



# Guide to Current Mining Reform Initiatives in Eastern DRC

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# Editorial

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# Acronyms

ACP – African, Caribbean, Pacific

BGR – German Federal Institute for Geosciences and Natural Resources

CaMi – Cadastre Minier

CEEC – Centre d’Evaluation, d’Expertise et de Certification

CFS – “conflict-free” smelter program

CMR – Conflict Minerals Report

CNDP – National Congress for the Defence of the People

CSR – Corporate Social Responsibility

CTC – Certified Trading Chains

DFID – British Department for International Development

DRC – Democratic Republic of the Congo

EC – European Commission

EDRC – eastern DRC

EICC – Electronics Industry Citizenship Coalition

EITI – Extractive Industries Transparency Initiative

EP – European Parliament

ESG – Environmental, Social and Governance

EU – European Union

FARDC – Forces Armées de la République Démocratique du Congo

FDLR – Democratic Forces for the Liberation of Rwanda

GAO – United States Government Accountability Office

GESI – Global e-Sustainability Initiative

GHGm - GreenhouseGasMeasurement

GTZ – German Technical Cooperation

ICGLR – International Conference of the Great Lakes Region

ITRI – International Tin Research Institute

iTSCI – ITRI Tin Supply-Chain Initiative

KP – Kimberley Process

KPCS – Kimberley Process Certification Scheme

LRA – Lord’s Resistance Army

MEP – Member of the European Parliament

MONUSCO – United Nations Organization Stabilization Mission in the Democratic Republic of the Congo

NCPs – National Contact Points

OECD – Organization for Economic Co-operation and Development

OGMR – Rwanda Geology and Mines Authority

PAC – Partnership Africa Canada

RCM – Regional Certification Mechanism

RINR – Regional Initiative on Natural Resources

RMI – Raw Materials Initiative

SAESSCAM – Small-scale-mining Technical Assistance and Training Service

SEC – Securities and Exchange Commission

SOMO – Centre for Research on Multinational Corporations

SSR – Security Sector Reform

STAREC – Programme de Stabilisation et de Reconstruction des Zones sortant des conflits armés

UNESCO – United Nations Educational, Scientific and Cultural Organization

UN GoE – United Nations Group of Experts

UNSC – United Nations Security Council

USAID – United States Agency for International Development

# Introduction

More than a decade after the United Nations (UN) Security Council expressed its concern about the illegal exploitation of natural resources in the Democratic Republic of Congo (DRC), international organizations, governments and industry bodies have in recent years increased emphasis on the accountability of companies sourcing minerals from eastern DRC and the wider region. The impetus which brought on a variety of initiatives aimed at enhancing transparency and corporate accountability with regard to the mineral trade both in and from eastern DRC, was related to legislative initiatives in the United States (US) which focused on conflict minerals. The legislative process in the US started in 2008 and resulted in a provision on conflict minerals from the DRC and adjoining countries in a larger law that became known as the Dodd/Frank Act. The Act is targeted towards Wall Street reform in response to the financial crisis and was signed into law by US President Obama in July 2010.

The provision on conflict minerals is contained in Section 1502 of the Act and imposes legal obligations with regard to due diligence measures by companies that trade on US Exchanges and are implicated in the supply-chains of tin, tantalum, tungsten and gold, the four main metals extracted from eastern DRC ores. The US law created a great sense of urgency in international diplomatic circles and in the business community. The pressure to create conflict-free supply-chains of the minerals concerned mounted further when the UN Group of Experts released its latest report in November 2010, which illustrated in detail how in the DRC both rebels and the national army are profiting from the mineral trade. Political momentum subsequently increased when the UN Security Council strongly expressed its support for the Group of Expert's due diligence guidelines.

In the DRC President Kabila imposed an embargo on all exploitation and exports from the Kivu provinces and Maniema (September 2010 until March 2011), causing among other things the implementation of several certification and traceability schemes to be put on hold. Meanwhile, the International Conference of the Great Lakes Region (ICGLR) has, in December 2010, endorsed the Guidance of the Organisation for Economic Co-operation and Development (OECD), which provides industry with a set of well conceptualized due diligence measures. Finally, at the European Union (EU) level legislators are currently considering the adoption of legislation on conflict minerals from eastern DRC in the vein of the pertaining provisions in the Dodd/Frank Act.

This briefing paper offers a short description of the ongoing initiatives by legislators, governments, multilateral organizations and industry aiming to ensure that mineral supply-chains are not tainted by conflict in eastern DRC. The paper briefly describes their genesis, the current state of affairs, the linkages between the initiatives and the main challenges they face. Links to key documents are incorporated in the footnotes, which should enable the reader to become further acquainted with the subject.

This paper is based on a literature review and interviews conducted by researchers of the International Peace Information Service (IPIS).

# I. Initiatives by international organizations and governments

## Organisation for Economic Co-operation and Development (OECD)

Following the L'Aquila G8 Summit in 2009, the OECD<sup>1</sup> hosted a working group which aimed at establishing guidelines for companies operating in or sourcing minerals from conflict-affected areas. In December 2010, this effort resulted in the final draft of a Guidance<sup>2</sup> which, through a comprehensive process of consultations, was drawn from the input of high-level governmental, industry and civil society stakeholders (see below). The UN Group of Experts (UNGoE) on the DRC was key in conceiving the OECD guidelines. Consequently, the Group's recommendations for appropriate due diligence measures<sup>3</sup> in its latest report (Nov. 2010 – see below) are mirrored in the OECD Guidance<sup>4</sup>.

It is important to note that the OECD Guidance as such does not entail legal obligations for actors in the supply-chain. Cases of violation by companies can be brought to the OECD National Contact Points (NCPs) of their country of domicile, but the ensuing procedure has no judicial value. The NCPs, whose criteria of composition vary between member states, rather play a “mediating role” between conflicting parties (read: civil society groups vs. companies). Proceedings result in a communiqué or statement of the NCP which, again, is legally non-binding and does not result in punitive measures.<sup>5</sup>

This said, the OECD Guidance has the merit to provide actors in the supply-chain with a detailed and well defined set of guidelines, which through an inclusive consultation process has gained support from key stakeholders.<sup>6</sup> These stakeholders include initiators<sup>7</sup> of other due diligence, traceability or certification endeavours, both governmental (i.e. International Conference of the Great Lakes Region/Regional Certification Mechanism<sup>8</sup>, Bundesanstalt für Geowissenschaften und Rohstoffe/Certified Trading

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<sup>1</sup> The lead was taken by the OECD Investment Committee and the OECD Development Assistance Committee. An overview of the project can be found at: [http://www.oecd.org/document/36/0,3746,en\\_2649\\_33765\\_44307940\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/36/0,3746,en_2649_33765_44307940_1_1_1_1,00.html) (last accessed on 22/02/2011).

<sup>2</sup> The link to this final version can be found at: [http://www.oecd.org/document/36/0,3746,en\\_2649\\_34889\\_44307940\\_1\\_1\\_1\\_1,00&en-USS\\_01DBC.html](http://www.oecd.org/document/36/0,3746,en_2649_34889_44307940_1_1_1_1,00&en-USS_01DBC.html) (last accessed on 21/02/2011).

<sup>3</sup> The OECD furnishes the following definition of due diligence: “*Due diligence is an on-going, proactive and reactive process through which companies can ensure that they respect human rights and do not contribute to conflict. Due diligence can also help companies ensure they observe international law and comply with domestic laws, including those governing the illicit trade in minerals and United Nations sanctions. Risk-based due diligence refers to the steps companies should take to identify and address actual or potential risks in order to prevent or mitigate adverse impacts associated with their activities or sourcing decisions.*”

<sup>4</sup> The UN GoE outlines the same five-step due diligence approach as the OECD Guidance and refers to the Guidance for further details (S/2010/596 p. 86).

<sup>5</sup> The DRC Panel's report of 2002, which named and shamed numerous companies and individuals involved in the plundering of natural resources in the DRC, brought the OECD Guidelines for Multinational Enterprises to the fore by denouncing companies to be in breach with these Guidelines. Subsequently, several advocacy groups resorted to the OECD Guidelines and accompanying procedures as an instrument to hold companies accountable. Cases were, for instance, brought before the NCP's of the UK and Belgium. In one of these cases, UK company Afrimex was found to have been in breach with the Guidelines. While this had no consequence in law, it did contribute to the understanding that companies sourcing from eastern DRC should take due diligence seriously.

<sup>6</sup> The list of participants in the third consultation (Nairobi, Dec. 2010) illustrates the wide array of stakeholders consulted. The link to the list can be found at: [http://www.oecd.org/document/41/0,3746,en\\_2649\\_34889\\_45793897\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/41/0,3746,en_2649_34889_45793897_1_1_1_1,00.html) (last accessed on 21/02/2011).

<sup>7</sup> The initiatives listed here will be discussed further in this paper.

<sup>8</sup> The Guidance has been endorsed by the ICGLR in the Lusaka Declaration (Dec. 2010). See: [www.oecd.org/dataoecd/33/18/47143500.pdf](http://www.oecd.org/dataoecd/33/18/47143500.pdf) (last accessed on 08/02/2011).

Chains<sup>9</sup>) and industry based (i.e. International Tin Research Institute/Tin Supply-chain Initiative<sup>10</sup>, Global E-Sustainability Initiative/ Electronics Industry Citizenship Coalition<sup>11</sup>).

In short, the OECD has succeeded in creating the point of reference for due diligence of the supply-chain of minerals from eastern DRC (EDRC), while securing ample buy-in from international actors in the supply-chain and from relevant political bodies, both regional and international. Companies sourcing minerals from the DRC (or other conflict-affected areas) who adopt the Guidance, pledge not to profit from or contribute by any means to torture and degrading treatment, compulsory labor, the worst forms of child labor, other gross human rights violations or war crimes.<sup>12</sup> Further, they will not tolerate direct or indirect support to non-state armed groups through the entire supply-chain, or to public and private security forces who illegally control mines or levy illegal taxes at any point in the supply-chain.

The Guidance further provides details on risk mitigation in the supply-chain of tin, tantalum and tungsten (commonly referred to as “the three T’s”) and rigorous, comprehensive due diligence measures to be taken by upstream (mines to smelters/refiners) and downstream (smelters/refiners to retailers) actors. Local minerals exporters are, for instance, required to gather and disclose information on all taxes and other payments made along the supply-chain to government, security forces and armed groups; on the ownership and corporate structure of the exporter; on the mine of mineral origin; on the identity of all intermediaries; on the locations where minerals are traded and processed; and on transportation routes. The Guidance further recommends that this information is regularly checked on the ground by an assessment team, who are tasked to provide recommendations for risk mitigation.

The OECD is aware of the challenge this poses to actors in the upstream supply-chain and therefore calls upon donors to support efforts to strengthen supply-chain monitoring capacity in the DRC and improve wider governance systems, stretching beyond the mineral sector (customs, tax collection, the judiciary system and the security sector).<sup>13</sup> To disseminate information and receive feedback on the Guidance locally, the OECD held a workshop with local actors in the supply-chain (“comptoirs”, miners’ associations, civil society,...) in Goma, the capital of North Kivu, in mid-March 2011. At the event, North Kivu comptoirs formally endorsed the Guidance. The OECD will remain engaged in efforts to further disseminate the Guidance in and outside the region and to assist upstream and downstream stakeholders in putting it into practice, including day-to-day implementation and assessment. Finally, the OECD is working on a supplementary guideline for gold, where risk mitigation strategies in this very complex supply-chain can be better detailed.

## UN Group of Experts on the DRC (UNGoE)

In 2003 the UN Security Council (UNSC) imposed an arms embargo and sanctions regime that has been modified and strengthened over time.<sup>14</sup> Subsequently, a UN Group of Experts (UNGoE) was created to assist the Sanctions Committee and to monitor the implementation of the sanctions regime.<sup>15</sup> The Group replaced a Panel of Experts, installed in 2000 to investigate the illegal exploitation of natural resources in the DRC.

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<sup>9</sup> The BGR/CTC project has adopted standards derived from the OECD Guidance. See: [http://www.bgr.bund.de/nn\\_1756078/EN/Themen/Min\\_\\_rohstoffe/CTC/Approach/Standards-Principles/standards-principles\\_\\_node\\_\\_en.html?\\_\\_nnn=true](http://www.bgr.bund.de/nn_1756078/EN/Themen/Min__rohstoffe/CTC/Approach/Standards-Principles/standards-principles__node__en.html?__nnn=true) (last accessed on 15/02/2011).

<sup>10</sup> The iTSCI repeatedly expresses its adherence to the OECD Guidance. See for example: [www.itri.co.uk/SITE/.../8\\_iTSCi\\_News\\_Bulletin\\_October\\_2010\\_EN.pdf](http://www.itri.co.uk/SITE/.../8_iTSCi_News_Bulletin_October_2010_EN.pdf) (last accessed on 23/02/2011).

<sup>11</sup> GESI/EICC equally considers support for the OECD Guidance as a priority. See: <http://www.gesi.org/Media/PressReleaseFullstory/tabid/104/smid/503/ArticleID/69/reftab/61/Default.aspx> (last accessed on 10/02/2011).

<sup>12</sup> This paragraph and the next is based on the Guidance document. See: [http://www.oecd.org/document/36/0,3746,en\\_2649\\_34889\\_44307940\\_1\\_1\\_1\\_1,00&en-USS\\_01DBC.html](http://www.oecd.org/document/36/0,3746,en_2649_34889_44307940_1_1_1_1,00&en-USS_01DBC.html) (last accessed on 21/02/2011).

<sup>13</sup> <http://www.oecd.org/dataoecd/17/27/46785670.htm> (last accessed on 22/02/2011).

<sup>14</sup> Under Chapter VII of the Charter, the Security Council can take enforcement measures to maintain or restore international peace and security.

<sup>15</sup> <http://www.un.org/sc/committees/1533/> (last accessed on 15/01/2011).



