving the OECD minerals guidelines. Consequently, the Group's recommendations for appropriate due diligence measures are mirrored in the OECD guidance. In effect, The UNGoE outlines the same five-step due diligence approach as the OECD Guidance and refers to the Guidance for further details.⁵⁷

Although the due diligence procedures outlined by the UNGoE and the OECD are more or less identical, there is a crucial distinction as to their potential impact. While the OECD Guidance is voluntary, UN Security Council Resolution 1952 obliges the UN Sanctions Committee to take into account whether or not an individual or entity has exercised due diligence when considering whether or not to impose sanctions.

As per the UN Guiding Principles on Business and Human Rights, approved by the UN Human Rights Council in June 2011, companies are required to exercise due diligence to be able to show that they respect human rights throughout their supply chain.⁵⁸

⁵⁶ Global Witness 2010, pp. 2–3.

⁵⁷ Verbruggen, Franck & Cuvelier 2011, p.7.

⁵⁸ UNHCR 2011.

3.2.4 International Conference of the Great Lakes Region (ICGLR)

The illegal exploitation of natural resources and serious human rights violations in the DRC and the Great Lakes region in general led the United Security Council, through its resolution 1291 (2000), to call for an International Conference on Peace, Security, Democracy and Development in the Great Lakes Region (ICGLR). The ICGLR includes eleven countries: Angola, Burundi, Central African Republic, Republic of Congo, Democratic Republic of the Congo, Kenya, Rwanda, Sudan, Tanzania, Uganda and Zambia.

At the ICGLR's December 2010 summit in Lusaka, member countries adopted the Regional Initiative on natural resources (RINR). The RINR adopts six tools to curb the illegal exploitation of Natural Resources in the region, namely a regional certification mechanism for cassiterite, wolframite, coltan and gold; the harmonization of national legislations; the formalization of the artisanal mining sector; establishing a regional database on mineral flows; the promotion of the Extractive Industries Transparency Initiative (EITI); and a whistle-blowing mechanism.

The ICGLR member states did not meet the December 2011 deadline for launching the regional certification mechanism (the core tool of RINR), and little progress has been made with regard to the other elements of the initiative as well.⁵⁹

Given the role of the DRC's eastern neighbours in the flow (licit and illicit) of DRC minerals to consumers worldwide, issues of transparency and certification require political support at a regional level. As the ICGLR regroups most countries in the Great Lakes region and beyond, it seems well suited for this task. While the project was previously only sponsored by the German Technical Cooperation (GTZ/GIZ), there is now additional funding from the Netherlands, Canada and Belgium.⁶⁰

A major challenge, however, is that the ICGLR suffers from lack of awareness outside the region, for instance among key actors like the US State Department, the Global e-Sustainability Initiative (GESI) or the Electronics Industry Citizenship Coalition (EICC).⁶¹ Consequently, it is unclear whether the ICGLR scheme could be accepted by end-users as a means to satisfy due diligence requirements under the Dodd-Frank law, for example. There is also a tension between ITRI and the ICGLR, as the latter has accused ITRI of not providing data obtained in the course of its iTSCI programme (see 3.3.1 for more details).

In July 2012, in response to escalated violence, the ICGLR countries agreed on the principle of sending an international "neutral military force" to Kivu, which has a border with Burundi, Rwanda and Uganda.⁶² ICGLR governments have also engaged in negotiations with the M23 rebellion in November 2012. Allegations of Rwandan support for M23 may have undermined the credibility of such efforts, however.

⁵⁹ Verbruggen, Franck, & Cuvelier 2011, p.17

⁶⁰ Ibid, p.18.

⁶¹ Ibid, p. 28.

⁶² DRC representation to the EU 2012. Regional mobilization for Kivu. Congo Notes #6, published 27 July 2012. <http://congonotes.files.wordpress.com/2012/08/congonotes.jpg> (14 August 2012).

