



ICGLR-OECD-UN Meeting on implementing due diligence recommendations for responsible mineral supply chains

5-6 May 2011

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 ICGLR-OECD-UN GoE joint meeting provided the opportunity to bring together various stakeholders involved in implementing, or supporting efforts to implement, the *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*¹ and the due diligence guidelines of the UN Group of Experts on the DRC² (for the sake of convenience hereafter referred to as the "OECD and UN GoE due diligence guidance").

Participants in the ICGLR-OECD-UN GoE joint meeting included OECD, ICGLR and other partner countries, international organisations, industry at several levels of the mineral supply chain, international and local civil society organisations, expert consultancy groups and other independent experts.

II. Objectives

The ICGLR-OECD-UN GoE joint meeting sought to (i) discuss a common methodology to report how due diligence implementation throughout the supply chain; (ii) review the practical tools developed by industry to assess their consistency with the existing OECD and UN GoE due diligence guidance and overcome possible challenges; (iii) ensure the integration of the recommended due diligence processes

¹ 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. To download the OECD Guidance and get background information, see www.oecd.org/daf/investment/mining.

² 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.

and standards into on-going certification and traceability initiatives at national and regional level and harmonisation of approaches regarding the implementation of due diligence reporting requirements under section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

The two-day ICGLR-OECD-UN GoE joint meeting was divided into three core sessions and one final session focusing on follow-up actions. Specific objectives for the three core sessions included:

- **Session I – Implementing the OECD and UN GoE due diligence guidance for responsible mineral supply chains: Tracking performance and measuring improvement**
Agree on the Terms of Reference for the implementation phase of the OECD Guidance and solicit concrete feedback on the proposed framework to track due diligence performance and measure progressive improvement during the implementation phase.
- **Session II — Practical steps and coordinated efforts to implement the OECD and UN GoE due diligence guidance upstream in the supply chain of tin-tantalum-tungsten in the Great Lakes Region**
Identify the concrete progress made to implement and ensure normative and operational harmonisation of upstream international, regional and industry initiatives to establish chain of custody/traceability, map mine sites and carry out risk assessments, and finalise the ICGLR Regional Certification Scheme.
- **Session III — Implementing OECD and UN GoE due diligence guidance downstream in the supply chain**
Identify the concrete progress made to implement the OECD and UN GoE due diligence guidance, including through industry initiatives, and explore how downstream companies can rely on OECD-UN due diligence guidance to meet reporting requirements under Section 1502 of the U.S. Dodd Frank Act.

Questions were posed to the participants in the annotated agenda to inform the discussion and meet these objectives.

III. Summary Conclusions

Participants welcomed the continued cooperation between the ICGLR, the OECD and the UN Group of Experts on the DRC in the implementation of the supply chain due diligence within their respective roles and mandates.

The OECD and the ICGLR entered into a formal MoU to establish a programme of cooperation to promote the understanding, visibility and use of the OECD Due Diligence Guidance. In particular, it was agreed that the ICGLR would participate in and cooperate with the OECD during the implementation phase of the OECD Due Diligence Guidance including in the preparation of reports on implementation; and raise awareness and encourage relevant companies and actors operating in mineral extraction and trade in the Great Lakes Region to implement the OECD Due Diligence Guidance.

The UN GoE on the DRC has been mandated by the UN Security Council to evaluate the impact of the due diligence guidelines and continue its collaboration with other forums. In determining whether to designate an individual or entity supporting the illegal armed groups in the eastern part of the Democratic Republic of the Congo through illicit trade of natural resources, pursuant to sub paragraph (g) of paragraph 4 of resolution 1857 (2008), the Sanctions Committee should consider, amongst other things, whether the individual or entity has exercised due diligence consistent with the due diligence steps outlined in the UNSC Res 1952/2010.

As far as the OECD is concerned, the Secretariat was mandated by the OECD Investment Committee and the OECD Assistance Committee to report on the implementation of the OECD Due Diligence Guidance. It is also expected that the forthcoming OECD Ministerial Council Meeting on May 25th will provide a higher level mandate to the OECD Investment Committee and the Development Assistance Committee to report to OECD Council on the implementation of the Recommendation on the Due Diligence Guidance.

The existence of common ground and concurrent mandates justifies the establishment of a common platform through the OECD-hosted working group to report on the implementation of supply chain due diligence. Companies participating in the implementation phase which can demonstrate that they are making genuine good faith efforts to implement due diligence will be able to “know and show” that they have responded appropriately to the identified risks in different contexts with predictability of outcomes.

