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The project to end genocide and crimes against humanity

# Certification: The Path to Conflict-Free Minerals from Congo

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## Introductory note from John Prendergast, Enough's co-founder

*Justine Masika, a courageous activist from Congo, recently told us, "The link between conflict minerals and mass rape here is crystal clear. So the first and foremost priority for ending the war here is to set up a system to regulate the minerals trade."*

*I was in Congo twice in the last six months, and I would strongly concur with Justine's assessment. This is an unparalleled moment to create real change in the Congo. The upcoming election will present internal opportunities for change. But the conflict mineral legislation passed by Congress last year creates the biggest external driver for transformation. It is laying the groundwork for tracing and auditing the supply chains for our cell phones and laptops right to the source of origin in Congolese war zones. The Obama administration is also feeling pressure to deliver positive results on the ground following the legislation and some companies' choices to temporarily stop purchasing from Congo. This is the first time the light has been turned on this deadly trade.*

*But it's not sufficient. We at the Enough Project have always talked about three steps to cleaning up the conflict minerals trade: tracing, auditing, and certifying. The legislation addresses the first two. But ultimately we need the third step, a certification system, if there is going to be lasting change.*

*There are many precedents. The diamond industry wouldn't have been cleaned up and West African wars wouldn't have been stopped if a certification system for clean diamonds wasn't established in response to consumer demand for an end to blood diamonds. Sweatshops would still be an unchallenged phenomenon if President Bill Clinton hadn't responded to growing student activism to launch a process that ended up creating a fair trade certification system for apparel.*

*It's Congo's turn now. The minerals that go into our electronics products need a certification system to weed out the product that fuels violence. We need to create a major economic incentive for the peaceful, legal development of the Central African minerals sector.*

*To do that, we need a “conductor” to bring all the key actors together in one process to make this happen. The United States, as the biggest consumer of these minerals in the form of electronics products, is uniquely positioned to do that, in partnership with regional governments, other consuming countries, the private sector, and civil society. Secretary of State Hillary Clinton and her Under Secretary for Economic Affairs Robert Hormats are the key actors who should lead this process.*

*Our Raise Hope for Congo Campaign will continue to work on getting the conflict minerals legislation fully implemented, chiefly through the regulations that are to be issued by the Security and Exchange Commission. But we are now going to expand our advocacy to press for U.S. leadership in the creation of a certification scheme to disincentivize the war economy in Congo.*

*Creating a certification scheme for conflict minerals is not a magic wand. It is a catalyst—a domino that will help topple the edifice of greed and militarization that kills and rapes people in Congo at a higher rate than anywhere else in the world.*

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## Executive summary

The conflict minerals movement is gaining traction. The movement is a pragmatic effort to address one of the principal drivers of atrocities and conflict throughout Congo’s tortured history: the scramble for control of Congo’s vast mineral resources. In eastern Congo today, these mineral resources are financing multiple armed groups, many of whom use mass rape as a deliberate strategy to intimidate and control local populations. Armed groups and military units earn hundreds of millions of dollars per year by trading four main minerals: the ores that produce tin, tantalum, tungsten, and gold. This money enables the militias to self-finance their campaign of brutal violence against civilians, with some of the worst abuses occurring in mining areas.

Efforts to end the current violent and corrupt system have gained momentum following passage of ground-breaking U.S. legislation, Section 1502 of the Dodd-Frank Wall Street Reform Act in 2010. Since passage of the legislation, electronics companies, regional governments, and international organizations have accelerated efforts to reform their supply chains, attempting to trace minerals from mine sites to exports, developing audit protocols for smelters, and putting pen to paper on a regional certification plan for the Great Lakes Region of Africa. Although positive steps in the right direction, these many efforts remain rife with loopholes. Those pilot projects that have actually begun implementation remain managed by industry only, with potential for conflicts of interest. There are few to no penalties for noncompliance and there is no independent monitoring system to verify if traders are dealing in conflict minerals. A certification process has been developed by the countries of the International Conference on the Great Lakes Region, or ICGLR, and although promising in design, it remains controlled solely by the governments that have benefited from the trade to date.

Alternatively, a credible certification process led by the United States in partnership with regional governments, governments in consuming countries, business, and local and international civil society, could create a positive alternative to the current system, a responsible means of sourcing Congolese minerals that would create an incentive for Congolese actors to demilitarize the mining sector. But the United States must act quickly, as minerals traders in Congo are already seeking alternative, opaque markets for their minerals. An internationally accepted certification process would deter this development.

In order to inform certification efforts on conflict minerals, this report gleans lessons from other certification processes, including those for fair labor, blood diamonds, forestry, and oil revenue transparency. These processes offer five key lessons that should be incorporated into a certification scheme for conflict minerals:

- 1. A “conductor” is needed to convene a high-level diplomatic partnership on certification and help transform words into action.** A “conductor”—a leader with gravitas and political support—is needed to bring stakeholders to the table and to issue a call to action. President Bill Clinton provided a precedent for this when he called together companies and sweatshop labor campaigners in 1996, resulting in the Fair Labor Association certification process.
- 2. Certification should be governed and funded by a multi-stakeholder body that includes companies, governments, and NGOs.** The legitimacy of a process rests on a multi-stakeholder governing and funding framework that ensures accountability.
- 3. Certification must include independent third-party auditing and monitoring.** Regular independent monitoring assures the public that the process is credible.
- 4. Transparency of audits and data is essential to making certification work.** Certification processes are moving rapidly towards full disclosure of data and audits.
- 5. Certification must have teeth.** Certification can only work if its standards have meaning on the ground and are enforced through penalties for noncompliance.

The poverty of Walikale stands in stark contrast to its mineral wealth.



On conflict minerals, the United States, as home to the largest end-user companies of conflict minerals and as a powerful diplomatic actor in Africa's Great Lakes region, now has a choice: Either exercise leadership and help transform the current process on conflict minerals into real certification or step back and let the vested interests continue to develop systems that lack checks and balances. The administration need not construct an entirely new certification initiative, but it should use its convening power, diplomatic influence, and sanctioning power to strengthen current regional certification plans, harmonize industry efforts and close loopholes.

