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A GUIDE FOR COMPANIES

# DO NO HARM

Excluding conflict minerals  
from the supply chain

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global witness

## EXECUTIVE SUMMARY

# International companies' demand for minerals and metals is fuelling one of the world's most vicious and intractable conflicts.

Global Witness, the UN Group of Experts and others have published numerous detailed reports highlighting how rebels and government soldiers have hijacked the trade in mineral ores from eastern Democratic Republic of Congo (DRC), while subjecting the civilian population to massacres, rape, extortion, forced labour and forced recruitment of child soldiers.

The warring parties finance themselves via control of most of the mines in the region that produce tin, tantalum and tungsten ores and gold. They also generate substantial sums through illegal 'taxation' – i.e. extortion – of the minerals trade along transportation routes.

Congo's 'conflict minerals' are laundered into the global supply chain by exporters in the east of the country before being transformed into refined metals by large international smelting firms.<sup>1</sup> The metals are then used in a wide range of products, including consumer electronic goods such as mobile phones and computers. Some of the world's most famous brands are now coming under scrutiny to address their role in this devastating trade.

Nobody forces companies to purchase minerals or metals mined in war zones. It is their choice. Those that source minerals or metals originating from eastern DRC need to show the public that they have procedures in place to prevent direct or indirect involvement with serious human rights abuses and other crimes. This is what is called 'due diligence'.

Despite the mounting pressure on companies that use minerals and metals to carry out due diligence, few are actually doing this. Some companies claim that it is too complicated or too

difficult for them to do. *Due diligence is not rocket science, however.* It is a process that all reputable companies understand and employ on a regular basis to address risks ranging from corruption to environmental damage. Given the long-established link between minerals and human rights abuses in eastern DRC, it is something that international companies buying from the region should have implemented years ago.

At its core, the due diligence that companies using minerals or metals from the DRC need to undertake consists of:

- A conflict minerals policy
- Supply chain risk assessments, including on the ground checks on suppliers
- Remedial action to deal with any problems identified
- Independent third party audits of their due diligence measures
- Public reporting

By putting these measures in place, companies can help to create a mining sector in eastern DRC that brings real benefit to the people who live there. A due diligence-based approach to sourcing minerals is not about imposing blanket bans on trade; it is about ensuring that business does not perpetuate armed violence, serious human rights abuses and other crimes on the ground in conflict affected regions.

At the same time, a key message to companies that runs through this paper is that if they choose to use metals originating from eastern DRC they have a responsibility to demonstrate – by doing due diligence – that their activities are not causing harm. If they cannot do this, they must seek their supplies elsewhere.



global witness

# INTRODUCING GLOBAL WITNESS



Global Witness is a UK-based non-governmental organisation which investigates the role of natural resources in funding conflict and corruption around the world.

In Cambodia, in our first ever campaign, our investigations helped shut down the illegal timber trade financing the Khmer Rouge. In Angola, we documented how the rebel group UNITA underwrote its operations via diamond trading, in defiance of UN sanctions. We also campaigned against conflict diamonds in West Africa, and helped to establish the Kimberley Process to remove such diamonds from global markets. We were co-nominated for the 2003 Nobel Peace Prize for this work.

Global Witness successfully campaigned to break the link between the timber trade and conflict financing in Liberia and exposed the role of the international cocoa trade in fuelling conflict in Côte d'Ivoire. Our current work includes promoting equitable sharing of oil revenues as a means of preventing renewed civil war in Sudan and developing solutions to the economic dimensions of the conflict in eastern DRC.

Global Witness was one of the earliest proponents of the Extractive Industries Transparency Initiative (EITI), an international initiative to combat corruption in the oil, gas and mining sectors, and is a member of the EITI board.

## INTRODUCTION

# Carrying out supply chain due diligence is one way that companies can ensure that they are not causing harm.

It involves identifying problems, addressing them and showing, in a transparent manner, how they have done this. In the case of eastern DRC, the problem that companies need to identify and address is the link between their purchasing of metal ores and the financing of rebel and government armies that commit serious human rights abuses such as killing, rape, torture, recruitment of child soldiers and other crimes.

In eastern DRC, there are two main means by which abusive armed groups generate cash from the mineral trade. One is by controlling mines, which entails extortion or theft from the miners and in some cases soldiers mining themselves. The other is by illegally taxing (in other words,

extorting from) the trade at all points between mine and point of export.<sup>2</sup> Companies' due diligence needs to address both problems. Simply identifying or certifying the mine of origin will not be enough. Companies need to know and show that the conditions of trading were legal and legitimate at all times.

The steps involved in undertaking due diligence are fairly simple, but it is not a box-ticking exercise. Companies are responsible for ensuring that adequate due diligence is conducted and cannot use the weak performance of Congolese government agencies as an excuse for their own failings. Verification and traceability schemes managed by industry bodies may be an

### Eastern Congo's militarised minerals trade

Much of the minerals trade in eastern Congo is controlled by units of the Congolese army, militias and the Forces démocratiques de libération du Rwanda (FDLR), a group led by individuals allegedly involved in the 1994 genocide in Rwanda.

Recent research by Global Witness shows that former rebels from the Congrès national pour la défense du peuple (CNDP) have established mafia-style extortion rackets covering some of the most lucrative tin and tantalum mining areas. The ex-CNDP rebels, who

joined the Congolese national army in a chaotic integration process during 2009, have taken advantage of United Nations-backed military offensives to displace the FDLR from profitable mine sites.

They have gained far greater control of mining areas than they ever enjoyed as insurgents and are making tens of thousands of dollars a month from illegal taxes imposed on civilian miners. This represents a serious threat to the region's stability, not least as the ex-CNDP commanders have a history of reverting to rebellion when peace no longer suits their interests.

This militarised control of the minerals trade, which has continued in one form or another for twelve years now, is not only financing armed groups and robbing the state of much needed revenues, it also condemns miners to atrocious conditions characterised by armed violence and extortion. Global Witness has found evidence of miners being beaten for not handing over their winnings to the military and of systematic theft by soldiers of up to 30% of everything miners produce. The burden of illegal taxation is such that some miners fall into a cycle of debt in which they lose more than they earn.<sup>3</sup>

important source of information for companies' due diligence, but do not absolve them of their responsibility to ensure that their own activities and purchasing decisions do no harm.

Companies should see the conduct of due diligence not only as a part of their responsibility, but also as an opportunity to help resolve the Great Lakes region's cycle of armed violence. Supply chain due diligence, properly conducted, has the potential to have a much quicker impact in tackling the conflict minerals trade than some of the other options currently being proposed, such as certification of minerals.

Certification schemes may ultimately provide strong and comprehensive regulation of the minerals trade across the region. But our

experience with the Kimberley Process for conflict diamonds and other certification schemes makes clear that the establishment of the necessary regulatory frameworks and institutional infrastructure takes years, even in the best case scenarios.

Creating a certification scheme will also involve high level government cooperation and institution-building, but these are not viable options in conflict zones when the state is contested and rule of law largely absent.

Given the urgency of the situation in eastern DRC, these are major drawbacks. By contrast, supply chain due diligence is something that companies can start doing right away. There is no need, and no excuse, for waiting.

### **The growing international demand for due diligence**

In November 2009, the United Nations (UN) Security Council called on governments to make sure that businesses based in their jurisdictions 'exercise due diligence on their suppliers and on the origin of the minerals they purchase', to stop them financing armed groups in the DRC.<sup>4</sup>

This ties in with two key messages of the UN framework for business and human rights being developed by the UN

Secretary-General's Special Representative John Ruggie: that it is the responsibility of companies to conduct business in a manner that does not harm the rights of others; and that due diligence is the principal means of fulfilling this responsibility. Professor Ruggie argues that due diligence is about companies 'knowing and showing' that they are respecting human rights.<sup>5</sup>

Failure by companies to carry out supply chain due diligence can damage their reputations and make them legally liable.<sup>6</sup> In 2008, the UK government

upheld a complaint lodged by Global Witness against Afrimex, a British mineral trading company active in eastern DRC, under the framework of the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises. The UK government's investigation found 'that rebel soldiers extracted money from (Afrimex's) supply chain, helping them fund their campaign... through its lack of diligence, the firm failed to contribute towards ending the use of child labour and forced labour'.<sup>7</sup>

# Mapping the supply chain for tin from eastern DRC

This diagram illustrates the conflict minerals trade from mines to manufacturer.

