

ITRI RESPONSE TO THE FINAL REPORT OF THE GROUP OF EXPERTS ON THE DEMOCRATIC REPUBLIC OF THE CONGO S/2015/19 of 12th January 2015

ITRI, as the global tin industry association, leads the implementation of the joint industry due diligence activity, the ITRI Tin Supply Chain Initiative (ITSCI Programme) in the DRC and adjoining countries. Our organisation has followed closely reports and recommendations of the UN Group of Experts over an extensive period and feels that it is necessary to comment in depth on the recent report S/2015/19.

In summary;

- The report does not present any information on, nor a balanced view of, the progress of due diligence in the tin, tantalum and tungsten (3T) sector but is focused on traceability which is a limited aspect within the complex application of due diligence as a whole. As such, the Group does not seem to have fulfilled the request of Resolution S/RES/2136 para 23 to study the impact of due diligence as originally called for in S/RES/1952 para 6.
- The report states that the Group used standards of working as outlined in Resolution S/2006/997. Unfortunately, however, the Group did not always apply para 28 to make available to relevant parties any evidence for review and comment to ensure fairness in reporting, nor para 50 regarding the provision of concrete information to ensure accuracy.
- The report contains a number of errors and/or misunderstandings of the procedures utilised in the ITSCI Programme. These could have been fully clarified in advance of the drafting of the report if a fairer and more interactive approach to consultation had been taken by the Group.
- The Group provides extensive descriptions of apparent smuggling but does not differentiate between simple price driven theft and more serious connection to funding armed groups or supporting human rights abuses (if any).
- The report implies a number of 'possibilities' that appear to have limited supporting evidence and could be considered practically to be of low risk. The Group has made no assessment of the level or likelihood of such risk and has not provided fair contextual background for these assumptions.
- The Group does not reference the extensive information made available by ITRI to assist the Group's work and investigations, which could imply a lack of cooperation which is not the case. Conversely, the Group has not provided sufficient information on their concerns to enable further follow up by ITSCI or Government.
- All 'issues' described by the Group in Rubaya and Rwanda were previously known to ITSCi, and already managed through incident reporting, stakeholder discussion or other methods (except para 170 which originated before the ITSCI programme was in place in Rubaya). The Group has not referred to or reported on these due diligence actions.
- The Group has not taken the opportunity to highlight the positive impact of ITSCi/due diligence in Rubaya and Rwanda compared to the current lack of progress in Shabunda where ITSCI is not yet present.
- Several 'issues' described by the Group result from uncertainty in managing seized minerals. This risk issue has been one repeatedly highlighted by ITRI within the OECD-UN-ICGLR Forum with direct request for recommendations on managing disposal of those minerals but as yet no progress in has been made by the multistakeholder group and a way forward is unknown.

Further information on the above points are provided in the detailed comments below.

DETAILED COMMENTS

In this section text from the Groups report is provided in italics with comments from ITRI following each section.

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Summary; While there has been progress on traceability and due diligence efforts concerning minerals produced in the Democratic Republic of the Congo, smuggling continues. In addition, elements of the Congolese army (Forces armées de la République démocratique du Congo, FARDC) and some armed groups remain involved in the minerals trade, potentially introducing conflict minerals into supply chains in the Democratic Republic of the Congo and neighbouring States.

While acknowledged in the summary, there is no description or recognition of due diligence efforts, progress, or their impact within the text of the report. Due diligence is mentioned only once at the end of para 182 in relation to the question of legality.

Illegal activity, while of course important, does not automatically imply a link with support to armed groups, criminal networks, or other human rights abuses. In the same way, smuggling is a form of illegal activity that may, or may not, have a specific link to armed groups, criminal networks, or other human rights abuses.

While some examples are provided of the involvement of FARDC, no specific evidence of the introduction of conflict minerals into supply chains has been provided. There is always a 'potential' for such an occurrence and the implementation of due diligence is expected to reasonably reduce and respond to such a risk but not to be able to exclude it entirely. It would have been fair and appropriate for the Group to have described the due diligence measures in place in addition to the apparent concerns found.

156. *In the Democratic Republic of the Congo, the International Tin Research Institute's tin supply chain initiative is the only traceability system for coltan, cassiterite and wolframite, which are transformed into tantalum, tin and tungsten respectively (see S/2014/428, paras. 81-84). In November, a senior official of the Ministry of Mines of the Democratic Republic of the Congo told the Group that the Government would soon sign a memorandum of understanding with the company GeoTraceability for a new system, which would break the monopoly of the International Tin Research Institute. A GeoTraceability official confirmed this information and told the Group that the company hoped to start working in the Democratic Republic of the Congo early in 2015.*

Representatives of the UN have repeatedly been advised that the International Tin Research Institute does not exist, the name of our organisation is ITRI Ltd. This is a typical error by many reporters arising from lack of validation of information with the relevant party.

