



**3<sup>RD</sup> MEETING OF THE ICGLR-OECD-UN GoE JOINT FORUM  
ON IMPLEMENTATION OF DUE DILIGENCE IN THE TIN, TANTALUM AND TUNGSTEN SUPPLY CHAINS**

**3-4 May 2012**

***Summary Report***

*The meeting was conducted under Chatham House Rule: "When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed."*

**I. Introduction**

The third meeting of the ICGLR-OECD-UN GoE joint forum provided the opportunity to bring together OECD, African and other partner countries, international organisations, industry throughout the supply chain of tin, tungsten and tantalum, international and Great Lakes-based civil society organisations, expert consultancy groups and other independent experts involved in implementing and/or supporting efforts to implement, the *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*<sup>1</sup> (for the sake of convenience hereafter referred to as the "OECD Guidance") and the due diligence guidelines of the UN Group of Experts on the DRC.<sup>2</sup>

The meetings of the ICGLR-OECD-UN GoE joint forum are an integral part of the implementation phase of the OECD Due Diligence Guidance, Supplement on Tin, Tantalum and Tungsten, which was launched with

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<sup>1</sup> The *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas* was finalised and approved by the OECD Investment Committee and OECD Development Assistance Committee in December 2010. The *OECD Council Recommendation on Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas* was adopted by 41 OECD and non-OECD countries at the 50<sup>th</sup> Anniversary Ministerial Meeting held on 25 May 2011. While not legally-binding, this Recommendation reflects the common position and political commitment of adhering countries. To download the OECD Guidance and get background information, see [www.oecd.org/daf/investment/mining](http://www.oecd.org/daf/investment/mining). Colombia adhered to the OECD Council Recommendation at the 2012 MCM.

<sup>2</sup> On 29 November 2010, with the unanimous adoption of resolution 1952 (2010), the United Nations Security Council supported taking forward the detailed guidelines on due diligence for individuals and entities trading, processing and consuming minerals from eastern Democratic Republic of the Congo ("DRC"), as contained in the recommendations of the Group of Experts on DRC in its final report (S/2010/596). The UN Group of Experts on the DRC and the OECD-hosted working group on due diligence collaborated closely in 2010 to ensure that the OECD Guidance and the guidelines of the UN Group of Experts on the DRC were consistent with one another.

the approval of the Terms of Reference<sup>3</sup> by the participants in the first meeting of the ICGLR-OECD-UN GoE joint forum on 5-6 May 2011.<sup>4</sup> A second meeting of the joint forum was held on 29-30 November 2011.<sup>5</sup>

The multi-stakeholder ICGLR-OECD-UN GoE joint forum is intended to serve as a peer-learning platform and iterative process whereby the private sector can know and show that they are implementing due diligence, learn by doing, share experience to identifying emerging practices, and engage in open dialogue with other stakeholders with a view to finding practical solutions to concrete challenges. The joint forum rests on a principle of constructive participation from all stakeholders to effectively promote legitimate trade of minerals from the Great Lakes Region, including through appropriate incentives, opportunities for market access and the creation of the necessary enabling conditions.

## II. Meeting structure and objectives

The meeting was held over two days on 3-4 May 2012. The morning of 3 May included break-out and joint 3T and Gold plenary sessions focused on issues of cross-cutting relevance to the implementation of due diligence across the tin, tantalum, tungsten and gold supply chains. These sessions were convened together with the participants from the 2 May meeting of the OECD-hosted forum on implementation of due diligence in the gold supply chain.<sup>6</sup>

In the afternoon of 3 May 2012, participants received official welcome remarks from the hosts (UN Group of Experts on the DRC, Director of the OECD Development Co-operation Directorate, OECD and the Executive Secretary of the International Conference on the Great Lakes Region on behalf of the ICGLR, as well as high-level updates on the implementation of due diligence in 3T supply chains. The meeting proceeded in the late afternoon of 3 May and morning of 4 May with break-out sessions devoted specifically to the implementation of due diligence *upstream* and *downstream* in the supply chain.

In the late morning of 4 May, participants convened in plenary for a session on engaging smelters in due diligence for responsible mineral supply chains. In the afternoon of 4 May, participants then reported back to the plenary on the outcomes from their break-out session. During the final plenary session, participants discussed and agreed on the proposed next steps. The Director of the Directorate for Financial and Enterprise Affairs, OECD delivered closing remarks on behalf of all the hosts.

