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for Africa

Sub-Regional Office for Eastern Africa (SRO-EA)

**Special report on the  
“The ICGLR Regional Initiative against the  
Illegal Exploitation of Natural Resources  
(RINR) and other Certification Mechanisms in  
the Great Lakes Region:  
Lessons Learned and Best practices”**

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# 1 INTRODUCTION

Several African countries are endowed with considerable amounts of mineral resources. These resources play a crucial role in the economy, as they account for a significant share of exports. Indeed, mineral resource exports contribute to merchandise exports in almost half of Africa's 54 countries.

While the exploitation of mineral resources should have a positive effect on economic growth as it provides sufficient financial resources for building economic infrastructure and human capital, it has not been the case for most African countries. Poor performance in mineral economies has been linked, *inter alia*, to the disenfranchisement and conflict about the resources; poor legal and regulatory frameworks and weak institutional capacity, including for negotiation of mineral agreements; illicit financial flows that are lost by Africa through transfer pricing and other mechanisms used by private companies; and the negative impact that resource rents have on the workings of political institutions, as they create political incentives for discretionary or non-transparent management of public expenditure.

The link between natural exploitation and conflict is well documented. Natural resources driven conflicts have been fuelled by grievances on access to rights, perceptions of unfair distributions of benefits, disenfranchised groups or by pure economic reasons: the business of war. Classic cases include the role played by diamonds to sustain conflicts in Angola, Sierra Leone and Liberia, and similarly gold, diamonds, coltan and other minerals in the case of DR Congo. Several mechanisms have been established to curb this link. Chiefly among them, the Kimberley Process, which is meant to improve traceability in the diamond industry and eliminate the flow of conflict diamonds. In the Great Lakes region, which is most frequently cited as an example of the resource curse, the most important framework is the Regional Initiative against the Illegal Exploitation of Natural Resources in the Great Lakes Region (RINR), being coordinated by the International Conference on the Great Lakes Region (ICGLR).

“Conflict minerals” are ores that, when sold or traded, have played key roles in helping to fuel conflict and extensive human rights abuses, since the late 1990s, in the Democratic Republic of the Congo (DRC). The main conflict minerals are the so-called “3TGs”: ores of tantalum and niobium, tin, tungsten; gold; and their derivatives. Diverse international efforts to break the link between mineral trade and conflict in the Great Lakes region have been proposed or are under way. Key initiatives include government and industry-led mineral tracking and certification schemes. These are designed to monitor trade in minerals to keep armed groups from financially benefitting from this commerce, in compliance with firm-level and/or industry due diligence policies that prohibit transactions with armed groups.

Recognizing that the key problem is the missing linkage between the supply chain of natural resource and the formal economy of the ICGLR member States, and the fact that the exploitation and trade within the region are frequently conducted illegally, the ICGLR RINR seeks to redress these issues through a comprehensive approach including an elaborate Regional Certification Mechanism (RCM).

The Special report on the implementation of the ICGLR RINR will start by analyzing certification processes in general and their challenges; focus on the ICGLR RINR and highlight the progress made as well as achievements and success factors; flag any issues and

challenges that may have arisen that prevent its implementation; and make comparative analysis with other certification mechanisms and initiatives.

The Special Report will seek to:

- Analyze certification processes and their challenges
- Update on achievements and success factors as well progress made in the implementation of the RINR in member States
- Flag any issues and challenges that hamper its implementation
- Offer a comparative analysis with other existing initiatives (the Kimberley Process Certification Scheme, the OECD Guidance, the Dodd Frank Act, the FairTrade Fairmines standard, the Conflict free Gold Standard, the ITRI itSci, the Certified Trading Chains, the Conflict free Smelter (CFS), the EITI)
- Draw lessons learned and best practices
- Propose solution and way forward
- Acquire feedback from various stakeholders after its being presented during 17th ICE in Kampala, Uganda
- Discuss the issue with experts, practitioners and other stakeholders during an Ad-hoc Experts Group Meeting (AEGM) organized in Kampala, Uganda.

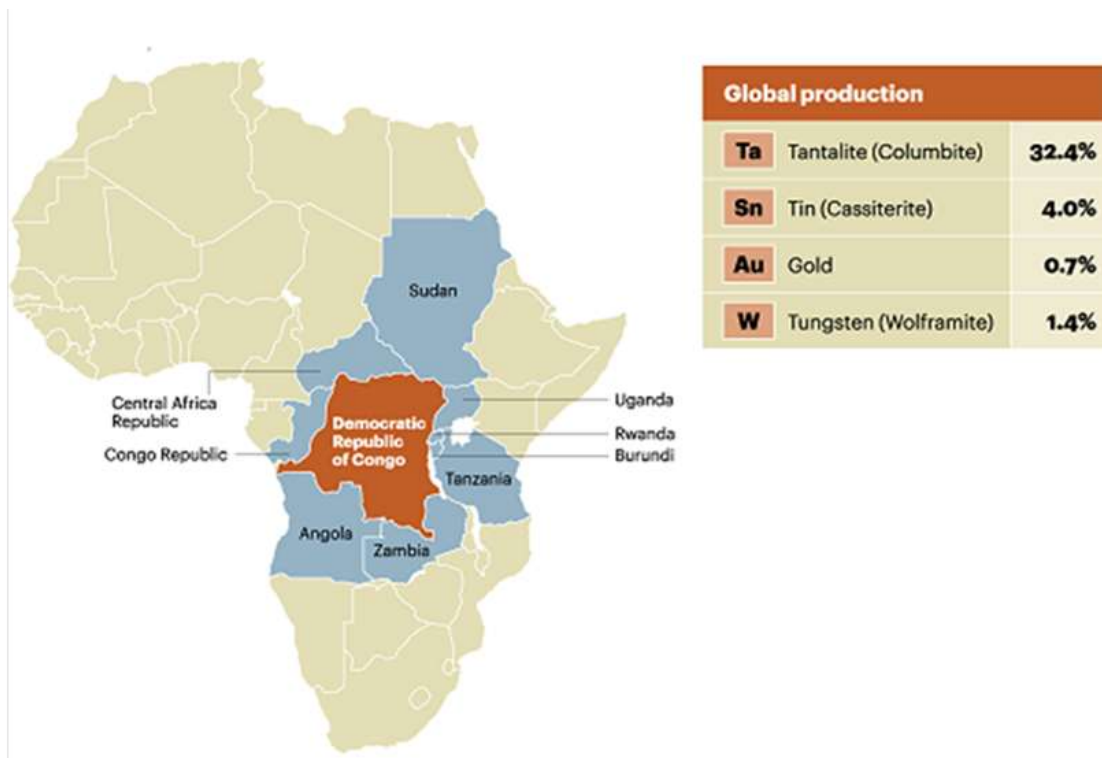
The overall expected results are:

- Enhanced understanding of certification mechanisms through analysis of supply chains of mineral resources to prevent their links to conflict
- Awareness creation on the ICGLR RINR
- Improved knowledge on best practices and lessons learnt through comparative analysis with other certification mechanisms and initiatives
- Increased partnership and collaboration with ICGLR

## 2 MINERAL CERTIFICATION IN THE GREAT LAKES REGION: A CONSTANT CHALLENGE

Minerals such as tin, tantalum, tungsten and to a lesser degree gold<sup>1</sup> (3TGs), that are major inputs for smartphones, laptops and other products<sup>2</sup> are most significantly sourced from the DRC and the Great Lakes Region of Africa. These minerals are mostly mined by artisanal and small scale miners whose livelihoods very much depend on these mineral supply chains. Unfortunately, these minerals also contribute to the financing of DRC’s continuous armed conflict and have been labeled ‘conflict minerals’. The conflict in the DRC has been one of the most tragic of the last few decades. It has been estimated that total loss of life in the region has exceeded 5 million. There are a number of issues driving the conflict, but one of the most discussed is the role that the mineral trade, particularly with regards to the 3TG, plays in financing conflict. Figure 1 shows the map of DRC and adjoining countries and some figures for global production of the 3 TGs.

**Figure 1: Democratic Republic of Congo and Adjoining countries**



Source: A.T. Kearney Analysis. June 2012

<sup>1</sup> US Geological Survey, 2010; Bawa, 2010.

<sup>2</sup> ICT industry consumes over 50%-60% of tantalum, up to 26% of tin, and 9% of gold (Burt, 2011; Vodafone, 2012.)

Following its resolution 1291 (2000), in June 2000 the UN Security Council (UNSC) first established the Panel of Experts to investigate the illegal exploitation of DRC's natural resources and identify any potential links between natural resources and the ongoing conflict in eastern DRC.<sup>3</sup> In 2003, the Panel issued its final report concluding that: *"The flow of arms, exploitation and the continuation of the conflict are inextricably linked."*<sup>4</sup>

Tracing and tracking the provenance and the supply chains of these minerals is essential as they can be used to fuel conflicts and could lead to massive displacements, and instability. If their provenance and 'routes' are not transparent, it could also trigger boycott from consumers and loss of investor confidence, deterring the people to actually benefit from these resources in a sustainable manner. Mining itself is not inherently unsustainable if it is responsibly managed. A regional solution is important as conflict minerals are mined in one country and exported through another. There is thus need for a comprehensive mineral tracking and a certification mechanism.

A relatively new creation in the aftermath of globalization, certification is the result of the desire of global consumers to ensure that the products they use in their daily life conform to certain ethical and environmental standards, even if the supply of raw materials and manufactured products has moved overseas beyond the reach of their own domestic legislation. In recognition of the power and influence that public and consumers have, producers of these products are aware and conscious that they have to fill this market demand. Indeed there is emergence of booming new markets for "ethically-certified" products. Certification is therefore by nature a voluntary agreement between consumers and producers, without consideration on where they physically live in the world. While consumers agree to seek out or limit their consumption to some specific products that meet their standard, producers agree to meet that same agreed upon standard. Both sides agree upon an independent auditor to verify that the standard is being met, rendering it beneficial to both sides.

Producers stand to gain from this arrangement. Certification systems could be considered by producers as another form of risk mitigation in brand management. Indeed, producers could gain more secure market access - an advantage in the marketplace over competitors that are not certified - and often a price premium, willingly paid by consumers in recognition of the added value of the product. In addition, certification systems reduce transaction costs for providing assurance of corporate social and environmental accountability. Consumers gain in terms of satisfaction of knowing that their daily purchasing decisions are supporting the moral, ethical and environmental standards to which they subscribe. While certification processes were initially driven by the Civil Society Organizations (CSOs) and educated consumers, it has gained support in the private sector and the development agencies as a way to promote Corporate Social Responsibility (CSR) in developing countries.

Where sanctions aim to use economic forces to influence behavior by withdrawing from the market, certification offers interested buyers (consumers and companies) a mechanism whereby they can selectively purchase only those materials that meet a certain standard, be it for origin, method of production or social and environmental impact. Where conflict is the major issue, a certificate of origin guarantees the buyer that, at a minimum, proceeds from the purchase of the material will not be used to finance or benefit belligerent armed groups.

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<sup>3</sup> United Nations Security Council, 2003-2005

<sup>4</sup> Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of Congo, S/2003/1027, October 23, 2003. Paragraph 59, p. 19.



This is the case of the Kimberley Process. Other certification schemes go beyond origin and guarantee the conditions under which a product is produced. The Fair Labor Association (FLA) originated out of allegations that garment manufacturers in developing countries were employing exploitative practices in the manufacture of textiles and garments destined for retail in developed countries. The FLA certifies that garments and textiles were manufactured in a manner that respects workers' rights. In the same vein, the Forest Stewardship Council (FSC) certification guarantees that the wood products in question were produced in ways respecting environmental sustainability.

A mineral certification scheme modeled on these lines would guarantee not just the origin and traceability of the minerals but also certify that the conditions under which they were mined and traded had met certain standards. Certification of mineral origin and traceability would enable to link these standards to specific mine sites. This kind of certification would help buyers curtail the supply of tainted conflict minerals, to exclude violation of broad international standards (child labor for example) in their supply chain. In doing so, they would positively choose ethical minerals, sourced and produced in ways that contributed to the peaceful economic and social development of the Great Lakes region.

While acknowledging and focusing efforts on a broader range of CSR issues, many NGOs, companies, governments, and consumers have expressed concern about and focused much attention on the link between natural resource extraction and conflict. The extraction and trade of minerals (including diamonds), timber, and oil are thought to have directly or indirectly financed warring groups and violence or other human rights abuses in areas such as Sierra Leone, Côte d'Ivoire, Cambodia, Angola, and Liberia. Since 1996, the Democratic Republic of the Congo (DRC) has been a focus of international concern, with a history of governance challenges and large mineral deposits believed to be contributing to violence perpetrated by rebel groups as well as the Congolese army.