Cassiterite – the ore from which tin is made – is the main mineral export from eastern DRC, both in terms of volume and value. The trade in cassiterite generates millions of dollars a year for the warring parties. Internationally, tin is used in everything from mobile phones to packaging materials. Over half of all tin is used in solder, which goes into electronic circuit boards.

## MINE SITE

Cassiterite is extracted by artisanal miners and sold to intermediaries (managers, négociants or representatives of comptoirs) at or near the mine site.

- Armed groups and army units steal and extort cash or cassiterite from miners at the mine site on a systematic basis.
- Miners are often forced to work at gunpoint in incredibly dangerous and difficult conditions. They are beaten if they fail to hand over the quantities of cash or mineral ore demanded.
- Top military commanders loot cassiterite from the mines in a highly organised manner. Commanders may seize control of specific mine shafts, sometimes even naming them after themselves.

## TRANSPORTATION

The ore is transported by foot, truck, and aeroplane to the capitals of North and South Kivu Provinces: Goma and Bukavu.

- Rebels and army units extort money from traders and intermediaries at all stages of transportation between mine and point of export.
- These illegal 'taxes' are typically extracted at checkpoints set up along footpaths, main roads and airports.
- For some groups, notably the Congrès national pour la défense du peuple (CNDP) former rebels, illegal taxation is increasingly important to their illicit revenue generation.

## EXPORT

Cassiterite is sold by intermediaries to government-licensed comptoirs or export houses based in Goma and Bukavu. Comptoirs have contracts to sell the minerals to foreign companies.

- Cassiterite that has come from militarised mines, or whose transportation has been facilitated by pay-offs to soldiers or rebels, is laundered into the legal supply chain by comptoirs.
- Comptoirs claim publicly that because they are licenced and pay taxes, therefore all the cassiterite they export must be conflict-free. In reality, their purchases are bankrolling abuses and instability in the region.

## TRANSIT COUNTRIES

A proportion of the cassiterite is traded, and sometimes partially transformed, in neighbouring countries such as Rwanda.

- Traders in transit countries, notably Rwanda, are importing consignments of cassiterite from militarised areas of eastern DRC and are not carrying out checks on the conditions of trade.
- Governments of these neighbouring countries have not acknowledged the issue and have not implemented successive UN Security Council resolutions calling on them to ensure companies do proper due diligence.

## SMELTERS

Cassiterite is sold by comptoirs or intermediate traders to international smelters. The main smelters of cassiterite from eastern DRC in recent years have been the world's 3rd and 5th biggest tin producers: Malaysia Smelting Corporation and Thaisarco.

- Some major cassiterite trading and processing companies have been named (in some cases repeatedly) by the UN Group of Experts as purchasing minerals from mines held by armed groups and the military.
- Trading and processing firms are not carrying out rigorous due diligence on their supply chains. Some have initiated a traceability programme via the International Tin Research Institute (ITRI). However, this programme takes no account of either conflict financing via illegal taxation, or abuses by the national army, and does not constitute credible due diligence.

## MANUFACTURERS

Refined tin is used to make components by manufacturers. Refined tin may pass through the hands of two or more component manufacturers before being incorporated into an end product.

- Component manufacturer and end users using tin, including major manufacturers of electronic goods like Apple, Dell, HP, Intel and Nokia do not have due diligence measures in place to exclude conflict minerals from their supply chains.
- Some of these firms have chosen to back the ITRI scheme, despite being warned repeatedly that it is not credible. There are also efforts underway by some electronics companies, notably Intel, to devise an industry-led 'smelter validation' scheme; however these are still at the planning stage.

## Which companies should be carrying out due diligence on their supply chains?

Companies that use mineral concentrate or refined metals may or may not be aware that their supply chains contain minerals from eastern DRC. The following checks should raise 'red flags' which tell companies that they need to do comprehensive due diligence for the presence of conflict minerals in their supply chain:

- The minerals used by the company originate from or have been transported via a country in the Great Lakes region. These are the Democratic Republic of Congo, the nations which border it – Angola, Burundi, the Central African Republic, Republic of the Congo, Rwanda, Sudan, Uganda, Tanzania and Zambia – and Kenya.<sup>8</sup> The point here is that the conflict in eastern DRC has a trans-boundary nature. Moreover, all conflict minerals from Congo pass through neighbouring countries before leaving Africa and it is well established that mis-declaration of conflict minerals as originating from other Great Lakes region countries is occurring on a large scale.<sup>9</sup>

- The stated origins of the minerals in question are countries that have limited or no capacity to produce them, raising the possibility that the materials are in fact of Congolese origin.

- The company or its suppliers have relationships or a history that links them to the Great Lakes region, for example if the company or one of its suppliers is known to have sourced minerals from the region in the past.

- The minerals supplied to the company are recycled or part-refined. (Part-processing of illicitly-sourced raw materials is a tried and tested means of evading supply chain controls internationally.)<sup>10</sup>

The point of identifying red flags is not to exclude countries or regions from trade but to focus a company's due diligence investigations. If a company's supply chain raises any of these red flags or any other grounds for suspecting that some of its materials may originate from eastern

DRC, it should be carrying out the due diligence measures outlined here. Ignorance is not an excuse.

## Do all these companies undertake the same due diligence measures?

All companies in the minerals and metals supply chain should be basing their due diligence around the same five components:

- A conflict minerals policy
- Supply chain risk assessments
- Remedial action to deal with any problems identified
- Independent third party audits of their due diligence measures
- Public reporting

With regards to the information-gathering component – the supply chain risk assessment – there is a distinction to be drawn between the measures taken by 'upstream' companies that trade or smelt raw mineral concentrate and 'downstream' manufacturers that use the refined metals. Supply chain risk assessments by upstream firms should be based primarily around on the ground assessments. They should also include compilation and analysis of chain of custody data. Downstream manufacturers, by contrast, should focus their supply chain risk assessments on verifying that the smelters that produce the refined metal that they use have proper controls in place.

Why the difference in the responsibilities of upstream parties using raw mineral concentrate and downstream companies using refined metal? This distinction recognises that it is at the point of transformation – where minerals are smelted into metals – that the most comprehensive mixing of materials from different regions takes place. It is always going to be simpler to establish the provenance of raw mineral concentrate than refined metal. The traders, smelters and others that handle the raw minerals are – in supply chain and often geographic terms – closer to the original source. For them, the process of identifying the mine the materials came from

and assessing the conditions of trade is fairly straightforward.

For their part, all manufacturers that use refined metal can very easily find out which smelters their metals come from.<sup>11</sup> Moreover, when it comes to producing metals like tin and tantalum, for example, the number of major smelters around the world is surprisingly small. The smelters are a key bottleneck in the global supply chain and a logical focus for manufacturers' efforts to exclude conflict minerals.

Some manufacturers draw attention to the fact that they do not currently have direct contractual relationships with smelters; but this should not constitute a barrier to checking on the smelters' supply chain controls.

If eliminating the deadly trade in conflict minerals requires a change in the relationships between international companies and a shakeup in assumptions about their responsibilities to the people of eastern DRC and their obligations to each other, then this would seem an extremely modest price to have to pay.

## Key components of supply chain due diligence

### 1. Conflict minerals policy

The company should publish a clear policy setting out its commitment to respect human rights in all its activities. It should undertake to abide by domestic and international law and UN sanctions and should set out how it will assess its own operations and those of its suppliers all the way up the supply chain against these standards.

The policy should state explicitly that it will not engage in any purchases that generate revenue for armed groups or army units that perpetuate serious human rights abuses or other crimes. In other words it will not trade in conflict minerals.