The UN GoE's latest report highlights numerous cases that illustrate the role of minerals in perpetuating and exacerbating the conflict in EDRC. This adds to the long list of similar evidence in previous reports, which thus builds a strong case for due diligence measures on behalf of all actors involved in the supply of minerals from EDRC. On request of the UNSC<sup>16</sup>, the UNGoE has, in its latest report, included a chapter which provides extensive guidance on the issue of due diligence.<sup>17</sup>

Based on the instructions from the UNSC, it pertained to the UN GoE mandate to "provide guidance to importers, processors and consumers of minerals from the eastern part of the Democratic Republic of the Congo on how to mitigate the risk of providing direct or indirect support to illegal armed groups and/or to individuals and entities that are subject to targeted UN sanctions".<sup>18</sup> On the ground, however, it is clear that also elements of the regular army (Forces Armées de la RDC or FARDC), often perpetrators of serious human rights abuses, are involved in the illegal exploitation, taxation and trade of minerals in EDRC. Consequently, the UNGoE's latest report suggests the option to equally take into account the illegal involvement of FARDC elements in the mining sector in due diligence measures by industry.

Crucially, the UNSC accepted this option thereby, innovatively, including reference to perpetrators of human rights abuses by the regular army in the notion of due diligence.<sup>19</sup> By entering this provision in the Resolution, the UNSC avoids a major pitfall that continues to undermine the credibility of the Kimberley Process Certification Scheme (KPCS), to date the most high-profile system aimed at stemming the flow of conflict minerals to legal markets. The KPCS narrowly defines 'conflict diamonds' as diamonds that 'finance rebel movements'. It is therefore inapt to take appropriate measures when state actors commit gross human rights violations against their own population, as was recently the case in the Marange diamond fields of Zimbabwe<sup>20</sup>. As we will point out below, the designers of the ICGLR tracking system, who have a thorough working knowledge of the KPCS, carefully avoided the many flaws of the diamond certification scheme.

Although the due diligence procedures outlined by the UNGoE and the OECD are more or less identical, there is a crucial distinction as to their potential impact. While the OECD Guidance is voluntary, UNSC Resolution 1952 obliges the UN Sanctions Committee to take into account whether or not an individual or entity has exercised due diligence, when considering whether or not to sanction them or it. Whether this is going to make a difference in practice, will depend upon the willingness of UN member states to put their nationals or companies forward for sanctions<sup>21</sup> and on the level of implementation of sanctions by countries trading with the DRC<sup>22</sup>.

Resolution 1952 extends the mandate of the UNGoE until November 2011 and asks for an addition of a natural resource expert to the Group. The UN GoE is tasked to evaluate the impact of its due diligence guidelines and to continue its collaboration with other forums on the issue. They will therefore remain the most authoritative source of on-the-ground information. The Group's next reports are due 18 May and 17 October 2011.

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<sup>16</sup> In paragraph 7 of Resolution 1896 (2009) the UNSC requested recommendations for the exercise of due diligence by importers.

<sup>17</sup> Chapter IX S/2010/596 p. 83.

<sup>18</sup> Resolution 1896 referring to Resolution 1857, paragraph 4 (g).

<sup>19</sup> S/Res/1952 (2010) paragraph 7.

<sup>20</sup> Information on the Zimbabwe case can be found on the websites of Partnership Africa Canada and Global Witness. Since its inception in 2003, the KPCS has been hampered by its decision-making system, which is based on full consensus of all member countries. The power of veto, indiscriminately granted to all KPCS members, has created a situation whereby any reference to human rights is systematically excluded from the KPCS' administrative decisions, communiqués and core documents. See, for instance: Other Facets, PAC, February 2011. <http://www.pacweb.org/index-e.php> (last accessed on 23/02/2011).

<sup>21</sup> In July 2010, Global Witness filed a law suit against the UK government for failing to list UK companies involved in the DRC mineral trade for sanctions: see <http://www.globalwitness.org/library/global-witness-takes-uk-government-court-failing-list-uk-companies-trading-congo-conflict> (last accessed on 23/02/2011).

<sup>22</sup> This level is reportedly low as far as the DRC's regional and Asian trading partners are concerned. See: *Good Deal, Bad Deal. Report of the Conference 'Illegal Trade in Natural Resources – What can Brussels Do?'*, Institute for Environmental Security, November 2010, p. 17.

# Legislative measures against conflict minerals

## *The United States*

In July 2010 the US Senate passed the Dodd/Frank Wall Street Reform and Consumer Protection Act<sup>23</sup>, which mainly concerns financial reform in the US. The Act, however, also contains a provision regarding Congolese 'conflict minerals' (Section 1502), the result of several years of intense lobbying by, among others, advocacy groups and faith-based investors. The provision merged two pre-existing Congressional bills on conflict minerals and was introduced in the Act by Senator Sam Brownback.

Under the Act, any company that offers its securities for sale to the general public in the US<sup>24</sup> - and is thus required to register with the Securities and Exchange Commission (SEC)<sup>25</sup>- and whose products contain coltan (columbite-tantalite), cassiterite, gold or wolframite, all categorically defined as "conflict minerals" - will have to disclose on a yearly basis whether these minerals originate from the DRC or an adjoining country<sup>26</sup>.

Claims that the conflict minerals used do not originate from the DRC or its neighbors, will have to be substantiated by a description in its annual report of how the company reached this conclusion. In case the conflict minerals used do originate in the DRC or its neighboring countries, or if the company is uncertain of the minerals' origin, it has to include a "Conflict Minerals Report" (CMR) in its annual report to the SEC. The CMR has to contain "a description of the measures taken by the person to exercise due diligence on the source and chain of custody of such minerals [...] and a description of the products manufactured or contracted to be manufactured that are not DRC conflict free ('DRC conflict free' is defined to mean the products that do not contain minerals that directly or indirectly finance or benefit armed groups in the Democratic Republic of the Congo or an adjoining country) [...], the facilities used to process the conflict minerals, the country of origin of the conflict minerals, and the efforts to determine the mine or location of origin with the greatest possible specificity."<sup>27</sup> The companies' supply-chain due diligence efforts have to be subjected to a private sector audit.

The Act obliges companies to furnish this audit and the "Conflict Minerals Report" to the SEC and to publish both documents on their website. By subjecting this information to public scrutiny, the reputational risk towards consumers for companies using conflict minerals will increase. In the words of Toby Whitney, legislative director for Congressman Jim McDermott: "It's a name-and-shame bill. There will only be fines for companies that do not do good reporting and auditing. Companies that carry out all the correct due diligence and report back to the SEC that they are indeed importing conflict minerals will not be fined."<sup>28/29</sup> Nevertheless, the Act requires the State Department to, jointly with the US Agency for International Development (USAID), develop a strategy on how to break the linkages between minerals and conflict in the DRC, including the drafting of punitive measures against commercial entities that support human rights violations.<sup>30</sup> This adds to UN sanctions which already apply to individuals and entities supporting illegal armed groups in EDRC through illicit trade of natural resources.<sup>31</sup>

<sup>23</sup> <http://www.sec.gov/about/laws/wallstreetreform-cpa.pdf> (last accessed on 15/02/2011).

<sup>24</sup> Importantly, this means that not only US based companies will be required to report, but also foreign companies that are trading on any of the stock exchanges in the US.

<sup>25</sup> The mission of the U.S. Securities and Exchange Commission is to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

<sup>26</sup> The new law enters into force on the 1 April 2011. Nevertheless, companies only have to submit their first report at the end of the fiscal year that starts after the law enters into force. A company whose fiscal year starts in March 2011 for example, will have to report for the first time in March 2013.

<sup>27</sup> See: <http://www.sec.gov/about/laws/wallstreetreform-cpa.pdf> (last accessed on 15/02/2011).

<sup>28</sup> Cited by Congo researcher Jason Stearns: [http://enterprisesilienceblog.typepad.com/enterprise\\_resilience\\_man/2010/12/conflict-minerals-and-the-supply-chain.html](http://enterprisesilienceblog.typepad.com/enterprise_resilience_man/2010/12/conflict-minerals-and-the-supply-chain.html) (last accessed on 24/02/2011).

<sup>29</sup> It is important to note that the bill does not set forth penalties for non-compliance with reporting requirements. See: [www.akingump.com/.../110111\\_SEC's\\_Proposed\\_Conflict\\_Minerals\\_Rules\\_Affect\\_Multiple\\_Industries\\_and\\_Require.pdf](http://www.akingump.com/.../110111_SEC's_Proposed_Conflict_Minerals_Rules_Affect_Multiple_Industries_and_Require.pdf) (last accessed on 28/02/2011). On the other hand, as noted above, non-compliance with due diligence recommendations outlined in the latest UNGoE report is a criterion for the application of UN sanctions under Resolution 1952.

<sup>30</sup> <http://www.sec.gov/about/laws/wallstreetreform-cpa.pdf> Section 1502 (c) (last accessed on 15/02/2011).

<sup>31</sup> UN Security Council Resolution 1857 (2008).

To date, the strategic plan of the State Department and USAID has not been put forward. However, without referring to it, the US Ambassador to the DRC on 27 January 2011 announced the allocation of USD 11 million for programs contributing to the regulation of the mineral trade in EDRC.<sup>32</sup> The underlying ambition seems rather grand as this fund should, among other things, contribute to improving road infrastructure (mines to trading centers), capacity building of police and other government entities, and capacity building of local communities to monitor all activities related to minerals, including traceability initiatives.

Many concepts and definitions in Section 1502 of the Dodd/Frank Act require further specification, a task conferred upon the SEC which should develop concrete rules as a guidance to the law. Therefore, the SEC launched a consultation process in which any stakeholder could send recommendations.<sup>33</sup> This was initially announced to close on 31 January 2011, but it was extended until 2 March 2011, whereas the rules should become effective on 15 April 2011. As “conflict minerals” are used in a very wide range of products, the law concerns, besides actors across the entire supply-chain (miners, traders, processors,...), a great number of manufacturers from, among others, the medical, automotive, aerospace, electronics and jewelry industries.

This is reflected in the response to the SEC’s call for recommendations by a wide array of companies and industry groups.<sup>34</sup> Corporate concerns are mainly about compliance costs, timing, creating a level playing field, competitive disadvantages, and arrangements for existing stocks and recycled metals. With the adoption date of the rules nearing, the US Chamber of Commerce has threatened the SEC with legal action over the alleged lack of a proper cost-benefit analysis.<sup>35</sup> Finally, arguments against a rigorous application of the Act culminate in the prediction that this would lead to a de facto embargo of minerals from EDRC, with catastrophic consequences to the region’s economy and increased tensions as a result.<sup>36</sup> In this context, it is important to note that Section 1502 requires the director of the US Government Accountability Office (GAO) to, starting in July 2012, annually evaluate the effectiveness of the Law in promoting peace in the region.

Civil society input includes recommendations by the United Kingdom (UK) based NGO Global Witness, which has advised the SEC to take over the five point framework for due diligence of the UNGoE and the OECD, as the Act does not set forth a specific standard.<sup>37</sup> Global Witness further puts into perspective corporate concerns about the challenges and complexities related to proper supply-chain due diligence. In addition, the US advocacy group Enough has suggested detailed specifications on due diligence requirements and proposes a number of definitions of key concepts in the Act.<sup>38</sup>

In a rare submission by EDRC stakeholders, three heads of EDRC mining cooperatives, claiming support by high-level officials in North Kivu, complain that the local population has not been consulted on the US legislation and state that they are putting in place a traceability scheme in cooperation with the International Tin Research Institute (ITRI).<sup>39</sup>

A politically important submission comes from the ICGLR, which stresses among other things that its tracking system currently permits to follow the supply-chain to the points of export in DRC (comptoirs) and that it will soon be possible to trace minerals further upstream to the level of the individual mines.<sup>40</sup>

<sup>32</sup> <http://fr.allafrica.com/stories/201101280554.html> (last accessed on 02/03/2011).

<sup>33</sup> [www.sec.gov/rules/proposed/2010/34-63547.pdf](http://www.sec.gov/rules/proposed/2010/34-63547.pdf) (last accessed on 02/03/2011).

<sup>34</sup> All comments submitted can be viewed at: <http://www.sec.gov/comments/s7-40-10/s74010.shtml> (last accessed on 24/02/2011).

<sup>35</sup> <http://www.reuters.com/article/2011/03/07/us-financial-regulation-sec-chamber-idUSTRE7265B220110307> (last accessed on 28/03/2011) The SEC has estimated the number of companies obliged to furnish a “Conflict Minerals Report” to be around 1,200. See: [www.sec.gov/rules/proposed/2010/34-63547.pdf](http://www.sec.gov/rules/proposed/2010/34-63547.pdf) p. 72 (last accessed on 28/03/2011).

<sup>36</sup> See, for instance, the submission by the International Tin Research Institute: <http://www.sec.gov/comments/s7-40-10/s74010-61.pdf> (last accessed on 01/03/2011).

<sup>37</sup> <http://www.globalwitness.org/sites/default/files/library/Global%20Witness%20Submission%20to%20the%20SEC%20-%2012%20October%202010.pdf> (last accessed on 28/02/2011).

<sup>38</sup> <http://www.sec.gov/comments/s7-40-10/s74010-65.pdf> (last accessed on 01/03/2011).

<sup>39</sup> The ITRI will be further explained in a later section. [www.sec.gov/comments/s7-40-10/s74010-179.pdf](http://www.sec.gov/comments/s7-40-10/s74010-179.pdf) (last accessed on 28/03/2011).

<sup>40</sup> <http://www.sec.gov/comments/s7-40-10/s74010-54.pdf> (last accessed on 01/03/2011).

However, given the current implementation status of the ICGLR's Regional Initiative on Natural Resources, it is clear that the ICGLR tracking system will not be up and running on the planned adoption date of the SEC's rules (see below). Elsewhere, the Rwandan government, a ICGLR member, issued a request in the press for a delay until the end of 2012 before Section 1502 would become effective.<sup>41</sup> Finally, the Tanzanian<sup>42</sup> Chamber of Minerals and Energy voiced its concern that the gold sector of the country, which is of considerable importance, would unduly be affected by Section 1502.<sup>43</sup>

### **Box 1: Conflict Minerals Map**

A crucial provision in Section 1502 of the Dodd/Frank Act is that the US State Department should draw a 'Conflict Minerals Map' within six months after enactment. This map has to be made available to the public and should be renewed every six months. The map should depict mines located in areas under the control of armed groups in DRC as Conflict Zone Mines, thus providing companies conducting supply-chain due diligence with essential on-the-ground information.

