

MEMORANDUM

To: File

From: John Fieldsend
Special Counsel
Office of Rulemaking
Division of Corporation Finance
U.S. Securities and Exchange Commission

Date: September 15, 2010

Re: Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act Regarding Congolese Conflict Minerals

On September 15, 2010, Paula Dubberly, Felicia Kung, Lillian Brown, Steven Hearne, and John Fieldsend of the Division of Corporation Finance met with Corinna Gilfillan, Jonathan Grant, and Annie Dunnebacke of Global Witness. The participants discussed the Commission's required rulemaking in Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which relates to reporting requirements regarding conflict minerals originating in the Democratic Republic of the Congo and adjoining countries. At the meeting, three documents were provided to the staff by Global Witness and are attached to this memorandum.

Attachments

Attachment No. 1

JULY 2010

A GUIDE FOR COMPANIES

DO NO HARM

Excluding conflict minerals
from the supply chain

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global witness

EXECUTIVE SUMMARY

International companies' demand for minerals and metals is fuelling one of the world's most vicious and intractable conflicts.

Global Witness, the UN Group of Experts and others have published numerous detailed reports highlighting how rebels and government soldiers have hijacked the trade in mineral ores from eastern Democratic Republic of Congo (DRC), while subjecting the civilian population to massacres, rape, extortion, forced labour and forced recruitment of child soldiers.

The warring parties finance themselves via control of most of the mines in the region that produce tin, tantalum and tungsten ores and gold. They also generate substantial sums through illegal 'taxation' – i.e. extortion – of the minerals trade along transportation routes.

Congo's 'conflict minerals' are laundered into the global supply chain by exporters in the east of the country before being transformed into refined metals by large international smelting firms.¹ The metals are then used in a wide range of products, including consumer electronic goods such as mobile phones and computers. Some of the world's most famous brands are now coming under scrutiny to address their role in this devastating trade.

Nobody forces companies to purchase minerals or metals mined in war zones. It is their choice. Those that source minerals or metals originating from eastern DRC need to show the public that they have procedures in place to prevent direct or indirect involvement with serious human rights abuses and other crimes. This is what is called 'due diligence'.

Despite the mounting pressure on companies that use minerals and metals to carry out due diligence, few are actually doing this. Some companies claim that it is too complicated or too

difficult for them to do. *Due diligence is not rocket science, however.* It is a process that all reputable companies understand and employ on a regular basis to address risks ranging from corruption to environmental damage. Given the long-established link between minerals and human rights abuses in eastern DRC, it is something that international companies buying from the region should have implemented years ago.

At its core, the due diligence that companies using minerals or metals from the DRC need to undertake consists of:

- A conflict minerals policy
- Supply chain risk assessments, including on the ground checks on suppliers
- Remedial action to deal with any problems identified
- Independent third party audits of their due diligence measures
- Public reporting

By putting these measures in place, companies can help to create a mining sector in eastern DRC that brings real benefit to the people who live there. A due diligence-based approach to sourcing minerals is not about imposing blanket bans on trade; it is about ensuring that business does not perpetuate armed violence, serious human rights abuses and other crimes on the ground in conflict affected regions.

At the same time, a key message to companies that runs through this paper is that if they choose to use metals originating from eastern DRC they have a responsibility to demonstrate – by doing due diligence – that their activities are not causing harm. If they cannot do this, they must seek their supplies elsewhere.



global witness

INTRODUCING GLOBAL WITNESS



Global Witness is a UK-based non-governmental organisation which investigates the role of natural resources in funding conflict and corruption around the world.

In Cambodia, in our first ever campaign, our investigations helped shut down the illegal timber trade financing the Khmer Rouge. In Angola, we documented how the rebel group UNITA underwrote its operations via diamond trading, in defiance of UN sanctions. We also campaigned against conflict diamonds in West Africa, and helped to establish the Kimberley Process to remove such diamonds from global markets. We were co-nominated for the 2003 Nobel Peace Prize for this work.

Global Witness successfully campaigned to break the link between the timber trade and conflict financing in Liberia and exposed the role of the international cocoa trade in fuelling conflict in Côte d'Ivoire. Our current work includes promoting equitable sharing of oil revenues as a means of preventing renewed civil war in Sudan and developing solutions to the economic dimensions of the conflict in eastern DRC.

Global Witness was one of the earliest proponents of the Extractive Industries Transparency Initiative (EITI), an international initiative to combat corruption in the oil, gas and mining sectors, and is a member of the EITI board.

INTRODUCTION

Carrying out supply chain due diligence is one way that companies can ensure that they are not causing harm.

It involves identifying problems, addressing them and showing, in a transparent manner, how they have done this. In the case of eastern DRC, the problem that companies need to identify and address is the link between their purchasing of metal ores and the financing of rebel and government armies that commit serious human rights abuses such as killing, rape, torture, recruitment of child soldiers and other crimes.

In eastern DRC, there are two main means by which abusive armed groups generate cash from the mineral trade. One is by controlling mines, which entails extortion or theft from the miners and in some cases soldiers mining themselves. The other is by illegally taxing (in other words,

extorting from) the trade at all points between mine and point of export.² Companies' due diligence needs to address both problems. Simply identifying or certifying the mine of origin will not be enough. Companies need to know and show that the conditions of trading were legal and legitimate at all times.

The steps involved in undertaking due diligence are fairly simple, but it is not a box-ticking exercise. Companies are responsible for ensuring that adequate due diligence is conducted and cannot use the weak performance of Congolese government agencies as an excuse for their own failings. Verification and traceability schemes managed by industry bodies may be an

Eastern Congo's militarised minerals trade

Much of the minerals trade in eastern Congo is controlled by units of the Congolese army, militias and the Forces démocratiques de libération du Rwanda (FDLR), a group led by individuals allegedly involved in the 1994 genocide in Rwanda.

Recent research by Global Witness shows that former rebels from the Congrès national pour la défense du peuple (CNDP) have established mafia-style extortion rackets covering some of the most lucrative tin and tantalum mining areas. The ex-CNDP rebels, who

joined the Congolese national army in a chaotic integration process during 2009, have taken advantage of United Nations-backed military offensives to displace the FDLR from profitable mine sites.

They have gained far greater control of mining areas than they ever enjoyed as insurgents and are making tens of thousands of dollars a month from illegal taxes imposed on civilian miners. This represents a serious threat to the region's stability, not least as the ex-CNDP commanders have a history of reverting to rebellion when peace no longer suits their interests.

This militarised control of the minerals trade, which has continued in one form or another for twelve years now, is not only financing armed groups and robbing the state of much needed revenues, it also condemns miners to atrocious conditions characterised by armed violence and extortion. Global Witness has found evidence of miners being beaten for not handing over their winnings to the military and of systematic theft by soldiers of up to 30% of everything miners produce. The burden of illegal taxation is such that some miners fall into a cycle of debt in which they lose more than they earn.³

important source of information for companies' due diligence, but do not absolve them of their responsibility to ensure that their own activities and purchasing decisions do no harm.

Companies should see the conduct of due diligence not only as a part of their responsibility, but also as an opportunity to help resolve the Great Lakes region's cycle of armed violence. Supply chain due diligence, properly conducted, has the potential to have a much quicker impact in tackling the conflict minerals trade than some of the other options currently being proposed, such as certification of minerals.

Certification schemes may ultimately provide strong and comprehensive regulation of the minerals trade across the region. But our

experience with the Kimberley Process for conflict diamonds and other certification schemes makes clear that the establishment of the necessary regulatory frameworks and institutional infrastructure takes years, even in the best case scenarios.

Creating a certification scheme will also involve high level government cooperation and institution-building, but these are not viable options in conflict zones when the state is contested and rule of law largely absent.

Given the urgency of the situation in eastern DRC, these are major drawbacks. By contrast, supply chain due diligence is something that companies can start doing right away. There is no need, and no excuse, for waiting.

The growing international demand for due diligence

In November 2009, the United Nations (UN) Security Council called on governments to make sure that businesses based in their jurisdictions 'exercise due diligence on their suppliers and on the origin of the minerals they purchase', to stop them financing armed groups in the DRC.⁴

This ties in with two key messages of the UN framework for business and human rights being developed by the UN

Secretary-General's Special Representative John Ruggie: that it is the responsibility of companies to conduct business in a manner that does not harm the rights of others; and that due diligence is the principal means of fulfilling this responsibility. Professor Ruggie argues that due diligence is about companies 'knowing and showing' that they are respecting human rights.⁵

Failure by companies to carry out supply chain due diligence can damage their reputations and make them legally liable.⁶ In 2008, the UK government

upheld a complaint lodged by Global Witness against Afrimex, a British mineral trading company active in eastern DRC, under the framework of the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises. The UK government's investigation found 'that rebel soldiers extracted money from (Afrimex's) supply chain, helping them fund their campaign... through its lack of diligence, the firm failed to contribute towards ending the use of child labour and forced labour'.⁷

Mapping the supply chain for tin from eastern DRC

This diagram illustrates the conflict minerals trade from mines to manufacturer.

Cassiterite – the ore from which tin is made – is the main mineral export from eastern DRC, both in terms of volume and value. The trade in cassiterite generates millions of dollars a year for the warring parties. Internationally, tin is used in everything from mobile phones to packaging materials. Over half of all tin is used in solder, which goes into electronic circuit boards.

MINE SITE

Cassiterite is extracted by artisanal miners and sold to intermediaries (managers, négociants or representatives of comptoirs) at or near the mine site.

- Armed groups and army units steal and extort cash or cassiterite from miners at the mine site on a systematic basis.
- Miners are often forced to work at gunpoint in incredibly dangerous and difficult conditions. They are beaten if they fail to hand over the quantities of cash or mineral ore demanded.
- Top military commanders loot cassiterite from the mines in a highly organised manner. Commanders may seize control of specific mine shafts, sometimes even naming them after themselves.

TRANSPORTATION

The ore is transported by foot, truck, and aeroplane to the capitals of North and South Kivu Provinces: Goma and Bukavu.

- Rebels and army units extort money from traders and intermediaries at all stages of transportation between mine and point of export.
- These illegal 'taxes' are typically extracted at checkpoints set up along footpaths, main roads and airports.
- For some groups, notably the Congrès national pour la défense du peuple (CNDP) former rebels, illegal taxation is increasingly important to their illicit revenue generation.

EXPORT

Cassiterite is sold by intermediaries to government-licensed comptoirs or export houses based in Goma and Bukavu. Comptoirs have contracts to sell the minerals to foreign companies.

- Cassiterite that has come from militarised mines, or whose transportation has been facilitated by pay-offs to soldiers or rebels, is laundered into the legal supply chain by comptoirs.
- Comptoirs claim publicly that because they are licenced and pay taxes, therefore all the cassiterite they export must be conflict-free. In reality, their purchases are bankrolling abuses and instability in the region.

TRANSIT COUNTRIES

A proportion of the cassiterite is traded, and sometimes partially transformed, in neighbouring countries such as Rwanda.

- Traders in transit countries, notably Rwanda, are importing consignments of cassiterite from militarised areas of eastern DRC and are not carrying out checks on the conditions of trade.
- Governments of these neighbouring countries have not acknowledged the issue and have not implemented successive UN Security Council resolutions calling on them to ensure companies do proper due diligence.

SMELTERS

Cassiterite is sold by intermediaries, government-licensed traders to international smelters. The main smelters of cassiterite from eastern DRC in recent years have been the World and 15th Street Smelters, United Process, Malaysia Smelting Corporation and Itasano.

- Some major cassiterite trading and processing companies have been named (in some cases repeatedly) by the UN Group of Experts as purchasing minerals from mines held by armed groups and the military.
- Trading and processing firms are not carrying out rigorous due diligence on their supply chains. Some have initiated a traceability programme via the International Tin Research Institute (ITRI). However, this programme takes no account of either conflict financing via illegal taxation, or abuses by the national army, and does not constitute credible due diligence.

MANUFACTURERS

Refined tin is used to make components by manufacturers. Refined tin may pass through the hands of two or more component manufacturers before being incorporated into an end product.

- Component manufacturer and end users using tin, including major manufacturers of electronic goods like Apple, Dell, HP, Intel and Nokia do not have due diligence measures in place to exclude conflict minerals from their supply chains.
- Some of these firms have chosen to back the ITRI scheme, despite being warned repeatedly that it is not credible. There are also efforts underway by some electronics companies, notably Intel, to devise an industry-led 'smelter validation' scheme; however these are still at the planning stage.

Which companies should be carrying out due diligence on their supply chains?

Companies that use mineral concentrate or refined metals may or may not be aware that their supply chains contain minerals from eastern DRC. The following checks should raise 'red flags' which tell companies that they need to do comprehensive due diligence for the presence of conflict minerals in their supply chain:

- The minerals used by the company originate from or have been transported via a country in the Great Lakes region. These are the Democratic Republic of Congo, the nations which border it – Angola, Burundi, the Central African Republic, Republic of the Congo, Rwanda, Sudan, Uganda, Tanzania and Zambia – and Kenya.⁹ The point here is that the conflict in eastern DRC has a trans-boundary nature. Moreover, all conflict minerals from Congo pass through neighbouring countries before leaving Africa and it is well established that mis-declaration of conflict minerals as originating from other Great Lakes region countries is occurring on a large scale.⁹
- The stated origins of the minerals in question are countries that have limited or no capacity to produce them, raising the possibility that the materials are in fact of Congolese origin.
- The company or its suppliers have relationships or a history that links them to the Great Lakes region, for example if the company or one of its suppliers is known to have sourced minerals from the region in the past.
- The minerals supplied to the company are recycled or part-refined. (Part-processing of illicitly-sourced raw materials is a tried and tested means of evading supply chain controls internationally.)¹⁰

The point of identifying red flags is not to exclude countries or regions from trade but to focus a company's due diligence investigations. If a company's supply chain raises any of these red flags or any other grounds for suspecting that some of its materials may originate from eastern

DRC, it should be carrying out the due diligence measures outlined here. Ignorance is not an excuse.

Do all these companies undertake the same due diligence measures?

All companies in the minerals and metals supply chain should be basing their due diligence around the same five components:

- A conflict minerals policy
- Supply chain risk assessments
- Remedial action to deal with any problems identified
- Independent third party audits of their due diligence measures
- Public reporting

With regards to the information-gathering component – the supply chain risk assessment – there is a distinction to be drawn between the measures taken by 'upstream' companies that trade or smelt raw mineral concentrate and 'downstream' manufacturers that use the refined metals. Supply chain risk assessments by upstream firms should be based primarily around on the ground assessments. They should also include compilation and analysis of chain of custody data. Downstream manufacturers, by contrast, should focus their supply chain risk assessments on verifying that the smelters that produce the refined metal that they use have proper controls in place.

Why the difference in the responsibilities of upstream parties using raw mineral concentrate and downstream companies using refined metal? This distinction recognises that it is at the point of transformation – where minerals are smelted into metals – that the most comprehensive mixing of materials from different regions takes place. It is always going to be simpler to establish the provenance of raw mineral concentrate than refined metal. The traders, smelters and others that handle the raw minerals are – in supply chain and often geographic terms – closer to the original source. For them, the process of identifying the mine the materials came from

and assessing the conditions of trade is fairly straightforward.

For their part, all manufacturers that use refined metal can very easily find out which smelters their metals come from.¹¹ Moreover, when it comes to producing metals like tin and tantalum, for example, the number of major smelters around the world is surprisingly small. The smelters are a key bottleneck in the global supply chain and a logical focus for manufacturers' efforts to exclude conflict minerals.

Some manufacturers draw attention to the fact that they do not currently have direct contractual relationships with smelters; but this should not constitute a barrier to checking on the smelters' supply chain controls.

If eliminating the deadly trade in conflict minerals requires a change in the relationships between international companies and a shakeup in assumptions about their responsibilities to the people of eastern DRC and their obligations to each other, then this would seem an extremely modest price to have to pay.

Key components of supply chain due diligence

1. Conflict minerals policy

The company should publish a clear policy setting out its commitment to respect human rights in all its activities. It should undertake to abide by domestic and international law and UN sanctions and should set out how it will assess its own operations and those of its suppliers all the way up the supply chain against these standards.

The policy should state explicitly that it will not engage in any purchases that generate revenue for armed groups or army units that perpetuate serious human rights abuses or other crimes. In other words it will not trade in conflict minerals.

The company should also commit to showing, via credible evidence, the exact origin of its supplies (mine site), the conditions in which they were produced and the identity of those involved in extracting, trading, transporting and taxing them.

The company will need to assign responsibility to a director or other senior member of staff for making sure that the company lives up to its policy. Whoever it is will need to have access to the company's board. This is in line with broader principles of good corporate governance that require that the board be made aware of information vital to the companies interests.¹²

Having developed its policy, the company will need not only to publish it, but also to make its expectations clear to its own suppliers. 'Suppliers' here means not only the person or entity from whom the company purchased the minerals directly, but also others further up the supply chain who are involved in the sequence of transactions that transmits the minerals from the mine site to the company.

The company should communicate the policy to all suppliers and encourage them to adopt policies on conflict minerals that are in line with its own. The company should build specific provisions into its contracts requiring its suppliers to meet the standards set out in the company's conflict minerals policy and cooperate with its due diligence measures. One way of doing this would be via a standard suppliers' declaration which would be attached to contracts.

2. Supply chain risk assessments

Regular supply chain risk assessments are the central element of the company's due diligence.

For upstream companies that handle mineral concentrate these supply chain risk assessments should involve on the ground assessments to verify the origin of the minerals and the conditions of trade.

For downstream manufacturing companies, the supply chain risk assessments should focus more on verification of the due diligence systems of the smelter supplying the refined metal, than on field investigations into the conditions of trade in eastern DRC.

This section provides an overview of how these assessments should be carried out. More detailed guidance on how to carry them out is provided in Annex A (On the ground assessment by companies sourcing minerals from the Great Lakes region) on page 16 and Annex B (Manufacturer's assessment of smelter's supply chain controls) on page 20.

i) Supply Chain risk assessments by companies using mineral concentrate

Supply chain risk assessments by upstream companies should have two main components which are outlined here in order of priority:

- On the ground assessments
- Review of chain of custody data

These two components fit together. The on the ground assessments provide a comprehensive and in-depth profiling of the conditions of trade. They are the only way that a company can accurately assess the risk of its activities fuelling conflict and human rights abuses. The chain of custody data supplements this, through documentation on individual consignments of mineral ore purchased by the company.

On the ground assessments

Companies should undertake on the ground assessments, involving individuals with specialist knowledge of the region and the trade, as the main information-gathering element of their due diligence. These assessments should be quarterly, but should be brought forward in cases in which problems are detected through the chain of custody documentation or other sources. The company should not notify its suppliers in advance when these assessments are taking place.

The main steps involved in the on the ground assessment, all of which are elaborated in Annex A, are:

- Establishing the scope
- Appointing the right people to carry out the work, with the right terms of reference
- Carrying out preparatory research
- Field research
- Writing up findings and recommending actions by the company

The relationships between the company and conflict and human rights abuses – if they exist – are likely to concern armed groups benefiting financially from its activities, particularly through control of the actual mines from which the company sources its goods or illegal taxes levied on the minerals as they move from mine to point of export. Ascertaining whether there is a risk of these kinds of relationships occurring should be the main focus.

Sending people to eastern DRC to gather information is an idea that many companies using minerals and metals balk at. Some appear to believe that due diligence begins and ends with compilation of a limited amount of chain of custody documentation; despite the fact that active data collection is integral to the due diligence carried out by reputable businesses in other sectors. Others cite the difficulties of research in eastern DRC. However, work by the UN Group of Experts, NGOs, journalists and others has repeatedly demonstrated that it is possible to research the conditions of trade in the region.

Ensuring the security of the company's staff or consultants is a very serious consideration that can reinforce, rather than obstruct, an on the ground assessment. Where a company finds that the area it is sourcing from is so dangerous that no one can go there to gather data on the supply chain, it has probably obtained all the information it needs: if conditions are that bad, there is a good chance that its own purchasing practices will be contributing to the cycle of plunder and violence and it should seek its supplies elsewhere.

Once in the region, the assessment team's activities will consist primarily of site visits, interviewing people and reviewing documentation. The visits should be to the operational sites where the company or its suppliers are active. That means, for example, mines of origin, trading locations (such as markets), transportation routes and points of export, as well as nearby settlements.

The range of people whom the assessment team should interview is broad and should include individuals working in the mineral trade, officials and civil society organisations.

The review of documentation should focus primarily on cross-checking data gathered through the company's own chain of custody management system with documents available in eastern DRC and the region.

Having undertaken these information-gathering activities, the assessment team should write up its findings and make recommendations. This should centre on the question of whether there is any risk of a relationship between the company's supply chain and human rights abuses and other crimes. It should also provide recommendations on actions that the company should take. It should be submitted to the company's senior management and – as explained in the section on public reporting on page 13 – its findings should be made public.

Review of chain of custody data

Reviewing chain of custody data is an important component to the due diligence companies carry out on their supply chains. It does not on its own constitute due diligence, however. Firstly, chain of custody data does not provide any information about illegal taxation or the conditions of trade more generally. For example, the fact that a traceability scheme might identify the mine from which particular consignments originate does not tell the company whether or not the transportation of these same materials has generated illicit payments to soldiers or rebels. In other words, knowing the mine of origin,

important though it is, is not the same as knowing whether purchasing the minerals produced there is fuelling conflict and human rights abuses.

In addition, conditions in conflict-affected areas, where the rule of law is weak, are not conducive to the seamless implementation of a control system based on documentation alone. There is a very high risk of the chain of custody tracking system becoming corrupted and generating misleading data.

What chain of custody information can do, if it is comprehensive and subject to rigorous review, is provide an important complement to the company's on the ground assessments. To this end, the company should obtain precise documentary information on each consignment of minerals it buys that shows how it has made its way along the supply chain.¹³ This documentary information will need to show the following:

- The minerals' exact origin (mine site), the date of extraction and the identity of the individual or organisation that did the mining.
- The locations at which the minerals were subsequently traded, the dates on which the trade occurred and the identity of those involved in these transactions.
- The means and routes by which the minerals were transported from mine of origin to the company, the dates on which the different stages of the transportation occurred and the identities of the person or organisation doing the transporting. (This should include export and import documentation.)
- The locations at which the minerals were taxed, the dates in question and the identity of the organisation or individual to whom the taxes were paid.
- A description of the minerals (type, weight, purity) and information pertaining to any transformation, even partial, of the minerals at the different points along the supply chain.

Some of this information may be contained in documents produced by Congolese government agencies. Forms issued by provincial Ministry of Mines bodies SAESSCAM, Division des Mines and CEEC provide partial information on the mine

to export supply chain. Documents issued by customs and revenue agencies OCC and OFIDA at the point of export also contain useful data.¹⁴ Wherever possible, companies should incorporate government-issued documentation into their chain of custody system.

However, government agencies charged with regulating the minerals sector in eastern DRC are not always able to function effectively and reliably, not least given the militarisation of the trade and other impacts of the conflict. This should not come as a surprise. Companies that choose to source minerals from conflict-affected areas should be aware that there is a high probability that one of the early casualties of the violence will be the capacity of the state to function effectively. They should build this assumption into their supply chain due diligence from the start.

When sourcing from conflict-affected areas like eastern DRC, doing effective due diligence is the responsibility of the company and cannot be passed over to the state or another party.

Companies sourcing minerals from eastern DRC will therefore need to introduce their own system of chain of custody data collection to fill the gaps in the documentation issued by government agencies. This could ultimately take the form of 'bagging and tagging', bar-coding, or a chip-based tracking system. However, getting a high-tech traceability mechanism in place should not prevent companies from introducing a more basic paper trail system in the short term. Whichever form it takes, the system will need to be proofed against tampering, forgeries and false declarations.

Making the chain of custody control system work as an element of the due diligence framework hinges not just on the company's ability to get the data flowing, but also on its capacity to respond to it. The company should therefore assign responsibility for checking and analysing the chain of custody documentation on a continuous basis and ensuring that any problems detected are acted upon. The person(s) responsible for reviewing the chain of custody data should be asking of it such questions as:

- Is the documentation complete?
- Is there evidence of irregularities or tampering in the documentation itself or the way in which it has been completed?
- What changes are there in the pattern of extraction, trade, transportation and taxation laid out in the chain of custody data? What accounts for these changes?

What to do when problems and irregularities are detected is the basis of the next element of the due diligence system – remedial action – which is addressed over the page.

ii) Supply chain risk assessments by downstream manufacturers using refined metals

Whereas for the upstream trader or smelter of minerals, the main information-gathering component of the due diligence is a supply chain risk assessment that involves sending an assessment team to the ground to check on the conditions of trade at source, for the manufacturer it is checking on the controls in place at the point of transformation from minerals to metal by smelters. They amount to the same thing: verifying, through a rigorous assessment, the claims made by suppliers. Each smelter should be assessed at least once a year.

Given that each smelter supplies a wide range of manufacturing firms with refined metal, manufacturers could consider pooling resources to carry out assessments of the smelters' supply chain controls. Each individual company would still need to take responsibility for ensuring that such joint assessments were carried out to a high standard, however.

As explained in more detail in Annex B, the assessment of smelters' supply chain controls consists of the following main steps:

- Establishing the scope
- Appointing an assessment team
- Carrying out preparatory research
- Visiting the smelter and verifying its due diligence
- Writing up findings and making recommendations

When it comes to visiting the smelter and verifying its due diligence, the approach proposed here is based around two levels of assessment. The first, what we call a Level 1 evaluation, is aimed at ascertaining whether the smelters that supply the manufacturer are sourcing minerals from the Great Lakes region. If the smelters are definitely using such materials, or are likely to be, then a more detailed Level 2 evaluation will be required. The Level 2 evaluation aims to deduce whether the smelter's purchasing practices are fuelling human rights abuses and other crimes and to gauge the robustness of their due diligence.

The need for a Level 2 evaluation may only become clear through the Level 1 enquiries, so the initial scope of the assessment may need to be flexible.

The Level 1 evaluation involves carrying out interviews with company staff, reviewing documentation and inspecting the smelter's on-site minerals stockpiles. The assessment team should look out for red flag indicators that suggest that minerals from the Great Lakes region may have entered the company's supply chain. These are the same red flag indicators set out at the start of this paper concerning which companies should be carrying out due diligence.

If the assessment team encounters red flags or any other grounds for suspecting that some of the smelter's materials may originate from the Great Lakes region, they should automatically proceed with the Level 2 evaluation of the smelter.

A Level 2 assessment is a much more in-depth assessment of the smelter's supply chain controls. It aims to assess whether the smelter has excluded conflict minerals from its supply chain and undertaken due diligence to the standards set out in the first part of this paper that is addressed to traders and smelters. This will involve reviewing all documentation relevant to that due diligence (for a list see Annex B) and further interviews with staff.

If, at any point during the Level 2 assessment, the smelter is unable to show evidence of effective due diligence; for example if documentation

contains gaps, contradictions, or evidence of failure to act on problems identified, then the assessment team should conclude that there is a high probability of conflict minerals being present in its supply chain. The assessment is now complete, because under these circumstances the company will have no choice but to exclude the smelter from its supply chain. Further information-gathering is therefore redundant.

If on the other hand, the smelter's due diligence appears to be strong, the assessment team should complete their information-gathering with selected spot checks on at least two points in the smelter's supply chain, one of which should be the mines of origin.

After completing its information-gathering, the assessment team should write up its conclusions and make recommendations on actions the manufacturer should take. The manufacturer should use this, together with any other data it may have gathered, to assess the risk of its supply chain causing harm to people in eastern DRC.

3. Remedial action

While intensive information-gathering is crucial to robust due diligence, the company must keep in mind that collecting data is not an end in itself but a precursor to action. If the company finds at any time that, through the minerals it is using, it is associated with, or risks being associated with, serious human rights abuses and other crimes, its response should be immediate, decisive and unambiguous: it should put a stop to these transactions and end its relationship with the suppliers in question.

The need for companies to take a zero tolerance approach to conflict minerals in their supply chains should be self-evident: trading these materials helps perpetuate one of the world's worst wars. In other sectors and other parts of the world, companies are sometimes encouraged to prioritise engagement with wayward suppliers to help them meet accepted standards concerning labour, the environment and so on. But in the case of the DRC, the risks to people of purchasing

from unscrupulous operators are too great and the company must take a much more cautious approach.

In cases in which a company finds that a supplier has very minor procedural weaknesses in its supply chain controls, but there is no evidence that these have resulted in conflict minerals being transacted, then there may be a case for the company helping the supplier improve its practices. The company should keep in mind, however, that it has to be able to demonstrate that its operations are in no way associated with human rights abuses and crime and that a lapse, even if unintentional, by its supplier, may cause it serious reputational damage.

4. Audits

For companies' supply chain due diligence procedures to have credibility, they will require third party audits. Like other aspects of supply chain due diligence, commissioning audits is something companies know how to do. Just as any well-run business commissions regular audits to reduce the risk (and the perception) of financial mismanagement, companies that source minerals and metals originating from the Great Lakes region should be subjecting themselves to audits to guard against the possibility that their due diligence activities are failing to detect ways in which the supply chain is contributing to serious human rights violations and other crimes.

The audit should review all elements of the company's due diligence. It should assess whether there is any evidence that the company is sourcing minerals in a way that finances rebel and government armies that commit serious human rights abuses such as killing, rape, torture, extortion, recruitment of child soldiers and other crimes. It should also reach a conclusion as to whether the due diligence measures that the company is taking are sufficient to prevent such problems occurring in the future.

Minimum criteria for an auditor should be:

Independence: The auditor should be entirely independent of the company and its suppliers, meaning that it should not be connected with them in any way, via financial relationships (such as share or equity holdings) or other business relations. In addition, the auditor should not have undertaken an audit of the company or any of its suppliers for a period of at least 24 months. This is to avoid the auditor developing a long-term business relationship with the company that gives it a vested interest in the company's commercial viability. (24 months is the disengagement period proposed by the Fair Labor Association's criteria for external monitoring.)¹⁵

Professional qualifications and capacity:

The auditor should meet the professional criteria of Chapter 7 of ISO 19011 on Competence and Evaluation of Auditors. They should also have specialist knowledge and skills necessary to carry out this specific type of audit effectively. That means capacity not only to review paperwork, but also to cross-check the data generated by the company's on the ground assessment: verifying that the assessment took place as described, recorded data accurately, and reached conclusions that can be supported. To do this, the auditors will need to visit a selection of operational sites, including mines of origin.

The findings of the audit should be reviewed by company senior management alongside the data generated by the company's own supply chain risk assessment. Like the company's internal controls, the external integrity check provided by the auditor must be seen as a basis for action; notably action to terminate supplier relationships that may be fuelling violence. The audits will need to be published, along with a range of other information on the company's due diligence, as explained in the next section on public reporting.

5. Public reporting

The trade in conflict minerals is a matter of high public interest. Businesses at all points in the international supply chains for the minerals and metals concerned are coming under increasing pressure to show that their activities are not causing harm.

To show that it is implementing supply chain controls that are effective, the company will need to report publicly on the due diligence measures that it has taken. Indeed, the credibility of the company's due diligence measures is directly linked to its transparency. If a company undertakes rigorous due diligence on its supply chain but never reports on it, its claims of good practice will be met with scepticism. It may also miss out on a significant opportunity to add to the value of its brand.

Reporting on due diligence should take the form of a twice-yearly publication made available through the company's offices and its website. It should cover, at a minimum, the following areas:

CONFLICT MINERALS POLICY: the public reporting should state clearly what the company's policy is, whether it has changed since the last report and if so, why.

SUPPLY CHAIN RISK ASSESSMENTS: set out what these consist of, for example, how has the company carried out its on the ground assessments / assessments of smelters' supply chain controls and what have been the findings? Also, what chain of custody controls does the company have in place and what information have these generated over the reporting period?

REMEDIAL ACTION BY THE COMPANY: explain what actions the company has taken to deal with problems identified in its supply chain risk assessments. Has it excluded from its supply chain suppliers who were found to be trading in conflict minerals or who did not carry out adequate due diligence?

SUPPLIERS: The report should set out who all the suppliers are back to mine of origin, what commitments they have given the company regarding their policies on conflict minerals and what due diligence measures they are undertaking.

AUDIT: state who carried out the most recent audit and their qualifications for the assignment. Publish the audit and details of the company's response to its findings.

SUPPLY CHAIN MAP: the company should also publish a supply chain map setting out:

- The exact mines from which its materials are sourced
- The points at which the minerals are traded, mixed or processed
- The transportation routes taken
- The taxes paid: where, how much, and to whom
- The identity of all players along the supply chain: mine operator, traders, exporters, transportation companies.

All of this information must be published on a disaggregated basis: the company cannot fulfil these requirements by publishing data compiled by industry bodies about the collective activities of their members, for example.

At all times, companies must apply a precautionary principle: if in doubt, do not buy. With regards to the trade in minerals, the risks of irresponsible purchasing practices doing harm to civilians living in eastern DRC are simply too great.

CONCLUSION

Many of the companies using the minerals and metals exported from eastern DRC are very large international corporations that make very substantial profits. Having benefited – in some case for many years – from a trade that damages so many people in Congo, they must now begin facing up to their responsibilities.

Due diligence is a well-established business concept which is readily applicable to supply chain management in the minerals trade. The aim – identifying and addressing risks of harm resulting from companies' activities – and the means – gathering information as a basis for taking remedial action – are essentially the same as any other kind of due diligence. Where companies undertaking due diligence encounter obstacles, for example in gaining safe access to certain mine sites, this is a signal that they need to change their sourcing practices, not that doing due diligence is too difficult.



On the ground assessment by companies sourcing minerals from the Great Lakes region

An on the ground assessment of the conditions of trade is the cornerstone of the company's due diligence. This section sets out one way in which it can be carried out.

i) Establish the scope

The on the ground assessment is the principal means by which the company can find out whether its activities and purchasing practices may be fuelling killings, rape, extortion, forced labour, and other abuses.

In its most stripped-down form, the assessment should be aimed at answering the following questions:

- What is the pattern of serious human rights abuses and other crimes in the region from which the company is sourcing its materials?
- What does the company's supply chain in that region look like?
- Where do the two intersect?

These overarching questions can be broken down into a series of more specific ones, examples of which are set out in the box below:

<p>Guiding questions for the on the ground assessment</p> <p><i>Serious human rights abuses and other crimes:</i></p> <ul style="list-style-type: none"> ■ What kinds of abuses are occurring in the areas from which the minerals that the company purchases originate? Where exactly are they occurring and who is involved? ■ What laws are being violated? In many cases this may seem obvious, but the company should find out whether international crimes, such as pillage, may be occurring. Violations of national law are also relevant, given the legal prohibition in the DRC on soldiers getting involved in mining activities, for example. <p><i>The supply chain and the way in which the materials the company sources are extracted, transported, traded and taxed</i></p>	<ul style="list-style-type: none"> ■ What is the precise origin of the minerals (the specific mines)? ■ Who owns the rights to the mines or concessions in which minerals are mined? ■ What are the conditions in which the minerals are extracted? For example, is there forced labour, child labour or any kind of coercion involved? ■ How are the minerals transported and by what routes? Who provides the transportation services? How long does the transportation take? Do the authorities provide any official oversight or inspection? If so, what form does this take? ■ Where are the minerals traded and how is trading carried out? Are the trading sites secure, or is there scope for coercion, fraud, introduction of materials from other sources etc? 	<ul style="list-style-type: none"> ■ Do the authorities provide any official oversight or inspection at this point? If so, what form does this take? ■ At what points in the supply chain are the minerals inspected or taxed by government authorities or any other parties? What form does this take? Are any documents or receipts issued? How much money is paid in taxes and who does this money go to? ■ Do the transactions and other activities observed on the ground match with the patterns of activity set out in the chain of custody documentation? ■ Can the miners, traders and intermediaries show records of previous transactions for specific consignments of minerals which tally with chain of custody records held by the company?
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Guiding questions for the on the ground assessment (continued)		
<i>Suppliers</i>		
<ul style="list-style-type: none"> ■ Who are the company's suppliers at each tier of the supply chain (i.e. all the mines of origin, traders and intermediaries in the supply chain, from point of extraction onwards, not just the company's immediate supplier)? ■ What are the various suppliers' policies on conflict minerals? ■ Do the suppliers have the necessary authorisations and permits to operate? 	<ul style="list-style-type: none"> ■ Is there any evidence of the suppliers themselves being involved in serious human rights abuses or other crimes? ■ Who are these suppliers' beneficial owners? ■ What relationships, if any, do the suppliers or their beneficial owners have with other traders, state or non-state armed groups or criminal elements?¹⁶ 	<ul style="list-style-type: none"> ■ Are state or non-state armed groups directly or indirectly involved in the extraction, trading, transportation or taxing of the minerals? ■ Are these groups acting within the bounds of national and international law? Are any of them involved in serious human rights abuses or other crimes? ■ Are state or non-state armed groups benefiting in any way from extraction, trading, transportation or taxing of minerals being carried out by other parties? In other words, are they making money out of transactions that superficially do not appear to involve them?
<i>Armed groups</i>		
	<ul style="list-style-type: none"> ■ Are state or non-state armed groups controlling the mine or the surrounding area or otherwise present? If so, what is their relationship to the mineral trade? 	

ii) Appoint an assessment team

It is the company's responsibility to carry out this on the ground assessment, as part of its due diligence. This should not prevent the company from drawing on external expertise where needed. Companies that buy from, but do not operate in, the Great Lakes region may wish to consider the option of hired help in conducting due diligence. At the same time they may feel that there are advantages to involving their own employees in the process directly, with an eye to building up their in-house capacities. There are pros and cons to both approaches.¹⁷

Whatever the team's composition, its members must be mandated to ask difficult questions, pursue leads and follow up on unexpected information that they may come across as they go along. They need to be aware that the kind of data they are looking for will be primarily qualitative and empirical. This will complement the more procedural information that the company will receive through its chain of custody system.

The assessment team must be given clear terms

of reference and plan their work carefully. They need to understand that they cannot reduce the exercise to a questionnaire-filling or box-ticking exercise. What is set out here should be seen as a framework and the minimum set of steps that a company should take, not a limit on what a company assessment team should do.

The assessment team should be required, under contract, to meet appropriate evidentiary standards for the research that they carry out. These evidentiary standards could be modeled on those used by UN panels of experts, for example. Whatever standard of evidence is used, it must be remembered that the point of due diligence is to detect risk, not support a case in a court of law. Risks are, by definition, sometimes difficult to pin down as fact and risk assessments must assume 'imperfect knowledge'. For example, it may be difficult to determine the precise details of a particular series of human rights abuses, but if there are reliable reports, or reports from several sources, no team should exclude reporting such events for lack of 'hard evidence'. Rather, the team should be careful to communicate to company decision-makers the nature of the information by which a risk is identified.

iii) Carry out preparatory research

The first step to answering the questions listed above is to carry out a desk-based review of available documentation. This will likely include reviewing the following:

- National and international laws, codes of conduct, good practice guidance or other standards for businesses relevant to the region in question. Having established a conflict resources policy that refers to these standards, the company should have many of these documents already.
- Reports by the UN, governments, the International Criminal Court, NGOs, media and others on the conflict, associated human rights abuses and crimes, and on the trade in the Great Lakes region. As part of this desk review process, the assessment team should get in touch with the organisations or individuals that have produced the publications reviewed to follow up with them on particular points that are relevant to the assessment.
- Contracts with suppliers, so that the team can go into the assessment knowing what commitments the suppliers have given the company with respect to their sourcing practices
- The chain of custody documentation gathered by the company since the last on the ground assessment

iv) Field research

Having completed the desk-based research, the assessment team will need to go to eastern DRC and possibly neighbouring countries in order to

- Gather first-hand information on the conditions of trade, with a particular focus on problems such as illegal taxation, which chain of custody documentation cannot detect.
- Cross-check the data that the chain of custody documentation can provide, for example by inspecting mines, visiting trading centres and export points and mapping out transportation routes.

This on the ground element of the assessment should include the following types of information-gathering:

Site visits:

■ **The operational sites** where the company or their suppliers are active: mines of origin, trading locations (such as markets), transportation routes, points of export and other places. This means all the sites for each part of the supply chain. In practice, visiting the mines of origin will simultaneously enable the assessment team to inspect most of the relevant transportation routes and visit sites along the way where trading and taxation occur. If there are additional key transportation routes for the minerals, the assessment team should inspect these also. The assessment team should not give advance warning of these site visits.

■ **The nearest settlement** to each of these sites. People living in the vicinity of these various sites are likely to have information about the conditions of the trade and may be able to speak more freely than those on site who may be under the scrutiny of supervisors or soldiers.

■ **Provincial capitals**, in order to visit the company head office, government offices, NGOs etc.

Interviews:

At each of the locations visited, the assessment team should carry out a minimum of four separate interviews, with a cross-section of people from the following broad categories:

- People involved in the mineral trade: diggers, porters, intermediary traders (e.g. négociants) and exporters (i.e. comptoirs)
- Government officials, including local Ministry of Mines bodies SAESSCAM, Division des Mines, CEEC and customs and revenue authorities OFIDA and OCC
- Members of the security forces, such as

- Local residents: people living in or around the key sites at which mining, trading, transportation and taxation take place, traditional chiefs and other community leaders

- Civil society: NGOs, unions, journalists, church groups

Not all of these categories of interviewees will be present at each location. However, at every operational site visited, it is essential that, within the minimum four interviews, the assessment team interview at least two people directly involved in the activity taking place. That means, at each mine site, a minimum of two diggers; on a transport route at least two porters, drivers or middlemen; at a market where minerals are traded, two traders; at a taxation point, a minimum of two people carrying out the taxation and so on. At each site, the team should endeavour to interview at least one official from one of the Congolese agencies involved in regulating the mineral trade.

Where the assessment team encounters conflicting accounts or ambiguous information, they should carry out additional interviews.

In the visit to the provincial capital, the assessment team must make sure they interview at least two people from each of the categories listed above and all of the state agencies concerned with regulating the minerals sector: SAESSCAM, Division des Mines, CEEC and customs and revenue authorities OFIDA and OCC.

Review of documentation:

- Laws and regulations (if not already obtained during desk-based research)
- Official permits: licences of each exporter or trader in the company's supply chain
- Documents accompanying individual shipments concerning source, quantity, purity of minerals, e.g. bills of lading, customs declarations, documents issued by government agencies. These documents can be cross-checked against

data generated through the chain of custody tracking system.

The assessment team must try to trace all consignments of minerals originating from eastern DRC that the company has purchased back to the mine of origin. That will require them to cross-check details of these consignments, or the individual bags (colis) that make up these consignments, with the records held by the individual exporters and intermediary traders in the supply chain. Wherever possible, the team should try to obtain copies of the documentation held by the exporters and traders concerned for the company's own records.

v) Write up the assessment and make recommendations

Having completed its information-gathering activities, the team should write up its findings. It should set out the pattern of abuses in the region and profile the company's supply chain, the activities involved and conditions in which they take place, the players involved, and their patterns of relationships. It should draw conclusions as to whether the pattern of abuses and the company's own activities and associations intersect. Is there a relationship between the company and abuses, or a risk of there being one? If so, what is it? What are the consequences for the parties abused and for the company? Is the company liable under national and international law or industry standards? Is it in compliance with its own conflict minerals policy?

The assessment should provide recommendations on action the company should take to address problems identified and suggestions as to how it can improve its due diligence. If the assessment team finds grounds for suspecting that the company could be complicit in abuses, or reason to think that it is not possible to eliminate this risk, then it should recommend that the company discontinue its existing purchasing practices.

B

Manufacturer's assessment of smelter's supply chain controls¹⁸

When it comes to carrying out a supply chain risk assessment, the manufacturer should focus on verifying the controls exercised by the smelter that supplies the refined metal that it uses. This annex proposes a means of doing this.

i) Establish the scope

The approach proposed here is based around two levels of assessment. The first, what we call here a Level 1 evaluation, is aimed at ascertaining whether the smelters that supply the manufacturer are sourcing minerals from the Great Lakes region. If the smelters are definitely using such materials, or are likely to be, then a more detailed Level 2 evaluation will be required. The Level 2 evaluation aims to deduce whether the smelter's purchasing practices are fuelling human rights abuses and other crimes and to gauge the robustness of their due diligence.

The need for a Level 2 evaluation may only become clear through the Level 1 enquiries, so the initial scope of the assessment may need to be flexible.

Both levels of evaluation start with a preliminary review of available documentation and then a visit to the smelter.¹⁹

Before that, however, the manufacturer needs to assemble a team to carry out the assessment.

ii) Appoint an assessment team

Unless the manufacturer already knows that the smelter is using minerals from the Great Lakes region, it will begin with a Level 1 evaluation. This will require an assessment team whose knowledge

is primarily industry-based and which is capable of analysing trade data, inspecting mineral stocks and carrying out interviews. The assessors could be auditors appointed by the manufacturer or members of its own staff, or both.

If, through the Level 1 evaluation, it then emerges that the smelter's mineral concentrate sources are likely to include mines in the Great Lakes region, it will become necessary to enlist additional, specialist expertise, almost certainly from outside the manufacturer's own staff.

Like the teams appointed by upstream companies using mineral concentrate, the assessors engaged by downstream manufacturers should be required to meet clear terms of reference and evidentiary standards.

iii) Carry out preparatory research

The assessment team will first need to check who the manufacturer's smelters are, using chain of custody documentation and making enquiries of its immediate suppliers of metal or metal-containing products. They should map out the supply chain between the smelter and the manufacturer.

Next, they should conduct some preliminary research on the smelter. Has the manufacturer had any previous contact with the smelter, for example communications regarding the manufacturer's expectations of its suppliers? Has the smelter featured in a previous supply chain risk assessment by the manufacturer? What do the smelter's own annual reports and website say about its conflict minerals policy and its supply chain due diligence? Is it publishing specific reports on its due diligence measures? Are there any published reports that link the smelter to minerals from the Great Lakes region?

The assessment team members should familiarise themselves with the terms of contracts between the manufacturer and its immediate suppliers, particularly if the immediate supplier is also the smelter. They should review documentation on relevant laws and standards. They need to have

a reasonable working knowledge of the conflict minerals trade and conditions in the Great Lakes region, who is known to be implicated and what are the patterns of activity involved, so that they can cross-reference this with the information they gather about the smelter and draw conclusions about its supply chain.

Lastly, the assessors need to know which countries around the world produce the type of mineral that the smelter processes and what are their known production capacities. They will need a grasp of this information in order to detect any anomalies in the chain of custody data they review when they visit the smelter.

iv) Visit the smelter

Having done the preparatory desk-based research, the assessment team should go and see the smelter. This should be a visit to the site where the smelter actually processes minerals into metals, because this is the place where they will be able to inspect physical stock and where there should be the most complete and up to date records of what materials are coming in and what is going out. Visiting one of the smelter's representational offices at another location is not a substitute. The smelter should not receive more than a day's notification ahead of a visit by the assessment team.

The first thing the assessment team needs to do is to ascertain whether there is a possibility that the smelter is using minerals from the Great Lakes region. The smelter may be quite open about the fact that they do use such materials, in which case the team should proceed directly with a Level 2 evaluation (below). In other cases the smelter may say that they do not use minerals from the Great Lakes region or that they do not know, in which case the team begins with a Level 1 evaluation.

LEVEL 1 EVALUATION

The assessment team should separately interview the smelter's senior management

and its procurement division staff and review documentation about the consignments of minerals that the smelter uses. They should also carry out a physical inspection of the on-site stock and compare it with the smelter's chain of custody documentation. Their enquiries should focus on such questions as:

- What are the types of minerals that the smelter uses and what form (i.e. unprocessed or semi-processed) are they in?
- What are the minerals' exact origins, when were they extracted and who did the mining?
- Where were the minerals subsequently traded, on what dates and who was involved in these transactions?
- What are the means and routes by which the minerals were transported from mine of origin to the smelter, on what dates did the different stages of the transportation occur and who was doing the transporting? What international border crossings did the minerals pass through en route to the smelter?
- Where and when were the minerals taxed? To whom were the taxes paid?
- What were the key characteristics of the minerals (type, weight, purity) at the different points along the supply chain?

The documentation that the assessment team needs to review includes:

- Records of the mineral consignments being extracted and transported out of the mine of origin
- Licence details of traders and exporters
- Transportation records
- Export permits and import permits issued by the relevant state authorities
- Shipping documents, including bills of lading, packing lists, assay certificates

■ Records of stock maintained at the smelter site

The assessment team should look out for 'red flag' indicators that suggest that there is a possibility that such Great Lakes region minerals could have entered the smelter's supply chain.

These red flag indicators are the same as those set out at the start of this paper concerning which companies should be undertaking supply chain due diligence:

- The minerals used by the company originate from or have been transported via a country in the Great Lakes region.
- The stated origins of the minerals in question are countries that have limited or no capacity to produce them, raising the possibility that the materials are in fact of Congolese origin.
- The company or its suppliers have relationships or a history that links them to the Great Lakes region, for example if the company or one of its suppliers is known to have sourced minerals from the region in the past.
- The minerals supplied to the company are recycled or part-refined. (Part-processing of illicitly-sourced raw materials is a tried and tested means of evading supply chain controls internationally.)

If the assessment team encounters red flags or any other grounds for suspecting that some of the smelter's materials may originate from the Great Lakes region, they should automatically proceed with the Level 2 evaluation assessment of the smelter.

If, in the course of its Level 1 evaluation, the team has encountered only consistent and verifiable evidence that the likelihood of minerals from Great Lakes region entering the smelter's supply chain is negligible, then the information-gathering phase of the assessment is complete and they should move on to writing up their findings (see section below on writing up).

LEVEL 2 EVALUATION

Having established that the smelter is sourcing minerals from the Great Lakes region, or that there is a possibility that this may be happening, the assessment team now has to proceed with a more in-depth examination of the smelter's supply chain and control systems.

The types of data that the assessment team will be looking at for this more in-depth evaluation are those that would automatically be generated by rigorous due diligence:

- Conflict minerals policy
- Contracts with suppliers
- On the ground assessments
- Chain of custody documentation
- Records of action taken by the smelter to address problems identified
- Auditors' reports
- Public reports by the smelter

The assessment team will need to supplement its review of documentation with interviews with the smelter's staff, particularly those directly involved in doing the due diligence and the senior management staff ultimately responsible.

If the smelter is unable to offer convincing evidence that it has excluded from its supply chain materials sourced in a harmful manner, for example if the documentation generated by its own due diligence contains gaps, contradictions, or evidence of failure to act on problems identified, then the assessment team should conclude that there is a high probability of such minerals being present in its supply chain. The assessment is now complete, because under these circumstances the manufacturer will have no choice but to exclude the smelter from its supply chain. Further information-gathering is therefore redundant.

If, however, these enquiries of the smelter reveal a picture of strong supply chain due diligence which appears to have excluded conflict minerals and dealt effectively and promptly with any problems, then the assessment team should now proceed with a final verification in the form of spot checks.

COMPLETE THE LEVEL 2 EVALUATION WITH SPOT CHECKS

The aim of the spot checks is to compare the data presented by the smelter with the operations of mine operators, traders, or other intermediaries further up the supply chain. By now, the assessment team will have obtained details of what the smelter's supply chain looks like and will be able to choose particular points to look at in more depth. This guidance recommends that the cross-checks focus on at least two different points in the smelter's supply chain, one of which should be the mines of origin.

Undertaking the cross-checks will involve visits to the site of operations of the miners, traders, intermediaries or others concerned, using the on the ground assessment methods outlined in Annex A (section iv). The assessment team should not give prior notification of its cross-checking visits.

Once more, the focus of the assessment team's enquiries should centre on what evidence the supplier visited can produce to prove that they are not engaging in harmful sourcing practices and the extent and quality of their due diligence. Carrying out this part of the Level 2 evaluation may require the manufacturer to augment its assessment team with additional members who have specialist knowledge, for example of the Great Lakes region.

v) Write up findings and make recommendations

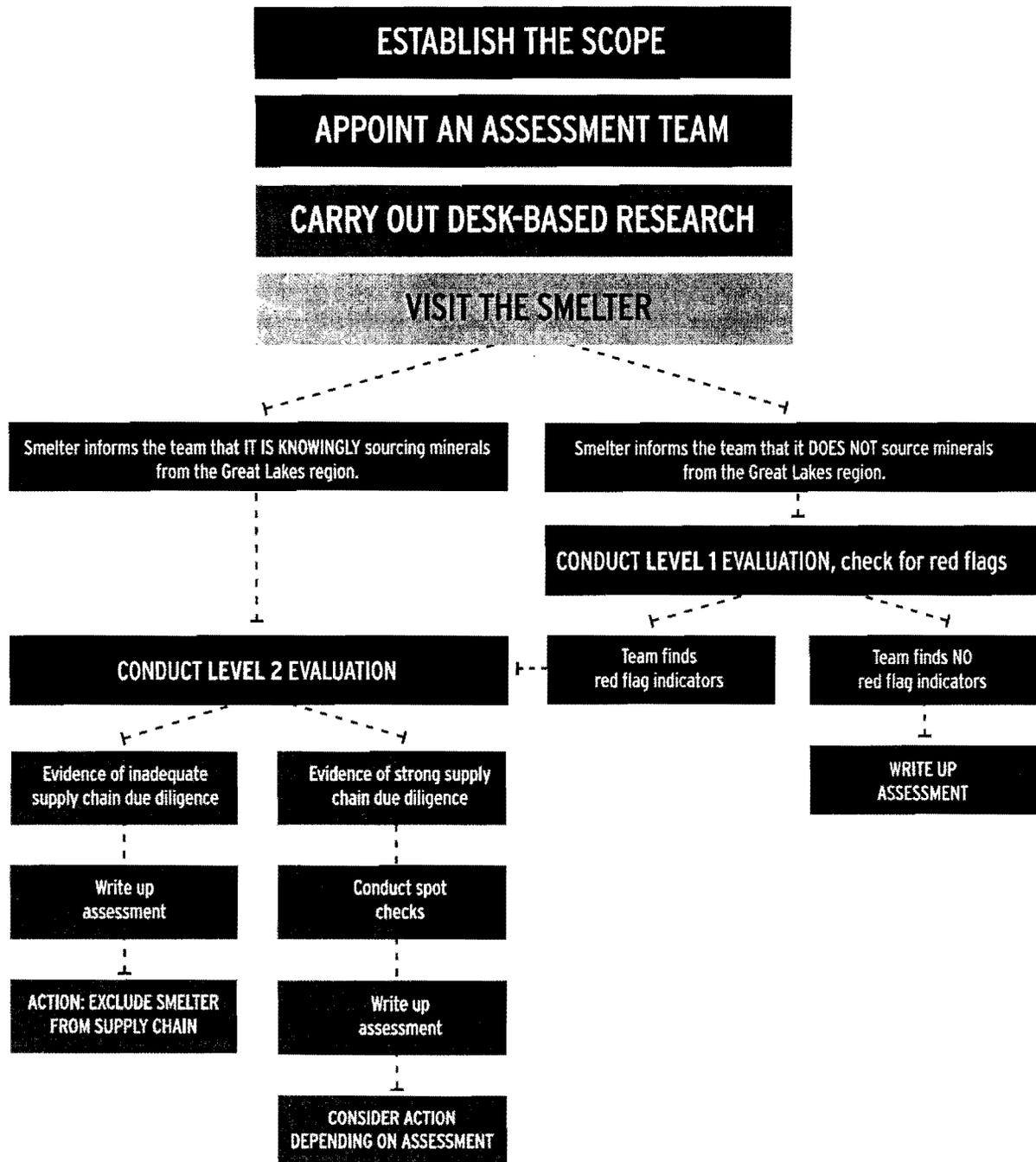
The assessment team should now set out its conclusions in detail. First it should explain whether it decided to undertake a Level 1 or Level 2 assessment or both and the reasons why. In cases where the team decided not to go beyond Level 1, it should set out the basis for its decision in detail.

