



ITSCI Response to Global Witness
'The ITSCI Laundromat'





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ITSCI has indicated in parentheses references to GW's report, and our original opportunity to comment is referenced in footnotes.

Contact details

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ITSCI is committed to supporting whistleblowers who disclose evidence of wrongdoing relating to the mineral supply chain covered by the Programme and relating to the key references and scope of the policy. The disclosure can be made directly to any person connected with the Programme and with whom the whistleblower may or may not already be familiar, this includes;

- The confidential ITSCI whistleblowing address at itsci.whistleblowing@internationaltin.org
- The ITSCI incident reporting officer at reporting-itsci@pactworld.org
- The ITSCI Secretariat at itsci@internationaltin.org
- The ITSCI Governance Committee members
- The ITSCI Independent Evaluators
- The DRC whistleblowing hotline: +243 994310000, or +243 890031111, or +243 820990991
- The Comité Local de Suivi or the Comité Provincial de Pilotage
- The local ITSCI field staff
- The area level ITSCI field manager
- The regional ITSCI manager

EXECUTIVE SUMMARY

Global Witness (GW) opens by stating that minerals extracted by hand from the Great Lakes are in ‘huge’ demand noting that DRC and Rwanda produce ‘nearly half’ of the world’s coltan and ‘large’ amounts of tin and tungsten. We are glad that GW acknowledges the important role the 3T sector plays in contributing to regional livelihoods and revenue, although note that demand is tempered by ‘conflict mineral’ stigmatisation and negative reporting. GW begins with the sweeping, inaccurate and unquantified terms such as ‘large’ used throughout the report. In fact, only around 2-3% of the world’s tin arises from ASM in the region, with similar figures for tungsten.

In their opening, GW acknowledge that effective governance in the region is lacking also leading to why minerals are linked to conflict and human rights concerns, and that the OECD Due Diligence Guidance and industry efforts aimed to improve matters. Yet, GW’s over-focus on ‘traceability’, while common, is surprising, and incorrect labelling of ITSCI as a traceability¹ system is a huge and misleading oversimplification of our work. The core OECD expectation for risk mitigation while engaged in trade is underplayed while GW’s over-focus on ‘conflict-free’ terminology reinforces unwarranted regional stigma with no recognition of progress.

GW explain they have brought together ‘evidence’ which tends to be second or third-hand from existing reports or other sources, but has sadly omitted to bring ITSCI incident information into their evaluation of ‘evidence’. While GW may have based reporting on information from over 10 undefined ‘mining areas’ we note that ITSCI monitors ~2,500 mines and engages with 1,000s of companies and stakeholders *every month* and we believe our information to be the best available. Throughout the report GW appears to show unjustified bias towards certain sources which raises significant questions on credibility and accuracy.

ITSCI

GW misrepresents ITSCI’s purpose and ignores risk mitigation options

GW misrepresents ITSCI’s aim, inaccurately stating it is to provide chain of custody of minerals ‘not linked’ with child labour or armed group or army influence or smuggling. Issues arise throughout the GW report due to their apparent preference for assurance or certification, their misunderstanding of, or lack of support for the OECD due diligence guidance, and from that, their misrepresentation of ITSCI. GW uses the term ‘conflict-free’ extensively.

The OECD guidance recognises the legitimate role public security such as army can play² while also anticipating risks may occur, and companies may remain engaged in trading as issues are mitigated. The guidance does recommend disengagement if there are reasonable risks of sourcing connected with non-state armed groups. However, in all cases, the risk must be reasonable, identified and assessed³ prior to decision by companies.⁴

ITSCI’s aim is to provide information to member companies in support of their due diligence decisions. We address all OECD Annex II risks and our incident management system is the primary tool in identifying, reporting, mitigating and monitoring in the DRC and Rwanda. ITSCI has reported on many incidents relevant to GW’s report.

GW rely on a selective view of ‘green’ validated mines

GW claim that, in DRC, mines validated by the government are those free from association with child labour or armed group or army influence and ITSCI aims to provide chain of custody from those validated mines. This is wrong. We explain (see sections 1.1, 2.1.1) that GW has selected to adopt a particular interpretation of ‘green’ validated mines, assuming they are sources free of abuses although they may not have been inspected under the ICGLR related process for a year or more. It could be said that there are currently no ‘green’ validated mines in the DRC. GW also states (section 2.1.1) that they do “not suggest that all minerals from unvalidated sites are linked to conflict or human rights

¹ OECD DDG, 3T Supplement, Step 1C1 to 1C4

² We report as part of our incident reporting any wrongdoing by army or public security in relation to abuses, bribery and corruption or fraud associated with the extraction, transport or trade of minerals, and as outlined in OECD Annex II.

³ OECD DDG, 3T Supplement, Step 2

⁴ OECD DDG, 3T Supplement, Step 3

abuses". Unlike GW, ITSCI does not rely on validation to assess mines as field staff continually visit mines, as well as transport routes and companies.

GW misinterprets OECD alignment

GW confirms that in 2018, the OECD evaluated ITSCI's standards as fully aligned with their own guidance but suggests 'the reality on the ground looks very different'. GW seems to have a poor understanding of OECD alignment methodology which evaluates Standards separately to Implementation (section 4.1); although contributing to its development.⁵ ITSCI achieved high scores⁶, including 80% for Implementation, which recognises continuous improvement is at the core of due diligence. Note that challenges with tag fraud are not new or unexpected, mentioned within the OECD alignment report "Whilst the number of tag-related incidents is a positive reflection on ITSCI's incident reporting process, it also reinforces the need for companies within the programme to undertake effective due diligence on their own suppliers".⁷

LAUNDERING OF MINERALS FROM UNVALIDATED MINES IN DRC

Nzibira case study – GW creates 'large' tonnage 'discrepancies' by reference to 'validation'

GW suggests that ITSCI minerals traded at Nzibira are 'contaminated' by choosing to rely on historic mine 'validation' and making use of unsurprising differences in mineral tonnage figures which of course arise when not making like-for-like comparisons (section 2.1.1). Green-validated sites may cover an area covering several ITSCI sites or vice-versa, stakeholders may consider a new pit opening within an existing, validated site to be unvalidated, and there can be other confusion over mine names and locations. GW chooses to ignore these local complexities as well as ignoring additional ITSCI mine assessments made on a significantly more regular basis, as well as supplementary company mine site visits. GW discusses the '7 mines in Nzibira' it considers as green. In 2020, ITSCI supported ~25 mostly active mines in Nzibira sector.

We consider the resulting GW allegations of fraud to be exaggerated and misleading. GW allege Nzibira is 'contaminated' by minerals from three other areas of South Kivu as below.

Lukoma – rejected by local stakeholders as a source of mineral for Nzibira

GW claims that at the unvalidated and non-ITSCI Lukoma mine, militia Raia Mutomboki (RM) used violence against the local population, forced miners to work unpaid, and requested illegal tax from traders (section 2.1.1). ITSCI has reported many directly or indirectly relevant incidents on both non-state armed group and mining activity since 2016. In April 2022, the army (FARDC) secured the area, although recent reports suggest non state armed groups have regained control. The changeable situation is regularly discussed with local stakeholders who reject the GW allegation that minerals from Lukoma are tagged at Nzibira (including most recently in a May 2022 field mission). Potential risks of RM collecting illegal taxes on minerals and/or other goods exist and we will continue to report and consider next steps within improvements in the local context.

Chigubi – no evidence of children for this site which is far from Nzibira

GW claims that the unvalidated and non-ITSCI Chigubi mine is situated close to a residential area and children have been seen working there (section 2.1.1). This site is very far from Nzibira sector and from an understanding of local context and logistics we believe it is highly improbable that minerals from the site enter the trading centre at Nzibira. Despite review we have no evidence so far to support GW assertions of child labour. Recent information received from SAEMAPE in May 2022 indicates that Chigubi mine (spelled 'Cigubi') is now considered for integration into traceability

⁵ See <https://www.globalwitness.org/en/press-releases/global-witness-statement-oecd-alignment-assessment-industry-programmes-oecd-minerals-guidance/>

⁶ See <https://www.itsci.org/2018/07/31/itsci-achieves-highest-rating-in-independent-oecd-alignment-study/>

⁷ See page 59, <http://mneguidelines.oecd.org/Alignment-assessment-of-industry-programmes-with-the-OECD-minerals-guidance.pdf>

and due diligence systems. GW further alleges other minerals originate from mines in Burhinyi in Mwenga without substantiation.

Mines around Luyuyu – armed group presence reduced and mines integrated into ITSCI

GW claims that until around June 2020, unspecified mines around Luyuyu town were occupied by a non-state armed group (Raia Mutomboki) who forced government officials to pay them 15% of taxes collected on minerals mined (section 2.1.1). ITSCI previously reported on armed group presence in the vicinity of 3T and gold mines around Luyuyu as well as insecurity on the transport route between Shabunda and Nzibira from RM and unidentified bandits. We agree there is a risk that during this period armed groups may have taxed 3T minerals, however we have no confirmed evidence that minerals from Luyuyu have entered the ITSCI supply chain. Mines in the same broad area are now integrated into ITSCI following efforts to improve security. This progress is not reported by GW. With ITSCI now present, we can monitor more closely the situation, report risks and support their mitigation.

GW exaggerated claim of ITSCI ignoring incidents

GW allege that 'ITSCI's incident reporting frequently appears to downplay or ignore incidents that seriously compromise its supply chain' by reference to just one disputed 2015 ITSCI incident out of 9,804 ITSCI incidents through 2021 (section 2.1.1). GW chose not to describe how ITSCI uses multiple sources from various stakeholders, including civil society, to evaluate veracity of risks. ITSCI remains confident in our information while GW prefers to rely on a local NGO report containing very broad allegations without convincing evidence, false accusations and misunderstanding of ITSCI procedures (section 2.1.1). GW places great weight on what it calls a Pact 'consultants' report although no consultant was employed. GW selectively focused on one site only, Lukoma, while ITSCI reported the most likely risk of 'contamination' from Luntukulu; a large-scale gold concession where non-state armed groups were not present.

Example ITSCI recording and actions on unknown minerals

GW alleges minerals are fraudulently tagged in Kalehe territory, South Kivu. We have recorded incidents documenting mineral of unknown origin tagged in that territory with state agents sometimes complicit and have taken relevant action. ITSCI has enhanced the joint tag management procedures and reminded stakeholders of their responsibilities. The DRC government agencies are carrying out internal investigations.

GW appears to be misinformed on tonnages related to Lubuhu

GW further rely on 'validation' to claim that at the trading centre 'Lubuhu, around 15 times as much cassiterite' was tagged as was produced at the two validated mines in the vicinity (Kachuba and Muhinga) (section 2.1.2). GW then suggests other sources such as 'unvalidated mines in Nindja such as the Lukoma mine and from [mines in] Shabunda Territory' in regard to the supposed tonnage discrepancy. Kachuba and Muhinga mine's green validation status expired six months after the most recent validation dates on 5 December 2017 and 23 September 2014 respectively. ITSCI records of Kachuba production are lower than the tonnage GW claims is tagged at the site. The claims put forward do not appear to be based on accurate facts.

GW re-reports and 'reveals' risks already subject to ITSCI incident reports

GW allege that 'suspected failures' of ITSCI have been reported at 7 other tagging centres and 'at least 10 mines controlled by armed groups' (section 2.2). This generally reflects second hand information, much of which is not relevant today, from IPIS (2019), UNGoE (2020) and UNGoE (2021) as well as GW field reports (2021) and video footage (2019-2020). ITSCI is aware of, has raised and followed-up incidents on, most of the issues GW raise. We do not deny that mineral fraud is an ever-present risk, however, we deny these examples point to a pattern of laundering. We do not believe that GW 'revelation' of challenges that may be expected to occur, and are previously recorded by ITSCI, supports GW claims of a deep-seated issue. GW misrepresent the purpose of ITSCI and omitted information on incident reports and the progress stakeholders have made.

GW exaggerates claims of wrongdoing and lack of control by ITSCI staff

GW claim that ITSCI has ‘minimal’ field staff who (without authorisation) collaborate with miners and officials to launder minerals, sometimes taking a cut of ‘illicit proceeds’ (section 2.4.1). ITSCI field officers do not receive any incentives, financial or material, on volumes of minerals tagged and their reports are checked by others. Team performance is regularly evaluated and addressed through measures such as training, or sanctions when necessary. For example, Pact’s local partner organisation acted against one field officer in early 2020. Four cases of misconduct have been documented as ITSCI incidents and transparently reported in the last five years across the DRC (section 2.4.3). GW omits to note that ITSCI field teams makes ~600 field visits every month.

GW alleges DRC government agents ‘tag as many bags as possible in response to ‘rampant smuggling’ from DRC to Rwanda – refer to Rwanda section 3.

GW seems to object to industry programmes per se and wrongly question ITA/ITSCI’s motives

GW implies that ITA and ITSCI ignores ‘illicitly tagged minerals’ for alleged financial benefit from ‘high volumes of minerals’, and further suggesting conflict of interest (section 2.4.3). GW first ignores incidents which ITSCI has reported on plausibility issues, misuse of tags and other aspects of fraud related to traceability, to wrongly imply negative behaviour. GW then omits to describe that ITSCI is operated at-cost with no profit incentive with ITSCI funds held in trust for sole use of the programme and any surplus or deficit rolled into following years. GW fails to acknowledge that in circumstances when mineral volumes increase the ITSCI levy rate per tonne of mineral can, and has been, reduced. ITSCI is not a commercial traceability provider or consultancy but acts as a joint industry programme as envisioned in the OECD guidance, with the aim to support efficient on the ground activities. ITSCI is governed by two not-for-profit organisations, ITA and TIC. This governance is undertaken by staff members of those organisations who have no interest in commercial matters.

MINERAL TRAFFICKING AND OUTBURSTS OF VIOLENCE IN RUBAYA

GW omits highly relevant contextual background on Rubaya

The full historical context of Rubaya must be understood to evaluate the accuracy and balance of GW assertions (sections 2.3 and 2.3.1). GW has presented a selective view of recent years only for reasons that are not explained.

Around Rubaya land is mostly covered by mining and cattle grazing concessions in hands of the wealthy minority while agricultural land is scarce. There is a mix of ethnicities with around two thirds Hutu, and Tutsi and others in minority. These factors can create tension. Mine sites have changed hands over time, 1977 to SOMINKI, 1996 to SAKIMA, 1998 incomplete transfer to SOMICO, and 2001 partial allocation to Mwangachuchu Hizi International (MHI) later re-named Société Minière de Bisunzu (SMB). Local miners always worked on the sites, including as members of the cooperative COOPERAMMA. The 1998 deal was shortly before the second Congo War (1998-2002) when eastern Congo became controlled by the rebellion movement Rassemblement Congolais pour la Démocratie (RCD-Goma). In the 2001 deal MHI/SMB obtained an exploration permit from RCD-Goma for a small portion (PE4731) of the larger one (PE76) held by SAKIMA.