Although many stakeholders have been advocating for the production of such a map, for example the UNGoE in their December 2008 report, a reliable version is currently still not available. It should also be noted that, given the volatile situation on the ground, such a map should be updated regularly.

New geographic data on mining and human rights violations stems from two sources. The first source is the Belgian research NGO IPIS and their local partners who collected data in the first half of 2009 (in the Kivu provinces) and in the first half of 2010 (in North Katanga, Maniema and South-East Orientale). These data were published in several maps that are available on the IPIS website.<sup>44</sup> Apart from the IPIS data, the DRC peacekeeping mission MONUSCO has tried to keep track of the positions of armed groups in relation to mining sites. A MONUSCO staff member has the task of filtering this information from general MONUSCO reports after which it is geo-referenced. Production of such maps by MONUSCO are troubled because the UN mission lacks the necessary manpower to process all the data in time and exercises restraint in sharing its data for reasons of confidentiality. As well, the mining site positions MONUSCO uses are mostly taken from the IPIS data.<sup>45</sup>

The IPIS and MONUSCO data were used as the principal sources of two other "mineral maps" that have been published since 2009. The DRC has produced two maps of its own through SAESSCAM, a state institution for the formalization of artisanal mining, and with the assistance of the German Bundesanstalt für Geowissenschaften. The latest was published in February 2010. It is not clear whether SAESSCAM will continue to produce similar maps as the responsibility for mapping within the Congolese mining ministry has been given to CaMi (Cadastre Minier).<sup>46</sup>

The US Department of State has, since the enactment of the Dodd/Frank Act, not produced an updated map. Its latest "minerals map" is dated from June 2010 and was based on existing data, mainly gathered from the IPIS maps.<sup>47/48</sup>

<sup>41</sup> <http://allafrica.com/stories/201102220169.html> (last accessed on 28/03/2011).

<sup>42</sup> Also Tanzania is a ICGLR member.

<sup>43</sup> [sec.gov/comments/s7-40-10/s74010-82.pdf](http://sec.gov/comments/s7-40-10/s74010-82.pdf) (last accessed on 28/03/2011).

<sup>44</sup> <http://www.ipisresearch.be/mapping.php?&lang=en> (last accessed on 29/03/2011).

<sup>45</sup> IPIS interviews with MONUSCO staff in Kinshasa and Brussels in May and July 2010.

<sup>46</sup> IPIS interviews with mining officials in Kinshasa in July and October 2010.

<sup>47</sup> [https://hiu.state.gov/Products/DRC\\_MineralsArmedGroups\\_\(June\\_2010\).pdf](https://hiu.state.gov/Products/DRC_MineralsArmedGroups_(June_2010).pdf) (last accessed on 02/03/2011).

<sup>48</sup> The map was drawn following Section 1252 of the National Defense Authorization Act, Fiscal Year 2010, Public Law 111-84 (NDAA), enacted on 28 October 2009, stating that "the Secretary of State, in consultation with the Secretary of Defense, should work with other member states of the United Nations and local and international nongovernmental organizations to produce a map of mineral-rich zones and areas under the control of armed groups in the Democratic Republic of the Congo."

While it is unclear why the process has been stalled, efforts are now underway to set up a system of regular map updates produced by CaMi under the guidance of international experts and based on data gathering by both local mining officials and civil society. The mapping exercise could be integrated with other due diligence initiatives such as the OECD Guidance or the different certification and traceability efforts.

## The issue of conflict minerals at EU level

After the US Senate passed the Dodd/Frank Act, pressure on the EU to address this issue has been mounting. In October 2010 the European Parliament (EP) welcomed the new US 'Conflict Minerals' Law in its Resolution regarding "failures in protection of human rights and justice in the Democratic Republic of Congo".<sup>49</sup> Despite several requests by Parliament to the European Commission (EC) and the Council to examine a legislative initiative along these lines, the Commission has so far limited itself to vague statements without concrete action.

Preliminary information came from Andris Piebalgs, the Commissioner for Development, in his responses to the Parliamentary questions provided from MEPs Judith Sargentini<sup>50</sup>, Marc Tarabella<sup>51</sup> and Niki Tzavela<sup>52</sup>. Also Trade Commissioner Karel De Gucht touched upon the issue in his speech to the joint African, Caribbean, Pacific (ACP)-EU Parliamentary Assembly on 4 December 2010.<sup>53</sup> De Gucht acknowledged that the EU is one of the world's largest importers of raw materials and should take the responsibilities that come with this position. He further explained that the EC is considering the issue of transparency in the extractive industries within a wider context of EU-financial regulatory reform and that it would also be addressed in the EC's communication on the Raw Materials Initiative (RMI).

When the EC released its communication on the RMI, which sets out targeted measures to secure and improve access to raw materials for the EU, the issue of conflict minerals was indeed mentioned.<sup>54</sup> Yet, it should be noted that the RMI communication is not the best forum to address obligations for companies. First of all, the document is not legislative but sets out an economic strategy of the EU. Secondly, even though the RMI aims at "fair" and "sustainable" supply of raw materials, it primarily has the objective to secure access to the market, while measures that aim at avoiding or preventing conflict related to minerals can indirectly pose barriers on the trade of raw materials.

The EC thus acknowledged – without specifying any country or situation – that revenues from resource extraction can fuel conflicts, yet it did not come up with innovative solutions for this problem. Besides expressing its support for the work of the OECD concerning the drafting of due diligence guidelines and other existing initiatives, the Commission did not express the intention to introduce due diligence requirements for companies similar to those in Section 1502 of the Dodd/Frank Act.

The EC did propose to promote more disclosure of financial information and transparency for the extractive industry. In this respect, the creation of common EU rules on the disclosure of financial information on a country- by-country basis is currently being considered. Rules on financial reporting by multinational companies can contribute to transparency in the extractive industries, however they differ from due diligence reporting on measures taken to identify the mines of origin of certain minerals

<sup>49</sup> <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0350+0+DOC+XML+V0//EN> (last accessed on 22/03/2011).

<sup>50</sup> <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+E-2010-9040+0+DOC+XML+V0//EN> (last accessed on 11/04/2011).

<sup>51</sup> <http://www.europarl.europa.eu/sides/getDoc.do?language=MT&reference=E-2010-7868&secondRef=0&type=WQ> (last accessed on 22/03/2011).

<sup>52</sup> <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+E-2010-5532+0+DOC+XML+V0//EN> (last accessed on 22/03/2011).

<sup>53</sup> Speech Karel De Gucht, Kinshasa, 4 December 2010. See: [http://trade.ec.europa.eu/doclib/cfm/doclib\\_results.cfm?key=ACP-EU&opt=1&dis=20&lan=all&ty=Speeches%20and%20articles&sta=1&en=20&page=1&year1=&year2=&sector=all&country=all&langid=en](http://trade.ec.europa.eu/doclib/cfm/doclib_results.cfm?key=ACP-EU&opt=1&dis=20&lan=all&ty=Speeches%20and%20articles&sta=1&en=20&page=1&year1=&year2=&sector=all&country=all&langid=en) (last accessed on 22/03/2011).

<sup>54</sup> [http://ec.europa.eu/enterprise/policies/raw-materials/index\\_en.htm](http://ec.europa.eu/enterprise/policies/raw-materials/index_en.htm) (last accessed on 15/02/2011).

and to avoid that these minerals finance armed actors. In the context of current debate on minerals from EDRC, it is important not to confuse these two types of corporate disclosure. Financial reporting mechanisms could combat corruption in the industrial mining sector, as mining companies would be obliged to publish what they pay to governments in countries where they are active. Trying to avoid financing rebels groups or human rights violators who are present in EDRC, where all mining is artisanal, is more complex. Since the region has no industrial mining operations, it will be necessary to demand efforts from companies further down in the supply-chain to identify whether the minerals they are buying benefit armed actors.

In order to address the problems in the DRC mining sector, a combination of both financial and due diligence reporting will thus be required. The US legislators understood this and included both requirements in the Dodd/Frank Act. While Section 1502 requires due diligence reporting on the efforts undertaken to, among other things, identify the mine of origin of minerals that are used in the production process, Section 1504 – also known as the Cardin-Lugar provision - requires extractive companies to include their payments on a country-by-country and a project-by-project basis, and to publish that information. When discussing replication of the Dodd/Frank Act at the EU level, it is thus important to specify whether one aims at replicating Section 1502 or Section 1504. It is possible that the EC will address both the financial and the due diligence reporting in one set of rules. Nevertheless, the public consultation to gather stakeholders' views on rules on financial reporting by companies, conducted by Internal Market Commissioner Michel Barnier, only contained questions related to financial reporting.<sup>55</sup> In addition, recent comments made by Klaus Rudischhauser, a senior official of the EC for Development, at the EITI conference in Paris (March 2011) regarding the plans for a so-called Dodd/Frank Plus Act, only dealt with Section 1504 type requirements.<sup>56</sup>

From the point of view of the EP, it aims at a replication of the due diligence requirements specified in Section 1502 of the Dodd/Frank Act. On 15 December 2010, the EP repeated this concern in the resolution adopted regarding the future of the EU-Africa strategic partnership following the third EU-Africa Summit. Using stronger wording than two months before, the EP states that "the adoption of the new US 'Conflict Minerals' law is a *huge step forward* in combating illegal exploitation of minerals in Africa, which fuel civil wars and conflicts; and [that it] is of the view that the Commission and the Council *should come out* with similar proposals to ensure traceability of imported minerals in the EU."<sup>57</sup>

The confusion caused by the announcements at the EITI conference in March seems to be addressed in the draft report on the RMI of MEP Reinhard Bütikofer. This document, which will be the basis for the discussion regarding the Parliamentary resolution on the RMI, again specifies that "the Parliament calls on the Commission to follow the US Dodd-Frank bill *concerning conflict minerals*."<sup>58</sup> The Parliament explains that "the European Union should follow the US lead on the Dodd-Frank bill and require companies to disclose whether they source their resources from conflict regions *and* require extractive industries to disclose their payments to foreign governments in order to enhance transparency and ensure good governance."

As the EC has not taken the initiative to create a new directive or regulation that addresses the issue of conflict minerals, the most feasible and efficient way to tackle the issue of reporting obligations for companies active in the extractive industries, is possibly to frame it in the context of the broader European Corporate Social Responsibility Policies of the EU. Moreover, addressing this specific problem in a broader perspective has the advantage of leaving open possibilities to include other situations in which EU companies have a direct effect on the occurrence of human rights violations.

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<sup>55</sup> The consultation on financial reporting on a country-by-country Basis by Multinational Companies closed on 9 January 2011. More information can be found at: [http://ec.europa.eu/internal\\_market/consultations/2010/financial-reporting\\_en.htm](http://ec.europa.eu/internal_market/consultations/2010/financial-reporting_en.htm) (last accessed on 23/03/2011).

<sup>56</sup> <http://www.euractiv.com/en/specialreport-rawmaterials/eu-table-oil-mining-transparency-bill-news-502755> (last accessed on 28/03/2011).

<sup>57</sup> <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2010-0482&language=EN&ring=P7-RC-2010-0693> (last accessed on 28/03/2011).

<sup>58</sup> See: [http://www.europarl.europa.eu/meetdocs/2009\\_2014/organes/itre/itre\\_20110331\\_0900.htm](http://www.europarl.europa.eu/meetdocs/2009_2014/organes/itre/itre_20110331_0900.htm) (last accessed on 23/03/2011).

## The CSR Policy of the European Union

Ten years ago, the EC presented its Green Paper “promoting a European Framework for Corporate Social Responsibility”<sup>59</sup>, which was followed by the EC’s Communications concerning CSR of 2002 and 2006.<sup>60</sup> A new CSR Communication of the Commission is planned to come out in the fall of 2011. Furthermore, the EC hosts and facilitates a Multi-stakeholder Forum on CSR. This Multi-stakeholder Forum, which was created in 2002, provides a space for dialogue about developments in CSR and the European policy towards it.<sup>61</sup>

In the past few years, the Multi-stakeholder Forum has addressed the issue of business and human rights in a constructive way. At the request of the Forum, the EC commissioned the University of Edinburgh with a study to “clarify the current legal framework for human rights and the environment applicable to EU-based companies when they operate outside of the European Union”. This report, which is often referred to as “the Edinburgh study” was published in October 2010 and will give guidance to the EU when defining their CSR policy and when implementing the United Nations business and human rights framework (also known as “the Ruggie framework”).<sup>62</sup>

Regarding the issue of disclosure of environmental, social and governance (ESG) information, the EC hosted a series of workshops between September 2009 and February 2010 where stakeholders had the opportunity to share their views on the importance of ESG disclosure, and put forward proposals for European policy in this field.<sup>63</sup>

Following up on these workshops, the EU’s Directorate General Internal Market & Services launched two consultations regarding the reporting requirements. In the first consultation regarding “Country-by-Country Reporting by Multinational Companies”, NGOs such as Publish What You Pay, Global Witness and Oxfam International advocated for mandatory country-by-country reporting requirements, referring to Section 1504 of the Dodd/Frank Act. In the second consultation regarding the disclosure of non-financial information by companies, NGOs are demanding a general obligation for companies to report on any risk of violations of international human rights and environmental standards that may occur or that have occurred as a result of their operations, or as a result of the operations of their subsidiaries or suppliers. They also demand that companies have an obligation to report on any steps taken to mitigate such risks and violations.<sup>64</sup> Without explicitly referring to it, this demand is similar to Section 1502 of the Dodd/Frank Act, yet not limited to the extractive industries.

Even though it is not mentioned as an official purpose of the consultation, the Reporting Directives will be revised in the summer of 2011.<sup>65</sup> Currently, the directives allow member states to permit or require companies to include information relating to environmental and social matters in their annual report “where appropriate”. Nevertheless, as there is no guidance as to when it is “appropriate”, member states have translated this directive very differently, which has led to a reporting framework that is confusing for investors, the general public and for the companies themselves.<sup>66</sup>

<sup>59</sup> Com (2001) 366 final of 18/07/2001. See: [http://ec.europa.eu/enterprise/policies/sustainable-business/documents/corporate-social-responsibility/index\\_en.htm#h2-3](http://ec.europa.eu/enterprise/policies/sustainable-business/documents/corporate-social-responsibility/index_en.htm#h2-3) (last accessed on 04/03/2011).