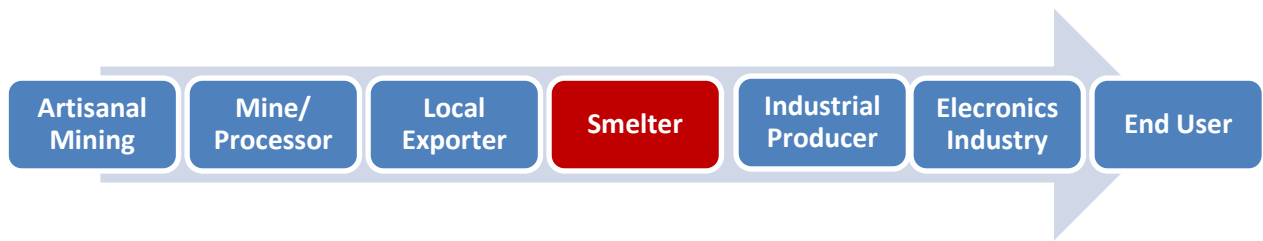
Many minerals originating in conflict regions such as the DRC, including gold, tin, tantalum, and tungsten, end up in products such as computers, cell phones, and other personal electronics, as well as in many other products like jewellery, airplanes and automobiles. Greater awareness of these issues on the part of the public and end-use industries such as electronics has prompted a closer investigation of their supply chains. However, these companies face significant challenges due to a lack of transparency and complex structure and relationships in particular metals supply chains.

The complexity of conflict minerals becomes apparent when looking at a communications company as an example. The company would need to filter through 35 manufacturers, 60 to 80 parts suppliers, more than 1,000 commodity parts suppliers, and an unknown number of distributors to get to all of its sources. Since only very small quantities of conflict minerals are typically integrated into any given product, traceability is even more difficult. For example, a 2 kilogram laptop contains 10 grams of tin, 0.6 grams of tantalum, 0.3 grams of gold, and 0.0009 grams of tungsten. Smelters, where metals of diverse origins come together to be processed, have been identified as the crucial traceability point. Fortunately, the number of smelters within the overall supply network is still manageable.<sup>5</sup> (see Figure 2 for an illustration of the minerals supply value chain).

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<sup>5</sup> A.T. Kearney. 2012. *Conflict Minerals: Yet Another Supply Chain Challenge*. June. [http://www.atkearney.com/paper/-/asset\\_publisher/dVxv4Hz2h8bS/content/conflict-minerals-yet-another-supply-chain-challenge/10192](http://www.atkearney.com/paper/-/asset_publisher/dVxv4Hz2h8bS/content/conflict-minerals-yet-another-supply-chain-challenge/10192).

**Figure 2: Minerals Supply Chain**



Minerals typically lose their provenance (or traceability) as they move through the supply chain from mine to product. Transparency can be challenged due to one or more of the following typical supply chain characteristics and processes: mixing of ore, particularly during trading and prior to smelting; the smelting or refining process, where ore is processed to obtain the target metal, with a smelter often drawing from different sources; and/or re-melting, re-processing or recycling of metals. While there have been tremendous advances with regards to certification, there still remains some difficulties verifying sources that enter the supply chain from mines that are illegal or part of the informal economy. With these sources, a paper trail can be difficult to establish and verify, and many question the credibility of record-keeping related to these sources. In regions such as the Great Lakes, supply chain tracking mechanisms are likely to be necessary with regard to informal, artisanal and small-scale sources. Some positive examples of relevant mechanisms include those developed by the Association for Responsible Mining.<sup>6</sup>

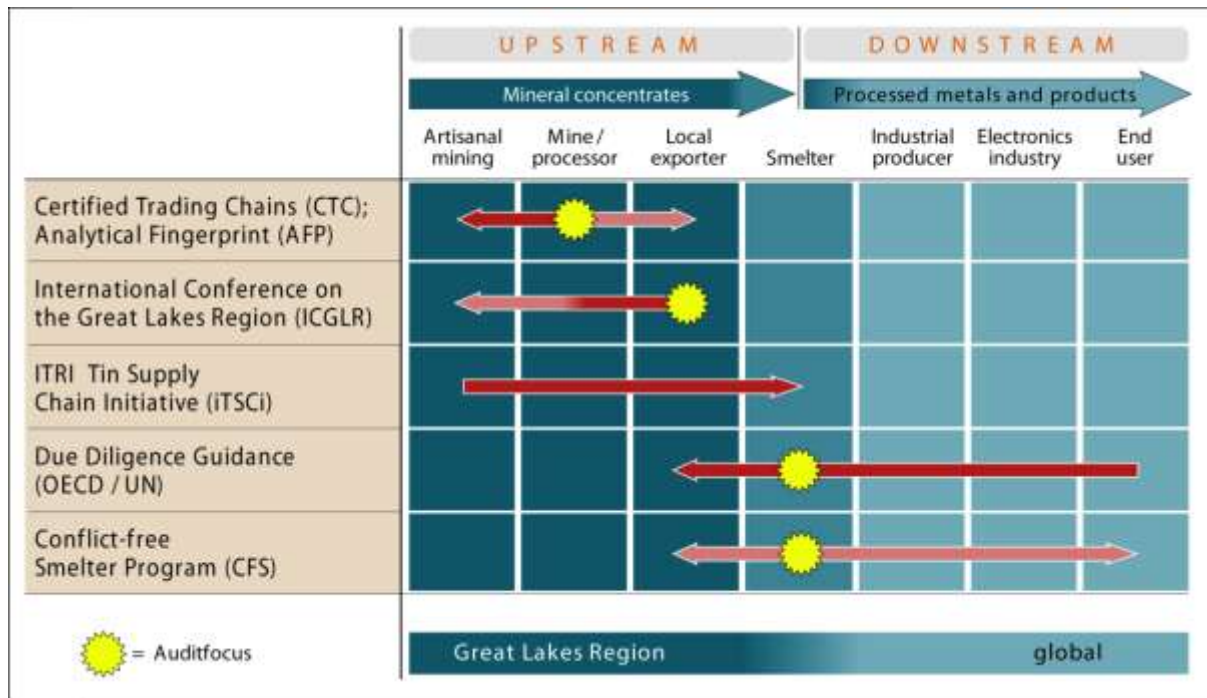
This means that, while end-use companies have the potential to establish and have confidence in sources for some percentage of the metals in their products, they cannot assert 100% sourcing certainty about individual metals or the product as a whole without significant alterations and/or assurance mechanisms in their supply chains. Success requires confidence in supply chain relationships and new strategies, such as direct sourcing, or innovations, such as minerals tagging or fingerprinting. A number of efforts are underway, and many of these were undertaken in consultation with local civil society leaders and Congolese mineral trade exports. In particular, an effort called PROMINES involving the Congolese government, the World Bank, and industry has made great strides towards improving transparency and accountability.

Currently, the ICGLR, the ITRI, the OECD, and the SEC are all pursuing traceability regulations and schemes, sometimes in consultation with one another and sometimes without doing so. Other schemes include MONUSCO's creation of trading centers, and the German government's BGR program. The problem is compounded in that traceability is possible with some commodities (eg, diamonds), but extraordinarily difficult with others (namely, gold). As shown in Figure 3 below, most mechanisms focus on the upstream side (from mine to smelter) with a few focussing on the downstream side (from smelter to end users). The risk areas where the audits should focus are indicated in yellow and include where the mines are processed at the mine site; when they are with the local exporter, and particularly at the smelters.

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<sup>6</sup> Alliance for Responsible Mining, 2010. *Fairtrade and Fairmined Gold: Information for business and designers*. At [www.fairtrade.org.uk/press\\_office/default.aspx](http://www.fairtrade.org.uk/press_office/default.aspx).

**Figure 3: Minerals Supply Chain by Mechanisms**



Source: BGR

### **3 ICGLR'S REGIONAL INITIATIVE AGAINST THE ILLEGAL EXPLOITATION OF NATURAL RESOURCES (RINR)**

#### **3.1 Introduction**

The ICGLR was founded in 2006 against the backdrop of the war in the DRC (2002-2006) with the assistance of the African Union, the United Nations, and bilateral partners. The ICGLR's main objective is to enhance regional security, stability and Development. Its activities are coordinated from a Secretariat established in 2007 in Bujumbura, Burundi.

The ICGLR is a political platform, which has the task to harmonise views, actions and politics concerning regional challenges amongst the member States. In the Dar-Es-Salaam Declaration, the Heads of State and Governments of the ICGLR agreed to seal a Pact on Security, Stability and Development. The Pact confirms the determination and commitment of member States to “*transform the Great Lakes Region into a space of sustainable peace and security for States and people, political and social stability, shared growth and development*”.<sup>7</sup>

Following this commitment, the ICGLR “Regional Initiative against the Illegal Exploitation of Natural Resources” (RINR) was launched in 2009, which particularly aims at breaking the link between mineral revenues and rebel financing. The RINR outlines specific actions needed to translate the Great Lakes region's rich mineral resources from a source of conflict into a catalyst for development.

On 15 December 2006, the eleven member States of the ICGLR signed the Protocol on the Fight against the Illegal Exploitation of Natural Resources. The Protocol provides the legal basis for the implementation of the RINR. The Lusaka Declaration, signed on 15 December 2010, specifies six complementary tools, which will comprise a regional control mechanism aimed at eradicating the main source of funding for violent conflict in the region.

The six tools are:

1. the creation of a regional certification mechanism for natural resource supply chains,
2. the harmonization of national legislation in member states,
3. the construction of a regional database on mineral flows,
4. the formalization of the artisanal mining sector,
5. the promotion of the Extractive Industries Transparency Initiative (EITI) peer learning mechanism, and
6. the establishment of a whistle-blowing mechanism.

#### **3.2 Governance of RINR**

A Regional Steering Committee, comprising technical experts from all ICGLR Member States, has been charged with the steering of all activities within the RINR since September 2009.

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<sup>7</sup> ICGLR. 2006. Pact on Security, Stability and Development in the Great Lakes Region. December. [https://icglr.org/IMG/pdf/Pact\\_on\\_Security\\_Stability\\_Development-S.pdf](https://icglr.org/IMG/pdf/Pact_on_Security_Stability_Development-S.pdf).

Its suggestions on policies and technical guidelines are to be approved at a later stage by the Regional Inter-Ministerial Committee as well as the ICGLR Summit. Meanwhile, the ICGLR Secretariat is collecting and managing the data provided by member States and acts as an exchange platform on issues concerning the Initiative.

While the constitutive meeting of the Steering Committee of the Regional initiative against the illegal exploitation of natural resources was held in Gisenyi (Rubavu), Rwanda in September-October 2009, the second meeting was held in Bujumbura, Burundi in April 2010; the third in Nairobi in September 2010; the fourth in Resha, Burundi in April 2011; the fifth in Bujumbura, Burundi in April 2011; and the sixth and seventh in Bujumbura in May and November 2012, respectively.

This Special report draws extensively from the minutes of these Steering Committee meetings, which were graciously shared by ICGLR/GIZ.

### 3.3 The six tools of RINR<sup>8</sup>

Approved by the ICGLR member States, the RINR operates with six specific tools designed by the ICGLR Conference Secretariat.



#### 3.3.1 Regional Certification Mechanism (RCM)<sup>9</sup>

The RINR is primarily established to track the chain of custody of four selected natural resources, namely cassiterite, wolframite, coltan and gold, also referred to as ‘conflict minerals’. The RCM aims at guaranteeing that neither mine site nor channels of trade within the country and the region are in predatory control of armed groups or criminal networks.

<sup>8</sup> ICGLR website. <http://www.icglr.org>.

<sup>9</sup> Blore, Shawn and Smilie, Ian. 2010. *An ICGLR-based tracking and certification for minerals based in the Great Lakes Region of Central Africa*. March.

The guiding principles are (i) transparency i.e. data on mineral flows would be made public as it enhances the role of civil society as an oversight body; (ii) the burden of proof falls primarily on exporters and secondly on the governments, which means that responsibility to follow procedures and sanctions for non-compliance both fall on industry; (iii) mandatory third party audits, which implies the recruitment of auditors by the ICGLR Audit committee which includes representatives from government, industry and Non-Governmental Organizations (NGOs) and that would issue substantive, automatic penalties for non-compliance; (iv) to adapt existing current systems as much as possible and not to reinvent the wheel if credible systems are already in place; and (v) design for adaptability, so that the mechanism stays present with time and incorporates relevant and best practice standards as much as possible.

The ICGLR RCM Manual, which sets out the standards and procedures for chain of custody systems and certification in-region, was informed by BGR's Certified Trading Chains (CTC) and the OECD Due Diligence Guidance, and also integrates lessons learned from industry-led chain of custody systems, including iTSCi.<sup>10</sup> It "seeks to promote the mineral sector's role in the peaceful economic and social development within the member States of the Great Lakes Region by establishing common regional standards for transparency... working conditions, environmental performance and community consultation."

