

Civil society statement at the 10th Forum on Responsible Mineral Supply Chains, Paris, 10-12 May 2016

National and international civil society organisations working to advance transparency and accountability in supply chains welcome this 10th Joint Forum on Responsible Mineral Supply Chains.¹ The Forum represents a commitment by governments and companies to engage in more responsible sourcing and trading in line with applicable laws and standards, such as the United Nations Guiding Principles on Business and Human Rights (UNGPs).

As articulated in the UNGPs, states have an obligation under international law to take appropriate legislative, policy and other measures to protect people against human rights abuse by third parties such as companies. Additionally, the UNGPs require that companies “do no harm” and take pro-active steps to ensure that they do not cause or contribute to human rights abuses in their global operations – and respond to any human rights abuses if they do.

As the international standard for mineral supply chains, the Organisation for Economic Cooperation and Development (“OECD”) Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (the “Guidance”) translates the second pillar of the UNGPs, which elaborates the corporate responsibility to respect human rights, into an operational guide for the minerals sector. The Guidance makes clear in practical terms the steps that companies should take to identify, prevent and address risks, such as human rights abuses, in the mineral supply chain. All 34 OECD countries have endorsed the Guidance, as well as nine non-OECD members and The International Conference on the Great Lakes Region (“ICGLR”). Most recently a Chinese industry body affiliated to the government acknowledged it to be the internationally-recognised due diligence standard and reflected it in their own supply chain guidelines.

This 10th Forum is a critical opportunity to review our progress towards achieving real impact on the ground and in implementing the Guidance in pursuit of more responsible, transparent and resilient mineral supply chains.

While we are encouraged to see that public commitment to the OECD Guidance has grown, much work is still to be done. We are concerned that practical implementation of the framework by states and companies is still severely limited.

¹ The ICGLR-OECD-UN GoE Multistakeholder Forum on Responsible Mineral Supply Chains, May 2016, <http://mneguidelines.oecd.org/icglr-oecd-un-forum-paris-2016.htm>

Remaining Challenges:

States are not meeting their commitment to ensure that companies operating in or from their territories implement the OECD Guidance

We are concerned that OECD member and non-member states are not taking adequate steps to ensure that companies operating in or from their jurisdictions are meeting the OECD standard in full. While states have committed to implement the Guidance, they are falling woefully short when it comes to taking meaningful steps to do so.

Many governments – including European Union member states – are reluctant to legally require companies to do due diligence. This means relying on an entirely voluntary system even though take-up of such schemes by companies has historically been slow. For example, companies have stated that unless they are legally required to undertake due diligence in conformity with the OECD Guidance, they will not do it.ⁱ

We welcome and are encouraged that some states, such as the Democratic Republic of Congo, Rwanda and the United States of America have introduced domestic laws relating to the Guidance, which require companies operating within their jurisdictions to undertake supply chain checks for certain ‘designated’ minerals. But even those governments only do so for a limited number of minerals. Additionally, they are failing to ensure that companies are meeting the minimum standards of the law for the select minerals chosen. In most cases company due diligence measures and reporting fall short of even the basic legal requirements.

Research undertaken by Amnesty International and Global Witness in 2015 revealed that only 20 percent of the 100 randomly selected companies surveyed were adequately checking and disclosing under Section 1502 of the US Dodd Frank Act whether their products contain conflict minerals from the Great Lakes Region.ⁱⁱ

Companies are failing to demonstrate that they are assessing or addressing human rights and other supply chain risks sufficiently, and they lack robust annual reporting

We are concerned that companies are failing in their efforts to undertake robust and meaningful risk management and annual public reporting that includes specific detail about identified supply chain risks and how these risks have been addressed. To fully assess and address risks in their supply chain, companies need to respond to red flags identified in the context of sourcing or trading (Step 2 of the Guidance). This means that they should be prepared to tackle issues ranging from the financing of abusive armed groups, extortion,

corruption and smuggling; to serious human rights abuses such as the worst forms of child labour and forced evictions; and to significant environmental or health impacts.

But in reality, supply chain due diligence appears to be treated by many companies as a checklist or an exercise carried out with the ultimate aim of achieving “conflict-free” status. Due diligence is not an exercise in seeking perfection or eradicating risk from supply chains, rather it is an on-going process of identifying and managing risk responsibly.

Candid, detailed, regular public reporting coupled with independent and transparent third party audits at key points in the supply chain are vital to this, because they allow progress to be measured visibly over time and guard against the process becoming a mere showcase for occasional successes.

Furthermore, if a company finds human rights abuses such as the worst forms of child labour in its supply chain, it is not enough to cut out a supplier and walk away. In collaboration with government and other suppliers, a strategy should be designed and implemented to address these practices.