<sup>60</sup> Com (2002)347 final of 02/07/2002 and Com(2006)136 final. See: [http://ec.europa.eu/enterprise/policies/sustainable-business/documents/corporate-social-responsibility/index\\_en.htm#h2-3](http://ec.europa.eu/enterprise/policies/sustainable-business/documents/corporate-social-responsibility/index_en.htm#h2-3) (last accessed on 04/03/2011).

<sup>61</sup> [http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/multi-stakeholder-forum/index\\_en.htm](http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/multi-stakeholder-forum/index_en.htm) (last accessed on 04/03/2011).

<sup>62</sup> [http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/human-rights/index\\_en.htm](http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/human-rights/index_en.htm) (last accessed on 04/03/2011).

<sup>63</sup> [http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/reporting-disclosure/index\\_en.htm](http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/reporting-disclosure/index_en.htm) (last accessed on 04/03/2011).

<sup>64</sup> European Coalition for Corporate Justice. Submission to the European Commission public consultation on disclosure of non-financial information by companies. Will soon be available at: [http://ec.europa.eu/internal\\_market/consultations/2010/non-financial\\_reporting\\_en.htm](http://ec.europa.eu/internal_market/consultations/2010/non-financial_reporting_en.htm) (last accessed on 23/03/2011).

<sup>65</sup> Interview IPIS with the Commission, DG Internal Market, Financial Reporting Unit. The Reporting Directives are the Fourth Council Directive 78/660/EEC, the Seventh Council Directive 83/349/EEC as amended by Directive 2003/51/EC, also known as the Accounts Modernisation Directive. These amended Directives are available at [http://ec.europa.eu/internal\\_market/accounting/legal\\_framework/index\\_en.htm](http://ec.europa.eu/internal_market/accounting/legal_framework/index_en.htm) (last accessed on 23/03/2011).

<sup>66</sup> GREGOR F., *Principles and Pathways: Legal Opportunities to Improve Europe’s Corporate Accountability Framework*, European Coalition for Corporate Justice, November 2010, p. 11.

Interestingly, one of the recommendations of the Edinburgh Study is that “the EU and the EU Member States could further specify existing reporting requirements on environmental and social impacts, and clarify when and under what conditions human rights risks and impacts should be disclosed, including human rights and environmental impacts of third-country subsidiaries and suppliers of European corporations.” Not only does the possibility of fuelling conflict through the trade in minerals from EDRC seem to be a first-class example of where human rights risks and impacts will need to be disclosed, but as well, the fact that Commissioner Piebalgs referred to the necessity to wait for the recommendations of this study when answering the Parliamentary question of MEP Tarabella, shows the importance of the given advice and that the Commission should take it into consideration.<sup>67</sup>

Besides the incorporation of these disclosure requirements in the revision of the Reporting Directives, there is also an option to include them in the revision of the Transparency Directive.<sup>68</sup> This directive, which aims to improve investor protection and market efficiency by prescribing rules for securities traded on EU Regulated Markets and the issuers of such securities, is the direct equivalent of the Dodd/Frank Act and will be revised in the autumn of 2011.

Finally, in response to an often heard complaint about a lack of consultation with local stakeholders in relation to Section 1502 of the Dodd/Frank Act, MEP Judith Sargentini is planning a hearing session on 26 May 2011<sup>69</sup> at the EP with representatives of NGOs from EDRC, in cooperation with the Dutch research institute SOMO.<sup>70</sup> This follows previous work of SOMO aimed at gathering opinions of local stakeholders, mainly from civil society, on mining reform in EDRC.<sup>71</sup> It should be remembered though that civil society leaders can face tough consequences when criticizing governance of the EDRC mining sector. In a public speech in March 2011, for instance, the mayor of Goma, North Kivu reportedly warned local organizations who had expressed their support for a swift implementation of the Dodd/Frank Act that he “will ask the government to track down and sanction everyone who was behind these negative statements.”<sup>72</sup>

## Measures by the International Conference of the Great Lakes Region (ICGLR)

The ICGLR was established in 2004 and is the highest-level peace process in the African Great Lakes Region.<sup>73</sup> It involves eleven governments and has hosted several summits with the regional heads of state. At a December 2006 summit, the ICGLR adopted a stability Pact for the region, containing ten Protocols which entered into force in June 2008.<sup>74</sup> The “Protocol on the fight against the Illegal Exploitation of Natural Resources” provides the legal basis for “a regional certification mechanism for the exploitation, monitoring and verification of natural resources within the Great Lakes Region”. Subsequent meetings in Burundi (April 2010) and Nairobi (September 2010) adopted the Regional Initiative on Natural Resources (RINR), which was finally signed by all heads of the ICGLR member states at a summit in Lusaka (December 2010).<sup>75</sup>

<sup>67</sup> <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2010-7868&language=MT> (last accessed on 28/03/2011).

<sup>68</sup> [http://ec.europa.eu/internal\\_market/accounting/legal\\_framework/transparency\\_directive\\_en.htm](http://ec.europa.eu/internal_market/accounting/legal_framework/transparency_directive_en.htm) (last accessed on 23/03/2011).

<sup>69</sup> Personal communication to IPIS on 31/03/2011 by the office of MEP Judith Sargentini.

<sup>70</sup> Communication by Tim Steinweg, a researcher with SOMO, which has conducted several investigations in supply-chains of the electronics industry for the Make IT Fair campaign.

<sup>71</sup> See: *Voices from the Inside. Local Views on Mining Reforms in Eastern Congo*, Finnwatch & Swedwatch, October 2010.

<sup>72</sup> <http://www.raisehopeforcongo.org/node/919> (last accessed on 29/03/2011).

<sup>73</sup> <http://www.icglr.org/>.

<sup>74</sup> [http://www.icglr.org/IMG/pdf/Pact\\_on\\_Security\\_Stability\\_and\\_Development\\_in\\_the\\_Great\\_Lakes\\_Region\\_14\\_15\\_December\\_2006.pdf](http://www.icglr.org/IMG/pdf/Pact_on_Security_Stability_and_Development_in_the_Great_Lakes_Region_14_15_December_2006.pdf) (last accessed on 02/03/2011).

<sup>75</sup> [http://www.icglr.org/IMG/pdf/Lusaka\\_declaration\\_final\\_version\\_english-2.pdf](http://www.icglr.org/IMG/pdf/Lusaka_declaration_final_version_english-2.pdf) (last accessed on 02/03/2011).



The Lusaka Declaration endorses the OECD Guidance and calls for the harmonization of donor efforts and existing certification initiatives (iTSCI and CTC) with the overarching RINR. Also, it adopts six tools to curb the illegal exploitation of Natural Resources in the region, namely a regional certification mechanism (RCM) for cassiterite, wolframite, coltan and gold; harmonization of national legislation; formalization of the artisanal mining sector; a regional database on mineral flows; promotion of the Extractive Industries Transparency Initiative (EITI); and a whistle-blowing mechanism.<sup>76</sup>

The foundations for the RCM, the core tool of the RINR, the database and the whistle-blowing mechanism have been laid by the NGO Partnership Africa Canada (PAC), a co-founder of the Kimberley Process Certification Scheme (KPCS), in a project sponsored by the Swiss government.<sup>77</sup> Based on their thorough working knowledge of the KPCS, the designers of the model were careful to avoid the many shortcomings of the diamond certification system.<sup>78</sup>

To secure local buy-in and to ensure the model is adapted to local realities, a series of extensive consultations and workshops were held throughout the region, including in the capital provinces of the Kivus in EDRC, and in the capitals of the DRC, Rwanda and Uganda.<sup>79</sup> The four key elements of the model are: chain of custody tracking, making use of local tracking systems already in place; regional tracking through a publicly available database; mandatory third-party audits, funded by industry, publicly available and with checks and balances to guarantee impartiality; and independent investigations into anomalies by a Mineral Chain Auditor/Whistle-blowing Mechanism.

The PAC consultants further point out that the certification schemes which have already achieved some level of implementation on the ground (ITRI/iTSCI and BGR/CTC) are compatible with and can be integrated in the ICGLR system.<sup>80</sup> Finally, the OECD Guidance is cited as a useful standard for the auditing of supply-chain due diligence by the industry actors involved.

Given the role of DRC's eastern neighbors in the transit (legal and illicit) of EDRC minerals to the world market, issues of transparency and certification require a regional approach and a considerable amount of political buy-in, for which the ICGLR is the appropriate body. On the other hand, it is obvious that the RINR will not be fully put in place when the Dodd/Frank Act comes into effect in April 2011. For example, the database tool conceived by PAC requires, among other things, an exercise in gathering reliable statistics from ICGLR members for the database on production and trade. A first attempt at this has proven very difficult.<sup>81</sup> Next on the agenda is a workshop in Burundi (April 2011) with representatives of all ICGLR member states on concrete steps to get the tracking and certification system up and running.<sup>82</sup> December 2011 is the official target date for system launch, which includes mineral tracking, certificate issuance, an operational database and audit protocols.<sup>83</sup>

With regard to other tools, such as the harmonization of legislation (a.o. tax legislation) and the formalization of mining, little progress has been made.<sup>84</sup> Also on the whistle-blower mechanism and on an auto-financing system for the certification scheme, more preparatory work is needed.<sup>85</sup> Other plans for 2011 include further dissemination of the OECD Guidance. Finally, it should be stressed that the issue of the trade in EDRC gold largely escapes government control across the region and therefore

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<sup>76</sup> [www.icglr.org/IMG/pdf/THE\\_SIX\\_TOOLS\\_OF\\_THE\\_RINR.pdf](http://www.icglr.org/IMG/pdf/THE_SIX_TOOLS_OF_THE_RINR.pdf) (last accessed on 02/03/2011).

<sup>77</sup> I. SMILLIE and S. BLORE, *An ICGLR-Based Tracking and Certification System for Minerals from the Great Lakes Region of Central Africa*, March 2010. Available at: [www.rodhecic.org/.../ICGLR\\_Mineral\\_Tracking\\_and\\_Certification\\_Scheme.Pdf](http://www.rodhecic.org/.../ICGLR_Mineral_Tracking_and_Certification_Scheme.Pdf) (last accessed on 15/02/2011).

<sup>78</sup> Examples are the lack of a permanent secretariat, lack of procedural flexibility and adaptability to political dynamics in implementing countries, inadequate monitoring and sanctioning, discretionary decision making based on (geo-)political considerations, and putting the burden of proof and compliance costs primarily on governments instead of industry.

<sup>79</sup> I. SMILLIE and S. BLORE, *Lessons from the Kimberley Process and Other Certification Mechanisms and their Application to a Tracking and Certification System for African Great Lakes Minerals to be housed at the ICGLR*, June 2010, Unpublished, p. 10.

<sup>80</sup> *Ibidem*, p. 15.

<sup>81</sup> IPIS interview in February 2011 with source close to the ICGLR Secretariat.

<sup>82</sup> Personal communication to IPIS by ICGLR consultant (05/04/2011).

<sup>83</sup> *Ibidem*

<sup>84</sup> IPIS interview in February 2011 with source close to the ICGLR Secretariat.

<sup>85</sup> Newsletter on the ICGLR Regional Initiative on Natural Resources, ICGLR, March 2011.

first requires basic information gathering. This is also reflected in the OECD Guidance, which contains an extensive supplement on the three T's but not yet on gold.

While the project was previously only sponsored by the German Government through the GTZ (German Technical Cooperation), there is now additional funding from the Netherlands, Canada and Belgium.<sup>86</sup> Consequently, a fair amount of funding is available to continue implementation of the RINR tools.

A major challenge, however, is that the ICGLR suffers from a lack of awareness outside the region, for instance among stakeholders such as the US State Department, Global e-Sustainability Initiative (GESI)/ Electronics Industry Citizenship Coalition (EICC) and industrial actors in the supply-chains of the three T's and gold. Consequently, there is a risk that the ICGLR scheme might not be accepted by end-users as a means to satisfy due diligence requirements under the Dodd/Frank Act.<sup>87</sup>

## Measures by the DRC government

### The mining ban

On 11 September 2010, the Congolese Ministry of Mines announced President Kabila's decision to suspend all exploitation and export of minerals from the provinces of North Kivu, South Kivu and Maniema until further notice. The statement explained that the ban was intended to put a stop to the illegal exploitation of natural resources in EDRC<sup>88</sup>. In the decree establishing the ban, explicit reference was made to *"the link between the illegal exploitation and the illicit trade of mineral resources, the proliferation and trafficking of arms by Mafia and armed groups, and the recurrent insecurity in the provinces of Maniema, North Kivu and South Kivu"*<sup>89</sup>.

In the weeks and months following the announcement of the Congolese Ministry of Mines, several observers expressed their doubts on the effectiveness and feasibility of the mining ban. In the opinion of some, it was highly unlikely that Congolese state institutions monitoring the embargo had the necessary capacity and willingness to prevent minerals from leaving the country illegally. There are indications that members of the Congolese military took advantage of the climate of uncertainty and confusion to set up and control illegal mining operations<sup>90</sup>. In the beginning of November 2010, for instance, the village of Binakwa, situated in the territory of Walikale, witnessed the arrest of six people who were in possession of an important stock of minerals. Commenting on the arrest, members of the Military Prosecutor's Office confirmed that *"certain military and police authorities continue to exploit minerals in certain mines of Walikale in an illicit manner"*<sup>91</sup>.

The involvement of high-ranking FARDC officers in illicit mining activities was also discussed in the above-mentioned report of the UN Group of Experts. According to the authors of the report, *"this involvement has led to pervasive insubordination, competing chains of command, failure to actively pursue armed groups, amounting in certain cases to collusion, and neglect of civilian protection"*<sup>92</sup>. In an interview with Colette Braeckman, a journalist of the Belgian daily *Le Soir*, one of the customary chiefs of the Walikale region stated that military officers were subjecting his people to a system of forced mining labour called *"salongo"*<sup>93</sup>. Finally, on 5 January 2011, Radio Okapi reported that, in the territory of Shabunda, situated

<sup>86</sup> IPIS interview in February 2011 with source close to the ICGLR Secretariat.