The objectives of the third meeting of the ICGLR-OECD-UN GoE joint forum were to:

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<sup>3</sup> The text of the approved Terms of Reference are available at <http://www.oecd.org/dataoecd/26/5/48593004.pdf>. For further details on the implementation phase of the OECD Guidance Supplement on Tin, Tantalum and Tungsten, see [http://www.oecd.org/document/15/0,3746,en\\_2649\\_34889\\_48584143\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/15/0,3746,en_2649_34889_48584143_1_1_1_1,00.html)

<sup>4</sup> For information on the first meetings of the ICGLR-OECD-UN GoE joint forum, including key outcomes, the summary report and the adopted action plan, see: [http://www.oecd.org/document/11/0,3746,en\\_2649\\_34889\\_47684171\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/11/0,3746,en_2649_34889_47684171_1_1_1_1,00.html)

<sup>5</sup> For information on the second meetings of the ICGLR-OECD-UN GoE joint forum, including key outcomes, the summary report and background documents, see: [http://www.oecd.org/document/38/0,3746,en\\_2649\\_34889\\_49079014\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/38/0,3746,en_2649_34889_49079014_1_1_1_1,00.html)

<sup>6</sup> For information on the Supplement on Gold, the OECD-hosted forum on implementation of due diligence in the gold supply chain and related meetings, see: [http://www.oecd.org/document/60/0,3746,en\\_2649\\_34889\\_49137660\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/60/0,3746,en_2649_34889_49137660_1_1_1_1,00.html)

- Provide an opportunity for participants to learn about implementation of due diligence in the gold supply chain and share relevant experiences from implementing due diligence in the 3T supply chain in order to foster mutual learning;
- Given the maturing of the process and its rapid expansion, explore the need for a governance structure for the on-going implementation programme of the OECD Due Diligence Guidance;
- Learn about progress made by industry in the 3T supply chain with the implementation of due diligence since the last meeting on 29-30 November 2011;
- Identify any practical challenges for due diligence implementation and share experience on how to overcome them;
- Facilitate greater experience sharing and learning, through discussion of emerging practices and due diligence tools/industry programmes designed to implement the OECD Guidance, Supplement on Tin, Tantalum and Tungsten;
- Clarify the interrelationship among industry programmes and other schemes (such as the ICGLR Certification Scheme), as they relate to the OECD Guidance, and explore opportunities for mutual recognition and coordination;
- Begin discussion and potentially agree on a plan for engaging more smelters in the implementation process; and
- Consider and possibly agree on an action plan to be implemented between now and the next meeting tentatively planned for 29-30 November 2012.

The annotated agenda, the upstream and downstream progress reports from the second cycle of the implementation phase, the presentations given during the meeting and all other background materials are available online on the meeting web page.<sup>7</sup>

### III. Summary Conclusions

*There was an unprecedented high-level participation.* More than 200 participants from OECD, African and other partner countries, international organisations, industry and international as well as local civil society organisations attended the meeting. A marked increase in participation, in particular from industry, shows how the OECD-hosted forum has established itself as a useful dialogue platform where stakeholders can effectively tackle due diligence challenges and work together towards consensus-based solutions.

*The meetings provided a first learning opportunity for participants to share lessons on implementation of due diligence across the different mineral supply chains.* For the first time, participants from the ICGLR-OECD-UN GoE joint forum on implementation of due diligence in the tin, tantalum and tungsten supply chains convened for a joint learning session with the participants in the OECD-hosted forum on implementation of due diligence in the gold supply chain. Participants were introduced to various ongoing conflict-sensitive mineral supply chain initiatives in the 3T and gold supply chains. Participants also shared experiences on topics such as the emerging practices and tools for managing data on the supply chain, and setting up secure pipelines of minerals, drawing from experiences in tantalum under the Solutions for Hope project in Katanga, “Make Africa Work”/KEMET project and Alliance for Responsible Mining’s Fairtrade/Fairmined projects in gold.

<sup>7</sup>

Available at [http://www.oecd.org/document/35/0,3746,en\\_2649\\_34889\\_49992739\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/35/0,3746,en_2649_34889_49992739_1_1_1_1,00.html).

*A joint gold and tin, tantalum and tungsten plenary session began to explore ways to ensure the continued successful development OECDs hosted due diligence initiative by establishing transparent and accountable governance structure.* Participants recognised the rapid expansion of the joint work hosted by the OECD to implement due diligence in the mineral supply chain, and participants agreed that, given the maturing of the process and the importance of implementation, it would be desirable for governments and stakeholders to take on a larger share of responsibility for the OECD-hosted process. Participants welcomed the opportunity to preliminarily brainstorm on potential options for the governance structure for the OECD- hosted due diligence initiative. Participants committed to follow up on the discussions. An interim governance group was tasked to look into the composition, mandate and propose options for a governance structure of the OECD-hosted due diligence process for consideration by the joint forum at the next meeting.

*Participants provided feedback on the draft OECD-ICGLR-WB joint study on how donors can create enabling conditions for effective implementation of due diligence in Africa's Great Lakes Region, and preliminarily highlighted ways to better coordinate their efforts.* Participants noted that host Governments and the private sector are best placed to drive efforts to create responsible supply chains of minerals, with a central role for civil society. Participants agreed that donors can help to support host governments reform agenda and assist to overcome barriers that may limit a company's due diligence efforts. Donors were encouraged to adopt a whole-of-government approach to articulate a comprehensive, multi-sector response to identified systemic challenges. Participants also highlighted the importance of a regional approach to the effective implementation of due diligence.

