Madini Project: Advocating for an improved enabling environment for the production, trade and export of OECD Due Diligence Guidance (DDG)-conformant minerals from eastern DRC

FOR THE ATTENTION OF:

Madini Project Consortium (International Alert, Eurac and International Peace Information Service, OGP and Justice Plus)

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Advocating for an improved enabling environment for the production, trade and export of OECD Due Diligence Guidance (DDG)-conformant minerals from eastern DRC.

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Contents

Acronyms

3Ts	Tin, tungsten and tantalum
AGR	African Gold Refinery
AML/CFT	Anti-Money Laundering/Combating the Financing of Terrorism
ASGM	Artisanal and small-scale gold mining
ASM	Artisanal and small-scale mining
BGR	German Federal Institute for Geosciences and Natural Resources
BSP	Better Sourcing Program
CAHRAs	Conflict-Affected and High-Risk Areas
CoC (System)	Chain of Custody (System)
CLS / CPS	Comité Local de Suivi / Comité Provincial de Suivi
CTC	Certified Trading Chains
CTCPM	Cellule Technique de Coordination et de Planification Minière
DMCC	Dubai Multi Commodities Centre
EC	European Commission
EDRC	Eastern Democratic Republic of Congo
EPRM	European Partnership for Responsible Minerals
EU	European Union
FARDC	Armed Forces of the Democratic Republic of the Congo
GDL	Good Delivery List (LBMA)
GDRC	Government of DRC
GLR	Great Lakes Region
ICGLR	International Conference on the Great Lakes Region
KYC	Know Your Customer / Client
LSM	Large-scale mining
OEC	The Observatory of Economic Complexity
OECD DDG	OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas
RCM	Regional Certification Mechanism
RJC CoP	Responsible Jewellry Council Code of Practices
RMAP	Responsible Minerals Assurance Process
RMI	Responsible Minerals Initiative
SAESSCAM, now SAEMAPE	Service d'Assistance et d'Encadrement du Small Scale Mining (SAESSCAM), now SAEMAPE
SMB	Société Minière de Bisunzu
SMSV	Sustainable Mine Site Validation project
TPAs	Third Party Audits (ICGLR)
UAE	United Arab Emirates
ZEAs	Zone d'exploitation artisanale (Artisanal mining zones)

Introduction

This report was produced by Levin Sources on the basis of a review of relevant secondary literature and interviews with key stakeholders. The purpose of the report is to (1) summarise the current situation and recent trends in relation to the production, trade and export of tin, tantalum, tungsten (3Ts) and gold from eastern DRC (EDRC), (2) identify the continued constraints and barriers faced by upstream supply chain actors to meet international normative and legal requirements relating to responsible sourcing and the impact that this is having on achieving stable access international markets, and (3) provide concrete recommendations to the Madini project as to (i) what strategies it can employ to overcome these barriers, thereby facilitating responsible supply chains that in turn contribute to increased peace, security and stability at the local level and (ii) formulate recommendations for a wider project advocacy strategy implicating key stakeholders to improve the enabling environment to contribute to this objective.

Summary of the evolution of the production, trade and export of 3Ts and gold originating from artisanal and small-scale mining (ASM) in eastern DRC (EDRC).

This section gives an overview of how production, trade and export of artisanally-produced 3Ts and gold from the DRC have evolved over the last decade. It is not an exhaustive account of the evolution of the sector; rather, its intention is to provide a background within which to situate the barriers to responsible ASM supply chains and entry-points for the Madini project as described in Section 2. More detailed information on each of the topics described below can be found by selected reading of resources contained in the bibliography.

Overview of the evolution of responsible minerals in EDRC (and relevant international developments)

The link between the exploitation of natural resources and protracted conflict in DRC, particularly eastern DRC, has long been of international concern. Starting in the early 21st century, the UN Security Council passed a number of resolutions on the topic of the illegal exploitation of natural resources in the DRC, as well as the involvement of MONUSCO in several attempted operations supporting the Armed Forces of the Democratic Republic of the Congo (FARDC) to dislodge non-state armed groups (largely unsuccessfully) from mining areas (International Crisis Group 2011). In the context of mounting pressure on companies to avoid sourcing practices that risked financing armed groups in DRC, the passing of the US Dodd-Frank Act in 2010 marked a shift towards mandatory due diligence policy, of which Section 1502 required US companies to identify and disclose whether 3Ts and gold in their supply chains originated from the DRC or neighbouring countries and report on steps taken to address any risks that were identified. Shortly afterwards, on September 11, 2010, President Kabila announced a governmental ban on artisanal mining in three provinces in eastern DRC, supposedly to address the issue of conflict minerals and bring the sector under control[1] (Stoop, Verpoorten, and van der Windt 2018). These events resulted in a temporary *de facto* embargo on the trade of 3Ts from the DRC caused by the decision of many companies to disengage from sourcing from the Great Lakes Region (GLR) altogether (Stoop, Verpoorten, and van der Windt 2018). Gold – which is much more easily smuggled – was not affected in the same way. Both official exports and 3Ts production declined rapidly in the period 2010-2012, with remaining production bought at significant discounts by those, such as Chinese operators, who were not directly impacted by the Dodd-Frank legislation (Stoop, Verpoorten, and van der Windt 2018).

At around the same time, the beginnings of regional regulations aimed at curbing the illicit trade of natural resources were being put in place. In December 2010, the member states of the International Conference on the Great Lakes Region (ICGLR) signed the Lusaka Declaration of their Special Summit to Fight Illegal Exploitation of Natural Resources in the Great Lakes Region, of which the main pillar was the Regional Certification Mechanism (RCM), which was established in 2011 (Wakenge, Dijkzeul, and Vlassenroot 2018). The RCM was closely aligned with international normative developments in relation to responsible sourcing, as outlined in v1.0 of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (OECD DDG) which was published in

[1] Some scholars have argued that the GDRC used the opportunity to facilitate the consolidation of control of the mining sector by industrial mining actors, as opposed to the 'disorganised' ASM sector, from which elite capture is more difficult, e.g. Geenen 2012

the same year, although with additional state and regional safeguards built in. As we will see in the barriers section it is these non-industry requirements of the RCM that have undermined widespread and successful implementation as a result of weak enforcement capacity.

The period since Dodd-Frank has seen an expansion in the development of supply chain initiatives aiming to facilitate the responsible trade of minerals from the DRC. In 2009, the International Tin Association working group was established, out of which grew ITSCI, which remains the most important upstream due diligence and traceability mechanism for 3Ts in the DRC today. During the same period, the German Federal Institute for Geosciences and Natural Resources (BGR) began the development of the Certified Trading Chains (CTC) certification scheme for responsible ASM in the DRC, although coverage of this program has been limited to higher performing small-scale mine sites. In the 3Ts sector, supply chain initiatives have seen growing success. ITSCI now operates at scale in DRC, covering 95% of exports of artisanal 3Ts in the GLR across approximately 2500 validated sites[2]. More recently the Better Sourcing Program (BSP) has also provided some competition in the 3Ts sector but does not yet operate at the same scale. Whilst some challenges remain, ITSCI and BSP systems have been recognised as conformant with international best practice. ITSCI has been assessed as 100% aligned with the five-step due diligence recommendations of the OECD's internationally accepted guidance – the leading global standard for responsible mineral sourcing – for good company management, risk assessment and mitigation, auditing and public reporting in responsible minerals supply chains, and BSP recognised by the RMI as conformant with the requirements of the its RMAP smelter audit program (BSP n.d.; ITSCI n.d.).

Recent years have marked the beginning of a trend towards mandatory due diligence legislation at the international level. January 2021 saw the entry into force of the European Union (EU) regulation 2017/821 laying down supply chain due diligence obligations for Union importers of 3Ts, their ores, and gold originating from conflict-affected and high-risk areas (CAHRAs) throughout the world, which requires said entities to conduct due diligence on their supply chains in line with the requirements of the OECD Due Diligence Guidance (OECD DDG). Other laws introducing mandatory due diligence for companies have been initatied, drafted or debated in at least 15 other European jurisdictions (see e.g. Business and Human Rights Resource Centre 2020, 2021; Ropes & Gray n.d.). In supply chain initiatives, trends point towards a growing consensus as to the limitations of a compliance-only approach, which has resulted in high-levels of disengagement with or boycotting of CAHRAs, resulting in loss of livelihoods and pushing small-scale actors into the informal sector. Against this backdrop, a growing number of initiatives (e.g. the CRAFT code, a tool to facilitate due diligence in ASM supply chains) have emerged that are aimed at lowering barriers to market entry, especially for small-scale producers, promoting instead engagement, continuous improvement and accompanying supporting measures and capacity-building of suppliers. This approach is strongly supported by the OECD and is necessary in the context of DRC to build sustainable, responsible supply chains.

The 3Ts: trends towards responsible production and trade in eastern DRC (EDRC)

Until recently, 3Ts production in the DRC was dominated by artisanal and small-scale production. In 2017, the artisanal production of cassiterite (tin ore) was estimated at 19 tonnes, employing nearly 100,000 people in EDRC (Gerig et al. 2020; IPIS 2020). However, in 2019 Alphamin Bisie Mining came on-line as an industrial large-scale miner in North Kivu and exported 11,000 tonnes in 2020 while projecting exports of 13,000 tonnes for 2021[3]. Coltan is produced by an estimated 25,000 in eastern DRC, which produced (according to official data) 2,174 tonnes in 2017 (Cellule Technique de Coordination et de Planification Minière (CTCPM) 2017; IPIS 2020). The tungsten sector is thought to employ nearly 8,000 miners and officially produced 251 tonnes in 2017 (Cellule Technique de Coordination et de Planification Minière (CTCPM) 2017; IPIS 2020). From the DRC, 3Ts are exported to smelters and refiners around the world. The vast majority of official exports of tin ores, valued at $30 million USD for 2019, go to Malaysia (OEC - The Observatory of Economic Complexity n.d. (Comtrade)) and Thailand. China dominates the official exports of tungsten ores and tantalum[4] ores,

[2] Interviews with ITSCI representatives, March 2021

[3] https://alphaminresources.com/2021/03/05/alphamin-announces-q4-2020-results-achieves-record-fourth-quarter-ebitda-and-production/

[4] Grouped with niobium, vanadium and zirconium ores, at a 2019 export value of $31 million USD.

importing over half of the DRC's production of these commodities (OEC - The Observatory of Economic Complexity n.d. (Comtrade)).

Before the passing of the Dodd-Frank Act in 2010 and the implementation of supply chain initiatives in the sector, tin was thought to be the biggest contributor, in terms of value, to conflict-financing in the DRC, contributing as much as $115 million USD to armed groups in 2008 (The Enough Project 2008). At the time, the DRC was the world's 6th largest producer of tin, producing an estimated 24,000 metric tonnes, or 6-8% of global production (The Enough Project 2009). Congolese coltan (often also described as tantalum) did not contribute as much to armed groups in terms of value (an estimated $12 million USD in 2008), but was of greater criticality to world production volumes, thought to occupy around 15-20% of the global market share (The Enough Project 2008, 2009). Tungsten production stood at 1,300 metric tonnes in 2008, contributing an estimated $7.4 million USD to armed actors in DRC (The Enough Project 2008).

Today, the situation is markedly different. Of 831 3Ts sites visited by IPIS researchers between 2015 and 2020, 659 (79%) – constituting over 53,000 miners – had no armed actors present (IPIS 2020). ITSCI monitors over 1,800 pits across eastern DRC, constituting a labour force of over 38,000 miners (ITSCI n.d.). Of 127 evaluated and approved full members (upstream companies), approximately 36 are located in DRC (ITSCI n.d., n.d.). ITSCI reports that they cover approximately 95% of 3Ts ASM exports originating from the GLR, a significant success in the context of previously high levels of conflict financing in the 3Ts sector. Moreover, discrepancies that existed in trade data for global import and regional export figures for both tantalum and tin before the passing of the Dodd-Frank Act have been replaced by more consistent data since this time, correlating with the growth of due diligence efforts in the sector. The same period has seen an improved market share of the DRC as the reported country of mineral origin for tantalum imports, suggesting that a greater proportion of tantalum ore that may previously have been smuggled from Rwanda is now being declared, correctly, as Congolese (Schütte 2019).

Nevertheless, challenges remain. Firstly, the interference of armed actors in 3Ts supply chains (beyond mine sites themselves), though reduced, has not been eliminated and remains important in many areas where due diligence programmes are in place (IPIS and Ulula 2019). Whilst the interference of armed actors at mine sites, especially 3Ts sites that are engaged in a due diligence initiative, in the DRC has decreased, it is unclear whether the interference of armed actors all the way along 3Ts supply chains has decreased to the same extent. Roadblocks remain a critical source of taxation of natural resources by both state and non-state armed actors and a significant source of revenues for these groups (IPIS 2017). The blurred lines between formal and informal taxation by state actors make the levels of illegal taxation difficult to quantify. In many cases, informal taxation is put in place by unpaid, underpaid or opportunistic state actors who set up legitimate agreements with local communities and cooperatives in return for protection (IPIS 2017). This indicates a trend away from fully illicit taxation of 3Ts by non-state armed groups and towards a greyer area of parafiscality, where the 'right' people (i.e. state agents) are collecting the 'wrong' (or too many) taxes both on, but particularly *around,* artisanal mining areas (Vogel, Musamba, and Radley 2018).