<sup>87</sup> Personal communication to IPIS by ICGLR consultant (05/04/2011).

<sup>88</sup> *L'exploitation minière dans l'ancien Kivu suspendue jusqu'à nouvel ordre*, Radio Okapi, 13 September 2010.

<sup>89</sup> Decree nr. 705 of 20 September 2010, quoted in: *Fini les minerais de sang et fini la guerre! Le président Joseph Kabila a décidé et au ministre des mines d'appliquer!*, L'Avenir, 22 September 2010.

<sup>90</sup> HALL, A., *Why US leadership is critical to reforming the mineral trade*, Weblog of the Center for Strategic and International Studies, 29 December 2010.

<sup>91</sup> *Walikale: exploitation illégale des minerais, la cour militaire promet des poursuites contre les militaires indexés*, Radio Okapi, 4 November 2010.

<sup>92</sup> S/2010/596, p. 3.

<sup>93</sup> *La révolte des creuseurs gronde*, *Le Soir*, 2 December 2010.

in the province of South Kivu, artisanal miners continued to dig for cassiterite, exporting their ores under the protection and control of Congolese army officers<sup>94</sup>.

The limited success of the mining ban was also alleged by the organization Enough in a report published on 1 February 2011. According to the report *“mining has not stopped and the ban has resulted in a windfall for the commanders of armed groups, mainly Congolese army officers, some of whom have hijacked trucks full of minerals”*.<sup>95</sup>

According to Congo researcher Sara Geenen<sup>96</sup>, the consequences of the mining ban have for the most part been negative, not only in terms of the security situation, but also in terms of the organization of the artisanal mining sector and the livelihoods of people directly or indirectly depending on the mining business for their survival. As far as the impact of the mining ban on the security situation is concerned, units of the FARDC have taken advantage of the new situation to strengthen their control over certain mines, while at the same time turning a blind eye on the continued presence and dominance of non-state armed groups in other mines further into the interior. For their part, workers operating at the bottom level of the supply chain such as artisanal miners and mineral buyers have increasingly been forced to conclude unofficial financial agreements with army officers and members of the mining police in order to get access to the mines. With regard to the organization of the mining sector, the various public services have not been able to use the period of the mining ban to ensure a better compliance with existing mining laws and regulations. Public servants clearly lack the necessary means, capacity, willingness and power to enforce the rule of law in the mining sector.

Finally, the mining ban has had disastrous consequences for the standards of living in the Kivu region. Not only did artisanal miners and mineral buyers have a very hard time to keep afloat financially, farmers supplying the mining areas with food products also saw their revenues dwindle as a result of the lower level of demand among the artisanal mining population. In addition to this, the mining ban indirectly gave rise to a declining availability of hard currency, since, until then, mineral exports had been by far the most important earner of exchange in this part of the DRC.

When the mining ban was lifted on 10 March 2011, the general feeling among participants in the artisanal mining sector was that a lot of valuable time had been lost. During a workshop on due diligence organized by the OECD in Goma on 15 March 2011, many economic operators complained that Kabila's measure had prevented organizations such as ITRI from making headway with the implementation of measures to render the mining business more transparent and less corruption-ridden<sup>97</sup>.

## STAREC

STAREC is the acronym for the *Programme de Stabilisation et de Reconstruction des Zones sortant des conflits armés*<sup>98</sup>. The program is due to be implemented in several areas in EDRC, including North and South Kivu, Maniema, Haut-Uele, Bas-Uele, Ituri and Tanganyika (in the northern part of the Katanga province). The rationale behind STAREC is that, in the opinion of the Congolese government, the security situation in EDRC has greatly improved as a result of a number of military campaigns against non-state military actors such as the CNDP, the LRA and the FDLR. Therefore, the authorities in Kinshasa esteem that it is both feasible and appropriate to start working on a plan to solve humanitarian problems and to kick-start socio-economic recovery in EDRC<sup>99</sup>.

<sup>94</sup> *Shabunda: l'exploitation des minerais se poursuit*, Radio Okapi, 5 January 2011. See also: GEENEN, S., *The DRC mining ban: the view from Kamituga*, 13 December 2010, <http://texasinafrica.blogspot.com>, (last accessed on 18 January 2011).

<sup>95</sup> <http://www.enoughproject.org/publications/view-north-kivu.p.8> (last accessed on 08/04/2011).

<sup>96</sup> Sara Geenen is a Phd student with the Institute of Development Policy and Management (University of Antwerp), who conducted research on the mining sector in South Kivu in January-February 2011. This and the following paragraph is based on: S. GEENEN, *“Le pari qui paralysait: la suspension des activités minières artisanales au Sud-Kivu”* in: *L'Annuaire de l'Afrique des Grands Lacs (2010-2011)*, Paris: L'Harmattan (forthcoming).

<sup>97</sup> Personal communication of IPIS with economic operators in Goma, 15 March 2011.

<sup>98</sup> This can be translated as “Program for the Stabilization and Reconstruction of zones coming out of armed conflict”.

<sup>99</sup> CUSTERS, R., *Het STAREC-plan van de Congolese regering: een voorlopige analyse*, IPIS, August 2009.

The STAREC plan has three components: a security component, a humanitarian and social component, and an economic component. The restoration of state authority over the timber and minerals sector is considered as an objective associated with the security component. The aim is to have the official Congolese security forces (*forces de l'ordre*) exercise permanent supervision over mining sites exploited by armed groups, to deploy a number of state agencies at the provincial level<sup>100</sup> and to set up checkpoints in the vicinity of airstrips and roads leading to mining areas.

It is hard to say how much progress has been made with the STAREC program since it was first conceived. Nevertheless, a number of small STAREC-related initiatives have been announced in the Congolese press in the past few months. First, on 10 December 2010, it was announced that members of the Congolese army would have to comply with a new code of conduct. According to an article in the Congolese newspaper *La Prospérité*, 10,000 copies of the code of conduct had already been distributed in the context of a STAREC program called "*réduction de l'ampleur des violences sexuelles*"<sup>101</sup>. Second, during a meeting of the UNESCO World Heritage Committee in Kinshasa in January 2011, Congolese Prime Minister Muzito announced that, in the context of the STAREC program, the Congolese government had designed two projects for the rehabilitation of the national parks of Virunga and Kahuzi-Biega<sup>102</sup>.

On 8 February 2011 Bruno Donat, the head of the Stabilization Support Unit of MONUSCO, the UN peacekeeping force in DRC, presented his action plan for the year 2011 to Julien Paluku, the governor of North Kivu. In addition he also announced that USD 30 million will be invested in the STAREC program, through the province of North Kivu. On 15 February 2011 a meeting took place in Goma, where the feasibility of different projects was assessed.<sup>103</sup>

## **MONUSCO and the "Centres de négoce"<sup>104</sup>**

As part of STAREC, the plan was launched at the end of 2009 to set up five minerals trading centers ("*Centres de négoce*") in EDRC in a pilot project jointly executed by the Congolese government and MONUSCO, the UN Peacekeeping Force in the DRC.<sup>105</sup> Ideally, at these centers miners and traders would be able to do business without interference of armed groups. State agents could exert control and levy taxes, traders could make sure they received the necessary paperwork, minerals could be labeled and miners could profit from a competitive market environment to negotiate better prices for their products. Miners would have to be able to reach these trading posts with their products by foot. Therefore, each of the posts is intended to handle products that have been mined within a 25 km radius. Moreover a fixed transport route (by air or over land) would link the trading posts to regional hubs such as Bukavu or Goma.

The centers would be located in Baraka and Mugogo (South Kivu), and in Itebero, Isanga and Rubaya (North Kivu). MONUSCO's task is, among other things, to rehabilitate roads towards the centers and provide training to police officers tasked with securing the sites and access roads. Implementation of the project has, however, been slow. In the case of Baraka, one could question the location of the center as it is too far removed from significant mining sites. In Rubaya there is a parallel rebel administration (CNDP) and, in addition, DRC Senator Edouard Mwangachuchu, who owns several mining operations in

<sup>100</sup> These state agencies include the mining registry, the CEEC, and the anti-fraud service of the Ministry of Mines (source: CUSTERS, R., *Het STAREC-plan van de Congolese regering: een voorlopige analyse*, IPIS, August 2009.

<sup>101</sup> *Les Forces armées de la RDC désormais mises au pas avec un vade-mecum d'un code de bonne conduite*, *La Prospérité*, 14 December 2010.

<sup>102</sup> *La RDC en synergie avec l'UNESCO plaident auprès de la communauté internationale afin de réhabiliter des sites congolais*, ACP, 18 January 2011.

<sup>103</sup> <http://www.congomaboke.com/pro/2011/02/08/dans-le-cadre-du-programme-starec-la-province-du-nord-kivu-debloque-trente-millions-de-dollars-americains/>.

<sup>104</sup> Unless indicated otherwise, this subchapter is based on: SPITTAELS, S., MONUC's/MONUSCO's role in the Eastern DRC in regards to demilitarization and securing mining zones, IPIS, May 2010, unpublished paper.

<sup>105</sup> GEENEN, S. & CUSTERS, R., "*Tiraillements autour du secteur minier de l'Est de la RDC*", in: *L'Afrique des Grands Lacs*, Annuaire 2009-2010, p. 249.

the vicinity, is said not to support the project.<sup>106</sup> To date only the center of Mugogo is built. However, the building is far too small (only 20 square meters) and the access roads are not secured.<sup>107</sup>

## **Lessons from the Kimberley Process Certification Scheme (KPCS)<sup>108</sup>**

Launched in 2003, the KPCS brings together diamond importing, exporting and producing countries, representing more than 99 % of the global diamond trade, in an international control regime. All KP members have enacted KPCS provisions in their respective legislations and are supposed to comply with the prohibition of trading diamonds with non-member countries. The KPCS certifies that diamonds traded under the scheme are “rebel-free”, i.e. that they are not used to finance rebel movements. Unlike the OECD Guidance, the KPCS offers no guarantees regarding human rights violations by law enforcement agencies of the state. This makes the KP model inapt for EDRC, where besides non-state armed actors, a large number of perpetrators of human rights abuses serve in the Congolese army.

Nevertheless, eight years of KPCS implementation in the DRC provides the opportunity to draw some conclusions which are relevant for similar endeavors in the East.

The diamond producing areas in the DRC lie outside rebel-held territories and do not suffer from the high degree of militarization that characterizes the mining sector in the east of the country. What the diamond sector does have in common with EDRC, is that production sites are scattered over an immense territory where basic transport infrastructure is lacking. The geographical distribution of hundreds, probably thousands of diamond mines has so far rendered it impossible for the provincial mining administrations and SAESSCAM<sup>109</sup> to exert adequate control and, for instance, deliver on the KPCS requirement of keeping reliable production statistics.<sup>110</sup> As a result, there is no sound chain of custody between the mines and the buying houses at the provincial level.<sup>111</sup> In short, certification under the KPCS is to a high degree disconnected from production.

The buying houses are the provincial antennas of mainly foreign owned trading companies in Kinshasa. In this part of the supply-chain, i.e. from the provincial buying houses down to the CEEC main office in Kinshasa, the CEEC is the main KPCS operator. The CEEC does a reasonably good job at ensuring the integrity of the chain of custody and keeping export statistics. This aspect of KPCS related formalization, can in turn have a positive impact on the state budget, as it allows export taxes on diamonds and exporters' license fees to be adequately captured.<sup>112</sup>

On the other hand, the KPCS has not succeeded in formalizing diamond production, which is entirely artisanal and employs up to one million diggers. Mining communities are hardly aware of KPCS requirements such as the (costly) registration of miners and they have no incentives to subject their activities to state control. Artisanal diamond miners therefore operate in a situation of de facto illegality. This is further accentuated by the fact that the DRC Mining Code only allows artisanal mining in specially designated zones, a legal provision which only exists on paper and which should be administered by the Mining Registry (Cadastre Minier).

<sup>106</sup> IPIS interview in August 2010 with local mining expert in North Kivu.

<sup>107</sup> IPIS interview on 16/03/2011 with Sara Geenen, a Phd student with the Institute of Development Policy and Management (University of Antwerp), who conducted research in South Kivu in January-February 2011.

<sup>108</sup> The author of this paper has been an Observer of the KPCS, a member of the KP Working Group on Statistics from 2007 to 2011 and partook in the KPCS review mission to the DRC in 2009.

<sup>109</sup> SAESSCAM is the Congolese state agency tasked with the formalization of the artisanal mining sector. In addition to being inadequately staffed and funded, it has a reputation for preying on local producers.

<sup>110</sup> Such statistics are crucial as their comparison with import/export statistics are a tool to monitor illicit diamond flows entering or leaving the country.

<sup>111</sup> Consequently, foreign diamonds with features similar to Congolese diamonds, i.e. from neighboring countries like Angola or the Central African Republic, can be easily added to local parcels (or vice versa).

<sup>112</sup> It should be noted, however, that there are no studies allowing to assess if this compensates for the costs that come with KPCS implementation. While the KPCS is intended to satisfy consumer demand for “conflict-free” diamonds, these costs are almost entirely carried by member governments. Consequently, tax payers largely fund the diamond industry's main tool to preserve a clean image for their product. The PAC consultants to the ICGLR rightfully address this anomaly by requiring in their certification model that the costs should be primarily carried by industry.

The KPCS is probably to some extent effective as a conflict prevention tool, as it creates a disincentive to potentially armed non-state actors seeking rents from diamonds. The KPCS is an impediment for such diamonds on their way to the world market. However, eight years of KPCS implementation show that certifying minerals as “conflict-free” does not yield developmental benefits for local mining communities nor does it appease tensions at the grassroots level. Conditions on diamond mining sites are dangerous and they are often places with considerable levels of violence. The activities of miners are controlled by local elites, which reinvest little or nothing in local communities. Capital formation occurs further downstream in Kinshasa and abroad. Furthermore, miners have nothing to gain from increased state control when it comes in the form of, at times repressive, underpaid state agents preying on their production. The same applies to revenues from minerals accruing to the state which, in the case of diamonds, are clearly not used to enhance livelihoods of ever more marginalized mining communities.