If the assessment team found reason to carry out a Level 2 evaluation, then it needs to describe precisely what steps it took and lay out its findings as follows:

- Describe the pattern of abuses in the region concerned.
- Profile the smelter's supply chain, the activities involved and conditions in which they take place, the players involved, and their patterns of relationships.
- Draw conclusions as to whether the pattern of abuses and the smelter's own activities and associations intersect.
- If there is such a relationship between the smelter and abuses, describe it in as much detail as possible.
- Assess what are the consequences for the parties abused and for the smelter and also for the downstream manufacturer carrying out the supply chain risk assessment. For example, is either the smelter or the manufacturer liable under national and international law? Are they in compliance with their own conflict minerals policy and industry standards?

The assessment should provide recommendations on action the manufacturer should take to address problems identified and suggestions as to how it can improve its due diligence. If the assessment team finds grounds for suspecting that any of its smelters could be complicit in abuses, or reason to think that it is not possible to eliminate this risk, then it should recommend that the manufacturer source its metals from a different processor.

Flowchart: manufacturer's assessment of smelter's supply chain controls



ENDNOTES

- 1** Global Witness has proposed a definition of 'conflict resources' as follows: conflict resources are natural resources whose systematic exploitation and trade in a context of conflict contribute to, benefit from, or result in the commission of serious violations of human rights, violation of international humanitarian law or violations amounting to crimes under international law. For more details see Global Witness, *Lessons UNLearned*, January 2010 and *The Sinews of War*, November 2006; both are available from www.globalwitness.org.
- 2** Some payments by trading companies (comptoirs) to armed groups could be as much voluntary as forced. For a description of the role of one comptoir in sending money to FDLR representatives in Europe, see Final Report of the Group of Experts on the Democratic Republic of the Congo re-established pursuant to resolution 1857 (2008), submitted to the UN Security Council November 2009, pages 24-25.
- 3** Report of the UN Secretary-General pursuant to paragraph 8 of resolution 1698 (2006) concerning the Democratic Republic of the Congo, 8 February 2007.
- 4** UN Security Council Resolution 1896 (S/Res/1896), adopted 30 November 2009.
- 5** Keynote address by UN Secretary-General's Special Representative John Ruggie 'Engaging Business: Addressing Respect for Human Rights', sponsored by the US Council for International Business, US Chamber of Commerce, International Organization of Employers, Atlanta, 25 February 2010, http://www.hks.harvard.edu/m-rcbg/CSRI/newsandstories/Ruggie_Atlanta.pdf.
- 6** International Alert & Fafo, 'Red Flags: Liability Risks for Companies Operating in High-risk Zones', www.redflags.info.
- 7** UK Government Department for Business, Enterprise & Regulatory Reform (BERR), 'Press release: Mineral Trade Helped Fund Rebels', 28 August 2008; see also BERR, 'Final Statement by the UK National Contact Point for the OECD Guidelines for Multinational Enterprises: Afrimex (UK) Ltd', August 2008; Global Witness, 'Afrimex (UK) / Democratic Republic of Congo / Complaint to the UK National Contact Point under the Specific Instance Procedure of the OECD Guidelines for Multinational Enterprises', 20 February 2007, available from www.globalwitness.org.
- 8** All these countries, including Kenya, are members of the regional governmental grouping the International Conference on the Great Lakes Region. Despite not sharing a border with the DRC, Kenya's role in the trade in Congolese minerals is crucial, as Mombassa is one of the two main ports through which they are shipped out of Africa.
- 9** See, for example Final Report of the Group of Experts on the Democratic Republic of the Congo re-established pursuant to resolution 1857 (2008), submitted to the UN Security Council November 2009, page 51.
- 10** For example tantalum ore that has been turned into k-salt. While there is nothing wrong with recycling or partially refining minerals, companies that mine and use refined tantalum have expressed concerns that these processes are used to introduce tantalum ore from eastern DRC into the global supply chain (Global Witness communications with industry representatives, April 2010). More generally, partial processing is a tried and tested means of laundering conflict resources and other commodities that have been sourced illicitly. For brief summaries of examples from the timber industry, see Global Witness, *Lessons UNLearned*, 2010, p.10 and *Cambodia's Family Trees*, 2007, p. 38, both available from www.globalwitness.org. The Kimberley Process Working Group of Diamond Experts has dedicated a substantial proportion of its time to closing the potential loophole of diamonds being part-polished as a means of evading Kimberley Process controls, which apply only to rough diamonds.
- 11** Communications with manufacturers of electronic components and end user products, 2010.
- 12** The pitfalls of assigning junior staff to take responsibility for ensuring effective due diligence are illustrated by Global Witness's investigations of the role of banks in laundering money stolen by dictators, see Global Witness, *Undue Diligence*, March 2009, available from www.globalwitness.org.
- 13** For a description of the key elements of an effective commodity tracking system, see Global Witness (Corene Crossin, Gavin Hayman & Simon Taylor) 'Where did it come from? Commodity Tracking Systems', in Ian Bannon and Paul Collier, *Natural Resources and Violent Conflicts: Options and Actions*, World Bank, 2003.
- 14** OCC stands for Office congolais de contrôle; CEEC is the Centre d'évaluation, d'expertise et de certification; OFIDA is Office des douanes et accises; SAESSCAM is Service d'assistance et d'encadrement du small scale mining.
- 15** Fair Labor Association Charter, Chapter VIII A, Accreditation Criteria for Independent External Monitors, [http://dev.fairlabor.org/var/uploads/File/FLA%20Charter_3.18.08\(1\).pdf](http://dev.fairlabor.org/var/uploads/File/FLA%20Charter_3.18.08(1).pdf).
- 16** Relationships with criminals are relevant with respect to the national army as well as non-state groups or civilians, not least given the International Criminal Court warrant for the arrest of a senior ex-CNDP rebel commander now integrated into the Congolese armed forces.
- 17** Mark B Taylor, Luc Zandvliet and Mitra Forouhar, 'Due Diligence for Human Rights: A Risk-based Approach', Corporate Social Responsibility Initiative Working Paper N°53, John F Kennedy School of Government, Harvard University, October 2009.
- 18** Manufacturers here means any firm that makes products using refined metals.
- 19** To keep the scenario as simple as possible, we assume in this example that the company has only one smelter supplying it with refined metal. In practice, there could be several.

Global Witness is a UK-based non-governmental organisation which investigates the role of natural resources in funding conflict and corruption around the world.

References to 'Global Witness' in this report are to Global Witness Limited, a company limited by guarantee and incorporated in England (Company No. 2871809).

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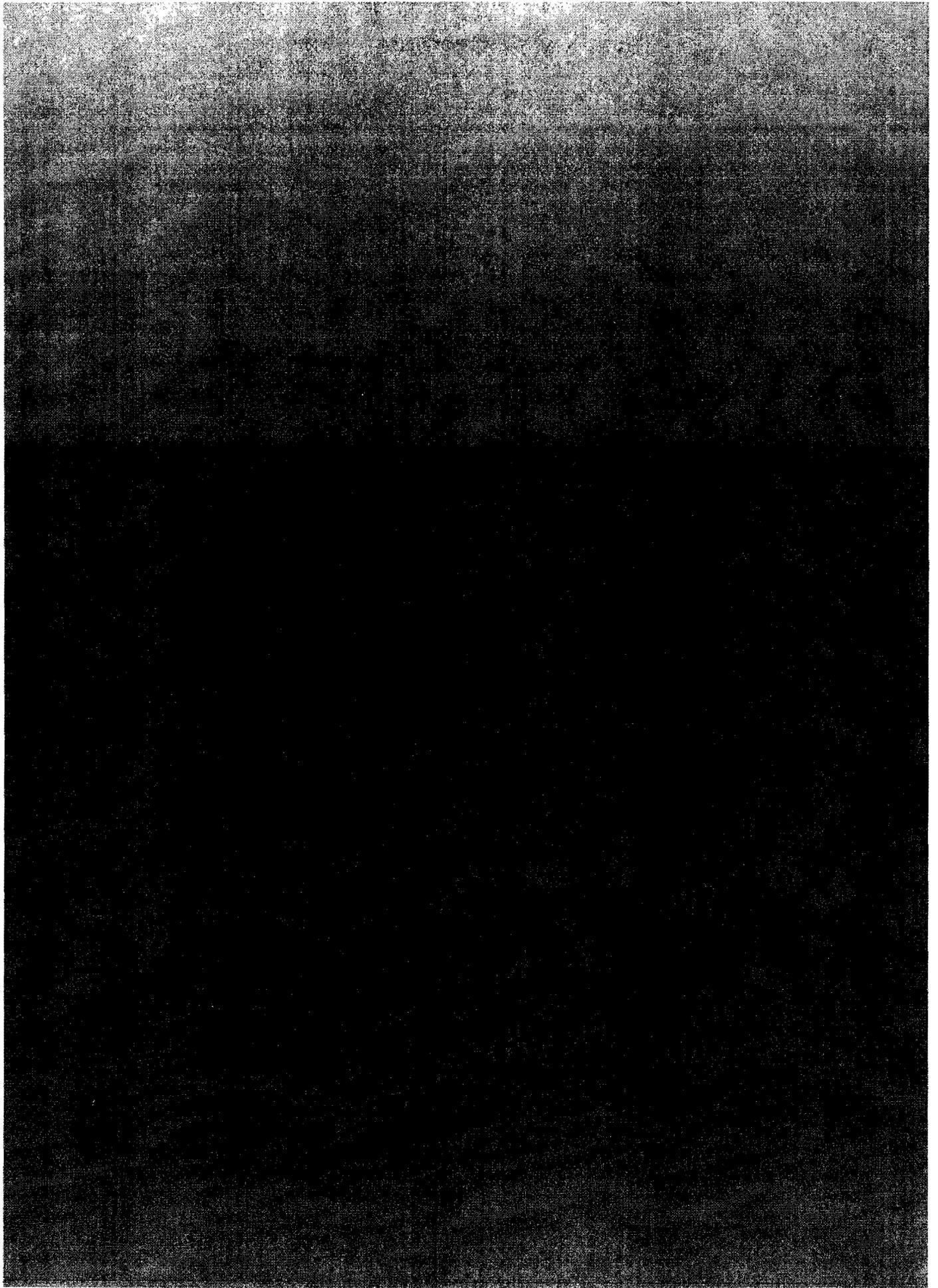
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Attachment No. 2



global witness

Global Witness
Annual Review **2009**



About Global Witness

GLOBAL WITNESS BRINGS TOGETHER THE ISSUES OF HUMAN RIGHTS, CORRUPTION, THE TRADE IN NATURAL RESOURCES, THE ROLE OF BANKS, THE ARMS TRADE, CONFLICT. IT IS THE ONLY ORGANISATION THAT DOES THIS, PERIOD.

ARYEH NEIER PRESIDENT, OPEN SOCIETY INSTITUTE

For 15 years, Global Witness has run pioneering campaigns against natural resource-related conflict and corruption and associated environmental and human rights abuses. From Cambodia to Congo, Sierra Leone to Angola, we have exposed the brutality and injustice that results from the fight to access and control natural resource wealth, and have sought to bring the perpetrators of this corruption and conflict to book.

Our work has revealed how, rather than benefiting a country's citizens, abundant timber, minerals, oil or other natural resources can incentivise corruption, destabilise governments, and lead to war. Rather than using their wealth wisely as a building block for development, countries rich in natural-resources frequently end up blighted by inequality and bad governance.

In spite of increasing international recognition of this phenomenon – often referred to as 'the resource curse' – governments, multilateral institutions and companies have all failed to do enough to tackle it. Indeed, in many cases, companies, acting with impunity in search of profits, are a major driver of the problem. Overall, there is a still a shocking inertia, motivated in many cases by self-interest, and a widespread lack of willingness to reform the systems and close the loopholes that perpetuate this problem.

Global Witness's work is cross-cutting and multi-dimensional. Our international campaigns operate at the nexus of development, the environment and trade. We are motivated by a desire to tackle the underlying causes of conflict and poverty and to end the impunity of individuals, companies and governments that exploit natural resources for their own benefit at the expense of their people and the environment. From undercover investigations, to high level lobby meetings, we aim to engage on every level where we might make a difference or find out something that will help us bring about change.

Global Witness refuses to accept a status quo where a powerful elite manipulate and break the rules for their own benefit. We do not want to live in a world where the privileged offspring of an African dictator can buy a luxury yacht with stolen oil money while the country's citizens live in poverty. We don't condone a system where seams of minerals in the ground represent extreme riches for the few and a cause of conflict and poverty for the many. And we will not pardon the selective myopia of companies that make millions from trading in the very diamonds, oil or timber which are destroying the lives and livelihoods of innocent civilians.

THE PARADOX OF WEALTH THAT CREATES POVERTY

In 2008, Africa exported oil and minerals worth \$393 billion. This is nearly nine times the amount the continent received in international aid (\$44 billion). This paradox sits at the heart of Global Witness's work. We believe that, managed well, natural resources could help end poverty and break poor countries' disempowering dependence on international aid. But this will only happen when the systems that govern the trade in natural resources are comprehensively reformed and when good governance is placed at the heart of international aid policy.

Directors' message

This is the first of our annual reviews that has, albeit briefly, tracked Global Witness's history from its roots in 1992 (see pages 4-5). It is incredible, looking back, remembering those cold and impecunious mornings shaking collecting tins outside tube stations at 5am trying to raise a few quid for the international phone calls. Then getting that first grant from Novib in late 1994, and just a few months later setting foot for the first time on the Thai-Cambodia border to investigate the timber trade between the Khmer Rouge and the Thai logging industry, knowing that the Khmer Rouge were on the other side of the hill.

We had some early and significant campaign successes. We managed to close down the Thai-Khmer Rouge trade, and our next campaign exposed the blood diamond issue to the world and did much to address it. But we have never become complacent. We constantly challenge ourselves to see that we're doing the best that we can do, to maintain that enthusiasm that got Global Witness going in the first place. Moreover, the rationale behind why we created Global Witness remains as true today as it was then. We remain the only non-governmental organisation that brings together the issues of natural resource exploitation, corruption and conflict – the root causes of so many human rights abuses and state failure – via case studies based on hard edged investigations, often risky and undercover. We deliver fresh verifiable evidence to bring about new policy mechanisms that enable global change.

We're a different organisation now. Bigger for sure, and comprised of forty eight highly committed staff who don't just carry on the work that we started, but bring new skills and new perspectives to it. They are helping us to take our work to a new dimension and it's no exaggeration to say that 2009 has been our best year yet.

We launched a groundbreaking new campaign targeting the banks and other entities that facilitate state looting and corruption. Our report *Undue Diligence* exposed household names like HSBC and Barclays as enabling corrupt elites to loot their countries, thus condemning their populations to poverty and instability. Our follow up advocacy work resulted in strengthened international anti-money laundering mechanisms and contributed to the historic UK anti-bribery bill that passed in 2010. We are not sure whether to be flattered or dismayed to hear that some financial institutions are using *Undue Diligence* to train their compliance officers.

Our other new campaign on oil in Sudan further extends our work exploring the links between natural resources and conflict. It focuses on the oil-revenue sharing agreement between the north and south upon which the current peace deal is based. Our report, *Fuelling Mistrust*, documented large discrepancies between the government's oil production figures and those of the main company operating in the fields – discrepancies which threaten to undo the fragile peace. The report quickly attracted ministerial attention, and both governments agreed to carry out audits of the oil sector. Trust on this issue is essential to prevent another outbreak of war.

In the Democratic Republic of Congo (DRC) one of the most intractable conflicts of recent times and certainly the bloodiest has been fuelled by the trade in natural resources. After years of trying we're really making headway on getting the international community to deal with this issue of conflict resources, with a UN Security Council resolution stating that traders in natural resources that fund illegal armed groups in the DRC should face sanctions. Meanwhile in the U.S., we have worked with legislators to try and bring in legislation combating the trade in conflict minerals – we hope to see this becoming law in 2010.

Since we began Global Witness we have worked on forest issues across the globe, but with the international recognition that if we do not halt deforestation we cannot win the battle against climate change, our forest work has escalated to become our biggest campaign. We have taken a leading role in trying to ensure that the international climate change talks reach a good agreement for forests under REDD (Reducing Emissions from Deforestation and Degradation), and co-founded a highly effective alliance to work on this issue. We are tackling the issue of industrial forest use, one of the major causes of deforestation, and we have continued to expand our work with civil society organisations in forested countries to improve forest sector governance, with major advances in Cameroon, Ghana and Liberia.

All in all we brought out twelve comprehensive and authoritative reports in 2009, each of which are years in the making. But success isn't reports: it's what's in them and what we do with them that counts. In short (because there isn't space to cover all our campaigning in this letter) Global Witness continues to achieve global change, and we have never had such a broad impact as we have had in 2009. We could not achieve this success without a solid foundation. This year we moved to a new office in Central London that, for the first time, provides us with the space we need and that can truly be described as a nice environment to work in – previously we would unite in the face of adversity! Amazingly, we're paying the same per square foot – a benefit of the recession.

The downturn has obviously not been so helpful in other areas. The current economic climate has been difficult for many, including a number of our funders, and we have seen some of our grants reduced. However, our overall income has risen. This is a testament to our funders' belief in our work and means that we have not had to curtail any of our campaigns, indeed we have expanded them. However, none of us know how the economy will fare through 2010 and 2011. It's likely to be tough and we need to bear this in mind with every decision we take.

Global Witness has changed a lot over the last seventeen years, but it hasn't changed beyond all recognition. The commitment to achieve positive change and to make an impact remains. To work as a small team punching above our weight, to continue to learn from others and above all, our determination not to compromise our core principles, remain as strong as they ever were.

So where next? The year ahead brings with it many challenges. We are looking at the energy supply crunch, whereby new oil discoveries are failing to keep pace with rising demand, and how this relates to climate change. Thus far, rather than getting serious about the need to pursue a low-carbon development path, the international response has been to scramble for new oil fields without much regard for the stability, human rights or democratic development of those countries that possess the oil. If the world reaches the stage when demand outstrips supply, it will be a conflict flashpoint.

Similarly, as the emerging economies like China and India continue to grow, demand for minerals means an escalation in the scramble for natural resources by all the industrial economies. In poor and vulnerable countries this has, in the past, led to the 'resource curse', as experienced in much of Africa, and it will be a major challenge to manage this issue into the future.

2010 will be a challenging year on many fronts, but we are well placed to take on these challenges. As ever, this brief message cannot cover all of our issues, but we have included as much as possible in this review. We hope you find it informative, and even enjoy it!

Patrick Alley, Charmian Gooch and Simon Taylor
Founding Directors

Charmian Gooch *Simon Taylor* *Patrick Alley*



ROSEWOOD BEING TRANSPORTED IN THE SAVA REGION OF MADAGASCAR. ILLEGAL ROSEWOOD LOGGING HAS DEVASTATED THE COUNTRY'S REMAINING ROSEWOOD FORESTS AND THREATENS ITS UNIQUE HABITATS. PHOTO © GLOBAL WITNESS.

From humble beginnings to international influence

Established in 1993 by the three friends working from their front rooms, Global Witness now numbers over forty five staff divided between its offices in London and Washington DC, and has a truly impressive track record of success.

Our first ever campaign aimed to stop the trade in illegal timber from Cambodia to Thailand which was funding the Khmer Rouge. Our painstaking evidence-gathering, which entailed months of undercover work in the forests on either side of the border, resulted in an astounding victory: the overland border was closed. The disruption of this trade helped to bring about the final demise of an organisation that had terrorised a generation of Cambodians.

Having confirmed our hunch that there were important gains to be made by focusing on the role of natural resources in fuelling conflict and corruption we turned our attention to Angola where diamonds were financing a brutal civil war. Our work here, and later in Sierra Leone, Liberia, the Democratic Republic of Congo and Cote d'Ivoire, brought the problem of blood diamonds to the world's attention and led to the creation of the precedent-setting Kimberley Process Certification Scheme. In 2003 we were nominated for the Nobel Peace Prize.

We have gone on to campaign internationally using a number of countries as case studies – including Burma, Indonesia, Sudan, Zimbabwe, Equatorial Guinea, Turkmenistan, and the Ukraine. From specific resources we have broadened out to look at the general policies that enable state looting and prevent transparency. Our work has helped to stop wars and brought about change that has saved lives. Through high-level policy and advocacy, as well as campaigning and capacity building on the ground, we have built an understanding of the issues and changed the terms of the debate.

Our History:

1992

How it all started

Three friends working together at the Environmental Investigation Agency decide to set up a new organization and to call it Global Witness.



1994

Fundraising

Initial fundraising includes shaking tin cans outside tube stations to raise money for international phone calls; the breakthrough moment is a grant from Novib in October 1994. This enables Global Witness to travel to Washington and then Cambodia where they camp out on the border counting logging trucks, and pose as timber buyers to infiltrate the trade.



1995

First Report

Global Witness's first report exposes how the illegal timber trade between Cambodia and Thailand is funding the genocidal Khmer Rouge rebels. The report and follow up campaigning result in the border being closed, depriving the Khmer Rouge of \$90m a year and contributing to their downfall.

1996/97

Evidence

Investigations continue in Cambodia and Thailand; evidence obtained is used to keep Cambodia's border with Thailand closed to Khmer Rouge log exports. Investigations begin into Angola's diamond and oil trades, and their involvement in sustaining the civil war.

1998

Blood Diamond

Global Witness's Blood Diamond campaign alerts the world to the problem of conflict diamonds with the report, *A Rough Trade*, which details how diamonds are fuelling the civil war in Angola



1999 Oil Campaign

A Crude Awakening is published, looking into corruption in the oil industry in Angola. This kicks off Global Witness's oil campaign which begins to build global pressure for oil revenue transparency; Independent Forest Monitoring (IFM) begins in Cambodia, conceived and pioneered by Global Witness.

2000 Kimberley Process

Members of the diamond industry, governments and civil society organisations meet in Kimberley in Western Australia and begin discussions which will result in the establishment in 2003 of the landmark Kimberley Process Certification Scheme to control the trade in conflict diamonds. Global Witness is one of two leading non-governmental organisations in the process.

2001 Arms Smuggling

Taylor Made shows how the illegal timber industry in Liberia is linked to arms smuggling and prolonging the war waged by Charles Taylor and the RUF rebels against the people of Liberia and Sierra Leone.



2002 Transparency

Global Witness calls for the oil, gas and mining industry to disclose revenue payments on a country-by-country basis and co-launches the Publish What You Pay (PWYP) campaign with George Soros and other NGOs. Following our campaigning, the then British Prime Minister Tony Blair launches the Extractive Industries Transparency Initiative (EITI), which requires member companies and governments to provide information about payments for commodities. Global Witness is on the Board.

2003 Nobel Prize

Global Witness is co-nominated for the Nobel Peace Prize for work on conflict diamonds; Following Global Witness reports and campaigning, UN sanctions are placed on Liberian timber and Liberian President Charles Taylor is indicted for war crimes.

2004 DRC

Rush and Ruin reveals how illegal copper and cobalt smuggling in Democratic Republic of Congo (DRC) is depriving the economy of between US\$1-4million a day. This marks the beginning of our campaigning on the DRC which will become a hugely important case study for our work on conflict resources.

2005 Burmese Timber

A Choice for China reveals Burma's \$250m a year illegal timber trade and results in China passing new legislation to stem the trade; Global Witness founding Directors receive the Gleitsman International Activist Award, 'recognizing the exceptional achievement of those [...] whose vision and courage inspire others to join with them in confronting and challenging injustice.'

2006 War Crimes

One of Charles Taylor's chief cronies, Dutch timber baron, Guus Kouwenhoven, featured in Global Witness reports, is put on trial for arms smuggling and war crimes; Global Witness builds up its campaigning on revenue transparency in the oil, gas and mining sector with a new report on the natural gas trade, *It's a Gas*, which warns about Europe's dependence on supplies from Russia and Central Asia; Hollywood blockbuster, *Blood Diamond*, starring Leonardo de Caprio, hits the cinemas – Global Witness research informed the film.



2007 Cocoa Trade

Hot Chocolate highlights corruption in the cocoa trade in Cote D'Ivoire and its role in fuelling conflict; Global Witness wins the Commitment to Development Ideas in Action Award, sponsored jointly by Washington-based Center for Global Development and Foreign Policy magazine.



2008 Judicial Investigation

Ivorian government launches a judicial investigation into embezzlement of cocoa revenues and arrests heads of the national institutions that oversee the sector.

2009 Banks Campaign

Global Witness launches a major new campaign on the role of banks in facilitating corruption and state looting, and begins work on oil revenue transparency in Sudan; influenced by Global Witness campaigning, the UN Security Council passes a resolution mandating sanctions on people or companies trading in conflict minerals in the DRC.

Campaigning on Conflict

DRC – changing the terms of the debate, influencing UN resolutions

For over 12 years rich mineral resources in the Democratic Republic of Congo (DRC) have provided the incentive and funding for a conflict which has claimed millions of lives and blighted many more. The situation in the DRC has become a flagship example for Global Witness's work on conflict resources, and in 2009 we shifted our campaigning on this problem up a gear to try to force international recognition and action. We published a comprehensive and challenging report documenting how all the main warring parties, including the Congolese national army, were vying for control of the trade in lucrative metals such as tin, coltan, and tungsten – all used to make electronic items such as mobiles phones and computers.

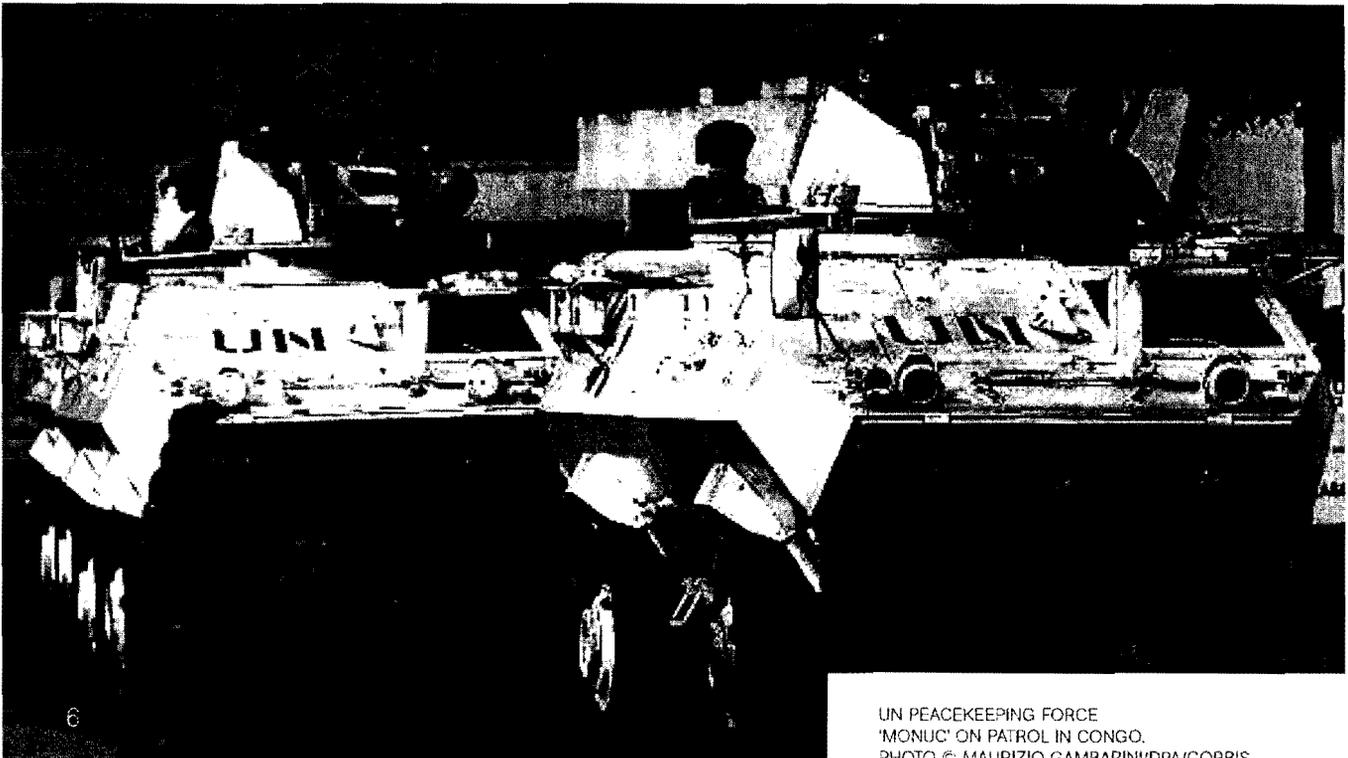
The report, *Faced with a gun, what can you do?*, included evidence and testimonies from miners, soldiers, army officers and traders. But it did not stop at describing the violence or even identifying the perpetrators. In order to

tackle the fundamental drivers of the ongoing violence, we focused on the role of companies in providing a market for the metals, and on regional and international governments, many of whom are also donors to the DRC, who have not done enough to tackle the economic aspects of this ongoing war. We aimed to show that responsibility does not just stop with those present in the mines or market towns, but travels all the way along the supply chain – right up to the consumers of electronics goods that contain the components mined in the Congo.

We launched the report with a joint press conference in Kinshasa with the Congolese NGO, the Natural Resources Network, and it received widespread attention from national and international media. One of our campaigners took part in an hour-long debate with the Congolese Minister for Information on the UN station Radio Okapi, which was heard throughout the country and helped increase awareness of, and provoke response to, our report.

Following the launch we met with high-level government Ministers in the DRC, including the Prime Minister and the Minister for Mines. We also travelled to the east of the country and conducted a series of meetings with a regional governor, local parliamentarians, and members of the military. We worked alongside local NGOs, Réseau-Cref, CREDDHO, the ERND Institute, and Observatoire Gouvernance et Paix, to co-host meetings and support capacity building. In many of these meetings we encountered a different attitude to the issue of conflict minerals than had previously been the case and a greater openness among politicians, diplomats and members of the business community to the idea of taking action. This is not to say that there was no opposition or that the discussions were all easy but the comprehensive evidence in the report – which named a number of the people with whom we subsequently met – seemed to have helped to open a door to political change.

As a result of our work the concept of conflict minerals and supply-chain



UN PEACEKEEPING FORCE
'MONUC' ON PATROL IN CONGO.
PHOTO © MAURIZIO GAMBARINI/DPA/CORBIS

traceability is becoming mainstream in eastern Congo, and the space for civil society and state bodies to call for change has opened up. One local NGO told us on a recent visit, "Your campaign has inspired us and given us the space to do our own work on the militarisation of the mining sector, and to monitor mine sites". Almost immediately after our report came out, the Congolese Prime Minister travelled to one of the most lucrative mining areas and publicly called for the military to get out of the mines.

We also carried out advocacy trips to Washington DC and New York, and held meetings with the UK government in London. These efforts yielded results. Perhaps most significantly, the UN Security Council passed a resolution stating that companies and individuals should face financial and travel sanctions if they are found to be "supporting the illegal armed groups in the eastern part of the Democratic Republic of the Congo through illicit trade of natural resources". The resolution, first passed at the very end of 2008 and then renewed and strengthened in 2009, also encouraged countries to ensure "importers, processing industries and consumers of Congolese mineral products under their jurisdiction exercise due diligence on their suppliers and on the origin of the minerals they purchase".

A number of people, including representatives of government missions at the UN, have told Global Witness that our campaigning and advocacy had a direct influence on the language of the resolutions and on the willingness of the UN to get tougher on sanctions.

This represents a significant step towards making the companies and middle men who currently benefit from the trade in conflict minerals from Congo accountable for the wider ramifications of their behaviour. It is imperative that governments such as the UK, U.S., Belgium, Thailand and Malaysia, act on the UN steer and put forward the names of their companies and citizens believed to be implicated in the trade. None have yet done so, despite compelling evidence. Their inaction threatens to undermine the groundbreaking resolution and is

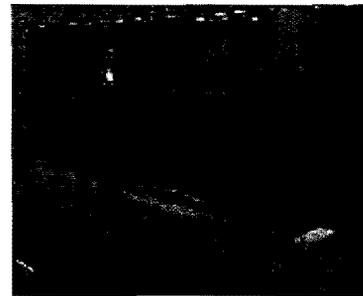
tantamount to protecting the guilty. On a more positive note, there has been some progress in the U.S., in the form of two new bills introduced by Congress which, if passed, would help control the trade in conflict minerals and make companies more accountable.

At the end of 2009 we published a background paper on the longstanding links between natural resources and human rights abuses in the DRC from 1993 to 2003. The paper, based on existing documentation by UN agencies, UN Panels of Experts, NGOs and other

sources, brings together a wealth of information about this ten-year period, which is still as relevant and topical today, as many of the patterns of human rights abuse and natural resource exploitation have barely changed since the beginning of the war. The paper includes recommendations to the UN, individual governments and the International Criminal Court, which have a strong focus on justice and are intended to address the current situation.

COMPANIES – FEELING THE HEAT

International mineral trading and processing companies are clearly feeling the heat of our campaigning on the DRC. Following the release of our report, *Faced with a gun, what can you do?*, the British-based trading company, Amalgamated Metals Corporation (AMC), whose subsidiary Thaisarco was named in our report as trading in minerals that had come from mines under the control of armed groups, announced its intention to suspend sourcing from the DRC, citing 'the threat of misleading and bad publicity'. And the tin industry body, ITRI, announced it would ramp up efforts to agree new guidelines for supply chain traceability for companies sourcing from the DRC.



There is still a long way to go: the ITRI initiative falls far short of what is needed and the willingness of companies such as AMC and others such as the Malaysian Smelting Corporation (MSC) to engage with the challenges and clean up the industry is seriously lacking. The UK government has not done enough to hold its companies to account and this is something that Global Witness will be following up on.

In 2010 we will keep pressing for clear standards for companies sourcing minerals from the Great Lakes region, moving our focus along the supply chain to look at the end-user electronics companies whose products such as mobile phones and computers are the ultimate destination for the minerals mined in the DRC. We will also keep pushing the DRC and other governments to do all they can to achieve the full demilitarisation of the mining sites.



A MAN INSPECTS A LEAKING OIL PIPE IN SOUTH SUDAN. THE OIL REVENUE SHARING AGREEMENT THAT HELPED SECURE PEACE BETWEEN NORTH AND SOUTH SUDAN HAS BEEN PLAGUED BY SUSPICIONS OVER THE REPORTING OF REVENUES. PANOS © SVEN TORFINN

Sudan – case study of effective advocacy

Another key aspect of our work on conflict resources in 2009 was Sudan, which offers a significant example of how natural resource revenues can potentially be used to negotiate and maintain peace. An agreement to share oil revenues underpinned the historic 2005 peace deal between north and south Sudan, which brought an end to Africa's longest-running civil war. In September we published *Fuelling Mistrust: The need for transparency in Sudan's oil industry*, which highlighted discrepancies in the oil revenue data published by the authorities in the north of the country and those published by the main (Chinese) company operating in the region. This matters because the south has always suspected that they are being cheated by the north over oil revenues. The report made a clear case for more transparency in the Sudanese oil industry on the grounds that without it mistrust between the two sides would grow and the peace would be jeopardised.

Following launches in Nairobi and Juba, the report was widely covered in the Sudanese, regional, and international

media, including the BBC and New York Times. Following publication, we briefed the President and Vice President of the Government of Southern Sudan in the capital Juba. At the meeting, the cabinet agreed to implement our three main recommendations, including commissioning an independent audit of the oil sector.

In the north, the energy minister was summoned to appear before parliament to explain the discrepancies highlighted in the report and the Presidency asked the energy ministry to look into the findings. Since then, the government in Khartoum has also agreed to an oil audit. Terms of Reference have been drafted by the Norwegian government and are awaiting approval in Juba and Khartoum.

The new U.S. government policy on Sudan, released a month after our report, states that they will work towards developing a post-2011 wealth sharing agreement, one of our main recommendations. In addition, our Sudan work was cited by a South Sudan minister in a hearing of the U.S. House of Representatives; in a debate in the UK House of Lords; and in the January 2010 report of the body set up

by the north-south peace agreement to monitor its implementation (the AEC).

2010 will be a critical year for Sudan with elections in April and preparation for the January 2011 referendum on independence at which the south is expected to vote to secede. We will continue to call for a credible audit of the oil sector and for a verification mechanism to be included in any future oil revenue sharing agreement between the north and the south. We will also continue to work on the need for governments and the international community to properly recognise the risks as well as the positive potential of natural resource revenues in countries attempting to emerge from war.

The return of the Blood Diamond?

Over 10 years ago Global Witness brought the problem of blood diamonds to the world's attention. As a result of our global campaign the landmark Kimberley Process Certification Scheme (KPCS or 'KP' for short) was established to eradicate the trade in conflict diamonds. The KP remains the only international mechanism designed to deal with a conflict resource and so it is important that it continues to have teeth.

For this reason, Global Witness focused in 2009 on monitoring and participating in key KP activities and on ensuring participant countries stand by their commitments. In spite of significant improvements over the last decade there are still loop holes in the international trade system, and the KP is still failing to deal with problem countries and issues; this puts the whole scheme at risk. We also continued to lobby the diamond industry to improve their system of self regulation, and pushed for increased oversight of diamond manufacturing and trading centres.

Human rights abuses in Zimbabwe's Marange diamond fields throughout 2009 dramatically demonstrated that blood diamonds are still a very real problem and highlighted weaknesses in the KP's ability and willingness to enforce its own rules. Although our key recommendation, that Zimbabwe be suspended from the scheme, was not adopted, we did manage to strengthen the measures agreed to address the problems in Zimbabwe. These measures are still not strong enough but they could bring about some positive changes on the ground if properly implemented.

2009 also saw progress in efforts to address challenges faced by West African countries in the fight against conflict diamonds. Global Witness contributed to a decision at the plenary aimed at addressing statistical anomalies and a lack of oversight in the Guinean diamond trade and we were also involved in establishing a 'Friends of Cote d'Ivoire' group which should help to address the KP's longest-standing case of conflict diamonds. Concurrently, West African civil society groups, brought together through the civil society coalition, have formed the Mano River Union civil society platform, with the aim of addressing challenges at a regional level.

2009 saw increased participation of southern civil society groups in the KP. The November plenary was attended by civil society representatives from Angola, Brazil, Cote d'Ivoire, DRC, Guinea, Liberia, and Zimbabwe. The activists took part in working group and

plenary sessions, and were able to share information and experience with each other. Southern civil society representatives also participated in the Zimbabwe review mission, and in a review visit to the DRC. This participation was facilitated by the Civil Society Fund, for which Global Witness has helped raise money. We have enormous respect for these campaigners, whose participation in the KP meetings and ongoing campaigning for better human rights in the diamonds sector places them constantly at risk.

In 2010 the emphasis will be on reform: we firmly believe the KP needs to address a number of weaknesses and reaffirm its commitment to stopping human rights abuses fuelled by diamonds. It needs to get tougher on non-compliance if it is to retain its credibility and Zimbabwe must be expelled if a review mission fails to find evidence of genuine reform.



A YOUNG BOY WHO HAD BEEN TORTURED BY A MILITARY-CONTROLLED DIAMOND SYNDICATE IN CHIADZWA, ZIMBABWE. REPORTS OF SYSTEMATIC ABUSE AND STATE CORRUPTION HAVE LED TO CALLS FOR ZIMBABWE TO BE SUSPENDED FROM THE KIMBERLEY PROCESS CERTIFICATION SCHEME. PANOS © ROBIN HAMMOND

Liberia – managing resources in a post-conflict context

As a post-conflict country where natural resources played a significant role in fuelling the war, Liberia now faces the challenge of managing its forests and other resources in a way that benefits the country's citizens and prolongs peace. Successfully overcoming decades of corruption and breaking entrenched patterns of resource mismanagement will require sustained political will, civil society engagement, and support from donors and other stakeholders. In 2009 Global Witness campaigned alongside local civil society groups in Liberia to ensure that the country's new forestry concessions were allocated in accordance with the reformed forestry law.

We published a series of press releases and briefings highlighting instances where the government was failing to follow its own laws and processes. In July we warned that three firms linked to Malaysian timber giant Samling, a company notorious for destroying tropical forests and abusing local communities, were being considered for major logging contracts. The Liberian government and international donors spent five years and tens of millions of dollars reforming the forest sector and instituting a system of checks and balances but the flawed bid assessment process showed how easily these safeguards could be short-circuited for the sake of short term economic gain and to please the industry lobby.

We followed the concession allocation process through its various stages of ratification, and continued to highlight our concerns publicly and in private correspondence. In parallel we met with Liberia's President, Ellen Johnson Sirleaf, and with various government departments and external agencies, to encourage Liberia to seek funding from the Norwegian government's Climate

and Forest initiative, to enable the country to receive financial compensation in return for protecting their forests instead of logging them (see section on REDD).

However, in spite of relentless campaigning by Global Witness and our local civil society allies, including the Sustainable Development Institute, in October Johnson Sirleaf signed four 25-year forest management contracts into law. She did this even though some of the companies lacked the financial capacity to operate and had already breached official procedures. We remain concerned that the anticipated logging revenues and promised employment benefits are unlikely to materialise, and that the government chose short term political expediency over long term financial and environmental stability.

Also in October, we responded to the Liberian Auditor General's audit of the Ministry of Lands, Mines and Energy, which highlighted weakness in financial controls and signs of corruption. Global Witness and the local Publish What You Pay coalition welcomed the audit as a significant step forward in Liberia's efforts to strengthen governance. The audit report identified a range of serious irregularities, not least the failure of three officials to account for US\$862,000 in missing government funds for which they were responsible. Other problems included unaccounted for discrepancies in donor funding, a general absence of transparency and accountability and a lack of sound financial management. Global Witness and PWYP called on the government to respond urgently to the report's recommendations. Some of our key recommendations were taken on board by the government.

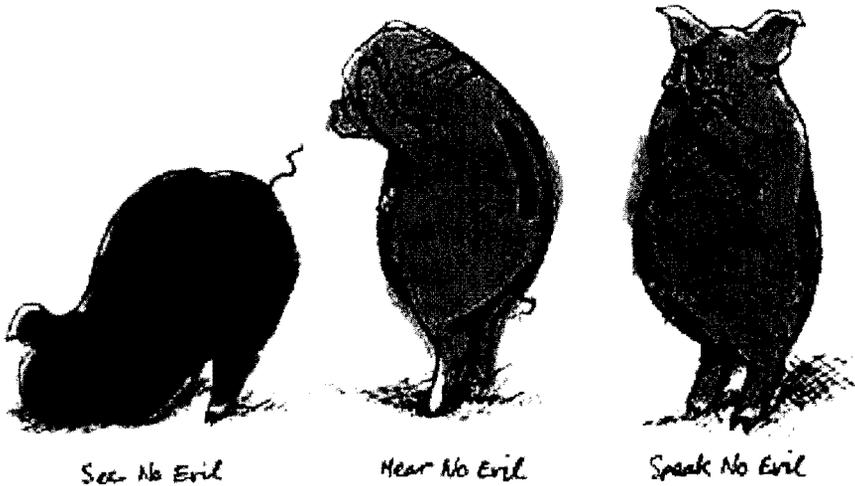
2009 also saw us bring our first legal case to a public prosecutor as we seek to set precedents on legal consequences for funding war. Based

on investigations over the previous years and joint campaigning with Greenpeace, we filed a complaint in France against one of the world's biggest timber companies, Dalhoff Larsen Horneman (DLH), alleging that they had bought and traded illegally obtained timber during the Liberian civil war. See the Ending Impunity section on page 18 for more detail on this case.



A WORKER TAPPING RUBBER IN LIBERIAN FOREST. TRANSPARENT
MANAGEMENT OF FORESTS AND OTHER NATURAL RESOURCES IN
THE POST-CONFLICT COUNTRY WILL BE VITAL FOR PROMOTING
DEVELOPMENT AND REDUCING POVERTY.
© GLOBAL WITNESS

Campaigning on Corruption



Banks facilitating corruption

2009 saw the launch of a new, exciting and critical campaign area: tackling the role of financial institutions in facilitating corruption and state looting. If the world is serious about Millennium Development Goals and Making Poverty History then it has to stop the shameful way in which the financial sector is involved in corruption that is keeping millions of people poor.

In March we published a comprehensive and ambitious report – the result of more than 2 years' work which entailed investigations as well as getting to grips with the immense complexity of the international banking system. Our team delved deep and steeped themselves in the sector, talking to a range of players including money laundering experts, police investigators, banking staff and officials. We sought to understand some of the key problems and see what solutions there might be.

Undue Diligence detailed how a number of the world's largest banks, including HSBC, Citibank, Deutsche Bank, and Barclays have done business with some of the world's most corrupt regimes, including Equatorial Guinea, the Republic of Congo, Turkmenistan, Charles Taylor's Liberia, and Angola. Through compelling case studies we showed how this behaviour, which fuels corruption, poverty and inequality, is happening despite a global framework of anti-money laundering laws. The report made strong recommendations on how to close loopholes and urged all stakeholders to use the opportunity inherent in the financial crisis to push through reforms that would stop banks and other institutions from facilitating state looting and kleptocracy. We have heard that it is being used by financial institutions to train business units and compliance officers and has been ranked with five stars for 'insight' by the corporate social responsibility website, businessrespects.net.

We held two report launch events in Parliament in the UK, one with MPs Vince Cable and John Bercow, and followed up with meetings throughout the year with officials at the UK and U.S. treasuries and other government departments. We also met with the World Bank and IMF, and wrote to all members of the G20 and the Financial Action Task Force (FATF), the intergovernmental body responsible for setting global anti-money laundering standards.

As a result of our campaigning, the G20 called on the FATF to focus more on the proceeds of corruption with an emphasis on beneficial ownership, customer due diligence and transparency. The FATF, which had previously focused heavily on terrorist financing, set up an informal group to assess how to fulfil the G20 requirement, recommendations from which will be addressed before the next round of peer reviews. Global Witness is working to ensure that the review is as effective as possible.

We made a submission to the Foot review of the UK's Overseas Territories, based on a case study from *Undue Diligence*, which resulted in changes to the money laundering regulations in Anguilla, a major offshore tax haven. We also made a submission to Hong Kong's review of its anti money laundering regulations, which resulted in acceptance of one of the key recommendations regarding reliance on 'third party introducers'. Our submission to UK reviews of money laundering regulations and money laundering guidance for banks resulted in acceptance of some of our recommendations on asset declarations and on banks needing to consult a wide range of NGO and inter-governmental reports when assessing corruption risk.

In May we testified to a U.S. Congressional hearing on 'Capital Loss, Corruption and the Role of Western Financial Institutions' and in October, we held a packed informal side event on the margins of the FATF plenary meeting in Paris. We gave the keynote presentation and ran training workshops for bankers and government anti-corruption officials at an APEC conference in Bangkok. We helped set up and continue to participate in the Task Force on Financial Integrity and Economic Development, an NGO

coalition designed to watchdog and tackle illicit financial flows out of developing countries. In March we took part in a joint European NGO campaign action in Jersey to draw attention to the impact of secrecy jurisdictions and tax evasion.

In November, we attended the meeting of parties to the UN Convention Against Corruption (UNCAC) in Doha and worked with a global civil society coalition calling for an effective review mechanism for the treaty. We were

critical of governments at the conference – including China, Egypt and Russia - for blocking such a mechanism, thereby removing any way of enforcing the Convention's rules, and effectively rendering it toothless.

Also in November we published a follow up report on Equatorial Guinea: *The Secret Life of a Shopaholic*, which showed how Teodorin Obiang, son of the President of the oil-rich West African state, went on a multi-million dollar shopping spree in the U.S. thanks in



BOSSSES AT RIGGS BANK, SEEN HERE TESTIFYING BEFORE A SENATE COMMITTEE, FAILED TO DO THEIR DUE DILIGENCE PROPERLY IN THEIR EAGERNESS TO HELP EQUATORIAL GUINEA'S DICTATOR, TEODORO OBIANG, MANAGE HIS OIL WEALTH.
© DENIS COOK/AP

part to American banks having allowed his corruptly-acquired funds into the country. Among Teodorin's purchases were a \$35m Malibu mansion, a fleet of fast cars, and a private jet. The story appeared on the front page of the New York Times, which put renewed pressure on the U.S. Government to reinvigorate efforts to tackle foreign corruption and bribery.

Cambodia - aid effectiveness & donor accountability

Global Witness has been working on Cambodia for a decade and a half. It is our longest-running campaign and the institutional corruption and state looting we have seen and campaigned against there has informed our organisational thinking and inspired work in other areas. In February 2009 we published a new report which looked at the emerging oil, gas and mineral industry. *Country for Sale*, downloaded over 7,000 times from the Global Witness website, revealed that the same political elite that pillaged the country's timber resources – the initial focus of our work in the country – had gained control of its mineral and petroleum wealth.

The report detailed how the rights to exploit oil and mineral resources had been allocated behind closed doors by a

small number of powerbrokers, for the benefit of members of the ruling elite and their families. It highlighted that millions of dollars paid by oil and mining companies, such as Australian mining giant BHP Billiton, to secure access to these resources, appeared to be missing from the national accounts. The work on access to resources in Cambodia is the first in a series of case studies which will inform a new branch of our work on oil, gas and mining – namely looking at how deals are done, and trying to identify the problems and corruption before the resource starts being exploited.

Country for Sale was critical of Cambodia's international donors, who, despite pledging U.S. \$1 billion in development aid at the end of 2008 – equivalent to half the total government budget – failed to use their leverage to demand better governance of natural resources and accompanying human rights and political reform. Unfortunately this failure by the international donors, and their *de facto* tolerance of the endemic corruption in Cambodia, has been the hallmark of their engagement with Cambodia since the elections in 1993.

We did a press launch in Bangkok and a UK parliamentary launch in London, and

followed up with extensive advocacy during the year, including writing letters to all Cambodia's donors ahead of their annual review meeting, and making a submission to the EC's Mid-term Review of its 2007-2013 strategy paper for Cambodia, in which we called on them to make better natural resource governance a key benchmark for EC aid. In the US we made a submission to the Tom Lantos Commission on Human Rights and briefed Hillary Clinton prior to a meeting with a Cambodian minister. We ran a training session for World Bank and EU staff using Cambodia as a case study to show how donors can recognise state capture and what they can do about it.

Our campaigning has significantly raised the profile and influenced the terms of the debate on oil, minerals and corruption in Cambodia. Mining and oil are now a part of donor-government dialogue. MEPs in Brussels launched an anti-corruption petition as a result of our campaigning, parliamentary questions were asked in the UK about Britain's aid policy, and U.S. Senator Richard Lugar wrote from the U.S. Committee on Foreign Relations to the president of the World Bank highlighting corruption in Cambodia. We have been told that *Country for Sale* is used as a training



GLOBAL WITNESS COMMISSIONED CULT CARTOONIST DAVID REES TO ILLUSTRATE OUR BRIEFING ON HOW THE EU IS NEGOTIATING WITH THE DICTATORSHIP OF TURKMENISTAN IN THE HOPE OF SECURING GAS SUPPLIES. ©DAVID REES, [HTTP://MNFTIU.CC](http://mnftiu.cc)

A NEW BRIBERY BILL FOR THE UK – VICTORY FOR ANTI-CORRUPTION CAMPAIGNERS

document for anti-corruption agencies and donors.

Despite persistent and rigorous campaigning we have not yet seen clear changes in the way that donors give aid to Cambodia, and consequently no meaningful attempt by the Cambodian government to tackle corruption or to deal with the kleptocratic elite. While we will continue to work with individual donors to lobby them to bring natural resource governance into their aid disbursement criteria, we know that it is time to take this campaign up to the next level, and focus on governments' policies towards aid in general, rather than Cambodia specifically. We have started to do this already, by working in the UK for a more joined up governmental approach to corruption, and by identifying processes in Brussels that offer entry points for change. This will be a key focus of our work in 2010.

Oil, gas and mining – focusing on access

During 2009 we developed a new direction for our oil campaign, focused on the risks of corruption in the global scramble by companies to win access to natural resources. We are assembling a major report for publication in 2010 and have produced a blueprint for citizens of developing countries to identify corruption risks in oil and mining deals. At the same time, we pushed ahead with our existing work on revenue transparency in oil and mining.

We focused activity on the key area of the Extractive Industries Transparency Initiative (EITI) and successfully used our seat on the EITI Board to stop the rules being watered down for the benefit of governments of resource-rich countries that lack political will to reform. We continued to play an active role within the Publish What You Pay coalition, including participating in the design of a new governance

Throughout 2009 we campaigned for new anti-bribery legislation in the UK to prevent British companies from paying bribes to facilitate their operations and home or abroad.