To this end, the Obama administration should now convene a high-level partnership on certification with leading electronics and end-user companies, together with Congolese President Joseph Kabila and regional governments, aimed at unifying the regional and industry-led initiatives and gaining consensus on a system of independent checks on the ground. The first certification partnership summit should bring together senior executives of end-user companies and political figures and should be followed up every six months to ensure adherence to deadlines and enable support for implementation.

As companies prepare to be compliant with the reporting requirements of the Dodd-Frank legislation, there is increasing anxiety among traders in the Great Lakes region who fear being unable to sell their minerals to international markets. This has created a window for robust reforms. It is critical that certification include independent monitoring, and the administration should as a matter of urgency work to help set up a joint monitoring mechanism to investigate and sanction conflict minerals traders. In addition, the administration should work to ensure a multi-stakeholder governance board, along the lines of other certification processes. It should also urge the Congolese government to prosecute officials and military officers involved in the conflict minerals trade and work with the United Nations to assist with security around mines.

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## Certification 101

### What is certification?

A certification regime is a guarantee that a given product—sometimes a commodity, other times a finished product—meets a defined, agreed-upon standard.<sup>1</sup> These regimes have been set up over the past 15 years to address complex transnational issues from sweatshop labor to blood diamonds to endangered species, seeking to enforce and assure a standard of governance in cases where government regulations and/or the private sector are unable or unwilling.<sup>2</sup>

*What* exactly is being certified by a given regime varies dramatically. The Kimberley Process certifies diamonds as conflict-free, although as detailed below the definition used by the process is problematic. Others guarantee social or environmental standards.



ENOUGH PROJECT/SASHA LEZHNEV

Tin ore

Fair Trade assures a consumer that the producers of a product get a fair price and labor conditions, while paper products and furniture certified by the Forest Stewardship Certification, or FSC, is guaranteed to come from sustainable forests.

As important as *what* is being certified is the question of *who* does the certifying. The promise of a certification regime is that it can guarantee standards when companies or governments on their own cannot, and therefore it must function as a partnership between governments, the private sector, and civil society. Shared ownership of the process, reflected in its governance structures, financing, and verification systems is what separates a legitimate certification system from similar efforts that are entirely driven by one sector, be it industry, government, or NGOs.

The other big picture consideration for a certification regime is *how* it operates. If a scheme cannot credibly implement a given standard, it will not be accepted by consumers. There are many different ways to administer a certification regime—some physically trace a product all the way from the point of extraction to the point of consumption. Others keep track of how much certified product a company purchases, but do not physically trace supply chains.<sup>3</sup> Finally, we have included in this study several important multi-stakeholder initiatives that do not provide chain-of-custody records, but which nonetheless use monitoring and independent audits to bring transparency and accountability to international supply chains. The Fair Labor Association, or FLA, and the Extractive Industry Transparency Initiative, or EITI, both fall into this category.

See the Appendix for a summary of four key certification processes that informed the analysis in this report.

## Five main lessons from the leading certification processes

### *1. Political will matters. A “conductor” is needed to convene a high-level diplomatic partnership on certification and help transform words into action.*

A critical lesson from other certification systems is the need for a “conductor”—a leader with the gravitas and political support needed to bring all of the players to the table and to issue the call to action. In the case of labor, the conductor was President Bill Clinton, who responded to growing student activism around sweatshops and convened a gathering of footwear and apparel companies at the White House in 1996, challenging them to develop a framework to improve working conditions in these industries and to provide the public with information it could use to make informed purchasing decisions. On extractive industries, U.K. Prime Minister Tony Blair took on this role when he convened oil and mining companies, governments, investors and NGOs together in London to launch the EITI in 2003, following four years of NGO campaigning.<sup>4</sup>

On diamonds, the conductor took the form of a high-level partnership between southern African countries concerned that conflict diamonds would taint their own domestic diamond production and western diplomats working behind the scenes. South Africa’s Minister of Minerals and Energy, Phumzile Mlambo-Ngcuka, worked tirelessly with British Africa Minister Peter Hain and the governments of Botswana and Namibia in 2000 to convene NGOs, leaders from the diamond industry, and representatives from 16 countries in Kimberley, South Africa to discuss the conflict diamonds trade.<sup>5</sup> With the U.N. General Assembly and G-8 having endorsed the ensuing negotiations, the Kimberley Process was then formed in late 2002.<sup>6</sup>

The conductor also has to help ensure that an initial meeting leads the way to an ongoing process. Otherwise rhetoric is unlikely to lead to concrete actions. By reconvening the group at set intervals, the conductor can provide oversight and help ensure that working level efforts are productive.

### *2. Certification should be governed and funded by a multi-stakeholder body that includes companies, governments, and NGOs*

Nothing matters more to the legitimacy of a process than how it makes decisions and who pays for it. Genuine partnership requires shared ownership of the process, with equal representation for government, civil society and industry in the steering body of the initiative. In order to ensure independence of the system, the certification process should be paid for by a multi-stakeholder trust with contributions from companies, donors, and NGOs.<sup>7</sup>

Although the FSC is primarily a company-civil society initiative, its governance structure provides an innovative model. The board is composed of companies and NGOs, and split into three chambers with equal power and voting rights, based upon the interests of each stakeholder—social, environmental, and economic. In terms of costs,

one-third of FSC International's funds come from the support of charitable foundations, government donors, and business contributions. The other two-thirds are generated from accreditation fees charged to certifying bodies.

Similarly, the multi-stakeholder boards of EITI, KP, and FLA ensure accountability of decisions. EITI board membership is rotated on a two-year basis, and the FLA also has an NGO advisory council, which consists of representatives of 30 NGOs. EITI committees in participant countries also have steering committees that are made up of NGOs, companies, and government representatives. EITI receives 40 percent of its funding from companies, 20 percent from the government of Norway, and 40 percent from other countries and NGOs.<sup>8</sup>

### *3. Certification must include independent third-party auditing and monitoring*

Accredited independent third-party audits, based on credible standards, must be conducted on a frequent and regular basis to assure participants and the public that the process is legitimate.