With the exception of the CEEC, performance of state agencies responsible for KPCS internal controls has been weak. This is partly because of the large number of production sites in areas with little accessibility, a pattern also characterizing the mining sector in EDRC, which additionally suffers from varying levels of severe insecurity. The other reason is that the state agencies concerned have a serious lack of capacity. It is actually these very same agencies which are supposed to oversee certification of EDCR minerals and facilitate due diligence by industry. As they are already largely overstretched in the rest of the country (mainly in the diamond and copper/cobalt sectors), considerable (long-term) funding and capacity building will be required.

## **World Bank and the EDRC mining sector**

In July 2010 the World Bank approved a USD 50 million project aimed at improving governance in the DRC minerals sector, enhancing investment conditions and increasing socio-economic benefits from mining, with a particular focus on EDRC and Katanga.<sup>113</sup> The British Department For International Development (DFID) supplemented the budget with a grant of USD 40 million. Both funders and the DRC government baptized the project “Promines” and commissioned a preparatory study from the US NGO PACT.<sup>114</sup> However, implementation of the project has since been stalled due to a dispute between the World Bank and DRC authorities concerning Canadian miner First Quantum, which in 2009 lost its exploitation rights on a mine in Kolwezi, Katanga and in which the Bank had a stake through the International Finance Corporation (7.5 %).<sup>115</sup>

## **Bundesanstalt für Geowissenschaften und Rohstoffe (BGR)/Certified Trading Chains (CTC)**

The engagement of the German Federal Institute for Geosciences and Natural Resources (BGR) in the issue of minerals certification in the DRC and Rwanda, fits into a wider framework of policies related to supply security of natural resources for the industry of the world’s fourth largest economy.<sup>116</sup> Faced with growing global demand and a tightening supply of oil and metals, German industry groups, in close cooperation with government, in 2005 established a Task Force to study how to ensure a steady supply of raw materials.<sup>117</sup> Being a member of the Task Force and gearing up towards the G8 Summit in

<sup>113</sup> <http://web.worldbank.org/external/projects/main?pagePK=64283627&piPK=73230&theSitePK=40941&menuPK=228424&Projectid=P106982> (last accessed on 01/04/2011)

<sup>114</sup> *Étude PROMINES. Exploitation minière artisanale en République Démocratique du Congo*, Pact, June 2010.

<sup>115</sup> <http://uk.reuters.com/article/2010/09/15/uk-firstquantum-enrc-idUKTRE68E27S20100915?pageNumber=1> (last accessed on 23/03/2011); IPIS interviews with mining experts and officials in DRC.

<sup>116</sup> See, for instance: “Berlin to Secure Mineral Resources”, in *Africa Mining Intelligence* n° 237, 11/03/2010.

<sup>117</sup> *Africa’s Resources in a Global Context*, IPIS, August 2009, p. 54-55. See: <http://www.ipisresearch.be/download.php?id=270> (last accessed on 08/03/2011); For a concise account of German business interests in the DRC coltan sector: *Who’s in Charge? Putting the Mineral Trade in Eastern DRC under International Control: an Overview*, Pole Institute, Aug. 2010, p.13 and further. See: [www.pole-institute.org/documents/pole-mines-En%5B1%5D.pdf](http://www.pole-institute.org/documents/pole-mines-En%5B1%5D.pdf) (last accessed on 08/03/2011).

Heiligendamm under the presidency of Germany (June 2007), BGR conceived a method for certifying artisanally mined minerals<sup>118</sup>, which the Summit subsequently endorsed.<sup>119</sup>

This system was named CTC and was first piloted in Rwanda, in partnership with the Rwanda Geology and Mines Authority (OGMR), where implementation started in 2008.<sup>120</sup> Through a process of international and local consultations, BGR developed a set of certification standards on traceability, transparency and social and environmental aspects.<sup>121</sup> The project involves four local tin, tantalum and tungsten mining and processing companies and a series of third party audits was announced for autumn 2010.<sup>122</sup> BGR further announced a March 2011 meeting on the project in Kigali (Rwanda), jointly organized with the OGMR and, importantly, the ICGLR.<sup>123</sup>

The CTC project has produced extensive literature on its broad outline and standards and over the last years BGR was well represented in the international circuit of conferences and workshops on good governance and artisanal mining. However, there are no reports providing details on the on-the-ground implementation of the project. The lack of publicly available statistics, audit reports or other data stretching beyond the conceptual level of the project, renders an evaluation of outcomes and challenges based on open sources impossible.

The same goes for the extension of BGR's endeavors to EDRC, which started in April 2009 and aims at introducing a certification system for cassiterite, coltan, wolframite and gold.<sup>124</sup> In this project BGR collaborates with the *Gesellschaft für Technische Zusammenarbeit* (GTZ, the German Technical Cooperation; recently renamed GIZ) and the DRC Ministry of Mines. After workshops in Kinshasa and Bukavu (February/March 2010) with local and international stakeholders, several gold and cassiterite/coltan mining sites in South Kivu were selected to pilot implementation of the project and a BGR office was set up in Bukavu. According to the BGR website, four of these mining sites (Mukungwe, Misisi, Lulingu, Nyabibwe) were exempt from the mining ban (see above).<sup>125</sup> Again, workshop reports or data on implementation at these sites are not publicly available. While the DRC project will run until April 2012, timelines regarding implementation set forth by BGR do not stretch further than the first quarter of 2011, when baseline audits of pilot sites are scheduled.<sup>126</sup>

The BGR initiative not only professes alignment with the RINR of the ICGLR, it also participates in the EU led Task Force on Illegal Exploitation of Natural Resources in the Great Lakes Region, partook in the OECD working group establishing the Guidance and lastly cooperates with ITRI in certification efforts at the Nyabibwe mine.<sup>127</sup>

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<sup>118</sup> Described in: "Zertifizierte Handelsketten im Bereich mineralischer Rohstoffe". Projektstudie, BGR, April 2007. [www.bgr.bund.de/...rohstoffe/...Zertifizierte\\_Handelsketten.../Studie\\_Zertifizierte\\_Handelsketten.pdf](http://www.bgr.bund.de/...rohstoffe/...Zertifizierte_Handelsketten.../Studie_Zertifizierte_Handelsketten.pdf) (last accessed on 10/03/2011)

<sup>119</sup> [http://www.bgr.bund.de/cln\\_160/nn\\_1756078/EN/Themen/Min\\_\\_rohstoffe/CTC/Approach/Political-Background/political-background\\_\\_node\\_\\_en.html?\\_\\_nnn=true](http://www.bgr.bund.de/cln_160/nn_1756078/EN/Themen/Min__rohstoffe/CTC/Approach/Political-Background/political-background__node__en.html?__nnn=true) (last accessed on 08/03/2011).

<sup>120</sup> In parallel with CTC, BGR developed a method to track the precise origin of coltan samples (Analytical Fingerprinting). This method, however, is very expensive and hard to put into operation in the Great Lakes Region.

<sup>121</sup> [www.bgr.bund.de/nn\\_326194/.../CTC.../CTC-update-Mai2010.pdf](http://www.bgr.bund.de/nn_326194/.../CTC.../CTC-update-Mai2010.pdf) (last accessed on 10/03/2011).

<sup>122</sup> [www.bgr.bund.de/cln\\_151/.../CTC/.../newsletter\\_09\\_2010.pdf](http://www.bgr.bund.de/cln_151/.../CTC/.../newsletter_09_2010.pdf) (last accessed on 10/03/2011).

<sup>123</sup> [http://www.bgr.bund.de/cln\\_160/nn\\_1755398/EN/Themen/Min\\_\\_rohstoffe/CTC/NewsEvents/newsevents\\_\\_node\\_\\_en.html?\\_\\_nnn=true](http://www.bgr.bund.de/cln_160/nn_1755398/EN/Themen/Min__rohstoffe/CTC/NewsEvents/newsevents__node__en.html?__nnn=true) (last accessed on 10/03/2011).

<sup>124</sup> [http://www.geopotenzial-nordsee.de/cln\\_153/nn\\_1755398/DE/Themen/TZ/TechnZusammenarbeit/Laender/kongo\\_dr.html](http://www.geopotenzial-nordsee.de/cln_153/nn_1755398/DE/Themen/TZ/TechnZusammenarbeit/Laender/kongo_dr.html) (last accessed on 08/03/2011); The project runs until April 2012 and has a budget of EUR 3.2 million: [http://www.bgr.bund.de/cln\\_160/nn\\_1756078/DE/Themen/TZ/TechnZusammenarbeit/Projekte/Laufend/Afrika/kongo\\_\\_rohstoffzertifizierung.html](http://www.bgr.bund.de/cln_160/nn_1756078/DE/Themen/TZ/TechnZusammenarbeit/Projekte/Laufend/Afrika/kongo__rohstoffzertifizierung.html). (last accessed on 10/03/2011))

<sup>125</sup> [http://www.bgr.bund.de/nn\\_1755432/EN/Themen/Min\\_\\_rohstoffe/CTC/FAQ/FAQ\\_\\_node\\_\\_en.html?\\_\\_nnn=true](http://www.bgr.bund.de/nn_1755432/EN/Themen/Min__rohstoffe/CTC/FAQ/FAQ__node__en.html?__nnn=true) (last accessed on 10/03/2011); The statement is most likely incorrect. [http://www.bgr.bund.de/cln\\_160/nn\\_1755398/EN/Themen/Min\\_\\_rohstoffe/CTC/NewsEvents/newsevents\\_\\_node\\_\\_en.html?\\_\\_nnn=true](http://www.bgr.bund.de/cln_160/nn_1755398/EN/Themen/Min__rohstoffe/CTC/NewsEvents/newsevents__node__en.html?__nnn=true) (last accessed on 10/03/2011).

<sup>126</sup> [www.gecoproject.org/pdf/colloque/Atelier\\_1/QRAC\\_A1\\_12\\_Franken.pdf](http://www.gecoproject.org/pdf/colloque/Atelier_1/QRAC_A1_12_Franken.pdf) (last accessed on 10/03/2011).

<sup>127</sup> [http://www.bgr.bund.de/nn\\_1755432/EN/Themen/Min\\_\\_rohstoffe/CTC/FAQ/FAQ\\_\\_node\\_\\_en.html?\\_\\_nnn=true](http://www.bgr.bund.de/nn_1755432/EN/Themen/Min__rohstoffe/CTC/FAQ/FAQ__node__en.html?__nnn=true) (last accessed on 10/03/2011).

## II. Industry initiatives

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

ITRI is a UK based industry association boasting membership which in 2010 accounted for 67 % of global refined tin production.<sup>128</sup> According to ITRI the DRC in 2007 yielded 4 % of global tin mine production<sup>129</sup>, an estimate which was left unexplained but has been frequently cited since. In its membership, ITRI includes actors operating across the supply-chain (smelters/processors, miners, traders, users), some of whom were mentioned in the December 2008 UN GoE report as buyers of cassiterite, coltan and wolframite from EDRC exporters (“*comptoirs*”) sourcing in areas controlled by rebels.<sup>130</sup> Under increasing pressure from the UN and international NGOs probing into importers of DRC minerals<sup>131</sup>, and after the proposal of a bill in the US Congress on conflict minerals<sup>132</sup>, ITRI responded by articulating a policy on artisanal and small scale mining<sup>133</sup> and set out to design a system for improved due diligence<sup>134</sup>.

This system was named the ITRI Tin Supply-chain Initiative (iTSCI) and implementation started in July 2009 with the collection of licenses and official documents from *comptoirs* and traders (Phase I, self-funded by ITRI members).<sup>135</sup> Phase II piloted a traceability system, including a certificate of origin, enabling the verification of the precise origin (mine) of minerals in EDRC. For the implementation of Phase II, ITRI raised a budget of USD 600,000 from smelter members and their suppliers<sup>136</sup> and from downstream users involved in the GESI/EICC (further discussed in the following section).<sup>137</sup>

Work on the ground, involving tagging bags with minerals and introducing a data recording system, commenced in the summer of 2010 at the Kalimbi mine in Nyabibwe, South Kivu in cooperation with US NGO PACT, Congolese mining consultancy BEGEM and DRC state agencies. However, the project was halted due to the mining ban imposed by President Kabila (September 2010).<sup>138</sup> Also Bisie, the main cassiterite mine in North Kivu, was selected for the pilot scheme but due to the embargo, work at that mine never passed the preparatory stage.<sup>139</sup> The iTSCI was severely criticized by Global Witness, who alleged the scheme did not sufficiently address the problem of illegal taxation by warring parties nor the issue of the regular army (FARDC) which was illegally benefitting from the trade.<sup>140/141</sup>

<sup>128</sup> [http://www.itri.co.uk/POOLED/ARTICLES/BF\\_TECHART/VIEW.ASP?Q=BF\\_TECHART\\_285697](http://www.itri.co.uk/POOLED/ARTICLES/BF_TECHART/VIEW.ASP?Q=BF_TECHART_285697) (last accessed on 22/03/2011).

<sup>129</sup> [www.itri.co.uk/.../ITRI%20DRC%20information%20sheet%20v1.pdf](http://www.itri.co.uk/.../ITRI%20DRC%20information%20sheet%20v1.pdf) (last accessed on 15/03/2011).

<sup>130</sup> S/2008/773 p. 19 and further.

<sup>131</sup> These supply-chain investigations were published in the following reports: *Culprits or Scapegoats? Revisiting the Role of Belgian Mineral Traders in Eastern DRC*, IPIIS, May 2009; *Faced with a gun, what can you do? War and the Militarisation of Mining in Eastern DRC*, Global Witness, July 2009.

<sup>132</sup> The Conflict Coltan and Cassiterite Act which was introduced in US Congress in May 2008 by Senators Sam Brownback and Richard Durbin. See: <http://www.govtrack.us/congress/bill.xpd?bill=s110-3058> (last accessed on 22/03/2011).

<sup>133</sup> *ITRI Artisanal and Small Scale Mining Policy*, October 2008. See: [www.itri.co.uk/SITE/.../ITRI\\_ASM\\_policy\\_doc\\_v1.pdf](http://www.itri.co.uk/SITE/.../ITRI_ASM_policy_doc_v1.pdf) (last accessed on 22/03/2011).