*Break-out sessions on implementation of due diligence "upstream" and "downstream" in the tin, tantalum and tungsten supply chains provided the opportunity for participants to delve into details most relevant to their activities.* Participants in the upstream break-out session focused on ways to streamline processes, improve coordination and enhance transparency as various due diligence implementation programmes continue to develop. A new project supported by the Dutch Government was announced that would aim to export responsibly mined and traded minerals from the Kivu Provinces in Eastern DRC. Participants in the downstream break-outs shared the ways to communicate common and realistic expectations to suppliers, establish consistency in supply chain data, and reach out to small and medium-sized enterprises, particularly those based on Asia.

*A dedicated smelter engagement session explored how to involve more tin, tantalum and tungsten smelters in the implementation of due diligence.* Participants discussed the smelter mapping exercise undertaken by the OECD with the support of BSR, and provided helpful feedback to update the draft smelter list. Participants also welcomed the wider participation of smelters in the forum, particularly the representative from a Chinese state-owned tantalum smelter.

#### **IV. Summary of main issues in each session**

##### **a. Morning break-out sessions on cross-cutting issues**

Two break-out sessions were held simultaneously and participants were invited to attend either one. One break-out session focused on a joint ICGLR-OECD-WB study on donor-supported programs. The other break-out session provided participants with an opportunity to learn about ICGLR and industry programmes to implement due diligence in the tin, tantalum, tungsten and gold supply chains.

### ***Learning session on implementation of due diligence in 3T and gold supply chains***

The first part of the learning session focused on implementation of due diligence in the gold supply chain. The session began with presentations and discussions on the ongoing industry-led programmes to implement due diligence in the gold supply chain such as the World Gold Council's (WGC) "Conflict-Free Standard", the London Bullion Market Association's (LBMA) "Responsible Gold Guidance", the Responsible Jewellery Council's (RJC) "Chain of Custody Standard" and "Conflict-Free Smelter Program" developed by GeSI and EICC (CFS program). A joint presentation was given showing how the industry programmes collaborated while designing their respective programmes to meet the expectations in the Supplement on Gold to the OECD Guidance and ensure a harmonised and streamlined approach.

In particular, the complementarities among the gold industry programmes were highlighted. Presenters clarified how the WGC "Conflict-Free Standard" is intended to implement the Supplement on Gold's due diligence recommendations for large-scale mining companies, while the LBMA's "Responsible Gold Guidance" audit framework and the CFS Program will seek to implement the Step 4 recommendation that gold refiners have their due diligence practices audited against a standard consistent with the Supplement on Gold. The RJC "Chain of Custody" standard will also support Step 4 audits under the Supplement on Gold. Further, certification by upstream or downstream companies under the RJC's "Chain of Custody" Standard will help to provide assurance of many of the due diligence recommendations contained in the Supplement on Gold, such as adopting a supply chain policy on gold from conflict areas, having a grievance mechanism, undertaking detailed risk assessments, particularly for mined gold from conflict-affected and high-risk areas, and managing risks appropriately. The RJC also announced that it had begun to prepare OECD Due Diligence Guidance training modules for its members and other relevant industry participants.

The second part of the learning session focused on implementation of due diligence in the tin, tantalum and tungsten supply chains. The participants received presentations on the ICGLR Regional Certification Mechanism, iTSCI, the Conflict-Free Smelter Program, the EICC and GeSI Due Diligence Tool (Conflict Minerals Reporting Template and Dashboard), the Solutions for Hope Project and the Public-Private Alliance for Responsible Minerals Trade. Reference was also made to the "Make Africa Work"/KEMET project in Katanga.

Participants noted how the implementation of due diligence programmes in the 3T supply chains has differed from the implementation of due diligence in the gold supply chain. In some respects, the implementation of due diligence programmes in the 3T supply chain is more advanced, but issues of harmonisation and streamlining processes have continued to be challenging. On the other hand, while the implementation of programmes in the gold supply chain may be in earlier stages, the ongoing collaboration between initiatives during the design phase will help to address issues of harmonisation before they arise. Participants agreed that it would be useful to continue dialogue amongst industry and other due diligence programmes within the various supply chains to foster mutual learning and cross-fertilisation of approaches.

One participant noted how the Solutions for Hope project provided an interesting case study on how Appendix 1 of the Gold Supplement may be operationalised for artisanally-mined tantalum. Participants welcomed the opportunity to look more into what lessons from Solutions for Hope may be relevant for potential country-specific "Gold for Peace" projects in the DRC, which would aim to create "mine to market" secure, transparent and verifiable pipelines of responsibly mined gold, in particular from artisanal and small-scale miners.