Participants recognised the significant and positive steps that have been made at the international (e.g. OECD and UN GoE due diligence guidance), regional (e.g. ICGLR Regional Certification Scheme), national (e.g. CTC-DRC and DRC mapping efforts) and industry level (e.g. iTSCi, EICC-GeSI) to ensure sustainable and conflict-free sourcing of minerals from eastern Democratic Republic of the Congo.

Participants also noted the major progress that has been achieved in a relatively short period of time with regards to harmonisation of the normative framework through the adoption of the OECD and UN GoE due diligence guidance and its integration into on-going certification, traceability and due diligence initiatives (e.g. see details below on mapping/risk assessments, establishing chain of custody/transparency and auditing). Some participants felt that more needed to be done to ensure *operational harmonisation* and coherence of the various schemes and industry initiatives, and in particular, to consolidate the various audit proposals into one streamlined process. *It was agreed that participants would intensify efforts to harmonise the schemes and initiatives at the operational level.*

Participants urged companies to begin due diligence immediately and not wait for schemes or initiatives to be put in place. Some participants felt that the faster upstream actors implement due diligence in good faith, the less potential there would be for a de facto embargo of minerals from the DRC and adjoining countries.

Participants noted that due to complex operating environments such as eastern DRC, some due diligence recommendations would take time to implement. *It was clarified that the OECD and UN GoE due diligence guidance account for practical difficulties in a number of ways, and expect companies to use reasonable and good faith efforts to implement due diligence. Due diligence therefore should be understood as a responsibility of process and not a responsibility of result.* Participants noted however that upstream companies acting in good faith could immediately implement a number of relatively simple, straight-forward due diligence measures, like adopting a policy, communicating it to suppliers and begin collecting on-the-ground information from suppliers and other stakeholders.

Participants agreed upon the Terms of Reference for the implementation phase OECD Due Diligence Guidance.

Participants questioned how the various initiatives and schemes, particularly the iTSCi scheme³ and the ICGLR Regional Certification Mechanism,⁴ would be funded and sustained. It was clarified that the iTSCi

³ Led by ITRI, the world’s leading membership-based tin organisation, in collaboration with the Tantalum-Niobium International Study Centre (T.I.C.), the ICGLR and its member states, the iTSCi scheme supports responsible sourcing of tin, tantalum and tungsten from Africa’s Great Lakes Region through chain of custody systems, on-the-ground risk assessments and audits.

⁴ On 15 December 2010, the Heads of State of the International Conference on the Great Lakes Region (“ICGLR”) signed the Lusaka Declaration, which calls on companies sourcing minerals from the Africa’s Great Lakes region to

scheme has been funded almost entirely by upstream industry without any donor contributions to date, and that while iTSCI anticipates to be sustained by industry in the future, funding limitations would determine the pace of implementation and progress. It was further clarified that the ICGLR was planning to carry out a study of funding models for consideration by the ICGLR Steering Committee against the Illegal Exploitation of Natural Resources. Likewise, the OECD was planning to carry out a feasibility study of an international mechanism to support due diligence of companies in the entire mineral supply chain. *Participants agreed that the OECD, the ICGLR and the World Bank should collaborate to determine the funding feasibility of the various initiatives to ensure complementarity and avoid duplication of work.*

Throughout the joint meeting, there were numerous concerns raised about the unintended consequences of Section 1502 of the U.S. Dodd-Frank Wall Street Reform and Consumer Protection Act.⁵ Most notably, participants highlighted how smelters may direct their sourcing of minerals away from Africa all together in order to avoid their customers that purchase metals the risks associated with issuing a conflict minerals report under the Act. It was noted that end- product downstream companies do not buy minerals directly, nor have commercial relationships with smelters. Participants noted how this “de facto embargo” could have severe adverse impacts in the DRC as well as adjoining countries and some of them questioned the compatibility of such an outcome with the object and purpose of the Act. *Participants agreed to issue a joint document addressed to the SEC inviting them to rely on the OECD and UN GoE due diligence guidance, in particular for the categorization of products as not-DRC conflict-free and the interpretation of what due diligence means, which should be understood as a responsibility of process and not a responsibility of result relative to companies’ reports of conflict material status. Participants agreed that such a statement should also clearly welcome and support companies which are implementing in good faith the OECD and UN GoE due diligence guidance and continue sourcing minerals from the Great Lakes Region as an example of how companies can positively contribute to lasting peace and development while mitigating competitive and reputational risks posed by publicly reporting. It is assumed that governmental and organisational participants will seek home country or headquarter’s approval of such a document.*

