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COMMENTS REGARDING 'TIME TO DIG DEEPER' REPORT BY GLOBAL WITNESS

September 2017

Global Witness (GW) recently released a report '*Time to Dig Deeper*¹' which reviewed progress of annual public reporting as recommended in Step 5 of the OECD Due Diligence Guidance. The review referenced many public reports of 3T companies who are iTSCi members which have been made available via the iTSCi website², and also made certain recommendations to companies and the iTSCi programme.

We were pleased to note that **good progress was recognised in 3T** supply chains and countries where iTSCi is implemented - all except one report was on 3T minerals rather than gold, all 3T reports were from iTSCi members, and contrary to other established iTSCi countries, there were no reports on 3T from Uganda where iTSCi was not at the time implemented.

iTSCi was also happy to cooperate with GW during their research, including encouraging member companies to respond to GW enquiries, as well as assisting with the visit to the Abahizi cooperative in Rwanda. However, we did not have the opportunity to consider the final recommendations of the report before publication which we comment on below;

GW recommendation> *Ensure they do not remove, or advise companies to remove, non-sensitive information on risk from their public due diligence reports.*

We are pleased that GW did not identify any significant examples of removal by iTSCi staff of non-sensitive information from any reports on our website. Information that we consider sensitive/confidential is explained in depth in both our letter of April 2017 (included as Annex 5 of GW report), and our letter of July 2017 (not included in the GW report but annexed to this response) which discusses further details of the ETI and TSL annual reports. We strive to maintain consistent and fair standards of transparency taking into account business confidentiality as per the OECD recommendations and normal business practice.

Regarding ETI, it is relevant to note that the workplace risk assessment had already been published the year prior (2014³), and is also published (with appropriate redactions on topics outside our scope) for 2016⁴. This illustrates continuous improvements in policy made by iTSCi as we learn from experience.

In further follow up with TSL, of which GW were aware but did not appear to account for, the company confirmed that "*The 2015 report is just a new version that we made that was not sent to you before... The risk assessment is something that we updated after some recent incidents to help our staff to understand what they must do...*" i.e. documents obtained by GW were updated versions not the originals provided to iTSCi.

¹ See <https://www.globalwitness.org/en/campaigns/democratic-republic-congo/time-dig-deeper/>

² See <https://www.itri.co.uk/information/itsci/members-annual-public-reports>

³ See https://www.itri.co.uk/index.php?option=com_mtree&task=att_download&link_id=55252&cf_id=24

⁴ See https://www.itri.co.uk/index.php?option=com_mtree&task=att_download&link_id=55819&cf_id=24

GW recommendation> *Treat poor quality risk reporting as a red flag and log this as an incident to be followed-up on.*

GW consider that public reporting is key to translate due diligence theory into practice, and a vehicle for sharing information through the supply chain, allowing for public scrutiny and verification. While this would be the case if no industry programme were in place and annual reports are a key source of information, iTSCi expects a much more continuous engagement of member companies in risk mitigation via our incident reporting mechanism, followed-up through discussions facilitated by our on the ground assessment teams, and driven by potential membership sanctions. Lack of response to risk by any actor, not only by companies but also by authorities or our own iTSCi staff are already noted, shared with the supply chain on a monthly or more frequent basis, and made public in the incident summaries⁵. Response to and reporting of risks is also evaluated by iTSCi audits, the summaries of which are made public⁶.

Practical implementation via an industry programme is the most effective approach. Reliance on annual public reports, which are issued some time after risks may have occurred, and containing information which is not verified, would be significantly less credible or effective. Any company at any point in the supply chain is welcome to participate as an iTSCi member in order to receive the best possible regular information on risks and follow up as appropriate.

The OECD guidance emphasises that companies are ultimately responsible for their own due diligence and as a result, iTSCi expects all members to evaluate information on suppliers and make their own evaluation to determine decisions on continuation of trade. While we recognise that annual reports of members can be improved, and plan to continue to provide guidance and suggestions on content or other recommendations, we would consider making judgement on what a company has itself decided to include in its own report as stepping beyond the scope of our responsibility. iTSCi does open incidents to highlight when any member has not published any report.

GW recommendation> *Treat the involvement of a politically-exposed person (PEP) in company ownership and/or management as a red flag, i.e. a corruption and/or direct or indirect link to conflict risk.*

Further comment on PEP's is contained in our letter of July 2017 annexed to this response; PEPs are not explicitly referred to in the main body of the OECD guidance and are therefore not directly within the scope of our activities. Nevertheless, without explicitly naming PEP's the iTSCi membership process does highlight the involvement of higher risk individuals within any company ownership when relevant and already considers this in relation to OECD Annex II risks.