The company should also commit to showing, via credible evidence, the exact origin of its supplies (mine site), the conditions in which they were produced and the identity of those involved in extracting, trading, transporting and taxing them.

The company will need to assign responsibility to a director or other senior member of staff for making sure that the company lives up to its policy. Whoever it is will need to have access to the company's board. This is in line with broader principles of good corporate governance that require that the board be made aware of information vital to the companies interests.<sup>12</sup>

Having developed its policy, the company will need not only to publish it, but also to make its expectations clear to its own suppliers. 'Suppliers' here means not only the person or entity from whom the company purchased the minerals directly, but also others further up the supply chain who are involved in the sequence of transactions that transmits the minerals from the mine site to the company.

The company should communicate the policy to all suppliers and encourage them to adopt policies on conflict minerals that are in line with its own. The company should build specific provisions into its contracts requiring its suppliers to meet the standards set out in the company's conflict minerals policy and cooperate with its due diligence measures. One way of doing this would be via a standard suppliers' declaration which would be attached to contracts.

### 2. Supply chain risk assessments

Regular supply chain risk assessments are the central element of the company's due diligence.

For upstream companies that handle mineral concentrate these supply chain risk assessments should involve on the ground assessments to verify the origin of the minerals and the conditions of trade.

For downstream manufacturing companies, the supply chain risk assessments should focus more on verification of the due diligence systems of the smelter supplying the refined metal, than on field investigations into the conditions of trade in eastern DRC.

This section provides an overview of how these assessments should be carried out. More detailed guidance on how to carry them out is provided in Annex A (On the ground assessment by companies sourcing minerals from the Great Lakes region) on page 16 and Annex B (Manufacturer's assessment of smelter's supply chain controls) on page 20.

### i) Supply Chain risk assessments by companies using mineral concentrate

Supply chain risk assessments by upstream companies should have two main components which are outlined here in order of priority:

- On the ground assessments
- Review of chain of custody data

These two components fit together. The on the ground assessments provide a comprehensive and in-depth profiling of the conditions of trade. They are the only way that a company can accurately assess the risk of its activities fuelling conflict and human rights abuses. The chain of custody data supplements this, through documentation on individual consignments of mineral ore purchased by the company.

#### On the ground assessments

Companies should undertake on the ground assessments, involving individuals with specialist knowledge of the region and the trade, as the main information-gathering element of their due diligence. These assessments should be quarterly, but should be brought forward in cases in which problems are detected through the chain of custody documentation or other sources. The company should not notify its suppliers in advance when these assessments are taking place.

The main steps involved in the on the ground assessment, all of which are elaborated in Annex A, are:

- Establishing the scope
- Appointing the right people to carry out the work, with the right terms of reference
- Carrying out preparatory research
- Field research
- Writing up findings and recommending actions by the company

The relationships between the company and conflict and human rights abuses – if they exist – are likely to concern armed groups benefiting financially from its activities, particularly through control of the actual mines from which the company sources its goods or illegal taxes levied on the minerals as they move from mine to point of export. Ascertaining whether there is a risk of these kinds of relationships occurring should be the main focus.

Sending people to eastern DRC to gather information is an idea that many companies using minerals and metals balk at. Some appear to believe that due diligence begins and ends with compilation of a limited amount of chain of custody documentation; despite the fact that active data collection is integral to the due diligence carried out by reputable businesses in other sectors. Others cite the difficulties of research in eastern DRC. However, work by the UN Group of Experts, NGOs, journalists and others has repeatedly demonstrated that it is possible to research the conditions of trade in the region.

Ensuring the security of the company's staff or consultants is a very serious consideration that can reinforce, rather than obstruct, an on the ground assessment. Where a company finds that the area it is sourcing from is so dangerous that no one can go there to gather data on the supply chain, it has probably obtained all the information it needs: if conditions are that bad, there is a good chance that its own purchasing practices will be contributing to the cycle of plunder and violence and it should seek its supplies elsewhere.

Once in the region, the assessment team's activities will consist primarily of site visits, interviewing people and reviewing documentation. The visits should be to the operational sites where the company or its suppliers are active. That means, for example, mines of origin, trading locations (such as markets), transportation routes and points of export, as well as nearby settlements.

The range of people whom the assessment team should interview is broad and should include individuals working in the mineral trade, officials and civil society organisations.

The review of documentation should focus primarily on cross-checking data gathered through the company's own chain of custody management system with documents available in eastern DRC and the region.

Having undertaken these information-gathering activities, the assessment team should write up its findings and make recommendations. This should centre on the question of whether there is any risk of a relationship between the company's supply chain and human rights abuses and other crimes. It should also provide recommendations on actions that the company should take. It should be submitted to the company's senior management and – as explained in the section on public reporting on page 13 – its findings should be made public.

### Review of chain of custody data

Reviewing chain of custody data is an important component to the due diligence companies carry out on their supply chains. It does not on its own constitute due diligence, however. Firstly, chain of custody data does not provide any information about illegal taxation or the conditions of trade more generally. For example, the fact that a traceability scheme might identify the mine from which particular consignments originate does not tell the company whether or not the transportation of these same materials has generated illicit payments to soldiers or rebels. In other words, knowing the mine of origin,

important though it is, is not the same as knowing whether purchasing the minerals produced there is fuelling conflict and human rights abuses.

In addition, conditions in conflict-affected areas, where the rule of law is weak, are not conducive to the seamless implementation of a control system based on documentation alone. There is a very high risk of the chain of custody tracking system becoming corrupted and generating misleading data.

What chain of custody information can do, if it is comprehensive and subject to rigorous review, is provide an important complement to the company's on the ground assessments. To this end, the company should obtain precise documentary information on each consignment of minerals it buys that shows how it has made its way along the supply chain.<sup>13</sup> This documentary information will need to show the following:

- The minerals' exact origin (mine site), the date of extraction and the identity of the individual or organisation that did the mining.
- The locations at which the minerals were subsequently traded, the dates on which the trade occurred and the identity of those involved in these transactions.
- The means and routes by which the minerals were transported from mine of origin to the company, the dates on which the different stages of the transportation occurred and the identities of the person or organisation doing the transporting. (This should include export and import documentation.)
- The locations at which the minerals were taxed, the dates in question and the identity of the organisation or individual to whom the taxes were paid.
- A description of the minerals (type, weight, purity) and information pertaining to any transformation, even partial, of the minerals at the different points along the supply chain.

Some of this information may be contained in documents produced by Congolese government agencies. Forms issued by provincial Ministry of Mines bodies SAESSCAM, Division des Mines and CEEC provide partial information on the mine

to export supply chain. Documents issued by customs and revenue agencies OCC and OFIDA at the point of export also contain useful data.<sup>14</sup> Wherever possible, companies should incorporate government-issued documentation into their chain of custody system.

However, government agencies charged with regulating the minerals sector in eastern DRC are not always able to function effectively and reliably, not least given the militarisation of the trade and other impacts of the conflict. This should not come as a surprise. Companies that choose to source minerals from conflict-affected areas should be aware that there is a high probability that one of the early casualties of the violence will be the capacity of the state to function effectively. They should build this assumption into their supply chain due diligence from the start.

When sourcing from conflict-affected areas like eastern DRC, doing effective due diligence is the responsibility of the company and cannot be passed over to the state or another party.

Companies sourcing minerals from eastern DRC will therefore need to introduce their own system of chain of custody data collection to fill the gaps in the documentation issued by government agencies. This could ultimately take the form of 'bagging and tagging', bar-coding, or a chip-based tracking system. However, getting a high-tech traceability mechanism in place should not prevent companies from introducing a more basic paper trail system in the short term. Whichever form it takes, the system will need to be proofed against tampering, forgeries and false declarations.