In 2005, MHI/SMB started to claim these rights. The CNDP (Congrès National pour le Développement et la Paix) formed out of the RCD-Goma in 2006 and, following CNDP as a recognised political party in 2009, Rubaya remained under CNDP (then rebel group) control until 2012. The worst violence since the 1990s occurred in 2012 when the CNDP was effectively reborn as the M23 rebellion. A member of MHI’s owning family, Senator Edward Mwangachuchu, was first elected as an independent non-aligned Senator in 2007, and after that time, in 2011, to the Congolese Parliament representing the new CNDP political party.

On 28 November 2013 MHI/SMB and COOPERAMMA signed a Memorandum of Understanding following a mediation led by the North Kivu provincial government. ITSCI worked on PE4731 between 2014 and 2018. From 2019 onwards SMB choose to work with a different traceability scheme.

GW surprisingly argues that risks should not be reported to supply chains

GW alleges that ITSCI issued incidents reports to supposedly ‘undermine the company (SMB) and the rival scheme’ (section 2.3.1). GW has not reported data on ITSCI incidents which shows that the total number of incidents related to SMB and their minerals from 2017 to 2019, before and after leaving ITSCI, is similar. ITSCI did report incidents on both SMB and COOPERAMMA, and indeed many other actors, both while SMB was a member and after it chose to leave ITSCI. GW implies issuing of incidents to other companies in the supply chain is somehow unusual and led to problems for SMB. This is wrong. ITSCI distributes all incident information at least monthly to the same companies and stakeholders, and makes public at a later date. Transparent reporting encourages progressive improvement as supply chains wish to see risks and evidence of mitigation.

GW fails to explain why SMB felt difficulties with their supply chains

GW implies that ITSCI incidents led to blocking of SMB exports and further, for company financial difficulties (section 2.3.1). GW fails to present key events relating to SMB’s decision to change traceability scheme; SMB’s increased use of its own security to protect interests, increasing resistance to ITSCI incident reporting, reduced participation in risk mitigation, and disengagement from stakeholders. GW omits to describe the period leading up to the end of 2018, including how mining and trading activities related to the SMB concession were suspended by the national Minister of Mines during 2018 over increased security risks (as reported in general media as well as by ITSCI incidents). Non-payment by SMB for minerals produced by COOPERAMMA members had existed for the long-term, suspension by authorities and lack of engagement with risk mitigation processes may not have assisted SMB’s position. Government is responsible for export authorisation and companies are responsible for their due diligence and purchase decisions.

GW’s allegations linking ITSCI to violence is based on incomplete understanding of Rubaya supply chains

GW suggests that miners began to protest at late payment by SMB (according to GW’s theory in 2019 following SMB’s change of traceability scheme), began to ‘traffic’ minerals and ‘sell minerals to SAKIMA’. Ultimately, GW allege this sequence of events led to ‘eruption of violence’ (section 2.3.4). This is wrong at every level; late payment to miners was a pre-existing issue, GW’s own data shows production in the SAKIMA concession increased from 2017, and was already significant in 2018, there are evident reasons for production changes due to geological and other factors, not only ITSCI but many stakeholders have paid close attention to plausibility of tonnages due to the complexity of the area, and miners do not in general ‘sell’ to SAKIMA who tend to collect royalties. GW’s understanding is limited, the basis of their argument is false and their conclusion is wrong.

GW fails to consider basic factors that impact mineral production

GW places great weight on a ‘huge shift’ in production levels on the smaller SMB (PE4731), and larger SAKIMA (PE76) concessions by, for example, claiming there is too little mining activity at Nyagisenyi site on PE76 citing images (section 2.3.2). The photograph which GW has taken from a UNGoE report has been found by stakeholders, including the North Kivu multi-stakeholder committee (CPP) to be misleading and incorrect. In fact, Nyagisenyi is an extensive alluvial site in PE76 with significant production, that stretches along a two kilometres length of three main rivers, with multiple pits and between 370-400 washing points. GW also takes SMB’s view that re-demarcation of the concession boundaries, and move of water accessibility from PE4731 to PE76 has no impact on production ignoring basic facts that water is necessary to wash minerals. GW also ignores the fact that alluvial deposits found on riverbeds (on PE76) are easier to mine than primary hard rock ones (on PE4731), and require less miners for greater production. GW questions ITSCI’s mine baselines without factual reason.

GW wrongly implies ITSCI responsibility for violence ignoring accountability of others

GW notes that two COOPERAMMA members were shot dead in June 2019 (see NK-2019-0086) but fails to explain this was by mining police contracted to SMB to guard their concession (section 2.3.4). GW omits to say that the mining police and the company SMB were found by DRC court to be guilty of offences. The two PMH at the time contracted to SMB were sentenced to imprisonment. The PMH officers, SMB and the Congolese State were

charged with US\$375,000 damages payable to the victims' families and US\$600,000 payable to COOPERAMMA. GW fail to report that the bodies of the victims have not yet been released to their families due to lack of execution of the judgment by authorities nor that in early 2022 Edouard Mwangachuchu spent some time in jail in Kinshasa, DRC in relation to these events. SMB had withdrawn from ITSCI six months earlier and worked with BSP/RCS/BM at this time.

GW seeks to link certain companies with its wrongful allegations of large-scale fraud

GW states that minerals allegedly 'laundered via SAKIMA' would be exported by two ITSCI member companies. Those companies are exporters, and investors in developing the mineral sector in the area. As above, we do not agree with GW's exaggerated claims of 'laundering' as they are based on wrong information. GW alludes to a businessman's former TIC position to imply some benefit may have been received but fails to note that the second company exported more minerals in 2020 (section 2.3.3).

RWANDA

GW allegations on Rwanda are historic and generalised, omitting evidence of progress

GW does not provide precision in its claims of 'huge quantities' of minerals smuggled to Rwanda either in the summary or in the core of the report, only in one picture caption mentioning 'hundreds if not thousands' of tonnes (section 3.2). Similar lack of precision and exaggerated headlines prevail throughout (section 3). GW remains focused on historic circumstances as far back as 2011 if not before, failing to present any balanced view on changes or progress. GW alludes to Rwanda's 'small mining sector' and other alleged figures suggesting that Rwanda remains reliant on 3T minerals 'smuggled' from the DRC. GW does not report that before April 2011 Rwanda legitimately re-processed minerals from the DRC nor that the Rwandan government has developed the mineral sector over recent years. GW acknowledges the Rwandan company (MSA) had begun to legally import minerals from the DRC from mid-2009 but fails to recognise that this positive change coincided with the first phase of the ITSCI programme on 1st July 2009 (section 3.2.1).

GW heavily relies on sources which appear to be unreliable

GW cites sources that claim that 90% of minerals exported from Rwanda were not produced there (section 4.2). GW appear to use several references and make assertions based on a failed legal case.⁸ Similarly to GW's apparent support to views of SMB in DRC, GW seems to favour the complainant's version of events in Rwanda although these claims have been tested and have not been upheld. A main witness for the claim was judged to be 'untruthful, whose uncorroborated statements were wholly undermined by the documentary record'. Key parts of their case, including the false allegations regarding smuggling, were quietly abandoned...⁹ ITSCI questions the agenda of 'experts' and other sources relied on by GW and considers that credibility of GW reporting is in question.

GW shows weak understanding and analysis of mineral supply chains in Rwanda

GW alludes to ITSCI and Rwandan government knowledge of 'inflated' figures which arise from GW's omission of mixed minerals production figures from their analysis, referring to coltan production alone (section 3.1.2). This illustrates poor research and/or understanding of mineral supply chains. Following some initial challenges, Rwandan exports are plausible when considering all forms of coltan production at Rwandan mine sites. GW further claims that most Rwandan mining companies lack basic equipment suggesting they cannot produce significant quantities of minerals, omitting to note that all 3T production in the Great Lakes before around 2015 was artisanal. GW provides a graph to support their simplistic theory that if production in DRC rises, 'production/smuggling' in Rwanda falls (section 3.1.5).

⁸ Bay View Group LLC and the Spalena Company LLC (claimant) versus the Republic of Rwanda (defendant)

⁹ Respondents Post-Hearing Brief ICSID Case No. ARB/18/21, See <https://www.italaw.com/sites/default/files/case-documents/italaw16330.pdf>

Yet, in 2014 when ITSCI began working with SMB in DRC exports rose there and Rwandan coltan exports remained similar or slightly higher. Other examples are not repeated here.

GW unreasonably demands information beyond agreed in OECD guidance

GW move their argument to demand public data on mine-level production to combat smuggling (section 3.1.2). ITSCI is transparent with members and government partners on production figures by district level which should be more than adequate to enable the appropriate evaluations. In the context of ASM production mine data is of commercial interest for buyers seeking mineral sources and considered competitive as noted in OECD guidance and as GW should be aware.¹⁰

GW does not substantiate allegations suggesting ITSCI lack of action against certain companies

GW implies that ITSCI has only taken action against ‘minor’ incidents of smuggling leaving ‘large’ companies alone. GW does not present any information on ITSCI incidents or actions against companies such as suspensions or expulsions. GW falsely allege ITSCI favours the company MSA (section 3.3), as well as other companies allegedly linked to a specific individual (Huber) (section 3.2.2) although incidents have been raised by ITSCI against all the companies that GW name. No evidence of any such favours has been provided by GW who appear to rely on expert sources/rumours. In the bulk of the report, GW make many further claims not repeated in the summary, for example suggesting ITSCI should not report incidents if these impact the reputation of companies, or claiming ITSCI does not report incidents if it has reported on similar cases before – both examples are wrong.

GW falsely alleges ITSCI/ITA links to Rwandan defence failing to acknowledge our due diligence track record

GW go as far as to quote ‘sources’ alleging ITSCI was set-up for the purpose of laundering smuggled minerals, falsely alleging a connection between the CEO of MSA and ITA and Rwanda’s then Defence Minister (section 3.3). ITA refutes any such allegation, has no knowledge or contact with the Defence Minister, cooperating only with authorities responsible for mining, and with no ‘three way MOU’ as falsely alleged by GW. The then CEO of MSA is unable to respond to GW’s allegations as he has passed away. GW chose to omit any acknowledgement of the long-term commitment and work of ITA to drive improvements in supply chains, including participation in meetings in 2009 which led to the OECD guidance. ITA was engaged with both DRC and Bensusan well before any indications of Dodd Frank, therefore, GW claims that ITSCI was established to support Rwanda and Bensusan’s alleged smuggling activities in the wake of Dodd Frank makes no logical sense, misrepresents the situation, and is wrong.

INTERNATIONAL SUPPLY CHAINS

GW seeks to blame ITSCI for other parties not using our published information

GW states that they have traced supply chains to companies that have ‘likely sourced’ ‘smuggled and/or conflict minerals’, and that these minerals ‘may end up’ in products of international brands although these allegations are based on assumptions (section 4). GW goes on to make generalisations regarding international companies doing little to detect smuggling fraud, conflict or child labour and rather than investing ‘proper resources’ and that smelters, downstream companies and RMI’s rely on ITSCI. GW did not request or consider ITSCI’s view on this section. We note that we make extensive information available to members and the public, including around 1,300 incidents of OECD Annex II risks each year, some of which are reports of armed groups and human rights abuses with explanation on any link to minerals. High-risk incident information is sent as an alert to our members, governments and partner stakeholders. Our reports also indicate mitigation efforts and the level of success of that mitigation. This information is available for company due diligence. It is disappointing that GW does not recognise and support our transparent approach.

¹⁰ OECD guidance, footnote 34, 35, 36

KEY RECOMMENDATIONS

ITSCI agrees with the majority of GW recommendations

The recommendations GW provide are general in nature and seemingly disconnected from the main body of the report. They range from disarming, demobilising and reintegration of armed groups to improving enforcement of various kinds by governments. Notably, GW also recommends that companies reduce reliance on all industry schemes, including smelter audits. ITSCI tends to agree with, and has previously advocated for, many of the recommendations put forward by GW for other parties. ITSCI believes that all companies should understand and contribute to schemes that they elect to use as OECD due diligence places final responsibility firmly on companies. ITSCI also agrees that any step towards improved governance and enforcement by every actor or authority will help and reduce the need for our work. Refer to our full comments on recommendations in that section.

1. INTRODUCTION

Global Witness (GW) begins with a statement that ‘for two decades’ minerals have ‘fuelled armed conflicts’ in the DRC and fighting leads to ‘horrific human rights abuses’. This is a complex part of the world, as GW acknowledges, but it is disappointing that **GW references the situation in 2009 and omits any recognition of positive change**. If GW truly considers there has been no progress despite all efforts made by campaign organisations, governments, industry and civil society, it seems to reject that due diligence is the responsible or workable path forward and yet provides no alternative. GW presents only broad generalisations regarding links between 3T minerals and armed conflict failing to acknowledge ITSCI’s detailed, regular and transparent reporting of relevant risks as well as their resolution.

GW recognises that key actors worked together to draw up the OECD Due Diligence Guidance to improve governance of the extraction of 3TG minerals in Conflict Affected and High-Risk Areas. GW has not recognised that the 3T industry supported that process from its very conception nor that **ITSCI drove implementation of that guidance on the ground through OECD aligned standards**. GW has not recognised evident progress in 3T due diligence, nor fairly compared to other mineral sectors. We believe that the 3T sector has moved on, but it seems GW is unwilling to move on.

GW acknowledges only in their footnote 2 that GW was represented on the ITSCI Advisory Panel for several years and received significant detailed information from ITSCI on a monthly basis. We appreciated constructive engagement with GW during that period and are disappointed in the reversion to ‘name and shame’. The report **makes many allegations on previously considered historical situations** which is unlikely to lead to new solutions or further progress.

GW considers the role of the region in providing each of 3T minerals, correctly stating that while the region provides a large global supply of tantalum, it plays a less important role in tin¹¹ and tungsten. It is positive that GW **recognises the economic opportunity and benefits to ‘hundreds of thousands of miners’ but does not consider the risk of harm to those livelihoods from sensationalised reporting** and potential de-risking/de-facto embargo.

GW outlines the regulatory system of the DRC with focus on ICGLR certification of minerals from mines ‘validated’ as ‘conflict-free’, and alludes to traceability requirements in adjoining countries. **GW adopts their own particular interpretation of ‘green’ validated mines**, does not fully explain the meaning of validation nor the difference between one-off validation and ITSCI’s approach of regular mine evaluations. GW does not acknowledge that the validation process is still being established nor that no mines in DRC are currently validated (see section 2.1.1).