<sup>134</sup> *Towards a Responsible Cassiterite Supply-chain. Improved Due Diligence and Steps Towards Voluntary Industry Declarations or Audited Certification*, ITRI, February 2009. See: [www.itri.co.uk/site/upload/.../ITRI%20action%20plan%202009%20final2.pdf](http://www.itri.co.uk/site/upload/.../ITRI%20action%20plan%202009%20final2.pdf) (last accessed on 22/03/2011).

<sup>135</sup> *DRC Artisanal and Small Scale Cassiterite Mining*, ITRI/ITSCI, October 2009. See: [www.itri.co.uk/SITE/.../ITSci\\_Final\\_Version\\_2\\_English\\_\\_2.10.09.pdf](http://www.itri.co.uk/SITE/.../ITSci_Final_Version_2_English__2.10.09.pdf) (last accessed on 22/03/2011).

<sup>136</sup> Six of these project funders were alleged in the 2008 or 2009 UN GoE reports to have bought minerals from rebel groups. Two of them – Belgian trader Traxys and Thaisarco, a Thai smelter owned by British metal group AMC – in 2009 announced they would suspend sourcing of minerals from EDRC.

<sup>137</sup> [http://www.itri.co.uk/pooled/articles/BF\\_NEWSART/view.asp?Q=BF\\_NEWSART\\_318425](http://www.itri.co.uk/pooled/articles/BF_NEWSART/view.asp?Q=BF_NEWSART_318425) (last accessed on 22/03/2011).

<sup>138</sup> iTSCI News Bulletin 6, August 2010.

<sup>139</sup> iTSCI News Bulletin 7, September 2010.

<sup>140</sup> *The Hill Belongs to Them: The Need for International Action on Congo's Conflict Mineral Trade*, Global Witness, December 2010, p. 23-25.

<sup>141</sup> The latter concern relates to the selection of Bisie as a pilot site, as it is widely reported that the mine is heavily militarized. See: S/2010/596, p. 15 and further; Also the mine of Nyabibwe holds considerable conflict potential, which is not addressed by a mere certificate of origin. The mine is the subject of a land dispute between several cooperatives, one of whom is headed by a local strongman with alleged ties to armed groups. Local rivalry between two cooperatives led to a violent



Meanwhile, ITRI has issued several statements on the negative consequences of the mining ban with regard to the continuation of iTSCI in the DRC. ITRI claims that funding of iTSCI relied mostly on a comptoir-smelter levy on cassiterite exports, which became illegal due to the ban.<sup>142</sup> While operations in EDRC have stopped, ITRI launched a call for funding to restart its program in the Kivus and extend it to northern Katanga. The budget needed amounts to USD 31 million over a five-year period.<sup>143</sup> However, as part of its lobbying efforts towards current rulemaking by the SEC, ITRI claims that the Dodd/Frank Act will cause end-users to require that smelters stop sourcing minerals from Central Africa, which in turn will cease funding for iTSCI.<sup>144</sup>

ITRI has secured buy-in from the Congolese government<sup>145</sup> and successfully liaised with the other due diligence initiatives. ITRI professes adherence to the OECD Guidance<sup>146</sup>, the iTSCI is mentioned in the Lusaka Declaration<sup>147</sup> and gained support from GESI/EICC<sup>148</sup> and BGR<sup>149</sup>. As an organization intended to serve corporate interests, ITRI has always taken a defensive stance against the UNGoE reports<sup>150</sup> and upcoming conflict minerals legislation in the US<sup>151</sup>. Now the Dodd/Frank Act has become reality, ITRI strives to influence the SEC primarily in order to obtain a transitional period of at least three years before the law will be fully effective.<sup>152</sup>

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

The Global e-Sustainability Initiative (GESI) was established in 2001 to further sustainable development in the ICT sector. It is a membership organization bringing together leading ICT companies, industry associations and NGOs.<sup>153</sup> Members include high-profile companies manufacturing products which are sensitive to NGO campaigns targeting consumers<sup>154</sup>, such as mobile phones (Motorola, Nokia, Ericsson) and PC hardware (Microsoft, HP). Responding to such campaigns, and to increasing pressure from US legislators and the UN, GESI set up an Extractives Workgroup in 2008 in cooperation with the Electronics Industry Citizenship Coalition (EICC). The EICC was founded in 2004 and is an ICT membership organization aiming at enhancing corporate social responsibility (CSR) policies in the global electronic supply-chain through use of a code of conduct. Its membership consists of 45 global electronics companies such as electronics manufacturers, software firms, ICT firms and manufacturing service providers.<sup>155</sup>

Joint collaboration of GESI and EICC on CSR in supply-chains started in 2008 by commissioning a study on metals supply to the electronic industry from GreenhouseGasMeasurement (GHGm), a Canadian consultancy.<sup>156</sup> In this scoping study on global supply patterns of several metals (not tungsten or

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clash in July 2010 leaving one person dead and 17 wounded. See: *Case study on Nyabibwe in The Complexity of Resource Governance in a Context of State Fragility: the Case of Eastern DRC*, International Alert/IPIS, publication forthcoming.

<sup>142</sup> *DRC Mining Ban Announced by President Kabila: Impact on iTSCI Project*, September 2010. See: [www.itri.co.uk/SITE/UPLOAD/.../ITRI\\_statement\\_on\\_Kabila\\_suspension.pdf](http://www.itri.co.uk/SITE/UPLOAD/.../ITRI_statement_on_Kabila_suspension.pdf) (last accessed on 23/03/2011)

<sup>143</sup> [http://www.itri.co.uk/pooled/articles/BF\\_NEWSART/view.asp?Q=BF\\_NEWSART\\_322005](http://www.itri.co.uk/pooled/articles/BF_NEWSART/view.asp?Q=BF_NEWSART_322005) (last accessed on 23/02/2011).

<sup>144</sup> [http://www.lead-free.org/pooled/articles/BF\\_NEWSART/view.asp?Q=BF\\_NEWSART\\_322557](http://www.lead-free.org/pooled/articles/BF_NEWSART/view.asp?Q=BF_NEWSART_322557) (last accessed on 25/03/2011).

<sup>145</sup> [www.itri.co.uk/.../ITRI%20DRC%20MOU%20PR\\_ENGLISH%20Final.pdf](http://www.itri.co.uk/.../ITRI%20DRC%20MOU%20PR_ENGLISH%20Final.pdf) (last accessed on 23/03/2011).

<sup>146</sup> See for example: [www.itri.co.uk/SITE/.../8\\_itSCi\\_News\\_Bulletin\\_October\\_2010\\_EN.pdf](http://www.itri.co.uk/SITE/.../8_itSCi_News_Bulletin_October_2010_EN.pdf) (last accessed on 23/02/2011).

<sup>147</sup> [http://www.icglr.org/IMG/pdf/Lusaka\\_declaration\\_final\\_version\\_english-2.pdf](http://www.icglr.org/IMG/pdf/Lusaka_declaration_final_version_english-2.pdf) (last accessed on 02/03/2011).

<sup>148</sup> See for example: [www.itri.co.uk/.../ITRI%20-%20iTSCi%20Support%2020090916.pdf](http://www.itri.co.uk/.../ITRI%20-%20iTSCi%20Support%2020090916.pdf) (last accessed on 23/03/2011).

<sup>149</sup> See for example: [http://www.bgr.bund.de/nn\\_1755432/EN/Themen/Min\\_rohstoffe/CTC/FAQ/FAQ\\_node\\_en.html?nnn=true](http://www.bgr.bund.de/nn_1755432/EN/Themen/Min_rohstoffe/CTC/FAQ/FAQ_node_en.html?nnn=true) (last accessed on 10/03/2011).

<sup>150</sup> See for example: [www.itri.co.uk/.../ITRI\\_statement\\_on\\_the\\_final\\_UN\\_experts\\_report\\_9th\\_Dec.pdf](http://www.itri.co.uk/.../ITRI_statement_on_the_final_UN_experts_report_9th_Dec.pdf) - (last accessed on 23/03/2011)/

<sup>151</sup> See for example: [www.itri.co.uk/.../ITRI%20DRC%20information%20sheet%20v1.pdf](http://www.itri.co.uk/.../ITRI%20DRC%20information%20sheet%20v1.pdf) (last accessed on 23/03/2011).

<sup>152</sup> [www.sec.gov/comments/s7-40-10/s74010-61.pdf](http://www.sec.gov/comments/s7-40-10/s74010-61.pdf) (last accessed on 23/03/2011).

<sup>153</sup> <http://www.gesi.org/?tabid=83> (last accessed on 30/03/2011).

<sup>154</sup> Examples of such campaigns are the Make IT Fair campaign, coordinated by Dutch organization Somo, and the Raise Hope for Congo campaign of the US Enough Project, which publishes a conflict minerals ranking for electronics companies.

<sup>155</sup> <http://www.eicc.info/Home.html> (last accessed on 30/03/2011). Members include high brands such as Acer, Dell, Adobe, HP, IBM, Kodak, Lenovo, Lexmark, Microsoft, Apple, Oracle, Philips, Sony and Samsung.

<sup>156</sup> Social and Environmental Responsibility in Metals Supply to the Electronic Industry, GHGm, June 2008. [www.gesi.org/LinkClick.aspx?fileticket...tabid=60](http://www.gesi.org/LinkClick.aspx?fileticket...tabid=60) (last accessed on 30/03/2011).

tantalum), the authors estimated that the electronic industry used up to 36 % of global tin supply and 9 % of gold.<sup>157</sup>

In September 2009 GESI/EICC organized the first in a series of workshops with representatives of the tantalum supply-chain.<sup>158</sup> By the end of the year, the same stakeholders decided to develop a smelter certification program, involving the piloting of a purchasing process to be initiated in the DRC, which should ensure that smelters source from socially and environmentally responsible mines.<sup>159</sup> Subsequently, another report was commissioned, this time from the US NGO Resolve, who was tasked to trace tin and tantalum (and cobalt) as far up as possible into their supply-chains.<sup>160</sup>

In the supply-chains of tin and tantalum, smelters represent choke-points with twelve tin smelters accounting for close to the entire global production of refined tin<sup>161</sup>, and 80 % of refined tantalum being smelted or processed by only seven companies.<sup>162</sup> Resolve therefore recommended, among other things, that end-users should use their leverage on smelters to jointly design a “conflict-free” verification mechanism. To design and implement this “conflict-free” smelter program (CFS), GESI/EICC took on board tin supply chain actors (a.o. ITRI) and organized a workshop with representatives from the DRC Mines Ministry, the UNGoE, the World Bank, BGR and several NGOs.<sup>163</sup> The CFS was launched in December 2010 after completion of a first tantalum smelter assessment.<sup>164</sup> The assessment was carried out by an independent third party tasked to check whether the raw materials procured by the smelter did not originate from sources contaminated by conflict from DRC. The audit should help companies satisfy reporting requirements under Section 1502 of the Dodd/Frank Act. Further, GESI/EICC announced ensuing assessments of tantalum, tin, tungsten and gold smelters in 2011.

Many observers fear that end-users in the electronics and other industries will urge smelters to stop sourcing from Central Africa. Since GESI/EICC has not made public the assessment standards and results, it is hard to evaluate to what extent such fears are reasonable. It is, however, a possibility that under the CFS “conflict-free” will simply be equated with “DRC (and neighboring countries)-free”. In a recent statement, ITRI claimed that Malaysia Smelting Cooperation is the only ITRI producing member who wishes to continue sourcing from Central Africa.<sup>165</sup> Elsewhere, John Kanyoni, the President of the comptoirs association of North Kivu, expressed his commitment to the ongoing due diligence and certification programs but also announced that DRC exporters would soon start prospecting for Asian buyers.<sup>166</sup> However, there is currently insufficient knowledge to predict whether newly structured supply-chains can keep conflict minerals outside the remit of US legislation.

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<sup>157</sup> *Ibidem* p. 10.

<sup>158</sup> [www.eicc.info/PDF/Tantalum%20Supplier%20Meeting.pdf](http://www.eicc.info/PDF/Tantalum%20Supplier%20Meeting.pdf) (last accessed on 30/03/2011).

<sup>159</sup> [www.eicc.info/PDF/PR\\_Extractives\\_Nov\\_Meeting\\_FINAL.pdf](http://www.eicc.info/PDF/PR_Extractives_Nov_Meeting_FINAL.pdf) (last accessed on 30/03/2011).

<sup>160</sup> *Tracing a Path Forward. A Study of the Challenges of the Supply Chain for Target Metals Used in Electronics*, Resolve, April 2010. Accessible at: <http://www.resolve.org/blog/tracing-conflict-free-minerals/> (last accessed on 30/03/2011).

<sup>161</sup> [http://www.itri.co.uk/POOLED/ARTICLES/BF\\_TECHART/VIEW.ASP?Q=BF\\_TECHART\\_285697](http://www.itri.co.uk/POOLED/ARTICLES/BF_TECHART/VIEW.ASP?Q=BF_TECHART_285697) (last accessed on 22/03/2011).

<sup>162</sup> *EICC 2009 Annual Report*. Available at: [www.eicc.info/documents/annualreport.pdf](http://www.eicc.info/documents/annualreport.pdf) (last accessed on 30/03/2011)

<sup>163</sup> <http://www.gesi.org/Media/PressReleaseFullStory/tabid/104/smid/503/ArticleID/57/reftab/61/Default.aspx> (last accessed on 30/03/2011).

<sup>164</sup> <http://www.gesi.org/Media/GeSINewsFullStory/tabid/85/smid/503/ArticleID/68/reftab/37/t/GeSI%20and%20EICC%20Complete%20First%20Tantalum%20Assessment%20Focused%20on%20Responsible%20Sourcing%20of%20Minerals/Default.aspx> (last accessed on 30/03/2011).

<sup>165</sup> *Statement on Lifting of the Mining Suspension in Eastern DRC. Future iTSci Conflict Mineral Programme Activities*, ITRI, 9 March 2011. [http://www.itri.co.uk/pooled/articles/BF\\_NEWSART/view.asp?Q=BF\\_NEWSART\\_322557](http://www.itri.co.uk/pooled/articles/BF_NEWSART/view.asp?Q=BF_NEWSART_322557) (last accessed on 06/04/2011).