IV. Summary of main issues in each session

a. Session I – Implementing the OECD and UN GoE due diligence guidance for responsible mineral supply chains: Tracking performance and measuring improvement during a pilot implementation phase

Participants discussed in detail the Terms of Reference for the implementation phase of the OECD Guidance. Some participants asked for more clarity as to what exactly the implementation phase of the OECD Guidance was, and how it would be carried out. *It was clarified that the implementation phase of the OECD Due Diligence Guidance would focus on tin, tantalum and tungsten from Africa’s Great Lakes*

comply with the OECD Guidance and directs the ICGLR Secretariat to integrate the standards and processes of the OECD Guidance into the six tools of the ICGLR Regional Initiative against the Illegal Exploitation of Natural Resources, also approved on that occasion. A core element of the six tools is the ICGLR Regional Mineral Certification Mechanism.

⁵ In July 2010, US President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 into law. Section 1502 of the Act imposes a new reporting requirement on publicly traded companies listed on US Stock Exchanges that manufacture products for which "conflict minerals" are necessary to their functionality or production. Conflict minerals include "columbite-tantalite (coltan), cassiterite, gold, wolframite, or their derivatives" and other minerals determined by the US Secretary of State to be financing conflict in the DRC. Under the new law, companies listed on US Stock Exchanges would be required to disclose in their annual reports whether the minerals in their products originate from the DRC or adjoining countries, and if so, the due diligence measures taken to ascertain the origin of the minerals. Companies would also be required to designate in their annual reports the products which are non “DRC Conflict-Free”. The US Securities and Exchange Commission (“SEC”) is planning to adopt final rules on these reporting requirements in the fall 2011.

Region and that it would be carried out in co-operation with the International Conference on the Great Lakes Region during the period June 2011 - June 2012, as agreed in the OECD-ICGLR Memorandum of Understanding signed in December 2010. The OECD-hosted working group on the implementation of the 3Ts Supplement will serve as a peer learning forum for stakeholders to share information, experiences, best practices and lessons learnt from the ground to solve problems and assist with the effective implementation of the Supplement on Tin, Tantalum and Tungsten. The OECD-hosted working group, facilitated by the OECD Secretariat, would review and discuss three progress reports on measures taken by participating companies to carry out due diligence in accordance with the –OECD Guidance, both upstream and downstream in the supply chain. A final report on the implementation of the OECD Guidance will be submitted by the OECD Secretariat to the OECD Investment Committee and the Development Assistance Committee by the end of 2012. Drawing on lessons from the ground, the final report on the implementation phase would identify due diligence challenges, share best practices, risk mitigation strategies and tools used to implement the OECD Guidance.

The implementation phase will also offer the opportunity to agree upon a joined-up strategy to develop capacity of the ICGLR and its member countries to implement the OECD Guidance and identify priority areas that would provide the enabling conditions for the successful implementation of the 3Ts Supplement. To this end, the donors involved in supporting a conflict-free minerals supply chains will constitute a “conflict-free minerals donor group”. This group will collaborate with the Governments of ICGLR countries and the ICGLR National Coordinators in charge of the ICGLR Regional Initiative Against the Illegal Exploitation of Natural Resources.

The implementation phase shall provide the opportunity to build trust and mutual confidence among Participants taking part or contributing to a genuine collaborative endeavour. For these reasons, Participants, the OECD Secretariat and any party appointed by the OECD Secretariat to liaise with Participants in the implementation phase, shall treat the information collected during the implementation phase as strictly confidential. As defined in the Terms of Reference, unless otherwise agreed by the Participants, their identity in the implementation phase will not be made public.

It was further clarified that the implementation of the OECD Due Diligence Guidance would not be a monitoring exercise for accountability purposes, but would be intended to help companies “know and show” the due diligence measures they take, identify possible challenges as well as ways to overcome them and share best practices. Companies would share their initial experiences and learn lessons from other participating companies’ practical experiences to ensure that the OECD Guidance is implemented in an effective manner. It was agreed that companies volunteering to participate in the implementation phase (“participating companies”) would report to the OECD Secretariat or consultants hired by the OECD Secretariat on the progress made in implementing the OECD Guidance. In order to foster trust and uninhibited exchange, it was agreed that in accordance with the approved Terms of Reference for the implementation phase, all reports by the OECD on implementation would not name any participating companies, nor attribute any comment or specific measures to them (“Chatham House Rule” applied to the implementation phase).