RCM works by designating certain circumstances and/or outcomes of production as red-, yellow- or green-flags. A red-flag "means a violation of one of the system critical criteria of either the standards or procedures for mine site inspection and approval ... or a violation of one of the system-critical criteria for Third Party Audits."<sup>11</sup>

Implementation of the RCM relies on four main system elements: (i) Chain of custody tracking from mine site to export; (ii) Regional tracking of mineral flows via ICGLR database; (iii) Regular independent third-party audits; and (iv) an Independent Mineral Chain Auditor.

a) Chain of custody tracking from mine site to export (upstream)

The task of tracking from mine site to export (upstream) is entrusted to national governments before export. They ought to be able to trace national production from mine to export. They should also be able to trace minerals imported and then re-exported. It is the duty of the governments to also review the chain of custody of documents before export with a view to establishing that minerals can be tracked from mine site to exporter (producer countries) or border post to exporting countries (reprocessing countries). An ICGLR certificate will be issued to countries exports that have the appropriate chain of custody documents. This certificate will be the evidence that there is compliance throughout the region.

b) Regional tracking of mineral flows via ICGLR database (see Section 3 below)

c) Regular independent third-party audits

A major innovation from existing certification mechanisms, the independent third party audits are conducted independently of government, industry and civil society. They will provide additional assurance that the chain of custody procedures have been adequately followed by all participants in the mineral chain.

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<sup>10</sup> Some of these certification schemes will be reviewed in detail in Chapter 4 of this report.

<sup>11</sup> ICGLR Certification Manual. 2011.

As there are regular audits they will reinforce credibility and legitimacy of the ICGLR system for all parties concerned including end users, consumers, civil society and the international community.

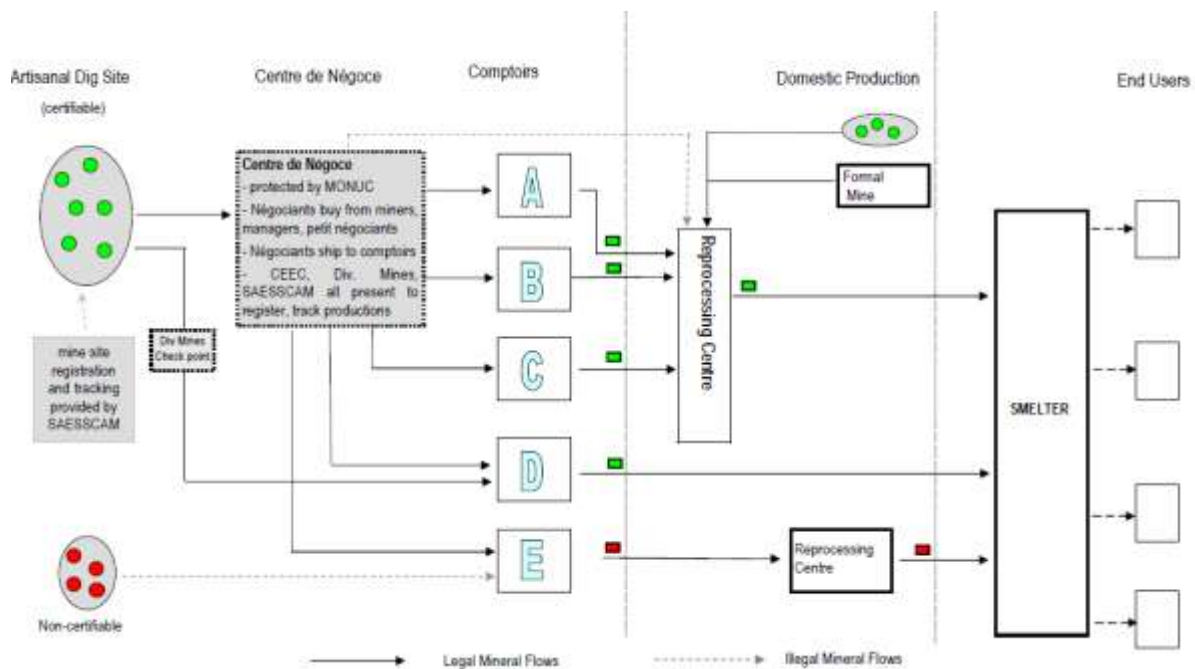
In order to acquire the ICGLR certificate, this 'dual –key system' requires that participants do not only have to prove that they follow proper chain of custody but also pass regular third party audits. Otherwise, they would be classified as 'non-compliant', and the consequences with regards to the market will be significant.

While an Audit Committee works within ICGLR, it is independent. It will be composed of members of government, industry and civil society in equal numbers. The role of the Audit committee is to accredit auditors; sets audit terms of reference for audits; determines scope and frequency of audits; commissions auditors; receives finished results; publishes them and recommends further action. The auditors will be accredited by the ICGLR Audit Committee and paid for by the exporting company which may pass on parts of these costs to its suppliers. Since the number of members of the Audit Committee is limited, it may be useful to have a rotating system that allows all member States to be represented over time. The audits focus on the exporter who is responsible for his own compliance and the one of his suppliers. The auditing report is shared with the respective exporting company, the member States and the ICGLR Secretariat.

d) Independent Mineral Chain Auditor.

The independent mineral chain auditor's function is to analyse and monitor the data from the ICGLR database and look for discrepancies and anomalies. He is able to initiate further investigation, issue reports, suggest sanctions and/or solutions. The Auditor has the authority to declare a participant non-compliant should he find non-compliance of a participant. The Mineral Chain Auditor's appointment is structured to provide full independence and freedom of action. As the last action in the process of certification, the Independent Mineral chain Auditor can react to unforeseen situations and close loopholes that were not foreseen when the system was created. He/she is to be appointed by the Executive Secretary on the basis of a list of candidates proposed by the member States. The Steering Committee of the RINR recommended that the Independent Mineral Chain Auditor be hosted by the ICGLR Conference Secretariat and that its office be permanent. Figure 4 below shows how the minerals flow from the DRC and how they can be traced.

**Figure 4: Great Lakes Mineral Flows in the Congo Region**



Source: Shawn Blore and Ian Smilie. 2010.

An additional element for the RCM is the Analytical Finger Printing (AFP). The AFP project is a joint program of the ICGLR and BGR within the German Cooperation. The overall goal of this project is the development and application of traceability and monitoring mechanisms for mineral production and trade. This will contribute to the implementation of the Regional Certification Mechanism. In order to achieve this objective, the AFP works in three steps namely the sample preparation laboratories and storage, central analytical laboratory and database management. The Analytical Fingerprinting (AFP) project is integrated into the RINR as an additional element to reinforce the credibility of the Regional Certification Mechanism after being approved by the Regional Committee in November 2011.

A study was undertaken to figure out where the AFP should be housed and according to the study it is best suited at the Southern and Eastern African Mineral Centre (SEAMIC) based in Dar-es-Salaam, Tanzania. Member States unanimously agreed that the Analytical Fingerprinting laboratory be located in Tanzania within the SEAMIC Center and recommend that this decision is presented to the Regional Interministerial Committee for consideration.

### 3.3.2 Harmonisation of National Legislations

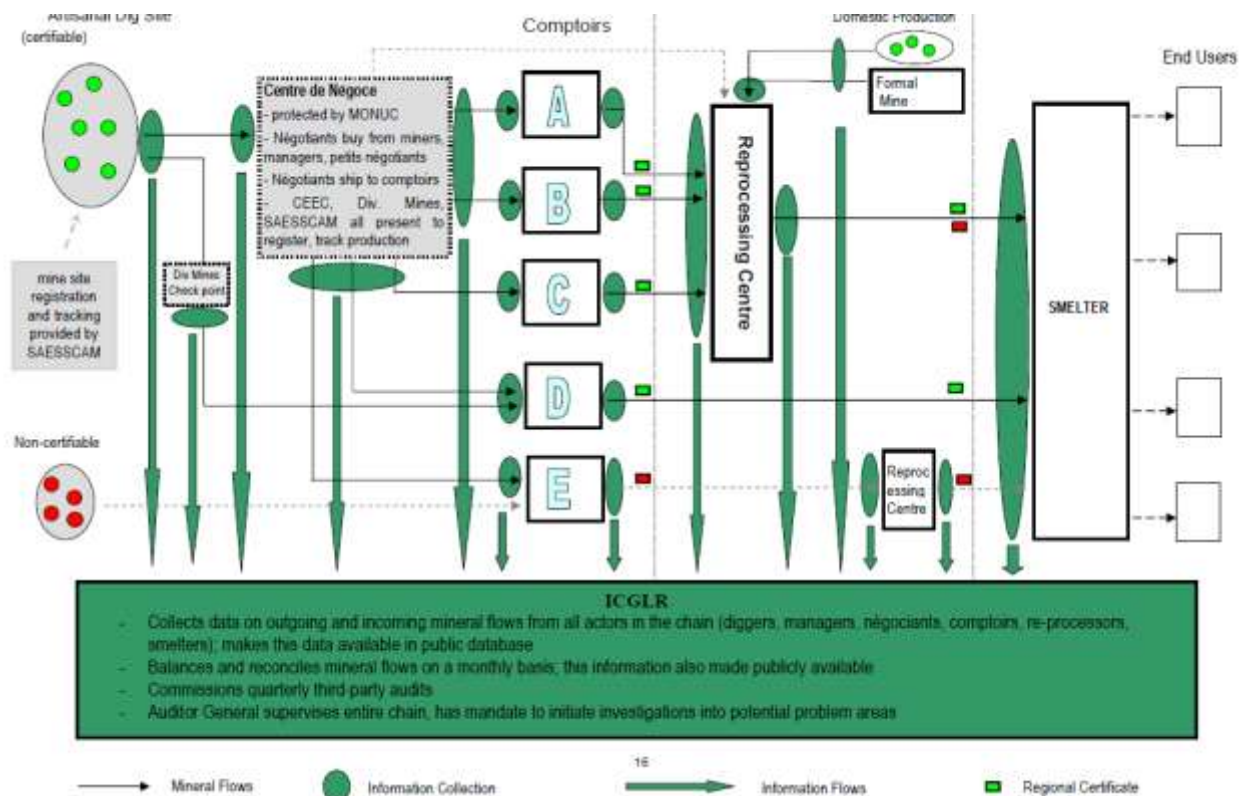
Domestication of the legal provisions of the Protocol into the national legislation of the member States is essential as stipulated in §22 of the Protocol. Moreover, the harmonisation approach comprises the identification of key differences between legal frameworks governing the mineral sector in the different member States. The RINR facilitated this process by consulting its member States and drafting a model law which will accelerate the process of domestication.



### 3.3.3 Regional Database on Mineral Flows

The creation of a regional database showing the production and trade of selected primary commodities in the Great Lakes Region is another very crucial tool. The availability and disclosure of this data will allow for the depiction of regional trade patterns and is also aimed at building trust among the member States. The regional database is hosted at the ICGLR Secretariat in Bujumbura, Burundi. It is envisaged that data on regional mineral flows will be transmitted to ICGLR on a monthly basis. For each participant, analysis will be undertaken on the data provided and inquire if exports match imports. In case of a difference, the participant will be given a chance to explain and correct. If it is unable to rectify the correction, the participant will be declared non-compliant. To ensure transparency and accountability, all data and the analyses will be made available for public access. Figure 5 shows where the data are collected and gives a holistic picture of monitoring through data acquisition.

Figure 5: ICGLR Monitoring of Great Lakes Mineral Flows



Source: Shawn Blore and Ian Smilie. 2010.

### 3.3.4 Formalisation

The objective of this tool is to encourage the formalisation of artisanal mining to improve taxation systems, to provide of extension services and capacity building. It aims at improving regulations, particularly in terms of simplifying registration and accounting requirements thus increasing productivity. This will in turn increase transparency and thereby help reducing fraud. This applies to extraction, processing and trading within the member States.

### **3.3.5 EITI Peer Learning Mechanism**

During the last few years the number of ICGLR member States endorsing the standards of the Extractive Industries Transparency Initiative (EITI) has been constantly increasing and several more member States have signalled their intent to implement the EITI. As the experience of more advanced countries is very valuable to newcomers, the ICGLR is a suitable forum for the facilitation of a peer learning mechanism. Additionally, it is envisaged that mineral volumes, represented by financial revenues recorded by EITI, are balanced with the physical mineral volumes traded, recorded by the ICGLR Regional Database. The ICGLR also calls upon the EITI for the extension of the initiative to cover small scale mining in the informal sector.

### **3.3.6 Whistle-blowing Mechanism**

The implementation of a whistle-blowing mechanism aims at capitalising on the knowledge of individuals witnessing or participating in illicit mineral activities. A web-based platform will provide a possibility to anonymously report such confidential information which would then be followed up by an independent mineral chain auditor (refer to Tool I: Regional Certification Mechanism).