While outlining that due diligence expects risk identification and reporting GW seems to require risk prevention, **paying limited attention to the core of due diligence which drives positive progress; mitigation and resolution of risks through engagement with local stakeholders**, normally over a period of time. GW uses the language ‘conflict-free’ and ‘certification’ rather than responsible sourcing and fails to explain that Dodd Frank only requires transparency, not guarantee of being ‘conflict-free’.

GW considers that tin and tantalum industries have played a key role in the Great Lakes, although misrepresenting that role as regulation rather than provision of information from on-the-ground teams for use by companies in due diligence. GW also misleadingly focuses on traceability, expecting that to create supply chains of ‘sealed’ minerals free from association with armed conflict and child labour and thereby implying ITSCI claims to make such guarantee. GW is wrong. Traceability is a tool which must be supported by on-the-ground risk management. **ITSCI regularly and transparently reports incidents linked to child labour¹² and armed groups¹³**, whether non-state groups or public security such as army or mines police, **and also reports how those incidents have been followed up** and generally resolved. In relation to child labour, we seek to understand each individual situation, also in line with do no harm principles.

For the avoidance of all doubt, we confirm that **ITSCI does not claim to provide certification or guarantee of ‘conflict-free’ minerals, but does support company due diligence by facilitating traceability, risk identification and mitigation**.

¹¹ Contribution of ITSCI minerals to global tin mine production estimated at 2.4% in 2021.

¹² 2018 to 2021 ITSCI reported 124 incidents concerning all forms of child labour.

¹³ From 2018 and 2021 there were 467 and 429 incidents involving non state and state armed groups.

GW alludes to others ‘relying’ on ITSCI which is not an approach we, nor the OECD guidance supports as companies ultimately remain responsible for their use of ITSCI information and their due diligence decisions.

GW acknowledges that ITSCI achieved 100% alignment during an OECD assessment in 2018, although despite participating in the development of the OECD methodology, apparently failing to understand that the methodology evaluates each of standards and implementation. **While ITSCI did not score 100% in implementation, we achieved far higher scores than other industry programmes and are proud of our work. We continue to make improvements whenever possible within the challenging prevailing operating context.**

GW criticises ITSCI’s work on the ground and lauds its own ‘research’ to support varied allegations of ‘spectacular failure’ and ‘apparent laundering’. In fact, much of GW’s ‘evidence’ is from recycled and/or outdated information which does not seem to stand up to detailed examination. We present our conclusions on every aspect of GW’s concerns in this response. While **GW highlights its ‘research’ via videos and just 90 interviews involving 10 mining areas, there is no balanced reflection on the ~600 field visits the ITSCI team makes every month**, our training of 13,744 stakeholders in 2021, the facilitation of 324 multi-stakeholder meetings, around 2,500 mines or the 1,325 incidents reported last year. We note that GW has not seemed to have fully assessed the reliability of sources or robustly vetted conflicts of interest.

Further paragraphs repeat GW allegations in the core of the report which we consider variously; lacking evidence, misleading, or simply wrong, unless otherwise indicated. Our full response can be found in the relevant sections.

RESPONSE TO GW BOX: Key elements of the system governing 3T mineral extraction and trade in DRC and Rwanda

Validation of mines

GW relies on the validation process related to ICGLR when taking a view on which mines may or may not be considered appropriate sources of 3T minerals. ITSCI takes into account, but does not rely on, validation status. GW explain the official process validating mine sites but reduce comment on its core implementation challenge to a footnote (54); **annual inspection of mines has rarely been possible, yet GW adopts the view that they consider any mine that has been validated green at some point in the past to still be ‘green’**. We suggest that this GW view is not adequate for accurate supply chain risk assessment.

There have long been continued efforts by the government and stakeholders to try to implement validation, the most recent outlined in the Ministerial decree from 12th November 2021 regarding the determination of mine sites status.¹⁴ However, the last known official mine site validation decree was issued in October 2021 which means at the time of GW’s report release **there were currently no validated sites in the DRC**. This is because validation status expires six months after publication of the decree. Efforts to implement validation continue.

As implementation of the validation system is still being developed, state officials face challenges. Officials may record production from mines which have previously been validated as green, as well as mines which have not been, to our knowledge, listed in any validation decree so far. **The GW view of what is ‘green’ may not always align with state officials view**. This is the fundamental basis of discrepancy between low production from ‘green’ sites and higher volumes of minerals tagged at trading centres which is at the core of several GW allegations. Whether or not a mine is validated does not impact whether that mine is connected to armed groups or human rights abuses (see section 2.1.1).

It seems that GW rely on, and apparently suggests companies rely on, ICGLR certificates and validation status to determine risks in their supply chains. Such **suggested reliance is contradictory to arguments GW themselves make, and contradictory to OECD recommendations regarding company responsibility** to understand supply chains.

¹⁴ Arrêté Ministériel N° 00677/CAB.MIN/MINES/ANSK/01/2021 du 12 Novembre 2021 fixant les procédures de qualification et de validation des sites miniers des filières aurifère, stannifère, cupr-cobaltifère et des pierres de couleurs en RDC.

Traceability

GW outlines the mechanics of traceability which in general is correct aside from suggesting bags are ‘sealed’.

GW not only describes traceability but also describes risk identification and management through ITSCI incident reporting. While we are pleased that GW acknowledges this aspect of ITSCI’s work, it is not ‘traceability’. Within the OECD guidance, traceability is a tool to collect information on actors and locations in the supply chain (Step 1). That information forms just one part of risk assessment and management in Steps 2 and 3 of due diligence.

Here GW correctly states that ‘smelters and downstream companies purchasing minerals from supply chains monitored by ITSCI can use this information for due diligence’. Unfortunately, in other sections of the report GW continues to focus only on certification of conflict-free minerals. Companies remain solely responsible for their due diligence whether or not, or to what extent, they use ITSCI or any other information.

ICGLR certificate

ICGLR certificates and the control of exports are a **matter for governments** as they agree with the ICGLR.

Due diligence

We agree that the OECD Due Diligence Guidance is the internationally recognised standard and have supported such since prior to its drafting. We **encourage GW to fully reflect the OECD approach in relation to reporting on ITSCI and ITSCI members, recognition of mitigation and progressive improvement**, rather than taking a more limited or narrow view in relation de-risking and disengagement. We encourage GW to more accurately reflect in their report the Steps of due diligence (traceability vs risk management) evident in the diagram and as mentioned above (section 1.2).

2. LAUNDERING OF MINERALS FROM UNVALIDATED MINES IN THE DRC: A SYSTEMIC PROBLEM

In the introduction to this section, GW claims that traceability is ‘severely undermined’ by government officials and ITSCI field officers which is the basis of further claims that ‘minerals disguised as clean’ are entering international supply chains. As elsewhere in the report it seems **GW seems to be aiming exaggerated allegations at both ITSCI and the government as a means to query due diligence of other parties.**

GW claims ‘massive laundering’ is taking place systemically in the ITSCI supply chain. We set out below why **GW is misguided in their understanding of, and reliance on, ‘validation’** for this claim as it has a particular meaning within the DRC context. We demonstrate **GW has erroneously interpreted trade figures and ITSCI processes** and critically lacks understanding of specific context fundamental to such damning allegations.

The report **puts forward exaggerated case studies** suggesting ‘large quantities’ of minerals from unvalidated mines infiltrate Nzibira, Lubuhu and Chaminunu trading centres (section 2.1), as well as similar cases in North and South Kivu (section 2.2) **while only suggesting just ‘some’ minerals may potentially be connected to conflict and child labour.** GW further falsely alleges that ITA misused traceability causing violence (section 2.3) and puts forward a weak analysis of other ‘failings’ in traceability (section 2.4) and due diligence (section 2.5). ITSCI recorded over 1,000 incidents annually from 2017 onwards which we act on together with our partner governments and other stakeholders to mitigate OECD Annex II risks. We are aware of and **have reported through our incident system issues GW raises.** GW makes no attempt to recognise that ITSCI reporting nor the progress ITSCI has made in supporting companies and governments with information for their due diligence.

GW focuses on the negative and out-dated concept of ‘conflict free’ minerals avoiding use of the less sensationalist or harmful terminology ‘responsible sourcing’ more recently adopted by international stakeholders to reduce de-risking and support progressive improvement as recommended in the OECD due diligence guidance.

2.1. Contamination of its key supply chains at Nzibira, Lubuhu and Chaminunu

2.1.1. Minerals tagged at Nzibira

GW misguided use of 'validation' status

In this section GW suggests that ITSCI minerals are 'contaminated' by taking a particular view on which mines may or may not be considered 'validated' and therefore inspected. GW has chosen to refer to, and rely on, validation process related to the DRC government's implementation of the ICGLR mechanism, **apparently dismissing additional mine evaluation that GW knows ITSCI undertakes on a significantly more regular basis**, as well as supplementary company mine site visits. This differing view is unfairly used by GW to imply issues exist at a 'massive' scale which ITSCI considers misleading and inappropriate.

GW chooses to ignore the discrepancy between what is listed by the government as green sites in validation decrees and what actual sites are integrated into a supply chain managed by local authorities and supporting national and international due diligence. As alluded to via a small footnote (54) GW admits referring to 'mines which have been validated green by the DRC government at some point - not necessarily in the previous year'. Thus it appears **GW is suggesting that supply chains rely on validation systems which are still in the process of being implemented**.

In 2019, the UNGoE referred to the problematic implementation of validation in the DRC as 'failure [of government authorities] to renew the validation of mines every six months, as required by Congolese law, undermines the reliability of validation information as do long delays between qualification missions and issuance of governmental validation decrees [...].¹⁵ **It could be stated there are currently no officially validated sites in the DRC** because validation status expires six months after publication and no validation decree has been released by the National Minister of Mines since October 2021. Information on 'green' or 'vert' mines can be obtained from online mapping by IPIS¹⁶ who have for example, reportedly visited 24 of 3,057 3T mines in the DRC between 2019-2022 (see map below).



While concerned with the same mineral supply chains, the ICGLR Regional Certification Mechanism (RCM) and ITSCI supply chains are not directly linked. **Green-validated sites listed in a DRC ministerial validation decree may cover a general area corresponding to several ITSCI sites or vice-versa, several validated sites in a decree may correspond to**

¹⁵ UNGoE (2019): Letter dated 20 December 2019 from the Group of Experts on the Democratic Republic of the Congo addressed to the President of the Security Council, S/2019/974, paragraph 44.

¹⁶ IPISMap: <https://www.ipisresearch.be/mapping/webmapping/drcongo/v6/#3.2640882242070433/27.250266889871682/5.306495053143227/4/1/2.668yrk,6,o>

one ITSCI site.¹⁷ Furthermore, what may be understood by local, national, and international stakeholders as an unvalidated site may in fact be a new pit opened within an existing, validated mine site. There can be confusion over not only the validation status, but the location and name of any mine pit. We note that the more recently updated version of the ICGLR manual allows 'blue' status to be given if a mine has not been inspected so far, and the blue status can be maintained for up to three years without any qualification and validation visit.¹⁸

GW incorrectly compares data points to claim 'discrepancies' in Nzibira

GW allege Nzibira sector is 'contaminated' because of 'a large discrepancy between the volume of minerals being tagged [at the local centre] and the volume of minerals produced in the 'green-rated' mines in Nzibira sector which GW's source claims are unproductive. In December 2021 ITSCI explained to GW that mines around Nzibira sector do produce significant tonnages of minerals and those tonnages are recorded by DRC state services from mines which have previously been validated as green (2014 and 2017), as well as mines which have not been, to our knowledge, listed in any validation decree so far.¹⁹ Note that **we record ~25 mines in the Nzibira sector, most of which were active in 2020 and continue to be active today. The last validation mission to the sites took place more than three years ago.** Some mines which were active in the past are indeed not currently active.

Any discrepancy between volumes of minerals produced at the '7 mines in Nzibira' which GW has considered as green, and those minerals produced and tagged across the ~25 mostly active mines of Nzibira sector is unsurprising. GW's attribution of this expected discrepancy (80% of Nzibira sector minerals) 'to contamination' or illicit introduction into supply chains is highly misleading. GW has not explained how they define 'illicit' or 'contaminated' although **GW notably and correctly acknowledges that it 'does not suggest that all minerals from unvalidated sites are linked to conflict or human rights abuses'.**

GW contradicts itself with selective and misguided reliance on validation

GW appears to 'find it very concerning that such a large share of tagged minerals apparently comes from mines which are not inspected'. This implies that GW would prefer to rely on the validation status of mines inspected likely at least 1 or more years ago than to recognise that ITSCI makes regular and constant checks on the ground and has numerous evaluation mechanisms in place. It seems GW is also suggesting companies should rely on out-dated validation status and that local company mine visits are not useful. **This is extraordinary and contradictory to arguments made by GW elsewhere in the report (section 4.1), as well as contradictory to the OECD due diligence guidance** which GW purports to support. The OECD guidance expects companies to have on-the-ground teams as an essential part of continual risk identification and management.

GW sensationally highlights that 'all traders in Nzibira buy minerals from unvalidated mines' choosing to avoid stating that there are currently no green validated mines.

As we explained to GW, ITSCI participates in validation missions with other stakeholders in support of DRC government and ICGLR systems, and considers validation reports in respect for local government, but **this does not provide all the information ITSCI uses to assess and integrate a site into our system and does not contribute to our ongoing monitoring** of mine sites.²⁰ We carried out 171 visits to mines and negociants in South Kivu's Walungu Territory encompassing the Nzibira sector in 2020. Our field teams increase the frequency when we are aware of potential or actual issues at sites in the ITSCI supply chain. Further, ITSCI companies also perform additional supplementary mine visits themselves as they consider necessary since due diligence remains the responsibility of companies (refer to section 4).

We strongly disagree with and contest GW's allegation there are 'very serious shortcomings ITSCI traceability system' on the basis of their selective and misguided reliance on validation.

¹⁷ ITSCI, Opportunity to comment response, 15/12/21, point 1.

¹⁸ See <https://www.levinsources.com/knowledge-centre/insights/rcm-series-great-lakes-blue-status-mine-sites-exporters>

¹⁹ ITSCI, Opportunity to comment response, 15/12/21, point 2.

²⁰ ITSCI, Opportunity to comment response, 15/12/21, point 1.

GW exaggerates case studies to claim laundering and links to abuses

GW allege Nzibra sector is ‘contaminated’ by minerals from other areas of South Kivu;

- Lukoma mine in Kabare territory
- Chigubi mine near Burhinyi town in Mwenga territory
- Unnamed mines near Luyuyu town in Shabunda territory

GW claim they have been able to identify several sources allegedly contaminating the ITSCI supply chain at Nzibira, including non-ITSCI Lukoma and Chigubi mine sites. No evidence is provided to support these claims such as relevant times, frequencies of incidents nor tonnages allegedly impacted.