The ITSCI programme is not a simple traceability system, but a Programme that assists the supply chain, and the Governments of the relevant countries, and therefore the ICGLR, with the implementation of due diligence as a whole. The ITSCI Programme incorporates all aspects of the OECD Guidance on due diligence including on the ground assessment teams, and independent auditing and evaluation of participants, and is a joint industry mechanism as recommended by the OECD Guidance to maximise efficiency of the significant task at hand. GeoTraceability is a data collection platform similar to another now being used as part of ITSCI in Rwanda.

157. *Since the Group's midterm report was issued, the Government of the Democratic Republic of the Congo has certified as "green" seven mining sites in Walikale territory (see annex 44). In September, the "tagging and bagging" system of the tin supply chain initiative was launched in the area of Ngungu, Masisi territory, for the mines owned by the company Sakima. The North Kivu Minister of Mines told the Group that the mining sites in Masisi would soon be revalidated in order to conform with the ICGLR rule that a mine should be revalidated every six months. The Rubaya and Ngungu mines were first validated on 2 February 2014 and should have been revalidated before 2 August. The Minister also told the Group that he plans to start validating mining sites in Lubero and Beni territories.*

The ITSCI Programme is not a 'tagging and bagging' system, but is a joint industry due diligence mechanism. The Group has failed to note the extension of mine validation and ITSCI implementation in a number of other sites in the DRC, including in the Kivu's, in the period after the mid-term report was presented although the below list was provided to them directly;

- January 2014: iTSCi traceability and due diligence begins in northern Maniema, DRC
- February 2014: iTSCi traceability and due diligence begins in North Kivu, DRC
- April 2014: iTSCi traceability and due diligence begins in Burundi
- June 2014: iTSCi traceability and due diligence expands in southern areas of South Kivu
- August 2014: iTSCi traceability and due diligence extends areas in North Kivu

158. The Group conducted two cases studies on tantalum, tin and tungsten in Rubaya, North Kivu, and Shabunda, South Kivu. The Group concludes that while progress has been made in Rubaya, many problems have yet to be resolved. The Group has confirmed that minerals from Rubaya are smuggled with the involvement of Congolese army officers, and that smugglers take minerals from Rubaya to Rwanda, despite Rwanda's recent efforts to improve transparency in its mineral sector. In Shabunda, the Group found that a Raia Mutomboki faction is controlling an area with cassiterite mines and deriving revenue from the trade in cassiterite.

The Group has not provided key information to demonstrate the cause of the difference between the two case study locations; that progress in Rubaya has been achieved through the implementation of ITSCI and local stakeholder efforts, while ITSCI has yet to be implemented in Shabunda. Such a description could have yielded interesting information on the impacts of due diligence to support fulfilling the mandate of the Group.

159. As it did in 2012, the Group documented the sale of tin supply chain initiative tags (see S/2012/843, para. 172) and obtained two such tags in Bukavu, the Democratic Republic of the Congo, and two in Gisenyi, Rwanda. The availability of tags intended to ensure traceability is a sign that gaps in the system that enable smuggling still need to be addressed. Minerals from non-validated sites, such as those in areas of Shabunda controlled by Raia Mutomboki, could enter into the international supply chain with the tin supply chain initiative tags. The Group asked the International Tin Research Institute about the sale of tags, but had not received any answer as of late November.

The two tags identified in Annex 55 obtained by the Group in Bukavu are not current or relevant (see para 189 below). These are obsolete tags which were provided for the ITSCI pilot project in 2010. These older, invalid tags are sometimes used for training sessions in order to avoid the possibility that current, valid tags are stolen during such meetings (noting that stolen tags are always cancelled in the database).

It is highly unlikely that these obsolete tags could be successfully used to introduce mineral from Shabunda into the supply chain as conflict free since they are visually distinctly different from current tags and their ineligibility would be immediately obvious to all participants within the ITSCI programme. If any participant had utilised those tags that would also be clearly evident in the data management systems. The user of such tags would be automatically linked to fraudulent activity for further follow up and mitigation with all details recorded in an auditable incident report. This is the normal process in the application of due diligence.

The Group made a request to ITRI for general information on sale of tags on 31st October, with a deadline of 12th November; the time period when many individuals were travelling in the DRC for the OECD meeting and not always available for immediate communication. The issue was not raised in person by the Group representatives during the OECD meeting in Kinshasa although the opportunity was available.