## **3.4 Status of implementation by ICGLR member States against the six tools**

### **3.4.1 General implementation**

#### **3.4.1.1 Mineral traceability and Certification scheme**

With regards to mineral traceability and certification scheme, its implementation is undergoing a number of processes. During the second meeting of the Steering Committee of the RINR in 2010, the document on tracking and certification mechanism of mines in the Great Lakes Region was presented by Partnership Africa Canada (PAC), and in 2010, it was recommended to adopt the certification system with a gradual implementation over a period of one to two years in order to ensure that all participating parties familiarise and adapt themselves to the new regulations. In 2011, a certification manual was developed and updated. Steps are being taken for the accreditation of auditors and the conduction of pilot audits.

The ICGLR Certification Manual was revised in the spirit of the ICGLR Heads of State to fully harmonise it with other schemes in place. First, the standards of the ICGLR Certification Mechanism were harmonised with the OECD Due Diligence Guidance. Accordingly, mine sites that engage in conflict and child labour will be marked with a red flag which stands for immediate disengagement. Mines marked with a yellow flag will be accorded a period of 6 months to show improvement. Exporters who are marked with a green flag receive an ICGLR certificate which is valid for 12 months. Second, the ICGLR audits will serve the requirements of the CTC and OECD schemes. This means that there will be only one audit for all schemes which covers the entire regional chain of custody from mine site to export.

Thirdly, the traceability system in the ICGLR Regional Certification Mechanism is to a large extent similar to the iTSCi scheme which is already in place in some of the member States and is recognized as a valid traceability scheme for the RCM. However, the iTSCi scheme often regards ITRI as the owner of the collected data whereas the ICGLR assigns full ownership to its member States. It is therefore recommended that member States negotiating agreements with ITRI ensure that they have full ownership of their tracking data.

In November 2011, member States adopted the Certification Manual as amended by the 5<sup>th</sup> meeting of the ICGLR Steering Committee and welcomed its harmonization with the OECD Due Diligence Guidance for responsible supply chains of minerals from conflict-affected and high-risk areas in accordance with the Lusaka Declaration. While member States renewed their commitment to implement the Certification Mechanism as soon as possible, they agreed upon the possibility of extending the deadline of December 15<sup>th</sup>, 2012 for the implementation of the Certification Mechanism. The member State seeking extension should formally communicate this to the ICGLR Secretariat.

On 28-30 October 2012 in Kigali, Rwanda, a regional Audit Committee was established. The Bureau is composed of a Chair from Rwanda; Vice-chair from Kenya and a Rapporteur from the DRC. The function of the Independent Mineral Chain Auditor should be operationalised as quickly as possible for the certification mechanism to be implemented in full swing.

#### **3.4.1.2 Harmonization of national policies/domestication of the Protocol**

Article 22 of the Protocol of the regional Initiative against the Illegal Exploitation of Natural Resources in the Great Lakes Region recommends the harmonization of the legislation of member States. The provisions of the Protocol can be grouped along three basic themes: sovereignty, criminalization and cooperation. These central themes must be analyzed carefully and together in order to achieve sound domestication of both global and specific provisions. The domestication process could be achieved in four main stages. First, States shall review their legislation in order to identify gaps existing between national laws and the Protocol. Then the parties would organize workshops and consultations with the concerned services and agencies. A legislation model could then be adopted with a view to be used for regional harmonization. The final stage will be a legislative process for the adoption of the defined laws, the procedure which depends on national provisions.

In June 2012, a technical workshop was held in Kampala, Uganda with experts in the respective fields of legislation and natural resources aimed at following up on the process of legal harmonization and domestication of the ICGLR Protocol on Natural Resources. The workshop provided an exchange platform on how the respective member States can incorporate the ICGLR Protocol in their respective domestic legislations, so that the regional obligations may become applicable and enforceable in the countries concerned. Member States contributed by identifying their respective needs in terms of national legislation and domestication of the Protocol. The participants discussed the draft “model law” to domesticate the Protocol and developed proposals on how to refine the existing draft and allow for all member States’ needs to be respected and reflected in their legislation.

The recommendations of the workshop were integrated into the “model law” draft version. The “model law” also made reference to the Regional Certification Mechanism without introducing specific legislation.

The model law is now serving as a template for member States to incorporate regional obligations into their domestic laws. Some member States (eg: Uganda and Burundi) already took the necessary steps to begin harmonizing their legislation.

#### 3.4.1.3 Creation of an information exchange system (Regional database)

In 2009, the need for more systematic data collection and analysis, on a regular basis, in order to fight the illegal exploitation of Natural Resources was underlined and paved the way for the creation of the ICGLR database with statistics on the production and trade of mineral resources.

The Data Base System is hosted in the ICGLR Secretariat.

There are six types of databases which are either owned by the member States or the ICGLR:

- Member States database of exporters;
- ICGLR database of exporters;
- national mine site database;
- regional mine site database;
- Member States mineral tracking database;
- ICGLR mineral tracking database.

The regional database will be managed by the ICGLR and derives its data from the member States, including the flow of data from mines, mineral processors, *comptoirs* and smelters to the ICGLR Regional Mineral Tracking Database. (See Figure 5 above).

The Regional Committee recommended that member States establish three national databases (Mine Site Database, the Mineral Tracking Database and Exporters Database) with the assistance of the ICGLR Secretariat.

In 2011, major steps taken for the development of this tool encompass missions in Burundi, Rwanda and the DRC to inform government officials on the use of the data sheet. Although the database already comprises some data on production and trade, the use of similar excel sheets, which were developed with support from Partnership Africa Canada, will ensure that in the future the data submitted by member States is consistent and can be used for analytical purposes. Data is already being submitted by the member States, focusing on statistics of production and exports for the 4 minerals.

#### 3.4.1.4 Whistle blowing mechanism

The Whistle Blowing Mechanism attempts to capitalise on the knowledge of individuals and thus reinforce the Certification Mechanism. By enacting the Protocol, the member States agreed to protect persons who, in good faith, provide information on illegal activities. The Mineral Chain Auditor follows up on information provided by the Whistle Blowing Mechanism.

A stock taking mission took place in some member States (Burundi, DRC, Rwanda and Kenya) in August 2011 to consult with national law enforcement authorities and anticorruption commissions, which will be pivotal actors for a successful implementation of the regional whistle-blowing mechanism. The results of the fact-finding mission demonstrate the overall support for the mechanism by member States and recommend starting with a first phase focusing on the Eastern part of the DRC. Currently, an extension of the pilot zone in Burundi is also under way.

Based on experience from this first phase, the tool will then be extended to other areas and countries.

It was noted that closer regional cooperation in law enforcement and similar activities, such as an effective sensitization of the civil society and the monitoring of financial flows through Financial Intelligence Units in the member States, was necessary and critical in order to successfully implement the whistle-blowing mechanism. Moreover, the report points out that the mechanism may possibly be integrated in existing structures. As the verification and the processing of whistle-blower information is closely related to the Independent Mineral Chain Auditor's (IMCA) overall mandate, an approach would be to utilize these existing structures to avoid duplication and increase the credibility of the system.

In 2012, a number of consultancies have been commissioned to deal with crucial aspects in the preparatory phase for the mechanism's pilot project in DRC's Kivu provinces. A scoping mission to DRC to consult the relevant authorities in DRC which will be operating the mechanism as well as design the content of the training modules took place in August. In addition, efforts have been made to obtain a phone number for the SMS platform from a local phone operator (possibly AIRTEL or Vodacom).

Given the recognition that a good knowledge of the risks that might jeopardize the success of the whistle blowing project is necessary, a consultant has been commissioned to carry out a risk analysis in the target areas for the pilot project and propose risk mitigation measures. The whistle blowing mechanism is expected to be launched beginning of January 2013, with prior focus on DRC and Burundi.

#### **3.4.1.5 Formalisation of ASM**

Member States are requested to formalize the artisanal mining industry and ensure it delivers tangible benefits to the miners through building their capacities and transforming their social economic livelihoods. They have made significant progress on this from as the country by country analysis shows (See Annex1- Implementation of the 6 tools- country by country).

### ***3.4.2 Implementation progress by country (see Annex 1)***

As shown in Annex 1, which was compiled from the various RINR Steering Committee meeting reports, progress has been uneven among ICGLR member States and against the various tools.

With regards to formalisation of ASM, all countries have made some progress, in particular in the creation and recognition of cooperatives. For mineral traceability and certification, implementation is taking place in DRC and Rwanda in 2012. Additional implementation of the ICGLR RCM is envisaged in Burundi and Uganda in the near term (next two years). Eventually, the system is intended to be applied to all ICGLR member States. Indeed, Rwanda is implementing the iTSCi traceability scheme and the Certified Trading Chains (CTC) project. In DRC, mineral traceability is being implemented in several mineral territories of the country in collaboration with ITRI. Both DRC and Rwanda are going to deliver their first certificates soon.

Specifically for EITI, at the end of November 2012, Burundi announced its willingness to join the initiative. This marks an opportunity for the ICGLR to start with the implementation process of this tool. It is to be noted that the Republic of Congo, DRC, the CAR, Zambia and Tanzania have already joined the EITI.

### **3.4.3 Major achievements and success factors**

Despite being a relatively new initiative, the RINR has already achieved some remarkable successes in its fight against the illegal exploitation of natural resources in the Great Lakes Region. The Regional Certification Mechanism is in place and a certification manual, which provides a practical guide for its implementation has been developed and approved by the 11 Heads of State.

Another important step was the elaboration of a ‘model law’ which will make it easier for ICGLR member States to domesticate the legal provisions of the Protocol into national legislation. In that regard, member States are cooperating in their fight against mineral fraud with reference to the Lusaka Declaration and they are in the process of including the RINR into their legal framework. Also worth mentioning is the test version of a database which has already started to gather data on the production and exports of selected natural resources. Another achievement is the set up of the Regional Audit committee as the third independent parties. A notable achievement is also the decision to set up a laboratory for the Analytical Fingerprinting in SEAMIC, in Tanzania.

The visibility of ICGLR has increased and the ICGLR has reached unanimous political support and the commitment of its member States to implement the six tools of the RINR. The initiative has enabled dialogue between the various countries and helped alleviate the tensions, mistrust and deep antagonisms amongst them. It has also given recognition to the ICGLR as the key stakeholder for issues of mineral governance in the Great Lakes Region. The fact that ICGLR has been able to mobilise considerable external support for the RINR from a variety of partners is a positive sign and has accelerated the implementation of the various tools of the RINR, especially trainings and workshops in a number of areas.

The external success factors for the RINR include the fact there is increasing demand for minerals and metals with the advent of emerging economies such as China and India in the market and the global commodities boom; that awareness creation and sensitisation of the public for conflict minerals have led to action by industry and international legislation (the Dodd-Frank Act) through heightened consumer responsibility and NGO campaigns; and that the ICGLR has become *the* African regional organization mandated to specifically address conflict minerals.

Another success factor for the RINR is that it is strategically focused on a narrowly defined issue (conflict resources, specifically on four minerals). It also strategically combines a political process to create dialogue and build confidence with a technical approach (i.e. development of the six tools, with external technical input). Another success factor is that RINR builds on existing initiatives such as the ITRI, CTC and the KPCS; and applies lessons learned from the precedent initiatives.

Moreover, the governance structure of RINR, which includes the establishment of a formal platform between all member States through the Regional Committee enables close and regular consultations with the member States as well as cooperation with a number of stakeholders including governments, intergovernmental organisations (OECD), private sector (ITRI) as well as civil society. ICGLR gained credibility as it is integrated in the international network. The steering structure is in itself a success factor as the Regional Committee is composed of qualified experts from all member States and their regular meetings creates dialogue and co-ownership; and guarantees follow-up on the development of the six tools. RINR's communication strategy which includes informing major stakeholders about the initiative; participating in key meetings; and actively seeking media coverage through regular articles, is another success factor.

#### **3.4.4 Challenges**

- **Institutional and operational structure**

One of the main challenges of the ICGLR RINR is that it has quickly moved from a conceptual framework to one that needs to be implemented on the ground. What the Lusaka Declaration implies in practice is that the role of the ICGLR Secretariat has been inflated to not only coordinate and facilitate political processes but to also guide and oversee implementation of the RINR. This has implications not only for the operational structure as the Secretariat will need to be recalibrated and restructured to meet the current needs. As expectations from member States increase towards the ability of the ICGLR to deliver, it requires a high level of coordination between member States and the ICGLR Secretariat for an effective outcome and coherent implementation on the ground. The ICGLR Secretariat needs to attribute paramount importance to the RINR. It should also step up and enhance regular communication flows between the Secretariat and the member States at the national level. The separate special unit that is envisaged with staff dedicated solely on the RINR might be a good idea but given the political nature of the Secretariat, in order to have the buy-in of member States, there needs to be prior approval from the relevant organs of the ICGLR as it implies a change in the original structure.