### ***Donor-supported programmes to create the enabling conditions for effective due diligence in the Great Lakes region***

Recognising that due diligence in the mining sector alone will not put an end to conflict and poverty cycles, and that the latter will continue to limit the growth of the legitimate trade in minerals, this session was devoted to what OECD member states are doing to support more responsible minerals, both within and beyond the mineral sector and what they should focus on to have a meaningful impact.

Participants received a presentation on the findings from the report "*Responsible Supply of Minerals from the Great Lakes Region: How Can Donors Support Host Governments?*", jointly commissioned by the ICGLR, OECD and World Bank. The findings are that (i) the main stakeholders in promoting and achieving responsible sourcing of minerals are host governments and the private sector, with a central role for civil society for monitoring and assisting with implementation programmes; (ii) there is an imperative to reactivate the trade of minerals from Central Africa, given that so many livelihoods rely on them, with positive recognition of the ongoing efforts of both host governments and the private sector; (iii) since positive results on one side of the frontier can come undone by the lack of reform on the other, a regional approach to responsible minerals is the right one, although donor support to the ICGLR and cross-country are still limited and should be encouraged; (iv) OECD member states should have a joined-up strategy across ministries, linking their development agenda, growth agenda and geopolitical agenda; mobilising public and private sector energies to develop minerals supply chains that are workable, profitable and accountable; raising awareness about responsible supply chains of minerals in the business community and engaging with emerging economies; (v) artisanal mining in eastern DRC needs to be recognised as an integral and positive part of the mining sector which provides jobs and livelihoods in line with the approach taken in the Appendix 1 of the Gold Supplement.

In the discussion that followed, participants recognised that donors have a role to play to analyse and address systemic blocking factors, often outside the reach of companies, which limit companies' efforts and supported the main findings. They provided additional up-to-date information on ongoing efforts to define what an effective comprehensive, multi-sector approach to the issue might be, and on the role that donors are currently playing in the region (to be reflected in the final report). Participants also stressed the need to strengthen the capacity of civil society, as an active civil society is an essential element of better governance.

#### **b. Joint 3T and Gold Plenary Session - Discussion of a new possible governance of the OECD due diligence implementation programme**

Participants recognised the rapid expansion of the joint work hosted by the OECD to implement due diligence in the mineral supply chain, and participants agreed that, given the maturing of the process and the importance of implementation, it would be desirable for governments and stakeholders to take on a larger share of responsibility for the OECD-hosted process. Participants welcomed the opportunity to preliminarily share ideas on potential options for a new governance structure for the implementation programme of the OECD Guidance.

Some participants felt that the composition, working procedures and mandate of the multi-stakeholder Drafting Committee for the Supplement on Gold provided a helpful precedent for a governance structure of the OECD-hosted implementation programme. Drafting Committee members in the session agreed that while the Drafting Committee process was demanding, it helped to foster real ownership over the

results, while also ensuring regular and ongoing contact amongst stakeholders for the purpose of effective collaboration. Some other participants felt that the forum could also seek inspiration from the structure, compositions, and mandate of the multi-stakeholder governing board for the “Public-Private Alliance for Responsible Minerals Trade”.

On the overall **structure** of any potential governance for the OECD-hosted process, many participants agreed that any small or nimble multi-stakeholder “Steering Group” or “Bureau” should be responsible to a larger multi-stakeholder forum, taking decisions by consensus that would reflect the inclusiveness of the larger forum. Participants generally felt this would be more appropriate than a hierarchy where a smaller “Steering Group” made ultimate decisions. Participants were reminded that the forum would ultimately answer to the OECD Investment Committee and Development Assistance Committee, which are the OECD bodies responsible for overseeing the process and monitoring the implementation of the *Council Recommendation on Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas* and reporting back to the OECD Council.

Some participants questioned why the ICGLR and UN Group of Experts on the DRC were only official hosts for the forum on implementation of due diligence in the 3T supply chain, and not in the OECD-hosted forum on implementation of due diligence in the gold supply chain. It was clarified that a “Steering Group” may wish to reflect more on hosts for the forums, but that the implementation programme of due diligence in the gold supply chain is not geographically limited to the Great Lakes Region. Already, Latin American countries have expressed an interest to become involved in “country-specific projects” for the implementation of the Gold Supplement. Including the ICGLR and UN Group of Experts on the DRC as joint hosts for the forum on gold may inadvertently discourage the wider application of the Supplement on Gold beyond the Great Lakes region.

Participants exchanged views on whether it would be preferable to have separate, dedicated “Bureaus” or sub-groups responsible for the implementation of due diligence in the *gold* and *3T* supply chains respectively. Some participants felt that a governance structure would be simpler and less bureaucratic if there were only one “Steering Group” dealing with issues of cross-cutting relevance to the implementation of due diligence across mineral supply chains, while the OECD-hosted forum on gold, and the ICGLR-OECD-UN GoE joint forum on 3T would still be able to take general decisions on issues related specifically to those mineral supply chains. Other participants felt that given the significant differences of those supply chains, and the different stages of implementation of due diligence within them, it would be preferable to have separate multi-stakeholder gold and 3T bureaus.