An example of monitoring and follow up on attempted purchase of tags in South Kivu was included in incident reports provided to the Group prior to their additional enquiry. For example, incident SK-2013-42 which is among information publicly available online;

https://www.itri.co.uk/index.php?option=com_mtree&task=listcats&cat_id=198&Itemid=11

Information in Group report S/2012/843, para 172, regarding use of Rwandan tags relating to Tuhagere was provided to that Group by ITRI in 2012. The incident RW-2012-0121 resulting from that Group report added to incidents RW-2012-0106, and RW-2013-0006, both on suspected high production at the Tuhagere sites. Tags were removed from the company in November 2013 and the company was suspended by GMD in January 2014.

Information in Group report S/2012/843, para 172, regarding use of Rwandan tags relating to Kuaka was provided to that Group by ITRI in 2012. The incident RW-2012-0122 resulting from that Group report added to incidents RW-2012-0013 that already existed and was closed once the Government confirmed normal activity at the site.

The Group has unfortunately not reported that the due diligence and field monitoring processes that are in place within the ITSCI Programme have mitigated and managed the issues raised in 2012.

ITRI provided extensive unpublished information to the Group upon their requests earlier in 2014;

- Unpublished Governance Assessment relating to payments and taxation (partly designed to provide information on financial drivers for smuggling minerals as discussed elsewhere)
- Unpublished Governance Assessment relating to Burundi
- Unpublished incident report summaries to a recent date

- Unpublished field reports
- Unpublished production and export data to a recent date
- Unpublished list of Rwandan mining companies
- Unpublished lists of recipient countries of minerals from Rwanda and DRC

This added to the information already available to the Group online;

- Upstream member company due diligence evaluations
- Upstream member company independent site audits
- Upstream member company annual due diligence reports
- Older field, data and audit reports than listed as unpublished above

None of this due diligence information has been acknowledged or utilised for reporting by the Group.

Rubaya

160. *In the Rubaya area of North Kivu, seven mining sites have been certified as “green”. The Société minière de Bisunzu (SMB) (formerly called Mwangachuchu Hizi International) holds titles for all seven sites but only controls the D2 Bibatama mine (see S/2014/428, para. 85); the Cooperative des exploitants artisanaux miniers du Masisi (Cooperamma) controls the other six sites. Cooperamma and SMB have signed a memorandum of understanding that requires Cooperamma to sell everything produced at its mining sites to SMB (see S/2014/42, para. 203, and S/2014/428, annex 31).*

SMB is the concession holder with mineral rights for production from all sites. It is legal and appropriate for Cooperamma to be required to sell those minerals to the holder of those rights. The company SMB controls its own concession, even if allowing Cooperamma to operate in some areas.

161. *On 28 October, the Group visited Rubaya and investigated the bagging and tagging system at the sites under the control of Cooperamma. According to the tin supply chain initiative scheme, mining officials should be present to affix two tags on each bag of minerals in Rubaya, one belonging to the mine of origin and one belonging to the négociant. During its visit, the Group noticed that the négociant tag was still being affixed in a separate location (see S/2014/428, para. 87). In an e-mail communication on 29 October, the management of SMB told the Group that the decision to affix the négociant tag not in Rubaya but at the Cooperamma office in Goma instead (55 km from Rubaya) was taken in part because “traders were unwilling to bring money to the mine for security reasons”.*

The procedure described by the Group is not correct; mining officials are not expected to affix two tags in Rubaya, they are expected to affix a mine tag (after washing) in Rubaya, and optionally, a négociant tag (after processing) typically in Goma. All tags are then collected for the relevant export (possibly following further processing) with an appropriate reference number.

The procedure being used, and the affixing of a négociant tag not in Rubaya, is entirely as expected and correct. Minerals are tagged and recorded before being removed from the washing area, and are identifiable on route to Goma for the next stage of processing and re-identification. This was not raised as an issue by the Group for comment by ITRI.

162. *The Group visited three washing stations that mining agents in Rubaya said were the main sites where minerals were washed for the last time before being dried, bagged and tagged (see annex 45). These washing stations were not located at the mine but, rather, in the town of Rubaya. Three négociants and one mineral washer told the Group that minerals were sometimes processed and dried in individual residences in Rubaya because there was not enough space at the washing stations to dry the minerals.*

Washing in Rubaya is a situation that arises due to lack of water at the mine sites. It is an issue of which everyone is aware, and a resolution was discussed in the Provincial committee meeting (CPP) in Goma on 20th August 2014. The CPP targeted to move the washing areas closer to the pits within a certain time and the company SMB has invested in development of washing areas close to the pits in order to improve and address this practical difficulty although this has not yet been finalised. This is an example of the need for flexibility in the application of due diligence according to operator size and practical circumstances as recognised within the OECD Guidance.