We made submissions to the Secretary of State for Justice and the relevant parliamentary committee on the bill in June 2009 and met with the Secretary of State for Justice, the Department for International Development, and other MPs.

Significant changes were made to the Bill at draft stage, which strengthened it in line with our recommendations. Global Witness chaired the British Overseas NGOs for Development (BOND) governance group that campaigned on this.

The Bribery Act was passed in early 2010, bringing UK laws up to date by creating a new offence of bribing a foreign public official and a corporate offence for companies that fail to prevent bribery.

This is a very positive step forward and will be a critical help in preventing corruption which hinders development and affects the poorest and most vulnerable in society.

In 2010 we will continue to push for adequate funding for implementation and for guidance for prosecutors and business.

arrangement. We also worked closely with Southern civil society activists, most directly via the EITI Board.

In November, as part of the continuing work on security of energy supplies into the EU, we launched an innovative satirical briefing, *All that gas?*, on the European Union's attempts to grovel to the autocracy of Turkmenistan in the hope of securing natural gas supplies. The briefing, illustrated by cult cartoonist David Rees, caused a stir in Brussels, and the signs are it influenced the thinking of some European Commission officials on this issue. We also had an op-ed published in the Financial Times on Europe's energy policies.

We also published two investigative briefings revealing questionable links between Angola's state oil company and little-known private companies. Angola, where average life expectancy is 46.5 years, is a classic example of a country in which natural resource wealth has not benefitted the majority of the population but instead has fuelled

corruption, conflict and exacerbated inequality. Our work on Angola has continued to be noticed by foreign governments, companies, multilateral organisations and the media. We are often contacted by investigators working on behalf of companies considering investing in Angola who want to assess corruption-related risks.

UNESCO – reputation laundering for the world's despots

In December 2009 we discovered that UNESCO, the UN body set up to promote education, science and culture, was lending its name and kudos to a prize sponsored by Teodorin Obiang, the corrupt President of Equatorial Guinea. We condemned the prize, proposed in recognition of "scientific achievements that improve the quality of human life", as a reprehensible attempt at reputation-laundering and called on UNESCO to cancel it without delay.

We wrote an open letter to the UNESCO board and submitted a spoof nomination for Obiang's son, for "improving the quality of his own life". Obiang junior, known as Teodorin, had recently purchased a \$33 million private jet, a \$35 million Malibu mansion, speedboats and a fleet of fast cars. This is in spite of the fact that his official salary as Minister for Forestry, Fisheries and the Environment in his father's government is only \$4000 - \$5000 a month.

In January UNESCO suspended the Obiang-sponsored award, pending an official review into all of its prizes.

Progress in the U.S. – new legislation on natural resources

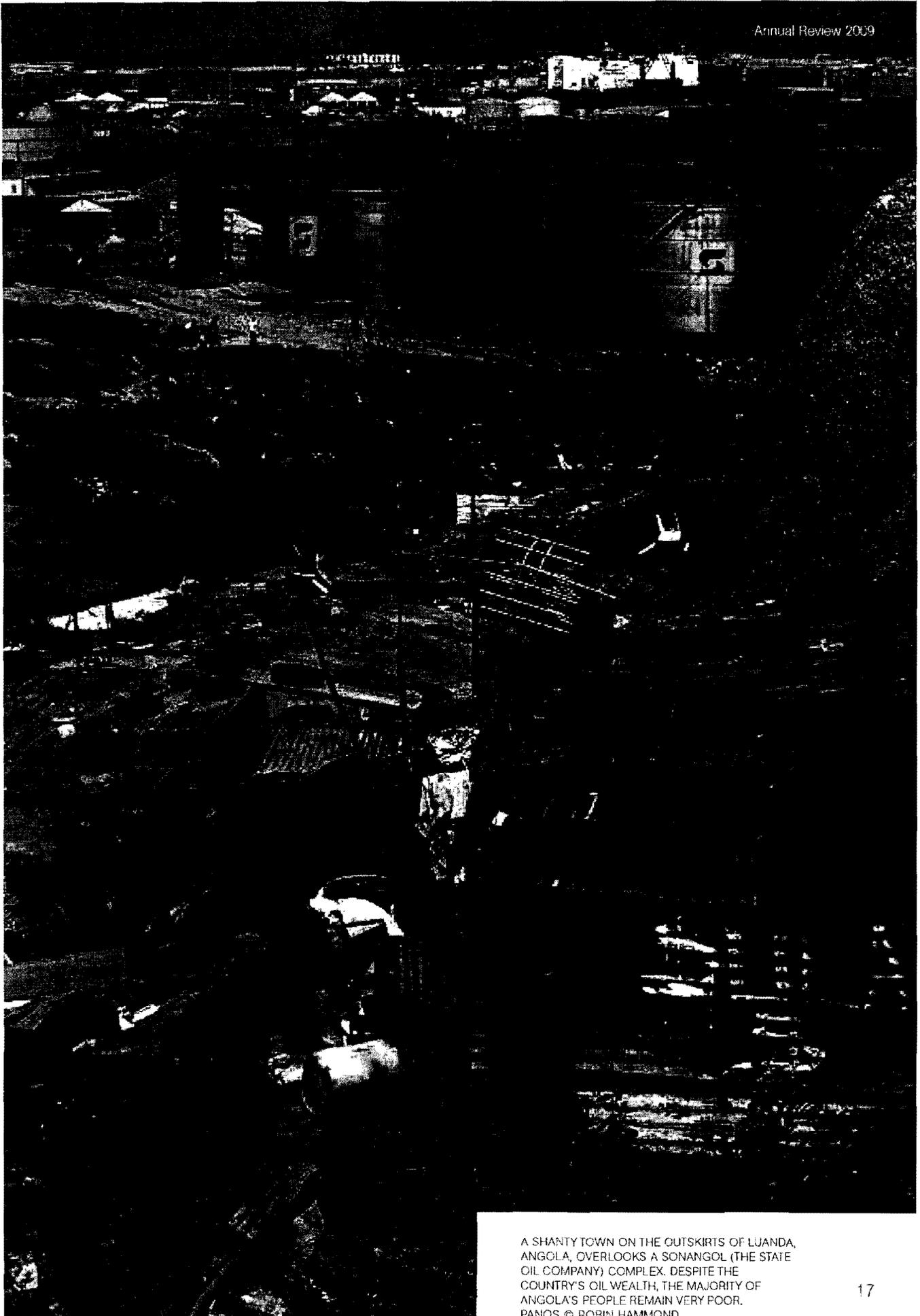
The U.S. has significant geopolitical influence and is home to some of the world's largest natural resource companies. If the U.S. government and companies used this influence more effectively, it would give significant momentum to global efforts to promote effective natural resource governance. In 2009 some significant progress was made in the US legislative context:

- Introduction of the Energy Security Through Transparency Act (ESTTA). This bi-partisan piece of legislation introduced in September 2009 would require companies to disclose their natural resource extraction payments on a country-by-country basis to the Securities and Exchange Commission. Global Witness played an integral role in getting the bill introduced and is campaigning with Publish What You Pay U.S. to get it passed. This legislation would be a major step forward in setting a global standard for transparency and enabling civil society to hold their governments to account for management of natural resource revenues.

- Introduction of bi-partisan legislation in both the House and the Senate to combat the trade in conflict minerals. The U.S. office was active in 2009 in educating members of Congress and the Obama Administration about the role of minerals in fuelling violence and human rights abuses in eastern DRC, which helped lead to the introduction of legislation in both the House and the Senate aimed at stemming the trade in conflict minerals.

- Through our research, reporting, and advocacy in Congress, we were able to pressure and support the Senate and House Appropriations Committees to include several new provisions within the FY 2010 foreign assistance funding legislation that promote transparency and equity in the management of natural resources. The provisions include: the requirement of a State Department report on mineral exploitation in the DRC and the identification of governments and companies involved; regular audits of the Government of Southern Sudan's financial accounts with special attention to oil and gas revenues; and a ban on U.S. funding directly or indirectly supporting industrial-scale logging.

In 2010, we will work on ensuring the passage of these progressive pieces of legislation in both the House of Representatives and the Senate. We will also encourage U.S. efforts to strengthen the anti-money laundering framework, including by requiring banks to carry out better due diligence. And we will push the U.S. government to properly enforce legislation imposing travel bans on government officials and their family members involved in natural resource corruption.



A SHANTY TOWN ON THE OUTSKIRTS OF LUANDA, ANGOLA, OVERLOOKS A SONANGOL (THE STATE OIL COMPANY) COMPLEX. DESPITE THE COUNTRY'S OIL WEALTH, THE MAJORITY OF ANGOLA'S PEOPLE REMAIN VERY POOR. PANOS © ROBIN HAMMOND

Campaigning on Accountability

Ending impunity for natural resource-related crimes

A key area of Global Witness's work is our efforts to end the impunity enjoyed by individuals and companies that profit from the illicit (and often illegal) exploitation of natural resources. We are constantly seeking ways to hold perpetrators of natural resource-related harm to account. This involves testing the limits of current laws and legal frameworks, exposing the 'accountability gaps', and calling for reform. The ultimate aim is to bring to an end the belief and unfortunate reality that individuals, companies and people operating within governments can operate above the law, and to the situation where, as with the trade in conflict minerals, existing laws are simply inadequate to deal with major global problems.

Working with other Global Witness campaigners, the Ending Impunity team aims to address the symptoms, causes and culture that enable a lack of accountability and prevent legal redress for crimes. There are three mechanisms that the team uses to achieve their aims:

- Casework - to facilitate and aid prosecutions that clarify the use of existing laws to create accountability for crimes involving the exploitation of natural resources, human rights abuses and corruption.
- Influencing policy - to encourage investigations and prosecutions under existing laws and push for the creation of new laws where gaps exist.
- Public advocacy - to create a climate where states and business believe that it is no longer acceptable to continue this exploitation and abuse and agree to take action against it.

Companies fuelling the conflict in Liberia – a landmark legal case

2009 was a seminal year for this strand of work because it saw us launch our first legal case to a public prosecutor. In November, Global

Witness, Sherpa, Greenpeace France, Amis de la Terre, and a prominent Liberian activist jointly lodged a complaint in France, against the timber company DLH (Dalhoff Larsen Horneman), alleging that they had bought and traded illegally-obtained timber during the civil war in Liberia from companies known to have been providing support to Charles Taylor's brutal regime. We would have liked to build a case around their financial support for a war but at present there is no jurisdiction where this is possible – hence the focus on their purchase of illegal timber.

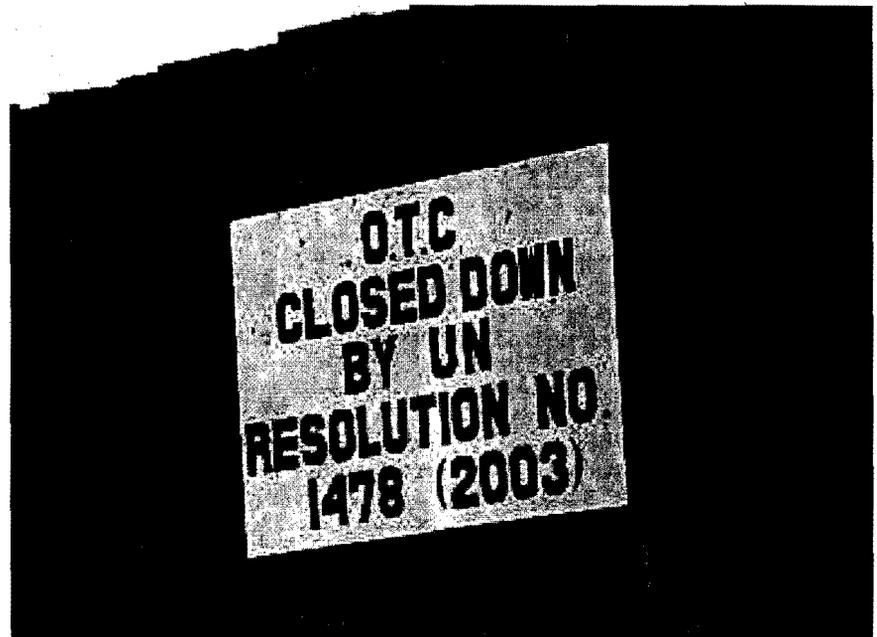
We were essentially accusing them of 'handling stolen goods' – which in France is a crime known as *receel*. We published a briefing paper, *Bankrolling Brutality*, explaining and accompanying the filing. This precedent-setting civil action is currently under consideration with the French prosecutor and we will know in 2010 whether the authorities intend to take it up. If they do not we are considering taking the case directly

to trial ourselves based on the wealth of evidence provided.

Also in 2009, we were invited to provide oral and written testimony to the Liberian Truth and Reconciliation Commission on economic crimes and the role that timber companies such as OTC, DLH, Danzer, and others played in funding the civil war. We also continued to carry out investigations into human rights abuses committed against ex-OTC employees and in the concession areas during Taylor's regime. Guus Kouwenhoven, the Dutch timber baron who ran Liberia's biggest logging company, OTC, was also implicated in gross violations and arms related crimes. Criminal charges were brought against Kouwenhoven in the Netherlands and we are currently waiting for a final determination.

Mapping the trade in Congolese conflict minerals

Throughout the year we continued to work on the accountability of companies trading in minerals from the DRC, where



PLAQUE SHOWING THE PREMISES OF OTC, ONCE LIBERIA'S BIGGEST LOGGING COMPANY, SHUT DOWN FOLLOWING THE IMPOSITION OF UN SANCTIONS ON LIBERIAN TIMBER.
© GLOBAL WITNESS

natural resource revenues are fuelling a violent conflict that has cost millions of lives. A particular focus for us in 2009 was the failure of the UK Government to act on evidence that British companies, including metals group AMC and trading company Afrimex, have purchased minerals originating from mines controlled by armed groups.

We provided oral testimony and a written submission to the UK Joint Committee on Human Rights highlighting weaknesses in the UK Government's current approach to minimising harm caused by UK-registered companies operating in conflict zones, particularly in eastern DRC. Some of our key recommendations were put forward by the Committee to the UK Government.

The basis on which companies are able to operate in areas of conflict and instability needs to change dramatically. Much of our campaigning is linked to this. In 2009 we began to work with the OECD on drafting practical due diligence guidelines for companies supplying minerals from conflict-affected states. This work will remain a core focus into 2010, with an official secondment to the OECD for one of our staff members. We hope to find out whether companies are capable of developing truly responsible and independently verifiable ways of sourcing. The jury is out on whether the industry and governments are ready to face up to their responsibilities.

We continued to work with Rights and Accountability in Development (RAID) and the Canadian Centre for International Justice (CCIJ) to highlight the on-going need for the accountability of economic actors, such as Anvil Mining, for their role in the Kilwa massacre in DRC in 2004.

Reforming England's libel laws to protect free speech

Among the many threats that Global Witness faces, by far the most common is legal action - both in terms of libel and breach of privacy. The corrupt politicians and businessmen who are frequent targets of our campaigning are often enormously rich and can afford to use the law to crush freedom of speech, despite the fact that what we

publish is true, and in the public interest.

Global Witness has never been successfully sued, nor had to settle out of court. Regardless, we regularly receive threats attempting to silence us, and always deal with these robustly. In 2007, for example, the son of the President of the Republic of Congo, Denis Christel Sassou Nguesso, used privacy laws in the UK to try and force us to remove documents from our website which showed that he had been using state oil revenues to fund his lavish personal lifestyle. We won the case and were awarded costs but the financial risk for a small organisation such as ours in defending this case was significant. By fighting this case, and refusing to be cowed, we set a precedent in the English courts on public interest and the laws on privacy.

England's claimant-friendly privacy and libel laws have long encouraged such behavior. Over the last few years the phenomenon of 'libel tourism' - where people who live outside the UK use its courts to sue non-UK residents - has been on the rise. This, and the increasing use of legal gagging orders such as injunctions and super-injunctions, has had a chilling effect on public interest campaigning. 2009 saw an upsurge in campaigning for libel reform.

Global Witness joined the Libel Reform Campaign set up by Index on Censorship, English PEN and Sense about Science (www.libelreform.org). We made written and oral submissions to the Culture, Media and Sport Parliamentary Select Committee on UK Privacy and Libel Laws and the resulting committee report incorporated a number of our recommendations.

Along with other NGOs we also submitted an Amicus Curiae brief to the European Court of Human Rights (ECHR), which is currently fast-tracking a landmark case brought by Max Mosley to tighten UK privacy laws. The brief outlined the potential negative implications of a ruling in Mosley's favour for organisations campaigning in the public interest and called on the court to define the right to privacy more

narrowly to protect such groups. The UK Government subsequently made a submission to the ECHR recognising the negative implications that prior notification could have on NGOs.

As a result of the campaigning by NGOs, the media and others, the then Justice Secretary Jack Straw announced a wholesale review of Britain's privacy and libel laws. Global Witness made a submission for consideration by Straw's expert panel, which reported in March 2010. Following the report, Straw announced welcome reforms to be taken forward in the next Parliament. These included:

- A 'single publication rule' to ensure that claimants in libel proceedings cannot bring a case against every publication or download of a story.
- Consideration of a statutory defence for publications in the public interest.
- Moves to prevent the growth of 'libel tourism'.

Straw also proposed to reduce the success fees that lawyers can charge for winning defamation cases in no-win, no-fee agreements. Unfortunately, in early 2010 a group of rebel Labour MPs blocked the proposal, citing concerns that the changes would prevent ordinary constituents being able to defend their privacy affordably. Global Witness accepts this important principle but believes that more often than not, the current system is cynically abused by the rich, powerful and very often guilty, who can well afford to pay their lawyers.

The matter is now due for review under the new government. Global Witness welcomes the coalition's early indication that libel reform will remain a priority and looks forward to seeing the details of their proposals. As the debate moves forward, it will be important to remember that non-governmental organisations publishing on a wide range of matters of public interest face different challenges and operate in a different context from journalists and lawyers. And that the work of such organisations will become more important as newspapers continue to cut back on quality long-term investigative reporting.

Campaigning on environmental sustainability

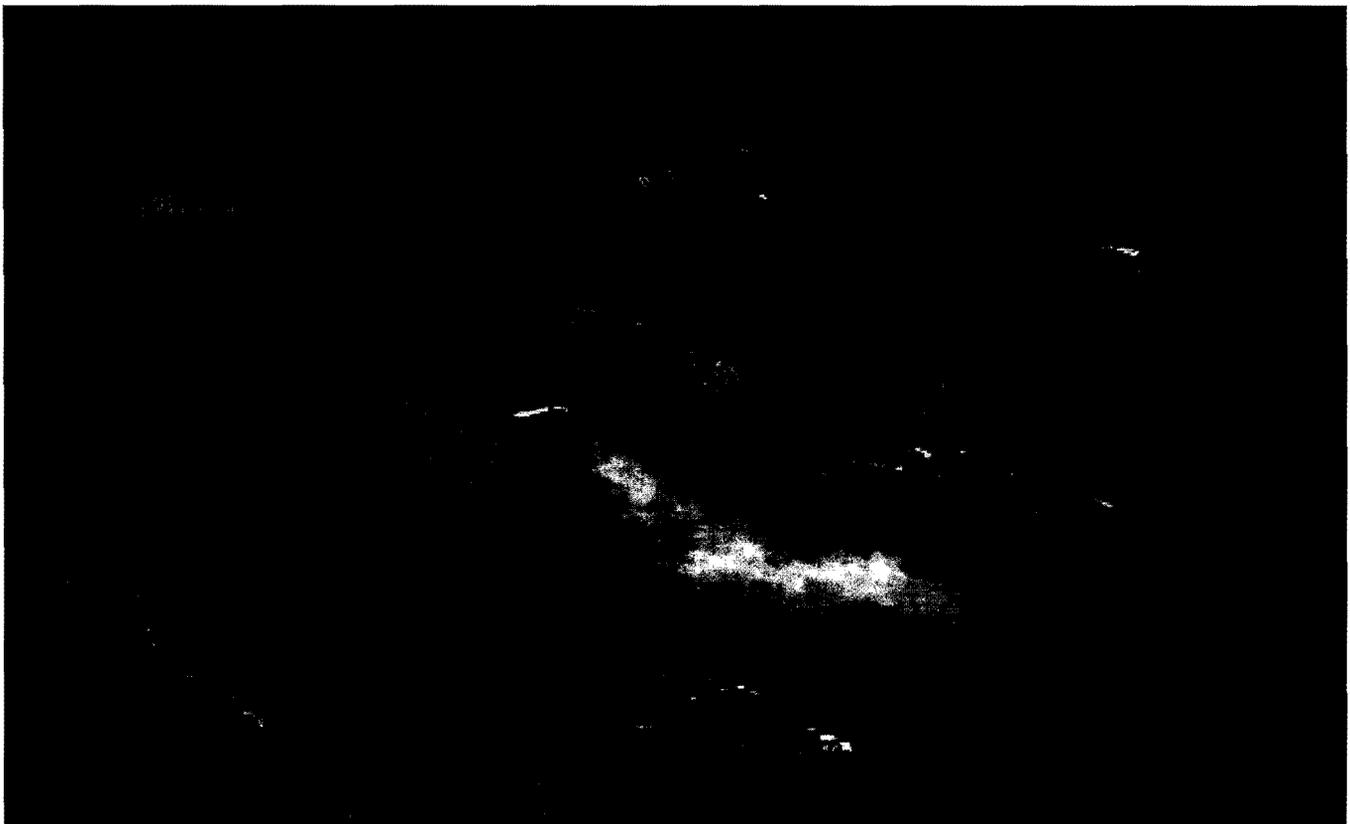
Ending impunity for natural resource-related crimes

2009 saw the launch of Global Witness's climate and energy campaign; with an initial focus on the looming oil supply crunch, a factor about which governments remain in denial. The campaign is calling on governments to publicly recognise the problem and take urgent action to switch to safe renewable energy alternatives. Global Witness believes that public recognition is the key first step. The campaign is an extension of our work on conflict resources and climate and is based on our belief that a world without enough oil is unlikely to be a peaceful place. An honest and public acknowledgement about the looming supply crunch could help climate change negotiators make progress towards agreeing safer targets.

In October, we published a report called *Heads in the Sand*, which outlined four key underlying fundamental factors that threaten secure future supplies of oil. These are declining discoveries, increasing demand, declining output from existing fields, and insufficient projects in the pipeline. Taken together, these factors threaten an imminent oil supply crunch. The report warned that the world's near-total dependence on oil for food production and transport mean that its decreasing availability is likely to have severe economic consequences. In addition, it will escalate food insecurity, and increase corruption, state-looting and impunity for dictators in countries with significant oil reserves. The increased geopolitical tension resulting from competition between countries struggling for essential supplies of oil will play havoc

with international efforts to address the climate crisis, and represents a serious threat to international peace and stability.

The current international effort to address the climate crisis could be described as "business-as-usual," with incremental changes to the global energy infrastructure occurring at a glacial pace. Current pledges for national greenhouse gas reductions represent a fraction of what appears to be required, according to recent scientific opinion. Meanwhile, existing global economic plans are predicated around a significant expansion in the use of fossil fuels. But given the range of indicators of the looming oil supply crunch, business-as-usual is no longer an option.



TAR SANDS – AN ENVIRONMENTAL DISASTER. THE WORLD IS RUNNING OUT OF OIL, RATHER THAN SEEKING EVER-MORE EXPENSIVE AND ENVIRONMENTALLY DAMAGING WAYS OF GETTING AT WHAT IS LEFT, GOVERNMENTS SHOULD BE INVESTING IN RENEWABLES.

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Following a London-based launch, we made one trip to the US to talk to members of Congress and the Obama administration about our findings. We presented *Heads in the Sand* at a panel event in Washington DC, attended by journalists, politicians and other NGOs. The report generated considerable interest, and suggestions that we hold further discussion panels. Against a backdrop of inadequate U.S. action to address the climate crisis, the visit also demonstrated the widespread lack of awareness about these issues amongst high-level officials on both Capitol Hill and within the Obama Administration. Global Witness has parallel concerns for many other countries.

In preparation for follow-up visits, the report was sent to Prime Ministers and key ministries of other major energy consuming countries and those in front line of looming climate disaster. By the year end, we had received positive reactions expressing an interest in further discussion from several countries.

A chance for forests at the climate change talks?

The world's forests have been declining at an alarming rate over the past fifty years due to industrial logging, conversion to plantations and agriculture. Carbon dioxide emissions from deforestation and forest degradation comprise 12 – 20% of the global total and it is now widely accepted that the battle against climate change cannot be won unless deforestation is halted. Consequently forest issues have risen high up on the international agenda and have been a key issue in the UN Framework Convention on Climate Change (UNFCCC) since 2007 when negotiations on a global mechanism for Reducing Emissions from Deforestation and forest Degradation (REDD) were initiated.

Essentially a scheme to prevent deforestation, REDD will see poor countries paid to keep their forests standing. It is both an unprecedented opportunity and a serious threat. A good REDD deal has the potential to protect forests on a global scale - a goal that has eluded policy makers for decades. But a bad agreement could prove

disastrous for the world's forests and the people that live in them. REDD is at risk from vested interests, including the logging industry, which could hijack the scheme and use it to subsidise business-as-usual practices, including industrial scale logging.

With tens of billions of dollars a year potentially to be transferred from rich countries to poor ones under REDD, and \$3.5bn already committed in fast-track financing for immediate implementation, addressing issues of governance will be key. Many of the countries in line for REDD money suffer from weak governance and a lack of transparency - some are ranked among the most corrupt in the world.

Global Witness campaigned hard in 2009 for a REDD deal that would protect the world's forests, build systems for good governance and monitoring, respect the rights of forest-dependent people and preserve the rich biodiversity that forest ecosystems contain. We engaged actively in all the UNFCCC negotiating meetings throughout the year, and spent time researching, carrying out advocacy, and devising policy in the months in-between.

Within a year of commencing our work on REDD we were recognized as a key contributor and authority in the debate, particularly regarding forest governance and monitoring. We co-founded the Ecosystems Climate Alliance (ECA) - a coalition of like-minded NGOs - at the UNFCCC meeting in Poznan in December 2008 and it has gone on to become the most effective civil society coalition influencing the REDD negotiations.

Through forging alliances with key negotiators we managed to ensure most of our key concerns were included in the final REDD text, which would probably have been adopted had the international negotiations concluded with a legally-binding deal at the UNFCCC talks in Copenhagen in December 2009. Provisions secured included the removal of pro-logging terminology, recognition of the need to address governance issues, and language to safeguard the rights of

indigenous peoples, protect biodiversity, and prevent the conversion of natural forest to plantations.

Because an agreement was not reached in Copenhagen we will use 2010 to ensure these provisions remain in place, and advocate for full implementation and monitoring of the safeguards.

We produced four reports for the REDD negotiations in 2009, including *A Decade of Experience and Building Confidence in REDD*, which were presented in Copenhagen. The reports provide a strong advocacy tool and are reportedly being used by civil society organisations and by bilateral and multilateral donor agencies to inform their thinking.

In parallel with the UNFCCC negotiations Global Witness is heavily involved in the two major mechanisms that will operationalise REDD: the World Bank's Forest Carbon Partnership Facility (FCPF) and the UN-REDD Programme, to which we were elected in late 2009 as the official international civil society observer representing developed countries. We are also monitoring and engaging with other key bilateral and multilateral initiatives, including various bilateral arrangements funded by Norway and the Paris-Oslo interim partnership agreement on REDD.

Industrial Forest Use – the major driver of deforestation

Underpinning all Global Witness's forest campaigns is the objective to get the world's decision makers to re-examine their use of tropical forests. For decades countless reports from governments, the media, academia and NGOs have documented the alarming decline of the world's tropical forests, but the international community has failed to slow it. This extraordinary failure lies, in large part, at the door of the world's forest economists who remain wedded to the notion that the industrial use of forests, whether through industrial scale logging (ISL) or conversion to agriculture (such as palm oil, soya and livestock), are key economic drivers in poor but forest-rich countries.

Led by bodies such as the World Bank and the UN Food & Agriculture Organisation (FAO), and funded by development aid from the rich world, the international community actively promotes the use of intact tropical forests for ISL and other activities, and even provides the funding and technical assistance to do so – some \$750 million per year of taxpayers' money. The results are not impressive: the tropical regions of Africa, Latin America, and Southeast Asia lost around 1.2 million km² of forest between 1990 and 2005 – an area the size of France, Germany and the UK combined.

Global Witness's IFU work is aimed at changing tropical-forest policy so that it is genuinely pro-poor and pro-environment, removing perverse subsidy from big industry and promoting the rights of forest dependent people.

Protecting Guyana's forests – and hosting a meeting with the President

Guyana lies at the heart of one of the world's last four intact rainforests and has one of the highest levels of biodiversity in the world. With forests accounting for around 80% of the country's land area, Guyana has become a flagship country for the World Bank's Forest Carbon Partnership Facility (FCPF), and is the furthest along of participating countries in achieving REDD 'readiness'. The country recently signed a five-year REDD agreement with Norway.

In August Global Witness visited Guyana, and discussed REDD with government officials, civil society groups and indigenous people. We then hosted a follow-up meeting in London in November with President Jagdeo and a representative of indigenous peoples. The aim was to explore the opportunities and risks of REDD for Guyana, and provide a forum for NGOs, leading academics, government representatives and the media to question the President on the government's plans to prevent deforestation.

Guyana's tropical rainforests are amongst its most valuable assets. Global Witness thinks a commitment to transparency and accountability should be enshrined

in legislation and that there should be oversight of all timber-related revenue flows. Forest communities need to be involved in decision making.

Making the Forest Sector Transparent – new website and report

Citizens of poor countries are often unable to access information on the management of their forests to hold their government and businesses to account.

2009 saw the launch of a landmark forest transparency project by Global Witness in partnership with four local non-governmental organisations from Cameroon, Liberia, Peru and Ghana. The project was launched via a new website – www.foresttransparency.info – which presented the initial findings of the first of a series of annual report cards. The full report card will be published in hard copy in 2010.

The reports will annually assess 70 transparency indicators on the level of public access to information in areas such as forest management plans, concession allocation, revenues and infractions. They will provide a tool for civil society to improve analysis of forest governance and transparency issues and to design strategies to tackle them and will be a useful way for NGOs around the world to learn and apply positive lessons in their own countries.

The report card is a product of a 'participatory action research' process involving Global Witness and the initial four project partner NGOs. We will bring in other countries to the scheme in 2010 and a key aim is to provide a framework and a 'pick-up-and-go' tool that NGOs and others can use without direct support from us to demand transparency over the management of forest resources.

Independent Forest Monitoring in Nicaragua – handing over the baton

2009 saw Global Witness complete implementation of an Independent Forest Monitoring (IFM) project in Nicaragua. IFM was first pioneered by Global Witness in Cambodia in the late 1990s. As the name implies, it is a form

of oversight whereby independent observers are engaged to monitor and report on forest-related activities in countries that have pledged to improve forest governance and stop illegal logging. IFM monitors provide robust evidence of where forest management and control systems are failing and support governments to address the reported weaknesses and system failures.

In Nicaragua we carried out a number of field visits with local partners and produced a series of mission reports highlighting problems in the forest sector. The project has generated a lot of interest and contributed extensively to the creation of a National Forest Audit System. After 2½ years of activities, Global Witness has initiated the handing over of IFM activities to local civil society and started training selected members of community-based organisations in the methodology and techniques.

A follow-up project will concentrate on building on the success in Nicaragua by expanding IFM into the sub-region, and on preparing civil society for active participation in, and monitoring of, future REDD mechanisms.

The Burma-China timber trade – signs of improvement

In October 2009 Global Witness released the third in a series of reports on illegal logging in Burma. Entitled *A Disharmonious Trade*, it was based on field research carried out between 2005 and 2009 in Kachin State, along the Burma-China border, and on China's eastern seaboard, and supported by analysis of the latest trade data. The report showed that imports of logs and sawn wood across the land border from Burma fell by more than 70% between 2005 and 2008. This represents a campaign success for Global Witness as the decline can be largely attributed to measures which were put in place by the Chinese authorities following the publication of our report *A Choice for China* in October 2005.

However, some illicit trade continues, causing serious damage to the environment. Furthermore, it is just part of a wider problem: half of China's timber imports from all countries are

probably illegal and China accounts for roughly a quarter of all illegal timber being traded internationally. This has a knock-on effect for other countries: the UK imports more illegal timber than any other EU country for example, because it buys so much from China.

Global Witness is urging the Government of the People's Republic of China to ensure that measures designed to prevent illegal timber imports are both widely known about and consistently enforced. Burma should continue efforts to stop illegal and unsustainable logging in Kachin State and end the illegal cross-border timber trade with China. Timber importing nations, including China, should adopt national legislation to prohibit the importation and sale of timber that has been harvested, transported, bought or sold in violation of national laws.

Undercover investigations into illegal logging in Madagascar

In November we published the results of a joint field investigation with the Environmental Investigation Agency (EIA) into the trafficking of precious wood, including rosewood, palissander and ebony, in Madagascar. The investigation was commissioned by the Madagascar National Parks authority and uncovered unprecedented levels of illegal activity in the country's northeast. Madagascar provides a good example of how a natural resource problem can escalate in the wake of a political crisis or as a result of endemic corruption. The spate of illegal activity we uncovered followed a political crisis earlier in the year. Our investigators – who spent much of the time working undercover – captured video and photographic evidence of the logging and collected testimony from local communities and traffickers, revealing both the scale and brazenness of the illegal trade.

The report estimated that between \$88,000 and \$460,000 worth of precious rosewood was being illegally harvested every day and accused members of the Forest Administration, the national police and other Malagasy authorities of serious failings and, in some cases, complicity with the traffickers. The report was seized upon

by international and local civil society, and used to put pressure on the Malagasy government to stop timber trafficking.

Global Witness also targeted the French shipping company, Delmas, who were reportedly transporting the investigated timber from Madagascar to China.

In March 2010 the Malagasy authorities reinstated the ban on exports of unfinished precious wood – a victory for the campaign. However, we are continuing to look into the network of

traffickers, traders and customers, with a view to using the U.S. Lacey Act to hold companies to account for importing illegal timber. And we will continue to press for similar legislation to be introduced in the EU.



LOGS WAITING TO BE TRANSPORTED IN MADAGASCAR. GLOBAL WITNESS'S INVESTIGATIONS HAVE REVEALED THE EXTENT OF THE ILLEGAL TRADE IN ROSEWOOD, PALISSANDER, AND EBONY, WHICH IS THREATENING THE COUNTRY'S LAST REMAINING NATURAL FORESTS.
© GLOBAL WITNESS



Our Funding

Without the support of those who share our vision, who want to tackle the same problems as us, and who believe in the solutions and methods we do, Global Witness would come to a standstill. As globalisation continues apace so does the growing need for global responsibility and we feel that there is so much more to achieve. The financial support we receive gives us the confidence, capacity and encouragement to continue and to strive for ever more impact in the international arena.

Our funders

The majority of Global Witness's income comes from grants made to us by Trusts and Foundations, followed by governments, and multilateral organisations and other NGOs. We would like to take this opportunity to thank most sincerely all those who supported our work financially in 2009. We are deeply grateful to our long term supporters who, despite desperate economic conditions, have continued to show their commitment to and endorsement of our work. And we are also delighted to welcome many new supporters this year, particularly the Arcus Foundation who have made a significant commitment to support Global Witness's forest work.

Governments and International Institutions:

Department for International Development (DFID), European Commission, Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ), Madagascar National Parks Authority, Netherlands Ministry of Foreign Affairs, Norwegian Agency for Development Cooperation (Norad), Swedish International Development Co-operation Agency (Sida).

Institutional Foundations,

Non-Governmental Organisations, Corporate Bodies and Individuals:

Adessium Foundation, The Ajahma Charitable Trust, Arcus Foundation, The Ashden Charitable Trust, Blue Moon Fund, DOEN Foundation, The David and Elaine Potter Foundation, The Ford Foundation, JMG Foundation, The Joffe Charitable Trust, Foundation Open Society Institute (Zug), The Rufford Maurice Laing Foundation, Scottish Community Foundation, The Sigrid Rausing Trust, R H Southern Trust, The Tylour Foundation, Zennström Philanthropies, Cordaid, Humanist Institute for Co-operation with Developing Countries (Hivos), Netherlands Committee for IUCN, Oxfam Novib, Trócaire, The Revenue Watch Institute, The World Bank Group, Brunswick Group LLP, Sharegift.

In the UK, Global Witness Trust Ltd. (registered with the Charities Commission: 1117844) is a separate entity that receives funds from certain funders and (under strict Trust guidelines) provides these funds to Global Witness Ltd. In the U.S., Global Witness Foundation (approved as 501(c)(3)) operates in the same way.

Volunteers and pro-bono legal advice

In addition to financial support, Global Witness relies on a growing number of volunteers at all levels who provide valuable advice, expertise, and hard work. We owe them our deep gratitude.

We are also hugely fortunate to be able to work with a network of lawyers coordinated by Advocates for International Development who provide pro-bono advice and services, giving us peace of mind, and savings us tens of thousands of pounds a year. Thank you.

Financial information

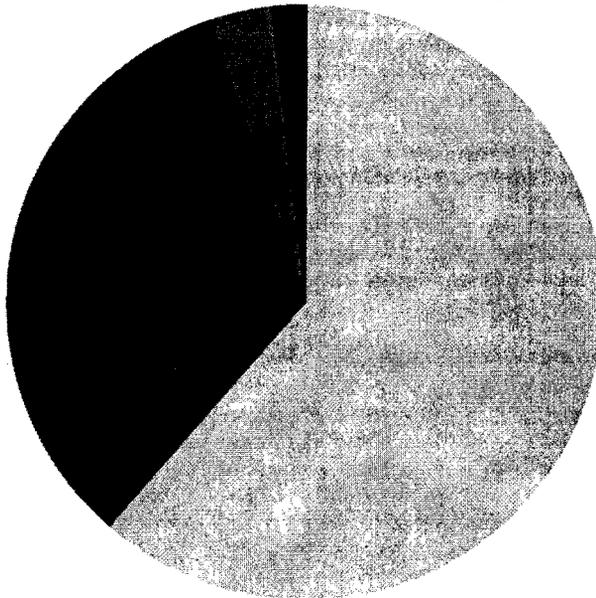
Growth in Global Witness's funding has been sustained since its inception 15 years ago and our annual income now stands at approximately £4m. To meet our campaigning needs we are aiming for steady and sustained growth in the years ahead. We want to maintain the valuable partnerships we currently enjoy, while also broadening our international reach and attracting new partners to support our expanding campaigning work.

These figures are extracted from the audited annual accounts of Global Witness Limited for the year ended 30 November 2009. A full set of accounts are available from our website, www.globalwitness.org. We are committed to transparency in our financial reporting and are happy to disclose all financial information on request.

Global Witness Limited 2008/09

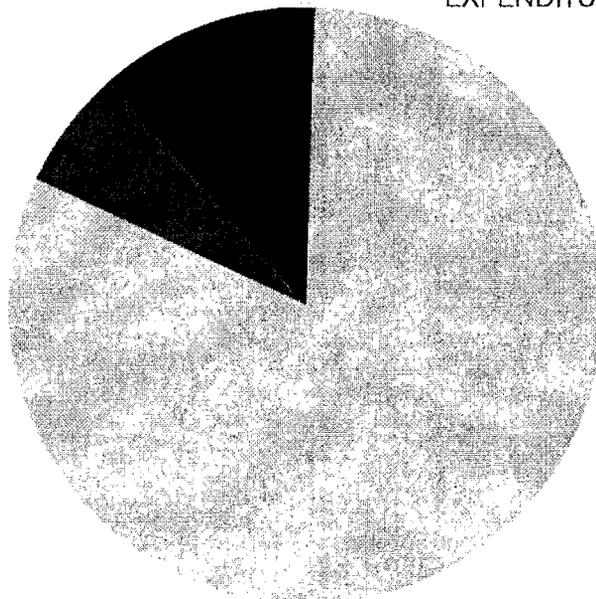
INCOME	£
Grants from trusts & foundations	2,298,450
Grants from governments	1,277,340
Grants from multilateral organisations and NGOs	116,040
Grants from other organisations	44,475
Bank interest & other income	95,526
TOTAL INCOME	3,831,831
EXPENDITURE	
Climate change	138,409
Conflict resources	473,467
DRC	215,282
Ending impunity	181,034
Forests	749,623
Forest transparency project (GTF)	440,455
Kleptocracy	393,168
Oil & transparency	397,655
Research & development	53,286
CAMPAIGN COSTS	3,042,379
FUNDRAISING COSTS	284,564
SUPPORT & GOVERNANCE COSTS	707,640
TOTAL EXPENDITURE	4,034,583

INCOME



■ Bank interest and other	2%
■ Trusts and foundations	61%
■ Multilateral & NGO	3%
■ Governments	33%
■ Other	1%

EXPENDITURE



■ Campaigns	75%
■ Support & governance	18%
■ Fundraising and communications	7%

Donor Community
Must Push For
Good Governance

HUN
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Attachment No. 3

"FACED WITH A GUN, WHAT CAN YOU DO?"

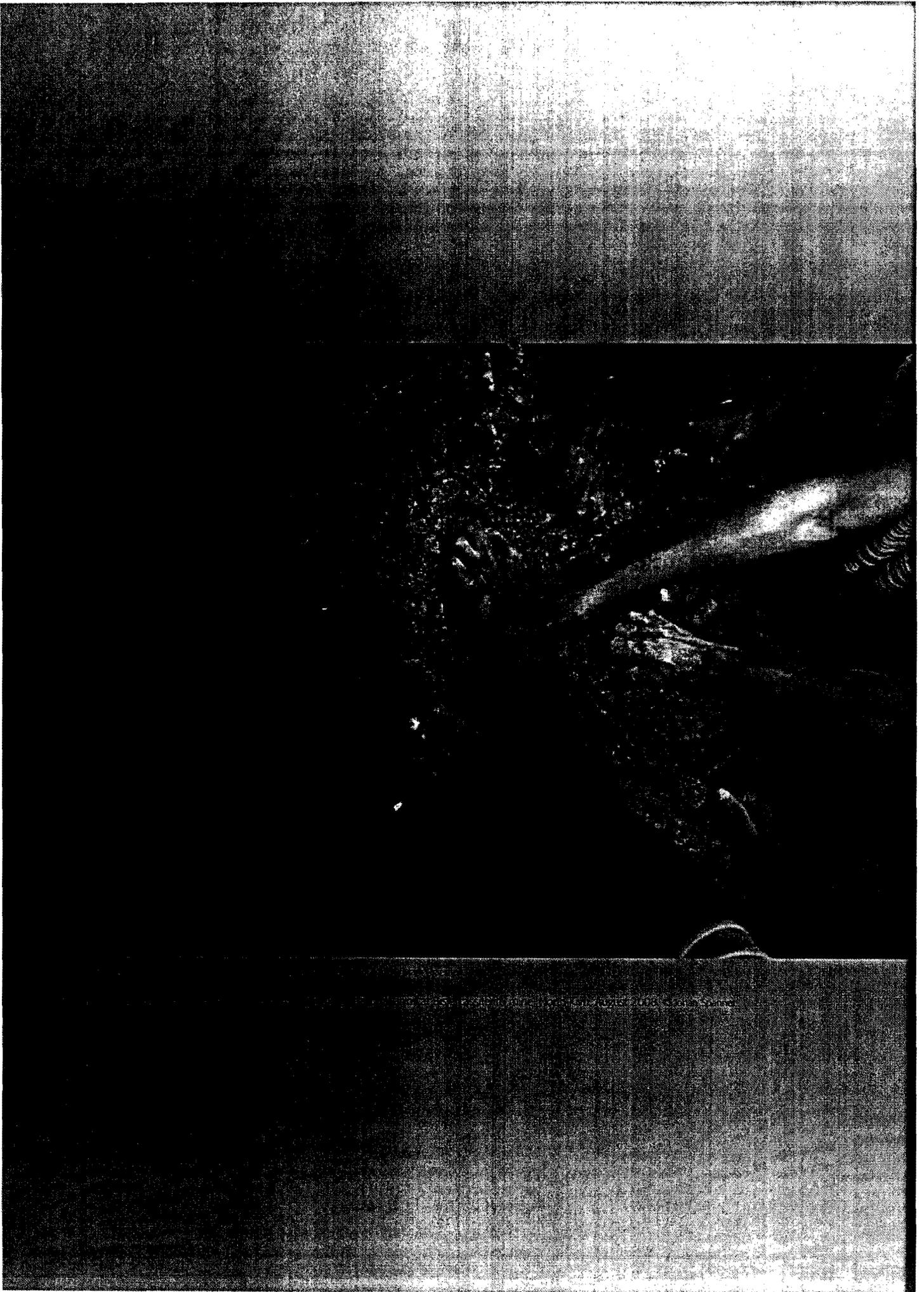
WAR AND THE MILITARISATION OF MINING IN EASTERN CONGO



A REPORT BY GLOBAL WITNESS JULY 2009



global witness



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Acronyms

ALIR

Armée pour la libération du Rwanda
(Army for the Liberation of Rwanda)

AMC

Amalgamated Metal Corporation

CEEC

Centre d'évaluation, d'expertise et de certification
(Centre for Evaluation, Expertise and Certification)

CNDP

Congrès national pour la défense du peuple
(National Congress for the Defence of the People)

CREDDHO

*Centre de Recherche sur l'Environnement,
la Démocratie et les Droits de l'Homme*
(Centre for Research on the Environment,
Democracy and Human Rights)

DRC

Democratic Republic of Congo

EICC

Electronics Industry Citizenship Coalition

EITI

Extractive Industries Transparency Initiative

FARDC

Forces armées de la République démocratique du Congo
(Armed Forces of the Democratic Republic of Congo)

FDLR

Forces démocratiques pour la libération du Rwanda
(Democratic Forces for the Liberation of Rwanda)

FEC

Fédération des Entreprises du Congo
(Federation of Congolese Enterprises)

FRF

Forces républicaines fédéralistes
(Federalist Republican Forces)

GeSI

Global e-Sustainability Initiative

GMB

Groupe Minier Bangandula
(Bangandula Mining Group)

GMC

Global Mining Company

HP

Hewlett-Packard

ICC

International Criminal Court

ICGLR

International Conference on the Great Lakes Region

ITRI

International Tin Research Institute

MHI

Mwangachuchu Hizi International

MONUC

*Mission de l'Organisation des Nations unies en République
démocratique du Congo*
(United Nations Organisation Mission in
the Democratic Republic of Congo)

MPA

Metal Processing Association

MPC

Mining and Processing Congo

MSC

Malaysia Smelting Corporation Berhad

NCP

National Contact Point

NGO

Non-governmental organisation

OCC

Office congolais de contrôle
(Congolese Office of Control)

OECD

Organisation for Economic Cooperation
and Development

OFIDA

Office des douanes et accises
(Office of Customs and Excise)

OGMR

Office de Géologie et des Mines du Rwanda
(Rwanda Geology and Mines Authority)

PARECO

Patriotes résistants congolais
(Congolese Resistance Patriots)

RCD

Rassemblement congolais pour la démocratie
(Congolese Rally for Democracy)

RIEPA

Rwanda Investment and Export Promotion Agency

SAESSCAM

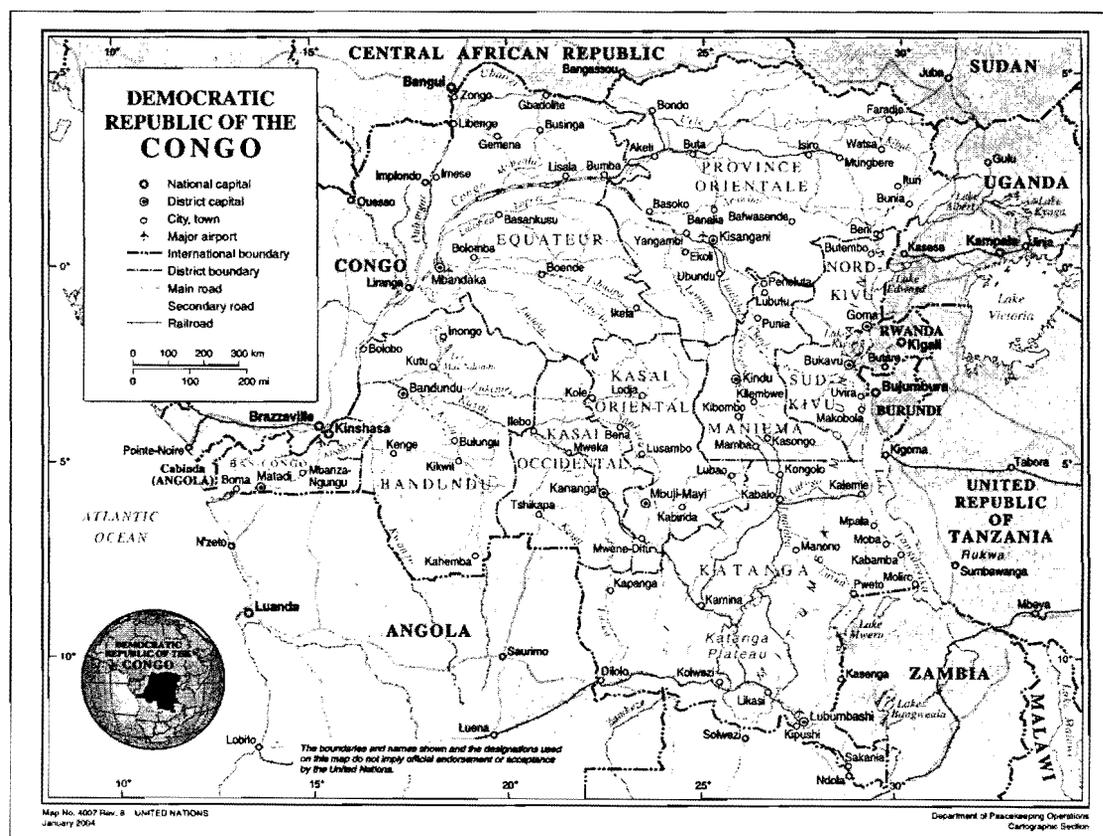
Service d'assistance et d'encadrement du small scale mining
(Small Scale Mining Assistance and Support Service)

THAISARCO

Thailand Smelting and Refining Corporation

UN

United Nations



1 Summary

“We are their meat, their animals. We have nothing to say.”

MINER FROM SHABUNDA (SOUTH KIVU), 28 JULY 2008

The militarisation of mining in eastern Democratic Republic of Congo (DRC) is prolonging the armed conflict which has been tearing the country apart for more than 12 years.

In many parts of the provinces of North and South Kivu, armed groups and the Congolese national army control the trade in cassiterite (tin ore), gold, columbite-tantalite (coltan), wolframite (a source of tungsten) and other minerals. The unregulated nature of the mining sector in

eastern DRC, combined with the breakdown of law and order and the devastation caused by the war, has meant that these groups have had unrestricted access to these minerals and have been able to establish lucrative trading networks. The profits they make through this plunder enable some of the most violent armed groups to survive.

In their broader struggle to seize economic, political and military power, all the main warring parties¹ have carried out the most horrific human rights abuses, including widespread killings of unarmed civilians, rape, torture and looting, recruitment of child soldiers to fight in their ranks, and forced displacement of hundreds of thousands of people. The lure of eastern Congo’s mineral riches is one of the factors spurring them on.

By the time these minerals reach their ultimate destinations – the international markets in Europe, Asia, North America and elsewhere – their origin, and the suffering caused by this trade, has long been forgotten.

The illicit exploitation of natural resources is not a new phenomenon in eastern DRC. It has characterised the conflict since it first erupted in 1996 and has been well documented by non-governmental organisations (NGOs), the United Nations Panel of Experts and Group of Experts, journalists and others. Twelve years on, the patterns remain the same, and despite abundant evidence of these activities, no effective action has been taken to stop this murderous trade. On the contrary, the warring parties have consolidated their economic bases and have become ever more entrenched.



Miners scour for cassiterite with their bare hands, Bisie mine, North Kivu, April 2008.

© Mark Craemer

¹ The term “warring parties” is used throughout this report to denote the range of armed groups operating in eastern DRC, as well as the Congolese army.

Overview of findings

This report documents the militarisation of mining in the conflict-affected areas of eastern DRC. Its findings and conclusions, summarised below, are based primarily on Global Witness field research in North and South Kivu in 2008, and in Rwanda and Burundi in 2009.

- All the main warring parties are heavily involved in the mineral trade in North and South Kivu. This practice is not limited to rebel groups. Soldiers from the Congolese national army, and their commanders, are also deeply involved in mining in both provinces.
- In the course of plundering these minerals, rebel groups and the Congolese army have used forced labour (often in extremely harsh and dangerous conditions), carried out systematic extortion and imposed illegal “taxes” on the civilian population. They have also used violence and intimidation against civilians who attempt to resist working for them or handing over the minerals they produce.
- The most detailed information obtained by Global Witness relates to the *Forces démocratiques pour la libération*

du Rwanda (FDLR), the predominantly Rwandan Hutu armed group, some of whose leaders are alleged to have participated in the 1994 genocide in Rwanda, and the *Forces armées de la République démocratique du Congo* (FARDC), the Congolese national army. The involvement of these two groups in the mineral trade is extensive and well-organised.

FDLR

- The FDLR has a stranglehold on the mineral trade in large parts of South Kivu. In some areas, their economic activities have become so successful that they appear to have become an end in themselves. Local residents describe them as the “big businessmen”.
- The FDLR sometimes trade openly, selling minerals in markets and towns; on other occasions, they use Congolese civilians as intermediaries.
- The FDLR systematically extort minerals and money from miners, charging a flat fee of 30% on mining proceeds in some areas and “taxing” minerals at roadblocks.



Cassiterite miner, Bisie, North Kivu, April 2008. Working conditions are dangerous and there are frequent accidents when mineshafts collapse.