The most important factor in assessing the audit system for a certification regime is the degree of independence of the auditor, otherwise known as the level of assurance. Third-party assurance means that the group doing the auditing has no connection with the organization that is being audited, so as to be independent and free from any conflicts of interest.<sup>9</sup> As Partnership Africa Canada puts it: "Independent third-party verification is standard practice for products, services, and management systems throughout the world. It is only resisted where individuals, companies, and governments cannot or will not meet agreed standards."<sup>10</sup> This further underlines the point that although the creation of a certification scheme requires significant technical knowledge about the particulars of a given supply chain, the obstacles to creating a credible monitoring system is fundamentally political.

Bagging and tagging of minerals sacks, if they are monitored carefully, can contribute to certification. Here, minerals tags from Rwanda.



When there is lack of consensus about independent auditing or monitoring, the results of certification are poor. The Kimberley Process provides a telling example of how an audit process can be compromised by the lack of a strong monitoring mechanism. Under the Kimberley Process, the 75 participating countries are reviewed through a peer-review mechanism.<sup>11</sup> Review teams consist of three representatives from governments, one representative from industry, and one from civil society. These review teams have been effective in monitoring diamond problems in several countries, including Cote d'Ivoire, Venezuela, and Congo-Brazzaville. However, these missions are *ad hoc*, irregular, frequently come late in the process, and are usually conducted only over an extremely short period of three days. Without regular, independent third-party auditing, the Kimberley Process must rely on internal government controls that are often highly suspect, as the Zimbabwe, where the national army has perpetrated horrific abuses in the Marange diamonds fields.

Another important component of a credible system of monitoring and audits is making sure that the process is consistent through the stages of the supply chain. For instance, products with the FSC label are certified for both “forest management,” to ensure that they come from a sustainably managed forest, and for “wood product certification,” which encompasses the tracking of products through the supply chain, from the certified source, through the manufacturing process, to market.<sup>12</sup>

The independence of the auditor can help prevent conflicts of interest but on its own does not guarantee quality performance. This requires having a rigorous process for accreditation of auditors and credible audit standards. Many of the most developed certification schemes, including FSC and FLA, include the accreditation of third-party auditors as one of their core functions. Additionally, credible audit standards usually depend on being able to conduct unannounced spot checks and site visits at randomly determined locations. For example, the FLA accredits independent third-party monitors that conduct annual unannounced audits of factories. Accredited auditors and credible audit standards create a legitimate system in the eyes of stakeholders and the public and prevent the most egregious forms of abuse.

#### *4. Transparency of audits and data is essential to making certification work*

Certification processes today are moving rapidly toward comprehensive disclosure of data and audits. As one leading fair labor activist told us, “If companies in the conflict minerals supply chain don’t want to disclose the details of audits, that would be years behind the transparency in labor audits.”<sup>13</sup> Disclosure helps build public confidence in the process. Making audits and other collected data publicly available not only lends credibility and legitimacy to a certification system but also allows governments, industry, and civil society to monitor participants and the initiative, as well as hold them accountable. Conversely, confidentiality allows participants and the certification scheme to remain free from outside scrutiny and pressure. Due regard for commercial confidentiality is important, but this should be limited to a small set of data points such as price.



On fair labor, although apparel companies such as Nike at first denied the right to disclose the names of its factories in Asia, after several years they allowed this disclosure and did not find it to be of competitive disadvantage. The FLA allows public access to its independent audits on its website in the form of its Independent External Monitoring reports, also called tracking charts. These reports, published annually, detail an assessment of the factory's noncompliance, risk of noncompliance, and evidence of noncompliance with the FLA's Code of Conduct.<sup>14</sup>

Furthermore, the International Labor Organization, or ILO, regularly conducts audits that include provisions regarding wages, employment security, occupational safety and health, forced labor, child labor, gender equality, etc. The full details of these audits are disclosed on its website. Its Better Factories program publishes synthesis reports on a semi-annual basis that detail working conditions based upon a 500-point assessment checklist reflecting ILO standards. Better Factories Cambodia ensures that these reports are transparent through its web-based information management system that allows easy accessibility for buyers.<sup>15</sup>

A limitation of the Kimberley Process is its lack of transparency. Under the KP, reports written by peer-review groups are classified as confidential. They are made available to participants of the KP, but not to the larger international community and the public.<sup>16</sup> The classification of reviews under the KP has become especially controversial in the case of Zimbabwe. One of the Kimberley Process's architects, Martin Rapaport, has decried the classification of the country's review, the certification of some of its blood diamonds, and the diamond industry group, the World Diamond Council's, complicity.<sup>17</sup>

### *5. Certification must have teeth*

Certification can only work if its standards have real meaning on the ground and will be enforced. A critical lesson from other certification processes is that a company and/or country that fails the certification process must be named and suspended from the process until it changes behavior and the certification steering body re-evaluates it to be compliant.

Several certification processes have stood up to pressures and penalized noncompliant members. On forestry, the FSC suspended three of its certifiers after they failed annual audits.<sup>18</sup> One firm certified loggers despite major infractions, such as not making required documents available and failure to address actions identified by FSC auditors.<sup>19</sup>

The Kimberley Process has suspended two countries for smuggling of conflict diamonds and partially reinstated one. In 2004 the Republic of Congo was suspended because a review mission found that it could not account for the origins of large amounts of rough diamonds it was exporting. It was reinstated in 2007 because it was able to convince KP experts that it had tightened controls on its diamond trade. The process of investigation, suspension, reform, and reinstatement demonstrates that the KP can act as a credible international initiative. Zimbabwe is currently a more contentious case, and Israel and

Canada pushed for its suspension in 2009 because of the abusive military presence at its Marange diamonds fields, in which hundreds of people have been killed since 2008. The issue remains volatile today. EITI also denied status to Equatorial Guinea for its lack of progress on civil society participation in 2010.<sup>20</sup>

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## Certification for Congo and the Great Lakes Region: Current initiatives and what is missing

Over the past two years there has been an unprecedented acceleration of efforts to break the link between minerals and conflict in eastern Congo. From legislation to due diligence initiatives, this section provides an overview of these developments and the role of an international certification regime.