Making the chain of custody control system work as an element of the due diligence framework hinges not just on the company's ability to get the data flowing, but also on its capacity to respond to it. The company should therefore assign responsibility for checking and analysing the chain of custody documentation on a continuous basis and ensuring that any problems detected are acted upon. The person(s) responsible for reviewing the chain of custody data should be asking of it such questions as:

- Is the documentation complete?
- Is there evidence of irregularities or tampering in the documentation itself or the way in which it has been completed?
- What changes are there in the pattern of extraction, trade, transportation and taxation laid out in the chain of custody data? What accounts for these changes?

What to do when problems and irregularities are detected is the basis of the next element of the due diligence system – remedial action – which is addressed over the page.

## ii) Supply chain risk assessments by downstream manufacturers using refined metals

Whereas for the upstream trader or smelter of minerals, the main information-gathering component of the due diligence is a supply chain risk assessment that involves sending an assessment team to the ground to check on the conditions of trade at source, for the manufacturer it is checking on the controls in place at the point of transformation from minerals to metal by smelters. They amount to the same thing: verifying, through a rigorous assessment, the claims made by suppliers. Each smelter should be assessed at least once a year.

Given that each smelter supplies a wide range of manufacturing firms with refined metal, manufacturers could consider pooling resources to carry out assessments of the smelters' supply chain controls. Each individual company would still need to take responsibility for ensuring that such joint assessments were carried out to a high standard, however.

As explained in more detail in Annex B, the assessment of smelters' supply chain controls consists of the following main steps:

- Establishing the scope
- Appointing an assessment team
- Carrying out preparatory research
- Visiting the smelter and verifying its due diligence
- Writing up findings and making recommendations

When it comes to visiting the smelter and verifying its due diligence, the approach proposed here is based around two levels of assessment. The first, what we call a Level 1 evaluation, is aimed at ascertaining whether the smelters that supply the manufacturer are sourcing minerals from the Great Lakes region. If the smelters are definitely using such materials, or are likely to be, then a more detailed Level 2 evaluation will be required. The Level 2 evaluation aims to deduce whether the smelter's purchasing practices are fuelling human rights abuses and other crimes and to gauge the robustness of their due diligence.

The need for a Level 2 evaluation may only become clear through the Level 1 enquiries, so the initial scope of the assessment may need to be flexible.

The Level 1 evaluation involves carrying out interviews with company staff, reviewing documentation and inspecting the smelter's on-site minerals stockpiles. The assessment team should look out for red flag indicators that suggest that minerals from the Great Lakes region may have entered the company's supply chain. These are the same red flag indicators set out at the start of this paper concerning which companies should be carrying out due diligence.

If the assessment team encounters red flags or any other grounds for suspecting that some of the smelter's materials may originate from the Great Lakes region, they should automatically proceed with the Level 2 evaluation of the smelter.

A Level 2 assessment is a much more in-depth assessment of the smelter's supply chain controls. It aims to assess whether the smelter has excluded conflict minerals from its supply chain and undertaken due diligence to the standards set out in the first part of this paper that is addressed to traders and smelters. This will involve reviewing all documentation relevant to that due diligence (for a list see Annex B) and further interviews with staff.

If, at any point during the Level 2 assessment, the smelter is unable to show evidence of effective due diligence; for example if documentation

contains gaps, contradictions, or evidence of failure to act on problems identified, then the assessment team should conclude that there is a high probability of conflict minerals being present in its supply chain. The assessment is now complete, because under these circumstances the company will have no choice but to exclude the smelter from its supply chain. Further information-gathering is therefore redundant.

If on the other hand, the smelter's due diligence appears to be strong, the assessment team should complete their information-gathering with selected spot checks on at least two points in the smelter's supply chain, one of which should be the mines of origin.

After completing its information-gathering, the assessment team should write up its conclusions and make recommendations on actions the manufacturer should take. The manufacturer should use this, together with any other data it may have gathered, to assess the risk of its supply chain causing harm to people in eastern DRC.

### 3. Remedial action

While intensive information-gathering is crucial to robust due diligence, the company must keep in mind that collecting data is not an end in itself but a precursor to action. If the company finds at any time that, through the minerals it is using, it is associated with, or risks being associated with, serious human rights abuses and other crimes, its response should be immediate, decisive and unambiguous: it should put a stop to these transactions and end its relationship with the suppliers in question.

The need for companies to take a zero tolerance approach to conflict minerals in their supply chains should be self-evident: trading these materials helps perpetuate one of the world's worst wars. In other sectors and other parts of the world, companies are sometimes encouraged to prioritise engagement with wayward suppliers to help them meet accepted standards concerning labour, the environment and so on. But in the case of the DRC, the risks to people of purchasing

from unscrupulous operators are too great and the company must take a much more cautious approach.

In cases in which a company finds that a supplier has very minor procedural weaknesses in its supply chain controls, but there is no evidence that these have resulted in conflict minerals being transacted, then there may be a case for the company helping the supplier improve its practices. The company should keep in mind, however, that it has to be able to demonstrate that its operations are in no way associated with human rights abuses and crime and that a lapse, even if unintentional, by its supplier, may cause it serious reputational damage.

#### 4. Audits

For companies' supply chain due diligence procedures to have credibility, they will require third party audits. Like other aspects of supply chain due diligence, commissioning audits is something companies know how to do. Just as any well-run business commissions regular audits to reduce the risk (and the perception) of financial mismanagement, companies that source minerals and metals originating from the Great Lakes region should be subjecting themselves to audits to guard against the possibility that their due diligence activities are failing to detect ways in which the supply chain is contributing to serious human rights violations and other crimes.

The audit should review all elements of the company's due diligence. It should assess whether there is any evidence that the company is sourcing minerals in a way that finances rebel and government armies that commit serious human rights abuses such as killing, rape, torture, extortion, recruitment of child soldiers and other crimes. It should also reach a conclusion as to whether the due diligence measures that the company is taking are sufficient to prevent such problems occurring in the future.

Minimum criteria for an auditor should be:

*Independence:* The auditor should be entirely independent of the company and its suppliers, meaning that it should not be connected with them in any way, via financial relationships (such as share or equity holdings) or other business relations. In addition, the auditor should not have undertaken an audit of the company or any of its suppliers for a period of at least 24 months. This is to avoid the auditor developing a long-term business relationship with the company that gives it a vested interest in the company's commercial viability. (24 months is the disengagement period proposed by the Fair Labor Association's criteria for external monitoring.)<sup>15</sup>

*Professional qualifications and capacity:* The auditor should meet the professional criteria of Chapter 7 of ISO 19011 on Competence and Evaluation of Auditors. They should also have specialist knowledge and skills necessary to carry out this specific type of audit effectively. That means capacity not only to review paperwork, but also to cross-check the data generated by the company's on the ground assessment: verifying that the assessment took place as described, recorded data accurately, and reached conclusions that can be supported. To do this, the auditors will need to visit a selection of operational sites, including mines of origin.

The findings of the audit should be reviewed by company senior management alongside the data generated by the company's own supply chain risk assessment. Like the company's internal controls, the external integrity check provided by the auditor must be seen as a basis for action; notably action to terminate supplier relationships that may be fuelling violence. The audits will need to be published, along with a range of other information on the company's due diligence, as explained in the next section on public reporting.

#### 5. Public reporting

The trade in conflict minerals is a matter of high public interest. Businesses at all points in the international supply chains for the minerals and metals concerned are coming under increasing pressure to show that their activities are not causing harm.

To show that it is implementing supply chain controls that are effective, the company will need to report publicly on the due diligence measures that it has taken. Indeed, the credibility of the company's due diligence measures is directly linked to its transparency. If a company undertakes rigorous due diligence on its supply chain but never reports on it, its claims of good practice will be met with scepticism. It may also miss out on a significant opportunity to add to the value of its brand.

Reporting on due diligence should take the form of a twice-yearly publication made available through the company's offices and its website. It should cover, at a minimum, the following areas:

**CONFLICT MINERALS POLICY:** the public reporting should state clearly what the company's policy is, whether it has changed since the last report and if so, why.