163. *Three négociants in Rubaya and two in Goma told the Group that mining agents were not present on a regular basis where minerals were washed and dried, and that they sometimes showed up only after being summoned by négociants to affix the mines tag on bags. In the view of the Group, these are loopholes that facilitate the smuggling of the minerals.*

SAESSCAM agents are responsible for application of the mine tags in Rubaya and are generally found in the area, both at the mine and washing sites. The agents are not 'summoned by négociants'. Registered négociants are not in fact dealing in mineral at that point in the supply chain but the related persons are 'negociant cat B' or 'chachouleur'.

Of course it is possible that state agents, like any other person, may not perform their duties appropriately from time to time and could be absent for reasons of, for example sickness, lack of resources to enable them to reach sites, or lack of pay. However, this is not a specific issue to Rubaya and the absence of agents is rapidly noticed and reported by traders who cannot obtain tags for their minerals and cannot sell. Instances of absences of agents are recorded as incidents, examples of which can also be found in the public summaries online.

It may be the 'view of the Group' that activities of agents facilitates smuggling, but it is not explained what evidence there is to support that view, nor any evidence to suggest that smuggling (or rather theft) has any link to conflict. Nor is it explained if the Group suggests that this facilitates smuggling illicit minerals into the system or enables minerals to leak out of the system. This was not raised as an issue by the Group for comment by ITRI.

164. *During its interviews in North Kivu with miners, civil society organizations, provincial authorities and businessmen, the Group was repeatedly told that although smuggling had declined since the launch of the tin supply chain initiative system, it remained a problem. Provincial mining authorities told the Group that, between February and August 2014, they had seized nine shipments of minerals smuggled from Masisi (see annex 46). Three state agents at the Mubambiro checkpoint and one police agent in Sake, however, told the Group they were discouraged because sometimes minerals from Masisi territory were seized and then immediately released after the intervention of a higher governmental authority.*

We appreciate the Group noting that they were 'repeatedly told that although smuggling had declined since the launch of the tin supply chain initiative system'.

However, with regard to the smuggling that continues, the Group has not provided any indication of the possible extent/quantity of this 'smuggling' nor the evidence to confirm it is linked to armed groups or human rights abuses. As such, it is impossible to evaluate the level of this risk and its impacts. Of course illegal activity will always continue for various reasons, for example for the purposes of tax evasion or to profit from price differentials, yet these types of issues are not limited to high risk areas, occur all around the world, and do not specifically contribute to conflict.

It is a positive point that illicit minerals are being seized at the checkpoints, and also a positive step that the excess number of authorities at the checkpoints have been reduced by the action of the CPP.

The ITSCI Programme recognises the enhanced risks of re-introduction of seized minerals into the supply chain and has repeatedly requested that the OECD-UN-ICGLR forum on due diligence provide guidance on a practical solution to this and other related issues including the management of stock over the past two years. The forum has, as yet, failed to provide any suggested solutions for disposal of seized minerals which therefore remain a risk with no method of mitigation.

165. *The Rubaya office of the provincial mining division provided data to the Group that shows declining official production since May (see S/2014/428, para. 86). In May, all the mines at Rubaya produced 135 tons of coltan, but a decline that started in June (79 tons) continued in September (70 tons) and October (57 tons). Three négociants and one miner in Rubaya told the Group that official production had dropped in part because of the onset of the rainy season; the three négociants added, however, that the decline was also a sign that minerals were being smuggled.*

ITRI does not publish or comment on production figures for individual company concessions since that information may influence price and competition. However, ITSCI staff report on changes in production each month and provide an assessment of the reasons for increase of decreasing tonnages. Significant changes to

the production in any artisanal or small-scale mine can be influenced by the following factors, with the first few relevant to the SMB concession;

- Lack of water for washing for certain periods
- Excess water during the rainy season causing flooding, access challenges, and instability of sites (in Rubaya from August)
- Diversion of miners for heavy work to further develop the site rather than mine
- Issues around availability of cash from the bank and purchasers
- Rich mineral veins being worked out and the ramp-up time needed to develop new resources
- Equipment breakdown or other technical delays
- Disputes or other issues which halt production
- Diversion of miners from certain mines or minerals (especially if there is a reduction in price) to more lucrative sites or materials

An assumption that a reduction in production immediately equates to increased smuggling based on verbal opinions is simplistic, does not appreciate the realities of artisanal operations, and is not verifiable.