Consultants hired by the OECD would develop in consultation with upstream and downstream focal points a questionnaire for tracking progress during the implementation phase in order to report accurately on the measures taken and improvement made by participating companies. The questionnaire is intended to enable the OECD Secretariat and any consultants hired by the OECD to liaise with participating companies to collect comparable information, identify common challenges and best practices, while at the same time enabling companies to build their due diligence capacity and learn how to report on their due diligence measures. Any proposed performance indicators would be intended to serve as a self-assessment tool to help companies improve their performance and measure any progress made internally as an integral part of their process of learning-by-doing to implement responsible

sourcing practices. A first draft framework for tracking implementation of the OECD Guidance was presented at the meeting. Some participants felt that the proposed framework was too complicated, particularly for upstream companies operating on-the-ground in the Great Lakes region who may lack the capacity to carry out due diligence, let alone report on the measures they had taken. Downstream companies felt that the proposed framework did not reflect the approach and methods anticipated for downstream due diligence and was focused more on data collection rather than process or system analysis. However, many participants felt that the framework with the necessary adjustments could provide a very useful starting point to assess supplier risk and help supplier get accustomed to the expectations set in the OECD Guidance. *It was clarified that the all members of the OECD-hosted working group on implementation would have time to provide written comments on the draft framework. Focal points for the upstream and downstream supply chain were also identified to further assist with the finalisation of the proposed framework.*

As part of the implementation phase, some participants felt that the OECD Secretariat and working group on implementation should first disseminate and promote the OECD Guidance on-the-ground in the Great Lakes Region so that actors operating upstream can become familiar with the international due diligence expectations. *It was clarified that the OECD Secretariat had already carried out a dissemination and implementation workshop in Goma, DRC in March 2010, and would continue to carry out such workshops in coordination with the ICGLR and its member countries.*

It was also clarified that during the implementation phase, the UN Group of Experts would remain available to help clarify factual circumstances on-the-ground wherever relevant to their mandate and appropriate.

b. Session II – Practical steps and coordinated efforts to implement the OECD and UN GoE due diligence guidance upstream in the supply chain of tin-tantalum-tungsten in the Great Lakes Region

Progress report on mapping and on-the-ground risk assessment

Step 2 of the OECD and UN GoE due diligence guidance calls on upstream companies to identify and assess risk of serious abuses or direct or indirect support to non-state armed group and public or private security forces in their supply chains. To do so, the OECD and UN GoE due diligence guidance specifies that upstream companies should collect detailed, on-the-ground, qualitative information on the suppliers, mine sites, transportation routes and points where minerals are traded in their supply chains.

In order to increase efficiency and lower the individual due diligence burden, the OECD and UN GoE due diligence guidance recognises that the due diligence measures, including the on-the-ground risk assessments, may be carried out jointly and coordinated by industry organisations. For example, the iTSCI scheme requires company members to integrate the model supply chain policy. The scheme is also intended to operationalise many elements of the OECD and UN GoE due diligence guidance, including the on-the-ground risk assessment and independent audit of the smelter/refiner's due diligence (for iTSCI chain of custody/traceability and audit, see below). The on-the-ground audit of the ICGLR Mineral Certification Scheme, once up and running at an adequate and effective level, may also help upstream companies meet the on-the-ground assessments provisions of the OECD Guidance.

Interactive maps of mine sites, transportation routes or points where minerals are traded can also provide a useful source of information for upstream company risk assessments, provided those maps are up-to-date, accurate and produced by reliable sources. Reliable maps with data on conflict conditions could therefore reduce the on-the-ground assessment burden for upstream companies.

In order for joint on-the-ground risk assessments and mapping efforts to effectively implement or support the implementation of OECD and UN GoE due diligence guidance, they should rely on the standards and processes therein, which provide a common reference point for all actors in the entire mineral supply chain.