### An international standard on due diligence

For most international certification efforts, the largest obstacle is simply defining the standard. But in the case of conflict minerals, this hurdle has already been cleared with the passage of U.N. Security Council resolution 1952, which endorses due diligence guidelines for importers, processors, and consumers of Congolese minerals. These due diligence guidelines are aligned with those agreed upon by companies, NGOs, and governments through the Organization for Economic Cooperation and Development, or OECD, which published its due diligence guidance in December 2010.<sup>21</sup> These guidelines are significantly better than company efforts to obtain unverified written statements from their suppliers that they “do not source from conflict mines.”

Due diligence guidelines provide a practical roadmap for companies who want to keep conflict minerals out of their supply chains. However, at present there is no operational structure to help implement and provide oversight, especially within the Great Lakes region. The OECD guidelines are voluntary, and although the U.N. Security Council tasks member states to urge their implementation and indicates that whether or not companies apply sufficient due diligence will play into decisions on applying targeted sanctions, enforcement mechanisms remain thin. Currently, only one member of the six-person U.N. Group of Experts for Congo is assigned to evaluate the impact of due diligence guidelines, an impractical task for such a small group given the number of mines, traders, and companies involved in the supply chain.<sup>22</sup> The OECD has proposed on-the-ground information units to collect data about implementation, which could be an important element of a more robust monitoring system. But these units must include a significant civil society involvement and U.N. protection for the collectors of information.

## Dodd-Frank and the move toward international legislation

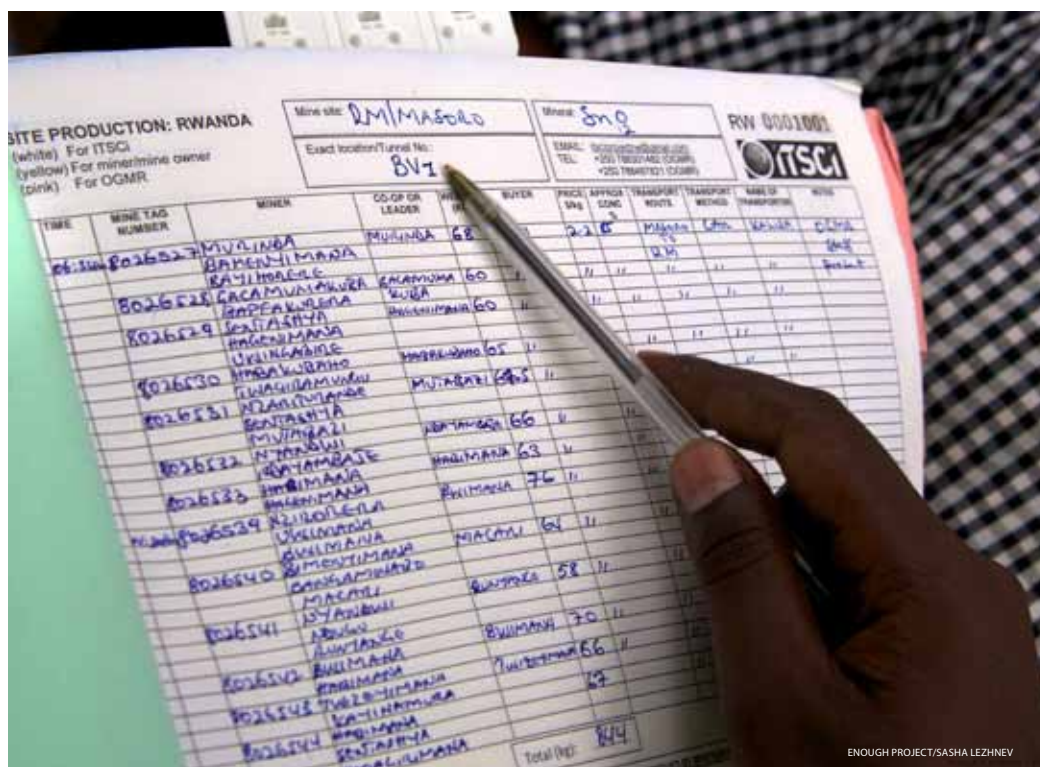
In 2010, the U.S. Congress led the way toward creating legislation that would make due diligence in minerals supply chains mandatory. The provision in the Dodd-Frank Wall Street Reform and Consumer Protection Act, signed into law in July 2010, requires companies to trace and audit their supply chains on the source and chain of custody of the 3Ts and gold in their products.<sup>23</sup> The Securities and Exchange Commission issued draft regulations for this law in December 2010, which would include 6,000 companies reporting under the law, according to the SEC, and the U.S. State Department issued a strategy on conflict minerals in March 2011.<sup>24</sup> Canada is also pursuing due diligence legislation that would require companies to trace their supply chains, and Europe is in the process of developing similar legislation.<sup>25</sup> These and other initiatives are important first steps in the trace, audit, and certification process necessary to end the trade in conflict minerals that are fueling mass atrocities in Congo.

## Industry-driven initiatives

Increasing consumer pressure has spurred efforts by actors within industry to trace their supply chains and demonstrate due diligence.<sup>26</sup> The electronics industry, through the Electronics Industry Citizenship Coalition-Global e-Sustainability Initiative, or EICC-GeSI, has developed a conflict-free smelter program that is beginning to audit the procurement procedures of tantalum smelters, the key choke point in the supply chain. The EICC is planning to expand this process to include tin, tungsten, and gold, but the timelines for this and how many smelters will be included are still unclear.

The tin industry association, ITRI, is also piloting the ITRI Supply Chain Initiative, or iTSCi, to track tin and tantalum ore in Rwanda and Congo from mine to exporter, or *comptoir*, and to establish tracing and documentation standards. A group of large mining companies and refiners are reportedly developing a planned supply chain reform project through the World Gold

A certification process can work on the ground. The tin industry is starting initial tracing work in Rwanda.



Council, but this initiative needs to be made public and should incorporate a multi-stakeholder oversight process that involves civil society. The council incorporates 60 percent of the world's leading mining companies and the 10 largest gold refiners.

These industry initiatives contain some of the elements of a certification scheme, including chain-of-custody documentation in some and audit processes in others. However, they all lack the multi-stakeholder governance structure that is part-and-parcel of a legitimate process, and conflicts of interest remain because they are controlled solely by industry. Furthermore, there is little to no transparency of the results of the EICC and iTSCi audits. Finally, there is no visibility into traders or smelters that fail and what practices they must change, in order to pass. Industry has yet to address these concerns regarding the projects.