166. *The Group discussed the causes of smuggling with three négociants in Rubaya and one worker at Cooperamma, who stated that SMB offered approximately 20 per cent less for the minerals than buyers in Rwanda offered. They also told the Group that in 2014 SMB was sometimes late in making payments, which led some négociants to sell minerals illegally. Négociants who are members of Cooperamma told the Group they would like to break the monopoly held by SMB on the minerals trade in Rubaya.*

As above, availability of cash is a key factor in motivating miners to work and lack of cash anywhere in the region rapidly leads to a reduction in production.

167. *In response to an enquiry from the Group about the aforementioned issues, the management of SMB told the Group that the négociants were “paid twice a week for the most part”. SMB told the Group the price it offered to the négociants. On the basis of that price and Group interviews with three négociants in Rubaya and a Cooperamma worker in Goma, the Group believes that the price in Rwanda is, in fact, 20 per cent higher than that at Rubaya.*

As per para 160, SMB has the rights to all minerals from its concession. Mining companies all around the world have issues with theft of minerals from their sites when buyers elsewhere offer higher price – something that is possible since the buyers of illegal minerals do not have normal company costs for operations, health and safety and other investment in the mines and surrounding communities, and can avoid the payment of tax. This is a result of financial incentive and would not appear to be directly linked to conflict or funding of armed groups.

Similarly, there is an issue of theft of mineral from Rwandan mine sites and movement to locations where higher price is available. This is a complicating factor in the evaluation of all data in the supply chain.

168. *The Group confirmed that Congolese army officers are involved in the smuggling of minerals from Masisi, as demonstrated by the two case studies below.*

169. *The following two paragraphs are based on the Group’s interviews with seven Congolese army officers and soldiers, officials at the provincial ministry of mines and civil society organizations. In addition, the Group obtained a transcript of the arraignment hearing of army Colonel Hassan Mugabo-Baguma.*

170. *During the night between 20 and 21 February 2014, Congolese army officers arrested Colonel Mugabo at the checkpoint at Mubambiro, near Sake, after military police spotted bags of minerals in his vehicle. At the time, Colonel Mugabo was commander of the 85th sector. An inspection of the car determined that he had 21 bags of coltan, weighing 1,363 kg. He was heading to Goma from Bihambwe in the company of his driver (a civilian) and three soldiers. During his arraignment, Colonel Mugabo acknowledged that he had been arrested because he was transporting minerals in his vehicle but also said that he did not know who owned the minerals. In June, négociant Kabirigi Rukebesha claimed the minerals from the central bank in Goma, where they were being held. The Group confirmed that Mr. Rukebesha had sold a total of 898 kg of minerals to SMB on two occasions in 2014: in August (594 kg) and November (299 kg).*

171. *The 8th military region, at that time under the command of the late General Lucien Bahuma, freed Colonel Mugabo without further investigation or punishment; his case was not even referred to the military prosecutor.*

The ITSCI Programme started field implementation at Rubaya mine sites on 3rd March 2014. The original event and the involvement of the FARDC was therefore prior to the incident reporting system being in place. As noted by the Group earlier, it is recognised that illegal activity has reduced since the introduction of the due diligence programme.

Mr Rukebesha is a négociant who has been known to sell minerals in the area in the longer term. Minerals sold by this individual to SMB during the times reported by the Group have traceability records starting at the mine. Since it is somewhat impractical and carries a high risk of detection, to transport minerals from Goma back to Rubaya to be tagged, it is unclear how the Group links the mineral from the bank to that supplied to SMB. ITSCI staff have no confirmation that the minerals were obtained from the bank by that négociant, nor that the mineral sold by the négociant came from the bank and not from the mine. The Group did not request any information from ITRI on this issue and has not provided any documentary evidence that would assist with our follow up although an investigation is now underway.

As above, the responsible Government has difficulty in managing the disposal of seized mineral due to the failure of the OECD-UN-ICGLR forum to recommend a practical solution to that already highlighted risk. This is a significant contributing factor to the continued difficulty in mitigating these incidents.

172. *The Group also confirmed that Congolese army Captain Mputu used an Kamaz truck belonging to the army to smuggle minerals from Rubaya. A négociant, a senior provincial mining official and two witnesses told the Group about the smuggling incident, which took place between 20 and 21 August (see annex 47). That night, Lieutenant Colonel Simweray-Kinyabuuma Pascal, commander of an army company in the 83rd sector of operations in Rubaya, tried to seize the truck in which Captain Mputu and 12 soldiers were transporting bags of minerals, but Lieutenant Colonel Simweray's superiors told him to release the truck. The only action taken by leaders of the 8th military region was to suspend Lieutenant Colonel Simweray (see annex 48). Two state agents told the Group that they had seen an army Kamaz truck in the night between 26 and 27 October carrying minerals through the Mubambiro checkpoint.*

This incident has been recorded by ITSCI as NK-2014-0041 as part of the on the ground monitoring process to ensure follow up. The issue was discussed during the CPP meetings and the CPP took action to clean up the checkpoints as stated above. The Group did not request any information from ITRI on this issue.