On the issue of harmonisation of approaches to on-the-ground risk assessment and management, participants noted that quite a lot of progress had been achieved in relatively short amount of time. Following the direction given by the ICGLR Heads of State in the Lusaka Declaration, the ICGLR had recently integrated many relevant standards from the OECD Due Diligence Guidance into the Regional Certification Mechanism. It was also clarified that the iTSCi scheme would include adherence to the OECD and UN GoE due diligence guidance as membership criteria, and would use the OECD and UN GoE due diligence guidance as a central reference point for undertaking on-the-ground risk assessments.

On the issue of mapping mine sites in the DRC, it was clarified that two separate but complementary efforts are currently underway under the authority of the DRC Minister of Mines. One effort planned by the DRC Cadastre Minier involving field-based teams of Ministry staff and civil society representatives, would map mine sites, transportation routes and points where minerals are traded with corresponding interactive, objective data on serious abuses and instances of direct or indirect support to non-state armed groups and public security forces. A second mapping effort is part of the 'centres de negoce' initiative led by the DRC government and the UN to create a marketplace where traceable minerals can be traded in a secure environment before they are being transported to the border. Joint teams involving Congolese administration, civil society, MONUSCO and BGR, will map, visit on a regular basis and validate mine sites and transportation routes that are supposed to supply the centres. These teams will decide on a red, orange or green designation of mining sites. This categorisation is similar to the one proposed in the ICGLR Mineral Tracking and Certification Scheme (replacing orange with yellow though).

One participant further noted that in these categorisations OECD standards of "contributing to conflict" are used and that the illegal presence of children working in mines was factored into the categorisation. Another participant noted however that some elements of the planned categorisation may differ from the standards of the OECD and UN GoE due diligence guidance. For example, where the OECD and UN GoE due diligence guidance allows for risk mitigation of direct or indirect support to public security forces (i.e. a "yellow" light), such activities would be designated as "red" lights in the DRC mine site categorisations, according to the stricter criteria applied by the DRC Government. One participant expressed some reservations about the DRC mapping efforts, explaining that it works only for artisanal mines and not semi-industrial small-scale or large-scale mines, where MONUSCO would not visit. This participant felt that since "formalisation" of the mining sector was a policy objective of the DRC Ministry of Mines, all the various schemes and initiatives on conflict-free mineral supply chains needed to consider the different structure of the supply chain and the associated risks with minerals from semi-industrial, small-scale or large-scale mines. Furthermore, some participants noted that legal rights to a mine should also be factored into the categorisation,. *It was clarified that although the OECD and UN GoE due diligence guidance does not address the issue regarding the existence of a legal title to a mine, respect for national law is a cornerstone of the OECD Guidelines for Multinational Enterprises, on which the OECD Due Diligence Guidance is based.*

It was also clarified that in accordance with the OECD and UN GoE due diligence guidance, the iTSCi scheme would assess suppliers and conduct on-the-ground risk assessments of mine sites, transportation routes and points where minerals are traded.

Participants generally agreed that with significant pressure being leveraged as a result of Section 1502 of the Dodd-Frank Act, mapping, categorisation and other on-the-ground risk assessments should begin as quickly as possible to reduce the risk of a de facto embargo. Some participants felt that as a priority,

“green” mine sites in the DRC should be assessed and designated as such, in particular as far as the Katanga Province is concerned.

Progress report on chain of custody/traceability

As part of Step 1 of the OECD and UN GoE due diligence guidance, upstream companies are expected to establish a chain of custody/traceability system for the minerals from “red flag locations of mineral origin and transit”. The information collected and maintained in such a system is intended to form the basis of the company’s risk assessment, where the chain of custody/traceability information should be verified through on-the-ground research, and additional qualitative information collected on the nature of mineral production and trade.

The iTSCi scheme is intended to operationalise this element of the OECD and UN GoE due diligence guidance by bagging and tagging minerals at mine sites, collecting vital information on chain of custody and traceability (e.g. locations where minerals are consolidated, traded, processed or upgraded, the identity of all upstream intermediaries, consolidators or other upstream actors in the upstream supply chain, etc.), and maintaining that information individually on a computerised database.

Participants recognised and welcomed the significant progress made by the iTSCi scheme in a short period of time, in particular the progress in bagging and tagging minerals in Rwanda and efforts made in Katanga, although it was noted that the DRC mining ban and the demands of end-users as a result of what some participants considered as a misinterpretation of the spirit of Section 1502 of Dodd-Frank had effectively halted bagging and tagging efforts in the Kivus. Participants also recognised the significant achievements made in the iTSCi database that is based on the ‘Maximo’ Asset Management system, an Industry Standard, and which is capable of tracking individual batches of tagged minerals in the supply chain while maintaining the relevant chain of custody information required under the OECD and UN GoE due diligence guidance.