**SUPPLY CHAIN RISK ASSESSMENTS:** set out what these consist of, for example, how has the company carried out its on the ground assessments / assessments of smelters' supply chain controls and what have been the findings? Also, what chain of custody controls does the company have in place and what information have these generated over the reporting period?

**REMEDIAL ACTION BY THE COMPANY:** explain what actions the company has taken to deal with problems identified in its supply chain risk assessments. Has it excluded from its supply chain suppliers who were found to be trading in conflict minerals or who did not carry out adequate due diligence?

**SUPPLIERS:** The report should set out who all the suppliers are back to mine of origin, what commitments they have given the company regarding their policies on conflict minerals and what due diligence measures they are undertaking.

**AUDIT:** state who carried out the most recent audit and their qualifications for the assignment. Publish the audit and details of the company's response to its findings.

**SUPPLY CHAIN MAP:** the company should also publish a supply chain map setting out:

- The exact mines from which its materials are sourced
- The points at which the minerals are traded, mixed or processed
- The transportation routes taken
- The taxes paid: where, how much, and to whom
- The identity of all players along the supply chain: mine operator, traders, exporters, transportation companies.

All of this information must be published on a disaggregated basis: the company cannot fulfil these requirements by publishing data compiled by industry bodies about the collective activities of their members, for example.

At all times, companies must apply a precautionary principle: if in doubt, do not buy. With regards to the trade in minerals, the risks of irresponsible purchasing practices doing harm to civilians living in eastern DRC are simply too great.

# CONCLUSION

Many of the companies using the minerals and metals exported from eastern DRC are very large international corporations that make very substantial profits. Having benefited – in some case for many years – from a trade that damages so many people in Congo, they must now begin facing up to their responsibilities.

Due diligence is a well-established business concept which is readily applicable to supply chain management in the minerals trade. The aim – identifying and addressing risks of harm resulting from companies' activities – and the means – gathering information as a basis for taking remedial action – are essentially the same as any other kind of due diligence. Where companies undertaking due diligence encounter obstacles, for example in gaining safe access to certain mine sites, this is a signal that they need to change their sourcing practices, not that doing due diligence is too difficult.

## ANNEX A

### On the ground assessment by companies sourcing minerals from the Great Lakes region

An on the ground assessment of the conditions of trade is the cornerstone of the company's due diligence. This section sets out one way in which it can be carried out.

#### i) Establish the scope

The on the ground assessment is the principal means by which the company can find out whether its activities and purchasing practices may be fuelling killings, rape, extortion, forced labour, and other abuses.

In its most stripped-down form, the assessment should be aimed at answering the following questions:

- What is the pattern of serious human rights abuses and other crimes in the region from which the company is sourcing its materials?
- What does the company's supply chain in that region look like?
- Where do the two intersect?

These overarching questions can be broken down into a series of more specific ones, examples of which are set out in the box below:

<p><b>Guiding questions for the on the ground assessment</b></p> <p><i>Serious human rights abuses and other crimes:</i></p> <ul style="list-style-type: none"> <li>■ <b>What kinds of abuses are occurring in the areas from which the minerals that the company purchases originate? Where exactly are they occurring and who is involved?</b></li> <li>■ <b>What laws are being violated? In many cases this may seem obvious, but the company should find out whether international crimes, such as pillage, may be occurring. Violations of national law are also relevant, given the legal prohibition in the DRC on soldiers getting involved in mining activities, for example.</b></li> </ul> <p><i>The supply chain and the way in which the materials the company sources are extracted, transported, traded and taxed</i></p>	<ul style="list-style-type: none"> <li>■ <b>What is the precise origin of the minerals (the specific mines)?</b></li> <li>■ <b>Who owns the rights to the mines or concessions in which minerals are mined?</b></li> <li>■ <b>What are the conditions in which the minerals are extracted? For example, is there forced labour, child labour or any kind of coercion involved?</b></li> <li>■ <b>How are the minerals transported and by what routes? Who provides the transportation services? How long does the transportation take? Do the authorities provide any official oversight or inspection? If so, what form does this take?</b></li> <li>■ <b>Where are the minerals traded and how is trading carried out? Are the trading sites secure, or is there scope for coercion, fraud, introduction of materials from other sources etc?</b></li> </ul>	<ul style="list-style-type: none"> <li>■ <b>Do the authorities provide any official oversight or inspection at this point? If so, what form does this take?</b></li> <li>■ <b>At what points in the supply chain are the minerals inspected or taxed by government authorities or any other parties? What form does this take? Are any documents or receipts issued? How much money is paid in taxes and who does this money go to?</b></li> <li>■ <b>Do the transactions and other activities observed on the ground match with the patterns of activity set out in the chain of custody documentation?</b></li> <li>■ <b>Can the miners, traders and intermediaries show records of previous transactions for specific consignments of minerals which tally with chain of custody records held by the company?</b></li> </ul>
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### Guiding questions for the on the ground assessment (continued)

#### *Suppliers*

■ Who are the company's suppliers at each tier of the supply chain (i.e. all the mines of origin, traders and intermediaries in the supply chain, from point of extraction onwards, not just the company's immediate supplier)?

■ What are the various suppliers' policies on conflict minerals?

■ Do the suppliers have the necessary authorisations and permits to operate?

■ Is there any evidence of the suppliers themselves being involved in serious human rights abuses or other crimes?

■ Who are these suppliers' beneficial owners?

■ What relationships, if any, do the suppliers or their beneficial owners have with other traders, state or non-state armed groups or criminal elements?<sup>16</sup>

#### *Armed groups*

■ Are state or non-state armed groups controlling the mine or the surrounding area or otherwise present? If so, what is their relationship to the mineral trade?

■ Are state or non-state armed groups directly or indirectly involved in the extraction, trading, transportation or taxing of the minerals?

■ Are these groups acting within the bounds of national and international law? Are any of them involved in serious human rights abuses or other crimes?

■ Are state or non-state armed groups benefiting in any way from extraction, trading, transportation or taxing of minerals being carried out by other parties? In other words, are they making money out of transactions that superficially do not appear to involve them?

## ii) Appoint an assessment team

It is the company's responsibility to carry out this on the ground assessment, as part of its due diligence. This should not prevent the company from drawing on external expertise where needed. Companies that buy from, but do not operate in, the Great Lakes region may wish to consider the option of hired help in conducting due diligence. At the same time they may feel that there are advantages to involving their own employees in the process directly, with an eye to building up their in-house capacities. There are pros and cons to both approaches.<sup>17</sup>

Whatever the team's composition, its members must be mandated to ask difficult questions, pursue leads and follow up on unexpected information that they may come across as they go along. They need to be aware that the kind of data they are looking for will be primarily qualitative and empirical. This will complement the more procedural information that the company will receive through its chain of custody system.

The assessment team must be given clear terms

of reference and plan their work carefully. They need to understand that they cannot reduce the exercise to a questionnaire-filling or box-ticking exercise. What is set out here should be seen as a framework and the minimum set of steps that a company should take, not a limit on what a company assessment team should do.

The assessment team should be required, under contract, to meet appropriate evidentiary standards for the research that they carry out. These evidentiary standards could be modeled on those used by UN panels of experts, for example. Whatever standard of evidence is used, it must be remembered that the point of due diligence is to detect risk, not support a case in a court of law. Risks are, by definition, sometimes difficult to pin down as fact and risk assessments must assume 'imperfect knowledge'. For example, it may be difficult to determine the precise details of a particular series of human rights abuses, but if there are reliable reports, or reports from several sources, no team should exclude reporting such events for lack of 'hard evidence'. Rather, the team should be careful to communicate to company decision-makers the nature of the information by which a risk is identified.