Participants agreed that it would be beneficial to consider the role that a Chair or Co-Chairs, could play in a “Steering Group”. In that regard, participants noted it would be important to carefully consider the selection process and term limit for the chairs.

Participants recognised that it was challenging to discuss the governance structure of the OECD-hosted implementation process without going into the detail of the precise **composition** and **functions** of any “Steering Group”. In this respect, participants expressed various views. Some participants felt that a “Steering Group” should be responsible for procedural matters, such as the approval of consultants for any implementation work, ensuring adequate time in the preparation and release of background documents, and the preparation of other meeting materials. It was clarified that it would be a clear contravention of OECD rules and of the OECD Convention itself for any member of the “Steering Group”, including any member country, to have a say in the selection of OECD consultants. Others felt that a “Steering Group” should also be responsible for helping shape the strategic vision of the implementation

programme in a manner that reflects the will of the wider OECD-hosted forum on gold and ICGLR-OECD-UN GoE joint forum on 3T. Such functions may include the elaboration of proposals for the overall work plan and taking more substantive decisions on meetings (timetables, agendas and invitees) in collaboration with the OECD Secretariat. Finally, some participants felt that the “Steering Group” should also play a more substantive role to facilitate the actual implementation of due diligence (e.g. streamline audit and other due diligence processes, and share and disseminate information on risks and due diligence in the supply chain) and monitor the impact of due diligence on the ground.

Participants agreed that any “Steering Group” should have a multi-stakeholder inclusive **composition**. However participants expressed different views as to whether there should be *equal tripartite composition* (i.e. equal representation of producing, processing and consuming countries, upstream and downstream industry, and international and local civil society organisations working in both advocacy/monitoring as well as implementation) or *adequate tripartite composition* (i.e. a representation of producing, processing and consuming countries, upstream and downstream industry, and civil society organisations in a manner that’s proportionate to the relative stake of the various constituencies, such as their use of the specific minerals, or in accordance with their relative roles and responsibilities). Many participants felt strongly that the design of any “Steering Group” should consider how host governments and partner countries as well as local stakeholders would remain actively involved and offer their on-the-ground expertise. Issues related to regional representation in any “Steering Group” and regional ownership to design in-country implementation activities were also raised.

Participants committed to follow up on the discussions and propose options for a governance structure of the OECD due diligence process, for consideration by the joint forum at the next meeting. Participants agreed that the existing members of the Steering Group set up to provide input on the joint ICGLR-OECD-World Bank gap analysis, desirability and feasibility study on an institutionalised mechanism to support due diligence implementation could re-convene as an interim governance group to look into its composition, mandate and propose various governance options. Any participant in the plenary was welcomed to participate in the interim governance group to ensure a balanced and inclusive composition conducive to the enhanced legitimacy of outcomes (see Section V, “Next Steps”).

### **c. Plenary session on high-level findings of the progress reports on implementation of due diligence**

The high-level findings from the upstream implementation report and UN Group of Experts on the DRC showed that North and South Kivu were slowly recovering from the “shock” of the export ban and other regulatory pressure in 2011; North and South Kivu were said to be currently exporting at one third of their pre- September 2010 levels with increased levels of smuggling. Mining and exports of 3T continue to rise in other non-conflict areas of the Great Lakes region where due diligence has been put in place (e.g. Katanga and Rwanda).

The high-level findings also showed that many economic actors in the upstream part of the supply chain are no longer questioning the need to implement due diligence, and some have shown a willingness to spend the necessary resources to implement the 5-step framework in the OECD and UN due diligence recommendations.

Actual implementation of due diligence upstream in the supply chain still varies considerably, and the high-level findings showed that there is a strong need for capacity-building among upstream actors. Some upstream companies based in the Kivus are carrying out due diligence by relying on the list of validated mine sites published by the DRC Ministry of Mines in March 2012. These companies were obtaining

information on mine of origin from their existing chain of custody documentation, such as transportation and export documents. Others are relying on industry programmes like iTSCi entirely. Some participants noted that merely relying on a list of sites, or on an industry programme, was insufficient on its own and should be complemented with more qualitative assessments and joint on-the-ground efforts in collaboration with local government and local civil society organisations. Finally, some upstream companies were reported to still be sourcing from conflict-affected and high-risk areas without any due diligence at all.