- **Multiplicity of donors within the RINR**

While the growing interest of donors for the RINR is laudable, the multiplicity of interventions at various levels requires greater ability to coordinate to obtain optimal results. As it stands, strategic coordination of the various sources of funding might not be optimal.

- **Lack of ownership by ICGLR Secretariat**

Related to the previous challenge of multiplicity of donors is the lack of ownership of the RINR by the Secretariat. Given the growing number of donors, each with their own priorities and set of agenda, the ICGLR Secretariat might not be empowered to be effective on the ground. With regards to management of resources, while the ICGLR Secretariat is allocated a certain amount each year, the ICGLR Secretariat may only be able to develop tools but necessarily to implement them.

There is lack of technical and human resources in the ICGLR Secretariat that are specifically dedicated to RINR. In addition, for the Secretariat to be able to manage considerable amounts of funds independently, it should comply with Internationally accepted Accounting Principles which includes the use of International Accounting Standards and International Financial Reporting Standards. Both these imply capacity development of the ICGLR Secretariat. The self financing study that is currently being undertaken is a step in the right direction for ownership and sustainability in the long term. The case of the Shamva project in Zimbabwe illustrates well how a solely externally supported initiative that lacks ownership ends up being unsustainable. (See Box 1).

### **Box 1: The Shamva Mining Project in Zimbabwe**

The Shamva mining centre in Zimbabwe was built to provide local small-scale gold miners with access to mechanised and more efficient minerals processing. Additional services included assistance with blasting; advice on geology, mining methods, law, marketing and environment; and equipment hire. The project resulted in increased productivity, safer and less environmentally damaging methods and increased incomes for miners. While it was publicized as an example of what-to-do to facilitate access to appropriate technology and equipment and develop mining skills of small-scale miners, failed to operate in a sustainable manner, due to hasty disengagement of its main funding agency, mismanagement and lack of institutional support.

Source: ECA. 2002. *Compendium of Best Practices in Small Scale Mining in Africa*. [http://new.uneca.org/Portals/15/CrossArticle/1/Documents/Compendium-on\\_best\\_practices\\_in\\_smallsacle.pdf](http://new.uneca.org/Portals/15/CrossArticle/1/Documents/Compendium-on_best_practices_in_smallsacle.pdf).

- **Multitude of transparency initiatives on minerals in the Great Lakes region**

As there are several initiatives on the ground, sometimes competing with each other since they have the same objectives, it requires proper coordination to avoid fatigue from artisanal small scale miners, traders and other participants in the supply chains as questionnaires, surveys and requirements of all the initiatives could quickly become cumbersome if not well coordinated and well managed.

- **Communication on the RINR**

Despite the positive image and coverage the RINR is getting, it is still relatively unknown compared to other schemes such as the Kimberley Process or the EITI. There is need to improve the communication on the RINR and also the monitoring of progress.



## 4 COMPARING THE RINR WITH OTHER CERTIFICATION SCHEMES AND INITIATIVES

As discussed above, the ICGLR RINR built on previous initiatives and incorporated lessons learned and best practices. A quick review will be made of some of these mechanisms/initiatives in order to draw lessons learned and best practices and forge a way forward.

### 4.1 The Kimberley Process Certification Scheme (KPCS)

The KPCS is a joint government, industry and civil society initiative to stem the flow of conflict diamonds, which are defined as rough diamonds used by rebel movements to finance wars against legitimate governments. The trade in these illicit stones has fuelled conflicts in countries such as Angola, Côte d'Ivoire, the DRC and Sierra Leone. KPCS imposes requirements on its members to enable them to certify shipments of diamonds as 'conflict free'.

The KP is an import-export certification scheme which requires participating governments to certify the origin of rough diamonds, and put in place effective controls to prevent conflict stones from entering the supply chain. Participant countries must enact domestic legislation to implement the scheme, and can only trade rough diamonds with other members. This creates a strong incentive for countries that want to produce, trade, or process uncut stones to join. The KP's technical provisions are implemented by governments, but its tripartite structure means that non-governmental organisations and the diamond industry hold official status as observers and take part, along with member states, in all working groups and decision making processes.

#### 4.1.1 *Achievements, successes and strengths of KPCS*

In the past ten years, the Kimberley Process has had some notable achievements, including pioneering a tripartite approach to solving international problems, and helping some of the countries that were worst-hit by diamond-fuelled wars to increase their official diamond revenues. The UN General Assembly 64<sup>th</sup> session Resolution notes that the implementation of the KPCS has had a positive impact in reducing the opportunity for conflict diamonds to play a role in fuelling armed conflict. It further notes that the KPCS would help to protect legitimate trade and ensure that the effective implementation of the relevant resolutions on trade in conflict diamonds.<sup>12</sup>

The Kimberley Process has been successful in addressing some issues regarding participant non-compliance with the KPCS. Most significant is the case of the Republic of Congo (ROC), which was removed from the KP in 2004 after a review mission, concluded that the country was not complying with KPCS minimum requirements. In 2007, after re-establishing and demonstrating compliance, the ROC was readmitted to the KP.

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<sup>12</sup>U.N. General Assembly, 64th Session. Resolution adopted by the General Assembly. 64/109 The role of diamonds in fuelling conflict: breaking the link between the illicit transaction of rough diamonds and armed conflict as a contribution to prevention and settlement of conflicts (A/RES/64/109) <http://www.un.org/depts/dhl/resguide/r64.shtml>.

According to Shawn Blore and Ian Smillie (one of the first researchers to document the existence of conflict diamonds and a participant in the original KP negotiation process who is now one of the most vocal critics of the KPCS), “The KP is the most extensive and – despite certain significant shortcomings – the most successful system currently in place for certifying the origins of high value natural resources, and the only scheme in place with a track record of addressing conflict situations.”<sup>13</sup> At the most basic level, the fact that the KPCS exists at all is its greatest strength.

Another strength of the KPCS is the stipulation that participants can only engage in rough diamond trade with other KP participants. Any country with a rough diamond business (production, trade, or consumption) must, almost of necessity, join the KP so that its diamond business can continue to function. Additionally, once a state becomes a KP participant, it is bound by the KPCS rules. Nearly every country that has joined the KP has had to pass new laws in order to meet the KPCS minimum standards and enforce the KPCS at home. Although the KPCS itself is not a legally binding international treaty, its enforceability is actually enhanced by the fact that each participant has made its provisions legally binding within its own borders. One of the greatest strengths of the KP is that it can evolve. At each annual plenary, participants can discuss and make changes to how the KP works. This is beneficial because it allows the KP to address its weaknesses and improve its effectiveness.

#### **4.1.2 Challenges and weaknesses of KPCS**

The Global Witness (2006), while acknowledging the fact that KPCS controls have reduced significantly the market for illicit diamonds, notes that in Côte d’Ivoire, the revenue from diamond production had provided income to rebel movements. There is also strong evidence that diamonds from Liberia, which remained under UN sanction, were being smuggled into bordering Kimberly participant countries. Serious problems in the DRC were also reported.<sup>14</sup>

In addition, member governments have repeatedly failed to deal effectively with problem cases such as Zimbabwe, Côte d’Ivoire and Venezuela. Despite the existence of the Kimberley Process, diamonds are still fuelling violence and human rights abuses. Although the scheme makes it more difficult for diamonds from rebel-held areas to reach international markets, there are still significant weaknesses in the scheme that undermine its effectiveness and allow the trade in blood diamonds to continue. The KP’s definition of “conflict diamond” leaves out several important factors. Conflict diamonds, according to the KP, are rough diamonds used by rebel movements or their allies to finance conflict aimed at undermining legitimate governments. This definition has two critical flaws: the focus on who is doing the violence and the focus on rough diamonds. The fact that a diamond is only a conflict diamond if it is used by rebel groups or their allies does not account for government-sponsored violence that is financed by diamonds. Second, the definition of conflict diamonds only mentions rough diamonds, not cut and polished ones. This loophole creates the possibility that conflict diamonds could still reach the international market after they have been cut and polished.

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<sup>13</sup> Blore, Shawn and Smillie, Ian. 2010. *An ICGLR-based tracking and certification for minerals based in the Great Lakes Region of Central Africa*. March.

<sup>14</sup> Global Witness, 2006, ‘An Independent Commissioned Review Evaluating the Effectiveness of the Kimberley Process’, Global Witness  
[http://www.globalwitness.org/media\\_library\\_get.php/272/1277890630/GW%20Commissioned%20Report%20on%20KP.pdf](http://www.globalwitness.org/media_library_get.php/272/1277890630/GW%20Commissioned%20Report%20on%20KP.pdf).

Consensus based decision-making is another weakness of the KP. It means that any state can veto decisions with which they disagree. While it may lend legitimacy to decisions and reduces major disagreements, decisions made by consensus often represent the lowest common denominator. Another weakness of the KPCS is that it does not have a 'house'. The current rotating system of KP Chairs undermines the continuity and follow-up on issues as well as sustainability. Internal controls are also among the weaknesses of the KPCS. Although the KPCS requires participants to establish a system of internal controls designed to eliminate the importing or exporting of conflict diamonds, what these internal controls should consist of is not explicitly stated. Instead, the KPCS has recommendations that participants are encouraged to follow when creating their internal controls. This can result in extremely weak internal controls. Finally, although the KP has provisions that require countries to face penalties for noncompliance, decisions about penalties for noncompliance are generally ad hoc rather than based on a predetermined set of rules that delineates which penalties should be given for different levels of noncompliance. Furthermore, because KP decisions are made by consensus, penalties for noncompliance can be blocked by political allies of noncompliant participants, allowing them to entirely escape accountability for their infractions.

#### ***4.1.3 Lessons learned from KPCS***

One of the major lessons learned from the KPCS is that there is need to have a clear purpose besides a short term focus on conflict. The linkages between natural resources, conflict and wider governance and human rights issues should be addressed simultaneously for a better impact and outcome. Another lesson learned is that the system should be flexible enough to adapt to new conditions that were unforeseen at the time the KPCS was conceived.

With regards to administration, the main lessons learned are the need for more rigorous internal controls and for tracking to cover the entire supply chain, from mine site to end user. In addition, decision-making should be open, inclusive and free of political interference as transparency is vital for building trust and for credibility. The need for a Secretariat is also another lesson learned as not having one implies weak administration, poor data collection, poor management and research. However, a top-down management will also make the system cumbersome so there is need to find a solution in the middle.

Concerning operations, there is need to make sure that the areas where production is taking place is free from any 'conflict' activity, including rebels, militias, or government sponsored military activities. The need to track from mine site is reiterated and the need for data starting from production at mine sites and trade figures cannot be overemphasized. Another lesson learned is the importance of an independent third-party auditing, including supply chain monitoring. There is also need for credible sanctions for non-compliance. Sanctions should include de-certification. Without this sanction, there is no incentive to follow the rules, and system will not function.

## 4.2 The OECD Due Diligence Guidance

The OECD Due Diligence Guidance for Responsible Supply Chain Management of Minerals for Conflict Affected and High Risk Areas provides good practice guidelines to businesses from OECD member States operating in conflict areas. The objective of the guidance is to help companies respect human rights and avoid contributing to conflict through their mineral sourcing practices. The Guidance is also intended to support transparency in mineral supply chains and sustainable corporate engagement in the mineral sector with a view to enabling countries to benefit from their natural mineral resources and prevent the extraction and trade of minerals from being a source of conflict, human rights abuses, and insecurity.<sup>15</sup> It covers the three Ts (tin, tantalum and tungsten) and gold. The Five-Step Framework was also incorporated into UNSC1952/2010 on DRC. It is applicable for any upstream and downstream company “sourcing minerals or metals from conflict-affected and high-risk areas, and is intended to cultivate transparent, conflict-free supply chains and sustainable corporate engagement in the minerals sector”.<sup>16</sup>

Integration of the OECD Due Diligence Guidance in companies supply chain management systems will enable downstream users to source from conflict-affected and high risk areas (and in particular the Great Lakes Region) knowing that due diligence has been conducted in line with recommendations developed through a multi-stakeholder process. Downstream companies are not required to map the factual circumstances of the upstream supply chain, but the Guidance does ask them to identify the smelters in their supply chain and evaluate their due diligence practices to ensure they are in line with the recommendations in the OECD Guidance. Conformance with the OECD Due Diligence Guidance means that operators sourcing from conflict-affected and high-risk areas have instituted management systems, identified and mitigated conflict and (the most serious) human rights risks and that smelters have been audited on their performance and reported on this regularly. The Guidance’s focus is primarily on risks such as human rights abuses and conflict, as stipulated in its 3Ts supplement while the Gold Supplement also encourages upstream companies that are carrying out Step 2 (identifying and assessing risks in the supply chain) to “map the factual circumstances” of present and possible risks.