### iii) Carry out preparatory research

The first step to answering the questions listed above is to carry out a desk-based review of available documentation. This will likely include reviewing the following:

- National and international laws, codes of conduct, good practice guidance or other standards for businesses relevant to the region in question. Having established a conflict resources policy that refers to these standards, the company should have many of these documents already.
- Reports by the UN, governments, the International Criminal Court, NGOs, media and others on the conflict, associated human rights abuses and crimes, and on the trade in the Great Lakes region. As part of this desk review process, the assessment team should get in touch with the organisations or individuals that have produced the publications reviewed to follow up with them on particular points that are relevant to the assessment.
- Contracts with suppliers, so that the team can go into the assessment knowing what commitments the suppliers have given the company with respect to their sourcing practices
- The chain of custody documentation gathered by the company since the last on the ground assessment

### iv) Field research

Having completed the desk-based research, the assessment team will need to go to eastern DRC and possibly neighbouring countries in order to

- Gather first-hand information on the conditions of trade, with a particular focus on problems such as illegal taxation, which chain of custody documentation cannot detect.
- Cross-check the data that the chain of custody documentation can provide, for example by inspecting mines, visiting trading centres and export points and mapping out transportation routes.

This on the ground element of the assessment should include the following types of information-gathering:

#### *Site visits:*

- **The operational sites** where the company or their suppliers are active: mines of origin, trading locations (such as markets), transportation routes, points of export and other places. This means all the sites for each part of the supply chain. In practice, visiting the mines of origin will simultaneously enable the assessment team to inspect most of the relevant transportation routes and visit sites along the way where trading and taxation occur. If there are additional key transportation routes for the minerals, the assessment team should inspect these also. The assessment team should not give advance warning of these site visits.

- **The nearest settlement** to each of these sites. People living in the vicinity of these various sites are likely to have information about the conditions of the trade and may be able to speak more freely than those on site who may be under the scrutiny of supervisors or soldiers.

- **Provincial capitals**, in order to visit the company head office, government offices, NGOs etc.

#### *Interviews:*

At each of the locations visited, the assessment team should carry out a minimum of four separate interviews, with a cross-section of people from the following broad categories:

- People involved in the mineral trade: diggers, porters, intermediary traders (e.g. négociants) and exporters (i.e. comptoirs)
- Government officials, including local Ministry of Mines bodies SAESSCAM, Division des Mines, CEEC and customs and revenue authorities OFIDA and OCC
- Members of the security forces, such as

- **Local residents:** people living in or around the key sites at which mining, trading, transportation and taxation take place, traditional chiefs and other community leaders

- **Civil society:** NGOs, unions, journalists, church groups

Not all of these categories of interviewees will be present at each location. However, at every operational site visited, it is essential that, within the minimum four interviews, the assessment team interview at least two people directly involved in the activity taking place. That means, at each mine site, a minimum of two diggers; on a transport route at least two porters, drivers or middlemen; at a market where minerals are traded, two traders; at a taxation point, a minimum of two people carrying out the taxation and so on. At each site, the team should endeavour to interview at least one official from one of the Congolese agencies involved in regulating the mineral trade.

Where the assessment team encounters conflicting accounts or ambiguous information, they should carry out additional interviews.

In the visit to the provincial capital, the assessment team must make sure they interview at least two people from each of the categories listed above and all of the state agencies concerned with regulating the minerals sector: SAESSCAM, Division des Mines, CEEC and customs and revenue authorities OFIDA and OCC.

#### *Review of documentation:*

- **Laws and regulations** (if not already obtained during desk-based research)

- **Official permits:** licences of each exporter or trader in the company's supply chain

- **Documents accompanying individual shipments** concerning source, quantity, purity of minerals, e.g. bills of lading, customs declarations, documents issued by government agencies. These documents can be cross-checked against

data generated through the chain of custody tracking system.

The assessment team must try to trace all consignments of minerals originating from eastern DRC that the company has purchased back to the mine of origin. That will require them to cross-check details of these consignments, or the individual bags (colis) that make up these consignments, with the records held by the individual exporters and intermediary traders in the supply chain. Wherever possible, the team should try to obtain copies of the documentation held by the exporters and traders concerned for the company's own records.

#### **v) Write up the assessment and make recommendations**

Having completed its information-gathering activities, the team should write up its findings. It should set out the pattern of abuses in the region and profile the company's supply chain, the activities involved and conditions in which they take place, the players involved, and their patterns of relationships. It should draw conclusions as to whether the pattern of abuses and the company's own activities and associations intersect. Is there is a relationship between the company and abuses, or a risk of there being one? If so, what is it? What are the consequences for the parties abused and for the company? Is the company liable under national and international law or industry standards? Is it in compliance with its own conflict minerals policy?

The assessment should provide recommendations on action the company should take to address problems identified and suggestions as to how it can improve its due diligence. If the assessment team finds grounds for suspecting that the company could be complicit in abuses, or reason to think that it is not possible to eliminate this risk, then it should recommend that the company discontinue its existing purchasing practices.

## ANNEX B

### Manufacturer's assessment of smelter's supply chain controls<sup>18</sup>

When it comes to carrying out a supply chain risk assessment, the manufacturer should focus on verifying the controls exercised by the smelter that supplies the refined metal that it uses. This annex proposes a means of doing this.

#### i) Establish the scope

The approach proposed here is based around two levels of assessment. The first, what we call here a Level 1 evaluation, is aimed at ascertaining whether the smelters that supply the manufacturer are sourcing minerals from the Great Lakes region. If the smelters are definitely using such materials, or are likely to be, then a more detailed Level 2 evaluation will be required. The Level 2 evaluation aims to deduce whether the smelter's purchasing practices are fuelling human rights abuses and other crimes and to gauge the robustness of their due diligence.

The need for a Level 2 evaluation may only become clear through the Level 1 enquiries, so the initial scope of the assessment may need to be flexible.

Both levels of evaluation start with a preliminary review of available documentation and then a visit to the smelter.<sup>19</sup>

Before that, however, the manufacturer needs to assemble a team to carry out the assessment.

#### ii) Appoint an assessment team

Unless the manufacturer already knows that the smelter is using minerals from the Great Lakes region, it will begin with a Level 1 evaluation. This will require an assessment team whose knowledge

is primarily industry-based and which is capable of analysing trade data, inspecting mineral stocks and carrying out interviews. The assessors could be auditors appointed by the manufacturer or members of its own staff, or both.

If, through the Level 1 evaluation, it then emerges that the smelter's mineral concentrate sources are likely to include mines in the Great Lakes region, it will become necessary to enlist additional, specialist expertise, almost certainly from outside the manufacturer's own staff.

Like the teams appointed by upstream companies using mineral concentrate, the assessors engaged by downstream manufacturers should be required to meet clear terms of reference and evidentiary standards.

#### iii) Carry out preparatory research

The assessment team will first need to check who the manufacturer's smelters are, using chain of custody documentation and making enquiries of its immediate suppliers of metal or metal-containing products. They should map out the supply chain between the smelter and the manufacturer.

Next, they should conduct some preliminary research on the smelter. Has the manufacturer had any previous contact with the smelter, for example communications regarding the manufacturer's expectations of its suppliers? Has the smelter featured in a previous supply chain risk assessment by the manufacturer? What do the smelter's own annual reports and website say about its conflict minerals policy and its supply chain due diligence? Is it publishing specific reports on its due diligence measures? Are there any published reports that link the smelter to minerals from the Great Lakes region?

The assessment team members should familiarise themselves with the terms of contracts between the manufacturer and its immediate suppliers, particularly if the immediate supplier is also the smelter. They should review documentation on relevant laws and standards. They need to have

a reasonable working knowledge of the conflict minerals trade and conditions in the Great Lakes region, who is known to be implicated and what are the patterns of activity involved, so that they can cross-reference this with the information they gather about the smelter and draw conclusions about its supply chain.

Lastly, the assessors need to know which countries around the world produce the type of mineral that the smelter processes and what are their known production capacities. They will need a grasp of this information in order to detect any anomalies in the chain of custody data they review when they visit the smelter.

#### iv) Visit the smelter

Having done the preparatory desk-based research, the assessment team should go and see the smelter. This should be a visit to the site where the smelter actually processes minerals into metals, because this is the place where they will be able to inspect physical stock and where there should be the most complete and up to date records of what materials are coming in and what is going out. Visiting one of the smelter's representational offices at another location is not a substitute. The smelter should not receive more than a day's notification ahead of a visit by the assessment team.