Secondly, leakages and smuggling still exist in 3Ts supply chains. The contamination of ITSCI supply chains have been reported in UN Group of Experts reports, despite the extensive systems of controls ITSCI has in place to address these risks. These include the misuse of ITSCI tags by state agents to tag minerals from unknown origins, including after receiving bribes (resulting in a shortage of ITSCI tags for validated minerals); and the transport of minerals from unvalidated ASM sites to other concessions, or vice-versa, depending on best prices offered by buyers (Zounmenou et al. 2020). A further challenge is the smuggling of 3Ts from industrial concessions. Société Minière de Bisunzu (SMB) told the UN Group of Experts, for example, that it lost 50 tonnes of coltan per month in 2019 due to smuggling from its concession (Zounmenou et al. 2020).

Other research has identified what is labelled as 'crime displacement' in the DRC ASM sector (Stoop, Verpoorten, and van der Windt 2018), reflecting trends in the movement of illicit activity away from 3Ts sites and either to surrounding areas (e.g. looting of civilians), to other non-mineral supply chains or, to a larger extent, to the mostly unregulated gold sector. This displacement towards the gold sector has been true not only of armed groups, but also of artisanal miners (Stoop, Verpoorten, and van der Windt 2018; Vogel, Musamba, and Radley 2018). This is thought to be a result not only of due diligence legislation and supply chain initiatives, but also the cumulative effects of the presidential ban on ASM in 2010-2011, as well as declines in international 3Ts prices (Vogel, Musamba, and Radley 2018). Similarly, the period after Dodd-Frank saw the shifting of power in many mine sites away from local elites, linked to non-state armed actors, and towards national elites, often with links to powerful state agencies (Geenen 2012).

Another challenge, related to the decline in production of ASM 3Ts over the past decade, is that of socioeconomic impact on local communities. Whilst ASM remains a lucrative livelihood compared to other income-earning activities – a recent study estimated that 3Ts miners earn around USD 2.7 and USD 3.3 per day in eastern DRC whereas 76% of the population lived with less than USD 1.9 a day in 2012 (De Brier et al. 2020) – other research has shown that on-site prices in the ASM 3Ts sector have declined, resulting in reduction of incomes for 3Ts miners (Vogel, Musamba, and Radley 2018). This collapse in prices has been attributed to a number of factors, including i) a collapse in global tin prices (down from over $30,000USD/tonne in 2011 to less than half of that in 2020[5]), ii) reportedly high fees passed down to Congolese exporters when compared to their neighbours in Rwanda for participation in the ITSCI system, and iii) a de facto monopsony structure created by the ITSCI system, where there is often only one validated buyer for each locality, which results in reduced competition and lower prices (Vogel, Musamba, and Radley 2018).

ASM gold production and trade from DRC

The ASM gold (ASGM) sector has made considerably less progress than the 3Ts sector in terms of improvements in supply chain integrity. Artisanally-produced gold in eastern DRC likely remains the mineral that is most used to finance armed groups and illicit networks in the region, and most observers confirm more ASM miners have migrated from the 3Ts (for reasons noted above) to ASM gold. Armed interference remains high, formal and informal tax requirements are onerous and fragmented, and this discourages legal production, encourages corruption and enables smuggling.

Nevertheless, the ASGM sector remains of significant socioeconomic importance in EDRC. Of a total ASM workforce of up to two million people in the DRC (Geenen, Stoop, and Verpoorten 2021), IPIS data collected mainly in eastern DRC mapped at least 1,894 gold mining sites, employing an estimated 286,629 workers (IPIS 2020). Economic uncertainty caused by the COVID-19 pandemic has led to record highs in gold prices, which surpassed $2,000/oz in 2020. Whilst the pandemic initially led to significant decreases in site-level prices paid to ASMs due to supply chain disruptions, this proved temporary, with site-level prices largely returning to equal or higher than they were before COVID. As in the post-2008 financial crisis period, higher gold prices drove an uptick in ASM population and production. We have seen a growth in ASM populations in Africa for example from two million in 1999 across 24 countries to 10 million+ today across 40 countries, driven not exclusively but to a large extent by ASM gold mining. Noting the global economic outlook, the important role gold plays as a "safe haven" for investors, and underlying drivers such as rural poverty in ASM host nations resulting from COVID, the importance of ASM gold is likely to grow. It should therefore play a central role in the strategy of the Madini project.

The ASGM sector in eastern DRC is highly informal. The vast amount of artisanal production takes place at unregistered and non-validated sites. This is largely due to weak GDRC capacity and the slow progress of mine site validations under the RCM. As of 2019, only 122 ASGM sites out of a total of 2,673 had been inspected by mine site validation teams (IMPACT 2020), and it is unlikely that any of these are being inspected on a 6-monthly basis as per DRC law. High levels of corruption exist in the sector, with many influential individuals benefitting. Lack of capacity to regularly pay state agents in charge of monitoring sites, or state armed actors, is also a factor in the high levels of informal taxation that occur, in many cases bolstering the illicit trade. One report found that FARDC agents in Ituri were involved in facilitating, for a fee, the transport of gold from ASM sites to be smuggled across the border to Uganda (internal Madini report 2020).

The ASM sector is also characterised by informal trade and export. While Barrick Gold's Kibali mine alone exported roughly 23.4 tonnes in 2020 through formal, legal and conflict-free procedures consistent with the RCM, yearly ASM

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[5] N.B. that the past year has seen a huge surge in global tin prices, which have experienced a nine-year high in 2021 due to a increased demand for electronics in the work-from-home era coupled with a hit to production due to mine output and supply chain disruptions (Bloomberg 2021).

production of gold is estimated to be 15-22 tonnes (Neumann et al. 2019). In 2013, up to 98% of ASM gold produced in eastern DRC is estimated to have left the country undeclared, a figure which is unlikely to have changed significantly since (Nelson Alusala et al. 2014, para 171). Official ASGM exports remain negligible, averaging at around 200kg per year (in 2018 they were as low as 56kg) (IMPACT 2020). Thus, the informal trade of gold results in a significant loss of earnings for the DRC authorities. In 2018, assuming a conservative estimate of 15 tonnes of artisanal gold production, the DRC government would have missed out on $10.82 million dollars in export tax alone.

Of the artisanal gold that leaves the DRC undeclared, it is thought that the vast majority is smuggled across the border to neighbouring countries such as Uganda, Rwanda, Burundi and Tanzania, and onto major international gold trading hubs, in particular the United Arab Emirates (UAE). This trade takes place through a complex web of relationships among actors in the DRC and in the wider region. One widely cited example is that of Uganda – a country with minimal gold deposits, Uganda refines and exports over a billion dollars' worth of gold through its relatively new African Gold Refinery (AGR). Since the refinery was founded in 2016 by the Belgian national Alain Goetz, official Ugandan gold exports have soared from under $17 million annually before 2014 to $1.65 billion in 2018 (Democratic Republic of the Congo (COD) Exports, Imports, and Trade Partners | OEC - The Observatory of Economic Complexity n.d.; Lewis and Hobson 2020). The Ugandan central bank estimates that as much as 90% of Ugandan gold exports come from neighbouring DRC (The Economist 2019). Research tells similar stories for gold exported from Burundi, Kenya and Tanzania, much of which is also believed to be of Congolese origin (Martin and Taylor 2014). Growth in Rwandan gold exports in recent years – and the discrepancy between these and Rwanda's estimated gold production capacity – also points towards the country's positioning as a key transit hub for Congolese minerals. Official gold exports – although difficult to verify due to opaque reporting – have reportedly grown more than tenfold since 2014, despite no significant changes in Rwandan gold production (IMPACT 2020). The establishment of the country's first gold refinery in 2019 reflects the government's push to capitalise on the opportunities offered by the gold trade and to promote the mining sector as a key engine for growth (Bizimungu 2019; IMPACT 2020).

One important characteristic of artisanal gold production in the DRC (which the 3Ts sector does not share) is the vertical integration of gold supply chains. A growing body of research has shown that gold supply chains are essentially controlled by a limited number of powerful actors from mine site (or at least local trading hub level) all the way to its sale at international trading hubs. The pre-financing provided to supply chain actors in DRC and elsewhere in the region by these influential individuals effectively controls the route taken by the gold out of the country. These informal actors, who do not account for the payment of formal taxes in their business models and who often target the sector for its vulnerabilities to money laundering, are able to pay very high prices for artisanal gold in eastern DRC – in some areas as much as 98% of the LBMA international spot price (IMPACT 2020). This is extraordinarily high for the region, where gold prices offered at ASM sites tend to be ~80-85% of the international spot price[6]. Formal actors, on the other hand, are subject to the DRC's onerous tax regime. When the Just Gold project exported 238g of gold from their project sites in 2017, it was subject to 26 separate taxes and fees at point of export, amounting to 15% of the shipment's value. This did not include taxes and fees that were paid before this point. The situation is exacerbated when informal taxes and fees are taken into account. A civil society study in 2017 in Ituri found that there were 46 different taxes to which gold supply chain actors were subject, both formal and informal ((CdC/RN) 2017). In addition to these socio-economic considerations, gold has inherent characteristics that attract illicit operators and make it easy to move across borders without detection.[7]

[6] Based on anecdotal information provided by ASM gold experts in Uganda and Kenya.

[7] For example: (1) the physical properties of gold make it a lucrative and easily smuggled commodity. At over $1,700 USD/oz, its high value to volume ratio means that small but lucrative quantities can easily be transported by individuals along the supply chain. Compared to the ores of tin, tungsten or tantalum, which are normally transported by the tonne, gold is an easy option for illicit trade. (2) the fungibility of gold means that it is universally accepted as a form of currency in transactions, which leave no paper trail. At the local level, gold is often used as currency at mine sites and in local trading hubs by mine site actors, rapidly fragmenting the supply from a particular site and rendering traceability almost impossible. Elsewhere in the DRC, gold is reportedly used to buy large amounts of manufactured goods such as clothing and electronics at discounted prices, for resale (in return for more gold) in mining areas (Interview with Congolese ASM sector expert, February 2021). This allows actors to trade in goods almost completely off-grid, avoiding the scrutiny of the banking system and the insecurity of working in large amounts of cash. International trade has been known to operate in the same way. The use of gold to serve an attendant economic activity, such as the trade of other goods, means that large traders are able to bypass the international banking system completely and therefore avoid taxes. These gains in the informal trade of gold trickle down to mine site

It is easy to see, therefore, that informal (and often illicit) actors have a commercial advantage. Within this context, economic incentives in favour of formal gold trade from the DRC are absent for both miners and traders. Vertical integration of supply chains further means that what happens in international gold trading hubs – in particular the UAE – has a significant impact on supply chain integrity in the DRC.

Over the past two decades, the UAE has emerged as one of the most important global gold trading hubs – in 2018 it was the world's 4th largest importer of gold, importing over 900 tonnes of gold at a value of over $27 billion USD (Blore and Hunter 2020). It is also a significant player in the African-produced gold supply chain. Official gold exports show the UAE is the destination market for a significant proportion of (predominantly ASM[8]) gold exports from eastern, southern (exc. South Africa) and central Africa (see Table 1). Research conducted on informal and illicit gold supply chains in the region suggests that the value of gold flowing from the region to the UAE may in fact be far higher, a large proportion of which is likely to originate from ASM[9].

Table 1: Official gold exports (total) to the UAE. Source: Observatory of Economic Complexity (Data Source: Comtrade)[1]

Exporting Country	Official gold exports 2018 (USD)	% reported *direct* gold exports to UAE	Other important destinations
Uganda	$1.65 billion	99.8%	
Sudan	$1 billion	99%	
Tanzania	$892 million	23% (41% inc Uganda)	30% to India 27% to Switzerland 18% to Uganda (likely UAE)
Rwanda	$637 million	100%	
Burundi	$113 million	96%	
Kenya	$78 million	15.5% (81% inc Uganda)	65.6% to Uganda (and likely on UAE) 10% to Switzerland 8% to South Africa
Zambia	$77 million	75%	25% to South Africa
DRC	$76.4 million	11.1%	52.8% to China
South Sudan	$12.4 million	100%	
CAR	$1.6 million	56.2%	36% to South Korea 8% Switzerland

Despite official export figures showing that the DRC is the country in the region that reports the least of its gold going to the UAE (Table 1), research shows that a substantial portion of the artisanally-produced gold smuggled out of DRC is likely to end up in the UAE (see e.g. Lewis and Hobson 2020; Martin and Taylor 2014; The Sentry 2018). Further research shows that a large proportion of the gold that makes its way to the UAE is smuggled. Discrepancies between gold declared exported to UAE from Uganda, for example, and gold declared imported to UAE suggest significant amounts of smuggling between the two countries (Martin and Taylor 2014).

Even when gold enters the UAE legally, research and advocacy work have made repeated claims that UAE importers do not carry out adequate due diligence on the gold they import (Martin and Helbig De Balzac 2017; Martin and Taylor 2014). Hand carried gold – the primary method that illicit/informal gold enters the UAE – is exempt from customs declarations on the origin of the gold (Blore and Hunter 2020; Martin and Helbig De Balzac 2017). From here, imported gold is easily absorbed into the country's gold souk, whose traders do not in practice require declaration of origin of the gold (Blore 2015). From the souk, gold becomes near impossible to trace, often ending up in the hands of the country's gold refineries (Blore and Hunter 2020). Dubai's numerous refiners face, in theory, more stringent responsible sourcing requirements than traders in the souk. Many Dubai refiners are listed – or self-certify – as 'Good Delivery Gold' refiners by the Dubai Multi

level – informal actors are able to buy gold at high prices – in some cases at a loss – thus undercutting legitimate actors who are subject to the costs of formal trade and export (Lewis and Hobson 2020).