### Regional initiatives

Central African governments, through the International Conference on the Great Lakes Region, or ICGLR, have developed a five-part certification plan in concept form.<sup>27</sup> Eleven heads of state from the region, including Congolese President Joseph Kabila, officially adopted the plan for this system on December 15, 2010 in Lusaka, Zambia, the “Minerals Tracking and Certification System from the Great Lakes Region of Africa.” Following on this, the Congolese government issued a traceability manual for its traders to follow in March 2011, and Rwanda has begun bagging and tagging its minerals rapidly, claiming that it has incorporated 95 percent of its domestic production by April.<sup>28</sup>

The ICGLR process is sophisticated in concept form but is controlled by governments that have been involved in the conflict minerals trade for years and thus have both limited political will and capacity to implement the certification on their own. As a Congolese civil society leader told us in March, “This traceability system is just to show to you foreigners. Apart from new buildings, nothing will change. We Congolese know that there is still corruption. You need to have international experts and local civil society at each step in the chain.”

The system's concept would require that sacks of materials be tracked from certain mines that have been formally assessed as being free from labor and other abuses to trading centers, or *centre de négoce*, through to the point of export, or *comptoir*.<sup>29</sup> These trading centers are being built by the United Nations now, with four already completed and a fifth on the way, and possibly additional centers as the system reaches full capacity. Additionally, a certificate issued by ICGLR would indicate that the minerals were mined, sold, and transported conflict-free and exported legally, including that all taxes have been paid. A database administered by ICGLR is due to begin piloting the tracking of mineral flows throughout the region in 2011, supported by Partnership Africa Canada, but data collection has been poor to date, due to deficient government response.

There is also an audit component in the form of the auditor general, which theoretically has the power to investigate and sanction conflict traders. However, the regional governments have dragged their feet on implementing it, which is a major gap going forward. Highlighting the lack of political will to implement, a senior official in a key ICGLR country recently told Enough, “civil society should not be part of the process,” despite having just signed the Lusaka declaration. Finally, the ICGLR plan does not include input from end-user companies. This is a serious limitation, as the minerals trade is a business, and certification must take corporate factors into account.

In conjunction with the Congolese government, the German Federal Institute for Geosciences and Natural Resources, or BGR, is working on a certification system for artisanal mines, beginning with four mines. BGR is also working with the Rwandan government and some Rwandan mineral producers to establish Certified Trading Chains, or CTC, for some of the larger mineral producers.<sup>30</sup> The BGR systems are making progress in Rwanda and Congo but at a limited number of mines, and its audit reports are not made public. If they are to have success in gaining public confidence, the German initiative’s audits must be transparent and publicly accessible.

Congolese civil society is also increasing their activities on conflict minerals certification now, following years of silence on the issue for personal safety fears. On March 16, 2011, nine major local civil society groups in Goma formed the “Support Group for Traceability and Transparency in the Management of Natural Resources,” known by its French acronym GATT-RN. The coalition is set to act as a preliminary monitor of the new government tracing plans, advocate for mining initiatives to benefit local communities, and work on broader certification efforts. Partnership Africa Canada is also partnering with a regional platform that is building up under CENADEP, a South Kivu civil society coalition, in order to provide civil society capacity building and advocacy on minerals certification.

### Capacity building

The U.S. State Department has recently been planning, together with companies, a proposed public-private partnership to build the capacity of the in-region minerals sourcing initiatives. This plan, still in concept form, would in principle garner funds from end-user companies to speed up the iTSCi and other in-region tracing pilot projects, improve coordination of technical experts on the ground, and have a clearinghouse for sharing information. However, it would not address the need for on-the-ground independent monitoring, the lack of multi-stakeholder governance, and the critical political will gaps. The State Department has already committed \$11 million to build roads around one to two key mine sites, build the capacity of the mining ministry, and train Congolese border guards, so this capacity building initiative would buttress those efforts at a technical level.<sup>31</sup> Furthermore, USAID is considering a multi-million dollar livelihoods program for mining communities, which would begin in late 2011 or early 2012.



Armed groups still control mines in eastern Congo, but certification would be able to tell clean mines from militarized mines.

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## The risks of continuing with the status quo approach

The various industry, regional, and due diligence initiatives are steps in the right direction, but the efforts in the region remain disproportionately dominated by political and commercial actors with vested interests in the trade, and lack the checks and balances, as well as the penalties, that would incentivize reforms. If left to continue to develop on their own, or if viewed purely as a technical exercise, they will do little to stop the flow of tainted minerals from the region, setting off the following scenario along the trading chain:

- **At the mines: Armed groups will continue to control mines and tax traders**, as there will be no independent monitoring system to investigate links between conflict actors and the minerals trade, the Congolese government will not move the army out of mines, and insecurity will persist.
  - The six-person U.N. Group of Experts, with one minerals expert, will examine certain case studies of these links but will be unable to make comprehensive assessments. The ICGLR will not have the will to implement its planned monitoring and will not penalize traders, as governments with vested interests will block sanctions.
  - Mapping of mines and trading routes will remain incomplete. The U.S. State Department is legally required to produce a map of militarized mines every six months, but without further funding from Congress to complete this task, it will instead rely upon NGO maps, or Congolese government maps which will not designate especially lucrative mines controlled by government aligned forces. Any maps must have meaningful participation by independent experts and/or civil society in their formulation, or they will be compromised.