Participants also had the opportunity to be updated on the progress made towards implementing the ICGLR's Regional Initiative against the Illegal Exploitation of Natural Resources (RINR), which includes the Regional Certification Mechanism (RCM) as a central component. The DRC and Rwanda were noted to have already taken some significant steps to implement the RINR, which include integrating the RCM into their national legal frameworks through Ministerial Orders issued on 29 February 2012 (DRC) and 23 April 2012 (Rwanda). As part of the validation efforts to begin certification process, the DRC also issued Ministerial Orders that categorise 46 mine sites in North and South Kivu according to the standards in the ICGLR RCM and OECD Guidance. Rwanda has selected three mine sites to pilot the RCM within their borders, which are sites that have already been certified under the BGR Certified Trading Chains programme.

The DRC and Rwanda have also elected members to the ICGLR audit committee, which will look to meet for the first time once other audit committee members have been elected. Finally, it was noted that the ICGLR Secretariat is in the process of actively consulting with international partners to mobilize support to set up the office for the ICGLR Independent Mineral Chain Auditor, which was viewed as critical to the credibility of the RCM.

High-level findings from the second cycle of the downstream progress report highlighted the emerging practices and tools used by the participants to implement due diligence. In particular, findings showed that downstream participants in the implementation phase, consisting of mostly large multinationals and end-users, had made progress towards adopting policies and identifying products or suppliers of 3T. Challenges still remain on getting accurate information on smelters in the supply chain and engaging suppliers, particularly small and medium-sized enterprises and Asia-based companies, in due diligence. Downstream companies continue to face difficulties getting smelters engaged in audits such as the Conflict-Free Smelter Program.

#### **d. Upstream break-out sessions**

The first upstream break-out session in the afternoon of 3 May was intended to provide an opportunity to discuss the detailed findings contained in the upstream progress reports from the second cycle of the pilot implementation phase of the OECD Guidance. The second break-out session on the morning of 4 May then provided an opportunity to delve into the issues on risk assessments, enhanced coordination, data collection and sharing identified by the participants for deeper discussion.

Findings from the progress reports showed that the overwhelming majority of participating companies declared to have a supply chain policy in place. Most of them relied on Annex II while elaborating their own policy. However, only a minority actually shared their policy. While information related to the mine of mineral origin and transportation routes is collected, companies report to carry out risk assessments but no documentation has been made available or shared with other actors or the ICGLR. iTSCi incident reports are immediately notified to the companies concerned and a summary of the risk assessment is

included in the audit report. iTSCI is also looking into ways that would allow the release of the information for wider use while preserving the integrity of the system. Risk mitigation measures were adopted regarding adverse impacts on artisanal miners and security related issues.

Participants in the session recognised the persistent challenges associated with streamlining processes and collaboration when implementing multiple due diligence schemes. Participants generally agreed that there had been progress made towards raising awareness of due diligence, and that various industry and national programmes were beginning to look into mutual recognition of their respective activities to reduce inefficiencies and duplications. In particular, this issue was seen as relevant to understanding the interrelationship and potential avenues for collaboration between DRC mine site validation and iTSCI baseline assessments, as well as the various emerging traceability technologies, such as iTSCI's tagging and manual data collection system and MetTrak's radio frequency electronic tags.

Participants noted an increase in short visits from donors and downstream industry players to mine sites in the DRC. The multiplication of uncoordinated visits for many different purposes are generally regarded by economic operators on the ground as auditing activities with related increase of the audit fatigue. Participants warned against the increase in "conflict minerals tourism" that fails to deliver concrete results in terms of moving forward the implementation of risk assessments and chain of custody or traceability schemes. At the same time, participants recognised the distinct role played by the UN Group of Experts on the DRC mandated by the UN Security Council to monitor the impact of the due diligence recommendations and acknowledged in some areas frequent visits have had some positive impact, resulting in reduction of illegal taxation.

Data collection and sharing was still regarded as a key challenge to the effective implementation of the ICGLR RCM. Where practicable, the introduction of electronic data collection and its incorporation into existing programmes as an alternative to manual data collection should enable the ICGLR to act as the central consolidator of in region data, thus helping to overcome host governments capacity constraints. Participants encouraged the parties engaged in those discussions to remain open and constructive, and come to an agreement that strikes a balance between the need for transparency and accountability on the one side, and the need to preserve commercially sensitive information on the other.

Downstream users further recognised that, subject to SEC requirements, the ICGLR certificate could well provide a credible system that would meet the CFS expectations for conflict-free sourcing.

#### **e. Downstream break-out sessions**

The first downstream break-out session in the afternoon of 3 May was intended to provide an opportunity to discuss the detailed findings contained in the downstream progress reports from the second cycle of the pilot implementation phase of the OECD Guidance. The second break-out session on the morning of 4 May then provided an opportunity to delve into the issues identified by the participants for deeper discussion.

Findings from the downstream report showed that the majority of pilot participants have a policy in place and in most cases, outline the company's commitment, activities, and supplier requirements. Many pilot participants found Annex II useful in devising their own policy, but have not relied on it in its entirety. In particular, many downstream companies found it difficult to commit to paragraphs 5-10 of Annex because they include elements perceived to be beyond what's directly actionable for downstream companies. .