3.3 INDUSTRY AND MULTI-STAKE HOLDER INITIATIVES

Since makeITfair and other NGOs started to pressure the electronics industry to act on the issue of conflict minerals five years ago, the branch has taken several steps towards tackling the problem. In this section we will present the most important initiatives at the sector level. Chapter 4 deals with measures taken by individual companies.

3.3.1 International Tin Research Institute (ITRI) / ITRI Tin Supply-chain Initiative (iTSCI)

ITRI is a UK-based association of tin industry actors, including smelters/processors, miners, traders and users. Under pressure from the UN, international NGOs and the US government, ITRI designed a due diligence mechanism. This system was named the ITRI Tin Supply-chain Initiative (iTSCI). Implementation of the iTSCI in the DRC started in July 2009, but the project was soon halted due to the mining ban imposed by President Kabila in September 2010.

However, in March 2012 iTSCI announced the signature of a further agreement with the Ministry of Mines of the DRC that expanded cooperation on the implementation of the due diligence programme.⁶³ The new extension paved the way for iTSCi activities in Maniema and the Kivus.

The new agreement was sealed following an evaluation of progress by ministry experts who had reported improved transparency and production statistics, and higher tax revenues, as well as better government oversight and governance in the mineral sector in Katanga, the only province where iTSCi currently operates.⁶⁴

The agreement strengthens the concept of training and capacity building for mining ministry services and also emphasises the role of the local stakeholder committees in raising issues and finding solutions. The committees will operate around UN-backed trading centres and in mining areas.

In interviews with the NGO Global Witness in March 2012, however, trading companies and mining sector officials in eastern DRC and Rwanda expressed concerns about iTSCi's functioning. Many of them complained about ITRI's reluctance to disclose production and trade data to regional governments and member companies.⁶⁵

Another common complaint was perceived conflicts of interest. According to Global Witness, "risk assessments and independent audits for the iTSCi programme have both been carried out by one consultancy firm, Channel Research". In other words, the same company evaluates the risks of armed groups' and the military's involvement in a company's mineral supply chain and then determines the quality of the evaluation.⁶⁶

63 ITRI 2012.

64 Ibid.

65 Global Witness 2012c.

66 Ibid.

3.3.2 Conflict-free tin from South Kivu

In September 2012, a new conflict free tin initiative was announced involving the Dutch government, ITRI and several companies. The pilot project shall secure the supply chain from mine to end-user, thus enabling legitimate trade from a conflict-free mine in South Kivu.⁶⁷

The conflict-free tin initiative has grown out of the Solutions for Hope Project which was announced by Motorola Solutions Inc. and AVX Corporation in July 2011. Through this initiative, the companies involved have created and are testing a program of responsible sourcing of coltan from the DRC. The Solutions for Hope Project's approach to mineral sourcing in the region utilizes a closed-pipe supply line, delivering from in-region traceable materials through independently assessed transport routes to a validated conflict-free smelter.⁶⁸

The Conflict-Free Tin from South Kivu Initiative is open to all companies including smelters, component manufacturers and product manufacturers (end-users). The project seems relatively transparent and capable of yielding tangible results, albeit thus far on a relatively modest scale. Several leading technology companies such as Nokia, Philips, HP and Intel have joined the project.⁶⁹ On 24 October 2012 the first bags of conflict-free tin left the mine in South Kivu. It remains to be seen whether the models tested and experiences gained through the project can be used to scale up the volume of conflict-free mineral processing. The stated goal of the pilot phase is to make mining in the area more formalised, improve the employment of artisanal miners and to contribute to economic development and stability.

3.3.3 Global e-Sustainability Initiative (GESI) / Electronics Industry Citizenship Coalition (EICC)

The Global e-Sustainability Initiative (GESI) was established in 2001 to further sustainable development in the ICT sector. It brings together leading ICT companies, industry associations and NGOs. Members include many high-profile electronics brands. Responding to pressure from NGOs, US legislators and the UN, GESI jointly set up an Extractives Workgroup in 2008 with the Electronics Industry Citizenship Coalition (EICC).