The first thing the assessment team needs to do is to ascertain whether there is a possibility that the smelter is using minerals from the Great Lakes region. The smelter may be quite open about the fact that they do use such materials, in which case the team should proceed directly with a Level 2 evaluation (below). In other cases the smelter may say that they do not use minerals from the Great Lakes region or that they do not know, in which case the team begins with a Level 1 evaluation.

#### LEVEL 1 EVALUATION

The assessment team should separately interview the smelter's senior management

and its procurement division staff and review documentation about the consignments of minerals that the smelter uses. They should also carry out a physical inspection of the on-site stock and compare it with the smelter's chain of custody documentation. Their enquiries should focus on such questions as:

- What are the types of minerals that the smelter uses and what form (i.e. unprocessed or semi-processed) are they in?

- What are the minerals' exact origins, when were they extracted and who did the mining?

- Where were the minerals subsequently traded, on what dates and who was involved in these transactions?

- What are the means and routes by which the minerals were transported from mine of origin to the smelter, on what dates did the different stages of the transportation occur and who was doing the transporting? What international border crossings did the minerals pass through en route to the smelter?

- Where and when were the minerals taxed? To whom were the taxes paid?

- What were the key characteristics of the minerals (type, weight, purity) at the different points along the supply chain?

The documentation that the assessment team needs to review includes:

- Records of the mineral consignments being extracted and transported out of the mine of origin

- Licence details of traders and exporters

- Transportation records

- Export permits and import permits issued by the relevant state authorities

- Shipping documents, including bills of lading, packing lists, assay certificates

#### ■ Records of stock maintained at the smelter site

The assessment team should look out for 'red flag' indicators that suggest that there is a possibility that such Great Lakes region minerals could have entered the smelter's supply chain.

These red flag indicators are the same as those set out at the start of this paper concerning which companies should be undertaking supply chain due diligence:

- The minerals used by the company originate from or have been transported via a country in the Great Lakes region.
- The stated origins of the minerals in question are countries that have limited or no capacity to produce them, raising the possibility that the materials are in fact of Congolese origin.
- The company or its suppliers have relationships or a history that links them to the Great Lakes region, for example if the company or one of its suppliers is known to have sourced minerals from the region in the past.
- The minerals supplied to the company are recycled or part-refined. (Part-processing of illicitly-sourced raw materials is a tried and tested means of evading supply chain controls internationally.)

If the assessment team encounters red flags or any other grounds for suspecting that some of the smelter's materials may originate from the Great Lakes region, they should automatically proceed with the Level 2 evaluation assessment of the smelter.

If, in the course of its Level 1 evaluation, the team has encountered only consistent and verifiable evidence that the likelihood of minerals from Great Lakes region entering the smelter's supply chain is negligible, then the information-gathering phase of the assessment is complete and they should move on to writing up their findings (see section below on writing up).

#### LEVEL 2 EVALUATION

Having established that the smelter is sourcing minerals from the Great Lakes region, or that there is a possibility that this may be happening, the assessment team now has to proceed with a more in-depth examination of the smelter's supply chain and control systems.

The types of data that the assessment team will be looking at for this more in-depth evaluation are those that would automatically be generated by rigorous due diligence:

- Conflict minerals policy
- Contracts with suppliers
- On the ground assessments
- Chain of custody documentation
- Records of action taken by the smelter to address problems identified
- Auditors' reports
- Public reports by the smelter

The assessment team will need to supplement its review of documentation with interviews with the smelter's staff, particularly those directly involved in doing the due diligence and the senior management staff ultimately responsible.

If the smelter is unable to offer convincing evidence that it has excluded from its supply chain materials sourced in a harmful manner, for example if the documentation generated by its own due diligence contains gaps, contradictions, or evidence of failure to act on problems identified, then the assessment team should conclude that there is a high probability of such minerals being present in its supply chain. The assessment is now complete, because under these circumstances the manufacturer will have no choice but to exclude the smelter from its supply chain. Further information-gathering is therefore redundant.

If, however, these enquiries of the smelter reveal a picture of strong supply chain due diligence which appears to have excluded conflict minerals and dealt effectively and promptly with any problems, then the assessment team should now proceed with a final verification in the form of spot checks.

## COMPLETE THE LEVEL 2 EVALUATION WITH SPOT CHECKS

The aim of the spot checks is to compare the data presented by the smelter with the operations of mine operators, traders, or other intermediaries further up the supply chain. By now, the assessment team will have obtained details of what the smelter's supply chain looks like and will be able to choose particular points to look at in more depth. This guidance recommends that the cross-checks focus on at least two different points in the smelter's supply chain, one of which should be the mines of origin.

Undertaking the cross-checks will involve visits to the site of operations of the miners, traders, intermediaries or others concerned, using the on the ground assessment methods outlined in Annex A (section iv). The assessment team should not give prior notification of its cross-checking visits.

Once more, the focus of the assessment team's enquiries should centre on what evidence the supplier visited can produce to prove that they are not engaging in harmful sourcing practices and the extent and quality of their due diligence. Carrying out this part of the Level 2 evaluation may require the manufacturer to augment its assessment team with additional members who have specialist knowledge, for example of the Great Lakes region.

### v) Write up findings and make recommendations

The assessment team should now set out its conclusions in detail. First it should explain whether it decided to undertake a Level 1 or Level 2 assessment or both and the reasons why. In cases where the team decided not to go beyond Level 1, it should set out the basis for its decision in detail.

If the assessment team found reason to carry out a Level 2 evaluation, then it needs to describe precisely what steps it took and lay out its findings as follows:

- Describe the pattern of abuses in the region concerned.

- Profile the smelter's supply chain, the activities involved and conditions in which they take place, the players involved, and their patterns of relationships.

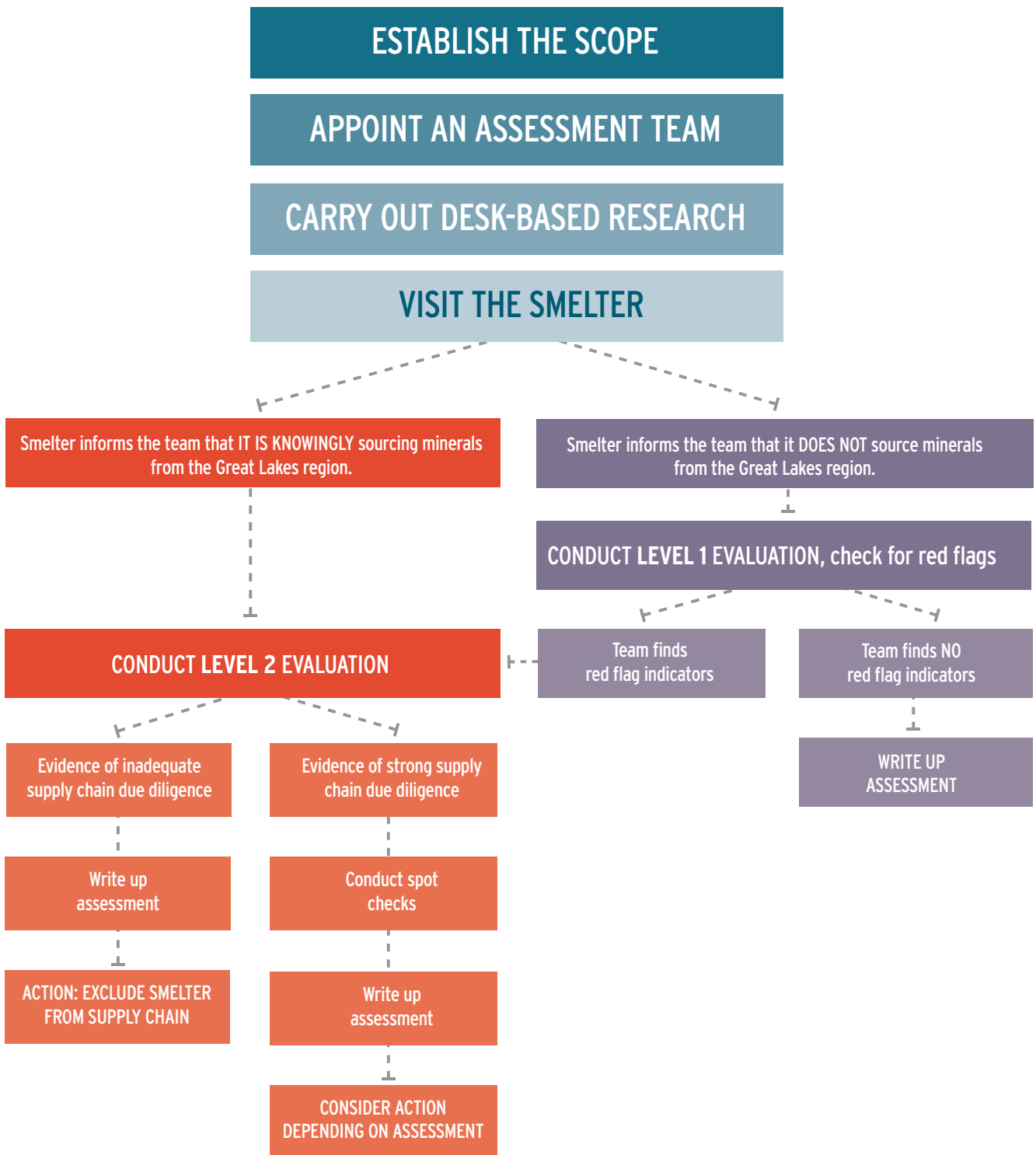
- Draw conclusions as to whether the pattern of abuses and the smelter's own activities and associations intersect.