[8] As Blore and Hunter note in their 2020 article "Dubai's Problematic Gold Trade", unlike most traditional gold trading hubs that source predominantly from large-scale mines from a small number of geographies, the refineries in the UAE have built their sourcing model around predominantly ASM sources from over 100 countries. This has allowed it to become one of the top four contemporary gold trading hubs, in comparison to not even featuring amongst the top 100 in 1996. Hence, whilst the Comtrade data does not differentiate between ASM and LSM official exports to the UAE, we can assume the primary origin of the gold is from ASM. This is further reinforced that many of the major export countries in the list in table one have significant domestic industrial production (with the exception of DRC, Tanzania and Rwanda).

[9] Industrial mining firms told Reuters in 2019 that they do not send their gold to be refined in the UAE, leaving the majority of the UAE's imports from Africa unaccounted for in industrial production (Lewis, McNeill, and Shabalala 2019).

Commodities Centre (DMCC). As part of the certification, they are required to implement the OECD Due Diligence Guidance (DMCC 2020). In reality, Dubai's gold trade has been plagued with a variety of damaging allegations, from the aforementioned failure to detect ASM gold sold as scrap to direct links with Sudanese 'conflict gold'[10] and ASM gold from other conflict-affected areas such as Mali, Burkina Faso and Niger with links to groups associated with Al Qaeda and the Islamic State (Blore and Hunter 2020; Global Witness 2020; Martin and Helbig De Balzac 2017).

One key area of risk relates to the mislabelling of ASM gold bought by UAE refiners as scrap. Although due diligence requirements require refineries to ask for proof of origin of the gold they buy, gold traders in the souk reported to labelling ASM provenance gold as scrap when selling to refiners in quantities small enough (5-10kg) that they are unlikely to be questioned (Blore 2015). This presents a significant point of risk to the integrity of gold supply chains worldwide. According to current LBMA Responsible Gold Guidance, the origin of recycled gold is considered to be the point in the gold supply chain where the gold is delivered to the refiner. Given that over 386 tonnes of recycled gold from the Middle East were refined by LBMA refiners in 2018 (LBMA 2020), it is highly probable that a proportion of this was in fact informally produced ASM gold originating from sub-Saharan Africa, and indeed the DRC.

The UAE's systemic failure to impose adequate due diligence checks and lack of regulatory control has important implications for the global gold sector, posing a significant risk that gold that leaves the DRC informally finds its way back into legitimate international gold markets. It also brings into question the integrity and breadth of enforcement of the UAE's responsible sourcing requirements, casting doubt onto the viability of their engagement with responsible sourcing more generally. However, recent developments within the Dubai Multi Commodities Centre (DMCC) may be cause for hope. A recent DMCC-led industry roundtable, which included the participation of more than fifty government and private sector stakeholders, discussed the tightening and improvement of regulations for hand-carried gold by air into the UAE (DMCC 2021). Whilst a proposal was made to ban hand-carried gold by air altogether, stakeholders agreed that closer monitoring and tighter regulations could greatly reduce the ease with which informal gold can be smuggled into the country unnoticed.

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In summary, therefore, the evolution of the production and trade of 3Ts and gold in DRC presents a mixed picture in terms of achieving supply chain integrity. Whilst the 3Ts sector has seen important successes, particularly with regards to formality and direct financing of armed groups, challenges remain both in terms of the 'displacement' of some of the main issues to the gold sector, and the entrenched nature of illicit groups and actors in the gold trade within DRC and beyond. The following section explores how some of these challenges can be addressed in the context of the Madini project.

Addressing barriers to OECD-conformant supply chains: entry-points for the Madini project

In this section we explore some of the main barriers that disincentivise or impede upstream supply chain actors from (benefitting from) access to responsible international markets, which in turn has resulted in disengagement by mid-stream and downstream actors, especially in the gold sector. We focus, in particular, on the challenges and barriers of governance relevant to the Madini project; the issues explored in this section are therefore a precursor to the solutions proposed, which are summarised in the recommendations section below. Entry-points to address these barriers will inform Madini's implementation strategy and advocacy and outreach plan.

1. **Sub-optimal national enabling environment for the production, trade and export of OECD-conformant minerals from DRC**

[10] Between 2012 and 2019, Kaloti has repeatedly acquired large amounts of gold from the Central Bank of Sudan, which has bought gold from the Jebel Amer mines in Darfur, controlled by violent militias responsible for grave human rights abuses during the long-running civil conflict in the region. Listed on the DMCC Good Delivery List in 2010, the refinery was delisted in 2015. It does, however, appear to have continued supplying gold to some European refiners, including Valcambi, according to a recent Global Witness report.

a) Policy inconsistency is unfavourable to development of responsible ASM businesses

A stable policy framework is necessary for the flourishing of enterprise. This is as true for ASM as any other business activity. Unfortunately, the policy approach of the GDRC towards the ASM sector has been both inconsistent and inconsistently applied over the last decade or more. This has undermined the growth of formal and accountable ASM operations, which are a pre-condition to meeting international requirements on responsible mineral sourcing.

The presidential ban on ASM in 2010, in the wake of the passing of the Dodd-Frank Act, is an example of this. Whilst it served to immediately criminalise ASM activity in DRC, it did little to impact its overall occurrence – the activity of course remained a vital livelihood source for many who largely continued in spite of the proclamation. Noting underlying drivers, black and white policy approaches to the ASM sector have said to only drive the sector further underground (Hruschka, 2015). The failings of this policy to achieve intended outcomes were clear; as such the decision was repealed a year later in 2011.

In the following years, a more hospitable policy towards ASM was adopted by GDRC. This coincided with the roll-out of industry initiatives such as ITSCI and the establishment of the RCM at the regional-level and its domestication in DRC law (2012). Nevertheless, only very partial implementation of the RCM and concerns of mismanagement, corruption, under/non-payment of officials and underperformance within the Service d'Assistance et d'Encadrement du Small Scale Mining (SAESSCAM, now SAEMAPE) typifies the management of the ASM sector over the next decade (Ministry of Mines PWC Audit SAESSCAM, 2013).

Despite the development of an ASM Strategy (2015-17) and a national action plan for SAEMAPE over the same period, much of the ASM sector remains under-supported and threatened by an uncertain policy environment. A good example of this in practice is the government policy to designate artisanal mining zones (ZEAs) to ASM operations, as dormant industrial miningare reverted to the Mining Cadastre (CAMI) and subject to applications endorsed by provincial Governors. To date only a small proportion of ASM sites are located in ZEAs (IPIS 2020). In addition, the government has shown preference for large-scale mining (LSM) license applications, even where ASM operations at sites have previously benefited from *de facto* government support. This can undermine long-term business planning required for implementing responsible mining activities. A recent decision by the government to suspend ASM activity at Luhihi, South Kivu (Cabinet du Gouverneur - Province de Sud Kivu 2021) following a parallel industrial exploration licence by a company backed by international investors demonstrates the precarity in which ASMs operate. At this same site, efforts were underway, with USAID support, to improve beneficiation of miners from the activity and establish commercially viable responsible supply chains. Such events demonstrate the limited incentives for longer-term planning or continuous improvement of operations. Rather a "get rich quick" attitude is pervasive within the sector, favouring the status quo, which includes continued direct and indirect sectoral linkages to conflict financing, as has been widely documented in UN Group of Experts reports[11].

It should be noted that the presence and effective roll-out of industry due diligence and traceability programs such as ITSCI and more recently BSP in the ASM 3Ts sector has largely attenuated the challenges described in the proceeding paragraphs. Wide sectoral coverage in the ASM 3Ts space has offered many – *but far from all* – operations a route to market.

Despite these industry successes that helped DRC avoid the worst fears of a *de facto* embargo in the years after 2010, DRC policy inconsistency on ASM continues to undermine long-term investments in improved business performance. Where industry programs have not filled the governance gap, there remains a gulf between mid- and downstream expectations relating to responsible sourcing – now reinforced with mandatory regulations in the EU – and upstream performance in DRC.

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[11] See multiple reports of UNGoE from the beginning of their mandate in 2004 to present. Accessible at: https://www.un.org/securitycouncil/sanctions/1533/panel-of-experts/expert-reports

The barrier this creates is significant – and it cannot be resolved by one program alone. However, it does provide an entry point for the Madini project. As a counterweight for a weak / non-existent enabling environment, Madini should advocate for a well-articulated and clearly implemented upstream supply chain approach, which can bring miners and supply chain actors the certainty required to pursue long-term improvements to their performance in return for improved and more predictable market access. This proposed approach is articulated in more detail in the recommendations section (especially recommendation 1 on the domestication of the revised RCM) and in the accompanying note on the implementation of the "Clean Mineral Supply Chain Project" outlined in Annex 1.

The recommendation is applicable to (1) sites and supply chains in the 3Ts sector that are not yet, or unlikely to be, covered by industry programs (as a result of security, economics, logistics etc,) and (2) all gold sites and supply chains within project scope, owning to the security challenges and limited coverage of industry programs in the gold sector.

b) Legal and regulatory discrepancies, compounded by weak implementation capacity

The legal basis in DRC for mandatory compliance with the OECD recommendations outlined in the OECD DDG is clearly outlined in a "Note Circulaire" n°002/CAB.MIN/MINES/01/2011 dated 6 September 2011. This is further reinforced by the Arrêté Ministériel N° 0057 CAB.MIN/MINES/01/2012 of 29 February 2012 requiring the implementation of the RCM, which (1) requires all supply chain actors to conduct due diligence to evaluate, assess and manage risks associated with human rights and conflict financing in their supply chains, and (2) outlines a system of state-led verification of sites and ICGLR managed Third Party Audits (TPAs) of exporters to reinforce these efforts. In addition to this, Congolese law incorporates various provisions relevant to the OECD DDGs, including on human rights and child labour, the interdiction of public and private security forces in the production and trade of minerals, and measures related to the false declaration of origin of minerals, money laundering and the payment of taxes (Bulongo 2020).

A decade on, this clearly articulated framework remains relevant and largely superior to that of other mineral producing countries in the region and globally. And yet, inconsistent and partial application as well as contradictory bodies of law depreciate its positive impact and undermines the business case for formal, responsible production – in much the same way as the incoherent policy approach detailed above. This further reinforces the need for a clear and consistent project approach that can build predictability for miners and supply chain actors – favouring long-term and progressive improvements to the performance of upstream supply chain actors, in line with international normative and legal requirements.

i. <u>Progress of implementation of RCM – audits / mine site validation</u>

The most startling disparity between legal and regulatory requirements is in the application of the RCM. The RCM v1.0 – still to date in force in DRC– requires mine site inspections in line with OECD Annex II risks on an annual basis. Where sites are not re-inspected and validated and exporters are not re-audited, they default to "Red Status" after a year . According to DRC law, which modified the RCM with the intent of being more rigorous, the frequency for reinspection of sites increases to 6-month cycles. A "Red Status", the law states, precludes mine operators selling minerals from these sites, whilst exporters are legally debarred from export. The problem is that such inspections / audits are costly and impossible to repeat at the stated frequency. In fact, despite there being an estimated 2,824 ASM 3Ts and gold sites in DRC (IPIS, 2020), only 529 mine sites have been inspected and validated (2012 – 2017). At the other end of the supply chain only 7 Third Party Audits (TPAs) have been carried out to date, none of which occured in the gold sector. Few sites and no exporters have been inspected / audited more than once. At present, despite USAID efforts to support mine site validation through the Sustainable Mine Site Validation (SMSV) project, no mine site validations have been signed off by the Ministry of Mines in the last six-months[12], and there have been no audits of DRC-based exporters during this time. *Ipso facto* there presently exists no *de jure* basis for the trade and export of 3Ts and gold from DRC.

[12] Interview with Pact, March 2021. It should be noted that SMSV has made some progress, including in the training of mine site insepctors and the qualification of over 200 sites in North and South Kivu. The lack of validation of mine sites is due to delays at the central level.

In spite of this, trade continues, due to due diligence programmes serving much – *but by no means all* – of the 3Ts sector. As for ASM gold, an estimated 98% leaves the country illegally, with the remaining 2% leaving via exporters whose primary trading activities are given a veneer of legitimacy through the establishment of legal entities (IMPACT 2020), presumably either without an ICGLR Certificate or with a certificate furnished not for the assurances it provides on responsible origin and trade but for the money transferred to the state agent responsible for their distribution.[13]

This is not the spirit in which the OECD DDGs are meant to be applied. They are supposed to promote engagement, reduce barriers to market entry and facilitate long-term commercial relationships that, where necessary, support the continuous improvement of upstream supply chain actors. The OECD DDGs clearly articulate that the responsibility for due diligence, which includes provenance tracking, rests with industry. Whilst the additional levels of state and inter-regional assurance outlined in the RCM are intended to (1) serve a valuable oversight role and (2) bring a certain national and regional legitimacy to industry application of the OECD DDGs in DRC, resource limitations and ineffective implementation have undermined its credibility.

At present, the RCM adds limited value to responsible sourcing efforts in DRC and in fact creates confusion and arbitrary barriers to legal export. Whilst upstream due diligence and traceability service providers report no obstacles to covering minerals from sites and exporters that have not yet been validated by the DRC government under the RCM, the entities on behalf of whom they are providing services, are operating in a sub-optimal legal enabling environment. The current enabling environment could theoretically provide fertile breeding ground for corruption, but perhaps more worryingly could altogether disrupt the export of ASM production to international markets in the event of an unforeseen policy shift, as has occurred previously under GDRC sectoral management. This is neither conducive to the interests of upstream supply chain actors nor the markets that they serve, the criticality of which, especially for tantalum, should not be downplayed. It further undermines the type of long-term industry engagement that the OECD DDGs encourage and demonstrates a long-term reputational risk as supply chain scrutiny will only increase over time.