Founded in 2004, the EICC is an ICT industry organization aiming at enhancing CSR policies in the global electronic supply-chain. Its membership consists of over 60 global electronics companies, including brands like Microsoft and Samsung.

In the supply-chains of tin and tantalum, smelters represent choke-points with twelve tin smelters accounting for close to the entire global production of refined tin and 80 percent of refined tantalum being processed by only seven companies. Given the leverage which end-users exercise over smelters in the supply-chains of tin and tantalum, GESI/EICC designed a conflict-free smelter programme.

The programme was launched in December 2010 after the completion of the first tantalum smelter assessment. The assessment was carried out by an independent third party tasked to verify that the raw materials procured by the smelter did not originate from sources involved in the DRC conflict. Such audits could possibly fulfil the reporting requirements under Section 1502 of the Dodd-Frank Act.

67 Conflict free tin initiative announcement, 18th September, <http://solutions-network.org/site-cfti/>.

68 Motorola Solutions 2011. Motorola Solutions Announces Project to Source Conflict-Free Tantalum from Democratic Republic of Congo. Published 7 July 2011. <http://mediacenter.motorolasolutions.com/Press-Releases/Motorola-Solutions-Announces-Project-to-Source-Conflict-Free-Tantalum-from-Democratic-Republic-of-Congo-36a1.aspx> (15 August 2012)

69 For more information, see <http://solutions-network.org/site-solutionsforhope/> (15 August 2012)

4. Companies' efforts to address the conflict mineral problem

The information contained in this section has been collected by sending a questionnaire with 13 questions to 53 officials in 31 companies (for a full list of the questions and companies, see appendices 1 and 2). After a two-week extension of the deadline and several phone calls, voice messages and emails, 13 companies provided a response. Several companies complained of survey fatigue, pointing out that they had just completed a similar survey by the US-based Enough Project.⁷⁰

Nonetheless, it is unfortunate that such a large number of companies decided not to participate in the survey and take the time to open their responsibility practices.

The 18 companies that did not reply included *Motorola Inc, Pentax Ricoh Imaging Co, Apple, Cisco Systems, Lenovo, Dell, Jabil Circuit, Intel Corp, Analog Devices, Acer, Foxconn Technology Group, IBM, Canon, JVC Kenwood, Olympus, Flextronics Manufacturing, Fujifilm Holdings* and *Sanyo Electric*.

It is evident that all of these companies are affected by Section 1502 (and in many cases, also Section 1504) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and are currently working to adapt their practices to meet the new regulations. All companies that are publicly traded in the United States are bound by the legislation.

According to our survey, the companies that have been most active in developing responsibility practices relating to the sourcing of conflict minerals are US-based Microsoft, Netherlands-based Royal Philips Electronics, US-based Hewlett Packard Corp, UK-based Vodafone Group and Finland-based Nokia. These companies have been actively involved in branch initiatives and taken concrete actions in their own supply chain management. They all stress that simply avoiding sourcing from DR Congo may just hurt the local economy and worsen the situation. Some of these companies are in fact actively involved in setting up pilot projects with the aim of securing non-conflict mineral trading.

Philips is working in collaboration with EICC-GeSi extractives working group and ITRI's iTSCi joint industry programme on traceability and due diligence. The company believes that rigorous due diligence checks could considerably reduce the amount of money going to armed groups. Philips is also a part of the new conflict-free tin initiative mentioned above.⁷¹

Hewlett Packard was one of the companies that started the EICC extractives working group in 2007 and has been active in it ever since. HP has also developed its own practices towards securing conflict-free minerals in its supply chain and engaged in the US Public-Private Alliance for Responsible Minerals Trade and the conflict-free tin initiative (Solutions for Hope project).

70 See Enough Project 2012b. Taking Conflict out of Consumer Gadgets. Company Rankings on Conflict Minerals. Available at <http://www.enoughproject.org/files/CorporateRankings2012.pdf> (21 November 2012).