Rwanda

173. *The Group met with people involved in the minerals trade in the Democratic Republic of the Congo and Rwanda, businessmen, Congolese mining agents, a senior official at the North Kivu ministry of mines, officers of the mining police in Goma and representatives of civil society organizations in the Democratic Republic of the Congo, all of whom said that minerals from Rubaya were being smuggled to Rwanda. Such smuggling is facilitated by the availability of Rwandan tags and associated documents on the black market, which can be purchased and used to insert smuggled or stolen minerals into the international supply chain.*

A significant portion of individuals in the DRC believe that Rwanda has no mines and all Rwandan minerals are from the DRC, which is patently untrue. Verbal opinions to this extreme, as well as other opinions on large scale smuggling, abound in all sectors of the community and equivalent opinions can be found in other mineral producing nations outside Africa that border each other and have a history of conflict. Since these opinions are common, the extent of their validity needs to be assessed through some other form of verification, and reporters such as the Group have a responsibility to indicate the extent to which those opinions may, or may not, be valid; unfortunately this has not been evaluated in the Group's report. Smuggling across borders is a worldwide problem, relating to all commodities and goods, and something which presents challenges to all Governments, and not necessarily linked to support of armed groups, funding conflict or human rights abuses. It is presumed that the Group obtained details from all these respondents which would enable them to verify these cases of smuggling and we would be grateful if these details could be shared to facilitate incident investigations.

Para's 174 to 178 describe mineral movement from Rubaya, DRC to Gisenyi, Rwanda – specifically white coltan which is considered to only be available in the DRC and not Rwanda. The Group discusses incidents relating to a number of companies and the mitigation/resolution process.

The Group acknowledges that ITSCI has contributed to the control of this issue through information presented in Governance Assessments and other incident reports and shared with the Rwandan Government, however, a number of clarifications can be made to add to the understanding of the report of the Group.

Para 175 discusses ‘fingerprinting’ of minerals. The evaluation was actually performed by general comparison of mineral assays of samples from the claimed mine source against the mineral in question, it was not a full fingerprinting analysis according to the technique of BGR. A request was made to BGR to perform a full fingerprint but this was not carried out. Para 176 discusses how the assay evaluation of minerals from Union Mines did not come to a clear result, and this is due to the fact that the more accurate fingerprinting technique was not available and differences between minerals based on the more basic assay alone were not sufficiently verifiable.

Para 178 notes that the Government of Rwanda has not identified the origin of the minerals in question or seized any minerals from the DRC. This is unsurprising since, without the availability of full fingerprinting, it is not possible to identify the source of mineral and, even with fingerprinting, it may be difficult to pinpoint the origin of mineral once mixed. In addition, as noted earlier, even if minerals could be verified to be from the DRC, the OECD-UN-ICGLR Forum has failed to produce guidance on the disposal of seized mineral which makes such a situation difficult to manage which creates a disincentive for seizures.

Para 175 discusses suspension of companies from ITSCI by the Government of Rwanda. However, the suspension of companies from the ITSCI Programme is under the authority of the ITSCI Governance Committee and not the Government, although both bodies discussed and jointly agreed actions on these incidents in full cooperation. The Government suspended the licences of exporters and mining companies, and the ITSCI Programme suspended the existing memberships, and application for memberships of exporter companies. ITSCI also added the mine companies to the monthly list provided to members of those requiring enhanced due diligence due to a possible higher risk.

Specifically, more information can be found from;

- ITSCI incident number RW-2013-157 relating to AD Trade and Cemiex, as well as the export of the indeterminate origin mineral to Intelligent Mineral Solutions UK.
- Incident number RW-2013-154 relating to Phoenix and Union Mines, as well as Trans African Super Metals TASM, Kerilee Mineral Investments Rwanda KMIR, Kerilee Investment UK, and mining companies Tuhagere, Mineca, AMKG, Gar Mining, Dukorenza. After evaluation of the available information Union Mines, Gar Mining, Dukorenza, AMKG, Cemiex remained on the ITSCI due diligence list for 6 months, after which were authorized to re-start their activities. Mineca was suspended for six months by the Government. Tuhagere was no longer active.

Most importantly, the mineral with an indeterminate origin was not sold into the conflict-free supply chain but removed from it.