FARDC

- The most blatant example of FARDC involvement in mining is Bisie, the largest cassiterite mine in the region, which accounts for around 80% of cassiterite exports from North Kivu. From 2006 to March 2009, Bisie mine was entirely under the control of an army brigade. In 2007 and the first part of 2008, the FARDC based at Bisie were collecting at least US \$120,000 a month by taking a commission of US \$0.15 on every kilogramme of cassiterite.
- In some mines, a system has been set up in which particular days of the week are allocated for civilian miners to work for individual soldiers or their commanders. Soldiers also demand 10% of minerals, as well as cash, at numerous military checkpoints along the roads.
- Senior officers in the provincial command of the 8th and 10th military regions of the FARDC have been profiting from this trade.
- Individual commanders or military units "own" particular mineshafts. In Mukungwe, in South Kivu, a mineshaft has been nicknamed "10th military region".

FARDC/FDLR collaboration

- The FARDC and the FDLR – supposedly battlefield enemies – often act in collaboration, carving up

territory and mining areas through mutual agreement and sometimes sharing the spoils. The FDLR use roads controlled by the FARDC, and vice versa, without difficulty. Minerals produced by the FDLR are sent out through local airports controlled by the FARDC in South Kivu.

Other armed groups

- The *Congrès national pour la défense du peuple* (CNDP), and various other armed groups such as the *mai-mai*, have also profited from the mineral trade, particularly through their own systems of "taxation".

Smuggling

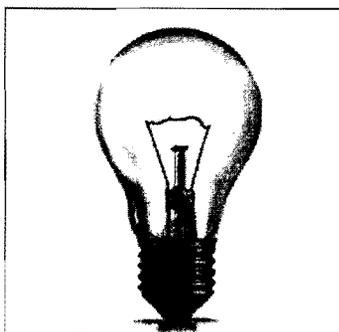
- Provincial government officials struggle to control mineral exports across the DRC's eastern borders. Official declarations and state revenues from exports of cassiterite and coltan have increased since 2007, but almost all the gold in North and South Kivu is still smuggled out. A Congolese government official told Global Witness that at least 90% of gold exports were undeclared.

Rwanda and Burundi as transit countries

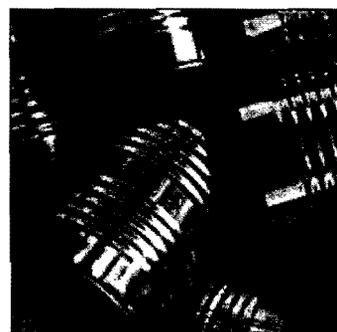
- The majority of the minerals produced in North and South Kivu leave the DRC through Rwanda or Burundi. The governments of these countries have effectively provided the warring parties in eastern



Metals extracted from coltan, cassiterite and wolframite are all used in the manufacture of electronic goods.



Tungsten derived from wolframite is used in the manufacture of light bulbs.



Tin extracted from cassiterite is used in the manufacture of cans.

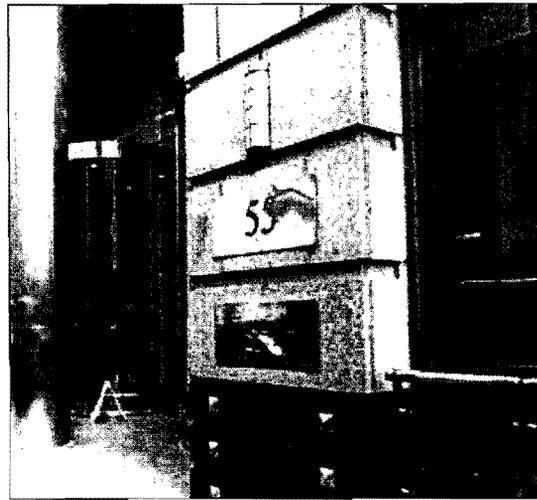
DRC with access to export routes and international markets. They have failed to acknowledge the fact that these minerals are fuelling the conflict in eastern DRC and have not held to account companies in their country which engage in this trade.

The comptoirs

- Several of the main *comptoirs* – trading houses based in Goma and Bukavu – buy, sell and export minerals produced by or benefiting the warring parties. They include Groupe Olive, Muyeye, MDM, Panju and others.
- The fact that these *comptoirs* are officially licensed and registered with the Congolese government acts as a cover for laundering minerals which are fuelling the conflict.

Foreign companies

- These *comptoirs'* customers include European and Asian companies, such as the Thailand Smelting and Refining Corporation (THAISARCO), the world's fifth-largest tin-producing company, owned by British metals giant Amalgamated Metal Corporation (AMC); British company Afrimex; and several Belgian companies such as Trademet and Traxys. These companies sell the minerals on to a range of processing and manufacturing companies, including firms in the electronics industry.
- Economic actors are turning a blind eye to the impact of their trade. They continue to plead ignorance as to the origin of their supplies and hide behind a multitude of other excuses for failing to implement practices which would exclude from their supply chain minerals which are fuelling the armed conflict.
- Foreign companies use the “legal” status of their suppliers as justification for continuing to trade with



© Global Witness

AMC's offices in central London. AMC's subsidiary, THAISARCO, is among the companies importing minerals from *comptoirs* whose suppliers have links with armed groups.

them, without verifying the exact origin of the minerals or the identity of intermediaries. In reality, some of these “legal” suppliers are among the main facilitators of the illicit trade with armed groups and army units.

- Some companies have claimed that the well-being of the Congolese population in mining areas is dependent on these companies' continued involvement in the trade. Such arguments ignore the serious human rights abuses perpetrated against artisanal miners and other civilians by the warring parties who exploit these minerals and with whom these companies are prepared to continue trading.
- Correspondence between some of these companies and Global Witness has revealed that despite paying lip-service to “ethical” principles, trading companies have no effective monitoring system in place to check their supply chain or assess the human rights impact of their trade.
- Correspondence from some of the major electronics companies has shown a greater recognition of the need for due diligence but also a lack of a sense of urgency and limited commitment to applying checks throughout the entire supply chain.

Foreign governments

- International dialogue and peace talks have not tackled the economic dimension of the conflict. Global Witness believes that political agreements which do not address the exploitation of natural resources as one of the main drivers of the conflict are unlikely to lead to lasting peace.
- Home governments have failed to show moral leadership in holding to account companies based in their countries that engage in trade which benefits the warring parties and leads to human rights abuses. They have fallen back on voluntary codes of conduct and other non-binding guidelines, resisting calls for stronger action to control the corporate sector.
- Most donor governments have chosen to concentrate on technical solutions instead of addressing the fundamental causes of the conflict. Not only has this allowed the warring parties, and the companies which do business with them, to continue benefiting from the mineral trade with impunity, but it has further delayed the implementation of measures which would deprive the warring parties of one of their principal sources of finance.
- The inadequacy of the international response to the economic dimension of the conflict is obstructing development efforts. The conflict in eastern DRC continues to cause deaths, displacement, trauma and destruction of livelihoods on a massive scale – all of which impede development. Donor governments continue to pour vast sums of money into the DRC, but this assistance is undermined by their failure to address one of the fundamental aspects of the conflict: the warring parties' access to natural resources.

The findings presented in this report are based on Global Witness interviews with a wide range of eye-witnesses and other sources in North and South Kivuⁱⁱ in July and August 2008, including miners, individual traders and trading companies, mining companies, government and military officials, members of armed groups, journalists, members of Congolese NGOs, UN staff and foreign diplomats. Global Witness has protected the identity of many interviewees in this report for their own security. Global Witness carried out further research in Rwanda and Burundi in March 2009. Additional information was obtained through correspondence with companies and other sources in late 2008 and early 2009.

Action to break the links between the mineral trade and armed conflict

This report sets out detailed recommendations for governments, individuals, organisations and companies inside and outside the DRC who have the power to break the links between the mineral trade and the conflict. Foremost among these recommendations are:

- measures to cut off warring parties' access to mining sites in the DRC, as well as international trade routes and external networks;
- ending the impunity protecting those engaged in illicit mineral exploitation and trade, through actions by the governments of DRC, neighbouring countries and countries where companies are registered;
- thorough due diligence by all companies trading in minerals which may originate from eastern DRC and stronger corresponding action by their governments to hold accountable those who continue to trade in ways which fuel the conflict.

ⁱⁱ Global Witness did not research the mineral trade in the area known as *le Grand Nord* (in the northern part of North Kivu) or in the neighbouring province of Maniema.

Recommendations

To the Congolese government

- Set up a tighter control system over the chain of supply of minerals, from the point of extraction to the point of export. Establish a legal requirement that individuals or companies handling minerals, at every stage of the supply chain, produce written, verifiable documentation of the exact location from which the minerals originate and the identity of their suppliers and any intermediaries or third parties. Prohibit any mineral exports which do not carry such documentation.
- Exercise greater oversight and control over the activities of *comptoirs*. Revoke the licences of *comptoirs* and *négociants* (buyers) who persist in trading in minerals produced by or benefiting the warring parties (including those named by the UN Group of Experts) or who fail to produce precise, verifiable documentation on their chain of supply, as outlined above. Investigate reports that some *comptoirs* and *négociants* are knowingly trading with armed groups or the FARDC and, where substantial evidence exists, initiate prosecutions.
- Carry out spot checks on the identity of suppliers to *comptoirs* exporting minerals from North and South Kivu and investigate any fresh allegations or suspicions that some *comptoirs* may be obtaining supplies from individuals known to be close to armed groups or FARDC units involved in mineral exploitation.
- Provide strong political and technical support to provincial-level government agencies responsible for controlling the mining sector, exports and border controls in North and South Kivu. Senior national-level government officials should be prepared to

intervene promptly in cases where members of armed groups or the FARDC prevent provincial officials from doing their job. Government and judicial authorities should investigate reports of threats against civilian officials by members of armed groups or the FARDC and take action against those found responsible.

To Congolese government and military authorities

- Closely monitor the conduct of army brigades deployed in mineral-rich areas; remove, discipline and, where appropriate, investigate and initiate prosecutions against those found responsible for the illicit exploitation of minerals and for human rights violations committed in this context.
- Launch an investigation into reports that the 85th brigade, under the command of Colonel Sammy Matumo, has been exploiting and trading in cassiterite in Bisie from 2006 to March 2009. The brigade's redeployment in March 2009 should not serve as a substitute for legal action. If substantial evidence is found, initiate judicial proceedings against Colonel Sammy Matumo and other FARDC members found responsible for these offences and for human rights violations committed in this context. Ensure that the FARDC brigade replacing the 85th brigade is not based in Bisie and does not engage in mineral exploitation and trade.
- Similarly, remove FARDC units known to be exploiting minerals in other locations in North and South Kivu and take action against their commanders and other FARDC members found responsible.

- Launch an independent investigation into allegations that senior FARDC officials, at provincial and national level, may be profiting from the trade in minerals in North and South Kivu; ensure that any individuals found responsible for profiting from this trade or for ordering or sanctioning such behaviour by others within the FARDC are brought to justice, however senior their rank.
- Immediately suspend and, where appropriate, initiate prosecutions against FARDC members who have collaborated with the FDLR and other armed groups responsible for grave human rights abuses, including through sharing the proceeds of the mineral trade.

To governments of neighbouring countries and transit countries

- Fully implement UN Security Council Resolution 1856 (2008) which requires "all States, especially those in the region, to take appropriate steps to end the illicit trade in natural resources, including if necessary through judicial means" and report to the UN Security Council on measures taken.
- In view of the gravity of the human rights situation in eastern DRC and the fact that the warring parties rely heavily on funds from the mineral trade, carry out additional due diligence with a view to stopping imports of minerals which are produced by or benefit any of the warring parties. Tighten controls of mineral imports and insist that any minerals imported from the DRC are accompanied by verifiable documentation indicating their precise origin and the identity of intermediaries.
- Launch investigations and, if appropriate, prosecutions against individuals or companies in their country who are trading in minerals produced by or benefiting any of the warring parties in eastern DRC. Suspend the trading licences of any such individuals or companies, pending the outcome of investigations.
- Submit to the UN Sanctions Committee the names of individuals or companies based in their country whose trade in minerals is helping fund armed groups in eastern DRC.

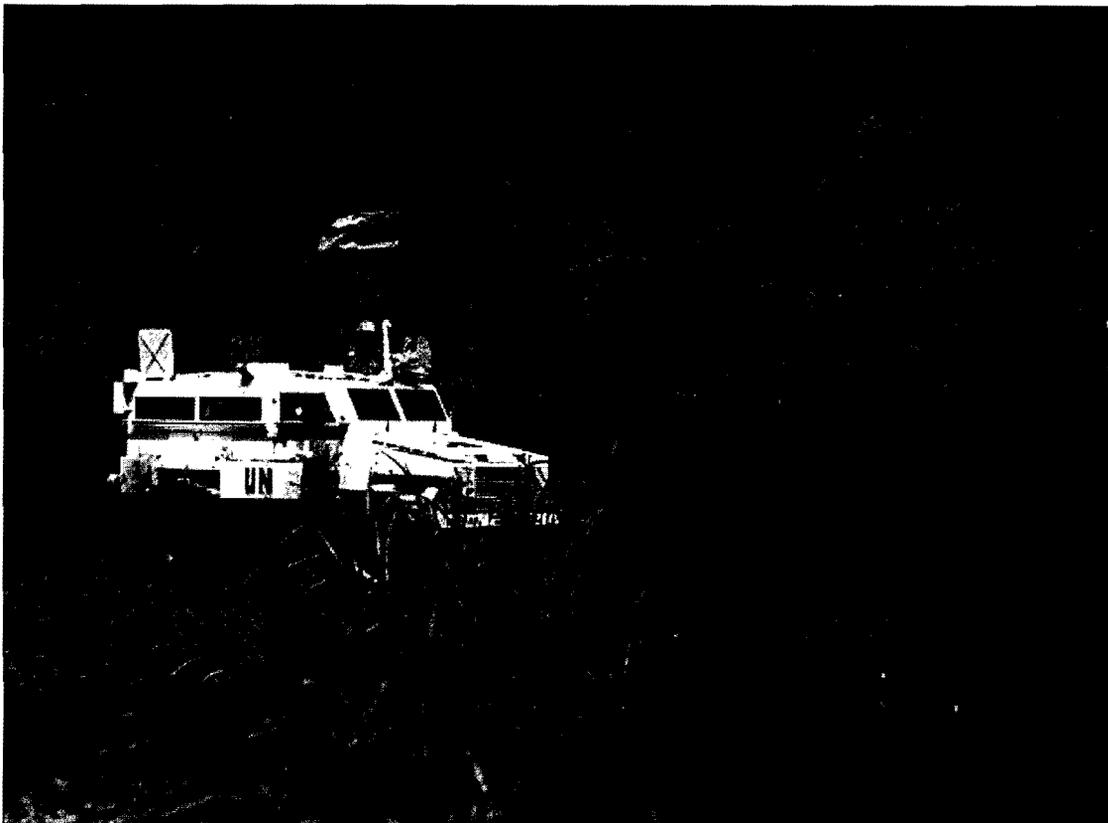
To foreign governments, including diplomats and mediators involved in peace talks

- Ensure that foreign policy on the DRC and the Great Lakes region addresses the economic drivers of the conflict as one of the central factors behind the continuing violence in eastern DRC.
- Ensure that the question of the economic agendas of the warring parties is discussed explicitly and frankly in peace talks and other regional and international political dialogue. Make clear that the exploitation and trade of natural resources by armed groups and army units is not acceptable under any circumstance. Seek agreement among leaders of armed groups, as well as FARDC and government officials, on measures to halt this illicit trade and secure their commitment to implementing this agreement within their ranks. Under no circumstances should negotiations include a division or apportioning of natural resources between the warring parties.
- Raise with the Congolese government, at the highest levels, the question of the involvement of FARDC units and military commanders in the mineral trade, and press for those responsible to be brought to justice.
- Urge the Congolese government to implement the other measures listed above; provide assistance and support to enable the rapid implementation of these measures, in particular to strengthen the capacity and effectiveness of provincial and local government bodies responsible for overseeing the mining sector and controlling exports.

- Ensure that clear guidelines and instructions prohibiting the illicit exploitation of natural resources are included in security sector reform and training programmes for the Congolese security forces.
- Provide political and technical support to MONUC (the UN peacekeeping mission in the DRC), as well as assistance in the form of personnel, to enable it to fulfil its brief to “curtail the provision of support to illegal armed groups derived from illicit trade in natural resources”, as provided for in UN Security Council Resolution 1856 (2008).

To MONUC

- Ensure that the task of curtailing the provision of support to armed groups through the trade in natural resources, included in MONUC’s mandate since December 2008, is fully integrated into the work of UN military and civilian teams deployed in mineral-rich areas of North and South Kivu; that these teams report regularly on their findings; and that these findings are communicated promptly to the UN Security Council. These efforts should cover the exploitation of natural resources by all the principal armed groups.
- In recognition of the fact that MONUC forces are severely overstretched, adopt a targeted approach to the strategy to combat illicit natural resource exploitation which can be implemented in the short term. Concentrate monitoring efforts on the principal mining sites known to be supplying armed groups and the trade routes known to be used by these groups, with a view to halting this trade. Set up monitoring and control points at strategic locations such as important mines, key border posts, airstrips and lake crossings used by armed groups. Carry out this work in close collaboration with Congolese provincial government authorities.



MONUC peacekeepers patrolling the road between Sake and Masisi, North Kivu, September 2008.

To the UN Security Council

- Request regular reports on MONUC's progress in using "its monitoring and inspection capacities to curtail the provision of support to illegal armed groups derived from illicit trade in natural resources", as mandated by UN Security Council Resolution 1856 (2008); propose further actions by MONUC and/or UN member states, as appropriate, in response to MONUC's reports and findings.
- Request regular reports from all member states on the implementation of UN Security Council Resolution 1857 (2008), relating, in particular, to sanctions against individuals or entities in breach of the arms embargo, including against those who support armed groups through the trade in natural resources.
- Continue to support the work of the Group of Experts and ensure that member states act on its findings.



Block of cassiterite, Lamera, South Kivu, August 2008.

To companies and traders purchasing, handling or trading in minerals originating from eastern DRC or neighbouring countries

- Exercise stringent due diligence regarding their mineral supplies:¹⁴ find out exactly where the minerals were produced (not only the broad geographical area, but the precise location and mine), by whom they were produced and under what conditions (including use of forced labour, child labour, health and safety and other labour conditions).
- Refuse to buy minerals if the above information is not available or if there are indications that the minerals have passed through the hands of any of the warring parties, benefited them in other ways, or otherwise involved human rights abuses.
- Be able to demonstrate, with credible written evidence, the exact origin of their mineral supplies, the routes they have taken and the identity of those involved in the chain of custody, including intermediaries or third parties who have handled them.
- Do not accept oral or vague assurances from suppliers as to the origin of minerals and the identity of their own suppliers. Carry out spot checks to verify the sources and the accuracy of suppliers' assurances. Require these measures in all circumstances, including in cases where minerals originate from areas which may be remote or difficult to access.
- Commission and publish regular independent third-party audits of their supply chain.
- Federations and associations of *comptoirs* and other trade bodies: adopt an explicit policy not to buy or handle minerals which benefit any of the warring parties in eastern DRC. Require their members to carry out the

¹⁴ For a separate briefing and recommendations on due diligence (some of which are also contained in the present report), see Global Witness, "Recommendations on due diligence for buyers and companies trading in minerals from eastern DRC and for their home governments", November 2008.

above due diligence steps systematically and to demonstrate precisely where all their supplies come from. Set up mechanisms for independently monitoring and checking whether their members are complying with these requirements.

To governments of home states in which companies are registered

- Provide clear guidance to companies purchasing or trading in minerals from eastern DRC or intending to do so in the future. Publicly warn these companies that they should proceed with caution, that the government is monitoring the implications of their activities and that they could face a number of liability risks if they are found to be assisting or facilitating human rights abuses.¹⁶
- Insist that companies carry out the highest level of due diligence regarding their entire chain of supply, as outlined above. Adopt national legislation that requires the performance of due diligence extra-territorially (in this case, in the DRC and the Great Lakes region), identifies specific measures which companies are expected to take and standards they are expected to meet, and specifies government action which would be triggered by a company's failure to take these steps.
- Ensure that these steps are taken not only in relation to imports from the DRC, but also from neighbouring countries such as Rwanda, Burundi, Uganda and Tanzania, as minerals originating from the DRC may be imported from these countries without being clearly identified as Congolese.
- In parallel with initiatives to introduce legislation (as above), effectively monitor companies' adherence to international standards such as the OECD

Guidelines for Multinational Enterprises. Reprimand those companies found to be in violation of these standards and formulate strong recommendations for remedying their business practices.

- Where there are indications that companies may be trading in ways which are benefiting any of the warring parties, carry out immediate detailed investigations. If credible information confirms this link, officially advise the companies to cease trading and purchasing from that specific area or supplier until the companies can demonstrate that their trade is not financing any of the warring parties or contributing to human rights abuses. In cases where complicity can be demonstrated, initiate prosecutions against companies and individuals.
- Submit to the UN Sanctions Committee the names of individuals or companies registered in their country whose trade in minerals is helping fund armed groups in eastern DRC, in conformity with UN Security Council Resolution 1857 (2008). These should include companies named in the reports of the Group of Experts, such as those registered in the UK and Belgium.
- Do not financially support or invest in companies whose trading activities benefit groups or individuals responsible for serious human rights abuses in eastern DRC, for example through export credit agencies or state pension schemes.

To the International Criminal Court (ICC)

- Recognise the role of economic actors and companies in crimes within the ICC's jurisdiction, as set out in the Rome Statute.
- Investigate individuals – including those heading *comptoirs* and foreign companies buying minerals from North and South Kivu – who, through their trading

¹⁶ For examples of the legal risks faced by companies, see International Alert / Fafo, "Red Flags: liability risks for companies operating in high-risk zones", 2008, available at www.redflags.info

practices, are financing armed groups or army units responsible for war crimes or crimes against humanity. Where appropriate, and pursuant to the principle of complementarity with national jurisdictions, initiate prosecutions of individuals against whom there is evidence of involvement in such crimes. Under the Rome Statute, the ICC has jurisdiction against an individual who "for the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission".¹

- Encourage states to launch their own investigations and, where appropriate, prosecutions of economic actors suspected of involvement in crimes within the ICC's mandate. Facilitate the work of national law enforcement agencies and monitor the progress of these investigations and prosecutions in national jurisdictions.

Global Witness is calling for actions targeted specifically at those parts of the mineral trade which are controlled by armed groups or military units and has developed the above recommendations with this goal in mind. A crackdown on this part of the trade would not have significant negative effects on the civilian population in the long term, as the profits currently derived from it serve primarily to enrich the elite of businessmen, the military and leaders of armed groups.

Global Witness does not take the position that mining activities in eastern DRC should cease altogether. Nor does it advocate a boycott or embargo of the trade as a whole, as such blanket measures would adversely affect the sections of the mineral trade which are not controlled by any of the warring parties.

The aim of Global Witness's campaign, therefore, is not to stop artisanal miners from trading, nor to close down mines in eastern DRC, but to exclude the warring parties, and their intermediaries, from the supply chain and trading networks, so that miners are able to sell only to legitimate, civilian buyers who do not have connections with any of the warring parties. Global Witness also aims to highlight, and ultimately stop, the grave human rights abuses committed by the warring parties involved in the exploitation and trade of minerals.



Sorting cassiterite, Lemera, South Kivu, August 2008.

Background to the armed conflict in eastern DRC



© Marcus Bleasdale/VII

Bodies of two Congolese army soldiers killed in fighting with CNDP forces, several kilometres outside Goma, North Kivu, 12 November 2008.

The fighting in eastern DRC has numerous, complex causes, including long-standing political and ethnic grievances and disputes over land. But there are baser motivations behind this war: greed and the desire to control eastern DRC's rich mineral deposits. The minerals scattered all over North and South Kivu have acted as a magnet for rebel groups and military factions throughout the last 12 years.

Global Witness previously undertook field research on the cassiterite trade in eastern DRC in 2005.² Three years later, despite turbulent political developments in the region, the practices of the warring parties, and the individuals with whom they trade, have remained constant. The fortunes of some of these groups may have turned – for example, the former rebel group the *Rassemblement congolais pour la démocratie* (RCD), now a political party, joined the government and no longer has its own armed force – but

their successors and opponents are using the same tactics to exploit and retain control of mining areas. Whereas in the earlier years of the conflict, armed groups fought for control of the mines,³ these groups have since carved up the main mining areas, each controlling different territories and the corresponding trade networks. Neighbouring countries, notably Rwanda, Burundi and Uganda, are also continuing to profit from the chaos on the Congolese side of the border and from the trade passing through their countries.

The conflict in the DRC is often described in terms of two wars. The first began in 1996, when the Rwandan army invaded eastern DRC, backing rebel leader Laurent-Désiré Kabila, who eventually toppled President Mobutu Sese Seko; the second began in 1998, when Kabila broke with his Rwandan allies, and Rwanda, in turn, backed a new rebel group, the RCD,⁴ to attempt to overthrow Kabila. The five

²The RCD later split into three different factions.

years of armed conflict that followed split the country into different zones of control ruled by competing armed groups. The result was devastating for the Congolese civilian population, with massive loss of life, internal displacement and a prolonged humanitarian crisis. 2003 saw the formation of a transitional government, based on a power-sharing arrangement between the main armed groups, including the RCD. Nevertheless, fighting continued in eastern DRC throughout the transitional period (2003 to 2006) and in the years following historic national elections in 2006.

Prospects for lasting peace in eastern DRC remain elusive. Despite numerous diplomatic efforts, rebel groups and the Congolese army are continuing to fight an exceptionally brutal war, which escalated sharply in the second half of 2008. Ceasefires have been broken almost as soon as they have been declared; peace agreements have been violated repeatedly; and international efforts to broker peace have foundered again and again.

Many of the armed groups in eastern DRC were created in response to a set of diverse and complex factors, often rooted in local dynamics. These included perceived exclusion on the basis of ethnicity or regional origin, conflicts over land ownership, absence of security, and the inability of government institutions to ensure the rule of law. Over time, some of these armed groups became diverted from their original objectives through a combination of corruption and political and economic opportunism. Finding it relatively easy to seize territory through the use of violence, they attempted to replace or take over state structures and reap the benefits of the mineral wealth which they found in the areas under their control. As the profits from this trade became increasingly important to their survival, some of the armed groups switched their attention and resources to further developing these activities. In some cases, the financial profits from the mineral trade or from the "taxes" they extorted from the local population became so attractive that this economic agenda seemed to

overtake political or ethnic grievances as the primary motivation for the conflict.

Armed groups in eastern DRC come and go, alliances form and unravel, and different groups have split along ethnic, political or regional lines. But some have remained more or less constant, posing continued threats to security and a pretext for their opponents to continue fighting. Among these is the *Forces démocratiques pour la libération du Rwanda* (FDLR), a predominantly Rwandan Hutu armed group, some of whose leaders allegedly participated in the genocide in Rwanda in 1994. Despite various attempts to dislodge them through military means and a Disarmament, Demobilisation, Repatriation, Reinsertion and Reintegration (DDRRR) programme overseen by the UN, the FDLR have remained active in North and South Kivu, sometimes forming alliances with smaller armed groups as well as the Congolese army (see section 7).

The presence of the FDLR has been used by the predominantly Tutsi armed group the *Congrès national pour la défense du peuple* (CNDP) as a pretext for waging its own war, supposedly in order to defend the Congolese Tutsi population against the threat of the FDLR. Similarly, in previous years, the Rwandan government and army have used the presence of the FDLR as justification for sending their own troops into eastern DRC.

In addition to fighting the FDLR, the CNDP had several other objectives revolving around political and social representation of the Tutsi, as well as securing the return of Congolese Tutsi refugees in Rwanda. Some of their grievances struck a chord among sections of the population, and support for the CNDP increased significantly after the RCD was wiped off the political map in the 2006 elections. However, the tactics the CNDP used to further its aims – particularly the extreme violence and suffering inflicted on the civilian population – ended up alienating many of its former or potential supporters.

In reality, these various armed groups' political posturing and their claims to protect particular sections of the



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Camp for internally displaced persons, forced to flee their villages of Karuba and Mushake because of fighting between Congolese government forces, CNDP troops and the FDLR. Goma, North Kivu, 17 October 2007.

population have often acted as facades for an altogether more crude, self-serving agenda: use violence as a means to secure a place at the political table, to obtain senior positions in the army, and, critically, to gain control of territory and the natural resources which come with it.

This strategy has been used, time and again, by various armed groups in eastern DRC with considerable success: some of the militias responsible for the worst atrocities have transformed themselves into political parties overnight and their leaders have been rewarded with military or political positions in national institutions, with little protest by international actors. Impunity has been the rule: there have been very few cases of successful prosecution for war crimes, crimes against humanity or other grave human rights abuses against civilians carried out during the conflict. The result has been the formation of an army, and branches of the government, composed of individuals responsible for overseeing or carrying out some of the most serious crimes. Furthermore, many of the combatants from former rebel groups which have been integrated into the national army retain their former ethnic or regional allegiances.

In January 2009, a new scenario began unfolding, with a rare military collaboration between the DRC and Rwanda to disband the FDLR and the reported arrest of Laurent Nkunda, the leader of the CNDP, in Rwanda on 22 January.³ On the surface, these events may signal a short-term resolution of some of the more intractable obstacles which have characterised the conflict to date – in particular, the fierce enmity between Congo and Rwanda – but reports from human rights groups indicate that they are already bringing a further wave of human rights abuses and displacement in their wake.⁴ Most importantly, the underlying causes of the conflict, and the many challenges on the road to long-term peace, have yet to be addressed.

The deals secured behind the scenes in the run-up to the events of January 2009 have also resulted in some shocking developments: following an internal split within the CNDP, Bosco Ntaganda replaced Laurent Nkunda as its military leader and announced that the CNDP would join the Congolese army to fight against the FDLR. Ntaganda thus effectively became one of the main interlocutors in attempts to resolve the conflict, despite

³The Rwandan authorities are not known to have formally arrested Laurent Nkunda or charged him with a criminal offence; nor have they begun judicial proceedings against him. He is believed to be under a form of house arrest. In an interview with the BBC, Rwandan President Paul Kagame described Nkunda as Rwanda's "guest" (BBC, Hard Talk, 17 March 2009). The Congolese authorities have requested Nkunda's extradition to the DRC to face prosecution there.

the fact that he is wanted by the International Criminal Court (ICC) for war crimes committed in Ituri (Province Orientale). In a further blow to the search for justice, senior Congolese government figures, including President Joseph Kabila himself and Information Minister Lambert Mende, have indicated publicly that they are unlikely to hand Ntaganda over to the ICC in the near future, prioritising "security and peace" over justice.⁵ This position reinforces the culture of impunity in the DRC, effectively rewarding the perpetrators of some of the worst human rights abuses and encouraging others to follow in their steps. As events in eastern DRC since 1996 have amply demonstrated, impunity has severely undermined peace efforts and served to prolong the conflict, while

depriving victims of the prospect of justice or redress. In April 2009, it was reported that Ntaganda was to play a prominent role in further FARDC operations against the FDLR.⁶

In March 2009, the CNDP and the Congolese government signed an agreement in which, among other things, the CNDP announced that its forces would be integrated into the national police and army and that it would become a political party.⁷ The process of the CNDP's "accelerated integration" into the national army began even before the agreement was signed, raising renewed concerns about impunity and the future of a national army made up of warlords and rebel fighters responsible for grave human rights abuses.

WHICH MILITARY AND OTHER ARMED GROUPS ARE PLUNDERING THE MINERALS?

- **Forces démocratiques pour la libération du Rwanda (FDLR)**, a predominantly Rwandan Hutu armed group, some of whose leaders allegedly participated in the genocide in Rwanda in 1994. Many of the FDLR fled from Rwanda to the DRC in the aftermath of the genocide in 1994 and have remained there ever since. Initially made up, in part, of members of the former Rwandan army and *interahamwe* militia who played a central role in carrying out the Rwandan genocide, it later gained new recruits. Many of its current members are too young to have participated in the genocide. The movement went through several name changes; known as *Armée pour la libération du Rwanda* (ALIR) from around 1998, it renamed itself the FDLR in 2000. The FDLR are spread across North and South Kivu, with a more established presence and greater involvement in mining in South Kivu.
- **Congrès national pour la défense du peuple (CNDP)**, a Tutsi-led rebel group backed by Rwanda. Active in North Kivu, particularly in Rutshuru and Masisi. The CNDP was headed by Laurent Nkunda until January 2009. At the time of writing, its political leader is Désiré Kamanzi and its *de facto* military leader is Bosco Ntaganda, who is wanted for war crimes by the International Criminal Court. In February 2009, the CNDP announced that it was to become a political party and that its forces would be integrated into the national Congolese army; this was formalised in an agreement signed with the Congolese government in March 2009.
- **Patriotes résistants congolais (PARECO)**, a group loosely allied with the FDLR, and sometimes with Congolese government forces, in their battles against the CNDP. In January 2009, PARECO followed the CNDP in announcing that it too would cease hostilities and join the ranks of the national army.
- Various **mai-mai** groups in North and South Kivu, often divided along ethnic lines. Originally local self-defence groups, *mai-mai* in different parts of eastern DRC have become increasingly involved in the armed conflict over the last ten years, sometimes fighting alongside the Congolese army against the CNDP or other Rwandan-backed groups, and sometimes fighting each other.
- **Forces républicaines fédéralistes (FRF)**, sometimes known as *Groupe de 47*, a small Tutsi armed group active in the Haut Plateau area of South Kivu.
- **Forces armées de la République démocratique du Congo (FARDC)**, the Congolese national army. North Kivu is under the command of the 8th military region. South Kivu is under the command of the 10th military region. Various FARDC units and commanders from these two military regions are involved in mining, in many locations in North and South Kivu.
- **Demobilised combatants**, particularly former *mai-mai*, in North and South Kivu, some of whom have retained their weapons.

TESTIMONIES OF HUMAN RIGHTS ABUSES

(All information and testimonies collected by Human Rights Watch and reprinted with its permission.)

All the main warring parties involved in mineral exploitation and trade in eastern DRC have committed grave human rights abuses.

Witness of summary executions by the CNDP in Kiwanja (North Kivu), November 2008:

On 4-5 November 2008, around 150 people were killed in the town of Kiwanja. Most of them were killed by CNDP forces. Others died during fighting between the CNDP and the *mai-mai*.

"I could not flee Kiwanja after the CNDP told everyone to leave because my wife was pregnant. I live close to where the CNDP had their camp, and I heard them say anyone leaving their house was suspect and that anyone poking their head out of a window should be shot. After a day hiding in our houses, I heard my neighbour say she had desperately to go to the toilet and she left her house. A soldier asked her where she was going, and when she told him she was going to the toilet, he shot her. Then her husband opened the door to see what had happened and they shot him dead as well. They were both about 60 years old. They were not *Mai Mai*. They were just an old couple who could not run away."⁸

Victim of rape by the FDLR near Ngungu, Masisi (North Kivu), December 2006:

A woman was assisting a victim of rape, whom she found tied to a tree, when she was followed and raped by FDLR combatants.

"There was a piece of wood inserted into her [the other woman's] vagina. I pulled it out, and I put the victim on my back. I carried her for about two miles and the victim then died on my back. She just passed away. All the time we were being followed by [FDLR] combatants [...] When I finished [burying the victim] they said they would rape me. I told them, if you want to rape me, let me first pray. There were eight of them. I prayed. When I stopped praying, four refused to rape me, but the other four said that they would not leave without raping me. They raped me, they hit me, for six hours, from 10am to 4pm. When they finished their dirty task they fled into the bush, firing shots. I was left there naked, beaten. I couldn't move."⁹



A man looks over the bodies of civilians killed during clashes between CNDP troops and *mai-mai*, Kiwanja, North Kivu, 6 November 2008.

© Kate Holt

Victim of rape by FARDC soldiers, Goma, October 2008:

In late October 2008, in the face of an advance by CNDP troops towards Goma, Congolese army soldiers panicked and fled, creating chaos in their wake. They rampaged through Goma, killing at least 20 civilians, including five children, and injuring more than a dozen others. They raped over a dozen women and girls. A 20-year-old woman was among the victims.

"Two soldiers came up to me and asked me to give them my goats. I said I didn't have any. They then asked for my pigs. Again, I said I didn't have any. They turned to another woman and asked her for her beans and bananas. She gave what she had, and the soldiers told me to carry the bananas for them into the hills. When we got to the hill, one of the soldiers pushed me to the ground. He put the blunt side of his machete on my neck and the handle of his rifle on my chest. Then he raped me. When he was finished, he called the other soldier and he raped me too. Then they told me I could go. As I fled, they shot their rifles into the banana plantation. I fell to the ground, pretending I was dead."

Hours later, the woman's 57-year-old grandmother was also raped by a man in Congolese army uniform.¹⁰

4 Overview of mining in North and South Kivu

MINERALS FOUND IN NORTH AND SOUTH KIVU

The main minerals in North and South Kivu are:

Cassiterite (tin ore)

Currently the most important mineral in terms of quantity and price. Found in numerous locations in North and South Kivu. It has many uses, including as a component in the production of solders, tin plating and alloys. These are used, among other things, in the electronics industry (electronic solders alone accounted for over 44% of all refined tin usage in 2007¹¹) and for the production of tin cans.



Soldering a circuit board. The production of solders is one of the main uses of tin.

In 2007 and 2008, the DRC accounted for around 4% to 5% of the global production of tin ore.¹² According to official government statistics from North and South Kivu, 14,905.9 tonnes of cassiterite were exported in 2007 and at least 13,782.74 tonnes from January to September 2008.¹³ In comparison, China and Indonesia – the world's two largest producers – produced 118,300 tonnes and 103,100 tonnes respectively in 2007.¹⁴ Other cassiterite-producing countries include Peru (39,019 tonnes),¹⁵ Bolivia (15,972 tonnes)¹⁶ and Brazil (12,596 tonnes).¹⁷

Gold

Found in North Kivu and South Kivu, with the most significant deposits in South Kivu. (Gold produced in the Ituri district of Province Orientale, to the north, is also traded and exported through towns such as Beni and Butembo, in North Kivu.) Almost all gold exports are illicit and undeclared; only a tiny proportion is produced and exported officially. No reliable statistics are available.

Coltan

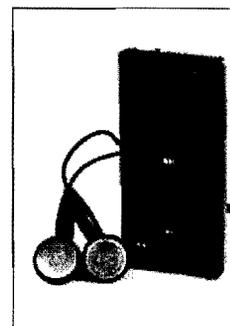
Found in many of the same locations as cassiterite, in North and South Kivu. "Coltan" is an abbreviation of columbite-tantalite, a mineral concentrate containing the metals niobium (also known as columbium) and tantalum.

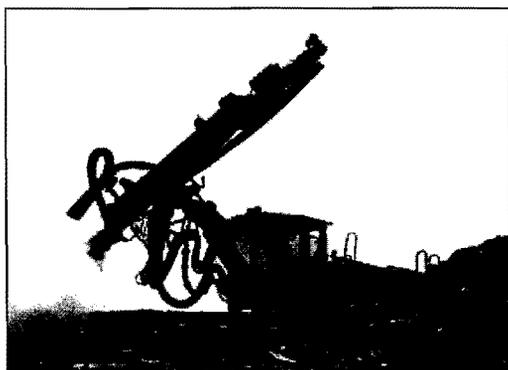
Coltan from the DRC is mostly used as a source of tantalum. Tantalum is used as a component in electronic goods, such as circuits in mobile telephones, laptop computers, airbag protection systems, playstations, video cameras and digital cameras.

Coltan was the most important mineral in the earlier phases of the war in the DRC, with its price peaking in around 2000 in response to rising demand. Coltan has become much less significant since its price dropped from 2001 onwards. It has since been overtaken in importance by cassiterite.

According to official government statistics from North and South Kivu, 428.4 tonnes of coltan were exported in 2007 and at least 270.79 tonnes in the first half of 2008.¹⁸

Metals derived from coltan and cassiterite are used in the manufacture of electronic goods such as MP3 players.





© iStockphoto.com/Azmaria98

Tungsten is used in the production of hard metals, which are used to manufacture tools such as drills for cutting rocks.

The 428.4 tonnes of coltan produced in 2007 had the potential to yield an estimated 116 tonnes of tantalum.¹⁹ In global terms, this is a significant amount: Australia and Brazil, which are among the world's largest tantalum producers, produced 435 and 180 tonnes of tantalum in 2007 respectively.²⁰ Other tantalum-producing countries include Canada, Rwanda, Ethiopia and Mozambique.

The amount of niobium extracted from coltan in the DRC is minimal in global terms. The 428.4 tonnes of coltan produced in North and South Kivu in 2007 had the potential to yield an estimated 99 tonnes of niobium.²¹ In comparison, Brazil, the world's largest producer of niobium, produced 57,300 tonnes in 2007; Canada, the second-largest producer, produced 3,000 tonnes in 2007.²²

Wolframite

Found in North and South Kivu. Wolframite, sometimes referred to as wolfram, is an ore used as a source of tungsten. Tungsten is used in the production of hard metals (or cemented carbides), which are used in heavy industry, particularly to manufacture metal and stone cutting tools, mining tools and other machinery components. Tungsten is also used in incandescent lamps,

alloys and steels, as well as in the vibration alert function in mobile telephones.²³

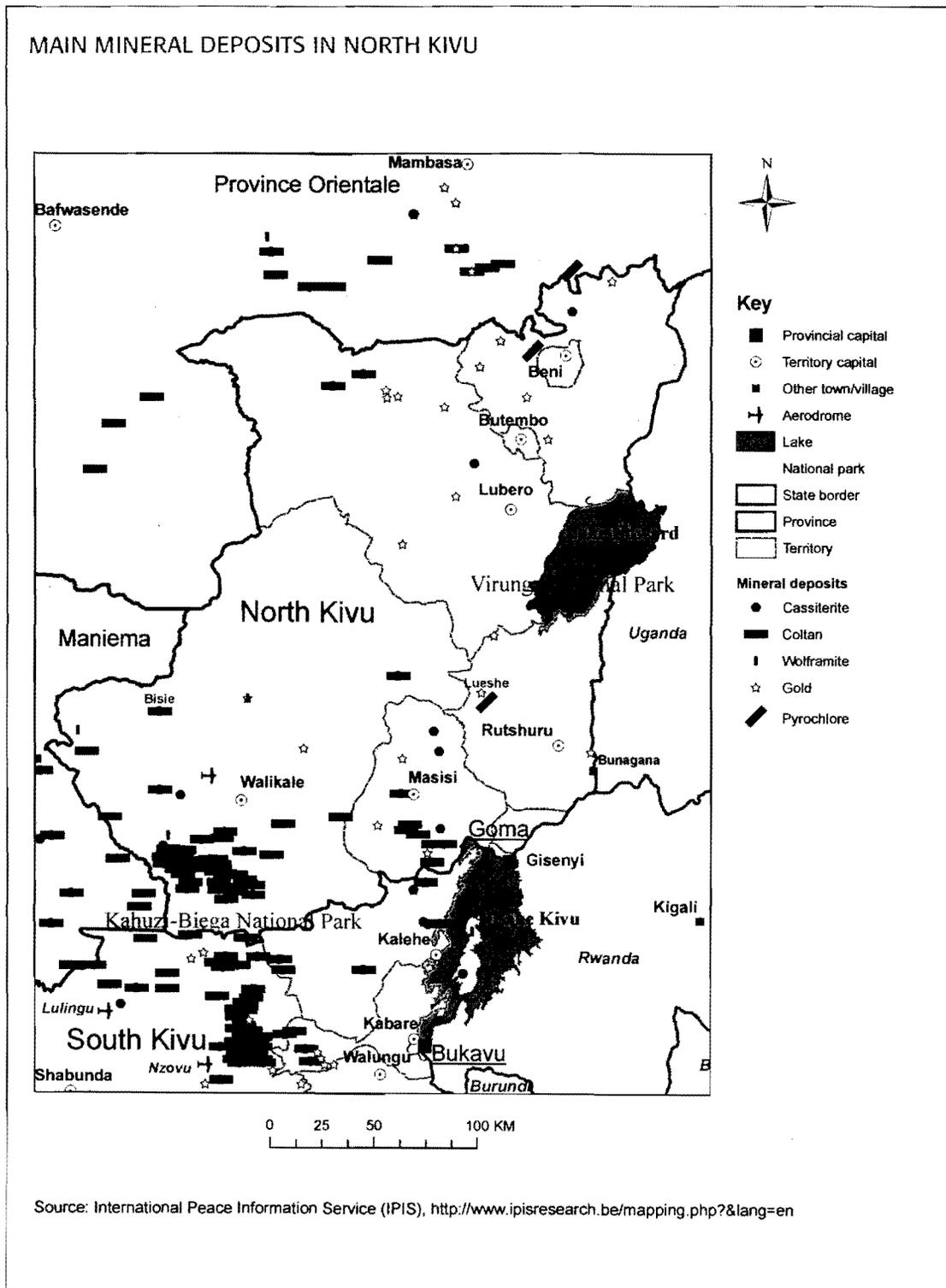
According to official government statistics from North and South Kivu, 1,222.1 tonnes of wolframite were exported in 2007 and at least 443.92 tonnes in the first half of 2008.²⁴ The 1,222.1 tonnes of wolframite produced in 2007 had the potential to yield an estimated 635 tonnes of tungsten.²⁵ As a comparison, China, the world's largest producer of tungsten, produced 41,000 tonnes of tungsten in 2007; other major producers include Russia (3,200 tonnes), Canada (2,700 tonnes) and Austria (1,200 tonnes).²⁶

Pyrochlore

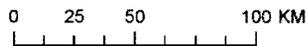
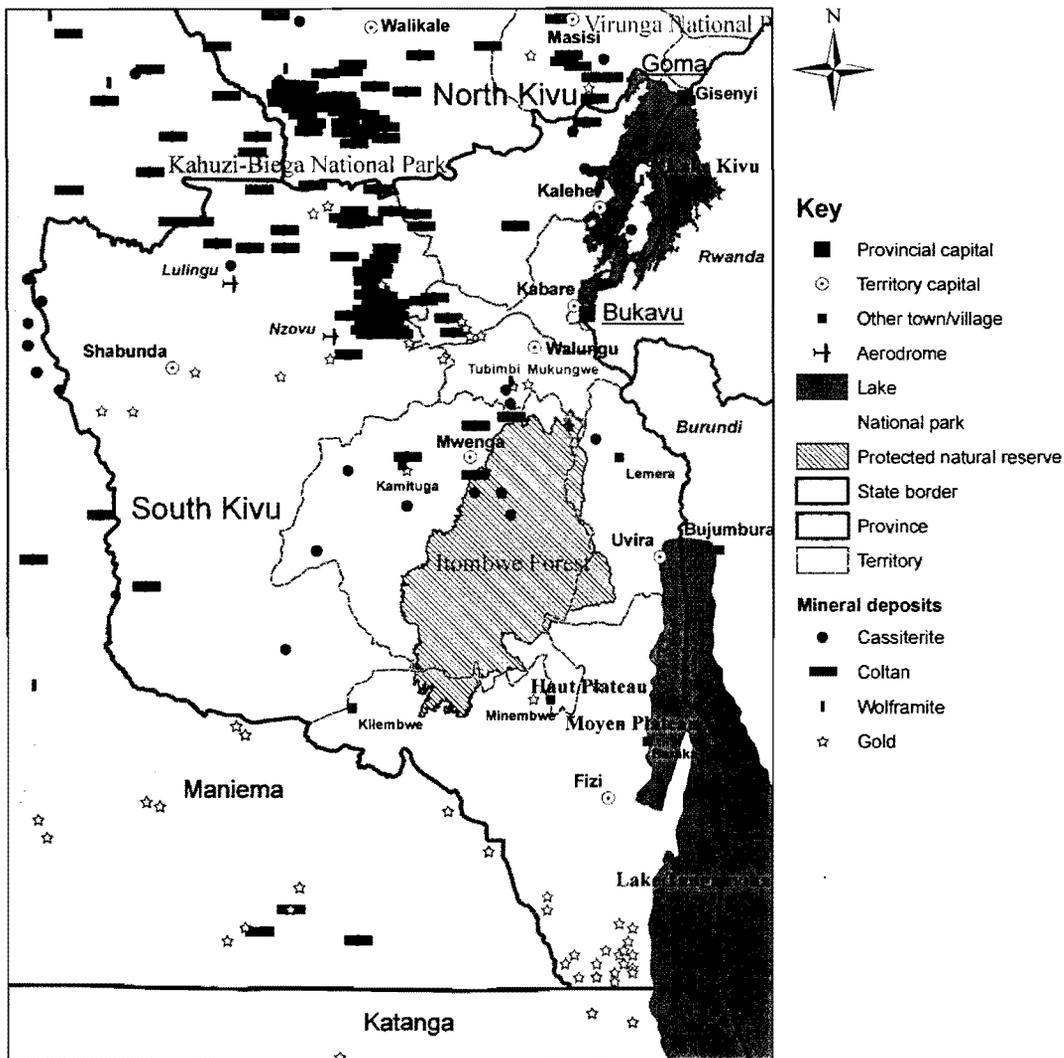
A rare mineral, found in Lueshe, in the *territoire* of Rutshuru (North Kivu), in an area under CNDP control in 2008. Pyrochlore is the main mineral from which niobium is obtained. The main use of the niobium found in pyrochlore is as an additive in the production of steel. Lueshe mine has been officially closed since 2004, in part because of an unresolved legal dispute over the rights to control it.²⁷ No government exports of pyrochlore are recorded for 2007 or the first half of 2008; some exports are recorded for 2006.²⁸ Production reportedly resumed in 2008 and stock was delivered to warehouses in Goma in preparation for export in late 2008, but the government blocked these exports due to the continuing legal dispute over the ownership of the mine.²⁹ Niobium is also obtained from coltan (see above).

Various precious and semi-precious stones, including diamonds, amethysts and tourmaline.

Small quantities found primarily in South Kivu.



MAIN MINERAL DEPOSITS IN SOUTH KIVU



Source: International Peace Information Service (IPIS), <http://www.ipisresearch.be/mapping.php?&lang=en>

THE FORMAL AND INFORMAL MINING SECTORS

All the mining in North and South Kivu takes place in the informal sector. The minerals are dug by hand, or with very basic tools, by civilians known as artisanal miners. These miners work in extremely harsh conditions, without training, equipment or protection; fatal accidents and serious injuries occur regularly. Officials of the Division des Mines (the provincial representation of the Ministry of Mines) are able to record only a small fraction of the number of accidents; the vast majority go unreported. Tens of thousands of people, including children, work as artisanal miners in the two provinces. It is impossible to know the exact number, as they are not registered. In theory, miners are supposed to obtain a card from the authorities ("*carte de creuseur*") before they can operate legally, but very few do, partly because of the cost and partly because the regulation is not enforced. Miners also move from mine to mine, according to opportunities and new discoveries of minerals. Work may be irregular and has been disrupted, among other things, by population displacement resulting from the conflict.

There are few foreign or multinational mining companies operating in North or South Kivu. Those which are present are at the early stages of exploration and have not begun extracting minerals. Some of their exploration programmes have run into serious problems because of the widespread presence of armed groups and military in the mines; local disputes over control of resources; and tensions between the companies and local populations, sometimes resulting in violence. Mining companies continue to face particular challenges arising from the volatile environment and the general context of lawlessness.

In 2008, these companies included:

Mining and Processing Congo (MPC), a subsidiary of South African-owned **Kivu Resources**, registered in Mauritius. MPC, which was established in the DRC in December 2002, holds exploration titles to 14 concessions in North Kivu, South Kivu, Maniema and Katanga provinces.³⁰ These include exploration rights for Bisie, the largest cassiterite mine, and three other cassiterite mines in Walikale (North Kivu). MPC also has its own *comptoir*, registered in North and South Kivu, which buys and exports Congolese cassiterite through

Metal Processing Association (MPA), its counterpart in Rwanda. MPA has a factory in Gisenyi, north-western Rwanda (just across the border from Goma), which used to process Congolese minerals. However, in 2008, the factory was no longer fully operational.³¹ Since 2007, MPA has been involved in cassiterite and coltan exploration in Rwanda, after forming a joint-venture company with the Rwandan government (Gatumba Mining Concession).

Banro, a company with headquarters in Canada, publicly listed on the Toronto and New York Stock Alternextsm stock exchanges. Banro holds exploration titles in three gold mining areas in South Kivu (Twangiza, Lugushwa, Kamituga) and one in the neighbouring province of Maniema (Namoya). Banro started working in the area in 1997 after it took over gold mining rights from the now defunct state mining company SOMINKI, but had to interrupt its work because of the war. It resumed exploration from 2004.³²

Canadian-registered **Shamika**, a relative newcomer in the region, which holds 15 exploration titles for cassiterite, gold and other minerals in South Kivu, the neighbouring province of Maniema and the northern part of Katanga province. Most of these titles were obtained in 2007, some in 2008.

Transafrika, a Mauritius-registered company with predominantly South African interests, which holds exploration titles to four gold mining areas in the southern part of South Kivu. One of the senior managers of Transafrika is Thomas Nziratimana, former deputy governor of South Kivu during the period that the RCD-Goma was in power.

Canadian-registered **Loncor**, which has a number of gold exploration permits in North Kivu, mostly in Lubero, but also in Walikale and Rutshuru.