Regarding Lukoma mine, the local security situation is known and has been increasingly monitored since 2016.²¹ There are nine existing ITSCI incidents between 2020-2022 directly or indirectly relevant covering local non-state armed group activities in and around Lukoma, as well as mining activity at Lukoma during the period of non-state armed group control.²² Most of the incidents remain open and the situation continues to be reviewed and discussed by multiple stakeholders, including at the Nzibira CLS meetings. Reports suggest that the non-state armed groups Raia Mutomboki, which typically include multiple militia groups, one of which is known as Force Populaire pour la Paix (FPP), were present in the area until April 2022 when state security forces (FARDC) were confirmed to have retaken control.^{23, 24} Recent reports of mid-June 2022 however suggest RM have regained control in an evolving situation. Potential risks that RM are collecting illegal taxes on minerals and/or other goods exist and there are now evolving potential risks associated with armed group presence and other constant changes. ITSCI and authorities conducted a recent field visit (May 2022) to Lukoma when stakeholders reported that during the period of local armed group control, minerals were brought to Lwizi trading town and not to Nzibira or Lubuhu. We have opened two additional incidents on GW allegations to ensure follow-up.

Regarding Chigubi mine, this site is very far from Nzibira sector and with an understanding of local context and logistics we believe that it is highly improbable that minerals from the site enter the trading centre at Nzibira.²⁵ GW does not provide a date, time or frequency of reports of the alleged observation of children at the site and **despite constant review we have so far no evidence that would support GW assertions of child labour**. We have opened ITSCI incident SK-2022-0160 for further follow-up. GW further alleges ‘other minerals originate from mines in Burhinyi in Mwenga Territories’ are tagged at Nzibira. This allegation is entirely unsubstantiated. ITSCI cannot at this stage confirm the authenticity of ‘proof of payment’ (bons de sortie) presented by GW or whether they are for receipt of bags of minerals or other goods. We have opened an incident for further analysis.

Regarding Shabunda Territory GW cite a government official claiming minerals originate from mines around Luyuyu town reportedly occupied by RM) until around June 2020 and that RM forced government officials to pay them 15% of taxes collected on the minerals. GW does not present any detail to the allegation and we have no evidence to support the assertions. We agree RM used to be present in the vicinity of 3T and gold mines around Luyuyu allegedly in the Kahuzi-Biega National Park some 35 km north of the Nzovu sector.²⁶ We have **recorded incidents on the RM or other unidentified bandits attacking users of the transport route between Shabunda and Nzibira**²⁷ but thus far we have no confirmation of minerals entering the supply chain from mines around Luyuyu town. ITSCI previously reported on armed group presence in the vicinity of 3T and gold mines around Luyuyu as well as insecurity on the transport route between Shabunda and Nzibira from RM and unidentified bandits. Based on up-to-date information from reliable sources, we understand FARDC soldiers appear to be involved in or collect taxes on gold activities. Note Luyuyu town is in the same broad area as Nzovu and Kigulube sectors in Shabunda territory. **3T mine sites in these sectors are now**

²¹ ITSCI, Opportunity to comment response, 15/12/21, point 4a, 16.

²² SK-2021-0009, SK-2022-0074

²³ We have opened an incident (SK-2022-0074) regarding allegations of tagging minerals from Lukoma after FARDC retook in April control.

²⁴ FFP was founded following the surrender of a Raia Mutomboki leader in 2020 and may now encompass various sub-groups.

²⁵ ITSCI, Opportunity to comment response, 15/12/21, point 4c.

²⁶ SK-2018-0214

²⁷ SK-2018-0114, SK-2018-0242, SK-2019-0207, SK-2020-0122, SK-2021-0003, SK-2021-0229

integrated into ITSCI following efforts to improve security which GW has not recognised in their reporting. We also have recently opened two incidents related to armed group interference and taxation at nearby non-ITSCI mines.²⁸

Not a new problem – and one that continues to escape ITA’s internal controls

Referring to an ITSCI 2014 Governance Assessment²⁹ and UN and civil society reports since (unreferenced), GW allege widespread failure by ITA to monitor or take appropriate action related to the Nzibira supply chain. GW even allege that ITSCI ‘turned on’ the NGO Max impact with regard to a disputed 2015 report, and attempted to cover up contaminated minerals linked to armed conflict.

We informed GW in December that ITA has certain responsibilities in the ITSCI Programme as do other organisations and requested GW refer correctly to each actor in the structure of ITSCI when making their allegations. They have failed to do so here for unexplained reasons. Note that the **NGO Pact is the ITSCI partner which implements the programme on the ground.**

As we informed GW in December 2021, the ITSCI Governance Assessment report is outdated for the purpose of assessing current risks and cannot be used to assess the current situation referring GW instead to our ongoing risk and incident reporting.³⁰ **Recent information reflects the situation in Shabunda territory more accurately. Since 2016 we established and increasingly focused on continuous monitoring activities in the territory.** This has not been used by GW who prefer to focus on the disputed NGO report from 2015. **We have recorded numerous incidents, including risks from alleged Raia Mutomboki (RM). Engagement efforts have led to disarmament of local militia groups** amongst other improvements. In recent months ITSCI has advanced plans to extend our support to the Shabunda territory. Based on the principle of continuous improvements, multiple mines in Shabunda have already been recently integrated into the ITSCI.

GW cites inaccurate, false and unevicenced Max Impact report

GW cite an NGO Max Impact report³¹ and a ‘consultant’ commissioned by Pact which are claimed to corroborate implausible production from four green-rated sites in 2015 entering the supply chain at Nzibira. Findings from the report need to be strongly balanced and put in perspective; we provide below the additional context from our December 2021 input which has not been reflected by GW in their report.

Max Impact allegations were very broad, concerned many different areas, did not provide evidence, and made false accusations.³² As explained in that report³³, the findings were based on a two-day visit to the Nzibira sector in July 2015. Max Impact visited four ITSCI sites in total said to be in Walungu territory, namely Chaminyago, Chembeke, Mahamba, Muhinga, (although Muhinga is in Kabare territory, not Walungu as erroneously indicated by Max Impact). Based on this single short visit, Max Impact concluded there was ‘hardly any sign of activity’ over 2015. Our experience is that assessment of mine production and plausibility cannot be done over the course of two days. There are multiple factors influencing production such as weather, local community events, geological factors, human factors, etc. The level of mining activities will also strongly vary depending on the time of the day or the day of the week. Therefore, **ITSCI assessment of production is based on more accurate multiple visits at different times of the day and at different days**, and we disagree with Max Impact’s assessment of plausibility at the green sites. Max Impact reported no information on other 3T sites to support the conclusion that minerals from elsewhere were entering the ITSCI supply chain. (The discrepancies on figures traded at Nzibira is explained by validation questions per section 2.1.1.)

GW does not seem to have checked the details of the Max Impact report and information therein which also **shows incorrect understanding of ITSCI procedure and activity.** GW includes a photograph of two copies of ITSCI logbook sheets as ‘evidence presented by Max Impact’ yet the photograph appears to be of **negociant logbooks** used at Nzibira to record mineral sourced from Muhinga sub-sector and not mine logbooks used at Chembeke mine. (The uppermost logbook is illegible.) Max Impact explains that the negociant recorded the purchase of a total of 1,100 kg of minerals

²⁸ SK-2022-0049 and SK-2022-0134

²⁹ Synergy (2014): ITRI Tin Supply Chain Initiative (ITSCI) governance assessment: Nzibira, Luntukulu, Lemera and Katogota. (South Kivu, DRC), p.23.

³⁰ ITSCI, Opportunity to comment response, 15/12/21, point 14, 18.

³¹ Max Impact (2016): Evaluation de l'implémentation du système de traçabilité dans la province du Sud-Kivu.

³² ITSCI, Opportunity to comment response, 15/12/21, point 17.

³³ Max Impact (2016): Evaluation de l'implémentation du système de traçabilité dans la province du Sud-Kivu.

from four ITSCI sites on 29 June 2015 on the negotiant logbook in the photograph. Max Impact concludes that this production was not plausible given the level of activities observed at those sites by the NGO over the two days in July that year, which as above does not consider the great variability in production over longer durations.

Most importantly, **the date recorded on the negotiant logbook is not equal to production dates at mine site level.** Minerals may be extracted, washed, dried, and eventually bagged over several days or weeks until ready for sale. This is when the minerals are tagged with ITSCI mine tags at the mine site. The negotiant then purchases the bags and processes the minerals (e.g., removing impurities) and the minerals are re-bagged. This is when the processed minerals are tagged with negotiant tags. Max Impact **wrongly presumed that the 1,100 kg recorded on ITSCI negotiant logbooks on 29 June 2015 were mined and mine-tagged that day.** The NGO further stated on page 8 of its report that Level 1 incidents ‘cannot be shared with governments and companies’, but only Level 2 and 3 incidents. This is incorrect, and anyone directly or indirectly involved in ITSCI or collecting available information on the ITSCI programme would know that. **Both examples demonstrate how Max Impact’s conclusions and, as a result, GW’s conclusions are unfounded and wrong.**

As we informed GW, the Max Impact report did not provide any formal evidence that ITSCI tags were misused nor that minerals from elsewhere were arriving either at ITSCI mine sites or in Nzibira town to be fraudulently tagged.³⁴ We received evidence from a whistleblower that the Max Impact report aimed to discredit ITSCI and was offered payment for with that purpose in mind.

GW wrongly cites ‘Pact Consultant’

GW alleges that a Pact ‘consultant’ was commissioned and that the ‘consultant’ confirmed Max Impact findings, including on origin of mineral traded at Nzibira and alleged association with non-state armed groups. **This is wrong. No consultant was contracted by Pact.** We explained to GW our ITSCI incident recording system uses multiple sources on the ground from various stakeholders, including civil society, to carry out in-depth analysis using a risk-based approach.³⁵ This was the case for Nzibira area where plausibility concerns existed and continues to be the case for other areas where ITSCI works. Within this incident framework we received a report from typical ITSCI sources, which also had its own limitations and was assessed in combination with other sources and ITSCI’s own assessment.

We refer you to other sections in this report which provide ITSCI’s analysis of the below topics which according to GW, and according to Max Impact were areas from which minerals fraudulently introduced into ITSCI supply chains. **In summary, we do not agree with GW’s interpretation or reliance on the report of 2015.**

GW’s unsubstantiated claim of attempted cover up

GW does not substantiate their allegations of attempted cover up by ITSCI field officers assigned to Nzibira. **ITSCI field officers do not receive any incentives, financial or material, on volumes of minerals tagged and entering the ITSCI supply chain. ITSCI field officers’ reports are also checked** including for instance whether they do not disclose their assessment of actual activities at a site and possible associated plausibility risks. ITSCI field staff have reported risks of minerals not declared by negociants or risk of mineral fraud – for example recently SK-2021-0140 or SK-2021-0227. We informed GW in our December 2021 response that none of our sources found any evidence of ITSCI staff being corrupt as relevant to GW allegations.³⁶ In general, in all areas, performance of ITSCI field teams are regularly evaluated, and addressed appropriately, through remediation measures such as training, or beyond. **ITSCI staff can be and are sanctioned when necessary** and Pact’s local partner organization acted against one field officer in early 2020. It would become obvious if an ITSCI field officer was not reporting as we also have the whistle-blowing mechanism and other multiple sources of information as means to identify corruption and open incidents.

Incidents are managed by a Pact team outside of the area they are responsible for, and not subject to local dynamics adding additional independence to reporting. **Records show that all issues raised by Max Impact were studied in incident SK-2016-0065 and we reject allegations that information was omitted.** The incident references all possible

³⁴ ITSCI, Opportunity to comment response, 15/12/21, point 16.

³⁵ ITSCI, Opportunity to comment response, 15/12/21, point 16.

³⁶ ITSCI, Opportunity to comment response, 15/12/21, point 16.

sites where minerals may have originated (Luntukulu area, Lukoma site, and Kigulube) as well as issues at the sites such as the RM involvement at Lukoma site.³⁷ **GW has disproportionately and selectively focused on one site only**, Lukoma. Our analysis determined that there were also other known non-ITSCI sites which presented more likely risks of infiltration to the supply chain, in particular around Luntukulu in the concession owned by large scale gold mining company BANRO. There were no non-state armed groups reported on that concession, which was being monitored by state services. **The incident focused on the most likely risk from Luntukulu and stakeholder discussions progressed and achieved mitigation of that risk of fraud.**³⁸

In GW's view the incident should have been given the highest level of seriousness i.e., Level 1 because the incident carries a high risk of minerals linked to armed conflict or serious human rights abuse entering the supply chain. In our December 2021 response³⁹ we explained to GW the incident in question was initially raised as Level 2 pending further investigations by our field teams on the veracity or credibility of the allegations. **We found no evidence of minerals related to armed conflict having entered the supply chain and therefore the incident remained as Level 2.** Note that we only raise Level 1 incidents based on third-party reports when they are reasonably evidenced and have a clear link to OECD Annex II.

GW allege that after the publication of Max Impact report, an ITSCI field officer warned members of a local committee which follows up on ITSCI incidents, not to share any information with Max Impact'. **There is no evidence to support this allegation which is not credible and based on hearsay. ITSCI does not suggest limiting the sharing of risk information with stakeholders.** ITSCI has of course no authority or control over who speaks with whom on the ground and it is entirely obvious that there are constant rumours, discussion and study of ITSCI's work.

The same source also told GW that Pact had suspended for a month the payment to the local committee of an allowance to cover its expenses, because it suspected that members of the committee had shared information with Max Impact **ITSCI does not 'suspend' payments to local committees to leverage action against stakeholders.** ITSCI supports multi-stakeholder information sharing and discussion as evident in public information on stakeholder meetings and incidents. GW goes on to allege ITSCI failed to monitor the Nzibira sector supply chain effectively despite previous red flags from several ITSCI incident reports related to production levels of green-rated mines around Nzibira yet also claim that 'ITSCI had not opened an incident about the allegation of conflict minerals entering its supply chain at Nzibira sector prior to publication of the UNGoE report'. **These statements are contradictory. ITSCI did open incidents on plausibility prior to the UNGoE report, as GW states itself,** which means there are risks of minerals from other sites that enter the ITSCI supply chain. However, that does not automatically mean an association with non-state armed groups. As described, the most likely risk was from a private concession (BANRO) without security concerns where mines were later integrated into ITSCI following successful incident mitigation.