To assist the 182 Madini sites in achievning legal, transparent and conflict-free export status, the Madini project has a critical role to play in improving this situation by advocating for a more sensible and pragmatic implementation of the RCM to be adopted in DRC, i.e. the RCM v2.0 (see further details of RCM in 2.2 below and in Annex 2). This ought to (1) provide an enabling environment in which a route to market for minerals originating from project sites can be developed (fundamental for and reinforcing of sustainable local peace building efforts) and (2) have longer term structural impact which brings greater clarity to legal requirements for those wanting to source minerals from the DRC responsibly.

ii. <u>Supplementary legal requirements incumbent upon ASM producers</u>

As described above, DRC law, with minor alterations, provides a route to market for minerals on the basis of due diligence and proof of origin requirements in accordance with processes and procedures in line with risks outlined in the OECD DDGs. Such requirements are mandatory not only in DRC, but increasingly in mineral importing countries and blocs, including the US and EU. The equivalency between national and international requirements – and minimum expectations of industry – in theory offers a set of commonly agreed rules on which all supply chain actors increasingly are in agreement.

Whilst there is a strong case to be made that the "responsible sourcing" of minerals requires additional performance indicators to be taken into account, such as environmental performance and contribution of operations to social development of communities, it is widely recognised that making these obligatory would likely preclude a significant proportion of ASM from international supply chains. Despite this, a second, parallel set of legal requirements are incumbent upon ASM operators in the DRC. These are outlined in various legal texts and regrouped in the requirements of the DRC-specific Certified Trading Chains (CTC) scheme. A non-exhaustive list of requirements includes: health and

[13] Anecdotal evidence on the sale of ICGLR certificates.

safety measures and management processes, evaluating and assessing environmental impacts and conducting post-mine restoration, and community consultation and investment in community development.

A quick glance at these requirements would lead to the conclusion that DRC-based artisanal mining operations are widely non-compliant. The same is true of a significant proportion of small-scale operations, hence the low number of CTC certified mines.

Whilst it would be advisable for the Madini project to be aware of these supplementary requirements and build them into the long-term capacity development plan as progressive improvement criteria, the project's primary focus should be on supporting the development of OECD DDG conformant mineral supply chains, in contrast to supporting the development of fully CTC compliant mining operations, which would be outside of the scope of a peace and security project.

This approach is further reinforced by advocacy efforts aiming at the domestication of the RCM v2.0. Whilst the RCM v1.0. included progress criteria against which operations were audited, the RCM v2.0, in equivalence with the EU regulations on supply chain due diligence, recognised the gap between implementation context and intent, thereby removing these supplementary requirements under the rubric of entry level market engagement.

iii. Under-developed system for verifying Chain of Custody (CoC) systems conformity with legal requirements.

Upstream due diligence and traceability providers – known in the RCM as Chain of Custody (CoC) Systems – are not evaluated against standardised criteria in DRC. Their operations – as well as the due diligence and proof of origin services they provide – are validated on the basis of individually negotiated Memoranda of Understanding with the GDRC, which are not publicly available. Whilst international standard setters such as the Responsible Minerals Initiative (RMI) have made up for this "accountability gap" by establishing their own process which evaluates and recognises what it terms as Responsible Minerals Assurance Process (RMAP) compatible "upstream assurance providers", it is not clear that the recognition / validation of such service providers should be left to industry alone.

A couple of points illustrate why this is the case:

- Only two upstream assurance providers (ITSCI and BSP) have been recognised by RMI to provide due diligence and traceability services in the Great Lakes Region (GLR). Whilst these providers cover a large volume of 3Ts exported from DRC – thereby providing an invaluable service to RMI membership – it is not clear that smaller, more supply chain specific chain of custody systems would be admissible under the program, or indeed have the resources to respond to the assessment requirements.
- Smaller, more supply chain specific chain of custody systems are likely to be closely geared around and tailored to the local and national context in which they operate, upon which the GDRC is perhaps better positioned to adjudicate.

Addressing this barrier requires establishing a state mandated competent authority[14] to evaluate and where appropriate licence chain of custody systems and supporting it to effectively and efficiently receive and review applications from CoC systems. This ought to provide improved conditions for more universal access to responsible markets for ASM operators that are not presently covered by the larger third-party providers. It would also encourage endogenous CoC solutions to gold due diligence and traceability, noting that international systems have until now struggled to provide commercially viable or scalable models. The role of the Madini project, which centres around advocacy, leveraging support from relevant stakeholders and capacity building of government and industry is further outlined in the recommendations section below.

[14] Note Arrete 121/ CAB.MIN/MINES/01/2020 of 6 March 2020 outlines the requirements for chain of custody systems to be licenced and audited by the Ministry of Mines, effectively establishing this process and the MoM as the competent authority.

2. **Weak and partial implementation of regional framework for supply chain due diligence**

As described in the previous sub-section, the implementation of the RCM since its establishment in 2011 has been inadequate in the DRC. The same is true at the regional level, although significant progress to embed the processes and procedures outlined therein into the inspection of ASM supply chains in Rwanda has yielded some fairly good results. Elsewhere, Burundi and Tanzania have domesticated the RCM, whilst Uganda and Zambia are working towards its domestication. Regionally, a total of 14 audits (7 DRC, 4 Rwanda, 3 Burundi) have been conducted – the latest of which have been self-financed by the exporters, demonstrating early signs of growing industry recognition of the RCM as a "passport to market". A further 6 audits have been requested by exporters and are currently being processed by the ICGLR Audit Committee.

This mixed picture should not disguise the challenges that the regional initiative faces if it is to be regarded by mid- and downstream actors as credible. It would therefore be easy to write off the initiative and focus attentions exclusively on industry initiatives and the upstream due diligence and traceability services they provide. However, to do so would restrict available routes to market. Whilst programmes such as ITSCI are now operating at scale in the 3Ts sector, with ITSCI for example reporting to cover 95% 3Ts production in the GLR, there remain sites and areas that industry programmes – despite efforts to create economies of scale that allow for inclusivity of smaller producers – do not reach (5+% of 3Ts sector) or do not presently have workable and scalable solutions (circa 100% of gold sector). It is for these cases that supporting domestic and regional solutions should be considered.

The revision of the RCM in 2018-19 – and its subsequent validation by the Regional Committee of Ministers (12 ICGLR Member States) – presents a significant opportunity in this regard that should be leveraged by the project. Not only does this version of the RCM have widespread regional political backing, but it also has a number of technical innovations that more closely reflect regional capacity and the focus on industry responsibilities for carrying out and reporting on due diligence in supply chains as outlined in the OECD DDG. Full details of the changes can be referred to in Annex 2: RCM Revision Blog Series. The most relevant changes that serve to underscore the recommendation are outlined below.

- **"Blue Status":** In the absence of state led verification, this newly introduced status is the default for all legally registered mine sites where no verification has taken place or where a verification has been requested but has not been carried out within the timeframe specified in the RCM. Blue status continues to require appropriate checks and balances in line with OECD Due Diligence Guidance and if correctly implemented exceeds the rigour of current practice placing the responsibility for due diligence on companies (see further details in Blog 2, Annex 2).

- **Member State Chain of Custody licencing program:** To ensure more consistency in the definition and implementation of CoC requirements, the Second Edition requires Member States to establish a CoC Programme that licenses CoC Systems. It is clarified that systems may be implemented by a third party, government, or company – something that has commonly been misunderstood by mid- and downstream actors, which might explain the (over)reliance on private third-party service providers and due diligence programmes.

Building upon these innovations, it is proposed that the Madini project work to integrate production from project sites into fully formal supply chains, by working with the exporter / supporting the exporter to build the case for technical and financial support to develop appropriate management systems for the conduct of due diligence and traceability within its supply chain (see Annex 1 – "Clean Mineral Supply Chain" project). It is believed that this model will be more scalable for the gold sector and promote greater, more complete coverage of the remaining informal 3Ts supply chains in DRC. To link back to the project objective – fostering local peace, stability and security – this solution can build domestic capacity from producer to exporter, thereby promoting inclusion of DRC upstream supply chain actors and enhancing engagement and mineral access for responsible mid- and downstream buyers, in line with OECD DDG and growing mandatory supply chain due diligence requirements.

3. **Sub-optimal international enabling environment for the trade of OECD-conformant minerals originating from DRC**

The third set of barriers are centred around the lack of incentives for supply chain actors to engage in the formal trade of minerals originating from the DRC. Given the high levels of illicit activity that continue to characterise the international trade of gold originating from the DRC and elsewhere in the region, as well as the 'displacement' of many of the supply chain risks that used to impact on 3Ts supply chains to the gold sector, this section focuses predominantly on gold.

Building on section 1, this section demonstrates the barriers to sustainable, responsible gold supply chains from EDRC extend beyond in-country factors and are in fact underscored by regional and international trade dynamics and the rules or practices that govern them. Whilst we must be realistic about the agency of the project to disrupt illicit trade networks, which will continue to provide a market to untracked minerals, it is nonetheless important to consider where it, or other external stakeholders within the project orbit, might be able to shift the dial on this issue. Doing so will serve to address the structural barriers that enable and drive illicit upstream trade of gold, with its attendant impact on the financing of criminal and armed groups and corruption throughout the supply chain, which in turn threaten local peace, security and stability.

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a. In-region refining, fiscality and weak enforcement of provenance reporting in GLR

The tax burden levied on formal exports of DRC and the vertical integration of illicit gold supply chains are referred to in the above section. These serve as both a disincentive for and impediment to formal trade, which is a prerequisite for responsible trade. These factors are further compounded by a trend towards in-region refining, highly attractive fiscal regimes and weak (or overlooked) provenance reporting requirements across DRC's eastern borders. Sometimes justified by a rhetoric of pan-African resource nationalism and in-country value addition, in-region refiners such as African Gold Refinery in Entebbe, Uganda and Aldango refinery in Kigali, Rwanda process and subsequently export / facilitate the export of gold bars refined to 99.99% purity – the volume and value of which outstrip national geological production and potential. In itself, there is nothing wrong with this, but as multiple reports and trade statistics presented in the introduction suggest, much of the refined gold is smuggled across borders to the detriment of the producing country(ies). DRC, with official ASM gold export value to the UAE of just $78 million in 2018, despite an estimated 15-22 tonnes of production (worth $825,000,000 – $1.21 billion @ $55 / gram) (Neumann 2019), is a case in point. In-region refining nonetheless aligns with (not always publicly stated) national policy trajectories in neighbouring countries to increase the economic contribution of natural resources to GDP and foreign exports (Ministry of Energy and Mineral Development - Republic of Uganda 2018). As a trend it is therefore likely to remain, as are the preferential fiscal arrangements for refined gold which encourage in-bound gold flows and the furtherance of these policy objectives.

Noting the entrenched regional political dynamics and vested interests surrounding the gold trade in the GLR, the entry points for the Madini project to address barriers are limited. Nevertheless, the two entry points identified are as follows:

- Implement the "Clean Mineral Supply Chain project" as introduced above and for which further details are provided in Annex 1. By providing a clear, simplified and efficient route to formal export, this approach can serve to address some of the drivers that perpetuate outbound smuggling.
- Conduct a detailed fiscal study as it relates to the production, trade and export of gold (and to a lesser extend 3Ts) in DRC a complementary fiscal study looking at regional smuggling hubs (notably Uganda, Burundi and Rwanda). The study should seek to understand the fiscal disparity between DRC and neighbouring countries, with a view to modelling optimal fiscal arrangements to encourage formal declarations in DRC. In addition to using this as an advocacy tool for greater fiscal harmonisation, which can be attempted regionally but is unlikely to yield results in practice, the project should harness the findings to lobby for exploring preferential fiscal arrangements for the fiscal pilot.

b. Weak regulatory environment pertaining to responsible sourcing in international trading hubs such as the UAE

As described in Section 1, the current enabling environment in the UAE provides strong incentives for a trade in undeclared ASM gold from the DRC. Principal risk points include:

i. **Exemption of hand carried gold from customs declarations on origin of gold.** This means that ASM gold originating from the DRC can enter the UAE legally without the traders having to provide any proof of origin of the gold, or any proof of responsible or even legal production.
ii. **Lack of regulation and monitoring of Dubai's gold souks.** Once gold has been brought into the UAE, it is reportedly easy for traders to operate on a 'no questions asked' basis when selling in the gold souks. Once gold has entered the souk, it becomes near-impossible to trace. From the UAE, gold can be traded and re-refined anywhere in the world and may end up in the supply chains of LBMA refiners.
iii. **Lack of enforcement of due diligence requirements by DMCC refiners.** Although the DMCC has put in place an OECD-aligned 'Good Delivery Gold' certification, significant allegations of sourcing gold from high-risk areas have been brought against Dubai-based refineries. One significant point of weakness is in mined gold being mislabelled as 'scrap' when it is sold from the souk to Dubai-based refineries. This gold, significant proportions of which are likely to be of ASM-origin, is then traded as recycled gold, and again may end up in the formal supply chains of LBMA refineries (see point 3 below).

These risks underscore and reinforce the illicit trade and export of gold from the GLR, which directly impacts on peace, stability and security in DRC. Whilst further removed from the ground level implementation of the Madini project, these barriers are immediately relevant to the realisation of the project's objectives. Careful, resource-sensitive and well-orchestrated advocacy directed toward authorities in DRC, GLR and the UAE and global standard setters / industry initiatives (ex. RMI, LBMA, RJC and OECD) on the subject should therefore be considered. Although leverage points are limited for the project, the following entry-points could inform such a strategy:

- With other specialized actors / platforms, monitor developments in the UAE with the goal of encouraging greater restrictions on the import of hand carried gold into the UAE. Inform other platforms / actors who are engaged in advocacy on this issue about the consequences of the existing loopholes for the DRC and the Great Lakes region. Raise awareness about the problem with stakeholders with whom Madini is engaged.
- Request advocacy actors in this area to pay particular attention to how this might result in a restructuring of in-bound gold from the region, notably whether the measures (if taken) have the publicly declared intended impact i.e.to reduce the incentives for illicit gold entering into UAE. A concern of the authors in this regard is the degree to which such efforts might further concentrate trade routes through "legitimate" in-region refiners or even an internal DRC refinery, which nonetheless encourage cross-border smuggling from DRC or buying of gold without meeting commonly accepted due diligence requirements.

c. Weaknesses in LBMA sourcing requirements, in particular, on recycled gold

The issue of proof of origin reporting on gold entering into the UAE, which allows significant quantities of ASM gold to be declared as "scrap", is to a large extent replicated by loopholes in international responsible sourcing standards, to the detriment of full supply chain traceability – an essential ingredient in supply chain risk management and integrity.