The OECD Due Diligence Guidance is non-binding and has been endorsed, by 34 OECD countries plus Brazil, Argentina, Peru, Lithuania, Latvia, Morocco and Romania, the 11 ICGLR countries and the UN Security Council in two Resolutions on DRC. In addition to being endorsed by the ICGLR Heads of State, the Due Diligence Guidance Recommendations have been integrated into the Government of DRC’s legal framework and the other ICGLR States are set to follow DRC’s lead. Country adherents to the downstream recommendations commit to “actively promote the observance of the Guidance by companies operating in or from their territories and sourcing minerals from conflict-affected or high-risk areas”, and “take measures to actively support the integration into corporate management systems” of the OECD Due Diligence Guidance. However, the implementation of OECD Due Diligence Guidance is conducted on a voluntary basis for most countries, and companies are not obliged to implement it.

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<sup>15</sup> The OECD Due Diligence Guidelines for Responsible Supply Chains of Minerals from Conflict-Afflicted and High Risk Areas, [http://www.oecd.org/document/36/0,3746,en\\_2649\\_34889\\_44307940\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/36/0,3746,en_2649_34889_44307940_1_1_1_1,00.html).

<sup>16</sup> OECD 2011, p. 52.

Adhering countries are expected to promote its observance in companies operating in or from their territories and sourcing minerals from conflict-affected and high-risk areas. In addition, companies operating in countries which are not signatories are also choosing to implement it, according to the OECD; for example, about 15% of the downstream participating companies are based outside of OECD member countries, including companies headquartered in China.<sup>17</sup>

### **4.3 The Dodd-Frank Act**

The Dodd Frank Act, which was signed into law by President Obama on 21 July 2010, is a set of a comprehensive financial regulatory reform bill entitled the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”). It represents an act of good faith of a home country government to improve transparency. A 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 Democratic Republic of Congo (DRC) or an adjoining country ores. Companies must report to the US Securities and Exchange Commission (SEC) on the due diligence conducted on the source and chain of custody of these ‘conflict minerals’, provide an independent audit of this report, and make further information available such as “description of the facilities used to process the minerals, country of origin and the efforts to determine the mine or location of origin with the greatest possible specificity.” All requested information must be published on the company’s website. The SEC’s rules on how to apply section 1502 of the Dodd-Frank Act were finalized on 22<sup>nd</sup> August 2012.

The Dodd-Frank Act was introduced as a way of ensuring greater transparency. It is a forceful signal to all companies operating in the area that they have to be very transparent about their dealings regarding ‘conflict minerals’ in DRC and neighboring countries. One of the main criticism of the Dodd-Frank Act is that it has eliminated legitimate trade in the DRC and neighbouring countries, given that the burden placed upon the industry to comply to the Act has effectively acted as a de-facto embargo on minerals from the region.<sup>18</sup> Notwithstanding their good intention, in enacting legislative measures such as the Dodd-Frank Act, it is important that home countries have a complete understanding of the potential impacts (positive and negative) and unintended consequences of the implementation of these measures; deploy necessary resources to help host countries build the necessary capacity and enforce the measures, as well as alleviate the negative impacts.

### **4.4 The Fairtrade and Fairmined (FT/FM) standard for gold from ASM**

The Fairtrade/Fairmined Standard ( FT/FM) was first published by the Alliance for Responsible Mining (ARM) and the Fairtrade Labelling Organization (FLO) in March 2010. The FT/FM) for artisanal gold allows gold to be judged as ‘sustainable’.

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<sup>17</sup> OECD 2011c. In addition, Brazil, Malaysia and the 11 countries of the Great Lakes Region actively participated in the OECD-ICGLR joint consultation. The ICGLR endorsed the Guidance after the Nairobi meeting in September 2010. Please see OECD, 2010 for more details.

<sup>18</sup>Weiss, Paul, “the Dodd-Frank Act Requirements Relating to Conflict Minerals and Mining and Resource Extraction Companies”, September 2010, <http://www.paulweiss.com/files/upload/27Sep10CM.pdf>.

The vision for FT/FM, in harmonization with that of the Alliance for Responsible Mining, is for “ASM to be a formalised, organised and profitable activity that is technologically efficient, socially and environmentally responsible; the sector’s development takes place within a framework of good governance, legality, participation and respect for diversity; it seeks to make an increasing contribution to improved workplace conditions, local development, poverty reduction and social justice within ... countries, stimulated by growing consumer demand for sustainable minerals and ethical jewellery”.<sup>19</sup> The Fairtrade and Fairmined standard gives miners clear guidance on what labour, organisational, environmental and traceability requirements they have to fulfil for their metals to be considered as Fairtrade and Fairmined. In return, the miners are guaranteed a fair price for their gold and they receive the Fairtrade premium of 10% (15% for Ecological Gold extracted without the use of toxic chemicals), which is to be reinvested in improving their businesses and social development.<sup>20</sup>

The FT/FM Standard is for use by artisanal and small-scale gold producers only and is presently only applicable to Latin America; however, programmes are being developed in Sub-Saharan Africa. Currently, mines in Peru, Colombia and Bolivia are certified with the FT/FM Standard. This includes sourcing from conflict-affected zones in Colombia. The FT/FM gold Standard “is designed to cover only existing, conflict free, community based, permanent and seasonal ASM.” While it was not expressly designed for carrying out chain of custody of conflict minerals supply chains, it does allow operators to work in conflict-affected areas provided they comply with minimum performance criteria relating to the principle that “the Standard will not support organizations involved with armed conflict in any way, including financing conflict or the use of revenue to engage in activities that facilitate the purchasing of arms.”<sup>21</sup> It is expressly oriented at improving the development gains for communities where gold is mined artisanally.<sup>22</sup> The ARM/FLO environmental standards are more rigorous than those of any other Standard oriented at ASM.

Despite some critiques that the FT/FM standards are not detailed or comprehensive, it is vitally important to note that the FT/FM standard goes beyond any other standard that seeks to support artisanal and small-scale miners to mine in ways that is not only responsible but developmental. However, it is unlikely that a majority of artisanal gold miners will ever be able to achieve FT/FM certification as it sets a very high standard which requires formalization and enabling market and legal frameworks. That said efforts are emerging to support the Artisanal and Small-scale Gold Mining (ASGM) sector’s move towards models of production and trade that are closer to FT/FM’s performance criteria in a quest for continual improvement of the ASGM sector. ARM and FLO have ambitious plans to increase the supply of Fairtrade gold to 300 kg by the end of 2011, partly through trebling the number of certified producer organizations to nine. Gold miners in the DRC and the Great Lakes Region could soon be FT/FM certified, as ARM, Solidaridad and Fairtrade are working to bring miners in Kenya, Tanzania, Ghana and Uganda to compliance and exploring opportunities in Mongolia and West Africa. Whilst FT/FM gold is primarily available in the jewellery market, it is entirely conceivable that ICT sector companies that wished to promote the ethical credentials of a product might be permitted by FLO and ARM to use FT/FM gold in products and label them as such.

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<sup>19</sup> The FairTrade Labelling Organization and the Alliance for Responsible Mining, 2010, p. 4

<sup>20</sup> Alliance for Responsible Mining. Annual report. 2010.

<sup>21</sup> ARM/FLO 2010.

<sup>22</sup> The Fair Trade Foundation and the Alliance for Responsible Mining, 2010. Fair Trade Foundation and Alliance for Responsible Mining, 2010, p. 12.

Depending on the partnership resource, market demand and opportunities to work with artisanal and small scale miners producing other products, ARM/FLO would consider development of additional standards beyond gold. Pending interest from the tin, tantalum and tungsten industry and the ICT sector, the development of FT/FM standards – and eventually mines and trading chains - for the 3Ts could be possible, especially further to ARM and the Fair Trade International Standards Unit’s recent announcement that the ARM/FLO standard will be undergoing review in 2012 with a specific objective of developing “a more generic system to facilitate standards development of ASM of other minerals in the future.”<sup>23</sup>

#### **4.5 The World Gold Council Conflict-free Gold (CFG) standard**

The World Gold Council (WGC) is the market development organization for the gold industry. Working within the investment, jewellery and technology sectors, as well as engaging in government affairs, the World Gold Council’s purpose is to provide industry leadership, whilst stimulating and sustaining demand for gold. Based in the UK with operations in India, the Far East, Europe and the US, the World Gold Council is an association whose 24 members comprise the world’s leading gold mining companies, representing about 70% of global corporate gold production. WGC wishes to contribute to the exclusion of gold that fuels conflict from the market whilst working from the premise that “disinvestment or withdrawal by responsible operators may make it more difficult to stabilise a conflict situation or to achieve post-conflict reconstruction”.<sup>24</sup> The Conflict free gold standard is designed to be applicable to armed conflicts globally and responds both to the requirements of Section 1502 of the US Dodd-Frank Act and of the emerging OECD gold supplement to their Guidance on the Responsible Sourcing of Minerals from Conflict-Affected and High Risk Areas.

##### **4.5.1 Achievements<sup>25</sup>**

The World Gold Council published the *Conflict-Free Gold Standard* in October 2012, the culmination of almost three years work involving leading gold miners and refiners and an intensive and innovative consultative process across five continents and involving over 100 stakeholder organisations. Two of the eight roundtables were held in Africa – one in Johannesburg under the auspices of the South African Institute of International Affairs and one in Dar-es-Salaam, Tanzania, jointly hosted with the ICGLR and GIZ. Thus, unlike with Dodd-Frank (and to an extent the OECD process) there has been substantive African involvement in developing the Standard. Moreover, unlike the US legislation, the Conflict-Free Gold Standard is global in scope rather than focusing on and, in the eyes of some, stigmatizing African minerals. It is early days to comment on success, since implementation will not start until January 2013. However, a significant achievement is the support that the World Gold Council and its Members have been able to secure for the Standard from governments, the gold supply chain and civil society. All have been involved in its development and have welcomed the Standard’s introduction, believing it to be credible and workable. The Standard is based on well-respected, international benchmarks like the UN Guiding Principles on Business and Human Rights.

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<sup>23</sup> Fairtrade Labelling Organization and the Alliance for Responsible Mining, 2012.

<sup>24</sup> Chatham House, 2011.

<sup>25</sup> Received from World Gold Council, Corporate Communications. December 2012.

Importantly, the Standard has not been developed in isolation from other initiatives but links with them. Notably, it is intended to act as an ‘industry programme’ to operationalise the OECD’s Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, and it has been developed to ensure it is complementary to other industry-led initiatives, such as the London Bullion Market Association’s (LBMA’s) Responsible Gold Guidance. Thus the Standard is a means by which gold miners operating in a conflict-affected or high risk area can reassure local, national and international stakeholders that they are operating responsibly and provide the foundation for the due diligence that refiners will need to conduct on their gold supplies.

#### **4.5.2 Success criteria**

The key success criteria will be the progressive elimination from the supply chain of gold of gold that fuels conflict or funds illegal armed groups. By following the Standard, gold miners can assess their operations and provide assurance that they do not cause, support or benefit unlawful armed conflict, nor contribute to serious human rights abuses, or breaches of international humanitarian law. The Standard is designed to increase trust and transparency in the gold supply chain, and provides confidence that responsibly undertaken gold mining is an important source of social and economic development. Implementing companies will be required to report on their implementation and these disclosures will be subject to independent assurance. All of the World Gold Council Members have committed to the implementation of the Standard.

Although the Standard is, in principle, available for use by any gold mining entity, in reality its requirements are likely to be challenging for most ASM groups. However, given the importance of mines working in the formal sector for newly-mined gold supply, being able to provide assurance that these large-scale operations are not fuelling conflict or funding illegal armed groups is a significant gain in maximising the proportion of gold production that can be shown to be ‘conflict free’. This may, in turn, help to underpin new investment since it is essential for any producer, looking to operate a mine in a high risk or conflict-affected zone, to be able to satisfy the due diligence requirements of downstream producers.

#### **4.5.3 Challenges**

The gold supply chain is uniquely complex and diverse, with gold mined in over 90 countries, on a variety of scales from large professional mines, to small groups mining artisanally. Moreover, recycled gold accounts for over a third of global gold supply and has an important ongoing role to play in the gold supply chain. Gold’s high value and portability also make it susceptible to smuggling. This complexity brings challenges with it.

Once gold is delivered to a refinery, the refiner will typically mix gold from a number of different sources, making it impossible thereafter to trace the source of specific consignments. Statements provided by the mine operator that demonstrate conformance with the Conflict-Free Gold Standard can be used by refiners as part of their due diligence practices. Refiners that know with certainty that all the gold entering the refinery can be shown to be ‘conflict-free’ can be assured that all gold leaving the refinery is ‘conflict-free’. This is the approach taken by the London Bullion Market Association’s Responsible Gold Guidance and other industry-led approaches that cover gold refiners.



All the initiatives to improve the traceability of gold and to require complex due diligence will also increasingly raise the bar which ASM producers will have to surmount if they are to continue to have access to the mainstream gold market. The danger exists that this production will increasingly be diverted in to informal or illegal channels. Which is why, in the case of the DRC, the World Gold Council is working with others through the Public-Partnership Alliance, to support projects to prevent the marginalisation of legitimate ASM producers and to promote increasing formalisation within a properly defined legal framework.