GW's ill-informed claims of negative ITSCI field staff behaviour

Unfortunately, GW chose to not include Pact's December 2021 confirmation which stated; Pact did not suspend any payment nor did our staff take any action to silence a local committee. We provide below **clarification on ITSCI roles in local and provincial stakeholder meetings and further rebuttals of GW allegations on Pact field teams 'covering up fraud'.**

- *Facilitating meetings of these local multi-stakeholder committees (**Comités Locaux de Suivi, CLS**) and provincial multi-stakeholder committees (**Comités Provinciaux de Pilotage, CPP**, also locally known as **CPS** or **CSAM**) is one of the core activities undertaken by Pact and local partners. This means that Pact, through the ITSCI programme, provides funds for meeting logistics (paper for reports, pen, water, etc.) as well as possible room rentals and transport of participants to attend those meetings. Committee members do not receive any per diem or other payments to attend the meetings, noting our response to section 2.4.1 indicates the strong reasons for not supplementing government salaries in any way. Pact is not in charge of these meetings, to either run or suspend them. These committees are not chaired by Pact (or ITSCI)*

³⁷ ITSCI, Opportunity to comment response, 15/12/21, point 18.

³⁸ ITSCI, Opportunity to comment response, 15/12/21, point 19.

³⁹ ITSCI, Opportunity to comment response, 15/12/21, point 20.

personnel. Pact has no authority or decision-making role in determining (a) who takes part in these committees, (b) when these committees meet, (c) the agenda for the committees, (d) what is discussed during committee meetings. Pact, however, does make suggestions to the committee's chairs or secretariat on risks and incidents that can be discussed during meetings. Pact also provides guidance to the members and input on possible mitigation actions to help drive the discussions. Topics are wide ranging. Minutes of meetings are reviewed and approved by all members of each committee at the subsequent meeting.

- With respect to the local committee in Nzibira sector, GW facts are inaccurate. The local committee in Nzibira sector met every month in 2016, apart from July, and was encouraged by Pact and ITSCI field officers to discuss various risks, including those you are referring to in questions 15-16.
- The establishment of such committees is a recommendation from the OECD Due Diligence Guidance (see Supplement on 3Ts, Appendix B.1.c.), and Pact considers these as critical to foster the accountability of local stakeholders, improve due diligence practices, and enhance mining governance overall. As a result, Pact continues to strengthen capacities of committee members, so they are in the better position to report risks themselves. Pact, in its role of ITSCI field implementer, also has continued to set-up new committees and/or support their meetings over the years to better address risks on the ground. Information publicly available on the ITSCI website shows that the number of active local committees (CLS) facilitated by ITSCI increased over the years, from 24 CLS in 2016 to 43 in 2020. This is further evidence of Pact's support for local mechanism and ownership of due diligence practices.
- Pact is a strong advocate for these committee meetings. In the past, Pact has raised concerns when there has been a repeated lack of stakeholder committee meetings and urged the chairs of those committees to hold meetings regularly.
- GW may be confusing a very different circumstance when Pact reported an instance of misconduct. This was adequately reported as an ITSCI incident. In that case, Pact uncovered evidence that an ITSCI field officer had been misusing funds allocated to the project for the facilitation of CLS meetings. As per our internal policy and the internal policy of our local partner organization, this staff's contract was immediately terminated.

A single poorly informed report focusing on two incidents out of thousands, and which ITSCI stands by the content of, does not substantiate GW allegations of systemic failure in ITSCI traceability and widespread covering up by ITSCI.

2.1.2. Minerals tagged at Lubuhu

Lubuhu is a trading centre in Kabare territory, South Kivu. GW allege 'over 90% of the minerals tagged at Lubuhu [trading centre] in early 2021 were illegitimately introduced into the ITSCI supply chain' there. GW claim government officials and an industry expert say production is too low at two 'green validated' mines (Kachuba and Muhinga) supplying Lubuhu to account for tonnages traded at the centre. Here **GW perpetuates their own misguided view that only minerals from green sites may be tagged at trading centre** and, citing various sources, minerals traded at Lubuhu come from 'unvalidated mines in Nindja such as the Lukoma mine and from [mines in] Shabunda Territory'.

GW continues misguided use of validation and incorrect figures

As we stated in section 2.1.1, according to DRC law, sites validated in the past 6 months can be considered green, however the last known validation decree was issued in October 2021. Our records show Kachuba and Muhinga mine's **green validation status expired six months after the most recent validation dates on 05/12/2017 and 23/09/2014** respectively.

GW alleges that the Lubuhu trading centre supply chain is contaminated by minerals from Lukoma mine being fraudulently attributed to Kachuba mine which we contest. **ITSCI does not hold records of Kachuba production anywhere near the level of 30 tonnes that GW alleges is tagged at the site ITSCI.** It appears that GW has the wrong and exaggerated information. Any misrepresentation of mine of origin we will of course take seriously and raise incidents. We have opened an incident to follow up GW allegations.

2.1.3. Minerals tagged at Chaminunu

GW alleges minerals are fraudulently tagged at Chaminunu village in Kalehe territory, South Kivu claiming the minerals originate from Lukoma mine and other mines in Shabunda territory. GW states the minerals are fraudulently claimed to be attributed at the inactive Kainga and Ngandju green rated mines. Note Kainga and Ngandju (ITSCI spelling Nganju) mines were last validated in 2019 and their green status has expired.

Chaminunu village is in the Kalonge chiefdom in Kalehe territory, 50km away from Kainga and Ngandju mines, and it is surrounded by the Kahuzi Biega National Park.⁴⁰ In our December 2021 response, we informed GW that **ITSCI does not distribute any tags to SAEMAPE agents in the chiefdom of Kalonge**. GW chose to ignore this in their report.⁴¹ We have opened an incident to check the veracity of GW's claims.

During the May 2022 joint mission conducted at Lukoma site (see section 2.1.1), local **stakeholders confirmed that minerals from Lukoma were not brought to Chaminunu**. Rather than being a tagging location, interviews suggested a possibility of other mineral sources around the area. As part of our normal and continual processes, we will engage further with stakeholders regarding this information, related risks and next steps.⁴²

We are aware of risks of minerals originating in Shabunda territory from non-ITSCI sites. We have recorded incidents related to state security forces erecting roadblocks along mineral transport routes in Shabunda territory and illegally taxing minerals and bandits, as well as non-state group RM attacking farmsteads and occupying towns in the territory. We recorded **four incidents in 2019 and 2021 documenting mineral of unknown origin tagged at Kainga** sub sector in Kalehe territory with state agents sometimes complicit. It is possible the minerals originate from non-ITSCI sites in Shabunda but this not known. As a result of the incidents ITSCI enhanced the joint tag management procedure at the site and stakeholders were reminded of their responsibilities. The DRC government agencies SAEMAPE and Divimines are carrying out internal investigations.

We have not found any substantiated links to the ITSCI supply chain from non-ITSCI mines in Shabunda territory occupied by armed groups and we continue to monitor the situation.

GW goes on to allege the mineral connected to non-state armed groups is introduced into the ITSCI supply chain at Bukavu town, the capital of South Kivu where exporters are located. Refer to section 2.1.4 below regarding mineral at Bukavu.

2.1.4. Minerals from Nindja collectivité tagged in Bukavu

GW alleges untagged minerals from the Nindja collectivité in Kabare territory (including the Lukoma mine, see section 2.1.1) are tagged in Bukavu town with the tags attributed to mines in Katogota sector of Uvira territory. GW claim officials record the minerals as 'tout venant' (meaning 'coming from anywhere') and cite officials explaining they regularly use tags meant for the mines in Luvungi and Kamanyola sectors in Katogota.

GW fails to acknowledge ITSCI follow-up on tag misuse

In our December input to GW we said we **were aware that a process of 'reconciliation' of mineral weight had recently been devised by State services in Bukavu** relating to simplifying the taxation process for mining services, which GW omitted in their response.⁴³ We have some concerns this may not follow defined processes and could enable tagging of mineral in Bukavu. In 2021, we opened an incident SK-2021-0228 and are currently following up locally. This issue was already being addressed in Bukavu by senior ITSCI representatives prior to the release of the GW report and will continue to be discussed with state services until we have confidence that procedures are followed and standards respected. We build state services' capacity in conducting traceability, however the services choose to collect taxes is beyond ITSCI mandate as long as traceability is not impacted.

⁴⁰ ITSCI, Opportunity to comment response, 15/12/21, point 8a.

⁴¹ ITSCI, Opportunity to comment response, 15/12/21, point 8a.

⁴² SK-2022-0161, SK-2022-0162 and SK-2022-0173.

⁴³ ITSCI, Opportunity to comment response, 15/12/21, point 10.

We informed GW that ITSCI does not deny that **tags may be misused by state agents and several cases have been recorded** and documented over the years for instance in exchange for a bribe. Reporting these issues as part of our incident mechanism is, in itself, a demonstration that the ITSCI programme works; it helps to uncover, report, mitigate, and resolve such issues. As part of our objective of ongoing improvement, ITSCI has continuously enhanced its procedures to reduce such misuse. This includes for instance joint tag management procedures with enhanced controls in place to better manage and monitor the use of mine tags at mine sites.

2.2. Minerals from other problematic mines, or of unknown origin, laundered through the ITSCI key supply chain

GW allege that the case studies put forward in section 2.1 (Nzibira, Lubuhu and Chaminunu trading centres) are not isolated cases and show a pattern of laundering in ITSCI supply chains across North and South Kivu Provinces and there are seemingly ‘deep-seated problems with the ITSCI scheme’. In this section GW presented additional brief ‘case studies’ to support its allegations.

GW re-uses and ‘reveals’ risks already subject to ITSCI incident reports

In this section, GW references in the main **second hand information, much of which is not relevant today**, after IPIS (2019)⁴⁴, UNGoE (2020)⁴⁵ and UNGoE (2021)⁴⁶ as well as GW field reports (2021) and video footage (2019-2020) attributed to unknown sources. **Most of the issues GW raises ITSCI is aware of and has raised incidents to mitigate. We do not deny that mineral fraud is an ever-present risk.** However, we deny this points to a pattern of laundering and deep-seated problems in the ITSCI supply chain. As we pointed out in our December response, we expect these challenges, and our programme has been set up to address them.⁴⁷ GW has not done its due diligence in using all available sources including ITSCI information. **We do not believe that GW ‘revelation’ of risks that are expected to occur, and are previously recorded by ITSCI, supports GW claims of a deep-seated issue.**

On page 26 GW gives a map titled ‘tainted minerals entering the ITSCI scheme’ without provision of definitive evidence to support that statement. The map shows 11 mines where child labour, conflict financing or human rights abuses have purportedly occurred between 2019-2021. Had GW illustrated the ITSCI supply chain it would show coverage of around 2,500 mines as of end 2021 and 896 incidents recorded in the DRC last year that would show the extent of our reach at identifying risks. To allege ‘ITSCI has effectively been used for massive mineral laundering’, based on suggested evidence at comparatively small number of mines and handful of incidents is highly misleading. **GW misrepresent the purpose of ITSCI and paid no attention to our reports on incidents and the progress we have made which could limit the importance of their ‘revelations’.** Risks are present everywhere, and there is fraud, in other provinces in the DRC and other countries where ITSCI operates and we report them using our incident reporting mechanism, respond and mitigate together with stakeholders.

Nyabibwe area: Illicit storage facilities; laundering of minerals from a mine where a criminal gang operates; child labour in a mine

GW alleges minerals originate from unvalidated mines in Kalehe Territory (South Kivu) and infiltrate the ITSCI supply chain at Nyabibwe sector in that territory. They cite one trader claiming to introduce minerals from the unvalidated Chambeo mine where a ‘criminal gang operates’ into the ITSCI supply chain. The minerals are purportedly attributed to an unnamed ‘validated mine in the Nyabibwe area’.

Information from our December 2021 response has not been reflected by GW; Chambeo is the name of a village, not a mine site. GW likely refers to the mine site Kibuye which is located near the village. Kibuye has been an ITSCI site since 2014 and there have been various incidents at and around this site which are well documented by ITSCI. They include disputes between landowners and cooperatives or among cooperatives. At least seven incidents were recorded

⁴⁴ IPIS (2019): Mapping artisanal mining areas and mineral supply chains in eastern DR Congo.

⁴⁵ UNGoE (2020): Final report of the group of experts on the Democratic Republic of the Congo, S/2020/482.

⁴⁶ UNGoE (2021): Final report of the group of experts on the Democratic Republic of the Congo, S/2021/560.

⁴⁷ ITSCI, Opportunity to comment response, 15/12/21, introduction.

over the years regarding security issues at, or close to, Kibuye mine. **We assume GW is referring to these types of incidents when they cite ‘criminal gangs’ however the incidents have not been recognised by GW.**

GW cites sources reporting ‘unexplained increases in the weight of bags of minerals that have been washed and tagged’ which they attribute to traders topping up bags of washed and tagged minerals with material for which they have not paid taxes. This allegation does not reflect that there is variation in weights at differing weighing stations due to water content of the bags and differing calibration of scales which is normal in the ITSCI supply chain and monitored for breaches of internal thresholds. Nor does it reflect ITSCI incident SK-2021-0228 mentioned above.

It is wrong to infer all unvalidated mines are connected to conflict and human rights abuses (refer to 2.2.1). **It is also wrong to imply that operation of a criminal gang in an area automatically impacts the mineral supply chain** without substantive evidence on control or taxation by that criminal gang or other abuses. The objective of ITSCI is to pinpoint occurrence of OECD Annex II incidents to as precise a location, issue and/or actor as possible to focus action or mitigation on responsible parties without negatively damaging associated actors in the supply chain. Unfortunately, GW does not seem to take this approach and speaks in generalised unspecific terms without providing sufficient evidence to enable any follow up. We deny mineral from Chambeo mine allegedly contaminating the ITSCI supply chain at Nyabibwe shows ‘deep-seated problems with the ITSCI programme.

GW ignores ITSCI mitigation efforts on child labour

GW claims to have seen children working in the Kalimbi mine near Nyabibwe. Refer to ‘Children working in artisanal mines’ below for our response. Kalimbi, which is the site where ITSCI was piloted in 2010 is likely one of the most visited mines in all of eastern DRC being easily accessible in the vicinity of the road, in close distance (~3 hours by car) from Bukavu in South Kivu, with no security issues for many years. It is also important to understand the local setting, i.e. the mine is very large with multiple extraction and washing areas located over several kilometres. Some of the tunnels are located some 50 meters away from local community houses, with miners and community members using the same paths to go to the local trading town of Nyabibwe. In other areas, private-owned lands are located at the border of washing areas and these lands are where community members, including children, sometimes bring their cattle. **The lack of clear boundaries between extraction sites or pits, washing, and crushing areas, etc. and private land may create situation where children are located very close-by mining activities. This does not equate to children working at the mines.** While understanding this we have reported in the past instances of child labour at Kalimbi site, which, in some instances, has resulted in mitigation measures being taken and issues resolved.⁴⁸ We report the detailed content of a 2021 incident report findings here to illustrate the efficacy of ITSCI teams to fact find and complexity of children’s presence at mines sites. GW presentation of children at sites to discredit ITSCI underlines their simplistic understanding of the problem and ignores our field teams efforts to resolve. GW has not shared this information with us to support mitigation.