Some participants felt that while the progress made was commendable, iTSCi is just an option to meet traceability requirements, that other systems would probably need developing for non-artisanal production and that more needs to be done to ensure that the scheme is credible, in particular for risk assessment and audit. To bring more transparency, participants suggested that a tripartite body oversees the iTSCi scheme and that the database be made available to the ICGLR. It was noted that the iTSCi scheme has a tripartite advisory panel made up of representatives of independent NGO’s, other stakeholders, industry groups and government representatives operating in the relevant implementing countries and with an in-depth knowledge of the mining sector. It was also clarified that the ICGLR would be setting up a mineral database as part of the six tools of the Regional Initiative against the Illegal Exploitation of Natural Resources in the Great Lakes Region, and that further discussions were necessary between ITRI and the ICGLR to determine the relationship between the planned ICGLR database and the existing and operating iTSCi database.

Due to time limitations, participants were unable to discuss all the items on the agenda for this session.

Progress report on ICGLR mineral certification scheme

The ICGLR Regional Certification Mechanism will provide a certified system to assure buyers of minerals from the Great Lakes Region that the extraction, trade, handling and export of minerals do not contribute to conflict or serious abuses. While purchasing ICGLR-certified minerals does not remove the responsibility of companies to conduct due diligence, it would significantly reduce the due diligence burden by providing reliable sources of information and on-the-ground assessment data yielded by ICGLR

audits. In that regard, some participants felt that stakeholders needed to clarify how ICGLR audits could be considered “reliable”.

After some multi-stakeholder consultations, the ICGLR Regional Certification Mechanism is expected to be finalised after one final public consultation planned for May-June 2011. The ICGLR member states are then expected to begin implementing the mechanism at country-level. Some participants felt that more consultation was needed, particularly with industry that would be directly impacted by the ICGLR mechanism, who have not yet been consulted or given the opportunity to comment.

Participants supported the work done by the ICGLR to date, recognising the significant progress made to integrate OECD-UN due diligence guidance, as well as the requirements of the CTC scheme, into the Regional Certification Mechanism.

Participants questioned how the various initiatives and schemes, particularly the iTSCi scheme and the ICGLR Regional Certification Mechanism, would be funded and sustained. Some participants felt that it was not feasible to put the cost onto upstream industry, particular small and medium-sized enterprises (i.e. local exporters) that would be unable to pay for audits. It was clarified that there had been some consultations on the financing of the ICGLR mechanism, and that there seemed to be some support, from both industry and civil society, for self-financing by upstream industry. However, participants noted that some of the industry that would be impacted by the ICGLR mechanism had not been consulted and were not be prepared to fund a scheme which appears to duplicate industry efforts carried out through the iTSCi scheme. Some participants noted that according to the OECD and UN GoE due diligence guidance, industry remains ultimately responsible for ensuring effective due diligence in their supply chains, and thus should be able to determine which models and schemes are deemed most appropriate for them to use and fund. Other participants noted that it was the sovereign right of ICGLR countries to determine how to manage and control mineral production and trade within their borders, and therefore while industry would remain responsible for ensuring due diligence, they should do so in a manner consistent with national law and the demands of host government within the framework of the regional initiative supported by them.

Nonetheless, it was clarified the ICGLR was planning to carry out a study of funding models for consideration by the ICGLR Steering Committee against the Illegal Exploitation of Natural Resources. Likewise, the OECD was planning to carry out a feasibility study of an international mechanism capable of supporting due diligence of companies in the entire mineral supply chain. *Participants agreed that the OECD, the ICGLR and the World Bank should collaborate to determine the funding feasibility of the various initiatives to ensure complementarity and avoid duplication of work.*

c. Session III – Implementing OECD and UN GoE due diligence guidance downstream in the supply chain

Under Step 2 of the OECD and UN GoE due diligence guidance, downstream companies are expected to identify the smelters in their supply chains and - if those smelters are sourcing from a red flag supplier or from red flag location of mineral origin and transit - evaluate the due diligence of the smelter against the OECD and UN GoE due diligence guidance. Industry tools, such as the proposed E-TASC data management system and EICC-GeSI Conflict Free Smelter program, are intended to operationalise the downstream company risk assessment (Step 2 of the OECD and UN GoE due diligence guidance) and smelters' independent third party audit (Step 4 OECD and UN GoE due diligence guidance).