A number of other companies – some Congolese, some foreign – have also been granted exploration rights to mines in North and South Kivu. Many of them have not yet begun operations. They include some companies already operating as *comptoirs* (see section 10), such as **Sodexmines** and **Groupe Olive**.³³

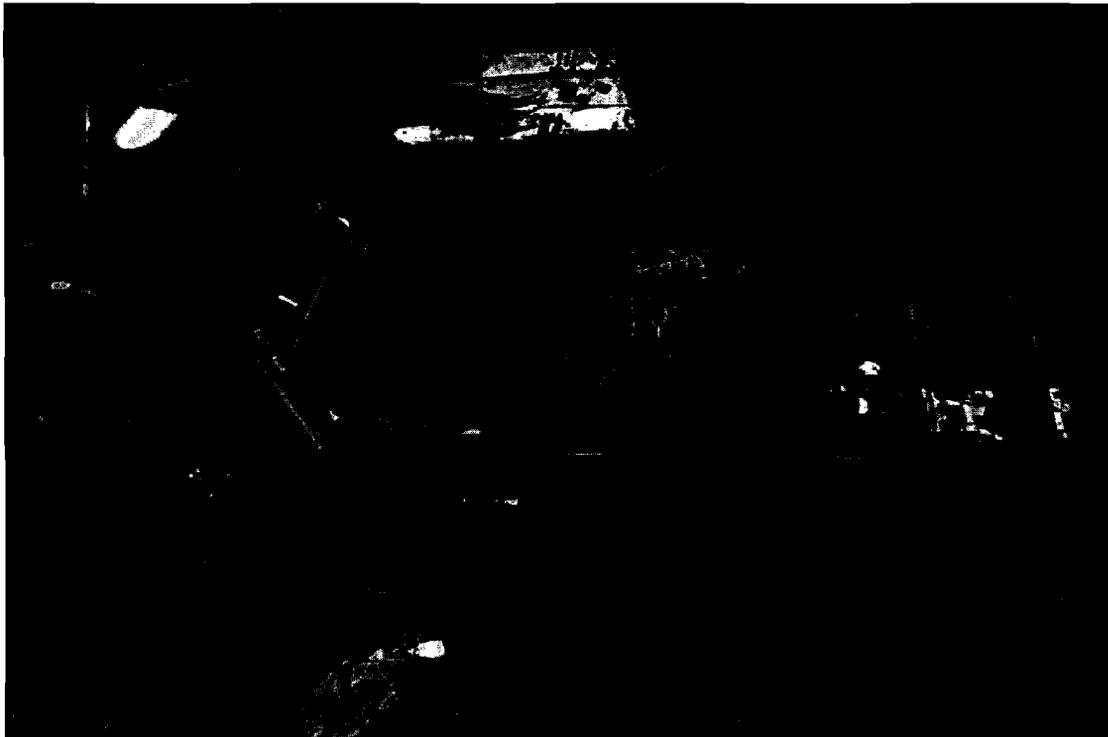
³⁰ Alternext is a market for small and medium-sized companies within the New York Stock Exchange.

The Congolese army's involvement in the exploitation of minerals

5

"Please tell the government to tell the military to stop this. The population is suffering."

MINER IN TUBIMBI (SOUTH KIVU), 29 JULY 2008



© Kate Holt

Congolese army soldiers at a military base 12 km north of Goma, North Kivu, 8 November 2008.

Global Witness collected numerous testimonies of the involvement of the FARDC in mineral exploitation in both North Kivu and South Kivu. Contrary to the claims of some military officials, this practice is not limited to a few low-ranking soldiers trying to top up their meagre salaries. It is widespread, across both provinces, and the system of financial rewards is well-organised: commanders are directly involved and the profits are channelled back up the military hierarchy. Those profiting include senior officers in the provincial command in the 8th military region (North Kivu) and the 10th military region (South Kivu). There are also frequent reports from North and South Kivu –

both from Congolese and international sources – that senior military and political officials in the capital, Kinshasa, are implicated. A UN source told Global Witness: "If a person has a rank in the army, he has access to natural resources."³⁴

The extent of mineral exploitation by the military, and the impunity which protects those responsible, are illustrative of the deeper problems which characterise the Congolese army, and the country's governing institutions as a whole. Corruption is widespread throughout the DRC and affects government agencies and the security forces at all levels. Corrupt practices

and systems of patronage are especially prevalent in the mining sector, in which senior political and military figures have accumulated vast wealth to the detriment of the local population. In the east, the anarchy brought about by the war has created even greater opportunities for the military to plunder these riches. The involvement of senior commanders has meant that it has been extremely difficult to challenge this behaviour. The weakness of the judiciary, whose officials are regularly subjected to threats, intimidation and interference when they attempt to investigate or prosecute crimes committed by the military, has meant that these crimes have gone unpunished.

Over the last few years, FARDC troops have been deployed in North and South Kivu in greater numbers. A miner in South Kivu told Global Witness that the FARDC had started exploiting minerals ever since they were deployed in the region in 2006, after the elections won by President Joseph Kabila.³⁵ Some of these areas were previously controlled by armed groups, but for the civilian population, the arrival of the FARDC has made little difference. Local residents and members of local NGOs told Global Witness that the FARDC and the armed groups behaved in very similar ways.

Once they find themselves posted in mineral-rich areas, the FARDC soldiers and their commanders are reluctant to move and jealously guard their positions. To do so, they are dependent on the protection of their superiors at provincial level. A source in Bukavu told Global Witness that when one FARDC brigade was due to replace another, "they don't want to leave because of the minerals [...] all the commanders send money back from the minerals to the provincial commander in Bukavu. Who is deployed where depends on the personal relationship with the commander of the 10th military region in Bukavu [General Pacifique Masunzu]. Those deployed in Mwenga and Shabunda are the favourites of the commander, for example Nakabaka's people in Mukungwe [see section on

Mukungwe below][...] Everyone knows what is happening but no one dares to say it."³⁶

In some cases, FARDC soldiers dig for minerals themselves,³⁷ but most often, they use the civilian population to dig for them. The FARDC effectively inherited a whole workforce of civilian artisanal miners when they took over these areas. As artisanal mining is unregulated, and the government does not have a permanent presence in the mines, artisanal miners are extremely vulnerable to exploitation and have little choice but to comply with what the FARDC ask of them. Fear of violence by the FARDC, who are notorious for committing human rights abuses, is such that few civilians even think of withdrawing their labour; they opt instead for a form of passive cooperation for the sake of their own security.

Local human rights organisations have reported cases where civilians have been arrested and tortured for not complying with soldiers' orders to work for them, for not satisfying their military "bosses", or for denouncing extortion, theft of minerals and other abuses by the military.³⁸ In one instance, in early August 2008, FARDC soldiers beat three civilian miners because one of them had lost a hammer he was using to dig for cassiterite in a mineshaft controlled by a FARDC official at Musholo, near Lemera (South Kivu). The soldiers then made the three miners work for them for ten days without pay.³⁹

The relationship between the FARDC and artisanal miners takes various forms. Forced labour occurs in some cases; in others, the miners, who would be working in these locations anyway, resign themselves to the fact that they will have to hand over a proportion of what they produce to the military. In some locations, the FARDC may seize a miner's entire production of minerals, but more typically, they will take a share, allowing the miner to keep the rest as a form of payment. The exploitation is organised along different models: in some mines, a system has been set up

³⁶ In several cases, the bodies of FARDC soldiers have been found among the victims of accidents when mineshafts have collapsed.

in which particular days of the week are allocated for working for the soldiers. This is sometimes referred to as *salongo* (a term normally used to describe compulsory community work by the general public). An activist from South Kivu said: "In Shabunda, Mwenga and Kamituga, specific days are designated. For example, every Saturday, people go to work in a particular commander's plot. It is like *salongo*. It is well-known. The workers are not paid."⁴⁰ Other days are dedicated to working for local authorities or traditional chiefs, as some of these civilian officials also take a cut of the mineral production.

In many mines under FARDC control, specific mineshafts or areas are known to "belong" to particular provincial or local military officials (though not through any formal process of allocation). The production from these mineshafts is collected and sold by agents acting on behalf of these FARDC officials. Local miners get to know these agents and for whom they are working. The agents, who are usually civilians, are often present at the mines to supervise and control production. With a few exceptions, the military "owners" of the mineshafts, especially the more senior ones, are seldom seen on site. However, they sometimes post their soldiers – who may be armed and in uniform – at the mines to ensure that the miners are working for them.

In addition to their direct involvement in mining, FARDC soldiers routinely extort minerals and money from civilians at military checkpoints along the roads. A miner from Shabunda (South Kivu) described five FARDC roadblocks on a road leading from a mine at Kibila to Shabunda town:

"They ask for money: sometimes 1,000 francs, sometimes 1,200 francs, 600 francs or 500 francs [between approximately US \$0.90 and 2.20]. Once, in around March 2008, they asked me for 2 kg of cassiterite. I had to give it. When you're faced with a gun, what can you do, as a simple civilian? At each barrier, there are between four and seven military, all well-armed. There are

captains. It's always the same ones. Some of the soldiers are young, 15 or 17 years old. They ask for 10% of gold or cassiterite. Whatever happens, you have to give it."⁴¹

Bisie: "a state within a state"⁴²

The most blatant example of FARDC involvement in mining is the Bisie mine, in Walikale, North Kivu. The largest cassiterite mine in the whole area, it accounts for an estimated 80% of cassiterite exports from North Kivu⁴³ and is thought to produce between 800 and 1,000 tonnes a month,⁴⁴ selling at between US \$8.5 and \$9 per kg at the *comptoirs* in Goma in mid-2008.⁴⁵

Cassiterite was discovered in Bisie several years ago, but until around 2003, it did not attract much attention as the price of tin was low. Mining in Bisie only took off in a significant way in 2004, when the price of tin rose.⁴⁶

For three years – from 2006 to March 2009 – Bisie was entirely under the control of the 85th brigade of the FARDC, headed by Colonel Sammy Matumo, a former



Colonel Sammy Matumo of the 85th brigade of the FARDC, which controlled Bisie cassiterite mine until March 2009. Walikale, February 2009.

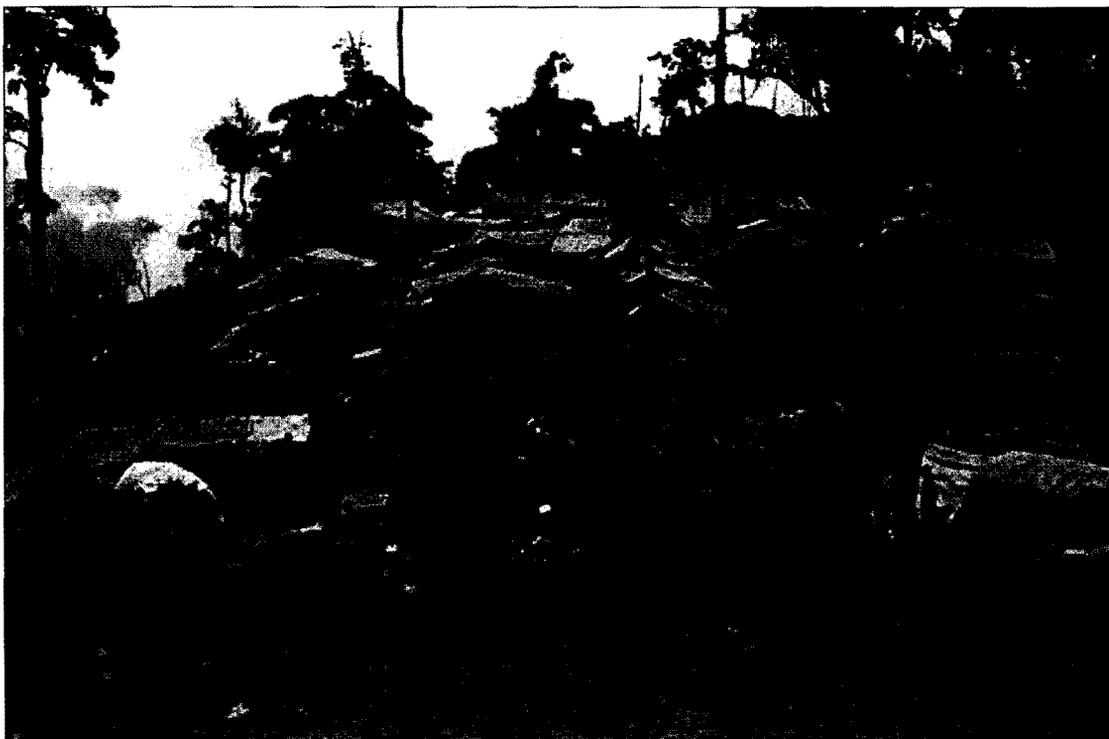
mai-mai. Unlike other mines under FARDC control, where the military presence is not always easily visible, soldiers of the 85th brigade, including Sammy Matumo himself, were physically present at Bisie. They operated openly, digging for minerals themselves, with Sammy Matumo personally overseeing the activities.⁴⁷ An estimated 200 to 350 military were present at the mine in mid-2008.⁴⁸

As the largest and most productive cassiterite mine in the area, Bisie has attracted thousands of civilian miners and other men, women and children in search of work. Some people describe it as a big village. Local sources estimated that in mid-2008, between 10,000 and 15,000 people worked in and around Bisie, some as miners, others as transporters, and some trading in other goods in or around the mine.

As in other mines, health and safety standards are completely ignored in Bisie, both by the authorities and by the miners themselves. Accidents are common. The situation has been aggravated by the pressure which the

military have exerted on miners to maximise production, as illustrated by the case below.

In one of the most serious incidents, several people were killed and many more injured when a mineshaft collapsed on 15 November 2007. According to an investigation by local government officials, two days before the accident, dangerous conditions had been reported after rocks began falling and two people were injured. Despite this, the military present at the site ordered miners to continue digging and forced them to enter the mineshaft, precipitating a second accident.⁴⁹ Officials recorded four deaths and 11 injuries, though the real number is almost certainly higher, as not all the bodies were retrieved. The report of the investigation notes that two soldiers of the 85th brigade may have been among the victims and that military uniforms and weapons were found in the mineshaft. It also states that a FARDC major of the 85th brigade, Major Ilunga, had used his own workers to dig in the mineshaft. The report complains that Major Ilunga blocked efforts to clear out the debris to try to retrieve



The "village" where miners have settled above Bisie cassiterite mine, North Kivu, April 2008.



© Johan Spanner

Porters carrying sacks of cassiterite between Bisie and Njingala, the closest town to the mine, August 2008. They walk a distance of more than 45 km, sometimes spending the night in the bush along the way.

the bodies of victims; it alleges that he was trying to stifle the truth as to the number of victims and their identities (whether civilians or military) and that he hoped to appropriate the cassiterite contained in the falling rocks.⁵⁰ In February 2007, the civilian authority, the *administrateur du territoire*, had issued a directive prohibiting mining in ten of the deepest and most dangerous mineshafts.⁵¹ Despite this, mining had continued in these mineshafts, illustrating the incapacity of the civilian authorities to exercise control over mines run by the military.

Different FARDC officials each had “their own” mineshafts and workers at Bisie. Soldiers stood outside every mineshaft, taking a cut of all production. The FARDC sometimes asked the civilian miners which mineshafts produced the most minerals, or watched them work to find out which were the most productive; they then moved the miners off and took over by force. Some mineshafts can produce up to four tonnes a day, with 20 to 30 miners, porters and other workers at each one. Throughout 2007 and the first part of 2008, the FARDC were taking a commission of US \$0.15 on every kg of cassiterite traded in Bisie.⁵² If Bisie produced a

minimum of 800 tonnes a month (as indicated above), the FARDC based there would have been collecting at least US \$120,000 each month.

In addition to controlling the mineral production, the FARDC based at Bisie extorted money, goods and other services from the vast population which has built up around the mine, including by imposing “taxes” at Bisie itself and at the numerous checkpoints along the road leading to the mine. In 2008, there were at least eight military checkpoints between Njingala and Bisie. These included two main barriers: one at Njingala – the entrance and exit point for Bisie – and one at Bisie itself, and other, improvised barriers in between. At each of the first two barriers, people were made to hand over 10% of any manufactured goods they happened to be carrying; at each of the following two barriers, they were made to pay 10% of the cassiterite they were carrying.⁵³ A local traditional chief estimated that more than 1,000 people went in and out of Bisie every day, of whom around 700 or 800 left with cassiterite; he said that they were made to pay 3,500 Congolese francs (around US \$6.35) for each bag of cassiterite at the military checkpoint at Njingala. Every evening, the military divided up the money, giving a share

to some of the civilian authorities.⁵⁴ People carrying food and drink to Bisie were also "taxed", usually in kind, and were asked for various sums of money, both on the way in and on the way out.⁵⁵ In 2008, it was estimated that the military typically collected more than US \$100,000 through "taxes" in this way every month.⁵⁶

Due to the poor condition of the roads, most of the cassiterite from Bisie is flown out by plane. It is first transported from Bisie to Njingala – painful physical labour as porters carry sacks of 50 kg of cassiterite on foot, for one or two days. Children are sometimes used as porters, splitting the 50-kg sacks between two of them.⁵⁷ The sacks of cassiterite are then loaded on to planes at Kilambo. Kilambo does not even have an airstrip: planes land and take off on the road. In mid-2008, between ten and 20 flights were leaving Kilambo for Goma every day, each carrying up to two tonnes of cassiterite. A man working in Walikale described the airstrip: "There are about 20 return flights a day. The airstrip at Kilambo is nicknamed Roissy Charles de Gaulle [after the airport in Paris]. The military rush around whenever there's a plane. They don't let civilians through until the planes have left. The airstrip is completely controlled by FARDC. Bags of cassiterite are spread out on the road... About 80% of the minerals flying out from there are from Bisie. Others are from Kalayi Boeing, another mine also controlled by the 85th brigade, about one and a half to two hours from Bisie."⁵⁸ On one occasion in 2007, researchers for a Congolese human rights organisation counted as many as 32 return flights in one day.⁵⁹

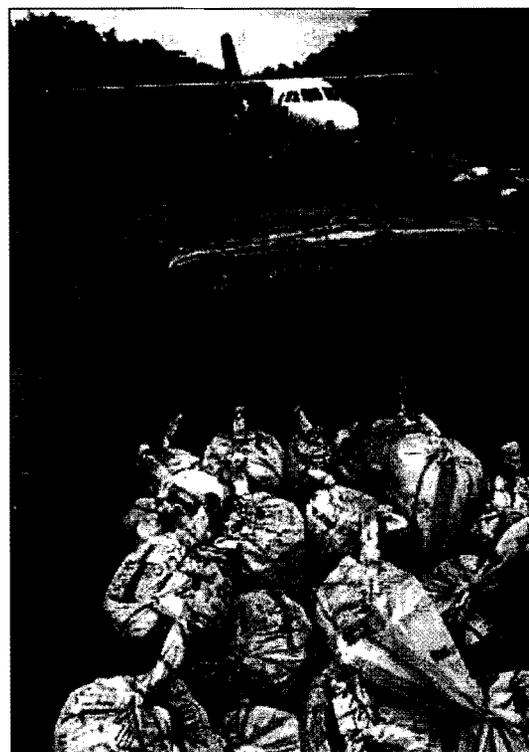
Each plane has to pay a tax of around US \$200 to the local government of the *territoire* of Walikale, but only a small proportion of this tax goes to the treasury; the rest is shared between military and civilian officials.⁶⁰

When Global Witness researchers visited North Kivu in mid-2008, the 85th brigade had not yet been sent to *brassage*, the process through which previously hostile armed groups are integrated and trained into a unified national army. Global Witness asked General Vainqueur Mayala, the



A plane delivers supplies for the population at Bisie; it will return loaded with cassiterite. Kilambo, North Kivu, April 2008.

© Mark Craemer



Sacks of cassiterite from Bisie arrive on a truck to be loaded on to a plane at Kilambo, North Kivu, April 2008.

© Mark Craemer



Plane loaded with sacks of cassiterite from Bisie, Kilambo, North Kivu, April 2008.

© Mark Craemer

commander of the 8th military region (which has chain of command responsibility over the 85th brigade), why the 85th brigade had been allowed to remain in control of Bisie. He initially replied: "We have nothing to do with Bisie." He claimed that strictly speaking, the 85th brigade was not part of the FARDC, as it had not been trained and integrated into the army, "but we can't fight a war against them. They started these activities long ago. What they're doing is illegal." He said he was worried about the situation in Bisie and complained that the 85th brigade was undisciplined and refused to obey orders. He claimed that the 85th brigade was about to be moved and that they were simply waiting for vehicles to transport them to the *brassage* centre.⁶¹ He did not explain how this situation had been allowed to prevail for more than two years without anyone challenging the brigade's control of the mine.

The explanation may lie in the fact that the status quo in Bisie served the interests of the military hierarchy. Several independent sources confirmed to Global Witness that Colonel Sammy Matumo and the 85th brigade shared the proceeds from the Bisie mine with senior officers in the provincial FARDC command in Goma. In particular, Etienne Bindu, chief-of-staff of the 8th military region and fourth in command in the province of North Kivu, was cited as one of the key individuals behind the 85th brigade's control of Bisie. A journalist who visited Bisie in 2008 was shown the mineshafts which "belonged" to Bindu, as well as a whole ridge of the mine which had been set aside for military commanders: some of the mineshafts were for Bindu, some for Sammy Matumo, and some for other commanders.⁶²

Bindu, himself a former *mai-mai*, originally from Walikale, is based in Goma but has often been seen at Bisie. He allegedly not only benefits personally from the cassiterite from Bisie but was instrumental in ensuring that Colonel Sammy Matumo remained in place there. Even a senior FARDC official of the 8th military region confirmed that Bindu had instigated "the mess in Bisie. He manipulates the 85th brigade. It is not a secret." When Global Witness representatives asked this official why neither Etienne

Bindu nor Sammy Matumo had been held to account, he argued that if Bindu were arrested, the 85th brigade would never go to *brassage*; he claimed that Bindu's misdeeds were being noted and that the military authorities may take action against him "later".⁶³

Etienne Bindu is reportedly involved in mineral exploitation in other parts of Walikale too, as well as other forms of trade.⁶⁴ A local source described him as more of a businessman than an army man.⁶⁵

Several people interviewed by Global Witness claimed that the profits from the cassiterite in Bisie, and possibly other areas, were shared not only with FARDC officials at provincial level but with senior national military and government officials in the capital, Kinshasa. They pointed the finger, among others, at General Gabriel Amisi, nicknamed "Tango Four", chief-of-staff of the FARDC ground forces at the national level and former commander of the 8th military region in North Kivu province. Sammy Matumo is reported to be in frequent telephone communication with Amisi and, more generally, to



A porter carrying a 50 kg bag of cassiterite, Walikale, North Kivu, August 2007.



© Johann Spanner

Open pit at one of the main cassiterite mining sites at Bisie, North Kivu, April 2008. Several thousand artisanal miners work at Bisie.

maintain good relations with the military hierarchy in Kinshasa.⁶⁶ A close ally of Amisi, Adjutant Ciza, has been seen at Bisie since around 2006.⁶⁷ Other Kinshasa-based FARDC officials are also reported to have their "agents" or "delegates" representing their interests at Bisie.⁶⁸

In 2006, Mining and Processing Congo (MPC), a division of South African company Kivu Resources, was granted exploration rights to Bisie by the government in Kinshasa. The company has faced numerous problems in carrying out its work in Bisie, ranging from serious assaults on its staff to a protracted dispute between different groups of civilians competing for control of the mine, each of which has set up a rival cooperative. One of the cooperatives, COMIMPA, is backed by the company Groupe Minier Bangandula (GMB), headed by prominent Goma businessman Alexis Makabuza, and has come into conflict with MPC on several occasions.⁶⁹ The control of Bisie by the FARDC presented an additional hurdle for MPC, not least because members of the 85th brigade, including Colonel Sammy Matumo himself, repeatedly threatened MPC staff. MPC formally

complained to the military authorities about Colonel Sammy Matumo, several other FARDC and members of GMB, including Alexis Makabuza, for alleged offences including extortion through the imposition of illegal taxes, intimidation, death threats and attempted assassination.⁷⁰ The company alleged that the military and GMB were forcing miners to work like slaves and concluded that "at the very least GMB and the DRC military were operating together to extort benefit from the small scale miners at Bisie. At worst, they were directly in control of the majority of the illegal and inhumane activities on MPC's property."⁷¹ Eventually, MPC decided it could not operate in such circumstances; it suspended its operations at Bisie until law and order were restored in the mine and applied for *force majeure*.⁷²

SAESSCAM, the government body responsible for overseeing artisanal mining across the DRC, has also been unable to work in Bisie or even set up a presence there. Its officials have been repeatedly blocked by FARDC soldiers posted at the entrance and exit of the mine. A SAESSCAM official was assaulted by a soldier at a military roadblock, and in May 2008, soldiers prevented

SAESSCAM from carrying out a registration process in Bisie to establish a record of the miners working there.⁷³ ^x

In March 2009, the 85th brigade was finally redeployed. Sammy Matumo was briefly put under house arrest, then ordered to leave the area; he was posted to Beni. Global Witness is not aware that he is facing any charges in relation to illegal exploitation of minerals or human rights abuses committed during his three years in Bisie. The 85th brigade has been replaced by a newly integrated brigade, headed by a former CNDP officer and made up in part of former CNDP combatants.

The provincial FARDC command had previously given its undertaking that the new brigade would not be based in Bisie itself;⁷⁴ Global Witness has not been able to confirm whether this commitment has been respected or whether the new brigade has entered the mine. However, soon after their deployment in March 2009, there were reports that soldiers of the new brigade had taken over some of the checkpoints and were already taxing miners.⁷⁵

Mineral exploitation by the FARDC in other areas

Global Witness gathered information about FARDC involvement in mining in many other locations in North and South Kivu. Unlike the 85th brigade at Bisie, most of these military units have been through the *brassage* process, have undergone training and have been integrated into the national army.

Tubimbi

Military from the 12th integrated battalion of the FARDC have been systematically exploiting cassiterite and gold and extorting money and minerals from the local population in Tubimbi, located in the *territoire* of Walungu (South Kivu). Residents of Tubimbi told Global Witness that these

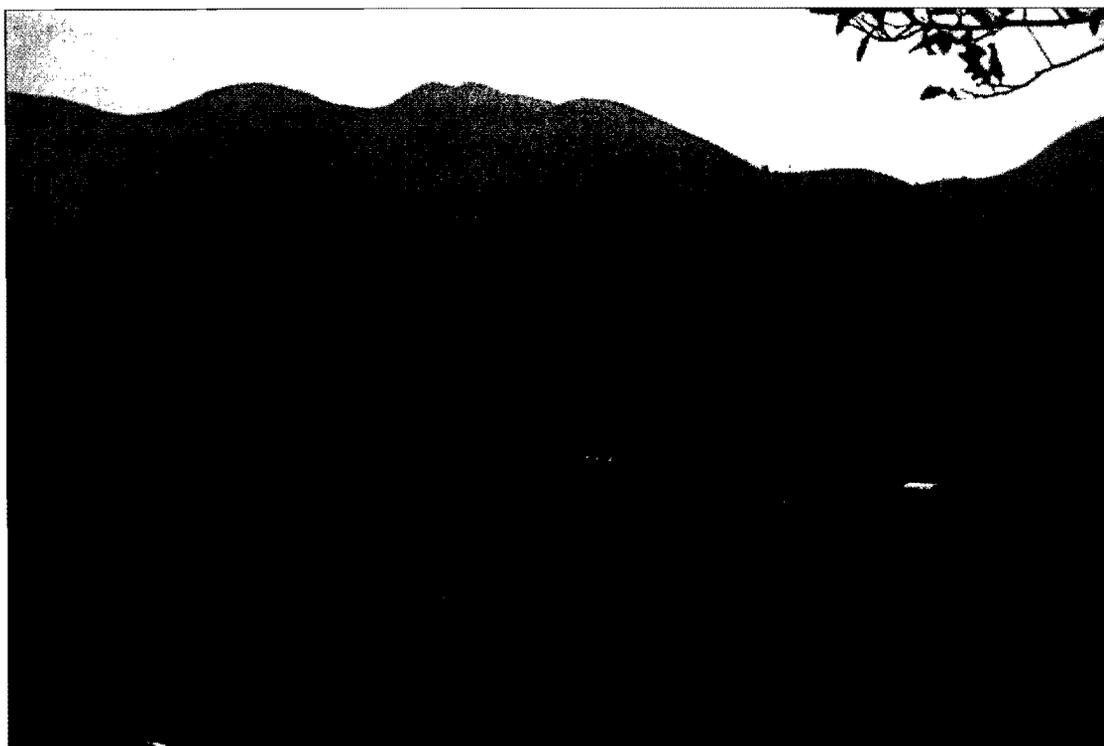
practices were particularly common at a cassiterite mine at Karhembu and a gold mine at Mufa. In Karhembu, every Thursday's production is to be handed over to the FARDC responsible for intelligence at provincial level (known as T2), while Saturday's production goes to the local FARDC based in Tubimbi. At Mufa, specific commanders, including the commander based in Tubimbi, have "their own" mineshafts or "drains". Typically, as in other locations, the FARDC do not mine themselves but send civilian agents, sometimes known as managers, to the mines. Through these or other intermediaries, the military sell the minerals to *négociants* (buyers) who come to the mines.⁷⁶

A local source in Tubimbi explained how the system worked: "The commander of the battalion from Mwenga [the neighbouring *territoire*] takes his share. The *militaire délégué* [the representative of the commander] sells the minerals locally in Tubimbi and goes once a month to hand over the money to the military chief in Mwenga. The managers go to the mines. They buy small quantities of gold or cassiterite, collect it and sell it to big buyers in Bukavu. Some of the managers are local; others are from elsewhere. The military tell me this themselves."⁷⁷

In mid-July 2008, an incident occurred in Tubimbi in which two groups of FARDC clashed, apparently over control of a cassiterite mine. A few days later, the commander of the battalion went to the site, ostensibly to resolve the dispute. "On that day," a local source told Global Witness, "the commander himself asked for that day's production of cassiterite to be given to him. Then the situation calmed down. These disagreements are not in their interests."⁷⁸

Global Witness raised these allegations with Captain Musa Kyabele Freddy, commander of the 2nd company of the 12th integrated FARDC battalion, based in Tubimbi. Captain Musa was cited by several local sources as being personally involved in the mineral exploitation in the area.⁷⁹ He denied categorically that he or any other

^xThe 2007 Annual Report of the Division des Mines for North Kivu states that SAESSCAM has been unable to establish a presence in Bisie "due to multiple blockages on the part of military and certain politico-administrative authorities".



© Global Witness

The village of Tubimbi, South Kivu, where FARDC soldiers have been exploiting gold and cassiterite.

FARDC were involved in mineral exploitation in the three months that he had been in post in Tubimbi, stating: "Soldiers never mine [...] It is not possible [...] The problem of military exploiting mines doesn't exist any more [...] The military have good relations with the population. I've never had any complaints." He denied any knowledge of the July 2008 clashes between two groups of soldiers at Tubimbi.⁸⁰

Global Witness also raised the case of Tubimbi with the FARDC commander of the 10th military region in Bukavu, General Pacifique Masunzu. He said he was not informed about the case and had not received any complaints about the military in Tubimbi.⁸¹

Mukungwe

In a number of locations, military called in to defuse tensions between groups of civilians have ended up taking over the very mines over which control or

ownership was in dispute. One of the most striking examples is that of a gold mining area known as Maroc, in Mukungwe, in the *groupement* of Mushinga, *territoire* of Walungu (South Kivu).⁸² Composed of two large hills known as Kalanga and Kalazi, Mukungwe has a total of 28 mineshafts. The current level of production of the mines is not confirmed, but in around 2006-2007, the total production from Kalazi was bringing in about US \$2,000 a day and production from Kalanga at least US \$5,000 a day.⁸³

Two groups of civilians, broadly affiliated with two local families, the Kurhengamuzimu and Chunu families,^{*} were involved in a dispute over the rights to the gold mine. The Chunu family won a court case asserting its ownership rights in the area, but in 2006, the Kurhengamuzimu family obtained an exploration permit from the Ministry of Mines in Kinshasa, in the name of SAMIKI, a company it had created for this purpose. The dispute then escalated into violent

^{*}Some sources also referred to the Rubango family, claiming that it had replaced the Chunu family in the area and was effectively acting on its behalf.

confrontations, both sides reportedly using demobilised or dissident fighters, including former members of the armed group known as Mudundu 40.⁸⁴

The FARDC were called to restore order and were deployed to Mukungwe in mid-March 2008.^{84xii} The soldiers then proceeded to take over the mine and start mining themselves. Local researchers who visited the area reported seeing representatives of five different military groups at the mine, in military uniform.⁸⁵ In June 2008, the tension between the two families culminated in violent clashes, resulting in at least one death and one serious injury, widespread destruction, looting of property and burning of houses; it is alleged that soldiers were present when the worst episode of violence occurred, on 26 June.⁸⁶ In July, military reinforcements were sent from the 12th integrated battalion, based in Mwenga, on the orders of the 10th military region in Bukavu. The reinforcements included soldiers from the 2nd company of Captain Musa Kyabele Freddy – the same company reported to be involved in mineral exploitation in Tubimbi (see above).⁸⁷

By August 2008, the violence at Mukungwe had stopped but the situation remained tense. In early 2009, the FARDC were still in control of the mine.

Local sources, including activists who investigated the case, stated that senior FARDC provincial-level officials from the 10th military region were involved in gold mining at Mukungwe. One of them told Global Witness that there was even a mineshaft nicknamed “10th military region”, which, he said, no one else could touch.⁸⁸ Global Witness has a copy of a letter dated 19 March 2008, signed by a FARDC captain responsible for intelligence for the 10th military region, addressed to the FARDC commander based in Mukungwe. Beginning with the sentence “There is too much noise coming from Mukungwe (Maroc), be

very, very careful,” the letter instructs the commander to allow civilians to mine there, not to let the military go into the mines, but to collect a percentage of mineral production for the 10th military region. This letter, as well as other correspondence relating to Mukungwe, is also quoted in a letter by a police officer addressed to the commander of the 10th military region,⁸⁹ denouncing the behaviour of the FARDC in Mukungwe.⁹⁰

One of the FARDC names cited most often in connection with mineral exploitation in Mukungwe was that of Colonel Baudouin Nakabaka, deputy commander of the 10th military region, based in Bukavu. Colonel Nakabaka was allegedly seen at the mine, in the company of the soldiers who were initially sent there to restore order. Just before the violent clashes in June 2008, he reportedly sent two FARDC soldiers to oversee the mining and represent his interests at the mine; one of them, Lieutenant Eric Mudemi, was mentioned by several people as often present in Mukungwe.⁹¹ Local sources mentioned the names of several other FARDC military, of various ranks, who allegedly “owned” mineshafts at Mukungwe, sent representatives there to act on their behalf and made large profits from the gold trade.⁹²

Global Witness representatives met Colonel Nakabaka, along with his superior, the commander of the 10th military region, General Pacifique Masunzu, and raised the case of Mukungwe. Colonel Nakabaka himself did not comment or respond. General Masunzu denied that the FARDC were involved in mineral exploitation in Mukungwe – or, for that matter, anywhere else – and stated that soldiers had been sent there solely to end the fighting between the two families.⁹³

The gold mine at Mukungwe is located in a concession to which the Canadian company Banro has exploration rights. Inevitably, Banro has been dragged into the

⁸⁴Mudundu 40 is a militia group associated with the *mai-mai* and primarily made up of members of the Bashi ethnic group.

^{84xii}Global Witness received contradictory information about whether the FARDC sided with one side or the other in the dispute. The Kurhngamuzimu family accused the FARDC of acting on behalf of the Rubango family and filed a formal complaint with the provincial and national authorities to this effect. However, an NGO source told Global Witness that the FARDC helped whichever side asked them to and that both families manipulated the FARDC by paying them.

dispute, and each side has accused Banro of supporting the other. When Global Witness met Banro's representatives in Bukavu in August 2008, they claimed to be handling the situation in an even-handed way and trying to resolve the conflict peacefully. The provincial government had become involved and organised a number of meetings and visits to the site; Banro said it would resume activities if the government could guarantee a return to order.⁹⁴

Lemera

The FARDC have been heavily involved in cassiterite mining in and around the town of Lemera, in South Kivu. Among the names cited to Global Witness in this connection in 2008 was that of Colonel Biau Futi, nicknamed "Magie". Based in Lemera since 2007, Colonel Magie was reportedly taking a proportion of the cassiterite from each tunnel at the main cassiterite mine at Lemera. One local source told Global Witness: "He gives his bag to a military there who gives it to the miners. The colonel's bag goes down as soon as a tunnel starts producing. Magie personally goes to the mine every day. I've seen him several times. People have accepted this as normal, but it's collected by force. He takes a share of every production. They sell it in Lemera."⁹⁵ Another said he had seen Colonel Magie visiting the mine in late 2007: "Magie used to come to the mine with his jeep and ask the president of the committee in charge of the mine to give him cassiterite, and they would give him two or three bags [...] I have seen four military in the mine, in military uniform. The military don't dig themselves but go down into the holes to ask for minerals."⁹⁶ During 2007, FARDC soldiers often stole minerals from the mine at Lemera, and there were sometimes clashes between soldiers and civilians when soldiers tried to seize cassiterite which the civilians had produced.⁹⁷

Lemera is also a centre where minerals from other locations are traded. Many minerals bought and sold there are produced not by the FARDC but by the FDLR, notably from the Itombwe forest (see section 6).



Entrance to a makeshift tunnel for digging cassiterite, on the road outside Lemera, South Kivu, August 2007.

© Global Witness

The response of the FARDC

The involvement of the FARDC in the exploitation and trade of minerals is in direct contravention of Congolese legislation, in particular the Mining Code, which prohibits members of the armed forces from trading in minerals.⁹⁸ The FARDC officials whom Global Witness interviewed, including the provincial commanders of North and South Kivu, did not attempt to justify this behaviour. On the contrary, they denied it and claimed that if it were to occur, or in the few cases where it did occur, those responsible would be brought to justice.

Despite overwhelming evidence of the impunity which protects the FARDC, the commander of the 8th military region in North Kivu, General Vainqueur Mayala, claimed that there were "many FARDC soldiers in prison, including for the illegal exploitation of natural resources". He said that the military prosecutor's office was investigating the involvement of high level military in mining and stated: "We cannot accept that officers are involved in mining".⁹⁹ He and his deputy provided information on the case of a senior officer, Lieutenant Colonel Mawa Hans Andomba, who was suspended on 29 July 2008, on the orders of General Mayala, after his vehicle

was intercepted carrying around 700 kg of cassiterite. The military disciplinary council concluded that he had used military vehicles abusively for private ends and had taken part in commercial activities which were not allowed within the FARDC and were incompatible with his responsibilities as an officer.¹⁰⁰ The case was transferred to the chief-of-staff of the army in Kinshasa, who had to decide whether to refer it to the military justice system. Three other military, including the driver of the vehicle which was transporting the cassiterite and other members of his escort, were let off on the basis that they were just executing orders.¹⁰¹

This is one of the very few cases where action has been taken against a senior FARDC officer for illegal mining or mineral trading activities. Global Witness has not been able to confirm whether it resulted in prosecution. In a number of other cases, bags of minerals belonging to FARDC officials, or transported in their vehicles, have been intercepted, but released following interventions by more senior members of the military hierarchy. In a typical example, a local official of the Division des Mines

told how on one occasion, in August 2008, he and other officials stopped a truck carrying ten tonnes of cassiterite at the road toll at Baraka because it did not have the necessary paperwork: "We stopped it because it didn't have the right documents for South Kivu. Then the 10th military region called us and told us to let it through. They intimidated us. The general of the 10th region called the Bureau 2 (security agents) and ordered them to let the truck through to Bukavu. He said 'do this, do that'. I was obliged to let it through."¹⁰²

Global Witness was informed of a small number of cases where the military responsible for trading in minerals, or more often the lower-ranking soldiers acting on their behalf, were arrested, but released within a short time, again on the orders of their superiors, and no charges brought. However, in the vast majority of instances, no action whatsoever is taken against FARDC soldiers and their commanders involved in trading in minerals.

Global Witness is not aware of any case where a FARDC official has been successfully prosecuted for the illegal exploitation or trade in minerals in North or South Kivu.



Extortion by FARDC soldiers is rampant. Bisie cassiterite mine, North Kivu, April 2008.

6 The FDLR: “*les grands commerçants*”

“They don’t want to leave because of the natural wealth. They are like bees swarming on honey. They prefer to die there.”

RESIDENT OF BUKAVU, 26 JULY 2008



© Finbarr O'Reilly/Reuters/Corbis

FDLR fighter stands lookout in the bush near the village of Mikingiro Kasum, about 9 km from the town of Pinga, North Kivu, February 2009.

The FDLR’s stranglehold on the mineral trade in parts of eastern DRC, particularly in South Kivu, provides a textbook example of the consequences of allowing an armed group to exploit natural resources unchallenged over a prolonged period. A human rights activist from Walungu (South Kivu) told Global Witness: “The Congolese can’t set up business in competition with the FDLR. They may just sell minerals which belong to the FDLR. The FDLR are becoming very rich. They have been sitting on these minerals for 14 years.”¹⁰³

Although the exploitation of natural resources was not the main *raison d’être* of the FDLR when it was first formed, the opportunities which presented themselves in North and

South Kivu proved to be irresistible. As time went on, the FDLR’s economic activities became increasingly important, and the profits increasingly significant. The UN Group of Experts estimated that the FDLR were making profits “possibly worth millions of dollars a year from the trade of minerals” and described the minerals business as “a high priority for FDLR”.¹⁰⁴

Thanks to these profits, the FDLR have set up efficient and extensive business networks and are able to obtain many other supplies, including weapons, without difficulty. In some areas, they have also set up political, economic and social structures and administration, including, for example, their own parallel justice system.¹⁰⁵ In some cases,

the FDLR live and work alongside the Congolese population (there are inter-marriages between the FDLR and Congolese civilians) – a relationship on which they depend for their economic survival; in other cases, their structures and modes of operation remain quite separate. The FDLR have become so well-established in some locations that the local population treats them as if they were state authorities, but in an atmosphere of fear, as the FDLR imposed itself through violence and extreme brutality. For example, in the context of a dispute between two traditional leaders over rights to exploit newly discovered cassiterite at Lwindi, in Mwenga, one of the traditional chiefs reportedly approached the FDLR and asked for their "protection and support" (against potential rivals) in exchange for half the mineral production.¹⁰⁶ This mirrors the way communities approach the FARDC for support, in exchange for a cut of mineral production, in areas under government control.

In South Kivu, the FDLR's trading activity appears to have become an end in itself, and minerals form the backbone of that activity. The FDLR have become very well-entrenched in parts of the *territoires* of Shabunda, Mwenga, Walungu, Uvira and Fizi – all of which contain gold or cassiterite mines – and have tended to settle in areas which are rich in minerals. As an illustration, one source explained that in the local area known as the *collectivité-chefferie* of Burhinyi (in Walungu), the FDLR controlled nine out of 18 *groupements*, all in Bas-Burhinyi; these include areas rich in minerals, forests and agricultural land. The FDLR sell their products in the nearby markets.¹⁰⁷

Many Congolese interviewed by Global Witness described the FDLR as "*les grands commerçants*" (the big businessmen). They conduct their business openly, unchallenged, wandering around in towns and villages with or without their arms. For example, Global Witness researchers saw and spoke to FDLR members selling cassiterite in Lemera, a small market town in South Kivu, in August 2008. Similar patterns are observed in North Kivu, especially in Walikale. A member of an NGO from Walikale told Global Witness that in December 2006, he had seen a FDLR

captain going to the market at Rusamambo, in *groupement* Ikobo, with large milk tins filled with gold.¹⁰⁸

The FDLR go to great lengths to buy and sell goods, often travelling for several days on foot from the forested areas where they live to reach the nearest trading centre. In South Kivu, they have bases in several locations. Among these are the Itombwe forest, in the *territoire* of Mwenga; parts of the area known as the Moyen Plateau, near Minembwe, in the *territoire* of Fizi; the areas around Lulingu and Nzovu, in Shabunda; and the western and northern parts of the Kahuzi Biega Park. A young Rwandan man, believed to be a FDLR member, told Global Witness that he, together with a number of people he described as traders, had walked for four days from Kitopo, in the Itombwe forest, where he lived, to the town of Lemera to try to sell 40 kg of cassiterite. Another, who had made the same journey, said he had 300 kg of cassiterite "stocked somewhere else". They were expecting to sell their cassiterite at Lemera for US \$7.5 a kg.¹⁰⁹

A local researcher described how the FDLR travelled and traded in parts of South Kivu:

"Towards Mwenga and Kamituga, you see FDLR with their families and children. I have seen them: the men are armed and move like a column. At the market, the men stay one km outside and send their families in. The FDLR have agreed with the FARDC not to enter the market with arms. Women go into the market, buy and sell things including minerals, then go back to the men and they all go back into the forest together. Some women are in uniforms. Occasionally the men go into the markets but without arms.

The big markets have become big meeting places. The FDLR order things, send a column of people to go and buy them and return to the forest. I have seen this in Kasika. They walk from the forest for about six hours – groups of

about 20 people with about four armed men in front, behind and in the middle. They have AK-47s, guns, rocket-launchers, chains of bullets and submachine-guns. In Mwenga and Kasika, I saw six or seven groups, each with about 20 people, and even more before and after.

They use the local population to support them, to collect their loot and ensure transport, accompanied by one or two FDLR soldiers. They go through FARDC barriers without any problems."¹⁰

Like the FARDC, the FDLR use the local population to dig and work for them. They rarely dig in the mines themselves. A man believed to be an FDLR member told Global Witness: "The Hutu don't exploit. The Bashi and Babembe [two other Congolese ethnic groups] exploit and the Hutu buy."¹¹

As with the FARDC, there are instances of forced labour by the FDLR, as well as a more passive form of cooperation on

the part of the civilian population which has effectively been taken hostage. According to a member of a local NGO, "if a mine is discovered by the population, the FDLR come and take it over [...] No one can stop them. People just observe."¹² The threat of violence always looms large over the relationship between the FDLR and Congolese civilians; one activist said "people simply can't refuse to work for them."¹³ Eventually, in some locations, the population has reached an uneasy form of cohabitation with the FDLR, though privately they express frustration and resentment. In Kisimba nord, in Walikale (North Kivu), in a gold mine known as "*mali mingi*" ("lots of wealth"), the FDLR pay the miners to dig for them but give them a deadline by which they are expected to produce a certain amount. "If they don't deliver the gold by that date, they have problems."¹⁴ They also sometimes use civilians as porters to carry minerals from one site to another – a practice used, for example, in the village of Lutika, 180 km north-east of Shabunda, where Congolese porters bring out wolframite, gold and cassiterite produced by the FDLR.¹⁵

In many locations, the imposition of "taxes" has taken the place of forced labour. In Kalehe and Mwenga, the FDLR



FDLR fighter in the forest near the village of Mikingiro Kasum, about 9 km from the town of Pinga, North Kivu, February 2009.

charge miners a flat fee of 30% on mining proceeds in exchange for "protection and support".¹¹⁶ In Shabunda, the FDLR were collecting 2 kg of coltan or cassiterite every week from each mining site (there are at least 250 mining sites in the FDLR-controlled areas of Shabunda)¹¹⁷ and a minimum of one gramme of gold (or its equivalent) from each mineshaft (each mining site has several mineshafts).¹¹⁸ In other parts of Shabunda, the FDLR were collecting "taxes" in cash: US \$1 for every 30 kg of cassiterite. The money quickly adds up: for example, in 2008, there were at least seven FDLR roadblocks on the road from Kigulube to Bukavu, passing through Walungu.¹¹⁹ A UN source estimated that between Shabunda and Bukavu, there were 14 barriers, around nine of which were controlled by the FDLR and around five by the FARDC. People travelling along this road each had to pay a total of about US \$20 for every journey.¹²⁰

A miner from Shabunda was regularly subjected to extortion at FDLR roadblocks as he made the 340-km trek from Shabunda to Bukavu on foot: "It took me one week. It is dangerous. There are Hutu military [FDLR] on the road at Kigulube, Mitala, Nyalubemba, Lubimbe, Kishatu, Chulwe, Kisuku. There are 12 barriers on the roads from Shabunda, all controlled by Hutu. They ask for money [different amounts]. The total is US \$40. They are well-armed [...] We are their meat, their animals. We have nothing to say."¹²¹

At the local level, the FDLR often sell the minerals themselves, sometimes at the mines, sometimes in nearby locations. Once the minerals reach the larger towns, they are usually handled by Congolese civilians acting or trading on their behalf. The ranks of the FDLR are primarily made up of Rwandans, but they depend heavily on the Congolese population for their business dealings. These intermediaries, described by an activist as "the economic axis of the FDLR",¹²² are an important link in the chain. The system is highly organised. Although there are occasions when members of the FDLR are seen openly trading minerals, the more substantial sales are conducted through their Congolese intermediaries. These

intermediaries buy other goods for the FDLR from towns such as Bukavu with the money made from the sales of minerals. Sometimes they are literally given a shopping list. One source told Global Witness: "The FDLR relay through Congolese. The Congolese transport the minerals from the forests and sell them to exporters. They then take other goods back to supply the FDLR in the forests. When the FDLR sell cassiterite, they specify what they want in exchange."¹²³ According to another source, these intermediaries' families are kept under close watch to make sure that the intermediaries return and do not run off with the money from the mineral sales.¹²⁴

In the southern part of South Kivu – for example the areas around Minembwe in the *territoire* of Fizi – the FDLR, as well as some *mai-mai* and smaller armed groups, have been able to control mines with even less interference than elsewhere. Parts of this region are remote and heavily forested, making access and oversight very difficult. The main mineral found in these areas is gold; there are also some cassiterite and coltan deposits and precious stones.

With bases in Kilembwe and Kingizi, the FDLR have a near-monopoly on gold mining in this area. Kingizi, in particular, is a strategically important base which they use to stock up on minerals, food and other goods and supply their troops in other locations. Local residents sometimes see them carrying these goods on foot to their command post at Kilembwe.¹²⁵

A mineral trader from Fizi told Global Witness:

"The FDLR buy minerals at the mines. I've seen them often, for example at Make Makilu, Kachoka, Ndolo and Kitumba, towards Nganja Milima. We know them. They wander around with arms. They tie their guns to their bicycles. They buy gold especially. They take it on motorised wooden boats across the lake.

Kingizi is their base, on the shore. They can cross easily and go in and out. They have a short-cut

from there to the mines, without going through the towns. They buy fish and take it to the mines where they sell it and buy minerals in exchange. They are big traders and buyers."¹²⁶

The minerals exploited in this area are exported by road or by lake to Burundi or across Lake Tanganyika into Tanzania, on canoes or small motorised boats. A number of gold traders based in the town of Uvira sell their gold to buyers in the Burundian capital, Bujumbura.

While the FDLR dominance of the mining trade is stronger in South Kivu, they also control mining areas and trade routes in North Kivu, for example in parts of Walikale. A provincial government official estimated that around 60% of cassiterite production in the *territoire* of Walikale was produced, directly or indirectly, by the FDLR. He described them as "strong and better organised than the local population".¹²⁷ The FDLR's presence in North Kivu is also important for maximising its profits from mineral production in South Kivu. There are many commercial links between the two provinces and some of the minerals produced by the FDLR in South Kivu are sold to *comptoirs* in Goma, in North Kivu, and exported from there.

Overall, the FDLR's control of the mineral trade in large swathes of both provinces has presented a significant challenge to initiatives to dislodge them. Having established long-term economic bases, they are extremely reluctant to move away from these locations. At different times, the FDLR have apparently foreseen and anticipated operations planned against them. A source in Bukavu told Global Witness: "When the Nairobi and Goma accords were signed [in November 2007 and January 2008], the FDLR here reorganised and retrained and intensified their supplies. Their headquarters are mobile."¹²⁸ More recently, since January 2009, one of the FDLR's responses to the Rwandan and Congolese joint military operation against them has been to turn against the local civilian population, accusing them of betrayal. As they have dug

in, the FDLR have become increasingly violent, killing and raping civilians in a bid to hold on to their territory.¹²⁹

The FDLR have categorically rejected all allegations that they are involved in the mineral trade. The commander of an FDLR brigade in South Kivu told Global Witness: "No FDLR military can go into the mines or do business [...] We are only involved in agricultural activities [...] It is totally false that the FDLR are involved in mining in this area. All we do is buy things like soap [...] We are just passing through. We don't control territory."¹³⁰ Reacting to Global Witness's press release of 10 September 2008, which denounced the FDLR's extensive involvement in mining, the FDLR issued a statement claiming: "We do not need to get involved in activities or exploitation or traffic of gold to attain our noble objective, the liberation of our country."¹³¹ Likewise, in a response to the report of the Group of Experts, they stated: "The FDLR have never financed their activities with revenues from any illegal trade of mining resources of the DRC."¹³²



FDLR fighter at Kilungutwe, South Kivu, August 2008.

The relationship between the FDLR and the FARDC

7

“The collaboration is quasi-official.”

HUMAN RIGHTS ACTIVIST, GOMA, 8 AUGUST 2008

Although the FARDC have been deployed to areas where the FDLR operate, their presence has not had any effect in curbing the FDLR’s exploitation of minerals or other activities. On the contrary, through mutual agreement, the FARDC and the FDLR have operated side by side, granting each other freedom of movement through each other’s territories and allowing each other to trade without interference.

The relationship between the FDLR and the FARDC is rooted in the earlier years of the war, when the two groups collaborated against a common enemy: Rwanda. The FDLR, allied with the Congolese national army, fought Rwandan troops and their allies, the RCD-Goma. The RCD seized control of large parts of eastern DRC from 1998 and remained in a position of power in the Kivus until it eventually joined the transitional government in 2003. Following the demise of the RCD, which suffered a heavy defeat in the 2006 elections, a new Tutsi-dominated rebel movement was formed, the CNDP, some of whose leaders had previously been members or sympathisers of the RCD. In particular, Laurent Nkunda, the CNDP’s leader until January 2009, had a long history of fighting alongside the Rwandan army and with the RCD. Many among the senior ranks of the FARDC therefore still feel sympathy for the FDLR, despite their history of extreme violence in both Congo and Rwanda. There are frequent reports that members of the FARDC supply the FDLR with arms, ammunition and uniforms.¹³³

Global Witness researchers met senior FARDC commanders who did not attempt to conceal these sympathies. They used the term “we” when referring to the FDLR, describing them as “our brothers” and

identifying with their demands, in particular for political dialogue with the Rwandan government. One senior FARDC official, speaking in a personal capacity, told Global Witness: “They [the FDLR] just want guarantees of security [...] You have to get to know them and get to know their reality here [...] The FDLR survive from natural resources because they have no money or help. God did this – made for them to be in an area where there are natural resources. Otherwise [...] people would have died.”¹³⁴

Congolese civilians interviewed by Global Witness in North and South Kivu described a happy co-existence between the FARDC and the FDLR in certain areas. For example, one man said that the FDLR and FARDC were sometimes seen fraternising in a market at Birhala, in Haut-Burhinyi (Walungu, South Kivu), an area nominally under FARDC control.¹³⁵ In parts of North Kivu, the system is slightly more formalised, with the FDLR and the FARDC having to obtain advance permission to travel into each other’s areas. The FDLR then use roads controlled by the FARDC, and vice versa, without difficulty. However, this apparent harmony between the two groups can be misleading: many Congolese civilians, including local authorities and community leaders, describe a brutal forced cohabitation with the FDLR, in which they have no choice but to submit to the FDLR’s military and administrative control.