‘ITSCI field staff visited the mine site on 5th-7th October 2021 and confirmed that children between 7 and 16 years old were present near the washing points but are not involved in mining activities. The children reportedly come to the mine sites with their mothers who transport or wash mineralised sand; this was confirmed by civil society actors and CLS/Nyabibwe members. The families reportedly disagree with the recommendations made by civil society actors on not bringing children to the mine site as they own part of the land where the mine site is located and argue that their children can roam free on the land they own. Cooperatives and state services were tasked with raising those families’ awareness with regards to risks related to the presence of children at mine sites.

The incident was discussed during CLS/Nyabibwe in November 2021 and participants reported that parents’ awareness was raised with regards to the presence of children at mine sites. Safety measures were also taken together with team leaders so that they prevent children from entering the mine site. The issue is reportedly compounded by the teachers’ strike whereby school did not start as planned back in September. ITSCI to continue monitoring and investigate the presence of children during upcoming field visits. The incident was also discussed during the CLS/Nyabibwe meeting in December 2021 and parents’ awareness reportedly continues to be raised about risks related to the presence of children at mine sites. In parallel, participants recommended that a letter is sent to the SAEMAPE provincial director to advocate for the relocation of the miners’ camp so that children are less likely to coming to the mine site. Participants highlighted

⁴⁸ See incidents SK-2018-0021 (resolved), SK-2019-0177 (inconclusive), SK-2021-0212 (unresolved), and now SK-2022-0144 (follow-up incident from 2021-0212, opened in May 2022, which references the GW report)

that with the resumption of classes the number of children coming to the mine sites has fallen. On 20th January 2022, ITSCI staff visited Kalimbi sub-sector and noticed that children are still present at the mine site. Awareness raising efforts by state services and cooperatives reportedly continue.

The incident was discussed during CLS/Nyabibwe on 14th March 2022 and participants reported that the incident had been raised at the CLS/Kalehe-level by the Madini project. Despite efforts made by stakeholders, children are still present at the mine site. This incident also follows SK-2021-0212.'

We continue to follow-up with local stakeholders at and around the mine regarding this incident, including by advocating cooperatives, state services and local community members implement effective actions such as barriers, signage, agreements between parties on land usage etc.

Numbi area: Contamination of ITSCI supply chain with tout venant minerals; children working in a mine

GW cite a government official claiming 'more than 40% of the minerals tagged in Numbi sector [town in the Kalehe Territory, South Kivu] could be from elsewhere, mainly North Kivu'. GW does not specify from which mines or places in North Kivu the minerals originate. We have recorded incident SK-2022-0013 about small quantities of untagged minerals from non-validated sites in Masisi Territory (North Kivu) brought to Numbi sector at night and state services seem to refer to those minerals as 'tout-venant' (refer to section 2.1.4). We are following up on this incident. We are monitoring activity at Numbi site and recently opened two incidents about discrepancies between latest baselines and level of production recorded on the ground: SK-2022-0179 and SK-2022-0180. **However, based on our records and observations, it is not credible to suggest that 40% of minerals recorded at ITSCI mines in Numbi come from elsewhere;** this does not match our own observation of activities taking place at ITSCI sites in Numbi.

It is important to understand the local context in Numbi sector. Some sites are located in a private-owned concession for which there is an exclusive purchase agreement with an ITSCI exporter and other sites located in ZEAs with no purchase agreements in place, and therefore miners/cooperatives can sell to whomever they want. This creates risks of minerals brought from one site to another depending on price offered. **These commercial drivers for fraud do not automatically equate to 'conflict' minerals entering the ITSCI supply chain.**

Provincial authorities are keen to control movement of minerals between North and South Kivu as this impacts their provincial tax revenues and they have now formalised trade between the provinces. Similar approaches apply at smaller territorial or other geographic level. There are frequent allegations and claims made locally on these sources in relation to revenues which are recorded as incidents if reasonably supported by other information.

GW claims to have seen children working at Numbi's Filon II mine, where ITSCI operates. ITSCI is aware and has reported child labour incidents in 2016, 2019 and 2021 and at this mine. Refer to 'Children working in artisanal mines' below.

RESPONSE TO GW BOX: 'Children working in artisanal mines'

Citing in the main their own field investigations, GW allege to have witnessed child labour at the following places in the ITSCI supply chain in 2019, 2020 and 2021;

- Kalimbi mine, Nyabibwe sector, Kalehe Territory, South Kivu - refer to 'Nyabibwe area' above
- Chigubi mine – Bitale sector, Kalehe Territory, South Kivu – refer 2.1.1 above
- Filon II mine, Numbi sector, Kalehe Territory, South Kivu – refer to 'Numbi area' above
- Gakombe mine Rubaya town, North Kivu – see below
- Kamatale mine, Ngungu sector, Masisi Territory, North Kivu – see below

GW is wrong to suggest child labour is pervasive at ITSCI sites

GW recycle IPIS reporting of children at around 'one-third of the mines covered by ITSCI.' To infer this issue is widespread in the ITSCI supply chain. **This is a gross misrepresentation of the IPIS report.** That report is based on a sample of 104 3T mines, 73 of which were ITSCI. The IPIS report then indicates, on page 30 (and not page 11 or 27 as referenced by GW), that in their mine-site surveys in 2019, a child was observed at 33% of ITSCI mines. This figure

refers only to the 73 mines considered in the report. It is by far not equal to saying that one-third of all ITSCI mines are concerned by child labour, as GW suggests.

In our December response ITSCI requested that GW provides substantive evidence of their allegations⁴⁹ that minerals from sites are commonly worked by children are entering the ITSCI supply chains – either directly or by encouraging use of the ITSCI whistleblowing mechanism. No information has been forthcoming to ITSCI to support GW claims which are in the main based on unreferenced videos and no other information is available to suggest the implied significant issues.

We have recorded incidents of child labour at ITSCI sites including Kalimbi mine, however we do not agree with GW’s inference child labour is pervasive at ITSCI sites – it is not. GW has failed to recognise that ITSCI monitors and verifies occurrences of child labour through its normal incident reporting mechanism; for example 35 incidents related to child labour on 19 ITSCI monitored mines were recorded in 2021.⁵⁰ An additional child labour report is also completed which ITSCI field teams use to broaden understanding on the child or children’s specific situation and the roles of others.

Regarding GW allegation of children working at Gakombe mine Rubaya town, North Kivu, This incident (NK-2021-0063) took place on SMB PE4731 after 2018 when SMB was no longer a member of ITSCI (see section 2.3 regarding other allegations related to Rubaya). Based on third-party information via our whistleblower mechanism, we suggest that there are over 100 children mining at D4 Gakombe within PE4731. ITSCI raised the issue about risks related to child labour in mine sites and encourages SAEMAPE, PMH and COOPERAMMA to follow up. ITSCI facilitated mitigation activities related to child labour includes;

- A first step always consists in communicating the incident during local multi-stakeholder meetings, which serves to remind all participants that child labour is forbidden by DRC law.
- ITSCI advocates stakeholders carry out monitoring visits to the site concerned to ensure that children present leave, whilst ITSCI teams are constantly raising awareness amongst miners, state services and state security forces about the dangers related to child labour during the regular site visits (in the DRC between 400-500 per month and around 250 multistakeholder engagements).
- Through the ITSCI whistleblowing mechanism, a radio campaign was launched in 2019 in the DRC and includes messaging around child labour. We find this an effective tool to engage mining communities and raise awareness: in 2021, there were 43 calls in total concerning child labor/presence of children at mines, but this includes both 3T and others and for 2020: 65 calls.⁵¹

ITSCI agrees with GW that ‘child labour is a complex problem’. It is important to note that child labour may have very different underlying causes, including poverty as GW notes, which need specific interventions to ensure sustained absence of children and that they are not put at greater harm. We make efforts within resources available, but this issue requires coordinated multiple action – not least to avoid de-risking. The need to take a wide and coordinated approach has been previously discussed at OECD.

Biholo mine: Miners forced to work for armed groups

Referencing information from years ago commonly during times of progressive improvement in security which is not so relevant today, GW allege non-ITSCI Biholo mine in Masisi Territory (North Kivu) was until November 2019 a source of contamination of the ITSCI supply chain at Ngungu sector in South Kivu. GW recycles second or third hand information such as UNGoE (2019) to allege non-state combatants occupied Biholo mine and ‘physically intimidated miners, forced them to work for them one day per week, and in addition demanded payments of up to \$2,000 per week’.

⁴⁹ ITSCI, Opportunity to comment response, 15/12/21, point 4c.

⁵⁰ See <https://www.itsci.org/status-report-public/>, Q4 2021 as published in the ITSCI bi-annual overview

⁵¹ The calls are not only about children at a site; some are about people asking about the radio campaign and in particular messaging around child labor, or about awareness-raising about CL at mine sites that the person calling wanted to share to the hotline. For 2020-2021, 8 incidents opened based on WB tips regarding CL, and two updated. For 2022, there has been one incident opened in 2022 so far based on a WB tip about CL.

GW provides no evidence of non-state armed groups

ITSCI believes this allegation to be inaccurate. We opened incident NK-2019-0007 about the UNGoE 2018 mid-term report, and NK-2020-0091, reopened as NK-2021-0003 in response to the UNGoE 2019 final report and the allegations therein. **Local companies and cooperatives responded to the UNGoE rejecting the accuracy of the UNGoE's findings.** FARDC operations during the same period have targeted non-state militants and there have been no further indications of fraud from Biholo mine or impacts on the ITSCI supply chain. The security situation in and around Biholo was discussed in multiple instances at local stakeholder committee meetings, including in January 2020, July 2020, and December 2021. At no point in time was information shared about non-state armed groups presence at that mine.

ITSCI continually analyses plausibility of risks of infiltration including minerals from sites purportedly occupied by non-state combatants and raises incidents accordingly. We report about state and non-state armed groups in multiple incidents in all provinces of the DRC and refer to in our December 2021⁵² response to GW (which is not reflected in their reporting).

Itombwe area: Congolese army illegally taxing ITSCI-tagged minerals from a nature reserve

GW refer to IPIS reports of minerals from the Zombe and Shakatembo mines and other unnamed mines in the Itombwe Nature Reserve in Mwenga Territory (northern South Kivu), were being tagged with ITSCI tags in Mwenga town, north of the reserve at the provincial border with North Kivu. Some of the minerals had been illegally taxed by units of the Congolese army. **ITSCI is well aware of FARDC presence and Mai presence in the Itombwe Nature Reserve; we have recorded several incidents in recent years concerning clashes between them in the vicinity of gold and 3T sites.** IPIS findings are from 2016 and outdated. Zombe mine came under the ITSCI Programme in early 2022 and has been **confirmed not to be within a protected area.** Shakatembo is a river that flows across Zombe mine and where alluvial mining is taking place.

Kamatale mine: Armed group extracting minerals; children working in the mine

GW cite the UNGoE report (2020) to allege minerals tagged at Ngungu sector/town in Masisi territory, North Kivu, originate from Kamatale mine in the same sector, which was occupied by Nyatura Matata and where children worked. **We are aware of security incidents recorded near Kamatale mine, which have no reported impact on ITSCI activities at the mine.** We do not have any report of child labour at Kamatale site. There has not been any report or information in that regard shared at local multi-stakeholder committee meetings.

Chugi mine: Minerals from mine controlled by armed group entering ITSCI supply chain

GW recycles IPIS to claim minerals from Chugi mine Masisi territory, North Kivu, is controlled by Nyatura militia and minerals from there enter the ITSCI supply chain at Kibabi village 5 kilometres from the mine. We are aware of the past presence of Nyatura in the area. We recorded a security incident in 2019 that took place close to Chugi mine in which Nyatura were looting people in a village nearby. The situation has improved and Chugi mine came under the ITSCI Programme in June 2019. Since then, there have been no security concerns at the site, and we do not agree with the GW allegations the site is a source of contamination of the ITSCI supply chain.

Mines in Lubutu Territory: Laundering of minerals connected to an armed group and human rights abuses by Congolese army

GW again recycles IPIS (2019) findings that mineral is being tagged at Mapamboli mine in Maniema's Lubutu Territory. IPIS claims the tagging takes place at Osso, four hours by foot from Mapamboli. IPIS does not specify the mineral origin other than 'areas under control of Mai Mai Simba, or from the neighbouring territory of Walikale [North Kivu]'.

ITSCI is aware of irregularities at the border between North Kivu and Maniema at Osso we understand to be a town/village and river at the provincial border crossing. **We have recorded four incidents in recent years relating to smuggling of untagged minerals over the provincial border at Osso implicating security forces, agents and**

⁵² ITSCI, Opportunity to comment response, 15/12/21, point 29.

negociants. There are reported improved conditions at Osso, however further monitoring is necessary and incident MN-2021-0060 remains open. This is an example of intervention by ITSCI to improve the situation.

Itebero area: Minerals from national park laundered into ITSCI supply chain

GW recycles IPIS (2019) to allege that minerals from unvalidated Nguba and Mbobolo mines in the Itebero area of the Kahuzi Biega National Park were being laundered into the ITSCI supply chain through green-rated mines, such as the Bukumo and Idambo mines. **We opened incident NK-2019-0157 in response to this claim.** ITSCI field staff discussed the incident in a CLS meeting. Cooperatives and local administrative authorities denied the allegations. ITSCI assessed and confirmed plausibility at ITSCI sites Bukumo and Idambo. The incident was closed as is inconclusive.

We later recorded incident NK-2017-0269 referencing the seizure of two bags of minerals by PMH. Despite discussion at two sub-CLS meetings and a site visit by ITSCI to Itebero, the origin of the minerals was not confirmed, and the incident closed as inconclusive. Stakeholders were again reminded about the risks of contamination.

Mines in Masisi Territory: Validated green despite the presence of armed groups

GW refers to UN (2019)⁵³ in which formerly validated sites Kibanda (and Rubonga) reportedly came under the control of non-state armed groups while green rated. Following normal ITSCI practice, we opened an incident concerning risks to the supply chain (NK-2020-0001). There have been no traceability activities at the sites since 2016 when non-state armed groups became present in the area. (NK-2016-0123). We however have continued to monitor the security situation. **We have found no evidence of non-state armed groups exploiting minerals and disagree that mineral from these sites infiltrated the ITSCI supply chain at Kibabi.**

Citing IPIS (2019), GW claim minerals from Kavuta/Katovu and Rwandanda mines in North Kivu, were allegedly tagged in Kibabi town and the sites under the control of non-state armed group Nyatura. The situation is fragile and there are multiple reports of the presence of various non-state armed groups located in villages between 15 and 50km from the ITSCI sites. **However there has not been any report of non-state armed groups involved or interfering in mining activities at those ITSCI sites.** ITSCI continued to monitor and discuss security at multiple local CLS meetings.⁵⁴

2.3. Intra-concession mineral trafficking and an allegation of ITSCI's bullying tactics provoking violence in the Rubaya area

GW's omission of pre-existing local tensions in Rubaya area is misleading

Rubaya is now an important tantalum supply area as GW state but it has had a long and difficult history and for some years was impacted by de-facto embargo related to the presence of unmanaged risks.