71 Conflict free tin initiative announcement, 18th September, <http://solutions-network.org/site-cfti/>.

Microsoft plans to perform third party audits within its supply chain as part of its due diligence process, consistent with the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.⁷² The audits and related corrective actions will assist the company in identifying and addressing related risks of sourcing metals from conflict areas.

Vodafone says that it carries out thorough checks when sourcing from the region and that it actively takes part in industry initiatives. Vodafone is not of the view that its products should be free of metals from the DRC or surrounding countries; rather, they need to be conflict-free.

Nokia is also working on supply chain due diligence but it mostly relies on in-house assessors. The company does not, as a matter of routine, employ independent assessors or auditors to verify the conflict minerals due diligence information of their first tier suppliers. Nokia's third party validation efforts are currently focused on the smelter level via the conflict-free smelter program.

The KPN Group, LG Electronics, Sony, Samsung and Research in Motion (RIM/Blackberry) are also quite active in trying to guarantee that they do not source conflict-minerals from the DRC. However, these companies largely rely on branch initiatives, such as EICC and GeSi.

Research in Motion, the company behind Blackberry, reports that its representatives are actively involved in the activities of EICC and GeSI and the associated conflict-free smelter programme. RIM is also involved in the new conflict-free tin initiative, mentioned above. It does not, however, take the additional step of contracting external auditors to go through all purchasing documentation, nor does it check that suppliers have all the documentation required to be able to trace minerals back to the original mine.

Other companies, such as TeliaSonera, Donaldson and Nikon, stand out because despite growing public awareness on this issue, neither Nikon nor TeliaSonera have made much effort to independently trace or audit their supply chains concerning the issue of conflict minerals. US-based Donaldson Company, a manufacturer of semiconductors, replied that it is in the process of developing and communicating a company policy regarding conflict minerals. TeliaSonera, based in Sweden, does have a standpoint on Tantalum from 2011, however the company does not address the other conflict minerals and is not clear on what it requires from suppliers. In November 2012 TeliaSonera announced that it had joined the Joint Audit Cooperation (JAC), an audit partnership



TANTALUM MINING IN SOUTH KIVU.

Photo: Sasha Lezhnev/Enough Project. Licensed under Creative Commons Attribution-NonCommercial-NoDerivs 2.0 Generic licence.

⁷² The OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. <http://www.oecd.org/daf/international-investment/guidelinesformultinationalenterprises/46740847.pdf> (10 August 2012)

set up by leading mobile communications companies. Determining the use of conflict minerals is part of the checklist.⁷³

TeliaSonera does have a position on Tantalum from 2011, but the company does not address the other conflict minerals and it is not clear on what it requires from its suppliers. In November 2012 TeliaSonera announced that it joined the joint audit cooperation (JAC) initiative that does supplier audits. Determining the use of conflict minerals is part of the checklist.⁷⁴

Nikon sent a questionnaire to all of its suppliers in January 2012 in order to gather information on the use of conflict minerals in its supply chain. Nikon also reports that it intends to fulfil its social responsibilities throughout the entire supply chain through the Nikon Basic Procurement Policy and the Nikon Procurement Partners' CSR Guidelines. Neither document discusses the conflict mineral issue in detail. In this sense the the company fails to provide adequate guidance to its procurement partners. Nikon does, however, report that it will take measures to reduce the use of conflict minerals as much as possible in cooperation with its partners.

The US-based Donaldson Company, a manufacturer of semiconductors, replied that it is in the process of developing and communicating a company policy regarding conflict minerals.

In conclusion, the majority of the companies that provided a response to our questionnaire, have taken substantial steps towards securing conflict mineral free supply chains and improving their social and environmental impacts. In this they have been driven by legislative requirements as well as increasing attention from consumers and the media.

Nonetheless, most initiatives, especially in the conflict-ridden eastern DRC, have been of a modest scale. It remains to be seen whether the experiences gained through them can be scaled up in the coming years.