Findings from the progress report showed that most of the respondents have begun or completed the identification of Tier 1 suppliers and/or products containing tin, tantalum, tungsten, and gold (hereafter 3T&G). Pilot participants are identifying metals through material content data forms, company declaration systems, bills of material, and/or part codes assigned to all parts. *In this regard, there was still a need to clarify that the OECD Guidance does not expect downstream companies to establish traceability over their products.* Rather, the OECD Guidance recommends companies use a combination of individual and collaborative means to identify, to the best of their efforts, the smelters in the supply chain. However, depending on the structure supply chain, some companies have chosen to identify smelters by putting in place measures to track individual products back to the smelter level, whereupon the company should individually or collaboratively assess the smelter's due diligence practices to identify risk of contributing to conflict.

The progress report showed that while most pilot participants have begun to engage with their suppliers on the issue of minerals from conflict-affected areas and high-risk areas at some level, there is variation in the way suppliers are selected and prioritized for communication and data collection. Pilot participants are either communicating with all suppliers (or Tier 1 suppliers) or applying a risk assessment methodology to determine which suppliers receive communications and information requests.

The downstream progress report also showed that pilot participants are using contractual clauses and terms & conditions to ensure compliance to data disclosure and/or required policies as a requisite/pre-requisite to doing business. A majority of the pilot participants reported that they are still working with their suppliers to overcome the issue of confidentiality, both individually and as an industry, through contract clauses, NDAs (non-disclosure agreements) and using data collection and roll-up tools that do not require listing of all suppliers used within a company's supply chain.

Participants agreed to focus discussion on issues such as engaging small and medium-sized enterprises in due diligence, harmonisation in communications of due diligence expectations to suppliers, engaging with smelters (in preparation for the smelter engagement plenary session) and the objectives and timing for the last cycle of the pilot implementation phase.

On engaging small and medium-sized enterprises in due diligence, participants in the session noted how the findings from the baseline and progress reports of the implementation phase should be considered in light of the dominant participation of large, leading multinational end-users. Findings therefore may not be entirely relevant for small and medium-sized enterprises, which may not have the capacity and resources to do due diligence with the same rigor. However, it was also noted that small and medium sized enterprises, by their very nature, may have much smaller and less complex supply chains, and therefore would not need to spend the same amount of time and effort on due diligence as large multinational end-user companies.

Participants agreed that industry associations were well-placed to reach out to small and medium sized enterprises (SMEs). In that regard, participants reiterated their request that the OECD develop a questionnaire that could be passed to industry associations for them to collect information on due diligence from the SME members. Participants also agreed to use their own networks and facilitate greater contacts with SMEs, particularly those based in Asia, through the last cycle of the implementation phase (see Section V, "Next Steps").

On the harmonisation of supplier communications, the progress report showed that companies are employing various modes of communication including letters, webinars, and in-person meetings. Many

associations have prepared and circulated, or plan to prepare, a joint letter making suppliers aware of due diligence expectations. A joint letter with multiple signatories may be considered useful as some companies, in particular SMEs, often ignore the existence of their industry's association and would not be responsive to individual letters. In this regard, participants in the meeting stressed that it was necessary to communicate reasonable and doable expectations, such as to begin to consolidate information on products and suppliers, rather than unreasonable expectations, like asking for 100% conflict-free guarantees before any due diligence capacity is established. The participants in the meeting suggested that the OECD could help to convene a small group of willing pilot participants to develop some common content on reaching out to suppliers (see Section V, "Next Steps").

Some participants felt that there should be more collaboration, either through the ICGLR-OECD-UN GoE joint forum or through industry associations, to develop a common database or lists of products containing 3T and gold.

On engaging smelters, the downstream progress report highlighted that since most pilot participants do not have direct relationships with smelters, they are relying on industry processes rather than engaging directly with smelters to obtain information and undertake due diligence, though have not been able to identify all of the smelters in their supply chain. Overall, pilot participants reported that they would like to support individual and industry-level efforts to encourage smelters to become verified as conflict free through audits or industry programmes such as the Conflict-Free Smelter (CFS) program. Participants in the meeting thought that the OECD could bring its convening power to bear on this issue, and therefore welcomed the smelter engagement session.

#### **f. Smelter engagement session**

This session was focused on identifying and engaging smelters in due diligence efforts, drawing on the findings of the smelter mapping exercise in the downstream progress report prepared by BSR.

Participants welcomed the smelter mapping exercise and the draft list compiled. Many participants requested contact information of the smelters on the list. It was clarified that this could be provided on request to the OECD Secretariat.

The smelter mapping exercise noted that many smelters had yet to begin due diligence. This was attributed in the report to the fact that there was shortage of competent auditors. Some participants expressed their belief that this was just an excuse, and that smelters were either waiting for the final SEC rules implementing section 1502, or were simply not responsive because their direct customers were not demanding they conduct due diligence.