- Industry-driven in-region sourcing initiatives such as iTSCi, which lacks an independent, transparent monitoring mechanism and has numerous self-admitted loopholes for material to leak in, will not be able to differentiate conflict materials from clean ores. The trading centers sponsored by the United Nations will pick up some conflict minerals, but without an oversight mechanism, the officials at the centers will be easily susceptible to corruption.
  - Congolese army commanders will continue to trade in minerals with impunity, as the military justice system lacks the capacity and political will to prosecute commanders involved in the conflict minerals trade. Following the lifting of the mining ban, commanders today continue to mine but in civilian clothes, and gold in particular is being traded in large volumes.
- **Along the trading route in Congo: Traders and exporters will continue to collaborate with armed groups**, as the likelihood and costs of being caught will remain lower than the benefits of continuing to source from conflict sources. Neither the ICGLR, iTSCi, nor the German plan currently has an enforceable penalty system.
    - Government officials and customs agents may benefit from U.S.-funded training and other capacity building, but being underpaid and still under the control of senior government officials taking bribes for this trade, they will not have the incentive to arrest conflict minerals traders.
    - Traders, or *negociants*, more than half of whom operate unregistered in eastern Congo, will continue the practice of paying bribes to officials and forging documents, as there is little concerted drive to register them. As a result, inaccurate data will flow to the regional ICGLR and iTSCi databases.
    - Exporters, or *comptoirs*, will continue to mix in conflict minerals with clean ores, as there is no monitoring system to investigate and penalize them for noncompliance with due diligence guidelines.
  - **In the region: Neighboring countries will continue to traffic conflict minerals unchecked.**
    - The ICGLR, controlled by the regional governments, will not have the will to penalize Congo’s neighbors for violations in its own scheme without an effective monitoring system.
    - The region’s varying minerals import and export tariffs will continue to act as an incentive to smuggling minerals. For example, it is 33 times more expensive to officially export minerals from Congo than Rwanda, because of the lack of export taxes in Rwanda.
    - The industry sourcing projects will be unable to check the minerals that get mixed with conflict minerals at the trading houses in Uganda, Rwanda, Burundi, and Tanzania, without a system to independently monitor imports and exports from these countries.
  - **At the smelters: Some smelters will go conflict-free, but others will process conflict minerals because of the higher global minerals prices.** With the prices of minerals doubling or tripling over the past one to two years, the production of minerals in areas outside the Great Lakes region will accelerate.<sup>32</sup> However, with Congolese minerals still two to three times cheaper than the global prices, some smelters will re-label conflict ore

as recycled minerals and sell it onward. The current smelter audits are not required to show how and why smelters failed, thus there will be no transparency around non-conflict-free smelters. There is a possibility that the metals markets will restructure to deliver Congolese minerals to smelters who sell to companies who export to non-Western markets, circumventing the U.S. legislation and industry self-regulation efforts.

- **At manufacturers: End-user companies will try to go conflict-free, but with no transparency will inadvertently source from conflict smelters.** The industry smelter audits will begin to differentiate between some clean and conflict smelters for some of the minerals. However, end-user companies are not currently required to report which smelters they source from, so there will be little way of assuring consumers that a particular electronics or jewelry company only uses conflict-free smelters. The OECD due diligence framework will be implemented unevenly, being a voluntary initiative. Many end-user companies have already said they will only implement it by seeking vague written assurances from suppliers without verification. The sole industry control of the EICC audit processes means that it will be difficult to gain public confidence in these audits from a consumer base increasingly worried about conflict minerals.

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### The way forward: A senior partnership on certification

Given the number of initiatives moving ahead on conflict minerals, it is understandable that policymakers would be concerned about a further fragmentation of efforts by promoting certification. This concern is misguided, as what is missing from the initiatives described in the preceding section is the high-level political support and harmonization that could be achieved through an international certification process.

What is missing is an agreed upon mechanism from mine to end-product to independently prove which minerals come from conflict areas and which ones do not. The path to this proof would be the development of a certification process with significant industry involvement, senior, sustained diplomatic leadership, and an independent monitoring mechanism. The momentum for such a process is building amid increasing demands by consumer, Congolese civil society, Congress, and electronics companies. The United States, as home to the largest end-user companies of conflict minerals and as a powerful diplomatic actor in the Great Lakes region, now has a choice whether to exercise leadership and help transform the current process into real certification or to step back and allow traders to exploit loopholes and develop new means of circumventing the law to bring tainted minerals to market.

The Obama administration can now play a leading role through a senior partnership on certification. The administration does not need to build an entirely new certification initiative, but rather use its convening power to bring together companies, regional governments, and NGOs to fix loopholes in the system, develop a monitoring system, and use diplomatic leverage to generate political will to implement it. The Dodd-Frank act provides the commercial leverage to catalyze reform. Regional governments genuinely fear being unable to sell their minerals and are open to a partnership to reform the sector in order to continue to access international markets.



## Recommendations

- **Convene senior U.S. officials and end-user industries with the region on certification.**

High-level support from the United States, other major donors, and industries at the end of the supply chain will provide momentum and credibility to the ICGLR effort. In addition to the problem of political will, the ICGLR's lack of company input means that traders and businesses are much less likely to implement a system that did not take legitimate business concerns into account. Increased U.S. involvement would provide a check against corruption; help bring reputable corporate actors into the process from the electronics, automotive, aerospace, jewelry, and other key industries; and align compliance with the Dodd-Frank law. This should be done with urgency, before traders find alternative, unregulated Chinese, Indian, and Russian minerals markets to replace markets that are subject to Dodd-Frank.

- The Obama administration should convene a high-level partnership on certification to bring together senior executives from end-user industries with President Kabila, regional governments through the ICGLR, mineral smelters, and NGOs. The main aims of the partnership would be to build consensus on a single certification process that incorporates both industry and the region and closes loopholes in the current framework.
- The institutional umbrella for this meeting should be a joint US-EU-ICGLR initiative, and the OECD could also play a co-sponsoring role. The first summit should bring together senior executives and political figures and should be followed up every six months with task force meetings to ensure that deadlines are defined and met and to sustain support for implementation. High-level meetings should alternate between locations in the region, which would maximize Congolese participation, and U.S. and European locations that would lend visibility and political pressure to the process.
- To lead work on certification and other key issues in the region, the administration should appoint a special envoy to the Great Lakes that reports to the secretary of state. Given the cross-border and cross-continental aspects of the mineral trade, such an envoy would complement and supplement the work of the ambassadors in the region.