73 TeliaSonera joins Joint Audit Cooperation, 2012-11-06, (JAC)<http://www.teliasonera.com/en/newsroom/news/2012/teliasonera-joins-joint-audit-cooperation-jac/>, downloaded 2012-11-09.

74 TeliaSonera joins Joint Audit Cooperation, 2012-11-06, (JAC)<http://www.teliasonera.com/en/newsroom/news/2012/teliasonera-joins-joint-audit-cooperation-jac/>, downloaded 2012-11-09.

5. A path forward: conclusions and recommendations

For several years, the trade in minerals from the DRC has fuelled armed conflict and poverty in the DRC itself and the Great Lakes in general. The underlying assumption of current DRC mining reform and due diligence initiatives is that these will contribute to the demilitarization of the DRC mining sector and re-establish legitimate state control over all mines, thus facilitating local development.

Although significant progress has been made in terms of improved due diligence systems, stricter disclosure and transparency regulations, capacity building, tracking and tracing mechanisms and so on, great challenges remain.

The M23 rebellion has undone a lot of the positive development in eastern DRC in a short period of time. How that conflict will resolve itself, remains to be seen. Some pessimist voices have already warned of a return to a situation akin to the bloody 1997–2003 civil war that caused the deaths of over five million people. In such a scenario, the likelihood of “conflict-free” mineral trade would be slim.

However, the purpose of the present study has been to assess the viability of the various due diligence and transparency initiatives relating to the DRC case. Based on our findings, we would like to issue the following recommendations to political decision-makers and the international electronics companies involved in the mineral business.

RECOMMENDATIONS TO COMPANIES

- Companies should develop functional due diligence measures that cover the entire supply chain and are in line with the requirements of the OECD guidelines and the provisions of the Dodd-Frank act. Some of the examples provided in this report, such as the Solutions for Hope project, provide tangible examples of how this could be done.
- Likewise, companies should work with local civil society organisations and join programmes such as ITSCI, the Conflict-Free Tin Initiative, smelter certification projects etc., demand their suppliers to trace the supply chain down to the mine-level, and to develop and partake in audit schemes involving independent third party verification.
- Industry associations such as ITRI and GESI/EICC should urge their members to adopt and implement the OECD guidance and include it in contracts with their suppliers.
- Companies should not limit their responsibility measures to “conflict-free” sourcing but also implement human rights standards, including key labour right norms such as a ban on child labour, decent wages and sound health and safety policies.

RECOMMENDATIONS TO DECISION-MAKERS

- All countries should encourage companies under their jurisdiction to apply the OECD guidance.
- The OECD guidance should be set as the minimum due diligence standard for companies reporting under Dodd-Frank section 1502 and other similar regulations.
- The US Securities Exchange Council (SEC) should not allow companies sourcing conflict minerals outside Central Africa, for instance tantalum from Australia or Canada, to use the label “DRC conflict-free”. The purpose of Dodd-Frank section 1502 is not to promote the sourcing of minerals from other countries, but rather to ensure that minerals from the DRC and adjoining countries are conflict-free and benefit all actors.
- The EU should introduce broad due diligence legislation making it compulsory for companies registered in the EU to conduct human rights due diligence in high risk areas, including the DRC. Such a legislation should be supported by capacity building on the ground where verification takes place.
- Artisan miners should be offered incentives to enter into a process of formalization. They should be empowered to be able to obtain better prices for their products and to assist in the monitoring of certification schemes.
- The EU should swiftly pass the reformed accounting directives and ensure that they require comprehensive project-by-project reporting, as well as information on all payments made by the companies in all countries. The reporting threshold should be set at a sufficiently low level (e.g. EUR 20,000).

RECOMMENDATIONS TO CONSUMERS

- Consumers should actively ask for responsibly produced electronics devices and encourage companies to further develop their responsibility systems.

Appendix 1. Questionnaire sent to the electronics companies

The following questions were sent to the companies included in this report.