The Responsible Gold Guidance (RGG) of the LBMA, to which Good Delivery List (GDL) refiners (which refine up to 90% of annual global gold production[15]) are required to conform, treats the issue of recycled gold in the following way: "The origin of Recycled Gold is considered to be the point in the gold supply chain where the gold is delivered to the Refiner"

[15] See "Who are we?" introductory video on LBMA website: https://www.lbma.org.uk/about-us/about-the-lbma.

(LBMA 2018). Whilst GDL refiners are required to conduct "ongoing and proportionate due diligence on the [recycled] gold supply chain", the exacting standards that are outlined for gold originating from ASM are absent (LBMA 2018)[16] [17].

While a number of scandals linking European refiners to conflict gold have been unearthed (Global Witness 2020), the reality is that the smokescreen created by UAE import and gold refining practices make it very difficult to (1) establish direct links between the origin and final destination of gold and (2) make conclusions as to the scale of the problem.

Aggregated export and import statistics according to geographical region and gold categories (differentiated between large-scale mining (LSM), ASM and recycled) nonetheless provide a sense of the scale of the problem. According to the 2020 LBMA responsible sourcing report, in 2018 (latest available figures) 221 tonnes of recycled gold was imported by Swiss-based LBMA refiners from the Middle East (LBMA 2020). A further 161 tonnes of recycled gold were imported from the same region by European / African LBMA refiners (only 1 LBMA refiner in Africa). By comparison only 99 tonnes of ASM gold were imported by Swiss-based LBMA refiners and 2.5 tonnes by European / African LBMA refiners. According to Metals Focus global annual production of ASM gold is approximately 560 tonnes – to which Africa is a major and growing contributor (Reuters 2020).

Although none of the above demonstrates direct causal links between European importers and potential OECD Annex II risks in their supply chains, it does highlight the inadequacy of the current framework to prevent such occurrences. In fact, it has been observed that due diligence requirements on recycled gold are likely to fall short of the threshold of meeting international sourcing standards as set out in the OECD DDG (RAID 2021), which is the bar against which the EU regulation (EU) 2017/821 on mineral supply chains due diligence is set.

This is especially relevant since LBMA has applied to the European Commission for mutual recognition of its Responsible Sourcing Program, which includes the Responsible Gold Guidance. Although the review process is ongoing, despite COVID-related delays to the shadowing of LBMA audits by the European Commission (EC), it is widely expected that LBMA Good Delivery status will be recognised by the EC as fulfilling requirements of the regulation.

It is important to note that the LBMA appears to be taking the issue on recycled gold seriously, underscoring the concern that the present definition and requirements extending therefrom are ill-defined. Efforts to address this as part of the ongoing revision process of the RGG v.8 are to be welcomed and represent an important entry-point for the Madini project and external stakeholders to advocate for more exacting requirements that reflect the gravity of the issue, noting in particular the high proportion of recycled gold presently being declared in public reporting by GDL refiners.

Recognising therefore the expressed objective of the Dutch Ministry of Foreign Affairs to contribute through the Madini project to greater peace, security and stability in DRC – a strategy itself which is encouraged by the EU accompanying measures to the regulation – the following is proposed:

- Analyze, monitor, and advocate for change in legal and regulatory loopholes that incentivize global illicit trade of gold / build case for responsible engagement with sources in DRC:
  - Promote learning on this topic within EU initiatives such as the European Partnership for Responsible Minerals (EPRM) and at international fora, targeting industry, civil society and EU member states as well as states whose industry is indirectly impacted by the EU regulations.
  - Madini should explore working with the Dutch, the EU and other Ministries of Foreign Affairs as well as with other relevant stakeholders to build understanding of the potential loopholes in the international legal and

[16] In practice, this means that gold declared as "recycled" does not require rigorous proof of origin documentation, but rather relies to a greater extent onthe declaration of the refiner sourcing the recycled gold, the management systems alone of which should be subject to the scrutiny of the buyer. This coupled, with the opaque requirements for checks on declared recycled gold in UAE opens the system up to potential integrity issues.

[17] The Responsible Jewellry Council Code of Practices (CoP) in addition suffers from weaknesses in relation to the definition and requirements of recycled gold, which has led some members to focus their "responsible sourcing" efforts on recycled production, to the detriment of ASGM sources. The RJC CoP and other standards / guidelines that have similar weaknesses on this requirement should, in addition to the LBMA, be considered in scope for any project advocacy strategy on the issue.

regulatory framework which could undermine the pursuit of the objectives outlined in the EU regulations, and by extension the project objectives.

- The Madini project should explore ways in which the Dutch Ministry of Foreign Affairs could leverage its position as a member state within the EU and a member of important initiatives such as the EPRM to propose a thorough appraisal of the LBMA and all other relevant guidance as it relates to recycled gold. An entry point to this is the ongoing revision of the LBMA Responsible Gold Guidance for which a review of the definition and requirements relating to recycled gold are reported to be a priority.
- Madini could work with Dutch and other relevant INGOs to develop a joint advocacy strategy on this issue – including the elaboration of proposed solutions to ensure alignment between the LBMA RGG, the RJC Code of Practices and any other relevant guidance / standard and the compliance requirements outlined in the EU regulations. It should pay particular attention to the conclusions that NGOs draw from their critiques, which all too often assume disengagement with sources in conflict-affected and high-risk areas (CAHRAs) to be the necessary and "responsible solution". As the OECD DDG and the section below outlines, the Madini project model should promote continuous improvement of upstream supply chain actors, which will over time contribute to raising standards in DRC upstream supply chains. This is the only sustainable route to delinking the mineral sector from conflict financing and serious human rights abuses.

d. (Dis)engagement with ASM in Conflict-Affected and High-Risk Areas (CAHRAs)

A final important barrier for upstream supply chain access to responsible international markets is whether or not that market exists at all. An important factor in this will be the criticality of the mineral, which can broadly be summarised as (1) international market demand (and reliance) on the mineral and (2) the proportion of the market served by the country or region in question. In the case of cobalt, where an estimated 70% of the current proven reserves are found in the DRC copper-belt and where the demand for the mineral is forecasted to skyrocket as a critical element in lithium-ion batteries to drive the green revolution, the international market case for engagement is strong. Coupled with responsible sourcing requirements of interested market actors, this has resulted in a flurry of activity and significant investment tackling upstream supply chain risks – with a focus on child labour. Coltan is another mineral for which DRC supply chains have a high level of criticality, constituting over 50% of the global production (Schütte 2019). Conversely tin, gold and tungsten production in the DRC – despite being important to the local / national economy – are of limited international relevance; in other words their criticality is low. Perhaps then it is unsurprising that the number of RMI conformant smelters sourcing tantalum from the GLR far outstrip the number of RMI conformant tin and tungsten smelters with in-region sourcing activities[18]. Regarding ASM gold, the global production of which is fairly ubiquitous, there is presently not a single RMI or LBMA refiner sourcing ASM gold *directly* from the region.

This represents a major challenge for initiatives that are looking to build responsible gold supply chains from DRC. In addition to low-criticality, potential buyers are faced with high reputational (including NGO and consumer scrutiny) and legal (AML-CFT, responsible sourcing mandatory regulation) risks. The rational business choice, then, would seemingly be to disengage – as has been the predominant pattern in recent history (see for example the case of Swiss refiner Metalor (SWI 2019)). However, as a recent article (Di Lorenzo and Rolfe 2021) argues, this is neither the responsible nor the coherent sourcing choice, as disengagement (1) favours the status quo, which contributes to the perpetuation and tacit acceptance of OECD Annex II risks in these supply chains and (2) gold will have a way of finding its way into these supply chains – the tightening scrutiny on the issue means this approach will solve neither reputational nor legal risks in the future.

Recognising the predominance of disengagement in international "responsible" sourcing strategies coupled with the limited resources of the Madini project to engage extensively with mid- and downstream market segments, we would propose the following entry-points and strategies be adopted by the Madini project:

[18] Interview with RMI, March 2021

- Build upon the MoU already established with the USAID funded Zahabu Safi program to seek to include concrete steps towards incorporating appropriate Madini project sites in the program's export model, depending on how and when the Zahabu Safi model develops. Concrete options for this include:
  - Aligning supply chain risk management approach, including site selection, thresholds for engaging supply chains actors (inc. Know Your Customer / Client[19] (KYC) requirements), corrective action planning and capturing continuous improvement metrics (to build the engagement narrative).
- Leveraging learnings of the project in relation to security, transport and logistics (inclusive of banking and insurance).
- Ad hoc engagement in meetings geared around mid- and downstream engagement, as appropriate.

[19] KYC is an integral part of the due diligence process to identify and assess the risks associated with building or maintaining a relationship with supply chain actors. KYC processes, as well as other due diligence processes of Madini project supply chain stakeholders will need to reflect international normative and legal requirements as well as buyers' requirements (which will either align with these or be more exacting). Through the curation of markets, the Zahabu Safi program is tailoring their approach in this regard to ensure that the minerals produced as part of the program have access to responsible markets. By working with and aligning approaches with the Zahabu Safi program the Madini project can build supply chains in which risks are managed in line with these expectations, thereby contributing to commercially viable, sustainable supply chains which will provide the conditions for long-term peace, security and stability.

Recommendations to address challenges and barriers

In the previous sections we described a situation of almost universal non-legal production and trade of artisanally mined gold in DRC coupled with widespread disengagement with the sector by international buyers. We also explored the good progress relating to the implementation of upstream due diligence and traceability in the 3Ts sector, from which we can learn. Nevertheless, although the illegal exploitation of 3Ts in DRC no longer represents the same level of threat to local peace and stability as it did a decade ago, it has been amply documented that opportunities presented to criminal and armed groups by the gold sector have more than compensated for this (see e.g. Behalal et al. 2018; Blore 2015; Gramajo et al. 2016; IMPACT 2020; Martin and Taylor 2014; The Enough Project 2017). It is clear therefore that significant challenges to upstream supply chain integrity remain. In addition, ASM gold producers and smaller and / or more remote ASM 3Ts operations constitute a significant population of miners who fail / may be unable to benefit from the route to market offered by third party upstream due diligence and traceability providers. It is argued that this unvirtuous cycle is unlikely to change without interventions that serve to redress the incentive structures for responsible production, trade, export from and import of minerals from DRC, which as a sourcing destination suffers not only from its characterisation as a CAHRA, but also from a certain degree of stigmatisation that favours simplistic narratives of disengagement. However, whilst not sourcing from a setting may serve to "de-risk" a supply chain from a legal or reputational perspective, it is neither without limitations (see the case of gold above), nor is it responsible. The OECD DDG recommends continuous engagement with producers and argues for disengagement only as a last resort. Accompanying measures to the EU regulations on responsible mineral supply chains are a practical manifestation of the same sentiment. Section 2 sought to address some of these barriers with a number of considered entry-points for the project, underscoring (1) the importance of building an upstream supply chain model that links the local peace and development activities of the project to international market imperatives and (2) looking beyond the borders of DRC to critically reflect on how the Madini project and stakeholders can leverage their positions to build a more conducive enabling environment for the development and scale-up of OECD DDG conformant supply chains from DRC.

With this as a backdrop, the table below provides concrete recommendations to the Madini project and associated actors to contribute to redressing the incentive structure for OECD conformant minerals to flow from the DRC from producer to refiner and beyond. It further considers which stakeholders the project will need to engage to successfully implement these recommendations.