A human rights activist explained that the proximity of the relationship between the FDLR and the FARDC sometimes depended on external developments: “In North Kivu, the FARDC and FDLR are sometimes close, sometimes separate. But they don’t attack each other. Where both are present, they share the spoils and both

extort from the population. When there is a Rwandan or CNDP presence, they get closer together."¹³⁶

These dynamics may change in 2009 following the joint Congolese and Rwandan military operation to dislodge the FDLR. At the time of writing, it is too early to assess the lasting impact of this operation – a new collaboration between two armies which have been sworn enemies for more than ten years. The joint operation could have tested the resolve of the FARDC to tackle the presence of the FDLR; in practice, it appears that the FARDC left most of the implementation of the operation to the better-trained and better-motivated Rwandan forces.

In the second half of 2008, local sources reported that the FARDC rarely challenged the FDLR, and that if anything, the FDLR had the upper hand in terms of military strength. It is an uneven balance of power, as despite foreign training and attempted reform programmes, the FARDC remains a disorganised and ill-disciplined army. An NGO representative in Goma told Global Witness: "Around Walikale, the FDLR are in control even when the FARDC are there. They are stronger and more numerous than the FARDC. They are experienced soldiers, much more experienced than the *mai-mai* or the FARDC. They are masters of the place."¹³⁷ A similar situation prevailed in South Kivu. A source in Bukavu described seeing a group of around 20 or 30 FDLR, wearing new FARDC uniforms, carrying new weapons, radios and other equipment. Soldiers from a nearby FARDC camp said that they had seen the FDLR column, but had not reacted as they had not received orders to do anything about it; and that anyway, they had neither the transport nor other means to block an armed FDLR battalion.¹³⁸

It is not clear to what extent the FDLR and the FARDC systematically share the proceeds of mining. Overall, it appears that they each exploit the mines in the areas they control, independently of each other but with mutual consent – an arrangement which has proved

highly beneficial for both parties. Some sources allege a more active form of collaboration; for example, Global Witness was informed that the FDLR sometimes give money to FARDC officers to buy cassiterite in Walikale and sell it in Goma.¹³⁹ There are also frequent reports of FARDC and FDLR dividing up the "taxes" they collect from the civilian population at roadblocks. Along some roads in South Kivu, there may be successive FDLR and FARDC roadblocks. According to a source from Shabunda, in some locations, the FDLR and the FARDC are both present at the same roadblock; this was the case, for example, at Nyalubemba, a location where minerals are traded, about 100km from Bukavu.¹⁴⁰

A researcher explained the arrangements between the FARDC and the FDLR in strategic locations in the *territoire* of Shabunda:

"The *groupement* Bamuguba Sud used to be entirely controlled by the FDLR, from the border with Walungu *territoire*. Since the end of 2007, the FARDC have been deployed there. The headquarters of the FARDC is Kigulube, a big mining centre. The aerodrome is at Nzovu, another mining centre [...] Yet the FDLR are still there too. They have divided up the zones. They have contact with each other. More than 70% of zones in this area are controlled by the FDLR. FARDC have to go through FDLR areas. They negotiate with each other. They agree not to attack each other. They respect each other's zones. They each administer their own zones and collect 'taxes'. In this *groupement*, it is mostly cassiterite, especially in Nzovu and Kigulube [...]"

Before 2007, all the centres were controlled by the FDLR. When the FARDC came, they agreed that the FDLR would liberate the commercial centres. These came under the control of the FARDC but other areas are still under the control of the FDLR."¹⁴¹



© Kale Hok

FARDC soldiers at an army post 12 km north of Goma, November 2008.



© SIPA Press/Rex Features

FDLR members at their camp in Kilungutwe, South Kivu, August 2007.

The situation in Shabunda illustrates the extent of collaboration between the FARDC and the FDLR. The FDLR control large parts of Shabunda and the mineral production there. In order to transport their minerals out of Shabunda, they are dependent on the cooperation of the FARDC, who control the local airports. Thus minerals produced and sold by the FDLR are accompanied to the planes by FARDC soldiers; from the local airstrips in Shabunda, the minerals are then flown to Bukavu or Goma.¹⁴² Although the airstrips are under FARDC control, a miner from Shabunda reported seeing some FDLR members at Nzovu airstrip in early 2008.¹⁴³ Another local source reported that in 2007, a FARDC colonel used to personally take the FDLR's cargo to Lulingu aerodrome.¹⁴⁴

The collaboration between the FARDC and the FDLR is particularly significant at Lulingu, one of the main aerodromes from which minerals produced by the FDLR are flown out to Bukavu or Goma.^{xiii} The Group of Experts reported that more than 90% of minerals arriving at the airstrip at Lulingu come from FDLR-controlled areas.¹⁴⁵ The FDLR regularly sell their minerals to traders in Lulingu, apparently in full view of local civilian and military authorities, without anyone challenging them.¹⁴⁶

The FARDC based at Lulingu profit directly, both from their own trade and that of the FDLR. A local researcher told Global Witness:

"Minerals leave from there [Lulingu] in big quantities. The centre is built on cassiterite. It is controlled by FARDC. Minerals go out by plane from Lulingu to either Kavumu (Bukavu) or Goma. They use Antonovs or other planes. They go out with cassiterite and come back with oil. The airport is controlled by FARDC for 'official' traffic. State agents are there and tax it. The FARDC don't tax at the

airport. They use civilians to export their minerals for them, using civilian names. The commanders are big traders but they don't show themselves. Their wives or commissionnaires sell it and travel for them. Commanders feel lucky to be posted there. All fines, bribes, etc are paid in cassiterite."¹⁴⁷

Officially, the FARDC, and the Congolese government, deny collaborating with the FDLR. The commander of the 10th military region in Bukavu, General Pacifique Masunzu, told Global Witness: "There are no places where the FDLR and FARDC are together [...] It is not true that the FDLR and FARDC have relations or share minerals. We are not allowed to collaborate with foreign armed groups. There are directives from our hierarchy. We respect them at the level of our units. There is no case of military collaboration with the FDLR." He confirmed that FARDC military were present at Shabunda, Lulingu and Nzovu airports "for security" but denied that the FDLR sent their goods out through Shabunda or came to the airports themselves.¹⁴⁸

The FDLR have also vehemently denied any form of collaboration with the FARDC.¹⁴⁹

In practical terms, the close ties felt by many FARDC towards the FDLR pose a serious challenge for the broader strategy to disarm and disband the FDLR. In November 2007, as a result of the Nairobi agreement signed between the Congolese and Rwandan governments, MONUC developed plans to work alongside the FARDC in a series of joint operations against the FDLR. One of the elements of this strategy was to take steps to cut off the FDLR's economic bases, including by reducing the FDLR's ability to control mines in four designated areas – two in North Kivu and two in South Kivu. The FARDC, with MONUC support, were also supposed to search aircraft and deploy in markets,

^{xiii}There are eight airstrips in Shabunda. The main ones are Lulingu, Shabunda, and Nzovu. The others, which are apparently used less regularly, are Mulungu, Kama, Nyalukungu, Katanti and Kachungu.

trading centres and trafficking routes.¹⁵⁰ However, when Global Witness met MONUC military officials in Goma in July and August 2008, just before this phase of the operation was scheduled to begin, it was apparent that the impact of the relationship between the FDLR and the FARDC on these plans had not yet been addressed.¹⁵¹ Yet senior MONUC personnel were clearly aware of the challenge it would pose. One MONUC official told Global Witness: “There is informal, unofficial collusion between FARDC and FDLR. It is not necessarily structural. The government denies it but we see it. There are local relationships but also at some senior levels. This makes it difficult for our operations as the FARDC are not necessarily committed.”¹⁵²

This phase of MONUC’s operations was due to begin in September 2008, but was delayed by the resurgence of fighting in North Kivu between the CNDP and the FARDC. Ten FARDC battalions which were supposed to be deployed in operations against the FDLR were diverted to fight the CNDP.¹⁵³ MONUC was planning to resume these operations in December 2008, but in January 2009,

Rwanda and Congo launched their own joint military operation against the FDLR in North Kivu, in which MONUC was not directly involved.¹⁵⁴ The Rwandan troops officially withdrew at the end of February 2009, with Rwandan and Congolese officials declaring “success” in breaking some of the key FDLR command structures.¹⁵⁵

In February 2009, the Congolese government announced that further FARDC operations against the FDLR, with MONUC support, were planned for South Kivu.¹⁵⁶ The status of these operations remained unclear for several weeks. Eventually, on 28 April, Minister of Defence Charles Mwando Nsimba announced publicly that the operation would be launched around ten days later and would last three months.¹⁵⁷ In the meantime, the March 2009 report of the UN Secretary-General had noted that “the continued presence of the FDLR in key areas remained a source of concern [...] FDLR elements are present in Mwenga territory [South Kivu] and control the area both militarily and economically. The FDLR also controls the mines and collects ‘taxes’ from civilians in the territory.”¹⁵⁸



Rwandan soldiers prior to their withdrawal from North Kivu, February 2009.

8 Other armed groups involved in the mineral trade



© Kate Holt

Scores of civilians were killed by the CNDP and the *mai-mai* during fighting in Kiwanja, North Kivu, November 2008.

The CNDP

The CNDP has not relied as heavily on the mineral trade as the FDLR, as the territories under its control, in North Kivu, tend to contain fewer large deposits of minerals. Primarily for this reason, Global Witness did not carry out detailed first-hand investigations into the CNDP's involvement in the mineral trade and did not visit areas under its control. However, several sources provided information to Global Witness on the CNDP's operations and activities and described ways in which it benefited from the mineral trade, in particular through an efficient system of "taxation".

The CNDP controls some areas where mineral deposits are found. These include a coltan mine at Bibatama, for which Senator Edouard Mwangachuchu holds the mining rights, through his company Mwangachuchu Hizi International (MHI); a wolframite mine at Bishasha; and cassiterite deposits in other locations.¹⁹⁹

Like other armed groups, the CNDP has relied on the civilian population to dig for minerals and taken a proportion of the production. More significantly, CNDP troops have found other ways of cashing in on the mineral trade, through extortion and the imposition of "taxes" – which they collect in cash or

in kind – along the roads, at checkpoints and at border crossings. A particularly lucrative source of revenue for the CNDP has been the crossing at Bunagana, at the DRC-Uganda border.¹⁶⁰ CNDP troops have also been involved in the charcoal trade from the Virunga national park and collect significant sums from “taxing” it.¹⁶¹

The CNDP has derived most of its support from Rwanda and from other Tutsi individuals in the DRC, in Rwanda and elsewhere in the diaspora.¹⁶² It has also enjoyed political and financial backing from businesses in these and other locations. A number of businessmen voluntarily donate to the CNDP; they reportedly include individuals or companies active in the mineral trade.¹⁶³

At the time of writing, CNDP troops are going through a process of integration into the FARDC. There is a strong likelihood that they will continue to exploit minerals or derive benefits from the trade in the areas where they are deployed, alongside or in parallel with their FARDC colleagues.

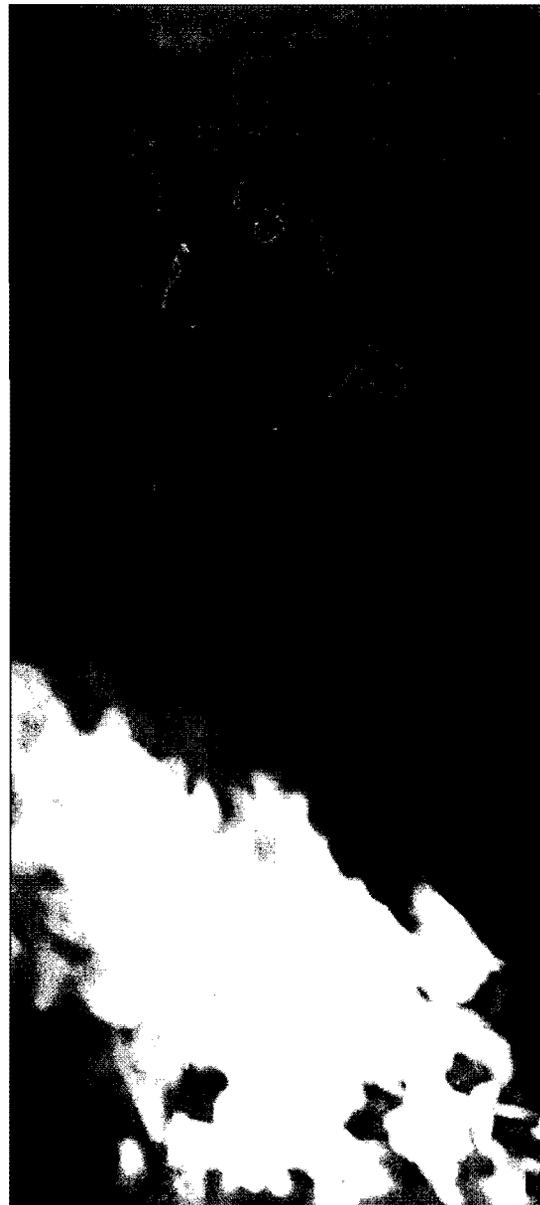
PARECO and the *mai-mai*

Other armed groups, such as PARECO and different *mai-mai* groups in North and South Kivu, are sometimes involved in mining too, but in an opportunistic way rather than as part of a well-organised strategy. This reflects the nature of these groups, which tend to be less homogenous than some of their counterparts and have a less well-defined political or economic agenda. Members of the *mai-mai* Yakutumba group, for example, exploit gold in parts of the *territoire* of Fizi, in South Kivu; they dig alongside the civilian population and extort “taxes”. In North Kivu, other *mai-mai* exploit gold, cassiterite and coltan in locations such as Munjuli and Usala (Walikale) and Mahanga (Masisi), sometimes in collaboration with the FDLR. The *mai-mai* also make arrangements with local

traditional chiefs who “own” certain mines, ensuring that each profit from the production of artisanal miners.

The FRF

Global Witness received reports that the FRF, a Tutsi armed group active in the southern part of South Kivu, in the area known as the Haut Plateau near Minembwe, is present in some gold mining areas



A soldier stands guard in Rutshuru, North Kivu, an area that saw fierce fighting between the FARDC and the CNDP. November 2008.

and may be profiting from the trade there.¹⁶⁴ Global Witness has been unable to verify these reports.

Ex-combatants

Demobilised *mai-mai* and other former combatants who have been unable to find employment sometimes turn to mining, both in North Kivu (particularly around Walikale) and South Kivu. Some have been responsible for incidents of violence and intimidation. A miner, himself a former *mai-mai*, who worked in a gold mine at Kasonge, in Basimukuma Sud, *collectivité* Mutambala, in the *territoire* of Fizi, said there were many former combatants in this and other mines in the area. He told Global Witness: "The ex-combatants in the mines behave like military... They come into the concession. They dig, but if they don't produce enough, they try to 'judge' and collect 'fines'. They have their own mineshfts. There are ex-*mai-mai*, ex-RCD,

ex-FARDC. Some have weapons but don't take them into the mines." He attributed this phenomenon to the failures of the demobilisation programme, which, he said, had abandoned many former combatants without any training, social or economic prospects.¹⁶⁵ Some of these demobilised combatants have retained their weapons; others have handed them in, but the proliferation of small arms means that it is very easy for them to acquire new ones. A local development worker said that *mai-mai* were involved in gold mining in Mukera, about 21 km from Fizi: "The *mai-mai* dig there. Sometimes they are in civilian clothes but still carry arms. I've seen them. There is 'community work'. They extort from people if they don't participate. They sometimes use the population as hostages to dig in their mineshfts. The *mai-mai* take everything. They don't give anything to the miners."¹⁶⁶



Mai-mai child soldier, awaiting an advance by CNDP troops, Kanyabayonga, North Kivu, November 2008.

The Congolese government's difficulties in controlling the mining sector

9

"The state itself has destroyed all the structures of the state."

SENIOR CIVIL SERVANT, BUKAVU, 28 JULY 2008

Faced with successive rebellions, the Congolese government has failed to control the eastern provinces for most of the last ten years. Located on the opposite side of this huge country from the capital, Kinshasa, more than 1,000 km away, the provinces of North and South Kivu have retained a distinct identity and are more closely bound up with events in neighbouring countries to the east – Rwanda, Burundi and Uganda – than with Kinshasa. Despite nationwide elections in 2006, in which the majority of people in the east voted

for the incumbent president, Joseph Kabila, the government's political control over this region has remained tenuous.

The result is that provincial government officials find it extremely difficult to enforce the law. Not only does the Kinshasa government lack authority in the east, depriving them of meaningful political support, but the area has become so heavily militarised that many civilian officials are powerless to do their jobs. The challenge is particularly striking in the mining sector. Global Witness met several provincial officials who were concerned about the illicit exploitation and exports of minerals and who were trying, to the best of their ability, to curb these practices, but were unable to exercise their authority in the face of the threat of violence by armed groups or their own national army. In response to the military presence at the mine in Mukungwe, for example (see section 5), the head of the Division des Mines wrote to the Governor of South Kivu in March 2008 asking for the military to be removed from the mine.¹⁶⁷ The Vice-Governor supported this request and wrote to the commander of the 10th military region, asking him to withdraw all his military from Mukungwe as well as from all other mining sites in South Kivu.¹⁶⁸ Several months later, no action had been taken. The military were still present in Mukungwe and, if anything, had reinforced their control of the mine. FARDC mining at other sites in South Kivu continued unabated.

At times, provincial government officials in North and South Kivu, for example in the Division des

CONGOLESE CIVILIAN GOVERNMENT AGENCIES WORKING IN THE MINING SECTOR

Division des Mines: the provincial representation of the Ministry of Mines. Responsible for overseeing the mining sector.

Service d'assistance et d'encadrement du small scale mining (SAESSCAM): government agency, within the Ministry of Mines, responsible for overseeing and regulating the artisanal mining sector.

Centre d'évaluation, d'expertise et de certification (CEEC): government agency, within the Ministry of Mines, responsible for certifying minerals. Originally set up to certify diamonds as part of the Kimberley Process, the CEEC has since extended its work to other minerals including gold, cassiterite, coltan and wolframite. It also collects data on mineral production, purchases by *comptoirs* and exports.

Office congolais de contrôle (OCC): national government agency responsible for controlling the quality, quantity and conformity of exports.

Office des douanes et accises (OFIDA): national customs agency responsible, among other things, for controlling exports.

Mines, have tried to implement measures to limit illicit exports and tighten regulations. Some of these measures have had a positive effect in improving the accuracy of statistics and in raising the level of officially declared exports and revenues, especially since 2007. However, smuggling and fraud are still commonplace. The situation is aggravated by pervasive corruption within the government's own ranks, hindering efforts by well-intentioned officials to clean up the sector.¹⁶⁹

In its 2007 annual report, the Division des Mines in North Kivu noted that fraud had gone down considerably since 2006 but had not been totally eradicated. It identified some of the likely causes of fraud and of the unreliability of the government's own statistics, including the absence of statistics on minerals transported by road, for example between Goma and Bukavu and between Walikale and Goma; imperfect procedures and negligence on the part of some officials in the collection of statistics; unrecorded consignments of wolframite, in

particular from the Bishasa mine in Masisi and the island of Idjwi in South Kivu; and more favourable tax rates in neighbouring countries.¹⁷⁰

Smuggling of gold is especially rife. Officials from several agencies responsible for export statistics told Global Witness that they did not have any figures for gold exports at all. They attributed this in part to the high rate of taxation in the DRC and in part to the fact that gold is easier to smuggle than cassiterite.¹⁷¹ The head of the Division des Mines in South Kivu estimated that at least 90% of gold exports were not declared. Only 20 kg a month was officially recorded, whereas gold production for the province was estimated, on average, at 300 to 400 kg a month.¹⁷²

Government systems for recording mineral production and exports still do not provide sufficiently precise information to ascertain whether, and which, minerals may have passed through the hands of armed groups. The Division des Mines in



Lake Kivu, seen from Goma. Minerals are often smuggled across the lake.

North Kivu told Global Witness that they were making greater efforts to trace the origins of minerals.¹⁷³ Such initiatives are to be encouraged. However, in order to be used effectively, these systems will need to be accompanied by much stronger law enforcement measures. The collection of information alone will not succeed in stamping out the illicit trade.

Indeed, none of the measures set up by the government so far has affected the capacity of armed groups or the FARDC to continue trading in minerals. While some of the problems stem from administrative and bureaucratic obstacles – for example provincial mining inspectors may have to wait several months for authorisation to visit mines – others are a direct consequence of the militarisation of mining across the region, with members of the FARDC or armed groups actively blocking civilian authorities from doing their work. This has been the case with Bisie mine, for example, where the FARDC have prevented SAESSCAM from operating (see section on Bisie above).

Some mining inspectors and other civil servants have become so afraid of the actions of FARDC soldiers or armed groups that they no longer dare to visit the mines or even complain about the presence of these groups there.¹⁷⁴ Other officials have simply given up trying to report abuses or to control what is clearly uncontrollable. A senior official stated that the FARDC were systematically involved in instances of fraud, even for minerals that they had not produced themselves: “You can’t export fraudulently if you don’t have the support of the army [...] The state itself has destroyed all the structures of the state [...] Fraud is the rule.”¹⁷⁵ A provincial customs official complained that at Kiliba, near the border with Burundi, and Baraka (both in South Kivu), the FDLR intimidated and blocked the work of customs agents in order to force their products through; economic operators were having to pay “taxes” to armed groups in front of customs officials.¹⁷⁶

More broadly, provincial government officials admit that they struggle to control their frontiers, even those where there are official border crossings and customs posts. Lake Kivu and Lake Tanganyika are among the easiest routes for smuggling goods out of the country, especially at night, as there are no controls there at all. The Vice-Governor of South Kivu described the houses on the shores of Lake Kivu as “nocturnal ports”; small motorised boats, carrying minerals and other goods, cross the lake several times a night.¹⁷⁷

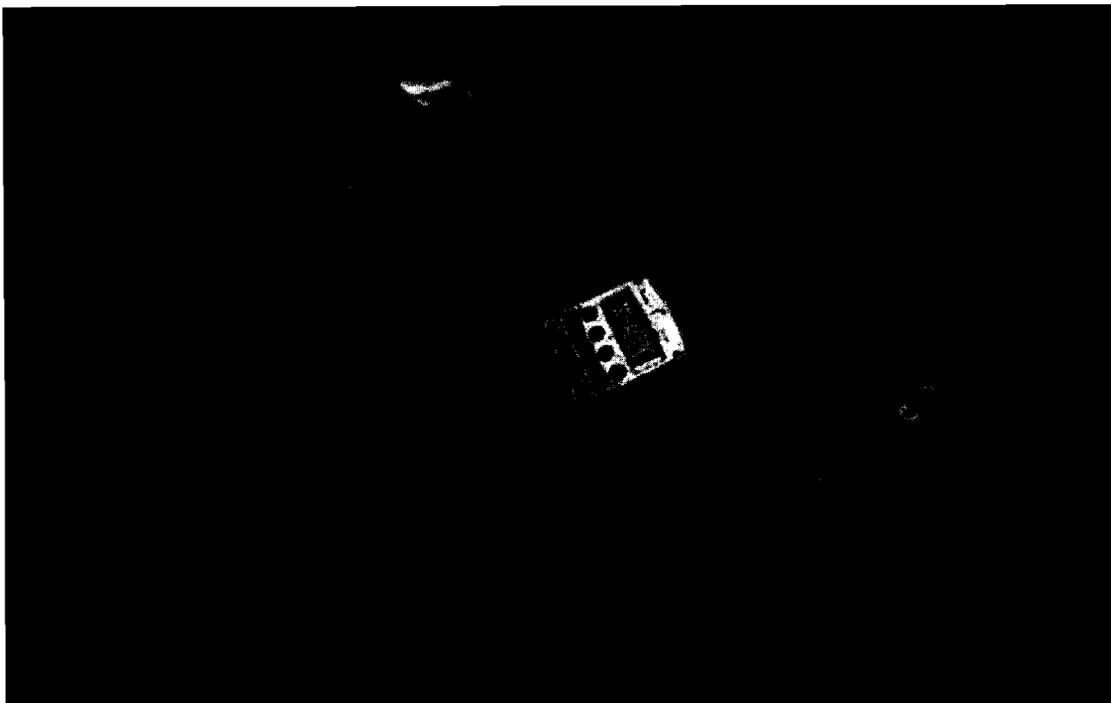
At the national level, the government in Kinshasa has failed to take effective action to demilitarise the mining sector in North and South Kivu. On several occasions, the Ministry of Mines has announced its intention to crack down on the illegal trade and on companies buying minerals produced by armed groups. However, to date, these promises have not materialised. Through a combination of inability and lack of political will to confront the military, the government has also allowed senior FARDC officers, and those under their command, to continue profiting from the trade with impunity.

One of the more radical measures imposed by the Minister of Mines in Kinshasa was a temporary suspension of mining in Walikale in February 2008, supposedly to stop illicit movements of minerals and, more specifically, to address the situation at Bisie. The measure was short-lived: after a few weeks, following intensive lobbying by traders, as well as by the local population who complained that the planes which used to fly out with cassiterite were no longer bringing food and other supplies into Bisie, the Governor of North Kivu lifted the suspension in April 2008, and the transport of minerals from Walikale resumed. Even during the period of the suspension, mining did not stop: buyers and traders simply switched to other routes to export their minerals, for example via Bukavu in South Kivu. This example is typical of the way in which decisions made in Kinshasa are quickly over-ruled by local interests.

10 The role of the *comptoirs*

“We all end up buying minerals which, in some way, have been produced illegally. You can’t just ask us to stop. We have no alternatives other than closing.”

REPRESENTATIVE OF A *COMPTOIR* SPEAKING TO GLOBAL WITNESS, GOMA, 9 AUGUST 2008



© Mark Greiner

Traders set the price for cassiterite, Bisie, North Kivu, April 2008.

The *comptoirs* — trading houses based in the towns of Goma and Bukavu^{xiv} — are a critical point in the chain of supply and export of minerals from eastern DRC. The *comptoirs* buy minerals from all over North and South Kivu (as well as other locations), including those produced by and benefiting armed groups and the FARDC, then sell them on, primarily to foreign companies. This trade accounts for the majority of exports from the two provinces, with the *comptoirs* effectively acting as a gateway to the international

markets. The South Kivu branch of the *Fédération des Entreprises du Congo* (FEC), the federation of Congolese businesses to which most of the main *comptoirs* are affiliated, estimated that in 2007, official *comptoirs* in South Kivu exported each month an average of 450 tonnes of cassiterite, 45 tonnes of wolframite, 16 tonnes of coltan and 10 kg of gold.¹⁷⁸

Officially registered *comptoirs* are required to obtain a licence from the Ministry of Mines. Thereafter, they are

^{xiv}Other unofficial trading companies and buyers, sometimes calling themselves *comptoirs* too, operate in smaller towns and other locations in North and South Kivu.

operating “legally”, at least from a technical point of view. Likewise, the *négociants* who supply them with minerals are also required to register with the authorities and obtain a licence.

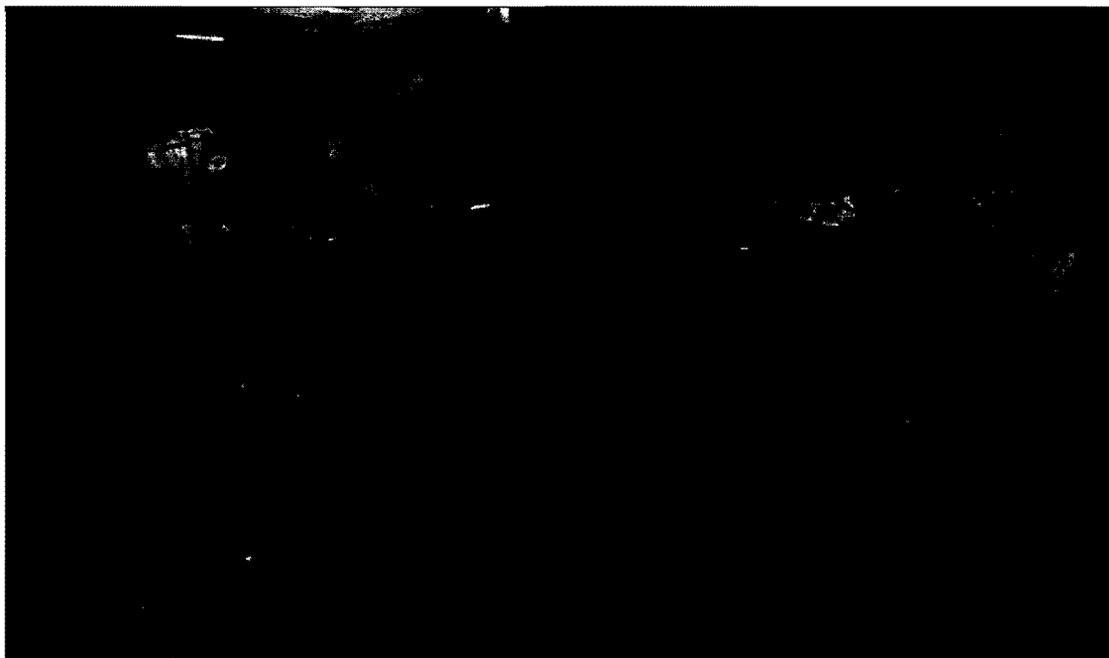
The *comptoirs*’ official status has allowed them to claim a certain legitimacy. This in turn has enabled the foreign purchasers who buy minerals from them to claim that they buy only from “legal” sources. In reality, several of these *comptoirs* and foreign purchasing companies are buying and selling minerals produced by armed groups or FARDC units entirely illegally.

In 2008, there were approximately 40 licensed *comptoirs* in North and South Kivu.¹⁷⁹ Many of these *comptoirs* are run by individuals who have been buying and selling minerals throughout the war. Their businesses have survived, or even thrived, as they have been willing to trade with armed groups, directly or indirectly, regardless of their record of violence and human rights abuse.

Some of these individuals are powerful businessmen in Goma or Bukavu, with strong political connections

inside the DRC and in neighbouring countries. Among them are Mudékereza Namegabe, who heads the *comptoirs* Groupe Olive and MDM, and is president of the South Kivu branch of the FEC; Muyeye Byaboshi, who runs Etablissement Muyeye, another prominent *comptoir* in Bukavu; and Alexis Makabuza, a businessman in Goma who heads Groupe Minier Bangandula (GMB), a company which has been in conflict with MPC over rights to mine cassiterite at Bisie. GMB controls mining areas adjacent to Bisie. Alexis Makabuza also works for Global Mining Company (GMC), another mineral *comptoir* in Goma. In August 2008, he informed Global Witness that GMC had hired him as a consultant, to set up the company’s mineral treatment factory; he stressed that he did not own shares in the company.¹⁸⁰

Several of these *comptoirs*, and the individuals running them, have been named by the Group of Experts as trading in minerals produced by armed groups. In particular, Groupe Olive, Muyeye, MDM, WMC, Panju and Namukaya (all major *comptoirs* in South Kivu) are cited as knowingly trading in minerals produced or handled by the FDLR, notably through pre-financing *négociants* who work closely with the FDLR.¹⁸¹ The *comptoir*



Barrels of cassiterite being prepared for export at a *comptoir* in Goma, North Kivu, April 2008.

Munsad is cited as buying coltan from the Bibatama mine, under CNDP control.¹⁸²

Groupe Olive has been granted exploration permits for cassiterite mines at Lemera,¹⁸³ an area used both by the FARDC and the FDLR to trade in minerals (see sections 5 and 6).

The *comptoirs* buy from the FDLR and the FARDC through intermediaries, who, according to local sources, are well-known to everyone in the trade. They also buy minerals through official *négociants*, with whom they have built close and sustained relationships; some of these *négociants* have connections with armed groups.¹⁸⁴ One source told Global Witness:

"Everyone knows who the FDLR intermediaries are but they won't say in case it implicates them. The FARDC are also involved. Everyone, including the authorities, is involved [...] They all know each other but won't say [their names]. But we know which *comptoirs* they sell to in Bukavu [...] Muyeye, MDM. They buy cassiterite, coltan and gold from Shabunda, Mwenga, Hombo and Bunyakiri, either from FDLR areas or through the civilian population used by the FDLR. The intermediaries then send the minerals by plane or trucks to Bukavu. They sell to those particular *comptoirs*. Everyone knows what's going on but the authorities don't control the situation."¹⁸⁵

A string of excuses: the responses of *comptoirs*

Global Witness met representatives of many of the main *comptoirs* in Goma and Bukavu in July and August 2008, as well as the presidents of the FEC in North and South Kivu and the chairman of the association of *comptoirs* in North Kivu. Global Witness asked them what measures they were taking to ensure that they

were not purchasing minerals from armed groups or military units and that their trade was not fuelling the conflict. Representatives of several *comptoirs* claimed that they could not know exactly where the minerals came from, as it was not possible to distinguish minerals from different sites, and that minerals from different locations were often mixed together before reaching them.¹⁸⁶

These claims do not stand up to scrutiny when confronted with the reality on the ground. The individuals running the main *comptoirs* are, for the most part, Congolese businessmen from the region with many years' experience in trading in minerals. They have extensive networks of contacts in the mining areas of both provinces and use local agents to visit mining sites and trading centres on their behalf; some of them reportedly even visit these sites themselves. A humanitarian source from Walikale told Global Witness: "The *comptoirs* are seen everywhere around the mines".¹⁸⁷ A local buyer in Uvira claimed that all the main *comptoirs* based in Bukavu know exactly where their supplies originate from: they usually ask the *négociants* for information about the origin of the minerals as the quality varies from mine to mine.¹⁸⁸ Thus statements by Mudekereza Namegabe that "*comptoirs* find it difficult to know what's happening in the mines and who's exploiting what"¹⁸⁹ or by Alexis Makabuza that *négociants* could deceive *comptoirs* about the origin of minerals¹⁹⁰ seem implausible.

More generally, within North and South Kivu, the fact that certain territories and mines are controlled by particular armed groups or army units is common knowledge. A range of different people interviewed by Global Witness within a period of just a few weeks were able to provide precise local information to this effect. It is therefore highly unlikely that well-placed individuals involved in the mineral trade and based in the heart of the region would not have access to this information. Even if some did not, they have a duty to obtain it and the means to do so.

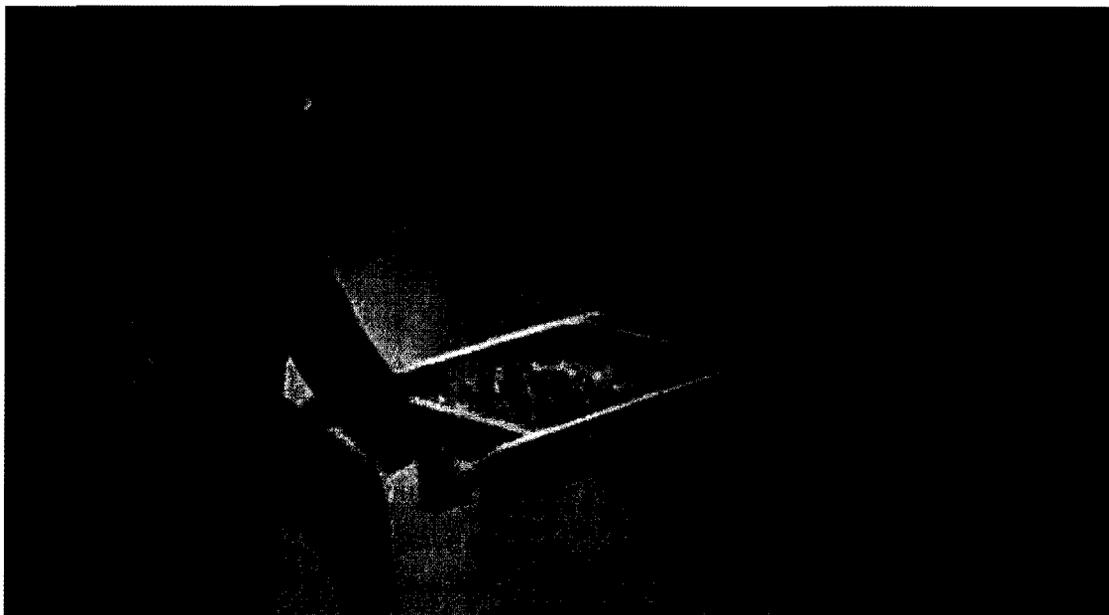
Independently, the Group of Experts reached a similar conclusion: “it is clear that the traders named below [in the section of its report on the FDLR’s financing through natural resources] are aware of the profits these [armed] groups derive from this trade, and that they are not vigilant enough in the sourcing of minerals they purchase”.¹⁹¹

In a meeting with Global Witness, representatives of several *comptoirs* affirmed that none of them bought minerals from the FARDC.¹⁹² Yet at least one subsequently informed Global Witness that it purchased and sold minerals from mines widely known to be under the control of the FARDC. In response to a letter from Global Witness about due diligence policies, the *comptoir* Pan African Business Group stated that it bought cassiterite from Bisie and Njingala in Walikale (as well as mines in Maniema province) and that it had representatives on site in these locations.¹⁹³ Other sources informed Global Witness that the *comptoirs* Sodexmines and Amur were among the biggest buyers of cassiterite from Bisie, with Sodexmines exporting around seven containers a week (each container carrying 22-24 tonnes); both *comptoirs* export the

cassiterite to Belgium (see section 11).¹⁹⁴ Sodexmines is one of the largest *comptoirs* in North Kivu.

Since mid 2008, the *comptoirs* in Goma and Bukavu have been coming under increasing pressure to exercise greater care in verifying the origin of their purchases. Some have reacted defensively to allegations that they may be trading in minerals produced by armed groups. In December 2008, FEC North Kivu wrote a letter to the Minister of Mines in Kinshasa complaining that the *comptoirs* were coming under attack by the Group of Experts and NGOs.¹⁹⁵

In meetings and correspondence with Global Witness, representatives of *comptoirs* stressed that they were not knowingly doing business with armed groups. Muyeye Byaboshi – whose *comptoir* is named by the Group of Experts as buying minerals produced by the FDLR – minimised the involvement of the FDLR in the mineral trade. He denied that there was any link between artisanal mining and the FDLR and claimed that the FDLR did not exploit gold, or only a very small amount.¹⁹⁶ The Director of Pan African Business Group said his *comptoir* only bought cassiterite originating from



Workers at the Pan African Business Group, Goma. The Pan African Business Group was one of the *comptoirs* buying cassiterite from Bisie when it was under the control of the 85th brigade of the FARDC.



© Mark Gremer

Crushing cassiterite at a *comptoir* in Goma, North Kivu, April 2008.

government-controlled zones; he did not comment on the fact that the profits from minerals in these zones often go straight into the pockets of the FARDC.¹⁹⁷

Some *comptoirs* stated that they were adopting new ethical policies.¹⁹⁸ In correspondence with Global Witness, Pan African Business Group stated that it had set up a system whereby its representatives would check the origin of all minerals from the *négociants* who supplied them.¹⁹⁹ Zulfikarali Panju, head of Panju *comptoir*, claimed that before any purchase, he sought as much information as possible about the identity of the supplier and the origin of minerals; he had concluded that most of the minerals purchased came from the provinces of Maniema or northern Katanga.²⁰⁰ Yet the Group of Experts names Panju as one of the *comptoirs* which are directly complicit in pre-financing *négociants* who work closely with the FDLR and are aware that some of the mines they buy from are controlled by the FDLR.²⁰¹

The *comptoirs* have tended to blame the Congolese state for its failure to control the mining sector rather than

address the question of their own responsibility to exercise due diligence.²⁰² They have also shifted the focus of the discussion on to what might happen if mining in eastern DRC were stopped altogether, justifying their activities on the basis that a large proportion of the population in eastern DRC would be left without any source of income if the trade were shut down. The FEC in South Kivu described international campaigns linking the ongoing conflict with the mineral trade as "a plot against the Congolese population with a view to making them ever poorer".²⁰³ In early 2009, several mineral *comptoirs* in South Kivu claimed to have suspended their activities in response to allegations that they were fuelling the conflict.²⁰⁴

Global Witness would welcome measures by the *comptoirs* to adopt ethical policies as a first step towards ensuring that their trade is not contributing to the conflict. However, until such policies are implemented, and for as long as these *comptoirs* continue to purchase and sell minerals which have passed through the hands of armed groups or FARDC units, their promises remain hollow.

Foreign companies buying or handling minerals from eastern DRC

Foreign companies who buy minerals from North and South Kivu also have a responsibility to ensure that their trade is not benefiting any of the warring parties. Yet some of these companies, based in Europe, Asia and elsewhere, have been buying minerals from *comptoirs* known to be trading with armed groups for several years, apparently without adjusting their practices in light of the conflict or carrying out sufficient due diligence to ensure that their trade is not fuelling the violence.

According to Congolese government statistics, companies registered in Belgium accounted for the largest proportion of cassiterite, wolframite and coltan imports from North and South Kivu in 2007 and from North Kivu from January to September 2008.²⁰⁵ The main Belgian companies are Trademet, Traxys, SDE, STI and Specialty Metals.²⁰⁶

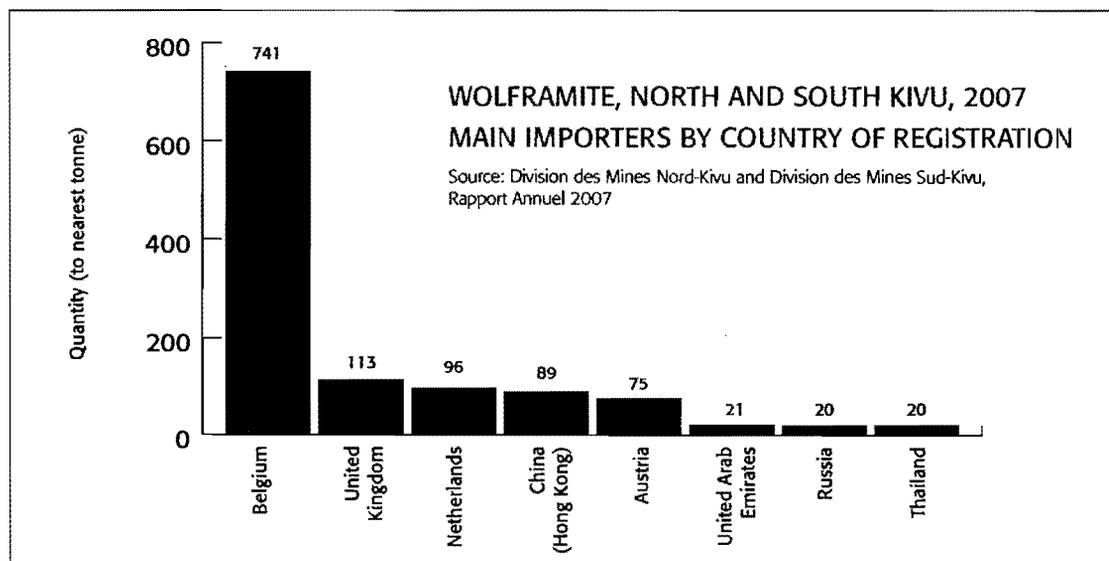
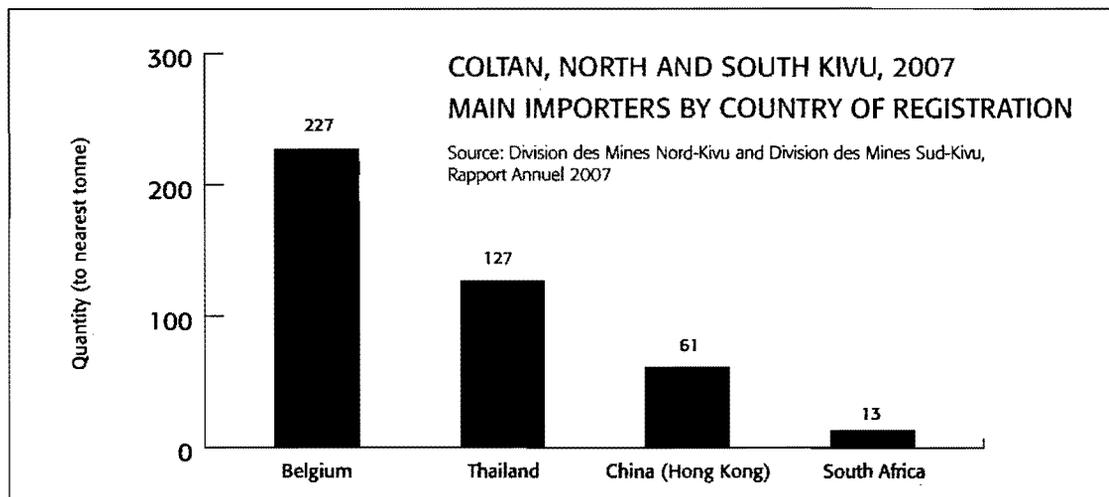
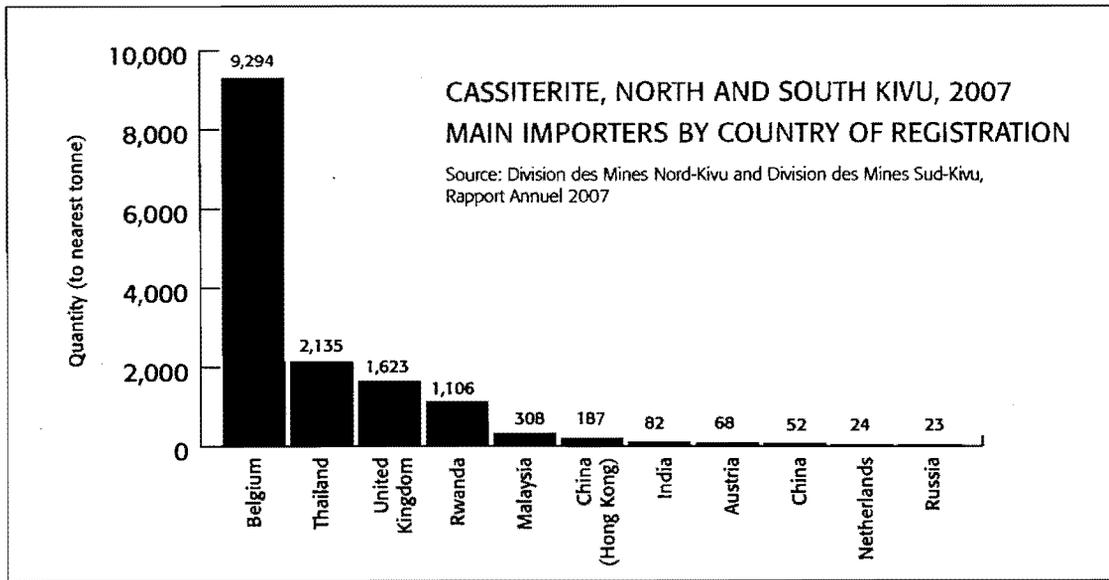
After these Belgian companies, the largest buyers of cassiterite from North and South Kivu in 2007 were the Thailand Smelting and Refining Corporation (THAISARCO), the world's fifth-largest tin-producing company²⁰⁷ owned by the large British metals company Amalgamated Metal Corporation (AMC) Group;²⁰⁸ Afrimex, a UK-registered company (see below); and MPA, the Rwanda-based subsidiary of South-African owned Kivu Resources. These were followed by the Malaysian Smelting Corporation Berhad (the world's fourth-largest tin-producing company),²⁰⁹ and companies based in China, India, Austria, the Netherlands and Russia.²¹⁰ Four other companies – African Ventures Ltd in China, Met Trade India Ltd in India, Eurosib Logistics JSC in Russia and BEB Investment Inc. in Canada – accounted for an increasing proportion of cassiterite imports from North Kivu between January and September 2008.²¹¹

For coltan, the largest importers in 2007 were Traxys, THAISARCO and companies based in Hong Kong and South Africa.²¹²

For wolframite, Belgian companies (Trademet and Specialty Metals) were once again the largest buyers in 2007. Other buyers included Afrimex, THAISARCO and companies registered in the Netherlands, China, Austria, United Arab Emirates and Russia.²¹³

There are no reliable statistics for gold exports from North or South Kivu. Even for cassiterite, wolframite and coltan, Congolese government statistics are incomplete, and there are large discrepancies with corresponding statistics from importing countries. For example, statistics from Thailand and Malaysia report much higher figures for cassiterite imports from the DRC than those cited by the Congolese government.²¹⁴ There may be a number of explanations for these discrepancies, including inaccuracy of statistics; smuggling and failure to declare a significant proportion of mineral exports from the DRC; and a common practice among exporters of under-declaring both the value and quantity of exports. In addition, Congolese government statistics sometimes list the transport or freight company, rather than the buyer, as the importer. In some cases, this may distort the picture as the transport company may not be based in the same country as the buyer.

Some of the *comptoirs* provided Global Witness with additional information on their clients. For example, in December 2008, the *comptoir* Pan African Business Group informed Global Witness that in the 13 months that it had been trading, it had bought 850 tonnes of cassiterite and that its business partner was a Russian company, Novosibirsk Integrated Tin Works.²¹⁵ If all or most of





© Gerard Ludwig/Corbis

Tin plant at Novosibirsk Integrated Tin Works. This Russian company buys cassiterite from the Pan African Business Group *comptoir* in Goma.

the 850 tonnes were sold to this one company, it would make it one of the biggest buyers of cassiterite from the region.^{xv}

The December 2008 report of the Group of Experts names Trademet, Traxys, Afrimex and THAISARCO as buying from *comptoirs* which are directly complicit in pre-financing *négociants*, who in turn work closely with armed groups.²¹⁶

Previously, Trademet, Specialty Metals, Afrimex, AMC and the Malaysian Smelting Corporation were all included in a list of companies considered by the Panel of Experts to be in violation of the OECD Guidelines for Multinational Enterprises in 2002.²¹⁷ xvi

The mandate of the Group of Experts is limited to investigating sources of finance for non-state armed groups. However, Global Witness has confirmed that

some of these foreign companies are also using suppliers who buy minerals produced by the FARDC. For example, SDE bought cassiterite from Sodexmines, one of the main buyers of cassiterite from Bisie, when the mine was still under the control of the 85th brigade of the FARDC (see section 5).²¹⁸

SDE and Sodexmines are both part of the Blattner Elwyn group,²¹⁹ a group of companies owned by Elwyn Blattner, an American national who has been based in the DRC for many years.²²⁰ According to the company's website, the group operates in several different sectors in the DRC; apart from its mineral trading activities through Sodexmines and SDE, it works in the agriculture, telecommunications, banking and logistics sectors. Most of the group's operations are based in the DRC, but it has also operations in Europe, for example in Belgium and France.²²¹

^{xv}Government statistics from North Kivu for January to September 2008 show that Russian company Eurosib Logistics bought 700.59 tonnes of cassiterite from Pan African Business Group. Eurosib Logistics is a transport company, based in Saint Petersburg, Russia, which may be providing a service to cassiterite buyers such as Novosibirsk Integrated Tin Works.

^{xvi}Some companies cited in the Panel of Experts' October 2002 report as being in breach of the OECD Guidelines for Multinational Enterprises claimed to have been subsequently "cleared" by the Panel. However, the process of resolution of these cases was seriously flawed. It left many questions unanswered and gave the impression that certain cases had been satisfactorily resolved when, in fact, many of the specific concerns raised by the Panel had not been addressed. For further details, see Rights and Accountability in Development (RAID), "Unanswered Questions: Companies, Conflict and the Democratic Republic of Congo", May 2004, and Global Witness, "Afrimex (UK) – DRC: Complaint to the UK National Contact Point under the Specific Instance Procedure of the OECD Guidelines for Multinational Enterprises", 20 February 2007.

AMC AND THAISARCO²²²

The Amalgamated Metal Corporation (AMC) group is a large international group which trades, distributes and manufactures metals, metal products and construction materials.

Amalgamated Metal Corporation PLC, London, is the group's holding company. The AMC Group operates through subsidiaries or associates in Europe, North America, Africa, Asia and Australasia. AMC was a founder member of the London Metal Exchange.²²³

The AMC group includes four UK-based entities:

- AMCO Investments Ltd
- Amalgamated Metal Corporation PLC
- Amalgamated Metal Investment Holdings Ltd
- British Amalgamated Metal Investments Ltd

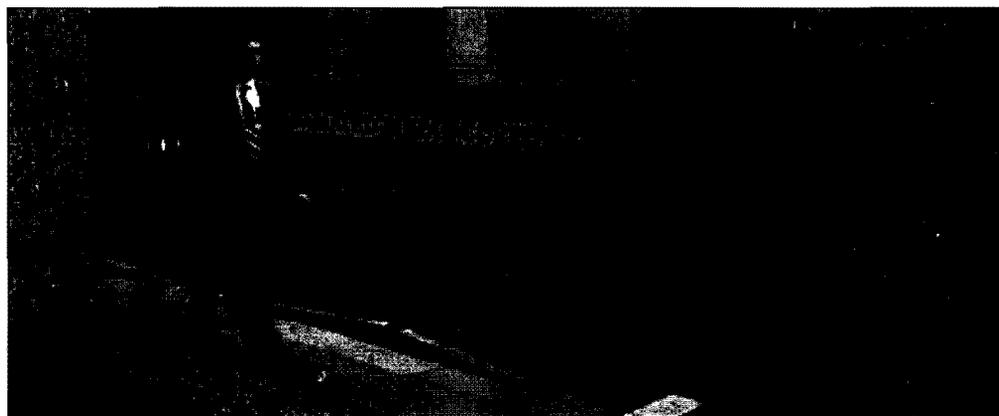
These four companies are the principal owners of the Thailand Smelting and Refining Corporation (THAISARCO), the fifth-largest tin-producing company in the world. AMC PLC's 2007 Annual Report and Accounts refer to THAISARCO as a principal subsidiary and operating unit of AMC PLC and state that AMC PLC owns 75.25% of THAISARCO.²²⁴

THAISARCO's chairman and three of its directors own shares in

two of the UK-registered entities within the AMC Group: AMCO Investments Ltd and Amalgamated Metal Corporation PLC.²²⁵

Global Witness is concerned that THAISARCO's trading practices are fuelling the conflict in eastern DRC. THAISARCO's main supplier in South Kivu is Panju, one of the *comptoirs* identified by the Group of Experts as complicit in pre-financing *négociants* who work closely with the FDLR and are aware that certain mines they buy from are controlled by the FDLR.²²⁶ Congolese government statistics show that THAISARCO purchased minerals from Panju in 2007 and 2008.²²⁷ The Group of Experts states that it obtained documents showing that all Panju's minerals purchases were sold to THAISARCO.²²⁸

Global Witness is calling on the UK government to request that the UN Sanctions Committee add the UK-based entities of AMC and their directors to the list of companies and individuals against whom sanctions should be imposed. UN Security Council Resolution 1857 (2008) states that "individuals or entities supporting the illegal armed groups in the eastern part of the Democratic Republic of the Congo through illicit trade of natural resources" should be subjected to sanctions, including travel restrictions and an assets freeze.²²⁹



AMC's offices in central London. AMC's subsidiary, THAISARCO, has purchased minerals from a *comptoir* whose suppliers have close links with the FDLR.