In a January 2016 report, Amnesty International and Afreewatch found that major electronics brands along the cobalt supply chain failed to demonstrate that they were carrying out human rights due diligence as required by international standards. Amnesty International contacted 26 companies in connection with the report – crucially, none of those that responded provided enough details to independently verify where the cobalt in their products came from.ⁱⁱⁱ

The Enough Project has documented the connection between gold and conflict in the DRC and Sudan, which the United Nations is also publicly reported to be investigating, despite objections within the Security Council. Refiners downstream appear to be continuing to purchase from Sudan and the DRC without complete due diligence.^{iv}

Human Rights Watch research published in June 2015 has shown how some large international refiners that sourced gold from Ghana’s artisanal gold mines failed to properly assess and monitor the risk of child labour, and to report on their actions publicly. Their Ghanaian suppliers bought the gold from local traders without checking its origin or monitoring conditions at the mines of origin, even though child labour is a common problem in Ghana’s artisanal mines.^v

Partnership Africa Canada has witnessed how local artisanal and small-scale (ASM) producers and exporters from high-risk areas are taking decisive steps to act in accordance with the Guidance. However, these producers and exporters are discouraged by the lack of engagement by the downstream sector and the latter’s general interpretation of the Guidance

that is either rigid or ill-adapted to ASM conditions.^{vi} The Guidance encourages progressive engagement with ASM producers.

Independent monitoring is ignored – and is regularly underfunded

Companies and governments too often overlook or ignore international and national civil society supply chain monitoring and reporting in conflict-affected and high-risk areas. It should be carefully and seriously considered by both and used, where appropriate, to improve supply chain integrity and transparency. Independent monitoring is also severely under-resourced in many cases.

Industry schemes should not in practice replace individual company responsibility to check supply chains

Industry schemes can be an important tool to help companies to improve their supply chain management and apply standards to a whole sector. But it is critical that they do not replace each company's individual responsibility for its own supply chain and due diligence. In practice, many companies have outsourced this responsibility to these initiatives such that their practices and findings are often accepted without question by member firms and to the detriment of companies themselves engaging in responsible sourcing. The original vision of this Forum was for supply chains to grow increasingly resilient to risk as every company takes individual responsibility, using industry schemes as a helpful tool where appropriate *as part of* their own due diligence efforts – not for a new growth-industry in outsourced risk-management.

Call to members of the OECD Forum:

We call on the members of this Forum to urgently demonstrate their commitment to the original and intended spirit of the Guidance, with an emphasis on encouraging a risk-based, hands-on approach to ensure responsible and transparent mineral sourcing.

OECD member states and non-member states who have endorsed the Guidance should:

- Legally require companies operating in or from their jurisdictions to undertake supply chain due diligence that is robust and meaningful through pro-active identification and mitigation of a broad range of risks, coupled with detailed public reporting, and ensure laws are backed with appropriate enforcement action for non-compliance.
- Report annually on the steps they have taken to implement the Guidance at the national level, including through legislation, evaluation of or support for industry schemes, and any other relevant incentives or support offered to companies to

encourage implementation (including any measures that would exclude companies from public procurement contracts or export credit support).

- Support diplomatic and development initiatives that aim to facilitate responsible sourcing and secure sustainable livelihoods and communities in areas where natural resources are extracted, including through support for the work of civil society organisations.

Companies implementing the Guidance should:

- Take a risk-based approach to supply chain due diligence by pro-actively identifying and mitigating a broad range of risks in their supply chain, including the worst forms of child labour. For these purposes companies should use those risks outlined in the Guidance as a floor – and not a ceiling – for a comprehensive and detailed evaluation of their particular supply chain risks.
- Take individual responsibility for their supply chain risks. For these purposes, industry schemes may be used as a tool to facilitate due diligence, as outlined in the Guidance, but should not be used as the sole means of undertaking supply chain checks or as a destination to which risks can be simply outsourced.
- Regularly publish annual reports that include comprehensive and accurate detail about how key risks were identified, what these risks are and how they have been addressed.

Industry schemes implementing the Guidance should:

- Publish in full and in a timely way supply chain information generated by industry schemes, including information on risks identified and how these were addressed.
- Require member companies to separately publish full details of their own independent supply chain due diligence efforts.
- Pro-actively encourage member companies to source from ASM producers that take progressive steps to implement the Guidance.

The OECD Secretariat should:

- Continue to make clear publicly that the Guidance applies to companies sourcing all minerals from conflict-affected and high-risk areas.
- Ensure that state reporting in relation to implementation of the Guidance reflects best practice on reporting and is meaningful, robust and effective. Member states should also be asked to consider in those reports the degree to which companies operating in or from their jurisdiction adhere to the Guidance and are transparent about their sourcing practices. Member state reports and an OECD assessment of them should be made publicly available.