Recommendation	Sub-recommendation	Main actors / role
1) Advocate for the domestication of the RCM v2.0 as an amendment to Arrêté Ministériel N° 0057 CAB.MIN/MINES/01/2012 of 29 February 2012.	a) Lobby GDRC at national level to clarify position on the domestication of the RCM v2.0, which it validated at the regional level in October 2019. Build the case using argumentation outlined in the present report for its rapid adoption, supporting the process for the fast-tracking of the RCM v2.0. into Congolese law where appropriate. Seek the support of the DRC government to support a supply chain model on the basis of the RCM v2.0. during the period in which the Madini project is to be implemented (through November, 2023).	✓ Provincial Ministries of Mines, incl Div de Mines, CEEC, SAEMAPE ✓ CPS/CLS/CSLS ✓ Private gold & 3T exporters & civil society ✓ Sector/chefferie chefs of ETD's ✓ Dutch Ministry of Foreign Affairs ✓ Leverage other foreign mission inc. EU, US, Belgium, UK as appropriate. ✓ ICGLR Secretariat ✓ RMI ✓ Upstream Due Diligence and Traceability providers ✓ Representatives from sites covered by project where mine verification has not yet taken place or has elapsed
	b) Work with ICGLR to promote RCM v2.0 with local, national, regional and international stakeholders, highlighting the key improvements and how the project plans to integrate it into its "Clean Mineral Supply Chain" project. Entry points include, amongst other things: participation in and support for ICGLR outreach activities e.g. OECD side event at the virtual responsible minerals forum (April 2021); collecting and communicating practical success stories related to implementation of project activities in line with the revised manual; and supporting national and provincial outreach efforts to sensitize key stakeholders on the technical implementation of the revised provisions of the manual.	✓ Provincial Ministries of Mines, incl Division de Mines, CEEC, SAEMAPE ✓ CPS/CLS/CSLS ✓ Private gold & 3T exporters & civil society ✓ Sector/chefferie chefs of ETD's ✓ ICGLR Technical Committee, Audit Committee ✓ GIZ regional program (HQ Rwanda) ✓ National and regional govt., civil society, industry ✓ Standard setters ✓ Due diligence and traceability providers
	c) Conduct a series of remote and in-person Roundtables with national and provincial (Ituri, South Kivu) government, industry and civil society to build awareness of and capacity to work with the requirements of the revised RCM. Combine these activities with efforts to build knowledge of the objectives and approach of the Madini project, demonstrating the linkages between local peace-building efforts and support for clean mineral supply chains.	✓ National and regional govt., civil society, industry ✓ The Zahabu Safi project ✓ Pact Sustainable Mine Site Validation (SMSV project)

Recommendation	Sub-recommendation	Main actors / role
	d) Advocate for technical assistance to work with the GDRC to put in place institutional arrangements necessary for the roll-out of the revised RCM. Activities might include: (i) Advising on the establishment of a process for licensing of Chain of Custody systems. *Here there may be an opportunity to conduct capacity building activities with relevant partners. For example, the project might explore a partnership with RMI to build the capacity of the competent authority to conduct effective and rigorous reviews of Chain of Custody systems (in line with its own upstream assurance program methodology). In turn, and in recognition of state resource limitations, the project might seek to broker joint-recognition arrangements between these programs e.g. with RMI's upstream assurance programs recognition process for larger third-party led schemes* (ii) Working alongside the competent authority to: (1) raise awareness of (a) the process requirements for assessment of admissible CoC systems and (b) the technical criteria for validation of CoC systems and (2) build capacity of relevant supply chain actors (exporters) and service providers to meet these requirements. *Leverage relationships with mining entities that have established independent CoC systems in line with OECD DDGs e.g. Barrick's Kibali Gold, Banro and Alphamin Bisie* (iii) Supporting outreach to supply chain actors to inform them of their obligations under the revised RCM (especially in relation to supply chain actors engaged through the "Clean Mineral Supply Chains" project). Activities might include developing an easy-to-use process guide, similar to the OECD manual for upstream actors.	✓ Ministry of Mines for chain of custody licencing and export procedures ✓ Standard Setters (esp. RMI) ✓ OECD Responsible Business Unit ✓ Existing mining operations in DRC with independent CoC systems ✓ Upstream supply chain actors
2) Advocate for Comité Provincial de Suivi et (CPS) / Comité Local de Suivi (CLS) to Pilot "Clean Mineral Supply Chain Project" to cover production originating from project sites (See note in Annex 1 below)	a) Assist CPS/CLS to identify legal mine sites / operations from the initial 182 "red" sites that meet minimum criteria according to robust mine site selection process, which should align to the extent possible with the process used by the Zahabu Safi project and the Pact SMSV project. Work with CLS to support mine operators to build appropriate corrective action plans to manage and mitigate risks and support their implementation. Request mine site verification. In the absence of the verification organized by the GDRC competent authority (or designated authority e.g. Pact) work to observe minimum requirements as outlined in revised RCM and engage with exporter on this basis.	✓ Mine site operator(s) ✓ IPIS (site evaluation) ✓ IA / IPIS (corrective action) ✓ SAEMAPE / PACT
	b) Advocate to private sector to identify and / or support the establishment of an exporter with aligned / strong intent to align management systems to ensure conformance with OECD DDG and by extension the revised RCM. Advocate for technical assistance, training and consultation for operators and exporters to support the development of internal management systems to conduct effective and verifiable due diligence, especially ongoing risk assessment and implementation and documentation of risk mitigation to upstream supply chains, including tracking of mineral	✓ Exporter – Comptoir / new exporter ✓ CEEC, Division des Mines, SAEMAPE ✓ Licencing Competent Authority ✓ ICGLR Audit Committee ✓ RMI

Recommendation	Sub-recommendation	Main actors / role
	through chain of custody procedures outlined in the manual and in accordance with Congolese law. Advocate to request Third Party Audit (TPA) from the ICGLR and support costs for 1x audit. If no audit is conducted by an ICGLR TPA in line with RCM and Congolese regulatory requirements, continue to work with the exporter on the basis of its blue status under the revised RCM, ensuring it reports red and yellow status risks in supply chains to ICGLR and DRC competent authority as they arise. Advocate for exporter to build capacity of mine site and upstream supply chain actors to comply with its requirements. Advocate for exporter to licence its CoC solution with DRC Competent Authority based on an independent evaluation of its internal management systems – at which point it should pay a levy to the GDRC for the licence.	✓ Existing mining operations in DRC with independent CoC systems
	c) Madini project should monitor the performance of the model, recording successes and challenges, which should be collated as training material for supply chain actors wishing to pursue a similar approach.	✓ Upstream project partners ✓ IA Communications and Advocacy
	d) Work with standard setters such as RMI, LBMA, RJC to enhance understanding amongst industry membership / scheme participants regarding working with exporters that independently develop and implement due diligence and mineral traceability systems. In particular, it is understood that the project will need to sensitize members that such approaches are recognized as legitimate and even encouraged, provided they meet minimum requirements. *Standard setters may wish to support this by providing practical tools to members to assess robustness of such systems. The Madini project can support such claims with clear and transparent reporting and feedback as detail in 2(c).*	✓ RMI, LBMA, RJC etc. ✓ ICGLR ✓ DRC Licencing Competent Authority ✓ Pilot project exporter
3) Advocate for project-based tax pilot (special fiscal arrangements)	a) Conduct a detailed fiscal study as it relates to the production, trade and export of gold (and to a lesser extend 3Ts) in DRC: a complementary fiscal study looking at regional smuggling hubs (notably Uganda, Burundi and Rwanda). The study should seek to understand the fiscal disparity between DRC and neighbouring countries, with a view to modelling optimal fiscal arrangements to encourage formal declarations in DRC. In addition to using this as an advocacy tool for greater fiscal harmonisation, which can be attempted regionally but is unlikely to yield results in practice, the project should harness the findings to lobby for exploring preferential fiscal arrangements for the fiscal pilot.	✓ DRC MoM ✓ Levin Sources, IPIS (conduct study) ✓ IA Advocacy and Communications ✓ Dutch Ministry of Foreign Affairs, EU and other foreign ministries ✓ LBMA / refiners ✓ In relation gold, consider joint advocacy with The Zahabu Safiprogram.
4) Monitor and advocate with specialized stakeholders about loopholes in UAE legislation detrimental to legal gold trade in DRC	a) With other specialized actors / platforms, monitor developments in the UAE with the goal of encouraging greater restrictions on the import of hand carried gold into the UAE. Inform other platforms / actors who are engaged in advocacy on this issue about the consequences of the existing loopholes for the DRC and the Great Lakes region. Raise awareness about the problem with stakeholders with whom Madini is engaged.	✓ DRC Ministry of Mines & engaged civil society ✓ ICGLR including DRC National Coordinator (seated in Min of Foreign Affairs) ✓ Dutch Ministry of Foreign Affairs / EU, and other foreign ministries ✓ INGOs active in this area, for example: Global Witness, IMPACT,
	b) Request advocacy actors in this area to pay particular attention to how this might result in a restructuring of in-bound gold from the region, notably whether the measures (if taken) have the publicly declared intended impact i.e. to reduce the incentives for illicit gold entering into UAE. A concern of the authors in this regard is the degree to which such efforts might further concentrate trade routes through “legitimate” in-region refiners or even an internal DRC	

Recommendation	Sub-recommendation	Main actors / role
	refinery, which nonetheless encourage cross-border smuggling from DRC or buying of gold without meeting commonly accepted due diligence requirements.	Transparency International, Artisanal Gold Council.
5) Analyze, monitor, and advocate for change in legal and regulatory loopholes that incentivize global illicit trade of gold / build case for responsible engagement with sources in DRC.	a) Promote learning on this topic within EU initiatives such as the EPRM and at international fora, targeting industry, civil society and EU member states as well as states whose industry is indirectly impacted by the EU regulations.	✓ Dutch Ministry of Foreign Affairs / EU, and other foreign ministries ✓ NGO membership of EPRM e.g. Solidaridad
	b) Madini should explore working with the Dutch, the EU and other Ministries of Foreign Affairs, as well as with other relevant stakeholders, to build understanding of the potential loopholes in the international legal and regulatory frameworks that could undermine the pursuit of the objectives outlined in the EU regulations, and by extension the project objectives.	✓ Dutch Ministry of Foreign Affairs / EU, and other foreign ministries ✓ EU ✓ EPRM ✓ LBMA ✓ EU based refineries
	c) The Madini project should explore ways in which the Dutch Ministry of Foreign Affairs could leverage its position as a member state within the EU and a member of important initiatives such as the EPRM to propose a thorough appraisal of the LBMA and all other relevant guidance as it relates to recycled gold. An entry point to this is the ongoing revision of the LBMA Responsible Gold Guidance for which a review of the definition and requirements relating to recycled gold are reported to be a priority.	✓ Dutch Ministry of Foreign Affairs ✓ EU & other governments ✓ EPRM ✓ LBMA ✓ EU based refineries
	d) Madini could work with Dutch and other relevant INGOs to develop a joint advocacy strategy on this issue – including the elaboration of proposed solutions to ensure alignment between the LBMA RGG, the RJC Code of practices and any other relevant guidance / standard and the compliance requirements outlined in the EU regulations. It should pay particular attention to the conclusions that NGOs draw from their critiques, which all too often assume disengagement with sources in conflict-affected and high-risk areas (CAHRAs) to be the necessary and "responsible solution". As the OECD DDGs and the present report outlines, the Madini project model should promote continuous improvement of upstream supply chain actors, which will over time contribute to raising standards in DRC upstream supply chains. This is the only sustainable route to delinking the mineral sector from conflict financing and serious human rights abuses.	✓ Solidaridad ✓ Fairphone ✓ Alliance for Responsible Mining ✓ Artisanal Gold Council
6) Explore and assess if and how to build export model into the design of the project	a) Build upon the MoU already established with the USAID funded Zahabu Safi program to seek to include concrete steps towards incorporating appropriate Madini project sites in the program's export model, depending on how and when the Zahabu Safi model develops. Concrete options for this include: ➢ Aligning supply chain risk management approach, including site selection, thresholds for engaging supply chains actors (inc. Know Your Customer / Client (KYC) requirements), corrective action planning and capturing continuous improvement metrics (to build the engagement narrative). ➢ Leveraging learnings of the project in relation to security, transport and logistics (inclusive of banking and insurance). ➢ Ad hoc engagement in meetings geared around mid- and downstream engagement, as appropriate.	✓ International Alert ✓ The Zahabu Safi program ✓ USAID, Dutch Ministry (co-branding) ✓ International refiners

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Annex I – "Clean Mineral Supply Chain Project"

Improving Security, Social Cohesion and Human Rights

in Conflict Mineral Rich Regions of Eastern DRC by

Leveraging the Second Edition of the ICGLR Regional Certification Mechanism Manual for Clean Mineral Supply Chains

(Clean Mineral Supply Chain Project)

Background: As stated in the Full Proposal "The general objective of this project is to strengthen regional stability in the Great Lakes by improving security and stability around mines in eastern DRC, and contributing to cleaner mineral chains by reducing levels of smuggling across the Great Lakes region. The project interlinks change at mine site level, territorial level, provincial level, national level, regional and global levels in order to contribute to this objective."

During 2018 and 2019, the ICGLR undertook efforts to revise their Regional Certification Mechanism (RCM) Manual based on five years of implementation experience and on feedback from all ICGLR Member States (MS), Supply Chain Actors and Civil Society. The object was to ensure the RCM could be implemented by the MS in both low capacity implementation and start-up situations. In addition, it was modified to assure alignment to the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. After a rigorous revision process and public consultation efforts the RCM was approved by unanimously by all member states in October of 2019.

The revised RCM provided MSs with the necessary requirements and clear delineation of roles and responsibilities to all RCM actors for implementing clean supply chains. The four main RCM components for implementation are 1. Mine Site Inspection and Validation, 2. Chain of Custody (CoC) requirements, 3. Third Party Audits (TPA) of Exporters, and 4. ICGLR Export and Certificate Requirements. The RCM also creates the opportunity for MSs (in this case the DRC) to initiate clean supply chains in start-up situations and low capacity, both of which exist in the DRC.

Proposed Solution: Following outlines the conceptual approach to implement clean supply chains at mine sites in the territories the project supports. It will outline how each of the main component of the RCM can be implemented to assure conformance to the OECD Guidance and RCM while creating access to the market with the issuance of the ICGLR Export Certificate.

1. **Mine Site Inspection and Validation –** As identified in the Full Proposal, there are a number of DRC mine sites that have not been inspected or inspected within the required time frame (RCM requires annual and DRC requires every-six months inspections). In these cases, the sites would maintain a "Red Status" meaning that no certificate should be issued for materials coming from a Red mine. The revised RCM created the Blue Status to deal with this issue. Blue Status applies to all legally permitted mine sites that have not been inspected initially and for green mine sites that have not been re-inspected within the one-year requirements (or six months for DRC). A mine site can maintain Blue Status for up to three years. To provide for appropriate checks and balances that are consistent with the OECD Guidance, material from a Blue Mine site can be eligible for an ICGLR export certificate if the Exporter that is sourcing from the mine site performs an on-the-ground risk assessment; shares the assessment report with the DRC Minister of Mines, ICGLR Technical Unit and makes it publicly available; and no Red Status Criteria is identified.