GW recommendation> *Communicate clearly that information on company ownership and potential conflicts of interest exists in its members' database, which should also be made easily searchable*

Information on company ownership is obtained and held by iTSCi, and any identified risks or conflicts of interest are highlighted in the public summaries of company status and understanding of due diligence. However, contact details and personal information of individuals is confidential and is not shared between all members. If a member intends to begin trading with another member they may enquire directly to iTSCi for information and a discussion on potential risks which will be provided if a legitimate business interest and supplier relationship is established. It would not be appropriate to establish a freely available database of personal information. Member companies can, and do, make their own additional due diligence on potential suppliers, both for financial and other risks and do not entirely rely on public iTSCi information.

⁵ See <https://www.itri.co.uk/information/itsci/itsci-incident-summaries>

⁶ See <https://www.itri.co.uk/information/itsci/itsci-company-audits>

Regarding publication of specific risks

Throughout the report, and in recommendations to companies, GW discuss how companies should be reporting specific risks in their supply chain, however, the OECD guidance for 3T minerals does not recommend publication of specific risks but discusses methods, general risk assessments, and practices. We disagree that information in public reports must be sufficiently detailed to describe precise actions and allow other companies in the supply chain to address and act on the identified risks since, not only would this be too late, but publishing a detailed report of specific risks in any supply chain would require the explicit permission of other named companies, and would reveal supplier relations which the OECD guidance recognises must remain confidential. While the gold supplement mentions disclosure of actual risks, this is not the case in the 3T supplement and is not an approach agreed in 3T multi-stakeholder discussions. Since GW identified only one report by a gold company it remains to be seen whether the gold sector will report on specific risks.

Through the iTSCI industry programme, member companies are made aware of risks in much more detail and at an earlier date than would ever be achieved through evaluating unverified annual reports. Since incident summaries are also made public, the parties responsible for mitigation and their performance can also be evaluated through public scrutiny without the need for repetitive inclusion in numerous company reports.

Additional comments

GW highlight that some companies did not report on accidents on their concessions. iTSCI agrees with responses from those companies that health and safety incidents, while important and requiring improvement plans, are not issues of due diligence relating to Annex II risks such as conflict and human rights abuses and not relevant for Step 5 reporting.

GW imply that incidents aside from those recorded by iTSCI and companies are likely to exist but when asked, did not provide any examples of additional risks which had not been identified by the programme.

While GW requested iTSCI to forward communications on their behalf to some companies with uncertain contact details in order to allow those companies to respond this was not done consistently. For example, Malaysia Smelting Corporation (MSC) is noted in the report as not replying to GW's request for comment, but the company states that no such request was received and iTSCI was not requested to make contact on behalf of GW to follow up.

From our detailed trading records, iTSCI has a somewhat different list of 2015 active exporters per country than those listed in the GW report; 4 differences in DRC, and 11 differences in Rwanda. This will have affected expectations upon them and the calculation of percentages of companies reporting as per GW report Table 1 as well as the overall conclusions. Differences in documentation and mix-ups are not unusual in-region and this has also been recognised in comments from GW in their Annex 1 on methodology.

Contact itsci@itri.co.uk for further enquiries or suggestions

ANNEX: Second response to Global Witness unpublished (July 2017)



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Name redacted at request of Global Witness

Global Witness
Lloyds Chambers
1 Portosken Street
London E18BT

By email to: *Redacted at request of Global Witness*

18th July 2017

Dear *Name redacted at request of Global Witness*,

Thank you for your follow up questions of 29th June 2017 - we are pleased to have an opportunity to respond to your enquires.

We are glad that you found our letter of 19th April useful and that Global Witness *recognise that "confidential information", as defined in the OECD Guidance footnote 34, is not required or expected in step 5 due diligence reporting.* Please do bear in mind however that the OECD guidance is not a law⁷ and does not have either well-defined terms or standard requirements, and cannot supplant governing laws on competition/anti-trust and data protection.

Footnote 34 refers to business confidentiality and competitive concerns and it is important to emphasise again that a range of types of information have commercial and competitive value, including for example detailed information on mine supply areas and production volumes. While competition law provides guidance, the extent of appropriate publication will depend upon the circumstances in particular markets, for example, the tin business may consider different information to be commercially confidential than the tantalum business. It also depends upon the position/activities of any one or other company in the supply chain.