To build public trust and assurance, under Step 4 of the OECD and UN GoE due diligence guidance, companies should ensure an independent third-party audit of the smelter/refiner's due diligence process. The EICC-GeSI Conflict-Free Smelter program (“CFS program”), which audits smelters against protocols

developed by the EICC-GeSI and publish lists of the “conflict-free” smelters found compliant with the EICC-GeSI protocols, may serve to operationalise Step 4 of the OECD and UN GoE due diligence guidance. However some participants felt that more work was necessary to ensure compatibility of approaches while some others felt that CFS protocols conformed to the OECD-UN due diligence guidance.

Participants noted that the inclusion of the OECD Guidance in the EICC and GeSI CFS eligibility criteria is a significant positive step in the right direction. However, some participants felt that the second part of the CFS audit for smelters sourcing from DRC countries (after the smelter is found to be consistent with the OECD Guidance), which independently evaluates if all sources of minerals purchased by the smelter are 100% “conflict-free”, is potentially problematic because it sets result-based standards for smelters which do not adequately consider the complex operating environments of conflict-affected and high-risk areas, creating a disincentive for smelters to continue to source minerals from the DRC and its adjoining countries. Other participants explained that the “conflict-free” part of the CFS audit is intended to facilitate the source and chain of custody reporting to comply with Section 1502 of the Dodd-Frank Act, which mandates disclosure of not DRC conflict-free products and due diligence. . They also explained how the development of the CFS audit protocols benefited from input received from other stakeholders.

Participants stated that Section 1502 of Dodd-Frank Act requires issuers to describe the products which are not DRC conflict free. Some participants felt that this disclosure and reporting requirement exposes companies to risks of legal liability for non-compliance, reputational damage by media, NGOs, competitive damage when compared with other companies which are not subject to the same reporting obligations. Such black or white determinations could also lead to interpretations which could be inconsistent with the constructive approach adopted in the OECD and UN due diligence guidance. Participants also explained that for tin in particular, designating “products” as conflict-free and not conflict-free is practically impossible unless smelters stop sourcing from the region, because it is not feasible to segregate cassiterite from different sources during the smelting process. Thus, all of the tin output of a smelter sourcing even partially from the DRC or adjoining countries would potentially be “contaminated”, if no reliable system is in place to cover 100% of purchased minerals. Participants therefore agreed that the central issue to be addressed was the clarification of the basis for the categorisation of “DRC conflict-free” and “not DRC conflict-free” products for SEC purposes. Many participants generally felt that such a categorisation should be based on conformity of the issuer and the smelter with the OECD - UN guidance, which allows for reasonable and good faith efforts to implement the Guidance, and for risk mitigation for risks of direct or indirect support to public/private security forces under strict requirements (risk management plan + significant measurable improvement within six months).

Some participants noted however that there was a clear incentive provided by the Act (reduced obligation under the law) to avoid sourcing from the region. It was also perceived that that end-product downstream companies would use a narrow interpretation of the law (on “conflict-free” sources) and purchase minerals for which they have control over sourcing to influence avoiding African minerals all together and the associated risks. Downstream participants noted that they have been engaged in the development of the CFS program and industry traceability schemes for more than a year, and are supporting developing mechanisms to encourage and develop legitimate sourcing from the region, both through iTSCi and other mechanisms. Participants questioned whether or not it was appropriate to pressure downstream companies during the meeting into taking on such legal and reputational risks associated with sourcing from the DRC and its adjoining countries. Participants noted that some downstream companies may prefer not to issue a conflict minerals report under Section 1502 of Dodd-Frank Act and therefore may chose to avoid sourcing from suppliers who directly or indirectly source from smelters that source from the DRC and adjoining countries. A participant explained how an intermediary product manufacturer in the downstream supply chain was already directing the smelters in their supply chain to discontinue sourcing minerals from the DRC and adjoining countries.

Many participants felt that downstream companies needed to clarify the assurances they needed to justify the risks taken vis-à-vis consumers, civil society, regulators, investors, competitors and company managers and enable sustainable and responsible trade of minerals to continue from the Great Lakes Region. It was also clarified that most downstream companies do not direct sourcing for smelters, but would simply carry out the audit and publish a list of those smelters that are determined to be DRC conflict-free. The EICC and GeSI CFS are not planning to publish the names of those smelters that were determined “not compliant”. However, it was noted that due to such an interpretation of Section 1502 of the Dodd-Frank Act, most actors in the supply chain, like traders and retailers, are in practice not incentivized to continue sourcing from the DRC and adjoining countries.