#### **4.6 The ITRI Tin Supply Chan Initiative (iTSCi)**

The ITRI Tin Supply Chan Initiative (iTSCi) is a joint initiative between ITRI and the Tantalum-Niobium International Study Centre (TIC). It was initiated in 2009 and first piloted in DRC (North and South Kivu) in 2010. It encompasses large, medium and small enterprises, co-operatives and artisanal mine sites. “It is designed for use by industry, but with oversight and clear roles for government officials.”<sup>26</sup> It “takes into account the recommendations of the UN Security Council (UNSC), in particular the Group of Experts of the DRC (UNGoE) to expand due diligence to include criminal networks, as well as armed groups and to include violations of the asset freeze and travel ban on sanctioned individuals and entities.” iTSCi covers tin, tantalum and tungsten, but not gold and treats the OECD Due Diligence Guidance as one of its normative documents.

iTSCi is a chain of custody and due diligence system that includes independent and third party risk assessment and independent third party audits for protection against human rights abuses including the worst forms of child labour.” iTSCi envisages including “additional social and environmental standards relating to the process and production methods for pre-smelter mineral extraction processing and trade ... at a later stage.” iTSCi’s policy stresses that minerals mined in protected areas cannot be included in the scheme, without however offering a method of verification. A number of stakeholders has welcomed the scheme including public officials participating in its implementation as they were able to accomplish their tasks better due to the capacity and relationship building that is undertaken in the context of iTSCi.

The positive impact of iTSCi is documented in the 2011 report of the UN GoE: “The Initiative has also helped to build Democratic Republic of the Congo Government capacity in the mining sector, to safeguard the livelihoods of miners at tagged mining sites and, according to some North Katanga civil society activists, to reduce corruption among State officials in the mining sector.” iTSCi works through the operationalization of three components: (1) Chain of custody tagging and monitoring of mineral origin, (2) Independent third-party risk assessment of mine sites, transportation routes, companies and the macro-level situation to identify and manage conflict-related risks, and (3) Independent third-party audit of all operators joining iTSCi, operators such as ASM who cannot become iTSCi members, and also the system data.

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<sup>26</sup> ITRI, 2012. “itSCi”. [Webpage.]  
[https://www.itri.co.uk/index.php?option=com\\_zoo&view=frontpage&Itemid](https://www.itri.co.uk/index.php?option=com_zoo&view=frontpage&Itemid)

#### 4.6.1 *Challenges*

There is a gap between demand for iTSCi and the initiative's capacity to rapidly scale up its operations. iTSCi identified in early 2011 that "limited funding, huge capacity building needs, the geographical and logistical challenge posed by the location of mine sites, the inadequacy of local infrastructure (e.g. electricity and telephone black-outs) in DRC" as the major constraints. iTSCi is the programme preferred by upstream supply chain actors in that it provides a Chain of Custody assurance of the 3Ts in line with what is required under the OECD Diligence Guidance and initiatives such as the CFS for the ASM sector. However, until iTSCi is able to expand throughout the entire region, or the ICGLR's Regional Certification Mechanism (RCM) is properly rolled out, tin, tantalum and tungsten miners around the Great Lakes Region will have few options but to market their minerals either for far inferior prices to buyers whose downstream supply chain is not oriented at countries requiring supply chain due diligence, or through fraud and smuggling.

iTSCi's development has been overseen by international actors, but local actors such as comptoir and negociant associations and local, provincial and national authorities have had important roles in determining how it would work. Local organizations are responsible for implementation in DRC and in Rwanda with Pact (an iNGO) and Channel Research (iTSCi's independent third-party Risk Assessor and Auditor) providing support. Government officials have an important role in the process in that they are the ones carrying out the tagging, and logging of the data. Local and provincial level stakeholder committees (comités de pilotage) also have major roles to ensure that the initiative is implemented in a way that is sustainable and realistic taking into consideration the operating environment.

#### 4.7 **BGR's Certified Trading Chains (CTC) and analytical fingerprint technology**

The Certified Trading Chains (CTC) scheme of the German Federal Institute for Geosciences and Natural Resources (BGR) was developed in 2008 and then piloted at a number of larger mines in Rwanda in September 2009 by BGR and the Rwanda Geology and Mines Authority. Mine sites certified as "CTC-compliant" under the CTC scheme can be judged as 'ethical' and towards 'sustainable.' It is more in keeping with triple bottom line expectations because it incorporates more social and environmental considerations than the OECD Due Diligence Guidance or iTSCi. The CTC system is government led, in cooperation with national authorities, Rwanda and DRC. The process has involved input from multiple stakeholder groups, bringing perspectives from different geographies, scales, supply chain tiers and sectors. CTC can be applied to tin, tantalum, tungsten and gold supply chains and is presently being implemented only in Rwanda and DRC under a co operation agreement between each of these governments and the government of Germany.

CTC aims to improve "supply chain due diligence and good governance in the artisanal and small-scale mining sector" in Rwanda and DRC. CTC contains "twenty certification standards on mineral origin and traceability, mining conditions, and supply chain due diligence elements based on OECD and other integrity instruments, adapted to practical applicability within the central African ASM".<sup>27</sup>

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<sup>27</sup> BGR, 2011a, p. 1.

Whereas iTSCi, the OECD Due Diligence Guidance and Conflict-free Smelter are concerned with chain of custody and risk management of the most serious human rights abuses and benefits to illegal armed groups, CTC also considers labour and working conditions, the behaviour of security forces, community consultation and development and environmental protection.

BGR has also developed an analytical fingerprint (AFP) technology that is “a combination of analytical evaluation methods to independently track the origin of tantalum (coltan) ore concentrates produced in Central Africa.” This analytical fingerprint is an optional exercise to verify chain of custody and is envisaged to be integrated into the International Conference on the Great Lakes’ Region’s (ICGLR) Regional Certification Mechanism (RCM). The AFP is very useful for downstream users who wish to confirm that their minerals are conflict-free as it allows for positive mineralogical confirmation of origin for mines where BGR has been able to gain a sample. However, the cost of using the technology means its application is intended for extraordinary circumstances, rather than as a normal course of action.

BGR has worked closely with ICGLR to incorporate CTC and AFP into their Regional Certification Mechanism. This means that all mineral supply chains across the Great Lakes Region for the 3TG will need to conform to CTC standards embedded in RCM and classified as red or yellow flag indicators by ICGLR, if they are to receive ICGLR export certificate. However, other CTC standards (on environment, working conditions and community development) have been classified as “Progress Criteria” by ICGLR and will hence simply be monitored, rather than enforced through ICGLR RCM. According to BGR, three CTC compliant mines in Rwanda will be part of an ICGLR pilot in 2012.

#### **4.8 Conflict-Free Smelter Program (CFS)**

The Conflict-Free Smelter Program (CFS) “is a voluntary program in which an independent third party evaluates a smelter’s procurement activities and determines if the smelter demonstrated that all the materials they processed originated from DRC conflict-free sources.”<sup>28</sup> The CFS was developed by the Electronic Industry Citizenship Coalition (EICC) and the Global e- Sustainability Initiative (GeSI) in 2009. The CFS is global in scope, and can be applied to smelters and refiners all over the world. The CFS is being progressively implemented across tin, tantalum, tungsten and gold smelters and refiners, and some supportive documents are in development. CFS audits have already been conducted.

It is primarily an audit that verifies the origin of a smelter’s input streams and includes a mass balance calculation to ensure inputs, outputs and stocks balance (taking into account a 10% margin for loss/gain of mass). Where the minerals have been sourced from or passed through specific countries (e.g., those of the Great Lakes Region or where there is evidence of smuggling or transit of conflict mineral), the CFS auditor must verify that the smelter or refiner demonstrates they conform to the OECD Due Diligence Guidance, and that the smelter has suitably responded to any identified risk that the minerals may have contributed to conflict in DRC.

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<sup>28</sup> EICC and GeSI, 2011c. *EICC®-GeSI Conflict-Free Smelter (CFS) tools and resources*. [www.conflictreesmelter.org/](http://www.conflictreesmelter.org/).

Smelters can show conformance with the OECD Due Diligence Guidance either by individually having their sources assessed against the Guidance by an independent third party or by using an assessed-conformance scheme, such as iTSCi, to do this for them.

The CFS seeks to provide companies with a method to comply with the Dodd-Frank Act. The CFS interprets Dodd Frank Act requirements in a conservative manner to work with the scenario that the SEC is working in absolute to deliver ‘conflict-free’ minerals rather than ‘conflict-managed’ ones. Consequently, in so far as the OECD is not yet aligned with the Dodd-Frank Act, there remain issues of compliance to the Dodd-Frank Act that are not compatible with the OECD Due Diligence Guidance, thus preventing full harmony.

#### **4.9 The Extractive Industries Transparency Initiative (EITI)**

The negative impacts of resource abundance on growth and sustainable development in general have been dealt with in depth and width in academia, policy circles and increasingly also in civil society campaigns since Auty presented the *resource curse thesis* in 1993. In parallel, transparency and the notion of multi-stakeholder governance have evolved to global norms setting the normative context of the Extractive Industries Transparency Initiative (EITI). The EITI was announced 2002 by the British government at the World Summit on Sustainable Development in Johannesburg. The EITI sets a standard for transparency requiring its participants to disclose revenues generated in oil, gas and mining. This applies both to the operating companies’ payments to national governments as well as to governments’ revenues received from the respective extractive industries. The two data sets can then be compared and assessed in terms of their congruity<sup>588</sup>. Revealing discrepancies in the numbers identify possible corruption. By eliminating traditional obscurity in financial transactions in the oil, gas and mining sector the EITI seeks to deprive public officials and private business of the possibility to further engage in corrupt practices. Subsequently – in theory – financial resources that would have been wasted through non transparent avenues and acts of corruption now can potentially be used to enhance sustainable development.

It is not easy to capture fully the impact of EITI. The potential of transparency as an instrument to reduce corruption has been subject to debate. The EITI not only emerged in parallel to other sustainability governance schemes in the mineral resource sector such as the Kimberley Process Certification Scheme. The Kimberley Process initially even served as a blueprint when designing the EITI. The EITI differs from the Kimberley Process in the sense that the EITI targets developmental objectives beyond purely security related issues.

The EITI, which was launched in 2002, aims to strengthen governance by improving transparency and accountability in the extractive sector. The EITI is a coalition of governments, companies, civil society groups, investors and international organizations. EITI developed a standard for monitoring which is verified through a validation process. EITI is a voluntary process and EITI compliance is monitored by the global civil society coalition Publish What You Pay (PWYP). PWYP campaigns for transparency in the payment, receipt and management of revenues from the oil, gas and mining industries.

Opinions expressed by a number of stakeholders suggest that the EITI has had a positive impact. According to the EITI Secretariat, in Liberia, EITI is seen as a strong indication that the government is committed to accountability and through the EITI process suspicion and mistrust are being reduced. In Nigeria, EITI is perceived as both an instigator of civic interrogation of public servants and as curbing social unrest as it directed youthful energies from resorting to violence to engaging in public debate. In Cameroon, it has helped improve the management and monitoring capacity of the relevant government agencies and in Gabon, it has provided a platform for civil society to point at challenges in the development and management of natural resources. In Ghana, it has helped local communities to engage with companies involved in natural resource extraction.<sup>29</sup>

However, governance indicators do not show a clear improvement in EITI countries as opposed to non-EITI countries for corruption perception, while there is improvement in business climate and voice and accountability.<sup>30</sup>

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<sup>29</sup> EITI, 2010, Impact of EITI in Africa: Stories from the ground' EITI Secretariat. <http://eiti.org/files/EITI%20Impact%20in%20Africa.pdf>.

<sup>30</sup> Aaronson S., 2008, 'Can Transparency in Extractive Industries Break the Resource Curse?' VoxEU.org <http://voxeu.org/index.php?q=node/1395>.