The participants in the meeting noted how the electronics industry had some success reaching out to tantalum smelters because their market shares gave them greater influence, while it had been more challenging for them to reach out to tin, and tungsten smelters. Participants noted that a combination of pressure from industry, civil society and countries would help to ensure more engagement from smelters in general.

Participants asked about how a "smelter" was defined for the purposes of the study. It was agreed that final report with the smelter mapping section should include a definition of a smelter. In that regard, industry associations participating in the pilot were requested to provide input.

Participants also welcomed the greater participation of smelters in the ICGLR-OECD-UN GoE joint forum, in particular the participation of Asia-based smelters, who agreed to help to disseminate the OECD Guidance within their home countries (See Section V, “Next Steps”).

One participant suggested that OECD member countries and accession countries, together with key partners, reach out to their domestic smelting industries as well as to other countries with a high population of 3T smelters to engage smelters, or the relevant national metals associations, in due diligence. The participant suggested that the countries most concerned would be the Germany, Japan, Korea, USA, China, Indonesia, Malaysia and Russia (See Section V, “Next Steps”).

## **V. Next Steps**

The following next steps were agreed by participants in the 3-4 May meeting of the ICGLR-OECD-UN GoE joint forum on implementation of due diligence in the tin, tantalum and tungsten supply chain:

- ***Donor-supported programmes session***<sup>8</sup>

Finalise the mapping of donor supported programmes in the Great Lakes region, emphasising the need for a regional approach to the issue of responsible mineral trade. Donors should support host governments’ reform agendas, strengthen the capacity of civil society and focus on systemic challenges which are often outside the reach of companies and can hamper corporate due diligence efforts. Donors are encouraged to (i) adopt a whole-of-government approach to articulate a comprehensive, multi-sector response to identified systemic challenges, (ii) raise awareness about the Guidance among their industry and (iii) engage with emerging economies.

- ***Governance session***

Hold a first call of an interim governance group tasked with establishing the mandate and membership of the new governance structure for the OECD due diligence process. The interim governance group would include the members of the former Steering Group on the institutionalised mechanism, as well as other volunteers to reflect the diverse multi-stakeholder participation of the ICGLR-OECD-UN GoE joint forum.

- ***Smelter engagement session***

Consider adjusting and revising the draft smelter list in light of comments received and input from participants, and provide contacts details of smelters on request. Remove gold refiners/smelters from the list. Industry associations and/or the ICGLR-OECD-UN GoE joint forum, depending on any decision from the interim committee, may wish to consider the ongoing maintenance of any smelter list(s).

OECD countries, in cooperation with the ICGLR, may consider how to reach out to domestic industries as well as non-OECD member smelter countries, such as China, Indonesia, Russia and other relevant countries, for them to encourage their smelters to perform due diligence in accordance with the OECD Guidance and engage in industry programmes, such as the Conflict Free Smelter Program(CFS)developed by GeSI and EICC.

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<sup>8</sup> The Next Steps for the donor-supported programmes session were discussed amongst the participants in that session only, rather than during the final plenary session.

Asia-based smelters participating in the meeting volunteer to be “OECD Due Diligence champions”, which may include disseminating the OECD DDG amongst their peers, including national industry bodies, and eventually facilitating meetings in their countries.

- ***Upstream break-out session***

Taking into account final SEC rules, the Conflict Free Smelter Program (CFS) developed by GeSI and EICC will accept ICGLR certificates as a credible in-region sourcing mechanism, once validated by the CFS programme and so long as minerals originate from “green” validated sites.

ICGLR members, the ICGLR Secretariat and iTSCI, as well as their consultants, are encouraged to continue discussion on data-sharing, taking into account capacity constraints which may be eased by more effective ways of data transfer and maintenance.

Encourage more effective coordination amongst different initiatives to minimize inefficiencies in on-the-ground due diligence.

- ***Downstream break-out session:***

Downstream pilot participants will establish a small group to explore the possibility of developing common content and model principles for reaching out to suppliers and other companies in the downstream supply chain, in order to make them aware of due diligence and reasonable expectations, and to avoid harmful unintended consequences of regulatory pressure.

Pilot participants with the assistance of the OECD Secretariat will increase outreach to Asia-based downstream companies, particularly intermediate product manufacturers, and industry associations.

In the last cycle of the pilot, establish a baseline of information with other industry organisations to highlight emerging practices, particularly amongst SMEs and end-product manufacturers that are not participating in the pilot. This will entail developing a simplified questionnaire to be circulated to industry associations and their SME and end-product manufacturer members.

Pending resources, the OECD will issue an additional follow-up report in 2013 after the completion of the 3T pilot, following up with pilot participants and after the adoption of the final SEC rules implementing section 1502 of the Dodd Frank Act.