- **Rapidly stand up a monitoring mechanism in the region.** This could be housed within the ICGLR's Auditor General Office. This office has yet to be established but is supported by traders and governments in the region, has the mandate to conduct investigations and penalize noncompliant exporters in the region by taking away their export licenses for a minimum of six months. Jason Stearns and Steve Hege have proposed a team of 30 to 40 local and international minerals experts based in the Great Lakes at a cost of \$3 to \$5 million per year.<sup>33</sup> The rapid expansion of monitoring capacity will help companies meet the reporting requirements of the Dodd-Frank legislation and help to counteract unintended consequences. Additional complementary measures should include:

- The Obama administration should increase its investigations and sanctions of conflict minerals traders and companies, in concert with the U.N. Security Council.

- The United Nations should set up perimeters around key mine sites and minerals transit points in eastern Congo to assist with security. Monitoring the minerals trade is part of MONUSCO’s mandate but it must be made a priority by the U.N. mission, and the United Nations can play a key role in security now.
  - The United States should urge the Congolese government at a senior level to prosecute army officers and government officials involved in conflict minerals trade.
  - The Public Private Partnership, including donors and companies, should incorporate a livelihoods program to assist impoverished mining communities.
- **Develop a multi-stakeholder oversight body made up of governments, industry, and civil society/independent experts.** Including this oversight will be critical when tough decisions about penalizing conflict traders must be made in the future. The OECD has proposed a multi-stakeholder framework, but it has not yet been adopted, and some parties are concerned about the institution’s lack of enforcement of voluntary guidelines. Furthermore, there needs to be an independent funding mechanism for certification, which the ICGLR has also recognized.
    - The Obama administration should work with the different stakeholders to ensure a multi-stakeholder governance board for the partnership. One option would be for the ICGLR to amend its governance body, the Steering Committee on the Illegal Exploitation of Natural Resources, to include end-user companies—particularly key end-user governments such as the United States and European Union—and NGOs as full members of the committee. The ICGLR has already expressed interest in such an option.
    - The administration should also work through the partnership to set up an independent funding mechanism for certification.
- **Connect certification to SEC required reporting and investigations.** The OECD and U.N. frameworks are significant steps on due diligence but remain voluntary. In order to close this gap and ensure accountability from mine to consumer, a certification process must have appropriate disclosure and transparency. If companies are to be held accountable for their supply chain purchases, they should report on their due diligence steps according to the new internationally agreed upon frameworks for such reporting. There also needs to be an investigative body that audits these statements and conducts supply chain checks to ensure compliance.
    - The SEC should mandate that companies follow the framework of the OECD and U.N. due diligence guidelines, as part of their compliance with the Dodd-Frank law. These include transparent in-country risk assessments if they source from Congo and independent, transparent audits and disclosure of smelters from which they source.<sup>34</sup> The Obama administration’s advocacy to the SEC in March 2011 to support the use of these frameworks was a good first step.<sup>35</sup>
    - Finally, the SEC should conduct investigations into company reports once they are filed, as it does with the Foreign Corrupt Practices Act, in order to ensure compliance.

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## Conclusion

The complexity of the conflict minerals issue may be daunting, but a solution need not involve reinventing the wheel. Efforts to reform this trade can draw from more than 15 years of evolving international certification processes for issues from oil and corruption to sweatshop labor to blood diamonds. International certification processes have proven that multiple competing interests from industry, civil society, and government can be brought together into a united framework to address complex issues. While not a silver bullet for comprehensively solving these problems, certification has made a notable impact in all of these areas, adding significant transparency to previously opaque trades and making it much more difficult for illicit actors to operate. The lessons from the leading processes have shown that the keys to a successful certification are transparency, independent monitoring, a multi-stakeholder framework, and the ability to penalize noncompliant actors.

Most importantly for conflict minerals, the fifth and most critical lesson is the need for a leading “conductor” to convene the different interests and drive them to concrete action through certification. The Obama administration has this opportunity for conflict minerals today: to bring together the multiple industry and government-led pilot efforts that have accelerated following passage of the Dodd-Frank legislation. These initiatives are positive steps, but remain uncoordinated and controlled by those who have financial interests in the minerals trade. These facts will hamstring progress on conflict minerals until a certification process accompanies them.

Actors across the trading chain from central African governments to electronics companies to NGOs are looking to the United States for leadership on this issue, because of the U.S. legislation and the diplomatic influence of the United States in the region. For the administration, a failure to become a leader will effectively relinquish power to actors with vested interests in the conflict minerals trade that are actively seeking to maintain the status quo.

It is now time for the United States to establish a senior partnership on certification with end-user companies and the Great Lakes region. This would build on existing initiatives, not replace them. Having a certification partnership led by a U.S. conductor would give these initiatives strategic direction, bring rigor to audits, spur increased private sector participation, and align compliance with the new law to other efforts to end mineral-fueled violence in Congo. The time for action is now.

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## Appendix: Four key certification processes

### Kimberley Process—Blood diamonds

The Kimberley Process, or KP, is a joint government-industry-civil society initiative to block the trade of conflict diamonds, defined as rough diamonds used by rebel movements to finance wars against legitimate governments. The blood diamonds movement and the KP were instrumental in preventing violence in West Africa in the early 2000s, but the process has stalled recently with Zimbabwe diamond abuses.<sup>36</sup>

#### Strengths

- **Multi-stakeholder.** Membership is open to governments, while industry—represented by the World Diamond Council—and civil society—represented by Partnership Africa Canada and Global Witness—are participants in the process.
- **Embedded in national legislation.** Although officially governed by an agreement rather than a formal international treaty, new laws were passed to enforce the Kimberley Process in almost every participant country, including the United States.<sup>37</sup>

#### Weaknesses

- **Limited definition, limited will to adapt.** The definition of conflict diamonds does not include human rights abuses by government actors in the diamond trade, engendering a tepid response to the growing crisis around the Marange diamond fields in Zimbabwe.
- **Weak monitoring.** The peer-review mechanism for monitoring is *ad hoc*, infrequent, lacks independent third-party audits, and can be subject to political interference.
- **Lack of transparency.** Disclosure of information is limited almost entirely to participants in the process and not publicly disclosed, hurting the credibility of the process.
- **Lack of permanent secretariat.** This was initially viewed as a costly and cumbersome bureaucracy, but it appears to have hampered the effectiveness of the process.