## 5 CONCLUSION AND WAY FORWARD

Certification mechanism/ Initiative	Main features	Main implementers	Good practices
<b>1. ICGLR RCM</b>	<ol style="list-style-type: none"> <li>Chain of custody tracking from mine site to export.</li> <li>Regional tracking of mineral flows via ICGLR database.</li> <li>Regular independent third-party audits.</li> <li>Independent mineral chain auditor (IMCA).</li> </ol>	<ol style="list-style-type: none"> <li>Member States;</li> <li>ICGLR ; harmonized with national-level databases;</li> <li>An ICGLR-supported/sanctioned tripartite Audit Committee oversees the region’s audits (pool of accredited auditors; ToRs for audits; receives and reviews audit reports, etc.);</li> <li>IMCA political backing and admin support of ICGLR, but independent</li> </ol>	Burden of proof falls primarily on exporters, secondly on Governments, in order to place less demands on resource-stretched governments in the GLR; Mandatory third-party audits, applying the <i>trust, but check</i> principle; Adapt current systems ; and 5) Design for adaptability, so that the mechanism stays present with time and incorporates relevant and best practice standards as much as possible
<b>2. Kimberley Process</b>	Multi-partner initiative (Government, CSOs, Industry) Primarily addressing conflict diamonds	Governments	tripartite approach; Can only trade with another KP member; evolving;
<b>3. OECD Due Diligence Guidance</b>	5 steps: <ol style="list-style-type: none"> <li>Management systems,</li> <li>Risk assessment,</li> <li>Risk mitigation,</li> <li>Independent third-party audits,</li> <li>Annual reporting.</li> </ol>	Companies (upstream and downstream)	Enhance transparency in the entire supply chain
<b>4. Dodd-Frank Act</b>	Section 1502 Imposes legal obligations on due diligence measures on companies that trade on US exchanges for the 3TGs from DRC and adjoining countries	Companies registered with SEC	Ensuring greater transparency on dealings with conflict minerals emanating DRC and neighbouring countries
<b>5. FairTrade/ Fair Mined ASM Gold</b>	Allows artisanal gold to be labelled ‘sustainable’; labour, organisational, environmental and traceability requirements	ASM	Rigorous environmental standards; oriented towards improving development gains for ASM communities
<b>6. World Gold Council’s Conflict Free Gold standard</b>	<ol style="list-style-type: none"> <li>Supports responsible mining practices.<sup>198</sup></li> <li>Oriented at complying with Section 1502 of DFA.</li> <li>In line with the OECD DDG, standards in development on how companies should commission a third-party audit and handle recycled gold.</li> </ol>	WGC members and other companies involved in the extraction of gold.	substantive African involvement in developing the Standard; is global in scope rather than focusing on African minerals; links with other industry led initiatives (OECD Guidance, etc)
<b>7. ITRI’s iTSCI</b>	<ol style="list-style-type: none"> <li>Combined tracking/tracing (through bag tagging, documentation,</li> </ol>	Upstream companies (from mine to smelter) and national	Government officials are the ones carrying out the tagging,

	and data management and analysis), 2. Independent third-party risk assessment, 3. Independent third-party audits, 4. Publication of findings of risk assessments and audits	governments supported by iTSCi Programme Operators.	and logging of the data. Local and provincial level stakeholder committees also have major roles to ensure that the initiative is implemented in a way that is sustainable and realistic
<b>8. BGR's Certified Trading Chains</b>	Third party assurance of "trading chain traceability, transparency, and the ethical quality of mineral production" Standards organized into 5 universal principles but to be customized to the particularities of different national contexts.	Mining companies with government support	Includes 5 principles: traceability; fair working conditions, Security and human rights; community development; environment. Development of the Analytical Fingerprinting technology
<b>9. Conflict free Smelter program (CFS)</b>	CFS is an audit that does: 1) Material analysis 2) Business process review (demonstration of management systems, e.g., conflict minerals policy, 100% documentation of chain of custody; and reasonable identification of origin).	Primary and Secondary Smelters and Refiners	Downstream entities – from local exporter to End user
<b>10.EITI</b>	Coalition of governments, civil society, investors, industry representatives and international organisations; Has a monitoring system; Concentrates on revenue flows	Governments and Companies	Improved governance through capacity building , management and monitoring; civic engagement in natural resource management; engagement of local communities and mining companies

As can be seen from this table, while the ICGLR RINR has positively built on other existing mechanisms and has for the most part incorporated some of the lessons learned, it can still draw from the best practices of other initiatives. To address sustainable development issues, it should for instance integrate the CTC scheme and the FT/MN which have higher environmental and working conditions standards, like it is already doing with CTC but extended to all countries of the ICGLR.

The tripartite approach pioneered by the Kimberley process is also a good practice to emulate and the ICGLR RINR should use CSOs more systematically. In that regard, the set up of a whistle blowing mechanisms where CSOs will play a big role is a welcome initiative that we think will be very successful if handled well.

A way forward for ICGLR RINR will be to review its operational structure and undertake some recalibrating and retooling including developing and increasing capacity at all levels to address the challenges of actually implementing some of the activities on the ground; have a strategy and a clear action plan how to use the resources allocated from the various donors to enable better coordination; seriously consider self financing schemes to have stronger ownership of the Initiative and for its sustainability; continue working very closely with already existing mechanisms and proactively integrate them into the Initiative to avoid

duplication of efforts and resources and to surmount the perceived ‘certification fatigue’ from a number of stakeholders; and substantially improve communication on the RINR to make it an internationally renowned initiative like the Kimberley Process and the EITI. More specifically, the ICGLR should give more importance to the RINR; it should hasten implementation of its tools with the countries that are already ready, i.e. it should keep things moving forward with available resources; it should quickly set up the function of the Independent Mineral Certification Auditor as it is its novelty and will also be used for the review of data assembled by the ICGLR database; and finally accelerate the rate of communication with the member States and acquire a means to regularly communicate with them at the national level.



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## 7 ANNEX 1- IMPLEMENTATION OF THE 6 TOOLS- COUNTRY BY COUNTRY ANALYSIS

	<b>Mineral Certification and traceability scheme</b>	<b>Harmonization of national policies/domestication of the Protocol</b>	<b>Creation of an information exchange system (Regional database)</b>	<b>Whistle blowing mechanism</b>	<b>EITI</b>	<b>Formalisation of ASM</b>
<b>Burundi</b>		<p>A new Mining Code is being finalized and takes into consideration the ICGLR Protocol and the project of model law (April 2011)</p> <p>A ministerial ordinance on certification is in effect since March 2011</p> <p>-The ICGLR National Coordination Mechanism has committed an independent study to ensure that the Protocol s has sufficiently been taken into account in the elaboration of the Mining Code.</p>	Burundi has transmitted data to the ICGLR Secretariat to feed into the database. (Apr 2011)		The EITI process has been initiated through the 2nd vice-presidency office (Apr 2011)	<p>Conduct of Sensitization and information missions for artisanal miners (April 2011)</p> <p>-A map of the artisanal sites in the country is available.(April 2011)</p> <p>Sensitizations workshops were also organised with artisanal miners in Ngozi, Cibitoke and Mabayi (Nov 2011)</p> <p>35 cooperatives have been created and recognized.</p>
<b>Central African Republic (CAR)</b>		The CAR has passed a revision of its Mining Code	The CAR handed in to ICGLR the statistics gathered on gold and diamond. The statistics of 2009 have also been made available.	In line with the set-up of a whistle-blowing mechanism	the compliance of the CAR with the EITI standards has been confirmed. (Apr2011)	Artisanal miners are being organized in cooperatives. The CAR has established a management

				m, the mineral brigades have been strengthened in order to better deal with illegal exploitation of natural resources.		unit tasked with the mapping of artisanal mines and map digitalisation
<b>Rep of Congo</b>	has developed a certification template and conducted a study, in partnership with UNDP, to identify the capacity requirements for certification. The introduction of the RCM on the other side has been delayed	The drafting of an ordinance for the implementation of the ICGLR Protocol on the Fight against Illegal Exploitation of Natural Resources is in progress. (Nov 2011)	In regards to the database, the Republic of Congo plans to cooperate with BGR to develop a country mine sites map.		In the EITI process, the Republic of Congo has made a lot of progress: it has produced its third EITI report for 2010 and will soon publish the fourth one by August 2011.	the counting of artisanal miners and the subsequent establishment of cooperatives are planned. There will also be a capacity building programme for ASM with World Bank and UNDP.
<b>DRC</b>	The DRC has developed a strategy in 4 steps: 1. Assessment of mine sites in security terms and mapping on the basis of this information; 2. Traceability; 3. Stakeholder engagement and monitoring & evaluation; 4. Coordination. The system of mineral	For the legal harmonisation, contact has been taken with Forum of Parliamentarians.  As for the harmonisation, it will depend on the draft drawn by ICGLR, as the government is currently revising large parts of the mining legislation.	The DRC has shared statistical data with the ICGLR Secretariat  DRC has stated it has already transmitted data many times to ICGLR Secretariat. In order to avoid lack of data issue, data on mine sites such as those under Ministry and those of Katanga have		The DRC is also working on compliance with EITI standards. The second EITI report will include the comptoires and the cassiterite production. The DRC reported that the overall minerals' production	the creation of artisanal exploitation zones is ongoing as the creation of ASM cooperatives. At this end, Promines project will give support to Saesscam. Maniema is the next targeted province

	<p>traceability is being implemented in several mineral territories of the country in collaboration with ITRI. (Nov 2011)</p> <p>No untagged mineral shall leave the country and already over 90% of mineral exports are tagged in the province of Katanga. Additionally, in order to deal with smuggling and issues on traceability, pilot committees are being set up to control if mining operators comply with the ICGLR certification manual and OECD due diligence scheme. The first regional certificate is supposed to be issued soon. (May 2012)</p>		<p>been given. Additionally, data on production, producers with license and GPS coordinates of sites have also been given to the ICGLR Secretariat.</p>		<p>is expected to decrease due to the international pressure.</p> <p>the second EITI report for 2008 and 2009 period has been validated.</p>	<p>under the traceability scheme and Nyabibwe site at South Kivu whose labelling operation will be financed by the New Kingdom of the Netherlands.</p>
<b>Kenya</b>		<p>Kenya is currently implementing its new constitution and the revision exercise of the Mineral and Mining bill is at cabinet level.</p> <p>The situation complicates the implementation of the six tools in their case. The timings are not in resonance.</p>				<p>formalisation was addressed by holding a stakeholder's meeting to sensitize and encourage the artisanal miners to work in cooperatives.</p>



<b>Zambia</b>	<p>Zambia is in the process of collecting mineral samples in order to establish the fingerprinting system. This process is however hindered by a lack of trained personnel which requires the CS' assistance in capacity building.</p> <p>To bring forward the RCM, the South African company MET TRACK has been contracted. In June, a trial run shall start in a cassiterite mine.</p>				<p>Zambia has adhered to the EITI process. The first report was published in January 2011.</p> <p>After the review of its next report, it is expected that Zambia becomes fully compliant.</p>	
<b>Uganda</b>		<p>The Uganda mining act is being reviewed and will be enacted soon (Nov 2011)</p>	<p>A database system on artisanal mines was put in place and is operational. Uganda has submitted data to the regional database.</p> <p>For the regional database, the new system ICGLR template is being used, but understaffing prevents faster progress</p>	<p>Uganda passed a whistle-blowing protection law that will support the implementation of the whistle-blowing mechanism.</p>		<p>The promotion of the formalisation of small-scale mining resulted in the creation of 18 cooperatives. Artisanal small-scale miners were trained and cooperatives were given grants. The formalisation process is going on and some artisanal miners have acquired their license as a first result.</p>
<b>Rwanda</b>	<p>Since December 2010,</p>				<p>In regards to the</p>	

	<p>Rwanda is implementing the iTSCI traceability scheme with 8 companies and exporters operating in the country. 78 people were hired to specifically deal with the mineral tagging system and ensure that governmental representatives are present at every producing entity. Currently, 80 to 90% of the production is tagged. Rwanda is also implementing the Certified Trading Chains (CTC) project. In this framework, 4 companies were subjected to external auditing, which led to the certification of 2 companies. Following the ministerial decree passed in March 2011 , all minerals imported to Rwanda have to be traceable.</p> <p>In order to comply with the ITRI scheme, more than one hundred people were recruited.</p> <p>In terms of cooperation with other countries, Rwanda has recently</p>			<p>EITI, Rwanda reported that a consultant has been recruited to prepare recommendations in view of Rwanda’s participation in this initiative.</p>	
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	(Nov 2011) handed back 81.34 tonnes of cassiterite and coltan to the DRC, where it was originating from.					
<b>Tanzania</b>	Tanzania has adopted a new Mining Act, Tanzania is going to introduce a certificate of origin for tanzanite. This avenue will be used to introduce certification of the 4 selected minerals in the framework of the ICGLR RCM Tanzania will issue its first certificate by the end of 2013	A team dedicated to review regulations was formed in April 2012. Tanzania recently reviewed its mining Act, so harmonization cannot be done immediately and shall await the next review.	For the database, two statisticians have been recruited by the Ministry to deal with compilation of minerals data and one of them has been designated to link with ICGLR Secretariat and is expecting directions from the ICGLR Secretariat.		Tanzania is in the process of completing the remaining five criteria before it is admitted as Compliant Member of EITI. They are currently compiling the second EITI Report which will address the remaining five criteria.	69 cooperatives have been formed.  For the ASM sector, the legal framework which recognises ASM as legitimate activities is already in place. The remaining challenge in formalization is the demarcation of mining sites, as the latter are spread all over the country, and working in other peoples areas.

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