179. Two people involved in the minerals trade in Rwanda and a civil society organization told the Group that small-scale mineral traders in Rwanda play a crucial role in the laundering of Congolese minerals. According to these sources, exporters in Kigali provide money to small-scale traders who buy minerals that are either smuggled from the Democratic Republic of the Congo or stolen or diverted from Rwandan mines. This is done with the tags and official papers delivered in the framework of the tin supply chain initiative, which can be obtained in Rwanda. In fact, the Group obtained two tags for Rwandan mines and all the necessary documents from the cooperative Kamico (Kamusheshe Mining Cooperative) (see annex 50). With such tags and papers, anyone could introduce coltan into the supply chain in Rwanda.

As above, movement of minerals between sites, whether within Rwanda or from elsewhere may be driven by financial issues and may not link to armed groups or human rights abuses. Minerals stolen/diverted to mines within Rwanda are not connected to conflict since Rwanda is a conflict free country. Minerals from the DRC may, or may not be related to conflict.

Incident RW-2014-0202 is currently open in relation to concerns around activities in Gisenyi and possible smuggling from DRC. When incidents are being researched, information is treated as confidential for obvious

reasons given its sensitivity, the risk of alerting those under investigation, and the risk of compromising staff security.

KAMICO were on the due diligence list between August 13 and February 2014; incident RW-2013-0063. The company has now been removed from the list since production quantities currently appear more plausible. KAMICO was also identified as a company where weight differences were notable between the mine and the processor level; incident RW-2013-135. Information on these incidents is available online.

Since the Group has not identified the full tag numbers in Annex 50, or provided any information, or discussed this issue with ITSCI, it is difficult to investigate or comment further. The tags may have been issued to the Government agent at any of four companies, and which one cannot be determined without the full tag number. Once the tag numbers are provided by the Group, then tracing the individual(s) involved will be possible and the Rwandan authorities will be in a position to take appropriate measures against the agents and/or companies.

The Group states that Annex 50 shows 'all necessary documents' that would allow 'anyone' to introduce coltan into the supply chain. In fact, the documents shown in the Annex have no bearing whatsoever on whether minerals would be accepted into the ITSCI Programme.

In order for minerals to enter the supply chain the following is necessary;

- Company registration with the Government
- Mine baseline by ITSCI which records extensive information including estimated production
- Allocation of a Government agent for data recording and monitoring purposes
- Allocation of specific tags and logbooks to the appointed Government agent
- Completion of the data and return before issuing of further tags
- Provision of the tags to the purchaser together with demonstrated logbook records

Detection of any unusual instances relating to the steps above as a result of fraudulent activity would lead to a possible incident for follow up. A number of indicators are considered in the assessment of data and other information to detect fraudulent activity such as;

- Comparison of estimated baseline mine production with claimed production
- Tags being returned from a mine to which they were not allocated
- Logbooks being returned from a mine to which they were not allocated
- Repeated 'mistakes' made by certain Government agents or at particular sites on data recording
- Analysis of other indicators regarding poor traceability or other factors

The sale of tags in itself is not what is normally detected or reported, but the misuse of tags or errors in procedures in some manner as above. It is important to remember that the tags are (a) of no value without the log book; (b) have an inherent security mechanism that identifies who is involved in the fraudulent activity; and (c) are cancelled in the database if identified as being used fraudulently or lost/stolen. The largest percentage of incidents in Rwanda relate to the need to track verification on production quantities and it is for this reason ITSCI circulates a monthly due diligence list to indicate which mine sites may have a higher risk of infiltration. Other actions to mitigate risk are also taken when appropriate, such as the reduction in number of tags allocated to the sites.

Other developments are also underway that may assist in detection of fraud, although it is never possible to eliminate fraud. As the Group were informed, the trial of electronic data collection in Rwanda continued in 2014, and following a successful period of use by Government agents, a first stage roll out covering up to 30% of Rwandan minerals occurred towards the end of the year. Improved verification of data is expected, as well as the introduction of GPS identification at the time of data recording.

180. In 2014, the Government of Rwanda issued new conditions, such as evidence of financial capacity and of adding value to minerals, for traders' licences in the mining sector. The Group acknowledges that the new conditions could help to reduce involvement in smuggling and criminal activity by small-scale mineral traders.

ITSCI welcomes the actions of the Government on this issue.

Shabunda

Para's 181 and 182 discuss minerals from Shabunda originating from non-Government validated mine sites, and possible interaction with/taxation by armed groups such as Raia Mutomboki. The Group reports information that these minerals are flown to Bukavu.