Acknowledgement of responsibility and policy:

- 1) Has your company officially communicated its recognition of responsibility in relation to the mining of metals that are used in your products?
- 2) Has your company integrated the points of makeITfair's List of Principles and/or other issues around the sourcing of metals in your Code of Conduct or other important policy documents? If yes, will you please send them to makeITfair?
- 3) Has your company adopted any specific policy regarding metals sourced from conflict areas such as eastern Democratic Republic of the Congo? If yes, please provide us with a copy of this policy, as well as information about how it is being implemented.
- 4) Has your company adopted a policy to stop sourcing metals (either by your company or your suppliers) from conflict areas? If yes, please provide us with information about how it is being implemented. Has your company developed any audit mechanism to check this?
- 5) Has your company taken the effects of the de-facto embargo on eastern DR Congo minerals into account in its operations? If yes, please provide us with further information on the actions you have, or will be taking.

Concrete actions:

- 6) Is your company participating in the activities around the mining of metals that are being set up and executed by the Electronic Industry Citizenship Coalition, or EICC, and the Global eSustainability Initiative, or the GeSI smelter validation project? If yes, please provide us with information on the activities your company has participated/is participating in.
- 7) Is your company participating in ITRI's iTSCi joint industry programme of traceability and due diligence designed to address concerns over 'conflict minerals' and/or other traceability measures/projects?
- 8) Has your company been involved in/developed any other activities on tracing minerals that are used in their supply chain?
- 9) Has your company applied the OECD due diligence guidance over the mineral supply chains? If yes, please provide us with information about how it is being implemented.
- 10) How has your company complied/is going to comply with the US government requirements as set forth in the Dodd Frank Wall Street Reform and Consumer Protection Act to increase due diligence over the supply chain?
- 11) Has your company been involved in any activity or program related to the sourcing of metals besides conflict minerals? Can you describe, send documents?
- 12) Please describe your company's plans and activities for 2012 relating to the mining and sourcing of metals?
- 13) Any other relevant information/comments would be appreciated.

Appendix 2. List of companies included in the survey

The survey was sent to the following companies:

Motorola Inc.
Pentax Ricoh Imaging Co. Ltd.
Apple Inc.
Cisco Systems Inc.
Lenovo
Dell Inc.
Jabil Circuit Inc.
Samsung Electronics Co. Ltd.
Intel Corp.
Analog Devices Inc.
Acer Inc.
Foxconn Technology Group
Royal Dutch Philips Electronics Inc.
IBM
Research in Motion, Ltd.
Canon Inc.
Hewlett Packard Corp.
Sony Corporation
JVC Kenwood Corp.
Vodafone Group Plc.
Olympus Corp.
Nokia Corp.
Sanyo Electric Co. Ltd
The Donaldson Company
Flextronics Manufacturing Ltd.
LG Electronics
KPN Group
Fujifilm Holdings Corp.
Sanyo Electric Co. Ltd.
Microsoft Inc.
TeliaSonera AB

The following companies provided answers to the survey:

Microsoft Inc.
Donaldson Company Inc.
Hewlett Packard Corp.
LG Electronics
Nikon Corp.
Nokia Corp.
KPN Group
Royal Philips Electronics
Research in Motion, Ltd.,
Samsung Electronics Co. Ltd.
Sony Corp.
TeliaSonera AB
Vodafone Group Plc.

The following companies decided not to participate in the survey:

Motorola Inc.
Pentax Ricoh Imaging Co. Ltd.
Apple Inc.
Cisco Systems Inc
Lenovo
Dell Inc.
Jabil Circuit Inc.
Intel Corp.
Analog Devices Inc.
Acer Inc.
Foxconn Technology Group
IBM
Canon Inc.
JVC Kenwood Corp.
Olympus Corp.
Flextronics Manufacturing Ltd.
Fujifilm Holdings Corp.
Sanyo Electric Co. Ltd.

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