ETI and Rutongo Mines

You noted that *according to Rutongo and ETI, both companies sent iTSCI their 2015 risk assessments attached to their 2015 due diligence reports, but iTSCI did not publish these.*

The reports for both companies were provided from a Tinco Group email address (shareholders in ETI and Rutongo). The annexes were 'Workplace Risk assessment and Control (WRAC)' template documents of a sort used for mining operations rather than risks specific to OECD guidance. These documents included comment

⁷ Although referred to in law of certain jurisdictions

on accidents, hygiene, lack of rule of law and other points that are beyond the scope of the iTSCi programme and such information would thus not be published as iTSCi cannot be seen to verify claims made by companies on those matters. While the WRACs did contain other general remarks about traceability, thefts and costs these did not seem to add a great deal to the information that was not already described in the bulk text of the reports which were uploaded in full, as well as other public comments frequently made by the same companies.

iTSCi did not instruct Tinco to remove the WRAC's but asked whether the company was happy for us to upload without the WRAC, or, whether they preferred that the WRAC was included (which would have involved redaction of issues not relevant to OECD DDG). The Tinco representative confirmed that the report could be uploaded without the WRACs. Should the companies wish to have made the WRACs public they could have indicated that to us, and/or could have published on their own websites - being relatively large companies this might be expected to be within their capabilities; <http://www.tincogroup.com/operations.php>

You will notice that the Rutongo report included discussion by the company of tin prices and costs but similar information on tungsten prices was not included by ETI in their report. This illustrates the point above – that commercial and competitive information varies according to mineral/circumstance on a case by case basis.

You might also notice that the reports did not refer to any incidents, for example, the ETI report did not refer to incident RW/2015/0045 in which company staff were completing logbook records in place of GMD agents, and not returning copies of the logbooks to iTSCi while otherwise reporting to the buyer that all procedures were properly applied. Some phrases in the WRAC such as “Logbooks are sent to GMD offices weekly” were known by iTSCi to be incorrect thus illustrating the challenges of a third party publishing information that could be making incorrect claims, as well as the limitations around the reliability of using public company reports for detailed assessment of suppliers/supply chains.

Trading Services Logistics

You note that according to TSL, the company was advised to remove information – highlighted by the company in red in the attached document – from the risk reporting section of its 2015 due diligence report “for confidentiality reasons”. However, in our view, the information it was advised to remove does not appear to be confidential or commercially sensitive.

TSL originally provided a report in English. This was quite similar to that from 2014 and they were requested to update the file with recent activity. A week or so later they provided an updated 2015 report in French but were then requested to remove names of suppliers and other contact information as previously discussed. Once this was achieved, a further updated version of the report was uploaded.

None of the versions of the document provided to us by TSL contain the sections that you have highlighted in red in the document that you have sent to us; we did not suggest or actually remove those sections, they were not there in our versions. I am sure you are aware that documents in the region are somewhat unreliable and this is presumably a typical document mix up.

Conclusion

iTSCi has not required the redaction of relevant non-commercial or non-confidential information.

Response from GW 28th April 2017

We appreciate you taking time to answer our three questions raised in our previous letter.

1. PEP – we note that you consider issues of PEP to be relevant to the spirit of the OECD guidance, however, we cannot base interpretations on possible intended meaning or spirit. PEPs are not explicitly referred to in the main body of the DDG and thus iTSCi does not have a policy on PEP's. Nevertheless we can communicate your advice to members and note that they themselves may wish to apply enhanced due diligence as part of their own responsibilities.
2. Multiple occurrences in one incident – yes we can confirm that Rutongo thefts and similar cases which may reoccur are recorded in batches under single incident numbers rather than one incident per report. Many incidents contain multiple factors and issues. Could you kindly confirm that you have not identified any specific risk incidents of which you could make us aware?
3. Lack of clarity on purpose – we would recommend that when you contact companies you do make it clear whether your research is relating to DDG or to other corporate social responsibility. This would be a more transparent approach. As a further example, during your visit to ITRI in the spring 2017 we did have a discussion around why GW was including Uganda in your study but not Burundi. It would appear from the publication of the recent report including extensive information on APRU that there was other work underway which you did not disclose at the time. In future we would appreciate being informed of potential cross cutting research being performed if relevant to requests/discussions.

As before, we would be pleased if you include this letter in full in your report rather than to include excerpts. If this is not possible then please advise us of your intent as it is likely that we will then also publish this response online.

We look forward to viewing a final version of your report as it is clear a significant amount of work has been undertaken to perform the research. I believe that companies would be interested to understand the likely potential resource needed for researching a supply chain via use of public reports as you have done and we would appreciate information on an indicative budget for the GW activity on this subject so that we may advise them on this point.

We do hope that you find the above information useful. If you have any further questions please do get in touch in advance of the publication of your report.

Yours sincerely,



Kay Nimmo, ITRI
On behalf of the Governance Committee of the iTSCi Programme



Roland Chavasse, T.I.C.