   For this project it is planned that once a legal mine site is identified the team works with the government to have an inspection conducted and status determined. In the event the DRC is unable to perform an inspection, IPIS would then perform an on-the ground assessment to determine if there are any Red or Yellow status criteria identified. If no red status criteria are identified and the assessment reports have been shared as described above, then the site may begin to produce material for export.

   Given the newness of the revised RCM, there would need to be capacity building conducted for the various government agencies, supply chain actors and other interested stakeholders to assure there is an understanding of the Blue Status and the requirements around material being acceptable for export and how it is in conformance with the OECD Guidance. This can be performed by OGP or Justice Plus, ICGLR Technical Unit or other qualified trainers.

2. **Chain of Custody (CoC) requirements –** There tends to be a perception by Governments and supply chain actors that CoC systems for the 3T must be implemented through a third party. The perception is wrong. CoC systems as defined in the RCM allow for three different kinds of CoC systems to be used for a supply chain; 1. Government system (such as Initiative de Traçabilité de l'Or d'Exploitation Artisanale, ITOA), 2. Company system (similar to what ABM and LSM gold miners such as Banro and Kibali have implemented) or 3. Third party (BSP or ITSCI). All systems must be licensed through the MS CoC programme.

   Third-party CoC systems have been criticized as being expensive, monopolistic, and not transparent. In a few cases the two existing systems are adversarial and do not collaborate, thus creating reputational and supply chain risks to the exporter. With that said, they do serve a purpose when material from an artisanal mine site ends up in several different exporters' supply chain and when exporters source from multiple mine sites or traders.

   For this project it is proposed that the mine site work with an identified exporter that is willing to have 100% off-take agreement and establish a company level CoC system to drive down due diligence cost. This can be a simple system and may provide an opportunity to look at some of the emerging digital supply chain tracking systems. It will provide an opportunity for mine sites as they begin to industrialize to increase their margins and reinvest that money by avoiding the cost of a third part system (levees up to 4%).

   There will be a need to develop capacity of the DRC government to develop and manage their CoC programme so this does not become a new bottleneck slowing robust and OECD compliant growth. This RCM also allows for the MS to charge a licensing fee to help fund the program if needed.

3. **Third Party Audits (TPA) of Exporters –** The RCM requires all Exporters to request a TPA within the first year of operation. During the period from start-up to the audit the Exporter retains a Blue Status (Not Audited). This Blue Status is contingent on the Exporter requesting the audit within the first year of operation. The TPA process is managed by the ICGLR Audit Committee and contracts with accredited audit firms to conduct the TPA. The audit looks at the Exporters' due diligence system to assure it conforms to the OECD Guidance and it audits the Exporters supply chain by evaluating some or all of the mine sites and transport routes associated with the material purchased by the Exporter. The actual audit scope is dependent on the number of material sources. Material that originates from a yellow, green, or blue mine site and a yellow, green, or blue Exporter is eligible for the ICGLR Export Certificate.

   This project proposed to identify an Exporter that is willing to enter into 100% off-take agreements and implement their own CoC system (3T) or utilize the government's ITOA system for gold. The program will also fund the initial audit of the Exporter which is good for three years.

4. **ICGLR Export and Certificate Requirements-** Once the supply chain has been set up and mine sites and the Exporter have the proper status (Blue, Green or Yellow) material will qualify for the ICGLR Export certificate issued by the CEEC.

Project Benefits: Consistent with the Project's Theory of Change; implanting this project will generate additional revenue for legitimate private sector actors and public services as outlined. Thus, it will help achieve: Result 2.1- Improved adherence to standards of provincial, national, and regional government actors in ensuring non-contamination of mineral chains; and Result 2.2 - Improved performance of private sector actors in ensuring non-contamination of mineral chains. In addition, it will assist the DRC government in developing a robust but adapted Mine Inspection and Validation programme and assist in their development of a formal CoC programme. It will help reduce cost of due diligence and improve the credibility of the various supply chains that originate from the DRC. With these improvements to the overall minerals program and favourable business start-up environment the potential to attack more investment increases.

Annex II – RCM Revision Blog

Blog 1: Introducing The Second Edition of the Regional Certification Mechanism

JUNE 9, 2020, BY ADAM ROLFE AND MIKE LOCH (RESPONSIBLE TRADE)

This short technical blog series has been developed to help you understand what **Regional Certification Manual (RCM)** elements have changed, why they were changed, what this means in practice and how the changes represent a significant improvement. The blog series is for anyone with an interest in certifying responsible supply chains in the African Great Lakes Region, and may also be of relevance to other Conflict-Affected and High-Risk Areas (CAHRAs). More specifically, it will be of practical value to public institutions (especially mineral producing and mineral importing countries), private sector actors (from producers to traders, exporters, smelters, refiners and end users) and civil society actors / practitioners engaged in the responsible trade of minerals. The series will offer insights that enhance your understanding of the new RCM manual in a time-effective manner.

These blogs mark the publication and entry into force of the Second Edition of the RCM of the International Conference on the Great Lakes Region (ICGLR), in January 2020. Prepared by **Adam Rolfe**, Levin Sources, and **Mike Loch**, Responsible Trade, they provide the perspectives of two of the primary drafters and facilitators of the revision process.

WHAT IS THE RCM AND WHY WAS IT REVISED?

The RCM of the International Conference on the Great Lakes Region (ICGLR) of central Africa is a regional standard to combat the illicit production and trade of tin, tantalum, tungsten and gold (3TGs), which has been linked to conflict and the perpetuation of gross human rights violations. Drawing on the OECD Due Diligence Guidance for Responsible Mineral Supply Chains, the RCM forms part of the Regional Initiative against the Illegal Exploitation of Natural Resources (RINR) and first entered into force in 2011. Despite some progress in implementation, notably in the Democratic Republic of Congo and Rwanda, and more recently in Burundi and Tanzania, the RCM remains only partially executed and weakly enforced. After 7 years of implementation it was therefore necessary to review and revise the standard with a view to ensuring greater uptake and impact in the years to come.

WHEN AND HOW WAS THE RCM REVISED?

A comprehensive review and revision of the RCM was undertaken between January 2018 and October 2019, which led to some significant changes being made to the certification scheme.

The revision exercise was conducted by independent consultants from Levin Sources and Responsible Trade on behalf of the ICGLR, and was funded by German development cooperation.

All changes to the existing manual were made on the basis of an inclusive stakeholder consultation process and technical papers assessing the cost and impact of the manual to date. All modifications were further assessed against a list of criteria, developed at the beginning of the process. These were the requirement to:

- Contribute to increasing the credibility of the RCM
- Support implementation efforts and Member State ownership
- Reduce implementation costs
- Provide clarity to requirements of the standard
- Clarify the roles and responsibilities of actors
- Increase the efficiency of the mechanism
- Ensure greater alignment with the OECD due diligence guidance; and
- Provide for appropriate checks and balances

Input was received from international and regional stakeholders from government, industry and civil society, through workshops, information sessions and online consultation platforms.

All feedback and recommendations were compiled into a master matrix and subjected to a technical assessment, taking into account the key criteria.

The Second Edition of the manual went through a total of four iterations before being submitted to the ICGLR Regional Committee for review and validation in October 2019.

WHAT ARE THE MAIN OUTCOMES OF THE RCM REVISION PROCESS?

The Second Edition of the RCM has not fundamentally changed the purpose of the mechanism, which remains to contribute to, and certify, mineral supply chains that do not directly or indirectly provide support to non-state armed groups and / or public or private security forces, or contribute to serious human rights abuses (as outlined in Annex II of the OECD Due Diligence Guidance on Responsible Mineral Supply Chains).

The new manual does however introduce significant changes to the requirements, processes and roles and responsibilities of actors. We believe that these innovations will make the RCM more user-friendly, ensure widespread uptake in the years to come and strengthen enforcement by focusing on its fundamental elements.

This blog series will serve to provide an overview of the Second Edition of the RCM manual. It will introduce and describe the major changes and their significance:

- Blog 2: Keeping minerals from the GLR flowing: An introduction to "Blue Status" for Mine Sites and Exporters.
- Blog 3: Focussing on the fundamentals: Removal of "Progress Criteria", Removal of the Independent Mineral Chain Auditor function.
- Blog 4: Other major changes.

Stay tuned for the next blog in the series and find out about the new **Blue Status** for mine sites and exporters and how this element in the RCM aligns with the OECD Due Diligence Guidance. We will describe what it means and how it helps ensure the flow of responsibly sourced minerals in start-up and low capacity situations – an essential ingredient for ensuring the commercial viability of formal mineral supply chains in the GLR.

BLOG 2: Keeping minerals from the Great Lakes Region flowing: An introduction to "Blue Status" for Mine Sites and Exporters

JULY 2, 2020, BY ADAM ROLFE AND MIKE LOCH (RESPONSIBLE TRADE)

SHARE

NEWER

This is the second blog in a four-part series to mark the release of the Second Edition of the Regional Certification Mechanism (RCM) Manual. It describes the introduction of "Blue Status" for Mine Sites and Exporters and how this "new" element of the RCM is aligned with the OECD Due Diligence Guidance for Responsible Minerals from Conflict Affected and High-risk Areas.

In this blog we outline what "Blue Status" means and how it helps ensure the flow of responsibly sourced minerals in "start-up and low capacity situations". By this we mean when

1. new Mine sites and Exporters are established and have not yet been verified under the RCM, and
2. they are already in existence but State and / or ICGLR led verification processes do not have the resources available to conduct verification within the timeframes detailed in the RCM manual.

We contend that this change is an essential ingredient to ensuring the commercial viability of formal 3TG mineral supply chains in the Great Lakes Region.

WHY THE NEED FOR BLUE STATUS?

To answer this question, we need to provide a little background on the genesis of the RCM. At the time of its release in 2011 the RCM allowed for a transition period for Member States to establish processes and procedures in line with the requirements outlined in the manual. The effective mandatory date of entry into force was set at 2014, although efforts in DRC and Rwanda pre-date this. After this all Member States were required to have active programs for implementing the RCM and all Mine Sites and Exporters required verification before Designated Minerals originating from / being exported by them could receive an ICGLR Certificate.

Unfortunately, the reality doesn't always match the theory. Presently only DRC and Rwanda could be said to implementing the RCM to any great extent, although Burundi and Tanzania just recently began implementation and developments in Uganda are encouraging. What this means is that, under the first iteration of the RCM, supply chain actors were penalized as a result of inaction or incapacity on the part of the Member States in which they operated. If there was no verification system there could be be no verification, which meant that *de facto* Designated Minerals could not be exported in compliance with the RCM.

To demonstrate the extent of the problem, even in DRC where the RCM had been embraced, low-capacity resulted in the slow roll-out of Mine Site Inspections. With more than 1500 mine site in scope conducting inspections at each of them on an annual basis would have been a herculean task. The reality is much closer to circa 600 sites inspected over eight years, only a few mines inspected more than once.

The situation relating to Exporter Third Party Audits is similar. Whilst there are more than 60 registered exporters in DRC and Rwanda, only 9 Exporters, 5 in DRC and 4 in Rwanda, have been audited under the RCM. Only one of these Exporters has been audited more than once.

In addition, under the First Edition of the Manual a *Catch 22* existed for new market entrants. Before commencing operations verification of their compliance with the RCM was required; this was both costly and illogical since only when in operation do Criteria in the RCM become applicable.

This situation was serving as an effective barrier to entry for potentially legitimate business and could not persist. As such, the drafters of the revised RCM manual had to come up with a solution to deal with low-capacity and start-up situations. The solution: Blue Status.

WHAT IS BLUE STATUS?

Blue status is the new "forth" status criterion under the RCM. It complements the previous three status criteria of Green (Verified), Yellow (Provisionally Verified) and Red (Not Verified), which denote the outcome of the verification process. By contrast Blue status is the default status for all legally registered Mine Sites and Exporters when no verification has taken place or where a verification has been requested but has not been carried out within the timeframe specified in the RCM.

The tables below outline the process governing Blue status (warning: those of you that are not practitioners or supply chain actors may be inclined to skip over this detail!).

BLUE MINE STATUS OVERVIEW		
Mine Status	**Definition**	**Outcome**

Not Inspected (Blue)	A mine site that has not yet been inspected according to the ICGLR RCM Requirements and / or a Valid (Green) mine site that has not been re-inspected within the last year. ***NB.*** 1. A mine site can retain Blue Status for a maximum of 3-years; if not inspected in 3-years it would be become Red Status 2. A previously Not Valid (Red) mine site or Provisionally Valid (Yellow) mine site cannot become Not Inspected (Blue) unless it has subsequently received a Valid (Green) Status.	Mine site can produce and sell minerals for certified export if the exporter has conducted an on-the-ground Risk Assessment, a copy of that assessment is made publicly available and shared with the Member State and ICGLR Secretariat and no Red Status Criteria risks have been identified. If Yellow Status Criteria are identified as part of the on-the-ground risk assessment the mine site shall have 6-months to mitigate the non-conformance or demonstrate significant measurable improvements for the Yellow Status Criteria identified. If after 6-months the Yellow Status Criteria have not been mitigated or the mine site does not demonstrate significant measurable improvement the Exporter shall immediately suspend or discontinue engagement with the mine site.