#### Related initiatives

- **Responsible Jewelry Council.** Jewelry industry association developing a system to certify members for ethical practices in the diamond and gold jewelry supply chain. Features strong standards and third party audits, but still developing chain-of-custody traceability.<sup>38</sup>
- **Diamond Development Initiative.** A multi-stakeholder initiative designed to support long-term development for communities involved in artisanal diamond mining.

### Forest Stewardship Council—Forestry

The Forest Stewardship Council, or FSC, is a voluntary process for verifying sustainable and responsible forestry. FSC accredits independent certifiers who then inspect forests and verify that they are compliant with national laws and respect social and environmental concerns.

### Strengths

- **Third-party audits.** The FSC audits through third-party chain-of-custody certification and accreditation, allowing companies to label products with the FSC brand. This process follows materials from the certified source, through the manufacturing process, to market.
- **Inclusive governance structure.** The FSC's board is made up of companies and NGOs. The board is split into three chambers with equal power and voting rights, in order to ensure a democratic process and to guarantee balanced influence.

### Weaknesses

- Several of FSC's key features have been grounds for criticism. For instance, some NGOs argue that the standards around mixed sources are actually encouraging deforestation, and that its control of auditors and ability to receive and manage complaints are insufficient. Some have suggested this amounts to "greenwashing."<sup>39</sup>

### Related initiatives

- **The Forest Trust.** NGO that works with forest managers and companies to help them meet FSC standards, and which operates its own wood chain-of-custody initiatives.<sup>40</sup>

## Fair Labor Association—Labor conditions

The Fair Labor Association, or FLA, Joint effort by companies, universities, and civil society organizations to improve sweatshop labor, and improve working conditions, and meet international labor standards in factories.

### Strengths

- **High-level government and corporate backing.** The FLA was formed in 1998 following a call to action by President Bill Clinton two years earlier. Its 20 full member companies have combined annual sales of more than \$30 billion.<sup>41</sup>
- **Multi-stakeholder governance.** The FLA is governed by an 18-member board that includes companies such as Nike and Adidas, universities from Princeton to Notre Dame, and NGOs from Human Rights First to National Consumers League. They have equal representation, with six board members representing each group.
- **Evolving standards.** "FLA 3.0," as it has been named, assesses the current state of the factory and makes a strategic plan from that basis. The 3.0 audits reveal substantive information about the factory's strengths and weaknesses, provide a roadmap for improvement with concrete results, and are evaluated through external assessments.<sup>42</sup>

### Weaknesses

- **Audit independence.** The FLA's audits are unannounced and conducted by FLA-accredited monitors, but the audits and FLA organization are paid for by companies. Critics thus argue that there is an inherent conflict of interest in the system, and there should be an independent payment system.

- **Transparency.** While the FLA's transparency program discloses some information about the factories it audits, it conceals the most important piece of information that would be needed to make its reports credible: the name of the factory investigated.

#### *Related initiatives*

- **Workers Rights Consortium.** Independent labor rights monitoring NGO that works with universities to monitor labor practices for university-related apparel.
- **The International Labor Organization,** or ILO—also regularly audits on sweatshop labor, and its Better Factories program publishes detailed reports on its website that ensures easy accessibility for consumers.<sup>43</sup>

### Extractive Industry Transparency Initiative (EITI)—Transparency in oil, gas, and mining

Extractive Industry Transparency Initiative, or EITI, is a global initiative to combat corruption in resource-rich countries for the oil, gas, and mining industry through transparency of revenue payments and receipts. Although not a certification initiative *per se*, it uses audits and independent validation to assess disclosure by governments and companies about payments and revenues for industrial extractive industries such as oil and gas, as well as large-scale industrial mining.

#### *Strengths*

- **Multi-stakeholder governance.** The EITI is governed by a 20-member board made up of oil, gas, and mining companies, governments, and NGOs. Board membership is rotated on a two-year basis. EITI participant countries are also required to have in-country multi-stakeholder committees and include civil society.
- **Firm adherence to standards.** Equatorial Guinea was denied full EITI status as a validated country by the board, because of the government's failure to include civil society participation in their initiative.

#### *Weaknesses*

- **Voluntary participation.** Once a country commits to implement the initiative, it must fully implement it on a set timeline. However, signing up to EITI is voluntary, so resource-rich nations from Russia to Venezuela are still left out of the initiative.

#### *Related initiatives*

- **Publish What You Pay**—NGO public advocacy coalition launched in 2002, made up of 600 NGOs in over 60 countries. It is aimed at having oil, gas and mining revenues to form the basis for development and improve the lives of ordinary citizens in resource-rich countries.

## Endnotes

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- 32 For example, tantalum mines in Australia that had suspended operations in 2008 have announced they are resuming operations. TK
- 33 See Jason Stearns and Steve Hege, Independent Oversight for Mining in the Eastern Congo? A Proposal for a Third Party Monitoring & Enforcement Mechanism. Center for International Cooperation, New York University, January 2010. Available at [http://www.cic.nyu.edu/peace\\_ssr/docs/CIC%20Concept%20Note%20-%20%28Jan%2010%29.pdf](http://www.cic.nyu.edu/peace_ssr/docs/CIC%20Concept%20Note%20-%20%28Jan%2010%29.pdf). The mechanism should have four main functions: a) Investigate the links between armed actors and the minerals trade in Congo and neighboring countries; b) Conduct spot checks of mines and trading routes used by in-region sourcing and traceability schemes to check for involvement of armed groups; c) Develop a 'conflict minerals' map of the region, as the team should include a mapping unit which would provide clear guidance on mines and trading routes to traders interested in purchasing minerals from the region; d) Penalize exporters and traders who are caught trading in conflict minerals. These penalties should be buttressed by criminal investigations and penalties on a national level.
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Enough is a project of the Center for American Progress to end genocide and crimes against humanity. Founded in 2007, Enough focuses on the crises in Sudan, eastern Congo, and areas affected by the Lord's Resistance Army. Enough's strategy papers and briefings provide sharp field analysis and targeted policy recommendations based on a "3P" crisis response strategy: promoting durable peace, providing civilian protection, and punishing perpetrators of atrocities. Enough works with concerned citizens, advocates, and policy makers to prevent, mitigate, and resolve these crises. To learn more about Enough and what you can do to help, go to [www.enoughproject.org](http://www.enoughproject.org).

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