Responses from companies: no coherent plan to address the conflict dimension of the mineral trade

Global Witness wrote to more than 200 companies in December 2008 and January 2009 inquiring about their trade with the DRC and their due diligence policies.

The companies, based in a range of countries and continents, included small and large trading companies, processing companies, mining companies,

manufacturers, major electronics companies and industry bodies in the mining and metals sectors. Some of the replies from companies are quoted below. A full list of the companies which had replied to Global Witness by the end of April 2009 is contained in Annex C of this report.

Overall, companies' responses were disappointingly evasive. Few have a coherent or comprehensive plan for addressing the impact of their trade on the violence and

human rights abuses in eastern DRC. Some mention their intentions to tighten their due diligence procedures, but these rarely go beyond their immediate suppliers and do not provide details of independent verification or checks of the entire chain of supply. Very few companies even mention the specific context of armed conflict in eastern DRC or the fact that the warring parties are heavily involved in the mineral trade.

One of the recurring arguments in companies' responses is that it would be extremely difficult or impractical for them to track every stage of their supply chain and obtain information about the suppliers and origin of every single component, in part because of the many sources of supplies and large number of suppliers. Global Witness appreciates that this might be an onerous and costly process but believes that companies have no alternative but to invest in it, and to make such a process systematic, if they want to be sure that their business is not associated with human rights abuses and conflict in eastern DRC. Some of the positive measures which companies mention, for example imposing tighter requirements on their direct suppliers and

observing codes of conduct, will be of limited use if they are not accompanied by corresponding steps all along the supply chain.

Another common argument is that companies deal only with "legal" or "licensed" traders. As demonstrated elsewhere in this report, this argument quickly becomes irrelevant in the context of eastern DRC, as it is often licensed traders who buy and export minerals produced by or benefiting the warring parties. Furthermore, by using this argument, companies are effectively legitimising suppliers whose trading practices may be fuelling the conflict.

Trading and processing companies

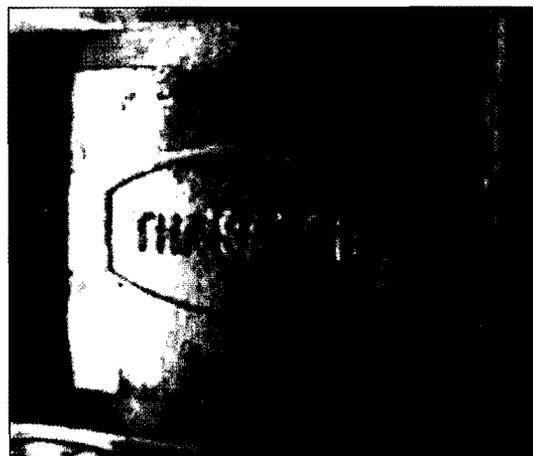
Most of the letters to Global Witness from trading and processing companies failed to address the specific question of how they ensure that their trade is not contributing to the conflict. Many referred to general standards of corporate social responsibility, but few described specific measures they were taking to identify the exact origin of their supplies.



Tin smelting. Processing companies have failed to adopt procedures for ensuring that the minerals they handle are not fuelling the conflict in the DRC.

Some companies, such as THAISARCO and its parent company AMC, attempted to create a distance between their trade and the situation in eastern DRC by stating that they do not operate "directly" in the DRC.²³⁰ Others replicated arguments used by the *comptoirs*, relating, in particular, to the "legal" nature of their suppliers. The fact that this "legal" status has been acting as a cover for some of these suppliers to trade with the warring parties in eastern DRC was not acknowledged. For example, Malaysia Smelting Corporation Berhad (MSC) stated that the tin concentrates it obtained from the DRC were acquired "through licensed traders who are authorised to perform the trade. They have also confirmed to us that the material arises from legitimate sources recognised by the host government."²³¹ This would seem to indicate that they are content to do business with these traders simply on the basis that they are licensed – a status which does not imply any comment on the nature of these traders' activities or on their relationships with their own suppliers, some of whom may have links with armed groups. Their response would also indicate that they accept at face value these traders' assurances that the minerals come from "legitimate sources recognised by the host government"; there is no indication that MSC has attempted to verify these assurances or find out exactly what these "legitimate sources" are.

Like the *comptoirs* – and many other foreign companies who replied to Global Witness's letter – MSC stated: "We consider total disengagement not to be an ethical option as this would deprive those dependent on artisanal cassiterite production of their only livelihood."²³² THAISARCO made a similar argument, claiming that "most parties and commentators appear to be in agreement that the continued trade in minerals from DRC is fundamental to the well being of the artisanal mining communities".²³³ Apart from the fact that Global Witness has not called for total disengagement or a complete ban on the trade (see section 2), these arguments fail to take into account



Tin ingot produced by THAISARCO.

that, as illustrated in this report, the artisanal miners whose interests these companies are claiming to serve are the first to suffer exploitation and human rights abuses at the hands of the warring parties and derive few, if any, benefits from working in these conditions. Companies have used the "ethical" argument to distract attention from the profoundly unethical nature of some of the practices underpinning this trade.

Belgian company Trademet was among those which tried to shift the burden of responsibility onto the Congolese government. It claimed to be asking its suppliers to confirm the origin of their purchases in writing, yet described Global Witness's recommendation that companies verify "the exact origin of every kilo of exported material" as "inappropriate in the current context in Congo", stating that this was the exclusive responsibility of the Congolese state, not that of companies like Trademet.²³⁴

Some of the companies which replied to Global Witness stated that they were committed to upholding and improving due diligence policies. However, the policies or internal codes of conduct they refer to are fairly general and do not include specific safeguards against the mineral trade fuelling armed conflict. For example, AMC, MSC,

THAISARCO and Trademet refer to the policies of the tin industry body, ITRI.²³⁵ The main document to which they refer is ITRI's Artisanal and Small Scale Mining Policy; this policy covers a number of issues relating to artisanal mining and corporate social responsibility, but does not include specific measures for ensuring that its members' trade does not contribute to financing armed groups in the DRC or elsewhere.²³⁶

More recently, ITRI posted a document on its website entitled "Progress report: towards a responsible cassiterite supply chain", which appears to be a more tailored response to some of the questions arising specifically from the trade in cassiterite from the DRC. However, even this document does not explicitly refer to the risks of trading in minerals produced by the warring parties. Instead, it uses general phrases such as "concern [...] regarding the circumstances surrounding cassiterite production and trade in, and from, the Democratic Republic of Congo". The document states that ITRI and its members "have committed to take steps to improve and encourage the

adoption of appropriate due diligence procedures throughout the supply chain in that region". Among these steps is an action plan which is to consider "options for extending due diligence procedures [...] as well as the longer-term possibility of industry self-declaration and audited certification". However, the statement notes that "while significant efforts will be made to identify the source of materials from the DRC it may remain impossible to demonstrate exactly what taxes or informal payments may have been made during transportation of that material. In light of this, provision of definitive evidence proving no unofficial payments across the entire supply chain may therefore be considered impractical under circumstances currently prevailing in the DRC."²³⁷

Global Witness welcomes ITRI's commitment to extending due diligence procedures. However, the examples of information which ITRI will ask suppliers to provide, cited in the progress report, still do not address the involvement of the warring parties in the mineral trade. ITRI states that the information requirements will cover aspects such as "whether suppliers are officially recognised organisations with appropriate local authorisation to carry out the activities in which they are engaged; whether locally required operating and export licences are held" and "whether appropriate taxes and other royalties have been paid only to the appropriate bodies".²³⁸ As explained above, in the current context of eastern DRC, these criteria do not provide any guarantee that suppliers are ensuring that their minerals are "conflict free". On the contrary, as illustrated by the behaviour of some of the main *comptoirs*, suppliers can meet all these conditions of "legality", yet continue to deal in minerals produced by armed groups or the military. A system of due diligence based solely on this type of information would not succeed in excluding such sources from the supply chain.

Furthermore, ITRI's statement that it may be "impractical" to demonstrate that no unofficial payments have been made along the supply chain could discourage companies from performing careful due diligence. ITRI



The London Metal Exchange is the world's leading metals market. Its prices for tin and other metals are used as a global reference.

and other industry bodies should be encouraging the opposite attitude among their members and urging them to uphold the highest standards at all times. The circumstances which make it difficult to operate in eastern DRC are precisely those which require an even higher level of due diligence than companies might perform in a more stable environment. Standards should not be set on the basis of what is practical. Companies have a responsibility to ensure that their trading practices are not causing human rights abuses, directly or indirectly, or supporting groups responsible for human rights abuses.

Mining companies

Not surprisingly, the few companies which did specifically address the question of the presence of armed or military groups in their correspondence with Global Witness are mining companies which have several years' first-hand experience of the situation in the DRC.

MPC formulates a clear position on ensuring that its activities do not contribute to the conflict, although the company does not have a formal due diligence policy.²³⁹ Its sensitivity to this question may have been brought about by its negative experiences at Bisie, where it has been unable to operate due to obstruction by FARDC soldiers and confrontations with GMB and the COMIMPA cooperative (see section 5). In a letter to Global Witness, MPC's parent company, Kivu Resources, states that MPC "applies significant emphasis on understanding the origin of the material purchased [...] and if there is any military involvement in the mining, or logistics of the material offered for purchase". The letter explains that MPC follows a procedure of physically visiting its properties and reporting any instances of military presence. It states: "Where there is any doubt as to the security of the company personnel, or as to the involvement of the military in any small scale mining that may be taking place [...] appropriate action [is] taken to reschedule or discontinue exploration activities. In such cases MPC would treat this area as a 'no go' area for the purchase of

mineral concentrates." The measures which the company would take "to avoid contributing to the conflict or benefiting armed groups or the DRC army" include "not purchasing material from such an area, notwithstanding the significant profits that could be made from such activities".²⁴⁰ In February 2009, MPC informed Global Witness that for the past three years, it had only purchased minerals from Manicma and Katanga provinces on the basis that these areas were "not the subject of control by any renegade military group".²⁴¹

Similarly, Banro, a gold mining company present in South Kivu, stated to Global Witness that its company, employees, contractors and consultants "are expressly [sic] prohibited from any dealings with illegal armed groups". However, it claimed that "the movement or presence of armed militia groups at or near our projects in the DRC has not been a pressing issue for the Company, as any such presence has been peripheral and very rare. On those rare occasions when a militia group has been in the vicinity of our operations, we have withdrawn our people from that particular locale and waited for the armed group to leave before resuming our activities."²⁴² This does not correspond to information gathered by Global Witness in South Kivu indicating that the presence of armed groups had been widespread for several years in areas where Banro's concessions are located.

Electronics companies

In their letters to Global Witness, several of the large electronics companies, including HP, Nokia, Dell and Motorola, refer to their involvement in the Electronics Industry Citizenship Coalition (EICC) or the Global e-Sustainability Initiative (GeSI), and a report prepared for the EICC and GeSI entitled "Social and Environmental Responsibility in Metals Supply to the Electronic Industry".²⁴³ The report is a desk-based study of how the trade in certain metals (including tin) is structured and how these metals are used in electronic products. It provides an overview of some of the social and environmental issues



The electronics industry accounts for a large proportion of the use of metals derived from minerals in eastern DRC, yet electronics companies still do not apply checks throughout their entire supply chain.

associated with this trade across the world, as well as recommendations “on whether and how the members of these organizations [GeSI and EICC] can effectively influence social and environmental issues associated with production of metals used in electronic products”. It touches on some of the difficulties electronics companies might face in tracing the sources of metals, due, for example, to the fact that supplies of many different origins are often mixed together long before they reach the electronics companies.

Although the report is more than 80 pages long, it contains only three, short recommendations, which are very weak and general and provide no precise guidance. With regard to social and environmental responsibility (one of the main themes of the report), the report simply recommends that the electronics industry engage with appropriate existing initiatives and stakeholders to strengthen efforts and reduce proliferation of overlapping initiatives. With regard to chain of supply, it recommends that electronics companies further characterise special metal content and use in electronic products which would support the tracking of metals used in electronics and help trace sources of materials.²⁴⁴

Prior to commissioning this study, the EICC adopted an Electronic Industry Code of Conduct. The Code of Conduct includes provisions on labour conditions, health and safety and the environment, most of them based on international standards. The introduction states: “For the code to be successful, it is acknowledged the Participants should regard the code as a total supply chain initiative. At a minimum, Participants shall require its next tier suppliers to acknowledge and implement the Code.”²⁴⁵

The response by Hewlett-Packard (HP) to Global Witness is one of the few that refers specifically to efforts to “minimize the risk that electronics manufacturing is supporting the parties responsible for violence in the eastern DRC.” It mentions the Electronic Industry Code of Conduct and the company’s own efforts to ensure that its suppliers respect it, including through “onsite supplier audits to ensure suppliers understand our expectations and have defined corrective actions where needed to meet them”. HP states: “We have focused on our first tier suppliers, where we think we have the most influence. HP has also been successful in reaching down to the second tier through many of our first tier suppliers.” However, it points to some of its limitations in engaging directly with all its suppliers beyond the first tier, stating: “It is the responsibility of our first tier suppliers to require the EICC to be followed by their suppliers, and so on down the supply chain. An increasing number of our suppliers have active programs to do so.”²⁴⁶ There are a number of inconsistencies in the response: for example, on the one hand, the company declares its intention to “map the supply chain down to the extractives level”, beyond the first and even second tiers of suppliers, yet it seems reluctant to take responsibility for the practices of its suppliers further down the chain.

Nokia’s response is less detailed but accepts that the company has “the responsibility over everything that

goes into making a Nokia product. We exercise this responsibility by a stringent supplier selection and monitoring process." It states that all its suppliers are contractually obliged to follow a set of specific requirements which are systematically monitored; it does not provide details on how this monitoring is conducted or by whom. Nokia has its own Code of Conduct, which contains guidance on human rights, anti-corruption measures and other ethical questions.²⁴⁷ In its letter to Global Witness, the company states: "We absolutely do not accept or support any illegal activity or abuse of human rights. We require all of our suppliers to only use legal sources of materials." It does not question whether some of these "legal" sources may in fact be sourcing their products from warring parties. It simply states that "the current situation with the supply chain of metals and other minerals from war zones such as Congo is [not] acceptable" and refers to efforts to explore ways of tracing metals along the supply chain.²⁴⁸

The Afrimex case

In February 2007, Global Witness filed a complaint against Afrimex for breaches of the OECD Guidelines for Multinational Enterprises, in connection with its trade in minerals during the war from 1998.²⁴⁹

Afrimex is a UK-registered company which operates in eastern DRC through the Congolese registered companies Société Kotecha and SOCOMI, both based in Bukavu. The UK Government's National Contact Point (NCP) for the OECD Guidelines investigated the case and, in August 2008, published its final statement, upholding the majority of Global Witness's allegations. It concluded that Afrimex had failed to ensure that its trading activities did not support armed conflict and forced labour. A significant part of its conclusions rested upon the fact that Afrimex had not exercised sufficient due diligence with regard to its supply chain, and that some of its suppliers – which included the *comptoirs* Etablissement Muyeye and Groupe Olive –



SOCOMI, mineral *comptoir* in Bukavu associated with Afrimex.

would have made payments to rebel groups (at that time, the RCD-Goma), thus contributing to the conflict.²⁵⁰

The NCP made a number of recommendations to Afrimex, relating, among other things, to the formulation, implementation and periodic review of a corporate responsibility policy which should take into account the human rights impact of the company's activities. By February 2009, almost six months after its final statement, the NCP had not received any information from Afrimex about the implementation of its recommendations.

Information gathered by Global Witness confirms that Afrimex continued to trade in minerals from eastern DRC after the complaint was filed in February 2007, albeit not on as large a scale as during the earlier years of the war. One of its suppliers in 2007 and 2008 was Muyeye, named by the Group of Experts as buying minerals produced by the FDLR. Congolese government statistics list Afrimex as having imported 382.5 tonnes of cassiterite from Goma and 1,102.5 tonnes of cassiterite and 112.5 tonnes of wolframite from the *comptoirs* Muyeye and Bakulikira in South Kivu in 2007.²⁵¹ A sample of the CEEC's monthly reports for 2008 shows Afrimex as having imported 22.5 tonnes of cassiterite from Muyeye on 27 May 2008 and 45 tonnes from Bakulikira and 90 tonnes from Muyeye in June 2008.²⁵² Afrimex's mineral *comptoir*, SOCOMI, is listed as an officially licensed *comptoir* for cassiterite in South Kivu, having paid its licence fee of US \$9,000 for 2008.²⁵³ Several other sources interviewed by Global Witness in mid-2008 confirmed that SOCOMI and Société Kotecha were still operating and handling minerals.²⁵⁴

In February 2009, Global Witness wrote to Afrimex asking, among other things, for an update on the company's progress in implementing the NCP's recommendations.²⁵⁵ In March 2009, Afrimex replied

to the NCP, with a copy to Global Witness, stating that it had stopped trading in minerals and that its last shipment of minerals left the DRC in around the first week of September 2008.²⁵⁶ Global Witness is urging the UK government to carry out an independent verification of Afrimex's claim that it has ceased trading in minerals.

Global Witness welcomes the UK National Contact Point's final statement on the Afrimex case and supports many of its recommendations. However, the case illustrates the severe limitations of relying on voluntary guidelines to hold companies to account. The OECD Guidelines for Multinational Enterprises remain a weak, non-binding mechanism. The NCP does not have the legal powers to enforce decisions arising from its conclusions and there is no in-built mechanism for following up its recommendations. The UK government will have to take further action to ensure that the investigation and conclusions of the NCP are more than just a theoretical exercise.

The UK government, at a senior political level, should send a clear signal to Afrimex and other UK-registered companies that it expects them to carry out careful due diligence to ensure that their trade is not funding any of the warring parties in the DRC, and that this is not an optional extra. One way of doing this would be for the UK government to recommend to the UN Sanctions Committee that Afrimex, and any other UK-registered companies found to be trading in minerals produced by armed groups, be included in the list of companies and individuals against whom sanctions should be imposed (see section 13).²⁵⁷

If backed up with strong political support, the UK government's findings on the Afrimex case could set an important precedent in holding companies accountable for their activities in conflict zones and could set an example for other governments.

12 The role of transit countries

Minerals from North and South Kivu are first transported to neighbouring Rwanda, Burundi or Uganda, usually by road.²⁵⁸ Once they have transited through these countries, the minerals usually leave Africa through the ports of Dar es Salaam (Tanzania) or Mombasa (Kenya).²⁵⁸

Some of the minerals produced in South Kivu are transported to North Kivu and exported from there, as the town of Goma is a larger commercial hub than Bukavu and has better transport and connections with Rwanda.

Rwanda

Rwanda has long been one of the main routes through which minerals leave eastern DRC. Weak controls on the Congolese side of the border have been compounded by Rwanda's unwillingness to ensure that the minerals it imports have not been produced by or benefited any of the warring parties in the DRC. These factors have meant that Rwanda has effectively provided these warring parties with access to export routes and international markets. The armed groups profiting from the trade with or through Rwanda have included not only those actively supported by Rwanda, such as the CNDP, but even the FDLR, Rwanda's fiercest enemy.

During the earlier phases of the war, from 1998 onwards, when Rwandan troops were present in the DRC, the Rwandan government and army profited directly from illicit mineral exploitation in North and South Kivu. Rwandan government and military

officials took advantage of the chaos to plunder the DRC's resources and to enrich themselves.²⁵⁹ In more recent years, Rwandan government and military involvement in mineral exploitation in the DRC has been less visible, but the political and business elite has continued to profit through Congolese armed groups which the Rwandan government has backed – such as the CNDP and previously the RCD-Goma – and through Congolese businessmen who maintain close personal and business links with Rwanda.

Rwanda has its own mineral deposits, and a developing domestic mining sector which accounts for an increasing proportion of its exports, but it continues to import and re-export significant amounts of minerals from eastern DRC. Congolese minerals exported from Rwanda are not always distinguished from minerals produced in Rwanda.²⁶⁰

The growth of Rwanda's mining sector

Rwanda's mining sector has grown steadily since around 2005. The value of its mineral exports increased from US \$38m in 2005 to US \$130m in 2008.²⁶¹ The continuing rise in production has been due in large part to an influx of foreign investment from 2006, which allowed the privatisation of 20 concessions previously managed by REDEMI, Rwanda's now defunct state-owned mining company.²⁶²

Artisanal and small-scale mining accounted for over half Rwanda's domestic mineral production in 2008;²⁶³ artisanal mining cooperatives sell their goods

²⁵⁸Most of the minerals produced in the areas of North and South Kivu covered by this report leave the DRC through Rwanda or Burundi. Minerals produced in the northern parts of North Kivu are more likely to be exported through Uganda or Rwanda. Global Witness did not carry out research for this report in the northern part of North Kivu or in Uganda.

to larger mining companies or to traders based in the capital, Kigali.²⁶⁴ According to documents which the Rwandan Minister of Mines provided to Global Witness in March 2009, there are seven foreign companies mining cassiterite, coltan and wolframite on ex-REDEMI concessions.²⁶⁵ An article published in 2008 by the Rwanda Investment and Export Promotion Agency (RIEPA) – a body set up by the government – states that 36 private mineral firms are operational in Rwanda; most of these are involved in trading rather than mineral extraction.²⁶⁶

In addition to fostering the growth of its own mineral production, Rwanda has the potential to develop mineral-processing facilities, which could be beneficial for neighbouring countries, such as the DRC. The Rwandan government is planning to improve its energy supply and encourage further foreign investment.

*Rwanda as a channel for
"conflict minerals" from eastern DRC*

"How can you ask a trader, a mining company, a [...] smuggler to track where the minerals they buy are coming from? Put yourself in their shoes."

RWANDAN MINISTER OF MINES VINCENT KAREGA TO
GLOBAL WITNESS, KIGALI, 6 MARCH 2009

The expansion of Rwanda's mining sector and processing capacity may prove positive for Rwanda's economy, but doubts will continue to be cast on the origin of these minerals for as long as the government fails to address the role of Rwanda as a channel and trading post for products which are benefiting the warring parties in eastern DRC.

Congolese government statistics and reports by the Group of Experts and NGOs have all demonstrated

that Rwanda is one of the main conduits for minerals leaving North and South Kivu. Rwanda's government agencies and border controls are better organised than those of the DRC. In theory, Rwandan customs officials check the paperwork accompanying all consignments from the DRC, but the government has not been pro-active in delving deeper into the origins of the minerals transported across the border. Neither the Rwandan government nor mineral trading companies operating in Rwanda are conducting careful due diligence to ensure that this trade is not benefiting any of the warring parties in eastern DRC.

Global Witness researchers who visited Rwanda in March 2009 found that there was widespread acknowledgement in Rwanda that minerals from eastern DRC pass through the country, either in transit or as goods to be traded and processed domestically prior to export. The Minister of Mines told Global Witness that approximately a quarter of Rwanda's mineral exports in 2008 originated from the DRC.²⁶⁷ Statistics from the Office de Géologie et des Mines du Rwanda (OGMR), the Rwanda Geology and Mines Authority, indicate that the proportion may be even higher: figures based on customs declarations show that in 2008, nearly half the minerals exported (by weight) from Rwanda were re-exports, therefore not of Rwandan origin.²⁶⁸ The RIEPA article mentioned above states that "a large proportion of [Rwandan mineral] exports are simply minerals transiting Rwanda" and goes on to say that only 20% of Rwanda's coltan and wolframite exports is produced domestically.²⁶⁹ In view of regional production and trade patterns, the remaining proportion is almost certainly Congolese. Other sources working in the mining sector in Rwanda confirmed that although Rwanda's domestic production has increased, most of the minerals traded in Rwanda in early 2009 still originate from the DRC.²⁷⁰

In discussions with Global Witness, the Rwandan Minister of Mines, Vincent Karega, did not appear to

consider Rwanda's trade in Congolese minerals to be problematic. He explained that raw materials from the DRC come through Rwanda because Rwanda has a greater processing capacity than the DRC. He stated that the Rwandan government had no objection to this trade or to mineral traders from eastern DRC holding bank accounts in Rwanda.²⁷¹ He did not address the fact that a significant proportion of the Congolese minerals entering Rwanda may be benefiting parties responsible for grave human rights abuses in eastern DRC and that the ease with which these minerals can cross the border is helping to fuel the conflict.

Global Witness representatives raised with the Minister of Mines the particular responsibility of neighbouring states to ensure that minerals produced by or benefiting the warring parties in eastern DRC do not enter the supply chain. This responsibility is reiterated in UN Security Council Resolution 1856 (2008) which requires "all States, especially those in the region, to take appropriate steps to end the illicit trade in natural resources, including if necessary through judicial means". The Minister of Mines acknowledged that private companies have a moral responsibility that comes with buying minerals from or near a war zone, but considered that due diligence measures would simply "discourage traders from coming into Rwanda". He claimed that the volume of trade coming into Rwanda from the DRC was too small to justify setting up an elaborate system of due diligence, despite stating himself that around 25% of Rwanda's mineral exports in 2008 originated from the DRC. Nevertheless, he indicated that if an organisation such as Global Witness presented him with "a budget and a plan", he would be prepared to start developing due diligence procedures.²⁷²

Global Witness would be interested in pursuing these discussions with the Rwandan authorities, but it is the responsibility of the government itself to take the lead in such initiatives, without waiting for plans

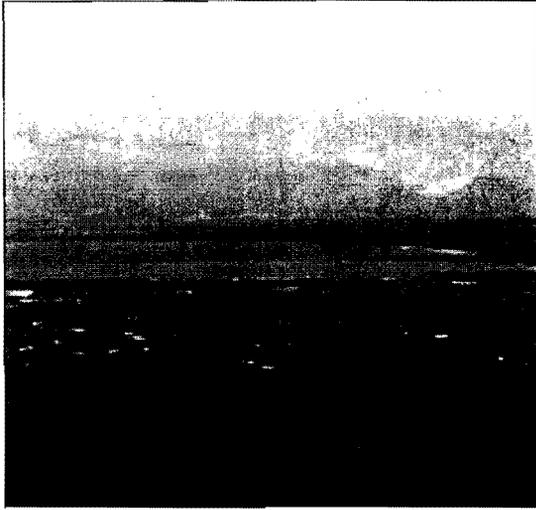
from outside. Concrete measures, such as tightening controls and performing thorough checks of mineral imports at the borders with the DRC, are not dependent on the input of NGOs and should be implemented without delay.

Companies and traders operating in Rwanda have shown little commitment to exercising control over their supply chain and have failed to put in place procedures which would ensure that the minerals they are purchasing are not benefiting any of the warring parties in eastern DRC. A mineral trader in Kigali told Global Witness that 40% of his supplies came from the DRC. He explained that he bought these goods from a middleman who brought them over the border. He claimed to "know his suppliers" well enough to be "fairly certain" that the majority of his supplies from the DRC did not come from mines controlled by armed groups, but did not explain on what basis he made this assertion. However, he also said that if he were to ask questions of his suppliers, "they will go somewhere else".²⁷³

Given Rwanda's proximity to eastern DRC, and the close business links between the two countries, it would not be difficult for traders and companies based in Rwanda to check the origin of their mineral supplies. The Rwandan government should work with these traders and companies to develop due diligence procedures regarding their supply chain. The gravity of the human rights situation in eastern DRC and the continuing violence by armed groups who are benefiting from the mineral trade should make this a priority for the Rwandan government.

Burundi

Burundi is one of the main conduits for minerals produced in South Kivu, especially gold. A former member of the Burundian National Assembly told Global Witness: "Burundi is like a transfer hub for minerals from Congo."²⁷⁴ As documented in this



© Gustavo Carvalho

The Burundian capital, Bujumbura, and Lake Tanganyika. Gold is often smuggled from South Kivu into Burundi across Lake Tanganyika.

report, a significant proportion of the gold mined in South Kivu is controlled by armed groups (notably the FDLR) or by the FARDC. Burundi offers an easy exit route for minerals produced by these groups. Burundian customs controls are extremely weak – sometimes non-existent – and customs officials may be complicit in facilitating illegal imports from eastern DRC.

From the southern part of South Kivu, gold is often smuggled into Burundi across Lake Tanganyika – a route favoured by the FDLR – or through the many informal crossing points along the Ruzizi river that marks the Burundi-DRC border north of the lake.²⁷⁵ The gold is then sold to traders in the capital, Bujumbura, and exported from there. The international airport in Bujumbura is one of the most direct routes through which gold from South Kivu leaves the region and reaches world markets.

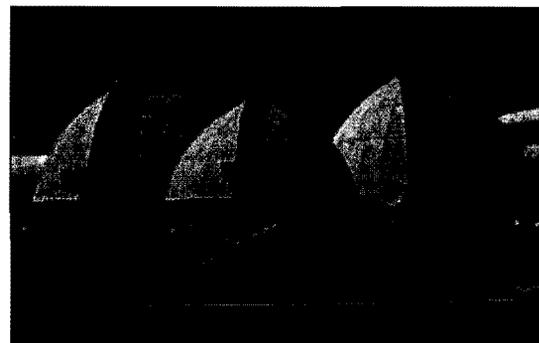
The mining sector in Burundi

Burundi's domestic mineral output is not globally significant. Gold, cassiterite, coltan and wolframite are exploited by around 100,000 artisanal miners,²⁷⁶ but quantities are difficult to ascertain in the absence of reliable production statistics.

Government statistics claim that in 2007, Burundi produced 50.6 tonnes of cassiterite, 51.5 tonnes of coltan, 443.4 tonnes of wolframite and 2,422.75 kg of gold. Between January and September 2008, it produced 33 tonnes of cassiterite, 91.28 tonnes of coltan, 342.27 tonnes of wolframite and 1,826.85 kg of gold.²⁷⁷

However, the director of the Burundian Mines Directorate explained that these figures were collected at the point of export and therefore refer to Burundi's mineral exports rather than its domestic production.²⁷⁸ Global Witness also obtained extracts of export statistics collected by the Burundian customs authorities, which provide different figures for mineral exports; in some cases, these are higher, in others, lower than those collected by the Ministry of Mines. The discrepancies could be explained in part by a high level of fraud. The government's own report on the mining sector states: "Fraud is so intense that the production recorded by state agencies only represents a tiny part of the reality."²⁷⁹ The report states that cross-border trade between Burundi and the DRC has always existed and that minerals originating from the DRC, such as gold, cassiterite and coltan, transit through the port and airport in Bujumbura before being exported further afield. It does not provide any figures or indication of the proportion of Congolese minerals passing through Burundi.

Global Witness also contacted the Institute for Statistics and the Ministry of Commerce to try to obtain official production and export statistics.



© Nanette Hätzel

Bujumbura airport, an important exit route for minerals produced in South Kivu.

The latest figures available from both offices dated from 2006; no figures were available for 2007 or 2008.

The director of the Burundian Mines Directorate informed Global Witness that in March 2009, there were 64 officially registered *comptoirs* in Burundi. Most of these sold wolframite; some sold cassiterite and coltan. There was only one licensed gold *comptoir* (see below). Global Witness asked him for a list of the licensed *comptoirs* and information about export destinations. He was not forthcoming with information; he told Global Witness he did not know about the export destinations and was not interested.²⁸⁰

"Burundian gold"

"Why are you talking to me about Congo when we are in Burundi?"

DIRECTOR OF THE BURUNDIAN MINES DIRECTORATE
TO GLOBAL WITNESS, BUJUMBURA, 12 MARCH 2009

Gold produced in South Kivu is exported from Burundi and passed off as Burundian gold. The fact that only a tiny proportion of gold exports from the DRC are officially declared means that it is easy for the Burundian government to claim that these exports are part of their country's domestic production.

A Burundian businessman, who is an economic adviser to Burundian President Pierre Nkurunziza, told Global Witness that 75% of gold available in Burundi comes from the DRC and that "to get gold, you need to have contacts, that's all".²⁸¹ Several jewellers in Bujumbura also said that they had no difficulty obtaining regular supplies of gold, either from Burundi or from the DRC.²⁸² A Rwandan diplomat told Global Witness that the FDLR come to Bujumbura to sell their gold there.²⁸³

The Burundian government does not appear willing to acknowledge that a significant proportion of the gold exported from Burundi originates from the DRC, nor that some of this gold has been produced or sold by Congolese armed groups or military units. The director of the Burundian Mines Directorate denied that any Congolese gold comes across the border, although he admitted that it is difficult to differentiate Congolese gold from Burundian gold.²⁸⁴

"The pillar of the gold trade"

The Group of Experts' December 2008 report names two companies in Burundi involved in the trade in Congolese gold: Farrel Trade and Investment Corporation (which appeared to have closed by early 2009) and Gold Link Burundi Trading, run by Mutoka Ruganyira. The director of the Burundian Mines Directorate confirmed to Global Witness that Mutoka Ruganyira's company was the only licensed gold trading and exporting *comptoir* operating in Burundi in early 2009; it changed its name to Berkenrode in mid-2008.²⁸⁵ Mutoka Ruganyira admitted to the Group of Experts that he purchased Congolese gold.²⁸⁶

Mutoka Ruganyira is referred to in Burundi as "one of the pillars of the gold trade", "the boss of gold trafficking in Burundi" and "a financial heavy-weight".²⁸⁷ Several different sources told Global Witness that he enjoys the protection of the security forces of the ruling party (the CNDD-FDD) and high ranking officials in the Burundian government.²⁸⁸ Jewellers and others involved in the gold trade explained to Global Witness that Mutoka Ruganyira buys almost all the gold which comes through Bujumbura, including gold from the DRC which is brought to him by intermediaries. President Nkurunziza's economic adviser, who is also the director of the Burundi subsidiary of an international mining company, told Global Witness

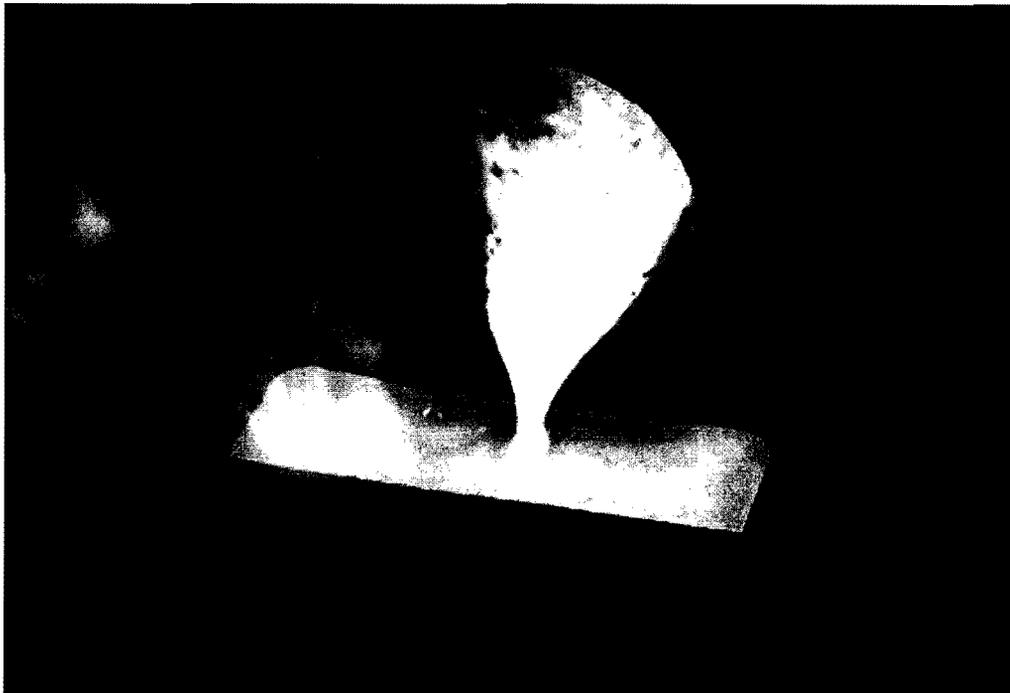
that whenever people come to him with gold from the DRC, he directs them to Mutoka Ruganyira.²⁸⁹

Global Witness researchers repeatedly tried to contact Mutoka Ruganyira during their visit to Burundi, but he was unreachable; he was apparently travelling outside the country. Several individuals who knew him personally said he often travelled for business, particularly to Dubai and sometimes to the DRC.²⁹⁰

The need for action

The fact that Congolese minerals are transiting through Burundi and that some of these may have been produced by the warring parties in eastern DRC is common knowledge in Burundi. Burundi is a small country, with a small number of mineral

traders who are well-known to the authorities. Yet the Burundian government has shown little interest in cracking down on this trade. Likewise, companies and traders based in Burundi have not taken any action to ensure that their trade is not fuelling the conflict in eastern DRC, safe in the knowledge that they have little to fear in terms of government checks or controls. The Burundian government should address this situation urgently by tightening its border controls and exercising oversight over companies and traders who are importing and exporting minerals. These companies should put in place due diligence measures to ascertain the origin of the goods they buy and to ensure that their purchases are not fuelling conflict in the DRC. The government should demonstrate a commitment to holding to account companies and individuals who fail to do so.



Gold smelting. Almost all gold exports from North and South Kivu are undecared. Many gold mines are under the control of FDLR or FARDC troops.

13 Recent international initiatives

“Natural resources are not on the table of topics in peace talks. Almost every other issue is. Yet it’s one of the keys to resolution of the conflict.”

UN OFFICIAL, GOMA, 22 JULY 2008

Diplomatic dialogue and mediation efforts

At the diplomatic level, there has been increasing recognition of the role natural resources continue to play in fuelling the conflict in eastern DRC, but little corresponding action to tackle the problem. Rather than using their influence to break the links between mineral exploitation and the armed conflict, governments and other international players have concentrated on the search for short-term political gains or technical solutions.

Successive rounds of peace talks and bilateral dialogues with governments of the Great Lakes region have failed to address this question in an explicit way. Neither of the two main initiatives launched in late 2007 and early 2008 – the Nairobi communiqué of November 2007 and the Amani Programme arising from the Goma agreement of January 2008^{xviii} – included concrete actions to stop the involvement of the warring parties in the natural resource trade. The question was raised in a number of discussions as part of the Amani Programme, and parties agreed that the issue should be tackled but limited themselves to



(left to right)
Rwandan President Paul Kagame, Burundian President Pierre Nkurunziza, former Nigerian President and mediator in the DRC conflict Olusegun Obasanjo, and Congolese President Joseph Kabila, at the opening session of a summit on the crisis in eastern DRC, Nairobi (Kenya), 7 November 2008.

© Reuters/Thomas Mukoya

^{xviii}The Nairobi communiqué, signed by the Congolese and Rwandan governments in November 2007, was aimed primarily at addressing the threat posed by the FDLR. The Goma agreement, signed by the Congolese government and 22 armed groups in North and South Kivu in January 2008, led to the Amani Programme, a wide-ranging programme of talks between these groups. Both these initiatives were set back by the resurgence of fighting between the CNDP, the Congolese army and mai-mai groups in North Kivu in the second half of 2008.

general statements of intent. Following the upsurge in fighting between the CNDP and the FARDC in the second half of 2008, further peace talks and mediation meetings took place, but the primary emphasis was on securing a ceasefire and limiting the immediate humanitarian crisis.

A number of Western diplomats admitted to Global Witness that they and others had not discussed the issue of natural resources with the governments of DRC, Rwanda and other neighbouring countries because they judged it too sensitive.²⁹¹ A UN source said: "Natural resources are not on the table of topics in peace talks. Almost every other issue is. Yet it's one of the keys to resolution of the conflict. The peace talks discussed the framework for the army, *brassage*, demobilisation, etc but not natural resources. Yet the armed groups are not prepared to leave the resources behind."²⁹²

Global Witness believes that agreements reached without addressing the fundamental dynamics of the conflict – in this instance, the warring parties' economic agendas – are unlikely to produce lasting results. Some of the armed groups may be willing to make political compromises, but they are unlikely to give up the wealth derived from the mineral trade of their own accord. Indeed, while peace talks and mediation efforts have been ongoing, armed groups and the Congolese army alike have continued to loot eastern DRC's natural resources with impunity, and neighbouring countries have continued to facilitate this illicit trade without fear of international scrutiny. Failure to take this dimension of the conflict into account could undermine peace agreements and create a misleading outcome: combatants could go through the motions of disarmament and demobilisation while retaining the economic means to go back to war, or threaten to do so as soon as they perceive it to be in their interests. Given the frequent recurrence of conflict in eastern DRC, this is not an abstract risk but an immediate threat. Concerted action will be needed at the international level to break these patterns.

Initiatives by donors and governments of home states

"We need to see more action to tackle and prevent conflict. Because conflict not only ruins lives – it chokes development."

DOUGLAS ALEXANDER, UK SECRETARY OF STATE FOR INTERNATIONAL DEVELOPMENT, IN A SPEECH TO THE BRITISH OVERSEAS NGOS FOR DEVELOPMENT (BOND), ANNUAL GENERAL MEETING, 24 OCTOBER 2007²⁹³

A number of governments, including those of the United Kingdom, Belgium and France, as well as the European Commission, have commissioned studies and initiated discussions on the question of natural resource exploitation in the DRC through their ministries of foreign affairs or development. Most of these have tended to avoid the politically sensitive issues – such as the involvement of senior political or military figures in the mineral trade – focusing instead on technical measures such as the harmonisation of tax systems in the region or the development of mineral certification schemes (see below). Such measures could lead to improvements in the long term, if they are backed up by strong political commitment, but the gravity of the conflict and the level of human rights abuse in eastern DRC call for more immediate and harder-hitting actions. The impact of strategies which do not address the high-level involvement of all the parties in the mineral trade – including the Congolese army – and which do not seek to end the impunity protecting the perpetrators is likely to be limited. Ultimately, technical solutions will not succeed in resolving political problems. On the contrary, they may prove to be a distraction.

The weakness of donor governments' approach to the question of natural resource exploitation by the warring parties also undermines these governments' aid programmes in the DRC. Western governments, in

particular, have been pouring huge sums of money into the reconstruction and development of the DRC, but the effectiveness of this assistance has been severely hampered by the continuing violence in the east. There is broad international consensus that conflict is one of the greatest obstacles to development. Yet donors have failed to tackle directly one of the main factors prolonging the conflict in eastern DRC: the warring parties' access to natural resources.

In recognition of the urgency of the situation, governments should agree on actions which can be implemented without delay to cut off the finances which the warring parties in eastern DRC derive from the mineral trade. These could include supporting MONUC's efforts to curtail this trade; applying sanctions against individuals and companies knowingly trading with armed groups; and investigating and, where appropriate, prosecuting such individuals or companies. In parallel, donor governments should pursue the longer-term goal of developing and reinforcing the Congolese government's ability to control and regulate the mining sector.

Governments and inter-governmental organisations should ensure that any measures they adopt apply not only to armed groups but also to army units engaged in the illicit exploitation of natural resources. Until now, international attention on the mineral trade in eastern DRC has focused almost exclusively on the role of non-state armed groups, in line with the UN arms embargo and the mandate of the Group of Experts (see below). Yet, as illustrated in this report, the FARDC are at least as involved as other armed groups in the mineral trade, and their close alliances with some of the groups which are the focus of the arms embargo – for example the FDLR – make it even more pressing to address their involvement.

In more recent months, some governments have engaged more actively in debating ways of curbing the illicit exploitation of natural resources. In February 2009,

in an initiative arising from the Great Lakes Contact Group, members of donor and other governments set up a taskforce to discuss natural resource exploitation in the DRC and to pursue, in a more concerted way, various ideas already under consideration by individual governments.

Global Witness welcomes this heightened interest. Yet there are a number of contradictions in the international approach, as some of the same governments which have started exploring ways of halting the illicit trade – for example the UK and Belgium – have shown a reluctance to hold to account companies registered in their own countries who are fuelling this trade.

Overall, governments have tended to adopt a timid line with regard to the role of economic actors. Some have engaged in dialogue with companies, and even with some of the *comptoirs* based in the DRC, for example on the adoption of codes of conduct, but have rarely challenged companies' excuses or justification for their trading practices (see section 11). Voluntary standards, such as the OECD Guidelines for Multinational Enterprises, and industry codes of conduct can be useful tools, but they have so far failed to change companies' behaviour, as they rely entirely on the goodwill of companies themselves to uphold certain principles. This highlights the need for stronger enforcement measures by home states, for example the adoption of legislation which requires companies to carry out thorough due diligence and imposes penalties on those who fail to do so.

The response of the Belgian government

In view of the fact that Belgian-registered companies account for the largest proportion of mineral imports from North and South Kivu, the Belgian government has a particular responsibility to provide firm guidance to companies and make clear its resolve to put an end to trading practices which are fuelling armed conflict and grave human rights abuses.

In January 2009, the Belgian Ministry of Foreign Affairs called meetings with Trademet and Traxys, two of the Belgian companies cited in the December 2008 report of the Group of Experts. Belgian government officials told Global Witness that they reminded these companies of the importance of respecting the OECD Guidelines for Multinational Enterprises and offered to facilitate contacts between the companies and the Group of Experts, with a view to “avoid being named in future reports”.²⁹⁴ They encouraged the companies to tighten their due diligence procedures. The companies told them that they believed the Group of Experts’ due diligence recommendations – which are very similar to Global Witness’s – were too far-reaching and unrealistic. The Belgian National Contact Point for the OECD Guidelines then also wrote to Trademet and Traxys asking for a meeting.²⁹⁵

The Belgian government’s initiative to meet these companies is a welcome first step. However, Foreign Ministry officials indicated to Global Witness that they were not envisaging stronger action – despite evidence in the Group of Experts’ report that these companies are buying from *comptoirs* which handle minerals produced by armed groups. The priority of the Belgian government appears to be to engage in dialogue with these companies and “find workable solutions with them”. Belgian government officials described this strategy as “much more forward looking than holding them to account”. They expressed fears that if these companies stopped trading with the DRC, they would be replaced by other companies which it might be more difficult to influence, and added that they did not want the situation to “revert to the black market”. This strategy does not appear to take into account the fact that the Belgian companies in question have not taken responsibility for breaking the links between their trade and the armed conflict and have continued trading with *comptoirs* which deal with groups responsible for grave human rights abuses. Most disappointingly, the Belgian officials stated that the Belgian government “did not want to take sides”, preferring not to be “directly engaged on this issue” and “to stay on the margins”.²⁹⁶

The Belgian government’s response on this issue is all the more surprising given the laudable role Belgium has played in raising the issue of natural resources and conflict at the UN over the past two years. Belgium has been one of the leading governments behind international moves to attach a higher importance to the role of natural resources in fuelling the conflict in the DRC and was instrumental in ensuring that measures on the illicit natural resource trade were included in UN Security Council resolutions 1856 and 1857 (2008) (see below). In November 2008, Global Witness had a positive meeting with Belgian Foreign Affairs Minister Karel de Gucht, who has shown a strong personal commitment to these issues; he promised to look into the role of Belgian companies buying minerals from eastern DRC.²⁹⁷ The Belgian government’s subsequent contacts with two of these companies were positive steps, but if these companies are to alter their trading practices in a meaningful way, the government will need to send a much clearer message to them than that expressed by the officials who spoke to Global Witness in April 2009.

The work of the UN Group of Experts

The Group of Experts set up by the UN Security Council in 2004 to monitor the arms embargo against armed groups in eastern DRC (in force since 2003) has continued to investigate the natural resource trade as a source of finance for these groups. Its December 2008 report contained detailed information about the mineral trade, particularly the relationships between armed groups, *comptoirs* and other buyers.²⁹⁸ The Group of Experts recommended that UN member states “take appropriate measures to ensure that exporters and consumers of Congolese mineral products under their jurisdiction conduct due diligence on their suppliers and not accept verbal assurances from buyers regarding the origin of their product”.²⁹⁹ The previous report of the Group of Experts, published in February 2008, had also stressed the importance of due diligence and concluded that individuals or companies failing to carry out basic due diligence steps to ensure that their purchases were not

providing assistance to armed groups could be considered to be in violation of the arms embargo for provision of assistance to armed groups.³⁰⁰

The work of the Group of Experts has been important in highlighting the role of the illicit natural resource trade in financing armed groups and fuelling the conflict in eastern DRC. However, its reports alone will not achieve real change unless governments take concrete action on the basis of their findings and recommendations, including against the individuals and companies recommended for sanctions.³⁰¹ Numerous reports, reaching similar conclusions, have been issued since 2001. Before the current Group of Experts, a Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DRC had produced several reports between 2001 and 2003, describing the illicit natural resource trade in the earlier phases of the conflict and identifying a number of companies and individuals involved. Disappointingly, governments took little action in relation to its findings. Global Witness urges UN member states to ensure that the work of the Group of Experts is followed up in a more effective way.

The December 2008 UN Security Council resolutions

On 22 December 2008, ten days after the publication of the Group of Experts' report, the UN Security Council adopted two resolutions containing measures to address the natural resource dimension of the conflict. Both resolutions recognise "the link between the illegal exploitation of natural resources, the illicit trade in such resources and the proliferation and trafficking of arms as one of the major factors fuelling and exacerbating conflicts in the Great Lakes region".³⁰² Global Witness welcomes the commitment to curbing the illicit trade in natural resources contained in these two resolutions and urges UN member states to ensure that these measures are applied promptly and comprehensively.

MONUC's revised mandate

Resolution 1856 (2008) extends and strengthens the mandate of MONUC. Included in MONUC's mandate, for the first time, is an explicit reference to using "its monitoring and inspection capacities to curtail the



MONUC peacekeepers on the road between Rutshuru and Goma, North Kivu, during a period of intense fighting between CNDP and FARDC troops, November 2008.



© Kate Holt

A UN peacekeeper walks past the body of a victim killed in Rutshuru, North Kivu, 6 November 2008. MONUC has struggled to ensure the protection of civilians in eastern DRC.

provision of support to illegal armed groups derived from illicit trade in natural resources” and to coordinating and supporting operations with the FARDC with a view to, among other things, “preventing the provision of support to illegal armed groups, including support derived from illicit economic activities”. The resolution urges “all States, especially those in the region, to take appropriate steps to end the illicit trade in natural resources, including if necessary through judicial means” and encourages the Congolese government to “establish a plan for an effective and transparent control over the exploitation of natural resources”.³⁰³

The inclusion of these measures in MONUC’s mandate is welcome, even though they only address the exploitation of resources by non-state armed groups, not the FARDC. However, their effective implementation will require strong commitment and resolve, not only on the part of MONUC personnel in North and South Kivu, but on the part of the UN hierarchy in Kinshasa and in New York and the UN

Security Council. Until 2008, efforts by MONUC to address the natural resource dimension of the conflict have been almost entirely dependent on the personal interest and motivation of a small number of staff members within MONUC. These individuals have carried out detailed monitoring and reporting of natural resource exploitation by armed groups in certain areas, but there has been little capacity or will to act on their findings in a concerted way.

The explicit inclusion of these measures in MONUC’s renewed mandate should mark a significant change in the way this issue is tackled.

On 12 January 2009, Alan Doss, Special Representative of the Secretary-General for the DRC, wrote to Global Witness in connection with this aspect of MONUC’s mandate. He stated that MONUC would continue to do its best within the limits of its capacity, but reiterated that the protection of civilians remained MONUC’s top priority. He highlighted the primary responsibility of the government of the DRC, as well as those of neighbouring states, to stem the

natural resource trade which sustains armed groups.³⁰⁴

In a second, more detailed letter, dated 16 February 2009, Alan Doss reiterated that in 2008, MONUC had been planning operations with the FARDC against the FDLR and that "disrupting the FDLR's presence in mining areas and driving them away from their most important trading routes was part and parcel of the plan". He wrote that MONUC was designing a new training course for military observers and civilian staff including a specific focus on monitoring airports, ports, roads and border entry points. He stated that MONUC would continue random inspections at airports and small landing strips during 2009. The letter refers to discussions between MONUC and agencies of the Congolese Ministry of Mines to explore the possibility of deploying mining inspectors from the Ministry of Mines to important mining sites and trading centres.³⁰⁵

Global Witness recognises that MONUC faces an extremely difficult task in the DRC, that it remains severely overstretched and that it is struggling to cope with many pressing demands. The security and protection of the civilian population must remain the top priority. However, the need to tackle the economic dimension of the conflict should not be seen as a separate task from ensuring protection for the civilian population. On the contrary, profits derived from the mineral trade are one of the main sources of funding which has enabled armed groups to survive and to continue committing grave abuses. From a strategic perspective, it is therefore integral to the protection of civilians. In this respect, Global Witness welcomes the commitment by the Special Representative of the Secretary-General to ensure that actions to stem the illicit exploitation of natural resources are integrated into the work of MONUC teams deployed in the east. By implementing these plans, and by working alongside Congolese government agencies responsible for overseeing the

mining sector, MONUC would be making a significant, longer-term contribution to cutting off one of the principal sources of funding of the armed groups.