Signatories

ABUCO-TI (Association Burundaise des Consommateurs - Transparency International Burundi) Burundi
ACADHOSHA (Action des Chrétiens Activistes des Droits de l'Homme à Shabunda) DRC
ACEDH (Alerte Congolaise pour l'Environnement et les Droits de l'Homme) DRC
ACIDI asbl (Action Chrétienne d'Initiatives de Développement) DRC
AFD (Actions des Femmes pour les Droits et le Développement) DRC
Afrewatch
AMCAV (Association des Mamans Chrétiennes pour l'Assistance aux Vulnérables) DRC
Amnesty International
APEO (Action Pour Enfants Oubliés) DRC
ARAL (Arche d'Alliance) DRC
ASADHO Nord-Kivu (Association Africaine de Défense des Droits de l'Homme) DRC
ASJDP asbl (Association des jeunes pour la paix et la démocratie) DRC
ASSODIP (Association pour le Développement des Initiatives Paysannes) DRC
Berne Declaration
BEST (Bureau d'Études Scientifiques et Techniques) DRC
Bread for All Switzerland
CADBU (Collectif des Associations pour le Développement de BUABO) DRC
CAFED/NK (Collectif des Associations Féminines pour le Développement) DRC
CdC/RN (Cadre de Concertation de la société civile de l'Ituri sur les Ressources Naturelle) DRC
CERJI (Centre d'Echanges pour des Réformes Juridiques et Institutionnelles) DRC
Children's Voice DRC
CONSEDI (Conseil pour le Développement Intégré) Burundi
COSOC-GL (Coalition de la Société Civile de la Région des Grands Lacs contre l'Exploitation Illégale des Ressources Naturelles)
CREDDHO (Centre de Recherche sur l'Environnement, la Démocratie et les Droits de l'Homme) DRC
Enough
ECO-ALLIANCE DRC
EFIM (Encadrement des Femmes Indigènes et des Ménages vulnérables) DRC
GEDROFE (Réseau Genre et Droits de la Femme, point focal Nord-Kivu) DRC
Global Witness
Human Rights Watch
ICJP (Initiative Congolaise pour la justice et la Paix) DRC
Initiatives Alpha, Burundi
Justice Pour Tous DRC
LSC (Ligue pour la solidarité congolaise) DRC
MALI (Maniema Libertés) DRC
MPEDH (Mouvement du Peuple pour l'Éducation des Droits Humains) Rwanda
NELICO Tanzania
Partnership Africa Canada
PIAP (Pain aux Indigents et Appui à l'auto-Promotion) DRC
REWU (Rwanda Extractive Industry Workers Union) Rwanda
RFEDI asbl (Réveil des Femmes pour le Développement Intégral) DRC
Solidarité Paysanne DRC
Solidarité des Volontaires pour l'Humanité DRC

SOLIFEM (Solidarité féminine contre la
pauvreté) DRC

WILPF (Women's International League for
Peace and Freedom) DRC section for
North-Kivu and South-Kivu DRC

ⁱ For more detail, see page 81 as well as full company responses in Amnesty International and Afrewatch, “*This is what we die for*”: *Human Rights Abuses in the Democratic Republic of the Congo Power the Global Trade in Cobalt*, January 2016, AI Index: AFR 62/3183/2016, available at <https://www.amnesty.org/en/documents/afr62/3183/2016/en/>

ⁱⁱ Global Witness and Amnesty International, *Digging for Transparency: How U.S. companies are only scratching the surface of conflict minerals reporting*, April 2015, <https://www.globalwitness.org/en-gb/campaigns/conflict-minerals/digging-transparency/>

ⁱⁱⁱ For more detail, including full company responses, see Amnesty International and Afrewatch, “*This is what we die for*”: *Human Rights Abuses in the Democratic Republic of the Congo Power the Global Trade in Cobalt*, January 2016, AI Index: AFR 62/3183/2016, available at <https://www.amnesty.org/en/documents/afr62/3183/2016/en/>

^{iv} Enough Project, *Modernized Sanctions for Sudan: Unfinished Business for the Obama Administration*, April 2016, <http://enoughproject.org/reports/modernized-sanctions-sudan-unfinished-business-obama-administration>

^v Human Rights Watch, *Ghana—Precious Metal, Cheap Labor: Child Labor and Corporate Responsibility in Ghana’s Artisanal Gold Mines*, June 2015, <https://www.hrw.org/report/2015/06/10/precious-metal-cheap-labor/child-labor-and-corporate-responsibility-ghanas>

^{vi} Partnership Africa Canada, “Just Gold“, <http://www.pacweb.org/en/just-gold>; Partnership Africa Canada, “First Congolese Gold Exporter Takes Decisive Action to Carry Out Due Diligence: Opens Its Doors to International Markets“, February 2016, <http://www.pacweb.org/en/pac-media/press-releases/258-first-congolese-gold-exporter-takes-decisive-action-to-carry-out-due-diligence-opens-its-doors-to-international-markets>