<sup>166</sup> *Apple, Intel-Backed Rules on Conflict Minerals Stall Exports*, Bloomberg, 1 April 2011. <http://www.bloomberg.com/news/2011-04-01/apple-intel-backed-ban-on-conflict-minerals-may-help-spur-exports-to-asia.html> (last accessed on 06/04/2011).

# Conclusion

In this paper we have reviewed the main current initiatives aiming at mining reform in EDRC. We described the basic elements of these initiatives, their genesis, the current state of affairs, the linkages between the initiatives and the main challenges they face. By way of conclusion, we will briefly discuss and evaluate the initiatives while focussing on the steps ahead.

The OECD Guidance is based on the on-the-ground investigative experience of the UNGoE and aligns with the Group's due diligence recommendations, which were endorsed by the UNSC in Resolution 1952 (November 2010). The Guidance adequately reflects the typology of ways in which armed actors – rebels and FARDC – profit from the minerals trade. This allows for nuanced, site-specific assessments by companies and auditors of armed group involvement in production and trade of minerals, which ranges from gross human rights violations to (illegal) payments for protection to the FARDC.

The adoption and implementation of the OECD Guidance by companies across the supply-chains of the three T's and gold is key in responding to the self-evident need for harmonization of current EDRC mining reform initiatives. An important step in this process was the formal adoption of the Guidance by all North Kivu comptoirs at a recent workshop in Goma. For the sake of methodological uniformity and effectiveness, this example should now be followed by other companies across the supply-chain, from comptoirs in other DRC provinces down to end-users. Industry associations such as ITRI and GESI/EICC have publicly expressed their support for the Guidance and should urge their members to adopt and implement it, among others by enshrining the Guidance in contracts with their suppliers. UN member countries should, in line with Resolution 1952, encourage companies under their jurisdiction to do the same, as should the ICGLR, which has endorsed the Guidance in the Lusaka Declaration (December 2010). A huge step forward would be if the SEC rules that the Guidance is the due diligence standard for all companies affected by the Dodd/Frank Act. Finally, legislators at EU level should promptly start consulting with the OECD to inform their efforts. Meanwhile, the OECD should continue to raise awareness, assist companies with the implementation of the Guidance and come forward with the supplementary guidance on gold.

The underlying assumption of current EDRC mining reform and due diligence initiatives is that these will contribute to the demilitarization of the EDRC mining sector. This assumption will, in the first instance, be put to the test as soon as the Dodd/Frank Act becomes effective, probably on 15 April 2011, and subsequently as the other initiatives, i.e. on certification (ICGLR, ITRI, BGR), are gradually implemented. Security impacts will be site-specific and will need to be closely monitored at the grassroots level. Case studies on specific localities in recent reports by national (i.e. Pole Institute) and international NGOs (i.e. Global Witness, IPIS/International Alert), together with the latest UNGoE reports serve as a baseline measurement of the current security situation at mining sites. The picture, however, is fragmented and a more systematic and long-term approach is needed.

The UNGoE is a key stakeholder for comprehensive on-the-ground assessments of human security impacts of the initiatives under review. In addition, the Group should in its upcoming reports (May and October 2011) pay particular attention to compliance by companies across the supply-chains of the three T's and gold with the due diligence recommendations outlined in the Group's November 2010 report. These investigations should cover possible new supply-chains structured to avoid companies affected by the Dodd/Frank Act and include companies involved in the trade of the three T's and gold which claim not to source or use minerals from Central Africa.

The SEC should shortly adopt the rules which will serve as guidance to Section 1502 of the Dodd/Frank Act. Despite the numerous requests for lengthy transitional periods by corporate stakeholders, due diligence obligations for companies using the three T's and gold in their products should become effective without further delay. Companies can conduct due diligence immediately, while EDRC mining reform initiatives are gradually implemented. It should be remembered that most of these initiatives were started in response to legislative efforts that began in the US in 2008 and that, most probably, a

lengthy phase-in period will slow down implementation. Secondly, the SEC should not allow companies sourcing conflict minerals outside Central Africa, for instance tantalum from Australia or Canada, to use the label "DRC conflict-free". The rationale behind Section 1502 is to ensure that minerals from DRC and adjoining countries are conflict-free and benefit the local population, not to promote supply-chains of minerals from non-DRC countries to the detriment of the latter. Finally, as pointed out above, the SEC would greatly contribute to the effectiveness of due diligence by affected companies if the OECD Guidance were adopted as part of a standard methodology for drafting and auditing conflict minerals reports.

US legislation will have far-reaching security and economic impacts on the local population in EDRC and the wider region. Possibly, the EDRC economy will shortly suffer from a slowdown caused by less mineral exports at lower prices. The US and other donors should ensure long-term follow up on possible negative impacts, both in terms of security and of local livelihoods, and address these by, among others, increasing support to security sector reform and economic development. One vehicle for this should be the strategy which the State Department and USAID are required to elaborate under Section 150 and which is currently two months overdue. This strategy, which according to the law should aim at breaking the linkages between minerals and conflict in EDRC, should include programs to increase the capacity of DRC state agencies which are supposed to facilitate due diligence and execute mining reform. In addition, the State Department should promptly publish the conflict minerals map, which is another requirement under Section 1502. This map should comprehensively cover EDRC mining sites and provide detailed, site-specific information on security issues, ideally guided by the UNGoE's typology of ways in which armed groups benefit from minerals. The purpose of the map, which should be regularly updated, is to inform companies and auditors across the supply-chains of EDRC minerals and to supplement on-the-ground follow-up by the UNGoE on security impacts of mining reform.

At the level of the EU, there is considerable confusion with regard to policies and legislative initiatives on EDRC conflict minerals. So far the EC has, in the framework of the Raw Materials Initiative, not displayed an unambiguous intention to introduce due diligence requirements similar to those in Section 1502 of the Dodd/Frank Act. This would obviously be necessary to close loopholes and create a level playing field for companies affected by the US law, including European companies trading on US Exchanges. Germany is the driving force behind the RMI and is, through BGR and GIZ, the EU country most directly implicated in current EDRC and regional mining reform. Therefore, Germany should assume a leading role in assuring EU countries that increased transparency and corporate accountability, including legal due diligence obligations, can contribute to supply-chain security, which is the rationale behind the RMI.

It should, however, be noted that the RMI is a framework for policies, not for legislation. Concerning the latter, this paper identified two windows of opportunity to shortly introduce due diligence obligations similar to Section 1502 in EU law. First there is an upcoming revision of the Reporting Directives (summer of 2011), which are part of the CSR policy framework of the EC and which regulate, among other things, reporting requirements of companies and their suppliers on human rights risks and impacts. Secondly, there is the revision in the autumn of 2011 of the Transparency Directive, which prescribes rules for issuers of securities traded on EU regulated markets. For its part, the EP in a December 2010 Resolution called the US conflict minerals law a huge step forward in combating illegal exploitation of minerals in Africa and urged the EC and the Council to come out with similar proposals. On 26 May 2011 MEPs will organize a hearing with DRC stakeholders on the matter, responding to claims that in the case of the Dodd/Frank Act, local actors have not sufficiently been consulted.

Besides adoption and implementation of the OECD Guidance, integration of the iTSCI, BGR and CFS in the RINR is the second cornerstone of harmonization of the ongoing initiatives. The trade in EDRC minerals is a regional problem and the ICGLR, which is the highest-level peace process in the region, is the appropriate body to deal with it and hence should overarch the other initiatives. Nevertheless, the current RINR efforts suffer from a lack of awareness outside the region, for instance among stakeholders such as the US State Department, GESI/EICC and industrial actors across the supply-chains of the three T's and gold. Consequently, there is a risk that the ICGLR scheme might not be accepted by end-users as

a means to satisfy due diligence requirements under the Dodd/Frank Act. Therefore, it is of the utmost importance that the ICGLR increases its efforts at awareness raising outside the region.

The ICGLR has completed most of the conceptual work surrounding a regional certification scheme and is in the initial stage of implementation of the main RINR tools (RCM, database). The task is huge as this involves, for instance, the collection of reliable mineral production and trade statistics from all eleven ICGLR members to feed into the database. Still, the ICGLR plans to officially launch the RCM (tracking, certificate issuance, audit standards) and database in December 2011. While this work is being carried out, the implementation of other tools is currently stalled. As is the case with the KPCS, the tools of the RINR will have to be integrated into national law. So far, however, not much headway has been made with regard to harmonization of national legislations, including the issue of taxes. Equally, work on the formalization of artisanal mining and the promotion of EITI has not progressed much, although the latter could in principle be applied to the more formalized companies involved in the regional mineral trade. Finally, the ICGLR should devote much attention to trade and production of gold, as the gold trade in the region to date largely escapes government control. Adequate funding for accelerated RINR implementation seems to be in place, as the ICGLR has succeeded in expanding its array of donors.

The mining ban decreed by President Kabila (September 2010 – March 2011) showed that an overall embargo on mining has negative consequences in terms of security and for the livelihoods of the local population. The DRC government and state agencies displayed a lack of capacity to adequately monitor the embargo and enforce the rule of law. Consequently, the FARDC tightened their grip on the mining sector and turned a blind eye on the continued presence and dominance of non-state armed groups in other mines further into the interior.

The mining ban also had negative consequences for the standards of living in the Kivu region. Not only did artisanal miners and mineral buyers have a very hard time to keep afloat financially, farmers supplying the mining areas with food products also saw their revenues dwindle as a result of lower demand among the artisanal mining population. In addition to this, the mining ban indirectly gave rise to a declining availability of hard currency. Until then, mineral exports had been by far the most important earner of exchange in this part of the DRC. When the mining ban was lifted on 10 March 2011, the general feeling among participants in the artisanal mining sector was that a lot of valuable time had been lost. Economic operators claim that Kabila's measure had prevented organizations such as ITRI from making headway with the implementation of measures to render the mining business more transparent and less corruption-ridden. Finally, there seems to be a lack of follow-up of the DRC government's STAREC plan, which was announced in 2009 and aims, among other things, at strengthening government control over the EDRC mining sector. While the plan on paper looks promising, the implementation record is sketchy while communication on progress is limited to anecdotal coverage by the Congolese press.

The "*Centres de négoce*" pilot project of MONUSCO is often quoted but its possible impact should not be overestimated. It involves only five trading centers catering to mining sites within a radius of approximately 25 km. One of these will be too far located from significant mining sites, another one faces opposition from a DRC Senator with mining operations in the vicinity. Two years after the project was announced, only one center – in Mugogo, South Kivu – has been built, but the infrastructure and security provisions reportedly are inadequate. This said, MONUSCO should continue the project, improve flaws and publicly report on further implementation.

Eight years of KPCS implementation in the DRC allow the initiatives under review to draw a number of important lessons. The ICGLR is adequately taking care to avoid conceptual, procedural and operational flaws of the KPCS in the design and implementation of the RINR. At a more concrete level, three important conclusions regarding the KPCS track record in the DRC are highly relevant for EDRC mining reform. First, most DRC state agencies, with exception of the CEEC, have performed weakly with regard to internal KPCS controls. As they are already overstretched in the diamond and copper/cobalt sector, long-term funding and capacity building will be required to adequately implement mining sector reform in EDRC. Second, artisanal miners should be offered incentives to enter into a process of formalization. They should be empowered to be able to obtain better prices for their products and to assist in the monitoring of

certification schemes. Third, grievances in mining communities, for instance over mining rights, arise in a context of poverty and local power relationships, which often funnel capital to a small number of elites who do not reinvest in the communities. Such grievances lie at the basis of insecurity in the region and they should be addressed by increased socio-economic benefits from mining at the grassroots level. The KPCS in the DRC clearly shows that increased government control and tax revenues are by no means a guarantee for fair redistribution mechanisms to the benefit of mining communities, while widespread patterns of wealth accumulating to the benefit of the happy few are a permanent threat to peace and security. The DRC government, donors and stakeholders engaged in the implementation of certification schemes should envisage ways to address this issue.

Two major stakeholders with the ability to address the previously discussed issues are the World Bank and DFID, who in July 2010 jointly approved a USD 90 million project aimed at, among others, enhancing governance in the mineral sector and increasing socio-economic benefits from mining, with a particular focus on Katanga and EDRC. Implementation, however, has stalled over a dispute regarding an industrial miner in Katanga which has lost its exploitation rights. This should not be to the detriment of reform initiatives in EDRC, which urgently need accompanying measures with regard to, among other things, capacity building and mining community development.

BGR/GIZ and ITRI to date are the only initiatives to have achieved some level of on-the-ground implementation in EDRC, which was put on hold because of the mining ban between September 2010 and 10 March 2011. Work involved tagging and bagging of minerals after a preparatory phase of verifying licenses and official documents from traders and comptoirs. The sites selected, however, were not subjected to a preliminary and publicly accessible assessment of armed group involvement. This raised the important issue of who should decide on the eligibility of mining sites where certification is implemented. Discretionary power rests primarily with the DRC government, but this should be based on a sound security assessment for which the OECD Guidance constitutes a proper standard.

Further, BGR seems to have achieved considerable success with the implementation of the CTC in Rwanda but this has not yielded open source documents which could contribute to transparency regarding imports of EDRC minerals or the supply-chain further downstream. Neither have concrete plans of BGR and GIZ with regard to further implementation of CTC in EDRC been announced. Finally, continuation of the iTSCI in Rwanda and the DRC depends on funding by industry, which is currently uncertain.

GESI/EICC announced it has completed the assessment of one tantalum smelter under the CFS and that more smelter (the three T's and gold) assessments will follow this year. Smelters of the three T's constitute choke-points in the supply-chains, with twelve tin smelters accounting for close to the entire global production of refined tin and 80 % of refined tantalum being smelted or processed by only seven companies. Therefore, there is a danger that end-users will require smelters to stop sourcing minerals from Central Africa altogether, instead of constructively engaging in efforts to create conflict-free supply-chains from DRC and adjoining countries. With the adoption date of SEC rules nearing, speculations, mostly pessimistic, abound on the economic and security impact such scenario could have in EDRC and the region.