- If there is such a relationship between the smelter and abuses, describe it in as much detail as possible.

- Assess what are the consequences for the parties abused and for the smelter and also for the downstream manufacturer carrying out the supply chain risk assessment. For example, is either the smelter or the manufacturer liable under national and international law? Are they in compliance with their own conflict minerals policy and industry standards?

The assessment should provide recommendations on action the manufacturer should take to address problems identified and suggestions as to how it can improve its due diligence. If the assessment team finds grounds for suspecting that any of its smelters could be complicit in abuses, or reason to think that it is not possible to eliminate this risk, then it should recommend that the manufacturer source its metals from a different processor.

# Flowchart: manufacturer's assessment of smelter's supply chain controls



## ENDNOTES

- 1** Global Witness has proposed a definition of 'conflict resources' as follows: conflict resources are natural resources whose systematic exploitation and trade in a context of conflict contribute to, benefit from, or result in the commission of serious violations of human rights, violation of international humanitarian law or violations amounting to crimes under international law. For more details see Global Witness, *Lessons UNLearned*, January 2010 and *The Sinews of War*, November 2006; both are available from [www.globalwitness.org](http://www.globalwitness.org).
- 2** Some payments by trading companies (comptoirs) to armed groups could be as much voluntary as forced. For a description of the role of one comptoir in sending money to FDLR representatives in Europe, see Final Report of the Group of Experts on the Democratic Republic of the Congo re-established pursuant to resolution 1857 (2008), submitted to the UN Security Council November 2009, pages 24–25.
- 3** Report of the UN Secretary-General pursuant to paragraph 8 of resolution 1698 (2006) concerning the Democratic Republic of the Congo, 8 February 2007.
- 4** UN Security Council Resolution 1896 (S/Res/1896), adopted 30 November 2009.
- 5** Keynote address by UN Secretary-General's Special Representative John Ruggie 'Engaging Business: Addressing Respect for Human Rights', sponsored by the US Council for International Business, US Chamber of Commerce, International Organization of Employers, Atlanta, 25 February 2010, [http://www.hks.harvard.edu/m-rcbg/CSRI/newsandstories/Ruggie\\_Atlanta.pdf](http://www.hks.harvard.edu/m-rcbg/CSRI/newsandstories/Ruggie_Atlanta.pdf).
- 6** International Alert & Fafo, 'Red Flags: Liability Risks for Companies Operating in High-risk Zones', [www.redflags.info](http://www.redflags.info).
- 7** UK Government Department for Business, Enterprise & Regulatory Reform (BERR), 'Press release: Mineral Trade Helped Fund Rebels', 28 August 2008; see also BERR, 'Final Statement by the UK National Contact Point for the OECD Guidelines for Multinational Enterprises: Afrimex (UK) Ltd', August 2008; Global Witness, 'Afrimex (UK) / Democratic Republic of Congo / Complaint to the UK National Contact Point under the Specific Instance Procedure of the OECD Guidelines for Multinational Enterprises', 20 February 2007, available from [www.globalwitness.org](http://www.globalwitness.org).
- 8** All these countries, including Kenya, are members of the regional governmental grouping the International Conference on the Great Lakes Region. Despite not sharing a border with the DRC, Kenya's role in the trade in Congolese minerals is crucial, as Mombassa is one of the two main ports through which they are shipped out of Africa.
- 9** See, for example Final Report of the Group of Experts on the Democratic Republic of the Congo re-established pursuant to resolution 1857 (2008), submitted to the UN Security Council November 2009, page 51.
- 10** For example tantalum ore that has been turned into k-salt. While there is nothing wrong with recycling or partially refining minerals, companies that mine and use refined tantalum have expressed concerns that these processes are used to introduce tantalum ore from eastern DRC into the global supply chain (Global Witness communications with industry representatives, April 2010). More generally, partial processing is a tried and tested means of laundering conflict resources and other commodities that have been sourced illicitly. For brief summaries of examples from the timber industry, see Global Witness, *Lessons UNLearned*, 2010, p.10 and *Cambodia's Family Trees*, 2007, p. 38, both available from [www.globalwitness.org](http://www.globalwitness.org). The Kimberley Process Working Group of Diamond Experts has dedicated a substantial proportion of its time to closing the potential loophole of diamonds being part-polished as a means of evading Kimberley Process controls, which apply only to rough diamonds.
- 11** Communications with manufacturers of electronic components and end user products, 2010.
- 12** The pitfalls of assigning junior staff to take responsibility for ensuring effective due diligence are illustrated by Global Witness's investigations of the role of banks in laundering money stolen by dictators, see Global Witness, *Undue Diligence*, March 2009, available from [www.globalwitness.org](http://www.globalwitness.org).
- 13** For a description of the key elements of an effective commodity tracking system, see Global Witness (Corene Crossin, Gavin Hayman & Simon Taylor) 'Where did it come from? Commodity Tracking Systems', in Ian Bannon and Paul Collier, *Natural Resources and Violent Conflicts: Options and Actions*, World Bank, 2003.
- 14** OCC stands for Office congolais de contrôle; CEEC is the Centre d'évaluation, d'expertise et de certification; OFIDA is Office des douanes et accises; SAESSCAM is Service d'assistance et d'encadrement du small scale mining.
- 15** Fair Labor Association Charter, Chapter VIII A, Accreditation Criteria for Independent External Monitors, [http://dev.fairlabor.org/var/uploads/File/FLA%20Charter\\_3.18.08\(1\).pdf](http://dev.fairlabor.org/var/uploads/File/FLA%20Charter_3.18.08(1).pdf).
- 16** Relationships with criminals are relevant with respect to the national army as well as non-state groups or civilians, not least given the International Criminal Court warrant for the arrest of a senior ex-CNDP rebel commander now integrated into the Congolese armed forces.
- 17** Mark B Taylor, Luc Zandvliet and Mitra Forouhar, 'Due Diligence for Human Rights: A Risk-based Approach', Corporate Social Responsibility Initiative Working Paper N°53, John F Kennedy School of Government, Harvard University, October 2009.
- 18** Manufacturers here means any firm that makes products using refined metals.
- 19** To keep the scenario as simple as possible, we assume in this example that the company has only one smelter supplying it with refined metal. In practice, there could be several.

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