Participants also noted that significant education and awareness-raising was needed. Many of the downstream sectors covered directly or indirectly by Section 1502 of the Dodd Frank Act were unaware of the “conflict minerals” issue and the complexities associated with sourcing from the Great Lakes Region. It was further noted that the complexity and global nature of the supply chain contributes to this lack of awareness.

Participants agreed that in terms of education and awareness-raising, more effort needed to be made by all stakeholders, including civil society organisations at the forefront of the conflict-free campaign, to convey the positive message that companies choosing to continue to responsibly source from the DRC and its adjoining countries, despite all the difficulties, are contributing to development and a transition towards lasting peace and security and that such efforts should be recognised and supported by local and international civil society organisations.

Participants agreed to develop a joint document – whose format would be either a statement or a letter to the SEC -- from participants in the ICGLR-OECD-UN joint meeting. Participants agreed that the joint document should urge the SEC to adopt a process-oriented (i.e. consistent with the OECD and UN guidance) approach to “not DRC conflict-free” product designations. Participants also agreed that the joint document should convey the positive message of continued and responsible sourcing from DRC and the Great Lakes Region, so downstream companies can better appreciate the opportunity cost associated with responsible sourcing and explain their sourcing decisions to the public, investors, managers and regulators. It is assumed that if governmental and organisational participants deem it appropriate to sign onto the joint document, they will seek home country or headquarters' approval.

V. Next Steps (Session IV)

The participants in the ICGLR-OECD-UN GoE joint meeting agreed on the following action plan:

- Issue a **joint document in the format of a letter or statement addressed to the SEC** outlining the “common understanding” among all stakeholders about what due diligence and products that are not DRC conflict-free actually mean. This statement is intended to constructively address the tension between process and result-oriented provisions in the Dodd-Frank Section 1502, and ensure a coherent interpretation of all the provisions with respect to the objective and purpose of the law, which is to ensure that trade in minerals does not directly or indirectly finance or benefit armed groups while not to create an embargo on legitimate minerals from the DRC and its adjoining countries.
- **Disseminate the OECD and UN GoE due diligence guidance and encourage companies throughout the supply chain to participate in the pilot implementation**, including through regional workshops in the Great Lakes Region, like those organised by the OECD in co-operation with the ICGLR.

- Members of the OECD-hosted working group on implementation of the OECD Due Diligence Guidance **launch the implementation phase** of the OECD Due Diligence Guidance: (a) circulate the final terms of reference and confirm private sector participation in the implementation phase; and (b) finalise the framework for reporting on implementation of the OECD Guidance in consultation with stakeholders.
- The UN Group of Experts on the DRC will **continue to collaborate** with the OECD during the implementation phase pursuant to UN Security Council Resolution 1952/2010.
- The International Conference on the Great Lakes Region, the OECD and the World Bank **will jointly develop the terms of reference and carry out a feasibility study** on the establishment of an institutionalised mechanism to support the implementation of the OECD due diligence Guidance and audits under the ICGLR regional certification mechanism, drawing lessons from the successful experience of the EITI.
- The OECD and World Bank **will cooperate to take stock of donor-supported programs** in the Great Lakes' region (e.g. mapping, traceability, certification, training of customs officials and security forces, and more broadly infrastructure and professionalization/formalisation of the artisanal sector) and liaise with existing structures, such as DRC *Groupe Thématique Mines*, to clarify what donors are already doing, which programs could be better coordinated to maximise impact and what remains to be done to create the enabling conditions for the implementation of the OECD and UN GoE due diligence guidance.
- Civil society participants **agree to issue public statements welcoming and supporting** companies which are implementing in good faith the OECD and UN GoE due diligence guidance *and continue sourcing minerals from the Great Lakes Region*, as an example of how companies can positively contribute to lasting peace and development.
- While recognising the significant progress towards harmonisation of the normative framework, members of the OECD-hosted working group on implementation **agree to improve coherence and avoid duplication of efforts in the operationalisation of different schemes and industry initiatives** and, in particular, consolidate the various audit proposals - into one, streamlined process.