*Para's 183 to 186 discuss similar issues in relation to the **Lulingu and Kikuni** areas of Shabunda.*

Shabunda is an area not yet incorporated in the ITSCI Programme, although funding assistance for scaling-up ITSCI is expected, and awaited, for both Shabunda and Walikale from USAID, via TetraTech and the CBRMT project. There is no well-structured traceability and due diligence mechanism in place as yet in Shabunda.

Mapimo, Shabunda territory

187. The Mapimo area of Shabunda territory is adjacent to the border with Maniema Province and across the Ulindi River from Shabunda town. There are no certified mines in Mapimo but many active mining sites are producing cassiterite. The Group observed people bringing minerals from Mapimo across the river, which were then transported on bicycles into Shabunda town. Businessmen and mining agents in Shabunda town told the Group that minerals produced in Maniema could be transported there through Mapimo and then mixed with minerals from South Kivu. The Group reviewed the manifests of flights from Shabunda town between 1 January and 23 October 2014 (see annex 53), which show that 35,347 kg of cassiterite were flown to Bukavu.

ITSCI has two open incidents relating to the alleged movement of minerals from Kalima or Kasese in Maniema to Shabunda. Although this is still being investigated it appears that it is driven by price, and cash availability issues, as described in other sections. The Government requirement for transportation of minerals from Maniema by train increases cost significantly, and takes a significantly longer time to export, tying up cash in minerals during transport and leading to lower prices at the mine level. This Maniema mineral will presumably become part of the volume flown to Bukavu and reported by the Group.

To add context to this discussion, the volume of mineral considered between para's 181 and 189 is around 212 tonnes. [Note that the Group report says 35 tonnes in para 187 but 212 tonnes in Annex 53]. The volume of traceable cassiterite produced in 2014 in the DRC was around 6,000 tonnes; 212 tonnes therefore represents just over 3% of the DRC export tonnage. This quantity for untagged production/export is entirely consistent with an estimate made by ITRI in relation to the international trade in cassiterite and the expectation that around 5% of DRC cassiterite would remain untraceable during 2014. Assuming Shabunda and Walikale each still produce an equivalent amount of untagged mineral, 5% seems to be reasonably accurate. The figures suggest that mixing of mineral from Shabunda with other material from South Kivu has a limited probability. For relevant figures please see;

https://www.itri.co.uk/index.php?option=com_mtree&task=viewlink&link_id=55233&Itemid=11

188. The Group investigated the storage in Bukavu of minerals flown from Shabunda and Lulingu. Négociants and mining authorities told the Group that minerals were stored in warehouses and not exported but could not point to the locations of any such warehouses.

ITSCI staff in Bukavu are not aware of such warehouses for use of minerals in transit. It is possible however that some companies who are not yet ITSCI members have a certain volume of stock on their premises, possibly from the Shabunda area. Investigations are obviously hampered by lack of detail, therefore reporting that minerals are in warehouses that no-one can identify is of limited value.

189. In Bukavu, the Group obtained two Congolese tags and the associated paperwork, which authorize the legal export of minerals through the tin supply chain initiative system (see annex 55). The availability of the tags in Bukavu means that once minerals from Shabunda and Lulingu have arrived they can be tagged, identified as originating from mine that has been certified as "conflict free" and sold legally on the international market.

As noted in comments to para 159, the two obsolete tags obtained by the Group are from 2010, and are distinctly different to the current tags. Only individuals without any basic understanding of or involvement in the current ITSCI programme would purchase minerals associated with such tags as they are immediately identifiable as invalid. The statement of the Group that these tags can be used to introduce minerals from

Shabunda into the supply chain is based solely on assumption, and is highly questionable. Only a small number of the 2010 tags are still in existence and used for training purposes; individuals accessing such tags will have an extremely limited supply.

The Group does not show any associated paperwork in Annex 55. In order to utilise tags, logbooks must also be completed. Logbooks and other records must then be shown to mining services in order to obtain an export permit and certificate of origin. While investigation is not yet complete, it is highly unlikely that these obsolete tag numbers will appear on official logbook records since the mining services would also recognise them as invalid. The Group did not discuss this issue with ITRI.

Recommendations, Government of Rwanda

226. *The Group recommends that the Government of Rwanda investigate and prosecute, as necessary, Kamico and others involved in the illegal sale of tags and paperwork for tin, tantalum and tungsten, as well as the laundering of minerals from the Democratic Republic of the Congo in Rwanda (see para. 179).*

ITRI welcomes all follow up from the Rwandan Government, however, it would be fair to note that certain mitigation actions against Kamico have already been taken and are recorded in the incident system. It will also not be possible to implement any further follow up without provision of the exact tag numbers and other documents to the Government/ITSCI by the Group.