It is critical to understand the historical context of Rubaya before considering the accuracy and balance of GW assertions. It seems that **GW has chosen to present a selective view of this background only from 2018 onwards for reasons that are not explained.** For example, it seems odd that GW selected to reference an ITSCI Governance Assessment, namely in relation to Nzibira, to suggest that ITSCI does not act on risks (see 'Not a new problem', section 2.1.1), yet GW chose not to use an ITSCI Governance Assessment⁵⁵ to reflect important background on Rubaya. We provide some of that background below.

Rubaya is situated around 55 km west from Goma in Masisi territory. Surrounding land is mostly covered by mining and cattle grazing concessions in hands of the wealthy minority. By consequence, land for agricultural production is scarce, yet it constitutes an important driver for the local economy. People have a mixed ethnic background with, according to interviewees, two thirds being Hutu, with Tutsi and others in minority. The mixed ethnic composition of

⁵³ UNGoE (2019): Midterm report of the Group of Experts on the Democratic Republic of the Congo, S/2019/974, paragraph 44.

⁵⁴ NK-2017-0147, NK-2018-0216, NK-2019-0009, NK-2020-0133, NK-2020-0147, NK-2021-0040, NK-2021-0119, and NK-2022-0055

⁵⁵ See <https://www.itsci.org/governance-assessments-public/>

the Rubaya population, combined with competing claims over scarce land led to a situation in which disputes are frequent.

Mine sites have during and after the colonial period often changed hands, especially under influence of the **Congo wars (first 1996-1997 and second 1998-2002)**. In 1977 the Rubaya concessions were nationalised and became the state-enterprise SOMINKI (*Société Minière et Industrielle du Kivu*). In 1996 the concession rights were transferred to SAKIMA (*Société Aurifère du Kivu et du Maniema*) following financial difficulties. This coincided with the first Congo war and in July 1998 efforts were made to nationalize SAKIMA, renaming it SOMICO (*Société Minière du Congo*). That remained a paper deal as just days later the second war broke out and divided the country. Eastern Congo, fell into the hands of the rebellion movement *Rassemblement congolais pour la démocratie* (RCD-Goma).

The mining company Mwangachuchu Hizi International (MHI), which later changed its name to Société Minière de Bisunzu (SMB), was created in 1999 by a prominent North Kivu politician, Senator Edward Mwangachuchu, and his family. **MHI/SMB obtained an exploration permit from RCD-Goma in 2001 for a small portion (36 carrés⁵⁶) of the larger total (360 carrés) held by SAKIMA (PE76)**. During the post-war transition period, mining contracts were renegotiated and in 2007 MHI obtained a 15-year renewable exploitation permit (PE 4731).

Members of the mining cooperative COOPERAMMA were working in Rubaya, including on the MHI/SMB permit (PE4731). In 2005, MHI/SMB, which previously had worked as an exporter in Goma, started to claim rights to the concession which resulted in opposition by COOPERAMMA who claimed prior presence. This led to an open **dispute between MHI/SMB and COOPERAMMA, which was only resolved in 2013** following a mediation led by the North Kivu provincial government. On 28 November 2013 MHI and COOPERAMMA signed a Memorandum of Understanding (MOU).

The CNDP (Congrès National pour le Développement et la Paix) formed out of the RCD-Goma in 2006 and operated as a rebel group under General Laurent Nkunda with Masisi as a core base until 2009⁵⁷. Between 2009 and 2012 Rubaya remained under CNDP (then rebel group) control and the CNDP exercised a parallel administration. The **worst violence since the 1990s occurred in 2012 in Masisi**, driven by economic and ethnic factors and involving various non-stated armed groups. The CNDP was effectively reborn as the M23 rebellion in 2012.⁵⁸ Senator Edward Mwangachuchu was first elected as an independent non-aligned Senator in 2007, and after that time, in 2011, to the Congolese Parliament representing the CNDP political party (the CNDP was only recognised as a political party in 2009).

GW alleges that ITSCI actions to supposedly ‘undermine its competitors’ in Masisi, exacerbated underlying tensions between SMB and COOPERAMMA and that ‘this in turn appears to have contributed to outbreaks of violence in 2019 and 2020’. ITSCI rejects these allegations which GW has not substantiated (**see section 2.3.1**). GW reporting is unbalanced and misleading not least due to omission of key background which we provided above.

GW further allege that ‘research suggests that an ITSCI insider has willingly purchased and profited from a large share of Rubaya’s coltan’ yet GW’s concept of an ‘insider’ is misleading, based on wrong assumptions and no evidence. There is no such insider (**see section 2.3.3**).

2.3.1. Rivalry and bullying in the traceability business

The GW report shows a selective version of the complex local context and history in the Rubaya area, as we have outlined in section 2.3. GW briefly allude to ethnic tensions but do not elaborate or provide deeper context. **It is well known that tensions pre-exist 2014⁵⁹ when ITSCI started working** with Mwangachuchu Hizi International (MHI) (now

⁵⁶ 1 carré minier represents approximately 1 square kilometer.

⁵⁷ On March 23, 2009, the CNDP signed a peace treaty with the government, in which it agreed to become a political party in exchange for the release of its imprisoned members.

⁵⁸ M23 took the city of Goma on 20th November 2012 for a short time. The M23 has recently become more active. See DR Congo: Civilians at Risk Amid Resurgence of M23 Rebels <https://reliefweb.int/report/democratic-republic-congo/dr-congo-civilians-risk-amid-resurgence-m23-rebels> Note it is reported that - In Congo, hate speech and stigmatization of communities linked to neighboring countries has been growing and sometimes linked to government officials.

⁵⁹ For example: <http://news.bbc.co.uk/1/hi/world/africa/8234583.stm>, and <https://www.reuters.com/article/ozatp-congo-democratic-minerals-20090408-idAFJQE5370L720090408>

SMB) and COOPERAMMA following improvement in local security, local mediation and signature of the MHI-COOPERAMMA MOU on 28th November 2013.

ITSCI worked with SMB and COOPERAMMA between 2014-2018

The MOU of 2013 placed certain obligations on each party with regard to sale of minerals produced by COOPERAMMA from MHI/SMB PE4731 concession. For a time, the MOU provided a workable solution for the parties although there were various complaints regarding non respect for that MOU.⁶⁰ Tensions between SMB and COOPERAMMA arose again in 2018, including around issues related to payments expected from SMB (refer to section 2.3.5). Ultimately the 2013 MOU was suspended by SMB which also led to a suspension of mineral business for a time.

A new MOU was agreed in June 2018 which included a clause on payments of minerals by SMB to COOPERAMMA within 10 days after sampling and analysis. This answered one of COOPERAMMA's complaints regarding recurrent payment delays by SMB. In following months and years, COOPERAMMA continued to denounce non-respect of this condition. Other complaints from negociants arose regarding the export by SMB of minerals before any payment to negociants. Stakeholders consider that the conditions of the MOU have not been adhered to by SMB.

The tensions GW mentions are deep seated. Between **2014 and 2018, ITSCI actively contributed to stability and peaceful relationships between different actors on the ground**, including SMB and COOPERAMMA through constant meetings and engagement. This became increasingly difficult as SMB turned to security to protect its interests. After SMB's work with stakeholders continued to progressively reduce after 2018 (when SMB switched to BSP/RCS/BM) the situation eroded further. Increased tensions have impacted not only SMB but have also increased risks for ITSCI supply chains as we constantly report via incidents.

GW presents an unbalanced view sympathetic to SMB

GW also suggests that through putting SMB into a more financially difficult position after it chose to leave ITSCI at the end of 2018 and work with BSP, it resulted in SMB being unable to pay miners which in turn eventually sparked violence in 2019 onwards. This is incorrect. It is well known that **tensions and violence and SMB's financial troubles predates this time** as noted above from public sources in 2015 and 2017^{61,62} including from Max Impact (used by GW as a source for section 2.1.1). These events were **reported by ITSCI as incidents at the time SMB was an ITSCI member**.

Rumours and misinformation characterise the environment. **SMB has also operated a long running campaign of negative allegations against various parties, many of which seem to be repeated by GW, but which have failed to be upheld in court in the DRC.** SMB has lost two trials and is appealing a third in Kinshasa. Two PMH officers contracted to SMB to secure their concession have been jailed for their involvement in the killing of two miners in 2019. PMH, Congolese officials and SMB have been charged with damages. Refer to section 2.3.4 for additional details.

GW has taken SMB's press release regarding the company's decision to leave ITSCI as the whole truth. GW puts forward two simple reasons from SMB's perspective – cost of due diligence and ITA deployed too few agents. **GW has not enquired or presented the ITSCI (or any other) perspective. Favouring SMB** over other potential sources results in presentation of a significantly unbalanced picture. Therefore we share our view here: which is that it was not about costs (although of course cost of due diligence is a constant concern to all companies) but SMB's apparent lack of willingness to address incidents reported by ITSCI and inability to demonstrate an acceptable level of performance and improvements. **SMB appeared to believe that ITSCI would control all stakeholders in support of SMB and not act in a neutral manner.** When not all aspects of ITSCI's work supported the view or aims of SMB, SMB determined this was due to a lack of agents. SMB proceeded to increase its own industrial guards, and employment of state security agents, which drove increased tensions in a further circular manner resulting in violence and increased tension in recent years.

⁶⁰ For example: <https://maximpact-asbl.org/wp-content/uploads/2018/12/PRATIQUE-COOPERATIVE-AU-SEIN-DE-LA-COOPERAMMA.pdf>, p. 24.

⁶¹ See <https://maximpact-asbl.org/wp-content/uploads/2018/12/PRATIQUE-COOPERATIVE-AU-SEIN-DE-LA-COOPERAMMA.pdf>

⁶² See https://www.pole-institute.org/sites/default/files/pdf_publication/Epargne%20dans%20la%20communaute%CC%81%20des%20artisans%20miniers%20de%20Munghalu%2C%20Rubaya%20et%20NyabibweKalimbi%20%20analyse%20des%20initiatives%20existantes%2C%20des%20contraintes%20et%20de%20strate%CC%81gies%20de%20sensibilisation..pdf, p. 32.

In our view **SMB were increasingly resistant to incident reporting, reduced their part in mitigation of risks and did not demonstrate respect for stakeholders** – therefore becoming less aligned with OECD due diligence. This means that ultimately the ‘loss’ of SMB was a positive thing as ITSCI would not have been able to continue to work with a company not committed to progress per OECD due diligence.

GW suggest that we did not honour a one month notice period. However, there is no one month notice period for leaving ITSCI. In the December response we explained that it was unfortunate there had been no prior notice or discussion of termination that would have benefited advance planning of practical aspects of withdrawal from ITSCI such as the end of tagging, and due diligence reporting on minerals enroute from the mine to smelters.⁶³ That GW did not research or chose to omit this is highly concerning and **points to a selective approach to what information is presented in the report and how information is weighted.**

GW appears to object to transparent reporting of risks

GW states that ITSCI continued to issue incident alerts related to SMB, after SMB left ITSCI, but ‘without a clear connection to ITSCI supply chains’ ‘scaring off’ SMB’s international customers ‘who apparently became afraid of buying potentially tainted minerals as a result’. This is incorrect. To the extent that any business was held up, it is the result of an independent decision of companies further up the supply chain. It is their commercial decision.

There is a very obvious connection to ITSCI as COOPERAMMA remains an ITSCI member. We also explained to GW in December 2021, and they will surely know that the OECD guidance recommends any individual or entity report any incidents occurring within the supply chain to help companies sourcing products to implement mitigating measures and reduce risks’.⁶⁴ Potential or actual purchasers make their own evaluation of the risks and are responsible for that determination. The same **‘international customers’ receive incident reports from ITSCI on a very regular basis and, if the risks are being managed and resolved, they evidently are not ‘scared off’**. Lack of engagement in the resolution of incidents could be a concern to all stakeholders, including GW. GW claims that delays in closure of incidents led to hold up in trading two containers of SMB’s minerals yet do not acknowledge that SMB provided no evidence of mitigation to enable incident closure (see below).

Below is a table showing the number of incidents SMB was either responsible for (first two rows) or involved with (second two rows), including in relation to COOPERAMMA who as we explain above are active on PE4731, as well as neighbouring PE76. The total **number of incidents related to SMB and their minerals from 2017 to 2019, before and after leaving ITSCI, is similar**. Among the 33 incidents for SMB in 2019, 18 were new issues/incidents while the remaining 15 were reopened from either 2018 or first half of 2019 for further follow-up. These were reopened due to the slow response to mitigation by SMB. In 2018, as an ITSCI member, SMB appeared to have a greater share of responsibility for the incidents than COOPERAMMA. This **trend is logical when considering the suspension of mining and trading activities by the national Minister of Mines during 2018 over risks on the SMB concession**. The official suspension by the government and, as a consequence, the need for the official re-validation of the site to lift the suspension is a clear indication of presence of high-level risks during 2018 as well as of the responsibility of the concession owner, SMB, to address those risks before activities were allowed to take place again.

Involved party	2016	2017	2018	2019	TOTAL
SMB	18	15	27	33	93
SMB/COOPERAMMA	1	27	11	4	43
SMB MENTIONED	2	5	7	9	23
SMB/COOPERAMMA MENTIONED	1	1		3	4
TOTAL	23	48	45	49	163

⁶³ ITSCI, Opportunity to comment response, 15/12/21, point 52.

⁶⁴ ITSCI, Opportunity to comment response, 15/12/21, point 56.

GW recognises that SMB, government officials and ITSCI personnel met to agree how to deal with incidents relating to SMB. SMB insisted to have incidents closed without providing any evidence of mitigation and GW ignores ITSCI's December 2021 response⁶⁵ which provides important information on SMB's lack of response. We repeat it in full here as we consider our input to GW (highlighted in bold) has been taken out of context in reporting.