BLUE EXPORTER STATUS OVERVIEW

Exporter Status	**Definition**	**Outcome**
Not Audited (Blue)	An Exporter that has not yet received an ICGLR TPA and has requested an Audit prior to the end of the first year of operation or a Valid Exporter that has requested an ICLGR TPA (with a minimum of 3-months' notice prior to the expiration of its existing TPA) but has not yet received an ICGLR TPA. ***NB.*** 1. Exporters must have initiated the audit process within one year of the effective date of the Revised RCM Manual Second Edition. 2. An Exporter can retain Blue Status until their first ICGLR TPA is completed and thereafter for a maximum of 3-years.	The Exporter may purchase and/or produce Designated Minerals for certified export.

BUT DOESN'T BLUE STATUS MEAN THAT UN-VERIFIED SUPPLY CHAIN ACTORS CAN GET AWAY WITH THINGS THEY SHOULDN'T?

This was a question that we as reviewers encountered a lot during the revision process. This concern is based on the reasoning that by allowing Designated Minerals to flow in the absence of state-led verification mechanisms the system allows non-compliant actors to undertake certified export.

However, this is to misunderstand the role of Blue status. Blue status continues to require appropriate checks and balances in line with OECD Due Diligence Guidance, placing the responsibility for due diligence on companies. For example, if an Exporter wants to source from a mine site that is Blue status, it must conduct an on the ground risk assessment and share the assessment report with the government and ICGLR. If the risk assessment identifies any Annex II risk as identified by OECD, they must discontinue sourcing when Red Status Risks are identified) or work with the mine site operator to mitigate Yellow Status Risks within six months. This is exactly how the OECD envisioned the Guidance working.

Similarly, if a Blue status Exporter wishes to conduct a fully certified export it will continue to need to demonstrate to both the Member State issuing ICGLR certificates and mid-tier and/or downstream buyers that itcan provide full chain of custody information for the associated mineral lots.

So, whilst the RCM Mine Site and Exporter verification adds additional controls beyond OECD requirements, it is perfectly feasible to ensure conformance with international market expectations in their absence. By introducing the Blue status, the revised RCM gives industry the opportunity to operate, but only if they conduct their operations in conformance with the globally accepted OECD Due Diligence Guidance.

Finally, in order to avoid a situation of perpetual Blue status, which could potentially undermine the additional checks and balances allowed for in the RCM, the revision incorporated a time-limit of 3-years after which non-verified Mine Sites / Exporters once again revert to Red status.

CONCLUSION

Blue status creates an opportunity for Member State and ICGLR programs as well as businesses operating within their territories to mature in a low capacity situation and it reaffirms the role of industry in effective due diligence. Until now the RCM relied only on Government/ICGLR systems that lack capacity to respond to the demand This change allows responsibly sourced minerals to enter global markets creating the opportunity for greater development in the region.

Blog 3: Focusing on the fundamentals: Removal of progress criteria and removal of the Independent Mineral Chain Auditor from the RCM Manual

SEPTEMBER 21, 2020, BY ADAM ROLFE AND MIKE LOCH (RESPONSIBLE TRADE)

This is the third blog in a four-part series to mark the release of the second edition of the Regional Certification Mechanism (RCM) Manual. It provides details of two significant changes in relation to the first edition: namely the removal of both 'progress criteria' and the Independent Mineral Chain Auditor function.

In this blog we outline the original intended purpose of progress criteria in the RCM and the Independent Mineral Chain Auditor function, as well as how and why they failed to live up to expectations in terms of generating positive social and environmental impact. For each it is explained why it was necessary to remove them from the mechanism and in the case of progress criteria, how it makes more sense for them to be incorporated into member states' legal frameworks. Finally, and this is a common theme for many of the revisions discussed in this blog series, we explore why these changes are reflective of normative and legal developments in the responsible mineral sourcing discourse.

REMOVAL OF PROGRESS CRITERIA FROM THE RCM

The original RCM differentiated between two sets of criteria against which upstream supply chain actor conformance was measured. These were categorized as 'status criteria' and 'progress criteria'.

The revised manual has retained status criteria, which it is argued are fundamental to the purpose of the RCM: to delink the production and trade of designated minerals in the Great Lakes Region from conflict and serious human rights abuses. They are also aligned with the OECD Due Diligence Guidance Annex II risks. Status criteria require that supply chain actors can demonstrate that they do not provide financing or other means of support to non-state armed groups and public or private security forces including international armed forces. They further cover serious human rights abuses, namely:

1. "any forms of torture, cruel, inhuman and degrading treatment";
2. "any forms of forced or compulsory labour, which means work or service which is exacted from any person under the menace of penalty and for which said person has not offered himself voluntarily";
3. "the worst forms of child labour";
4. "other gross human rights violations and abuses such as widespread sexual violence"; and,

5. "war crimes or other serious violations of international humanitarian law, crimes against humanity or genocide."

By contrast, progress criteria went beyond OECD requirements to include provisions on environmental performance and social impact, such as community engagement and the contribution of ASM mines to local development. Many of these elements were already included in the member states' mining codes, just not enforced in many cases. Whilst these requirements, when fulfilled, are key ingredients for harnessing the development potential of the minerals sector, they were all too often ignored or deemed unachievable in the short term by the RCM actors. Furthermore, their fulfilment did not directly correspond to the purpose of the RCM, which is to delink the production and trade of designated minerals from conflict and serious human rights abuses. As such, the RCM did not incentivise good performance in this regard, nor did it have measures built in to disincentivise poor performance. The net result of their inclusion was therefore limited to no impact, despite significant additional burden and cost on the mechanism in the form of measuring and verifying performance against them. It was further argued by stakeholders that the inclusion of progress criteria created confusion as to the purpose of the manual and / or diluted other more central requirements.

The removal of progress criteria from the RCM served to fulfil a number of the criteria guiding the revision, as detailed in our first blog in this series. These are: reducing implementation costs, providing clarity to the requirements of the standard, ensuring greater alignment with the OECD Due Diligence Guidance, and increasing the efficiency of the mechanism.

Finally, the removal of progress criteria from the RCM does not diminish the importance of social and environmental issues. Nor does it mean that the aspiration to meet them should be abandoned – in fact, many stakeholders that were consulted as part of the revision process reaffirmed their importance to a thriving and equitable mineral sector in the Great Lakes Region (GLR). After much consultation, it was agreed that in the absence of the widespread fulfilment of the minimum status criteria requirements, the progress criteria must be enforced through member states' legal frameworks as part of a wider commitment to formalisation and improved standards within the minerals sector in the region.

REMOVAL OF THE INDEPENDENT MINERAL CHAIN AUDITOR FROM THE RCM

In the first edition of the manual, the Independent Mineral Chain Auditor was conceived as playing an important role in overseeing the operational effectiveness and integrity of the mechanism. Its main responsibilities were to:

1. Assess chain of custody systems to ensure they fulfilled RCM requirements.
2. Conduct independent missions into conflict financing and contraband trade of designated minerals.
3. Evaluate conflict and conflict financing risks associated with the mineral trade in the GLR.

In practice, lack of clarity relating to the organisational structure and independence of the mechanism, challenges with establishing a sustainable financing mechanism and question marks concerning its added value meant that the function never really got off the ground.

In this context, stakeholders unanimously called for its removal from the mechanism, which made sense when considered alongside the need to reduce overall implementation costs.

Furthermore, clarification of the roles and responsibilities of the RCM actors means that an effective system of checks and balances is imbedded in the revised RCM, thereby doing away with the need for 'additional oversight'. The table below demonstrates the primary functions of the key RCM actors, whereby ICGLR is the standard setter and overseer of the mechanism, member states are responsible for regulating and enforcing RCM compliance and supply chain actors are responsible for ensuring they are in compliance with requirements.

Role / Responsibility	ICGLR	Member States	Supply Chain Actors
OECD 5 Step Due Diligence			X

Mine Site Inspection and Certification		X	
3rd Party Auditors for Exporters	X		X
Risk Assessments and Spot-Checks			X
Regulatory Enforcement		X	
Chain of Custody Implementation			X
Chain of Custody Licensing		X	
Regional Framework/Oversight	X		
Issue ICGLR Certificate		X	

This system already goes beyond the OECD Due Diligence Guidance requirements by affirming the important role of the ICGLR and member states in overseeing and enforcing requirements outlined in the manual. Further checks, as demonstrated in the first years of RCM implementation, have been overly burdensome, bureaucratic and costly, not to mention duplicating the important role that civil society and other international organisations play in monitoring the performance of the mineral sector in the GLR.

The IMCA position was therefore removed from the second edition of the RCM, with the critical functional elements of the IMCA being delegated to the ICGLR Technical Unit.

CONCLUSION:

Practical implementation experience served to demonstrate both the significant cost and limited added value that both progress criteria and the IMCA function brought to the operation of RCM. Based on feedback from stakeholders consulted as part of the revision process they were removed with the effect of

1. refocussing the mechanism on its core purpose of delinking the production and trade or minerals from conflict and serious human rights abuses in the GLR, and
2. creating a more sustainable implementation structure with appropriate checks and balances that reinforces rather than renders overly burdensome the implementation of the OECD Due Diligence Guidance in the GLR.

Blog 4: The Other Major Changes to the Second Edition of the RCM.

JANUARY 21, 2021, BY ADAM ROLFE AND MIKE LOCK (RESPONSIBLE TRADE)

This is the fourth blog in a four-part series to mark the release of the Second Edition of the Regional Certification Mechanism (RCM) Manual. We have already discussed the creation of Blue Status in the second blog and provided details of the removal of both 'progress criteria' and the Independent Mineral Chain Auditor function in the third blog. Now we will talk about some of the other changes that should make the RCM more effective and provide for easier implementation by Member States and supply chain actors.

WHAT WERE THE GENERAL IMPROVEMENTS MADE TO THE DOCUMENT?

There were a number of usability issues with the original RCM. Without going into too many details, the Manual was hard to interpret, did not flow well, had many redundancies, and inconsistent terminology. The following is a list of additional improvements made to the document:

- One Document (Manual + Appendices) - Original RCM was two separate documents, Manual and Appendices - Reduced from 150+ to 78 pages (English version)
- Added RCM Actors in "Section I – Scope" to provide clarity on roles and responsibilities
- Added additional definitions and removed definitions no longer used or appropriate
- Removed or consolidated four subsections from the requirements section of the previous manual
- Re-ordered the document to make it consistent with mineral process flow
- Created an Appeals Procedure, which only had a place holder before
- Re-oriented the manual such that requirements were covered in the body and process and/or information needs in the Appendices
- Used consistent terminology and removed redundancies

These improvements have made the RCM Manual easier to understand and implement.

WHAT ELSE CHANGED IN MINE SITE ASSESSMENT AND VALIDATION?

In addition to creating the Blue Status for mine sites, it was necessary to provide clarification on who had the responsibility and role of assessing and validating mine sites. It was critical to ensure that this was a Member State responsibility, as in the old manual the third-party auditors and the Independent Mineral Chain Auditor (IMCA) also had a mandate to change status. The revised manual does not allow Third-Party Auditors to change a mine site's Status but ensures that they must report all identified Red and Yellow Status issues to Member States and the ICGLR. Since the IMCA function has been removed, the ability of the IMCA to change the Status is also removed.

HOW WERE CHAIN OF CUSTODY REQUIREMENTS AFFECTED?

Based on the experience gained in the implementation of the old RCM, there was the impression that a third-party was required to implement the CoC. While not the correct interpretation, the CoC requirements in the RCM needed to be clearer. In addition, there were informal agreements or MOU's in place between governments and third-party providers. These were not consistent across the providers or governments, potentially adding cost and creating unfair advantages to a competing system. To ensure more consistency in the definition and implementation of CoC requirements, the Second Edition requires Member States to establish a CoC Programme that licenses CoC Systems. Systems may be implemented by a third party, government, or company. There may be more than one system in the Member States programme. In fact, this is strongly encouraged to promote competition amongst providers.

There has also been concerns raised regarding transparency of some of the systems that have been implemented. This included access to data during a Third-Party Audit (TPA) and what the true operational cost are. To address these concerns the RCM now requires greater transparency of CoC Systems including an annual financial report submitted by the CoC System to the Member

State and Audit Committee and access to data for auditors during a TPA. If a third-party CoC System provider is used, Exporters are responsible to assure Systems transmit data to the Member State. Failure to make data available during the audit may lead to a non-conformance, which may in turn impact the Exporter's ability to continue to export legally.

Finally, experience has shown that disputes have existed between third party CoC and Due Diligence providers which leads to the disruption of the competing supply chain and thus negatively impacting the supply chain. It is critical that disputes be raised to the Member State as soon as practical, therefore the RCM now requires CoC Systems to report immediately to Member States of any dispute.

WHAT CHANGED REGARDING THE THIRD-PARTY AUDITS OF EXPORTERS?

In alignment with OECD Due Diligence Guidance, TPAs are now Management Systems Audits and consistent with the OECD Alignment Assessment. There were significant concerns around cost and the ICGLR's capacity to conduct timely audits; therefore, the frequency of exporter audits was changed from annually to once every three years. The TPA process must be initiated by the Exporter, who is required to pay for the audit. To have an agreed understanding around access to data, payment terms, and confidentiality issues, Exporters need to have a signed contract in place with the ICGLR. This will avoid confusion and make sure the terms of the audit process are clear and well defined.

CONCLUSION

The Second Edition of the RCM has not fundamentally changed the purpose of the mechanism, which remains to contribute to and certify mineral supply chains that do not directly or indirectly provide support to non-state armed groups and / or public or private security forces, or contribute to serious human rights abuses (as outlined in Annex II of the OECD Due Diligence Guidance on Responsible Mineral Supply Chains).

The new manual does however introduce significant changes to the requirements, processes and roles and responsibilities of actors. We believe that these innovations will make the RCM more user-friendly, ensure widespread uptake in the years to come and strengthen enforcement by focussing on its fundamental elements.