Sanctions

Resolution 1857 (2008) renews the arms embargo and travel and financial restrictions on those in breach of the embargo. It specifies that "individuals or entities supporting the illegal armed groups in the eastern part of the Democratic Republic of the Congo through illicit trade of natural resources" are among the categories of people who can now be subjected to targeted sanctions and "encourages Member States to submit to the Committee for inclusion on its list of designees, names of individuals or entities who meet the criteria [...] as well as any entities owned or controlled, directly or indirectly, by the submitted individuals or entities acting on behalf of or at the direction of the submitted entities". Echoing the recommendations of the Group of Experts and Global Witness, the resolution also "encourages Member States to take measures, as they deem appropriate, to ensure that importers, processing industries and consumers of Congolese mineral products under their jurisdiction exercise due diligence on their suppliers and on the origin of the minerals they purchase".³⁰⁶

In late January 2009, Global Witness wrote to the governments of 30 UN member states, asking what actions they were taking to implement resolutions 1856 and 1857. The letter reminded them of the 45-day deadline by which they were called upon to report to the UN Sanctions Committee on actions they had taken to implement Resolution 1857, including those relating to sanctions against parties involved in the illicit trade in natural resources.

By April 2009, Global Witness had received replies from the governments of Austria, Canada, Germany, Israel, Mexico, the Netherlands, Sweden, the UK, and



© UN Photo/Devra Berkowitz

The UN Security Council votes to extend the arms embargo and the mandate of the Group of Experts on the DRC, New York, 22 December 2008. This resolution provides for sanctions against individuals or entities supporting armed groups through the natural resource trade. Yet to date, UN member states have not put forward the names of any such companies or individuals to the UN Sanctions Committee.

a brief reply from the US Department of Commerce referring the matter to the Department of State. Most of these replies limit themselves to references to states' minimum obligations regarding the implementation of UN sanctions and corresponding national or European legislation and regulations (see below). The UK government claims to have "actively supported the application of UN sanctions against businesses whose activities supported illegal militias in DRC and [...] will continue to do so where sufficient evidence is placed before the Sanctions Committee". It does not provide information on any specific actions it has taken in this respect.³⁰⁷

The UK, German and Swedish governments refer to their support for the Extractive Industries Transparency Initiative (EITI), a voluntary mechanism which has little bearing on the current

situation in conflict-affected areas of eastern DRC.³⁰⁸ The German government also refers to plans to develop a certification system for natural resources in eastern DRC (see below).³⁰⁸

The Dutch government has been more active in engaging companies on the question of responsible sourcing. In line with Resolution 1857, which encourages member states to ensure that companies under their jurisdiction exercise due diligence, the Dutch ministers for trade and for development cooperation met companies to discuss possible links between coltan used in mobile telephones sold in the Netherlands and the illegal trade in these minerals in the DRC.³⁰⁹

In terms of the formal process of reporting back to the UN Security Council, by the end of February

³⁰⁸EITI is a voluntary process which brings together governments, extractive companies and civil society organisations to develop a framework for companies to publish what they pay and for governments to disclose what they receive in countries that are dependent on natural resource revenues. For further information, see <http://eititransparency.org/eiti>

2009, the governments of Belgium, France, Serbia, Switzerland and the UK had filed reports on the implementation of Resolution 1857. With the exception of Switzerland, most simply mentioned existing national and/or European Union legislation, regulations and other measures already in place in their country to apply the sanctions on listed individuals; some also referred to domestic legislation regulating arms transfers.³¹⁰ In its report, the Swiss government published recommendations for Swiss economic actors on ways of avoiding violations of the sanctions in connection with the purchase of, trade in or processing of minerals from the DRC. These recommendations quote those formulated by the Group of Experts in its February 2008 report, setting out basic due diligence steps to determine the exact origin of the minerals and whether the mines are controlled or taxed by armed groups.³¹¹ Global Witness welcomes these recommendations by the Swiss government and urges other governments to promote due diligence procedures with companies and traders based in their countries.

As illustrated above, most governments' responses to Resolution 1857 to date have been fairly passive. UN member states should go beyond the minimum interpretation of the implementation of Resolution 1857 and take additional steps to break the links between the mineral trade and the armed conflict in eastern DRC. In particular, they should submit to the UN Sanctions Committee the names of individuals or companies registered in their country who are known to be trading in natural resources produced by or benefiting armed groups. Resolution 1857 "encourages Member States to provide any additional information whenever such information becomes available",³¹² yet by the end of March 2009, no state had submitted to the UN Sanctions Committee the names of individuals or entities which met the criteria for sanctions in connection with the natural resources trade, not even those

named in the December 2008 report of the Group of Experts.

Mineral certification

The German proposal

One of the proposals put forward to address the problems in the mining sector in eastern DRC is a certification scheme developed by the German Federal Institute for Geosciences and Natural Resources (*Bundesanstalt für Geowissenschaften und Rohstoffe*, BGR) with funding from the German government.³¹³ The project has been under discussion since around 2007. The BGR signed a memorandum of understanding with the Congolese Ministry of Mines in April 2008³¹⁴ and the first phase of the project was intended to run from 2009 to 2011. However, in early 2009, it had not yet been set up. Originally conceived as a pilot project in South Kivu, the project would aim to certify minerals by specifying their origin and the conditions in which they are produced. At the time of writing, the precise focus of the certification, the standards to be used and the methodology and timetable have not been finalised. From discussions to date, it would seem that issues such as labour standards, fair trade terms for artisanal miners and environmental considerations may form the primary basis for the certification. It is not yet clear how it would address directly the question of armed groups or military control of the mineral trade.³¹⁵

The project, which would be fairly limited in scope, focusing initially on coltan, would not provide a fully fledged, comprehensive certification process for all minerals produced in North and South Kivu, at least not for several years. If indeed such a process were to be set up in the longer term, it would require significant financial investment and would be dependent on Congolese government agencies themselves exercising greater control, oversight and enforcement over mineral production and exports.

The International Conference on the Great Lakes Region

In parallel, the International Conference on the Great Lakes Region (ICGLR) intends to develop a broader certification scheme which could apply to all minerals and timber produced in the Great Lakes region. In 2006, the 11 member states of the ICGLR (Angola, Burundi, Central African Republic, Republic of Congo, DRC, Kenya, Rwanda, Sudan, Tanzania, Uganda and Zambia) signed a Pact on Security, Stability and Development, which includes a Protocol against the Illegal Exploitation of Natural Resources. Among other things, the Protocol calls on members to establish a regional Mechanism for the Certification of Natural Resources. It also includes measures relating to protection of human rights, combating impunity, criminalisation of the illegal exploitation of natural resources and sanctions.³¹⁶

A stocktaking mission to identify relevant programmes and initiatives already in place in ICGLR member states was carried out in 2008. A proposal for the regional implementation of the Protocol on natural resources was submitted to members for consideration; it suggests numerous actions ranging from legal and institutional reform to strengthening border controls and harmonising regional trade.

The first expert meeting of the Regional Initiative against the Illegal Exploitation of Natural Resources was held on 2-3 April 2009 in Bujumbura. Member states reiterated the commitments they had made in 2006, stating that "setting up a regional certification mechanism should be the utmost concern in the coming months".³¹⁷ They did not reach a decision on the type of certification or on concrete steps for implementation. The ICGLR Executive Secretariat has been tasked with the development of a certification manual; this is not expected to be finalised and published until 2010 at the earliest. At the April 2009 Bujumbura meeting, member states also agreed to

submit their production and trade statistics to the ICGLR Executive Secretariat for a centralised overview of the natural resource trade in the region.

If actively pursued by member states, these steps could lead to positive developments such as increased institutional capacity, greater transparency in the natural resource sector, and improved statistical reporting and information sharing among countries in the region. However, the proposal does not specifically address the ongoing insecurity in eastern DRC and the continuing problem of the trade in natural resources providing funding to warring parties.

Although most members of the ICGLR agree that greater regulation of the trade in natural resources will serve their national and regional interests, incentives to establish a certification scheme or to implement concrete measures to control the trade are not always strong. For some states in the region, there are powerful vested interests in maintaining the status quo. These may explain in part the lack of progress in implementing the Protocol since its adoption more than two years ago and regional states' failure to curb the continuing illicit exploitation and trade of natural resources. As illustrated in this report, and in UN Panel and NGO reports on the earlier phases of the conflict in the DRC, political and military elites of countries in the Great Lakes region have benefited directly from the absence of control or regulation of the natural resource trade. The implementation of actions by the ICGLR to halt illicit natural resource exploitation will require genuine commitment and resolve, on the part of all parties, to break the patterns of the past.

Certification as a long-term measure

In the long term, an international system of certification of minerals could provide benefits and a framework for tighter control of the trade. Any such system should be designed both to strengthen the capacity of the Congolese authorities to better

control the mining sector and to tighten requirements on companies at the international level. The certification mechanism should be built around certain minimum conditions, including:

- transparency at all stages of the process;
- clear agreement on common definitions, standards and reporting requirements;
- the creation of coordinated structures for exchanging information;
- audited chain-of-custody arrangements, with third-party certification and credible audit procedures;
- effective complaint and enforcement measures, at national and international levels;
- the continuation of capacity-building programmes to assist the authorities of the DRC and neighbouring countries in implementing the system.³¹⁸

However, Global Witness believes that in view of the urgency of the current situation in eastern DRC, governments should not pin all their hopes on the development of international certification systems,

which will take considerable time and resources. The development of such systems should not be prioritised over actions which can have a more immediate impact. Nor should it delay the implementation of measures by the DRC and other governments specifically targeted at excluding the warring parties from the mining sector, such as those recommended in this report.

Likewise, international assistance to strengthen Congolese government capacity and performance in the mining sector should not be limited to the development of a certification scheme. The DRC already has a set of laws and regulations governing the mining sector and government agencies whose job it is to enforce them. At present, these laws and regulations are not being properly enforced, for a multiplicity of reasons described in this report. Donors should concentrate on developing the ability and capacity of government departments to enforce these laws, especially at provincial and local levels, as well as controlling the practices of their own domestic companies (as explained above). Strengthening provincial and local oversight will represent a significant investment for the DRC and should eventually enable the Congolese authorities to be less dependent on international interventions to manage the country's natural resources.

Conclusion



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Miner digging a pit, Bisie cassiterite mine, North Kivu, April 2008. Companies could be supporting forced labour and other human rights abuses by failing to check the source of their supplies.

The combination of recent political events in eastern DRC, a greater international interest in tackling the resource dimension of the conflict and increased sensitivity to criticism on the part of companies and traders may provide a long-awaited opportunity for more effective action to break the links between the mineral trade and armed conflict in North and South Kivu. However, the momentum will need to be sustained to ensure that the issue does not fall off the agenda in the rush to find short-term solutions to the crisis.

Global Witness welcomes the increased international attention to the mineral trade in eastern DRC since

2008 and the apparent will on the part of certain governments and UN bodies to take firmer action. Certain companies' promises to develop due diligence procedures may also have a positive effect if they are applied stringently and without delay. However, given the complexity of the situation in eastern DRC and the international networks involved in the mineral trade, one or two actors alone cannot be relied upon to achieve change. There needs to be a level playing field in which companies which are prepared to perform all the necessary checks to ensure that their trade is not fuelling the conflict are not disadvantaged by those which are not. The highest standards of due diligence should become the norm. In order to prevent

revenues from the mineral trade from prolonging the violence, all political and economic actors need to play their part, inside and outside the DRC: from the provinces of North and South Kivu, through to the transit countries and the final destinations of the minerals.

The stakes are high, and those benefiting from the illicit exploitation of resources will not be willing to give up these riches easily. As evidenced by the patterns of the last 12 years, it is in the interests of all sides in the conflict, as well as unscrupulous businessmen, to prolong the anarchy, as it delivers financial benefits without accountability. Any lasting solution to the problem has to be centred on restoring law and order and in bringing those responsible to justice – be it rebel leaders, army officers, companies or traders.

Action to stop the illicit trade should pay particular attention to the role of the FARDC. Efforts to dislodge rebel groups from certain mines may succeed, but safeguards are needed to prevent the FARDC from taking over their role and their trade networks – a pattern which has already been repeated numerous times as the FARDC have been deployed to areas previously held by rebel groups.

An end to hostilities would not automatically signal an end to the militarisation of the mineral trade. If anything, the FARDC – and combatants of former rebel groups within their ranks – may well try to strengthen their hold on the trade unless a clear signal is given that such behaviour will not be tolerated.

The complex and shifting relationships between the warring parties also have to be taken into account. In addition to the collusion between the FARDC and the FDLR, the recent integration of the CNDP into the FARDC, like other rebel groups before it, presents a further risk. Former CNDP commanders and their troops may now have even easier access to the mines in their new army uniforms.

Global Witness concurs with the view expressed by the Group of Experts that “it is not in the interest of certain FARDC commanders to end the conflict in eastern Democratic Republic of the Congo as long as their units are able to deploy to, and profit from, mining areas. Preventing illegal exploitation of minerals is inextricably linked to security sector reform, given the deeply rooted corruption and divided loyalties within FARDC that lends itself to deal-making with non-State armed groups.”³¹⁹

At the international level, bolder action is needed to translate the discourse of concern into reality. This will require a willingness on the part of governments to broach these issues explicitly with government and military authorities in the Great Lakes region, at the highest levels, and for home states to exercise their responsibility over companies which continue to ignore the human rights impact of their trade. If eastern DRC's natural resources are to turn into a source of wealth and development for the population, governments will have to have the courage to confront those on all sides who have been plundering the country and hold them to account.

Annex A

CONGOLESE GOVERNMENT STATISTICS

Mineral exports from North and South Kivu, 2007 and first half of 2008

Cassiterite (2007)

	NORTH KIVU (WEIGHT IN TONNES)	SOUTH KIVU (WEIGHT IN TONNES)	TOTAL (WEIGHT IN TONNES)	NORTH KIVU (VALUE IN US\$ AT EXPORT)	SOUTH KIVU (VALUE IN US\$ AT EXPORT)	TOTAL (VALUE IN US\$ AT EXPORT)
Division des Mines	10,175.2	4,730.7	14,905.90	\$27,566,421.39 ¹	N/A	N/A
Office Congolais de Contrôle (OCC)	8,599.05	4,799.2	13,398.25	\$23,369,797.97	\$18,741,206	\$42,111,003.97
Office des Douanes et Accises (OFIDA)	N/A	4,762.23	N/A	N/A	\$17,156,668	N/A
Centre d'Évaluation, d'Expertise et de Certification (CEEC)	N/A	4,371.5	N/A	N/A	\$16,013,940	N/A

Cassiterite (first half of 2008)

	NORTH KIVU (WEIGHT IN TONNES)	SOUTH KIVU (WEIGHT IN TONNES)	TOTAL (WEIGHT IN TONNES)	NORTH KIVU (VALUE IN US\$ AT EXPORT)	SOUTH KIVU (VALUE IN US\$ AT EXPORT)	TOTAL (VALUE IN US\$ AT EXPORT)
Division des Mines	10,902.71 ¹	2,880.03	13,782.74	N/A	N/A	N/A
Office Congolais de Contrôle (OCC)	14,114.5	1,224.88 ²	15,339.38	\$27,170,766.46	\$12,456,880 ³	\$39,627,646.46
Office des Douanes et Accises (OFIDA)	N/A	2,588.86	N/A	N/A	\$15,738,972	N/A
Centre d'Évaluation, d'Expertise et de Certification (CEEC)⁴	N/A	1,404.38	N/A	N/A	\$9,634,840	N/A

¹ Division des Mines North Kivu statistics, made available to Global Witness, cover January to September 2008.

² OCC South Kivu statistics by weight, made available to Global Witness, cover only January to March 2008.

³ OCC South Kivu statistics by value, made available to Global Witness, cover only January to May 2008.

⁴ CEEC statistics made available to Global Witness cover only April to June 2008.

Coltan (2007)

	NORTH KIVU (WEIGHT IN TONNES)	SOUTH KIVU (WEIGHT IN TONNES)	TOTAL (WEIGHT IN TONNES)	NORTH KIVU (VALUE IN US\$ AT EXPORT)	SOUTH KIVU (VALUE IN US\$ AT EXPORT)	TOTAL (VALUE IN US\$ AT EXPORT)
Division des Mines	74.2	354.20	428.40	\$531,760	N/A	N/A
Office Congolais de Contrôle (OCC)	77.4	348.62	426.02	\$548,193	\$3,436,423	\$3,984,616
Office des Douanes et Accises (OFIDA)	N/A	355.89	N/A	N/A	\$3,217,151	N/A
Centre d'Évaluation, d'Expertise et de Certification (CEEC)	N/A	587.52	N/A	N/A	\$3,370,714	N/A

Coltan (first half of 2008)

	NORTH KIVU (WEIGHT IN TONNES)	SOUTH KIVU (WEIGHT IN TONNES)	TOTAL (WEIGHT IN TONNES)	NORTH KIVU (VALUE IN US\$ AT EXPORT)	SOUTH KIVU (VALUE IN US\$ AT EXPORT)	TOTAL (VALUE IN US\$ AT EXPORT)
Division des Mines	25 ^v	245.79	270.79	N/A	N/A	N/A
Office Congolais de Contrôle (OCC)	17.41	369.44 ^{vi}	391.65	\$158,394	\$2,712,747 ^{vii}	\$2,871,141
Office des Douanes et Accises (OFIDA)	N/A	250.66	N/A	N/A	\$3,005,340	N/A
Centre d'Évaluation, d'Expertise et de Certification (CEEC)	N/A	106.43	N/A	N/A	\$1,425,879	N/A

^vDivision des Mines North Kivu statistics, made available to Global Witness, cover January to September 2008.

^{vi}OCC South Kivu statistics by weight, made available to Global Witness, cover only January to March 2008.

^{vii}OCC South Kivu statistics by value, made available to Global Witness, cover only January to May 2008.

Gold (2007)

	NORTH KIVU (WEIGHT IN GRAMMES)	SOUTH KIVU (WEIGHT IN GRAMMES)	TOTAL (WEIGHT IN GRAMMES)	NORTH KIVU (VALUE IN US\$ AT EXPORT)	SOUTH KIVU (VALUE IN US\$ AT EXPORT)	TOTAL (VALUE IN US\$ AT EXPORT)
Division des Mines	11,559	105,726.15	117,285.15	\$182,735	N/A	N/A
Office Congolais de Contrôle (OCC)	11,560	N/A	N/A	\$182,740	N/A	N/A
Office des Douanes et Accises (OFIDA)	N/A	98,275.6	N/A	N/A	N/A	N/A
Centre d'Évaluation, d'Expertise et de Certification (CEEC)	N/A	105,862.86	N/A	N/A	\$1,837,501.36	N/A

Gold (first half of 2008)

	NORTH KIVU (WEIGHT IN GRAMMES)	SOUTH KIVU (WEIGHT IN GRAMMES)	TOTAL (WEIGHT IN GRAMMES)	NORTH KIVU (VALUE IN US\$ AT EXPORT)	SOUTH KIVU (VALUE IN US\$ AT EXPORT)	TOTAL (VALUE IN US\$ AT EXPORT)
Division des Mines	N/A	22,398.3	N/A	N/A	N/A	N/A
Office Congolais de Contrôle (OCC)	N/A	N/A	N/A	N/A	N/A	N/A
Office des Douanes et Accises (OFIDA)	N/A	38,589	N/A	N/A	N/A	N/A
Centre d'Évaluation, d'Expertise et de Certification (CEEC)	N/A	24,398	N/A	N/A	\$450,053	N/A

Wolframite (2007)

	NORTH KIVU (WEIGHT IN TONNES)	SOUTH KIVU (WEIGHT IN TONNES)	TOTAL (WEIGHT IN TONNES)	NORTH KIVU (VALUE IN US\$ AT EXPORT)	SOUTH KIVU (VALUE IN US\$ AT EXPORT)	TOTAL (VALUE IN US\$ AT EXPORT)
Division des Mines	767.1	455	1,222.10	\$2,811,955.7	N/A	N/A
Office Congolais de Contrôle (OCC)	870.97	387.5	1,258.47	\$3,177,654	\$1,371,100	\$4,548,754
Office des Douanes et Accises (OFIDA)	N/A	410	N/A	N/A	\$1,605,800	N/A
Centre d'Évaluation, d'Expertise et de Certification (CEEC)	N/A	485.70	N/A	N/A	\$1,823,787.44	N/A

Wolframite (first half of 2008)

	NORTH KIVU (WEIGHT IN TONNES)	SOUTH KIVU (WEIGHT IN TONNES)	TOTAL (WEIGHT IN TONNES)	NORTH KIVU (VALUE IN US\$ AT EXPORT)	SOUTH KIVU (VALUE IN US\$ AT EXPORT)	TOTAL (VALUE IN US\$ AT EXPORT)
Division des Mines	324.42 ^{vi}	119.5	443.92	N/A	N/A	N/A
Office Congolais de Contrôle (OCC)	231.33	59.5 ^{vii}	290.83	\$1,627,632.20	\$638,400 ^{viii}	\$2,266,032.2
Office des Douanes et Accises (OFIDA)	N/A	119	N/A	N/A	\$867,900	N/A
Centre d'Évaluation, d'Expertise et de Certification (CEEC)	N/A	59.5	N/A	N/A	\$420,000	N/A

^{vi}Division des Mines North Kivu statistics, made available to Global Witness, cover January to September 2008.

^{vii}OCC Bukavu statistics on weight, made available to Global Witness, cover only January to March 2008.

^{viii}OCC Bukavu statistics on value, made available to Global Witness, cover only January to May 2008.

Annex B

COMPTOIRS AND DESTINATIONS OF EXPORTS

North Kivu 2007

COMPTOIR	MINERAL	QUANTITY (IN TONNES)	VALUE (IN US\$)	IMPORTER	IMPORTER'S COUNTRY OF REGISTRATION
Amur	Cassiterite Slag Wolframite	2,500.5 20.0 418.2	6,778,751.70	Trademet	Belgium
Avisam Trading	Cassiterite	278.5	752,176.76	Trademet	Belgium
Bakulikira Nguma	Cassiterite	382.5	996,750.00	Unnamed company Malaysia Smelting Corporation Berhad	United Kingdom Malaysia
Bulongo Gems	Wolframite	20.0	N/A	Wolfram JSC	Russia
CLEPAD	Cassiterite	539.1	1,523,967.10	Trademet	Belgium
Eurotrade Int.	Cassiterite	23.0	55,089.60	Malaysia Smelting Corporation Berhad	Malaysia
GEMICO	Cassiterite	40.0	116,065.25	Traxys	Belgium
GMC	Cassiterite	68.0	197,200.00	B.E.B Investment Inc	Canada
Hill Side	Cassiterite	234.0	641,600.00	STI AMC	Belgium United Kingdom
Hua Ying	Cassiterite	89.3	957,921.20	Traxys Trademet	Belgium Belgium
JMT	Cassiterite	343.0	994,700.00	Traxys Fogang Jiata Mettrade Thailand Smelting and Refining Co	Belgium China India Thailand
La Comete	Cassiterite	48.3	115,989.50	Trademet	Belgium

North Kivu 2007 *continued*

COMPTOIR	MINERAL	QUANTITY (IN TONNES)	VALUE (IN US\$)	IMPORTER	IMPORTER'S COUNTRY OF REGISTRATION
Laxmi	Wolframite	21.0	N/A	Aniha Exim FZC	United Arab Emirates
METACHEM	Cassiterite Slag	286.7 10.0	766,653.00	Traxys Trademet Thailand Smelting and Refining Co	Belgium Belgium Thailand
MHI	Cassiterite Coltan	6.0 74.2	14,400.00	Hong Kong Fortune Trading Unnamed company (Johannesburg / Pretoria)	China (Hong Kong) South Africa
MIM	Cassiterite	21.5	62,410.00	N/A	N/A
MPC	Cassiterite	1,068.3	2,885,120.00	MPA Gisenyi	Rwanda
Munsad	Cassiterite Slag	315.0 25.0	811,000.00	Trademet	Belgium
PABG	Cassiterite	23.0	66,591.25	JSC Transcon	Russia
SODEEM	Cassiterite Wolframite	186.6 89.3	541,312.55	African Venture Ltd	China (Hong Kong)
Sodexmines	Cassiterite	2,974.0	8,099,380.60	SDE	Belgium
Starfield	Cassiterite Wolframite	92.2 170.2	126,128.00	Starfield Tengen Metals Starfield	Austria British Virgin Islands / Malaysia Netherlands
Tengen Metals	Cassiterite	23.2	67,365.55	Tengen Metals	British Virgin Islands / Malaysia
WMC	Cassiterite	162.5	448,056.30	Traxys	Belgium
TOTAL	Cassiterite Wolframite Slag Coltan	10,172.1 718.7 152.0 74.2	27,018,628.39		

North Kivu, January to September 2008

COMPTOIR	MINERAL	QUANTITY (IN TONNES)	IMPORTER	IMPORTER'S COUNTRY OF REGISTRATION
AFROMET / METACHEM	Cassiterite	856.00	MET Trade India	India
Amur	Cassiterite Wolframite	1,774.20 219.12	Trademet	Belgium
Bakulikira	Cassiterite	45.00	Unnamed company Afrimex	Malaysia United Kingdom
CLEPAD	Cassiterite	932.10	Trademet	Belgium
GEMICO	Cassiterite	39.80	Traxys	Belgium
GMC	Cassiterite	463.79	B.E.B Investment Inc Canada	Canada
Hill Side	Cassiterite Wolframite	110.90 15.30	Trademet	Belgium
Hua Ying	Cassiterite	1,148.90	Traxys	Belgium
JMT	Cassiterite Slag	769.90 25.00	Thailand Smelting and Refining Co	Thailand
Kivu Metal	Coltan	5.04	Traxys	Belgium
Mudenge Th.	Cassiterite	38.00	Trademet	Belgium
MHI	Coltan	18.41	African Venture	China (Hong Kong)
MIM	Cassiterite	64.47	Trademet	Belgium
MPC	Cassiterite	972.00	MPA Gisenyi	Rwanda
Munsad	Cassiterite Coltan	212.00 8.00	Trademet	Belgium
PABG	Cassiterite	700.59	JSC Company "Eurosib-Logistics" Transcon	Russia
SODEEM	Cassiterite Wolframite	833.90 66.00	Africa Venture Ltd	China (Hong Kong)

North Kivu, January to September 2008 *continued*

COMPTOIR	MINERAL	QUANTITY (IN TONNES)	IMPORTER	IMPORTER'S COUNTRY OF REGISTRATION
Sodexmines	Cassiterite	2,103.10	SDE	Belgium
Starfield	Cassiterite Wolframite	144.00 24.00	Skapa Mining & GmbHR	Austria
Tengen	Cassiterite	132.06	Tengen Metals Ltd	British Virgin Islands/ Malaysia
WMC	Cassiterite	162.00	Traxys	Belgium
TOTAL	Cassiterite Wolframite Coltan Slag	10,902.71 324.42 31.45 25.00		

Source: Division des Mines Nord-Kivu

South Kivu, 2007

Gold

COMPTOIR	MINERAL	QUANTITY (IN GRAMMES)	IMPORTER	IMPORTER'S COUNTRY OF REGISTRATION
AUREX	Gold	7,503.85	Aurex Mana. Investi.	Switzerland
COTRACOM	Gold	7,505.80	N/A	N/A
Namukaya	Gold	90,716.00	Liongola Guy EP	Belgium
TOTAL		105,725.65		

Source: Division des Mines Sud-Kivu, Rapport Annuel 2007

South Kivu, 2007 *continued**Cassiterite, coltan and wolframite*

COMPTOIR	MINERAL	QUANTITY (IN TONNES)	IMPORTER	IMPORTER'S COUNTRY OF REGISTRATION
Amur	Wolframite	50.00	Trademet	Belgium
(B.NGU.M) Bakulikira	Cassiterite	270.00	Afirmex (UK)	United Kingdom
Groupe Olive	Cassiterite	270.00	Traxys	Belgium
Kaferege	Cassiterite	12.00	Niotand Ltd	China (Hong Kong)
MDM	Cassiterite	232.20	Traxys	Belgium
MPC	Cassiterite	37.50	MPA Gisenyi	Rwanda
Muyeye	Cassiterite	832.50	Afirmex (UK)	United Kingdom
	Coltan	136.86	Traxys	Belgium
	Wolframite	112.50	Afirmex (UK)	United Kingdom
Panju	Cassiterite	1,945.20	Thailand Smelting and Refining Co	Thailand
	Coltan	127.34		
	Wolframite	19.50		
WMC	Cassiterite	1,131.30	Traxys	Belgium
	Coltan	90.00	Traxys	
	Wolframite	273.00	Specialty Metals Trading	
TOTAL	Cassiterite	4,730.70		
	Wolframite	455.00		
	Coltan	354.20		

Source: Division des Mines Sud-Kivu, Rapport Annuel 2007

Annex C

COMPANIES WHICH REPLIED TO CORRESPONDENCE FROM GLOBAL WITNESS ON TRADE IN MINERALS FROM EASTERN DRC AND DUE DILIGENCE POLICIES *April 2009*

Comptoirs based in eastern DRC

<i>Name of company</i>	<i>Date of reply</i>
Afromet (holding reply)	11 December 2008
Mining Processing Congo	17 February 2009
Pan African Business Group	16 December 2008
Panju	11 December 2008

Companies based outside the DRC

<i>Name of company</i>	<i>Date of reply</i>
Alfred H Knight	9 January 2009
Amalgamated Metal Corporation PLC	19 January 2009
Apple (standard reply)	23 December 2008
Banro	19 December 2008
Dell	28 January 2009
DM Chemi-Net Ltd	16 December 2008
Emirates Gold DMCC	28 February 2009
Freeport-McMoRan Copper and Gold	16 February 2009
Global Metals and Mining	14 February 2009
Hewlett-Packard	4 February 2009
International Tin Research Institute	22 December 2008 and 5 March 2009
Kemet	16 January 2009
Kivu Resources	18 February 2009
Kuala Lumpur Tin Market	6 April 2009
Malaysia Smelting Corporation Berhad	16 January 2009
Motorola	12 February 2009
Nokia	16 January 2009
North American Tungsten Corporation	11 January 2009
PT Timah	3 February 2009
Shamika	15 January 2009
Simmonds Metals	24 December 2008
Talison Minerals	18 December 2008
Thailand Smelting and Refining Co Ltd.	20 January 2009 and 18 March 2009
Trademet	22 January 2009
Treibacher Industries AG	14 January 2009
White Solder	23 January 2009

Endnotes

- ¹ Article 25, 3(c) of the Rome Statute of the International Criminal Court.
- ² For details, see Global Witness report "Under-mining peace – Tin: the explosive trade in cassiterite in eastern DRC", June 2005.
- ³ See Global Witness report "Under-mining peace – Tin: the explosive trade in cassiterite in eastern DRC", June 2005; Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo, S/2001/357, 12 April 2001, and Interim Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo, S/2002/565, 22 May 2002.
- ⁴ See, for example, Human Rights Watch press release "DR Congo: Rwandan rebels slaughter over 100 civilians", 13 February 2009.
- ⁵ See President Joseph Kabila quoted in Radio Okapi, "Joseph Kabila à la presse : L'opération conjointe FARDC-Armée rwandaise n'ira pas au delà de février", 1 February 2009, and Information Minister Lambert Mende quoted in Radio Okapi, "Kinshasa : Human Rights Watch demande à Joseph Kabila de livrer Bosco Ntaganda à la CPI", 3 February 2009.
- ⁶ Reuters, "ICC-wanted warlord in UN-backed Congo offensive", 29 April 2009.
- ⁷ Accord de paix entre le gouvernement et le Congrès national pour la défense du peuple (CNDP), Goma, 23 March 2009.
- ⁸ Human Rights Watch, "Killings in Kiwanja: the UN's inability to protect civilians", December 2008.
- ⁹ Human Rights Watch, "DR Congo: peace accord fails to end killing of civilians", 17 July 2008.
- ¹⁰ Human Rights Watch, "Victim statements from eastern Democratic Republic of Congo", 4 December 2008.
- ¹¹ http://www.itri.co.uk/pooled/articles/BF_TECHART/view.asp?Q=BF_TECHART_309008, accessed on 27 March 2009.
- ¹² See www.itri.co.uk. The overall percentage is not broken down by province, but can be assumed to include tin ore from North Kivu, South Kivu, Maniema and Katanga.
- ¹³ Division des Mines Nord-Kivu and Division des Mines Sud-Kivu, Rapport Annuel 2007; Division des Mines Nord-Kivu statistics for January to September 2008; Division des Mines Sud-Kivu statistics for January to June 2008. At least four different Congolese government agencies produce export statistics, but their figures do not always tally. For a more detailed breakdown of statistics from the different agencies, see Annex A of the present report.
- ¹⁴ See <http://www.bloomberg.com/apps/news?pid=20601087&sid=ay2vucKlc4Pl&refer=home>, accessed on 14 April 2009.
- ¹⁵ Peruvian Ministry of Mines and Energy, <http://www.minem.gob.pe/archivos/dgm/publicaciones/ANUARIOS/ANUARIO2007/ANUARIO%202.pdf>, accessed on 9 April 2009.
- ¹⁶ See ITRI website, http://www.itri.co.uk/pooled/articles/BF_NEWSART/view.asp?Q=BF_NEWSART_310938, accessed on 14 April 2009.
- ¹⁷ Brazilian national department of mining production, <http://www.dnpm.gov.br/assets/galeriaDocumento/SumarioMineral2008/estanho.pdf>, accessed on 9 April 2009.
- ¹⁸ Division des Mines Nord-Kivu and Division des Mines Sud-Kivu, Rapport Annuel 2007; Division des Mines Nord-Kivu statistics for January to September 2008; Division des Mines Sud-Kivu statistics for January to June 2008. For a more detailed breakdown of statistics, see Annex A of the present report.
- ¹⁹ Global Witness estimate based on United States Geological Survey (USGS) Mineral Commodity Summaries and telephone interview with USGS country specialist, 7 April 2009.
- ²⁰ 2009 USGS Mineral Commodity Summaries, available at <http://minerals.usgs.gov/minerals/pubs/commodity/niobium/mcs-2009-tanta.pdf>, accessed on 9 April 2009.
- ²¹ Global Witness estimate based on USGS Mineral Commodity Summaries and telephone interview with USGS country specialist, 7 April 2009.
- ²² 2009 USGS Mineral Commodity Summaries, available at <http://minerals.usgs.gov/minerals/pubs/commodity/niobium/mcs-2009-niobi.pdf>, accessed on 9 April 2009.
- ²³ International Tungsten Industry Association Newsletter, December 2007.
- ²⁴ Division des Mines Nord-Kivu and Division des Mines Sud-Kivu, Rapport Annuel 2007; Division des Mines Nord-Kivu statistics for January to September 2008; Division des Mines Sud-Kivu statistics for January to June 2008. For a more detailed breakdown of statistics, see Annex A of the present report.
- ²⁵ Global Witness estimate based on USGS Mineral Commodity Summaries and telephone interview with USGS country specialist, 7 April 2009.
- ²⁶ 2009 USGS Mineral Commodity Summaries, available at <http://minerals.usgs.gov/minerals/pubs/commodity/tungsten/mcs-2009-tungs.pdf>, accessed on 9 April 2009.
- ²⁷ For information on the uses of pyrochlore and background on the Lueshe mine, see Division des Mines Nord-Kivu, Rapport Annuel 2007; Report of the Group of Experts on the DRC, S/2006/53, 27 January 2006, paragraphs 96-105; and Report of the Group of Experts on the DRC, S/2006/525, 18 July 2006, paragraphs 137-144.
- ²⁸ 2006 Congolese government statistics quoted in Pole Institute, "Ressources naturelles et flux du commerce transfrontalier dans la région des Grands Lacs", July 2007. These exports in 2006 were reportedly from old stock. See IPIS "Mapping conflict motives: eastern DRC", March 2008.
- ²⁹ Global Witness e-mail correspondence, 13 February 2009.
- ³⁰ Letter to Global Witness from MPC Managing Director Brian Christophers, 17 February 2009.
- ³¹ Global Witness interview with MPC representatives, Goma, 8 August 2008.
- ³² For background information on Batro's presence in South Kivu prior to 2004, see Koen Vlassenroot and Timothy Raeymaekers, "Divisé en

- deux: Or et identité sociale à Kamituga (Sud-Kivu)", in *L'Afrique des Grands Lacs, annuaire 2003-2004*.
- ³³ See Division des Mines Nord-Kivu and Division des Mines Sud-Kivu, *Rapport Annuel 2007*.
- ³⁴ Global Witness interview with MONUC official, Goma, 22 July 2008.
- ³⁵ Global Witness interview with miner, Tubimbi, 29 July 2008.
- ³⁶ Global Witness interview, Bukavu, 28 July 2008.
- ³⁷ Global Witness interviews with Division des Mines, Goma, 22 July 2008, and other sources in North and South Kivu, July and August 2008. See also CREDDHO, "Rapport sur l'exploitation et l'exportation de la cassitérite et du coltan en province du Nord-Kivu", Goma, October 2007.
- ³⁸ Global Witness interviews with members of Congolese human rights organisations, Bukavu, 24 July 2008, and Lemera, 3 August 2008.
- ³⁹ Global Witness interview, Lemera, 3 August 2008.
- ⁴⁰ Global Witness interview with human rights activist, Bukavu, 24 July 2008.
- ⁴¹ Global Witness interview with miner, Bukavu, 28 July 2008.
- ⁴² Global Witness interview with NGO representative, Goma, 21 July 2008.
- ⁴³ Global Witness interview, Division des Mines, Goma, 22 July 2008. This estimate was backed up by a mineral trader in Goma who told Global Witness that he believed Bisie accounted for 60-70% of all exports from Goma and around 80% of all mineral exports from North and South Kivu (Global Witness interview, Goma, 8 August 2008).
- ⁴⁴ Global Witness interviews with SAESSCAM official, Goma, 23 July 2008, and mining company representative, Goma, 7 August 2008. See also Pole Institute, "Ressources naturelles et flux du commerce transfrontalier dans la région des Grands Lacs", July 2007.
- ⁴⁵ Global Witness interview with mining company representative, Goma, 7 August 2008.
- ⁴⁶ Global Witness interview with Division des Mines, Goma, 22 July 2008.
- ⁴⁷ Global Witness interviews, Goma, 7 and 8 August 2008, and telephone interview with journalist, 10 September 2008. See also Lydia Polgreen, "Congo's riches, looted by renegade troops", *The New York Times*, 16 November 2008.
- ⁴⁸ Global Witness interviews, Goma, 7 and 8 August 2008.
- ⁴⁹ "Rapport d'enquête sur la mort d'hommes par éboulement dans le puits Safina du carré minier Bisie/Mpama le jeudi 15/11/2007, carré situé en groupement Wasssa, secteur des Wanianga", Province du Nord-Kivu, Territoire de Walikale, 30 November 2007. The report names the two FARDC second lieutenants who ordered mining to continue on 14 and 15 November as Asani and Asimbo Sileki Rasta.
- ⁵⁰ *Ibid.*
- ⁵¹ Décision no. 5072/002/TW/Y6/2007 du 10/02.2007 portant interdiction de l'exploitation des minerais dans des puits dangereux à la carrière Bisie/ Mpama, Dieudonné Tshishiku Mutoke, Administrateur du territoire de Walikale, 10 February 2007.
- ⁵² Global Witness interview, Kinshasa, 12 May 2008.
- ⁵³ Global Witness interviews, Kinshasa, 12 May 2008 and Goma, 7 August 2008. See also Lydia Polgreen, "Congo's riches, looted by renegade troops", *The New York Times*, 16 November 2008.
- ⁵⁴ Global Witness interview with traditional chief from Walikale, Goma, 10 August 2008. Global Witness received several other testimonies about local civilian authorities benefiting, directly or indirectly, from extortion by the FARDC at Bisie and other mines. For further information on the role of civilian authorities and the imposition of "taxes" in Bisie, see CREDDHO, "Rapport sur l'exploitation et l'exportation de la cassitérite et du coltan en province du Nord-Kivu", Goma, October 2007.
- ⁵⁵ Global Witness interview with representatives of local development organisation, Goma, 9 August 2008.
- ⁵⁶ Global Witness interview, Kinshasa, 12 May 2008, and telephone interview with journalist, 19 September 2008.
- ⁵⁷ Global Witness interview with CREDDHO, Goma, 8 August 2008. See also CREDDHO, "Rapport sur l'exploitation et l'exportation de la cassitérite et du coltan en province du Nord-Kivu", Goma, October 2007.
- ⁵⁸ Global Witness interview, Goma, 7 August 2008.
- ⁵⁹ Global Witness interview with CREDDHO, Goma, 8 August 2008.
- ⁶⁰ Global Witness interview, Goma, 7 August 2008.
- ⁶¹ Global Witness interview with General Vainqueur Mayala, commander of the 8th military region, and other senior FARDC officials, Goma, 11 August 2008.
- ⁶² Global Witness telephone interview with journalist, 19 September 2008.
- ⁶³ Global Witness interview with senior FARDC official from the 8th military region, Goma, 11 August 2008.
- ⁶⁴ Global Witness interviews, Goma, 7 and 10 August 2008.
- ⁶⁵ Global Witness interview with former member of an armed group, Goma, 9 August 2008.
- ⁶⁶ Global Witness interviews with UN source, civilian government official, industry and humanitarian sources, Goma, July and August 2008; telephone interview with journalist, 19 September 2008.
- ⁶⁷ Global Witness interviews, Goma, 7 and 10 August 2008.
- ⁶⁸ Global Witness interviews with UN personnel, sources in the mining sector and Congolese human rights activists, Goma, August 2008.
- ⁶⁹ Global Witness interviews, Kinshasa, 12 May 2008, and Goma, 7 and 8 August 2008. GMB and Alexis Makabuza are also cited in the Final report of the Group of Experts on the DRC, S/2007/423, 16 July 2007. For further background on the conflict in Bisie, see Pole Institute, "Ressources naturelles et flux du commerce transfrontalier dans la région des Grands Lacs", July 2007, and CREDDHO, "Rapport sur l'exploitation et l'exportation de la cassitérite et du coltan en province du Nord-Kivu", Goma, October 2008.
- ⁷⁰ Global Witness interviews with MPC representatives, Goma, 7 and 8 August 2008. MPC letter to the military prosecutor in Kinshasa, dated 11 December 2006. MPC also presented a detailed account of events in Bisie in a letter to Global Witness dated 17 February 2009.
- ⁷¹ MPC letter to Global Witness, 17 February 2009.
- ⁷² Global Witness interview with MPC representatives, Goma, 7 August 2008, and telephone interview, 18 March 2009.

- ⁷³ Global Witness interviews with Division des Mines, Goma, 22 July 2008, and SAESSCAM, Goma, 23 July 2008.
- ⁷⁴ Global Witness interview with General Vainqueur Mayala, commander of the 8th military region, and other senior FARDC officials, Goma, 11 August 2008; telephone interview with MPC representative, 18 March 2009.
- ⁷⁵ Global Witness e-mail correspondence, 19 and 25 March 2009.
- ⁷⁶ Global Witness interviews with local residents, Tubimbi, 29 July 2008.
- ⁷⁷ Global Witness interview, Tubimbi, 29 July 2008.
- ⁷⁸ Global Witness interview, Tubimbi, 29 July 2008.
- ⁷⁹ Global Witness interviews with local residents, Tubimbi, 29 July 2008.
- ⁸⁰ Global Witness interview with Captain Musa Kyabele Freddy, Tubimbi, 29 July 2008.
- ⁸¹ Global Witness interview with General Pacifique Masunzu, commander of the 10th military region, Bukavu, 30 July 2008.
- ⁸² The description of events in Mukungwe in this section is based on Global Witness interviews in July and August 2008 with a range of sources in South Kivu, including provincial and local government and military officials, human rights activists, a member of the Kurhengamuzimu family and representatives of Banro; correspondence by parties to the conflict and civilian, police and military authorities; and reports by local civil society organisations.
- ⁸³ Global Witness interview with local civilian official, Bukavu, 27 July 2008.
- ⁸⁴ See letter from SAMIKI, signed by its managing director, Pasteur Byamungu Kurhengamuzimu, addressed to the Minister of Defence, entitled "Occupation illégale par des militaires de la 10e reg.mil.du carré minier de Mukungwe accompagné d'exactions contre la population civile" (Illegal occupation of the mining site of Mukungwe by military from the 10th military region, along with abuses against the civilian population), Kinshasa, 22 May 2008; Global Witness interviews, Bukavu, July and August 2008.
- ⁸⁵ Global Witness interview with NGO representatives, Bukavu, 25 July 2008.
- ⁸⁶ Global Witness interviews, Bukavu, 27 July and 4 August 2008.
- ⁸⁷ Global Witness interview with Captain Musa Kyabele Freddy, Tubimbi, 29 July 2008.
- ⁸⁸ Global Witness interview with member of an NGO, Bukavu, 25 July 2008.
- ⁸⁹ Letter from FARDC intelligence officer of the 10th military region, Bukavu, addressed to the commander in Mukungwe, 19 March 2008.
- ⁹⁰ Letter from a police inspector, South Kivu, addressed to the commander of the 10th military region, entitled "Dénonciation mauvais comportement des Mil dans le carré minier de Mukungwe" (denunciation of bad behaviour by the military in the mining site of Mukungwe), 11 April 2008.
- ⁹¹ Global Witness interviews with members of NGOs, Bukavu, 24-26 July 2008.
- ⁹² Global Witness interviews, Bukavu, July 2008. Global Witness was not able to verify the involvement of all these officials.
- ⁹³ Global Witness interview with General Pacifique Masunzu, commander of the 10th military region, and Colonel Baudouin Nakabaka, 2nd commander responsible for administration and logistics, Bukavu, 30 July 2008.
- ⁹⁴ Global Witness interview with representatives of Banro, Bukavu, 4 August 2008.
- ⁹⁵ Global Witness interview, Lamera, 1 August 2008.
- ⁹⁶ Global Witness interview, Sange, 2 August 2008.
- ⁹⁷ Global Witness interview, Sange, 2 August 2008.
- ⁹⁸ Article 27 of the Mining Code specifies that members of the armed forces may not request or obtain mining rights, artisanal mining or trading cards or constitute themselves as *comptoirs* for the sale and purchase of artisanally produced minerals. Loi no.007/2002 du 11 juillet 2002 portant Code Minier.
- ⁹⁹ Global Witness interview with General Vainqueur Mayala, commander of the 8th military region, and Colonel Delphin Kahimbi, deputy commander responsible for operations and military intelligence, Goma, 11 August 2008.
- ¹⁰⁰ Letter from disciplinary council to the commander of the 8th military region, 15 July 2008.
- ¹⁰¹ Global Witness interview with General Vainqueur Mayala, commander of the 8th military region, and Colonel Delphin Kahimbi, deputy commander responsible for operations and military intelligence, Goma, 11 August 2008.
- ¹⁰² Global Witness interview with official of the Division des Mines, Baraka, 2 August 2008.
- ¹⁰³ Global Witness interview with human rights activist, Bukavu, 25 July 2008.
- ¹⁰⁴ Final report of the Group of Experts on the DRC, S/2008/773, 10 December 2008, paragraphs 73 and 77. Section IV, B of the report (paragraphs 72-101) describes the way in which the FDLR use the natural resource trade as a source of finance.
- ¹⁰⁵ For background information on the structures of the FDLR in North and South Kivu, see Pole Institute, "La conférence de Goma et la question des FDLR au Nord et au Sud-Kivu", Goma, June 2008.
- ¹⁰⁶ Internal MONUC report, 28 May 2008.
- ¹⁰⁷ Global Witness interview with member of an NGO, Bukavu, 25 July 2008.
- ¹⁰⁸ Global Witness meeting with members of civil society from North and South Kivu, Goma, 22 July 2008.
- ¹⁰⁹ Global Witness interviews, Lamera, 1 August 2008. The Group of Experts also found that the FDLR were bringing minerals to Lamera to sell them to traders there (see Final report of the Group of Experts on the DRC, S/2008/773, 10 December 2008, paragraph 85).
- ¹¹⁰ Global Witness interview with NGO researcher, Bukavu, 25 July 2008.
- ¹¹¹ Global Witness interview, Lamera, 1 August 2008.
- ¹¹² Global Witness meeting with members of civil society from North and South Kivu, Goma, 22 July 2008.
- ¹¹³ *Ibid.*
- ¹¹⁴ Global Witness meeting with human rights activist, Bukavu, 24 July 2008.
- ¹¹⁵ Global Witness interview with miner, Bukavu, 28 July 2008.

- ¹¹⁶ Internal MONUC memo, 2 January 2008, and draft report, 6 May 2008. A breakdown of FDLR "taxes" in mines in Mwenga is also provided in Pole Institute, "La conférence de Goma et la question des FDLR au Nord et au Sud-Kivu", Goma, June 2008.
- ¹¹⁷ Note on FDLR deployment in Shabunda by a local NGO, Bukavu, 3 November 2007.
- ¹¹⁸ Internal MONUC report, 28 May 2008.
- ¹¹⁹ Global Witness interview with researcher from Shabunda, Bukavu, 25 July 2008.
- ¹²⁰ Global Witness interview with MONUC official, Bukavu, 28 July 2008.
- ¹²¹ Global Witness interview with miner, Bukavu, 28 July 2008.
- ¹²² Global Witness interview with human rights activist, Bukavu, 27 July 2008.
- ¹²³ Global Witness interview, Bukavu, 26 July 2008.
- ¹²⁴ Global Witness interview with human rights activist, Bukavu, 24 July 2008.
- ¹²⁵ Global Witness interview with human rights researcher, Baraka, 2 August 2008.
- ¹²⁶ Global Witness interview with mineral trader, Baraka, 2 August 2008.
- ¹²⁷ Global Witness interview with provincial government official, Goma, 23 July 2008.
- ¹²⁸ Global Witness interview, Bukavu, 26 July 2008.
- ¹²⁹ See Human Rights Watch press releases "DR Congo: Brutal rapes by rebels and army", 9 April 2009, and "DR Congo: Rwandan rebels slaughter over 100 civilians", 13 February 2009; Twenty-seventh report of the Secretary-General on the United Nations Organisation Mission in the Democratic Republic of Congo, S/2009/160, 27 March 2009; and MONUC information note, "MONUC condemns exactions and threats on Congolese civilian populations by the FDLR", 18 February 2009.
- ¹³⁰ Global Witness interview with FDLR members, Luvungi (South Kivu), 31 July 2008.
- ¹³¹ Declaration of the FDLR 03/CD/September 2008: "The FDLR categorically deny false and absolutely baseless accusations propagated by the British organization Global Witness that they have been involved in activities of mining tin and gold in the DRC".
- ¹³² Declaration of the FDLR 02/CD/December 2008: "FDLR reaction to the final report of the Panel of UN Experts on the Democratic Republic of Congo (DRC)".
- ¹³³ For further details on military and other forms of collaboration between the FDLR and the FARDC, see Final report of the Group of Experts on the DRC, S/2008/773, 10 December 2008, section IV, C.
- ¹³⁴ Global Witness interview with FARDC official, Bukavu, 30 July 2008.
- ¹³⁵ Global Witness interview with member of an NGO, Bukavu, 25 July 2008.
- ¹³⁶ Global Witness interview with human rights activist, Bukavu, 27 July 2008.
- ¹³⁷ Global Witness interview with NGO representative, Goma, 21 July 2008.
- ¹³⁸ Global Witness interview with UN source, Bukavu, 28 July 2008.
- ¹³⁹ Global Witness interview with humanitarian source from Walikale, Goma, 7 August 2008.
- ¹⁴⁰ Global Witness interview with member of civil society from Shabunda, Bukavu, 24 July 2008.
- ¹⁴¹ Global Witness interview with researcher from Shabunda, Bukavu, 25 July 2008.
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- ¹⁴³ Global Witness interview with miner from Shabunda, Bukavu, 28 July 2008.
- ¹⁴⁴ The colonel has since been sent to *brassage* and moved to another area. Global Witness interview, Bukavu, 28 July 2008.
- ¹⁴⁵ Final report of the Group of Experts on the DRC, S/2008/773, 10 December 2008, paragraph 86 and Annex 14.
- ¹⁴⁶ Internal MONUC report, 6 June 2008.
- ¹⁴⁷ Global Witness interview with local researcher, Bukavu, 25 July 2008.
- ¹⁴⁸ Global Witness interview with General Pacifique Masunzu, commander of the 10th military region, Bukavu, 30 July 2008.
- ¹⁴⁹ See, for example, FDLR press release 02/CD/December 2008, "FDLR reaction to the final report of the Panel of UN Experts on the DRC", 15 December 2008.
- ¹⁵⁰ Global Witness interviews with MONUC military personnel and Western diplomat, Goma, 22 and 23 July 2008; letter from Alan Doss, Special Representative of the Secretary-General, to Global Witness, 16 February 2009. See also "Background briefing: UN support for security and stabilization of eastern DRC", February 2008, and Fourth special report of the Secretary-General on the United Nations Organisation Mission in the Democratic Republic of Congo, 21 November 2008.
- ¹⁵¹ Global Witness interviews with MONUC military personnel, Goma, 23 July and 11 August 2008.
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- ¹⁵³ See Fourth special report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of Congo, 21 November 2008, paragraph 23. The paragraph also notes that "there continue to be allegations of military and economic collusion by FARDC with FDLR". See also letter from Alan Doss, Special Representative of the Secretary-General, to Global Witness, 16 February 2009.
- ¹⁵⁴ Twenty-seventh report of the Secretary-General on the United Nations Organisation Mission in the Democratic Republic of Congo, S/2009/160, 27 March 2009.
- ¹⁵⁵ See AFP, "RDC : départ des troupes rwandaises à partir du 25 février", 23 February 2009, and BBC News, "Rwanda troops withdraw from Congo", 25 February 2009.
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- ¹⁶⁸ "Réflexion de la Fédération des Entreprises du Congo sur l'exploitation des minerais au Kivu : ses impacts sur la situation socio économique et la recherche commune des pistes de solutions durables", Bukavu, 24 August 2008. These figures differ from official government statistics (see Annex A of the present report).
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- ¹⁷⁰ Global Witness interview with Alexis Makabuzza, Goma, 10 August 2008.
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- ¹⁷² *Ibid.*, paragraphs 57-60.
- ¹⁷³ *Ibid.*, paragraph 85; Global Witness e-mail correspondence, 13 February 2009.
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