On 8-9th April 2019, a meeting was held in Kinshasa with the General Secretary of Mines, ITSCI, SMB, RCS/BSP, SAEMAPE (Kinshasa and North Kivu), CEEC (Kinshasa & North Kivu) and ICGLR to resolve issues between SMB and ITSCI, in particular around ITSCI incidents that concerned SMB supply chain. It was decided that "Regarding the incidents, the Ministry of Mines requests that incidents are closed in compliance with the current procedure in force within 10 days, taking into account what has been done by the CPP, if and only if the resolutions do not violate the recommendations of the OECD DDG, the requirements from ICGLR RCM, and the Traceability Procedural Manual, as well as some aspects related to the contractual agreement between both parties (ITSCI & SMB)"

As agreed at the meeting, ITSCI re-sent on 11th April 2019 a list of ITSCI incidents involving SMB for their comment and input to enable incidents to be resolved. This included;

- *Incidents that were opened in 2018, some of which were unresolved*
- *Incidents re-opened in 2019 due to their non-resolution (as above)*
- *New incidents opened in 2019*

*Unfortunately, **SMB did not provide any further answer or feedback to any of the ITSCI incidents sent to them.** Therefore, according to current procedures and aligned with expectations of the OECD DDG, the incidents could not be said to be mitigated or resolved, and SMB could not be said to be engaged with stakeholders on resolution of risks.*

Normal ITSCI procedures were followed at all times. ITSCI also respected in entirety the decision taken by the meeting referred to above. Both T.I.C. and ITA as the ITSCI Governance Committee together are ultimately responsible for evaluating all Level 1 (most serious) incidents.

We refute entirely your allegation that ITA varied normal procedures in managing incidents and in fact encouraged SMB to engage with ITSCI on resolution.

GW appears to also object to risk reporting in South Kivu

GW go on to claim that in 2018 the Better Sourcing Programme (BSP) (which later became RCS Global's Better Mining) had planned to implement its programme at Kachuba mine, but ITA alerted its international members, including smelters sourcing ITSCI-tagged minerals that also intended to buy minerals under the BSP scheme, to a nearby military presence and the companies then abandoned their plans to source from the mine. GW also imply ITSCI should not report incidents outside of its supply chain.

GW omits to explain the background around Kachuba site. ITSCI opened the level-1 incident in question, SK-2018-0003, regarding a dispute between cooperatives operating there around rights to access the site originating from historical matters. There was an **alleged request for DRC army (FARDC) presence by Group Olive, relating to COMINAGRI cooperative operating at Kachuba site and around a warehouse** supplying exporter CJX. In brief, the issues of risk relating to this incident are;

1. Increase of FARDC at a mining ZEA, without a clear need for protection of national security, which is a concern under Congolese law; and instead apparently being used to secure a closed supply chain in contradiction to the sole purpose of maintaining the rule of law (OECD Annex II.6).
2. Group Olive and staff of CJX being aware of, and apparently not addressing the risks linked to the deployment and permanent presence of FARDC and PMH in the vicinity of mining and mineral trading, contrary to expectations of OECD due diligence guidance, Annex II.5 to eliminate public security presence.
3. Group Olive allegedly providing food supplies in nature or cash to FARDC and therefore direct support to state armed groups, contrary to OECD due diligence guidance, Annex II.5 and Congolese law.

We note that the events were not publicly reported to authorities.

⁶⁵ ITSCI, Opportunity to comment response, 15/12/21, point 53.

ITSCI could not have prevented BSP tagging at the site because pilot traceability at Kachuba started in 2018 together with COMINAGRI, CJX, SAEMAPE and Division of Mines. Minerals were reportedly tagged by government agents with BSP oversight. However, the supply chain model implemented through BSP and the exporter required the local cooperative to sell all minerals directly to the exporter, de facto cutting the negociants from the supply chain. **The model no longer allowed the normal mineral trade prefunding mechanism, discouraging miners to work while creating tensions with negociants and local stakeholders.**

We repeat – issuing of incidents does not normally lead to ‘scaring off’ or abandoned plans. Incidents lead to mitigation and progressive improvement. **GW appears to suggest the presence of state armed services should not have been reported.** This is extraordinary since it is well known in DRC law FARDC are not permitted to participate in mining.

Two separate and additional incident reports are open on letters of protest against CJX, COMINAGRI and Group Olive, which also include, and recognise, the counter letters which have also been circulated;

- SK-2018-0004: Protest regarding contract of Société Olive and CJX, Katogota, Uvira Territory
- SK-2018-0008: Protest regarding COMINAGRI and CJX, Kachuba, Kabare Territory

These incidents are categorised as low level 3 incidents relating to disputes. These letters and counter letters are not the basis of the incident SK-2018-0003.

Overall, it is wrong to cite ITSCI incident reporting as a way to ‘squeeze out RCS Global’, based solely or heavily on the views of an ‘industry expert’. Some of the alerts (SK-2018-0003 above and SK-2018-0044) in question relate to armed group presence and it would be a serious oversight for ITSCI to not report on such matters as is any party’s responsibility. **We followed all normal procedures and reported incidents which could impact ITSCI supply chains as and when events evolved⁶⁶**, including issuing incidents related to increased smuggling risks to and from PE4731 and PE76, and issues which may indirectly impact ITSCI supply chains. All incidents are reported by ITSCI to the same companies and stakeholders.

GW seem to support the view that it is wrong to alert international customers to human rights abuses in supply chains and breaches in local laws.

2.3.2. Cross-concession trafficking of minerals

In relation to the SMB (PE4731) and SAKIMA (PE76) concessions discussed in this section it is important to recap the basic trading context and geography. Both SMB and SAKIMA carry out little mining activity and instead purchase minerals, or benefit from royalties on mineral trade of artisanal miners who are members of the cooperative (COOPERAMMA). GW places great weight on ‘huge shift’ in production levels on each of the SMB and SAKIMA concessions seemingly discounting important factors that led to change and focusing only on fraud while offering questionable and/or insufficient evidence. PE76 is much larger, and has much greater resource and potential than PE4731, and there are activities of other companies on PE76 which GW have not taken into consideration. There are **many legal, business, logistical and other factors which impact production** and relying on various third-party estimates and similar sources does not seem to have provided GW with adequate understanding.

GW’s misleading interpretation of Nyagisenyi site (PE76)

GW alleges there is too little mining activity at Nyagisenyi site on PE76 citing a photograph (January 2021) and Google Earth satellite image (stated to be from April 2020 during the height of COVID impact) to question the reported production from the site. The photograph which GW has taken from the UNGoE report has been found by stakeholders to be misleading and incorrect. **A commission was set-up by the North Kivu multi-stakeholder committee (CPP) following publication of that UNGoE report and rejected allegations** that there are only a few miners at Nyagisenyi site as alleged from the photograph. The commission highlighted the photograph does not represent activities at the site which can vary significantly based on the time of the day. According to the committee the extent of the mining

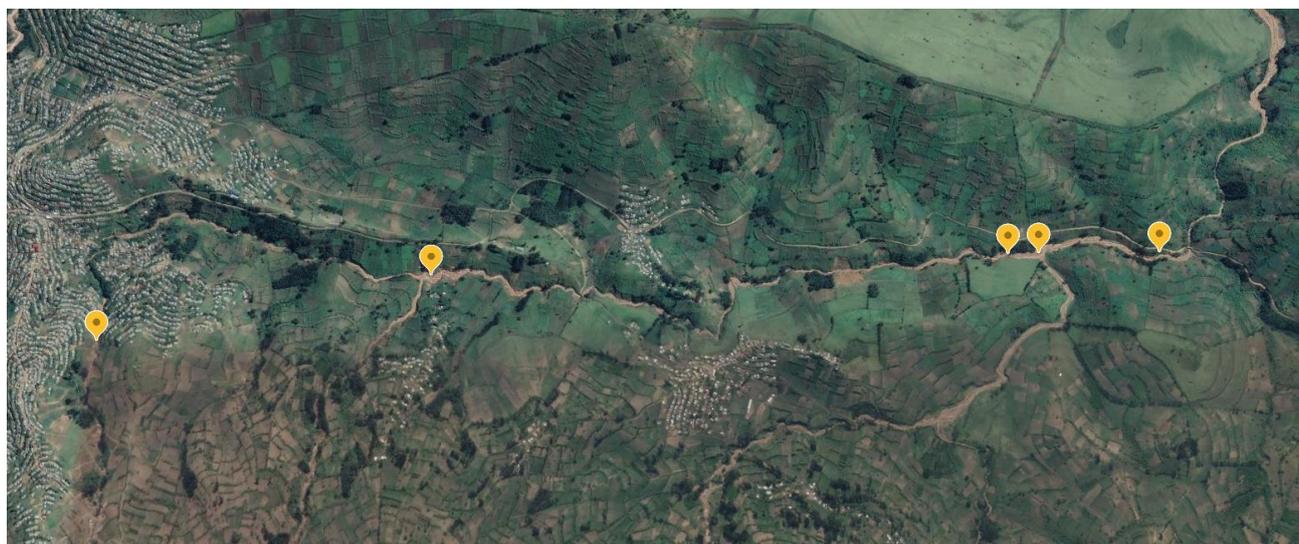
⁶⁶ COOPERAMMA is an active, full ITSCI member and miners are active on both PE76 and PE473.

area is much greater than GW and UNGoE present in their reports. The UNGoE say that only about 70-150 miners instead of thousands of miners were present at the site during 2020 when in reality several hundred miners were mining there.

While we agree Nyagisenyi was reported as the most productive of PE76 mines in 2020, we do not agree with GW's assumptions and allegations that large volumes of mineral are transported from PE4731 to PE76 simply on the basis of questioned information on activity at Nyagisenyi. Considering all evidence, we do not agree with GW that mining activities at Nyagisenyi site are too little to support production from the site. **Nyagisenyi is an extensive alluvial site in PE76 that stretches along a two kilometres length of three main rivers, with multiple pits and between 370-400 washing points;**

- Kalinzi river, which originates from Bundjali in PE4731
- Nyagisenyi river, which originates from Koyi in PE4731
- Gikombe river, which originates from Runyonyi river, downstream from Muderu pit and Luwowo site, in PE4731.⁶⁷

Our satellite imagery below of Nyagisenyi site shows a significantly larger site than that in the GW report, which is misrepresentative. The image shows mining areas that extend from Rubaya town along the river towards the East of the town.



It is important to note that another river (Kamahoro), which had been a busy washing point for minerals for PE4731, was found to be located on PE76 following official demarcation of the two concession areas on the ground. This is a significant factor impacting production at PE4731 as with poor water availability minerals cannot be washed – something that is an essential part of the production process – refer to 'Reasons why SMB production declining' below.

GW production estimates for PE76 sites omit critical factors

GW assessment of production plausibility omits other critical factors impacting production estimates. The Nyagisenyi sub-sector attracts a high number of miners (our records in 2020 indicated several hundreds of miners based on the correct geographical understanding above) because alluvial deposits found on riverbeds and along riverbanks are easier to mine than primary hard rock ones. **Fewer numbers of miners may produce more coltan from alluvial deposits on PE76 than from primary deposits on the SMB PE4731 which require more work.** As we explained to the UNGoE, alluvial deposits are more accessible to minerals and friable. Water for washing is readily available from the rivers.

⁶⁷ Gikombe river has several names based on exact location/villages it transects through: after Gikombe, it is named Gasura, then at the intersection with Kalinzi river it is named Kasumo. After crossing Nyagisenyi river, it is named Mishavu and further down the name changes again to Kashaki.

More forceful river flow in the rainy season concentrates minerals on the riverbed. We disagree with GW's simplistic interpretation higher production must correlate with higher numbers of miners.

Certain sources cited by UNGoE (2021) and recycled by GW claim production is implausible on SAKIMA PE76 concession and cite other estimates. Regarding one of those sources, MONUSCO, we note that MONUSCO has no permanent presence in Rubaya town with the Civil Affairs section carrying out intermittent field visits and meeting with mining sector operators (i.e., COOPERAMMA), among others. **MONUSCO do not engage with ITSCI, do not appear to have specific geological expertise, and never attended a stakeholder CLS meeting.** We do not consider MONUSCO production estimates plausible. Local stakeholders also rejected these allegations during discussions at local stakeholder meetings.

GW makes use of UNGoE (2021) reporting, to allege our baseline estimates for the SAKIMA PE76 concession are inconsistent with various other sources. The baselines for Nyagisenyi, Birambo and Mululu sites are regularly updated by ITSCI, including from 2019, to 2022. The sites are regularly monitored by the local ITSCI team based in Rubaya town, in the immediate vicinity of the site and **our production data shows good correlation with baseline estimates** for these sites. These sites in fact contributed to around 60% of coltan produced on PE76 in 2020.

As we also informed the UNGoE how baselines are by their very nature production estimates reflecting a particular time. Impacts of weather or seasonality, geological factors such as the discovery of mineralised veins, cash availability, number of miners and so on, means production will fluctuate daily, sometimes by significant amounts. At some sites/pits, rainwater during the rainy season facilitates washing of mined rocks and increased production. Conversely, the dry season and less availability of water will negatively impact washing and result in lower production. At other sites/pits, the reverse trend will be more accurate, all depending on other factors such as geology, mining techniques used at the sites, available equipment, etc. **ITSCI baselines are additionally supplemented by ongoing monitoring by ITSCI on-the-ground teams as well as information from local civil society, government, and others,** and ITSCI's incident, and whistleblowing system is in place to continually monitor production plausibility. GW may not benefit from the same continual information availability from the ground.

GW ignores reasons why production on SMB PE4731 is declining

GW insists that according to SMB, the re-demarcation of the PE4731 concession in which access to the river was lost did not impact its production, as no mine boundary was changed. We disagree. It is **common knowledge that access to water is a vital aspect of mineral production and denial suggests SMB information is unreliable.**⁶⁸ We explained in our December 21 response, that re-demarcation found that a busy washing point on PE4731 was actually on PE76 and SMB struggled to provide a new washing point for miners on their concession.⁶⁹ If availability of water for washing changes, it can negatively impact production. This was the case on the SMB concession and a reason why production decreased. GW also acknowledges that the Mining Ministry provided the same information yet GW **provides no explanation on why they favour SMB as the more credible source** and their reporting appears unbalanced at best.

It is known SMB has issues paying miners⁷⁰ which they admit.⁷¹ As we said to the UNGoE and GW we emphasise that in the past two years, **miners left PE4731 and moved to PE76 where they have greater confidence in being paid on a timely basis.** This is critical for artisanal miners who almost exclusively rely on daily incomes to sustain their families. The increase in the number of miners on PE76 -- and the support from exporters to provide equipment and financial means to the cooperatives and miners to develop activities -- is a significant factor impacting plausibility on PE76.

⁶⁸ Following the delineation of both concessions and the confirmation that the washing points in the river, SAKIMA released a statement that SMB was in fact taking production from PE76 and therefore informing that they started legal proceedings seeking compensation for the loss. "Communiqué de la représentation provinciale de la SAKIMA SA Nord-Kivu", 22/03/2018.

⁶⁹ ITSCI December 2021 response, point 43.

⁷⁰ See <https://laprunellerdc.info/masisi-plus-de-4-000-creuseurs-obliges-daller-en-chomage-pour-non-payement-de-leurs-minerais-fournis-a-la-smb/>

⁷¹ UNGoE (2021): Final report of the group of experts on the Democratic Republic of the Congo, S/2021/560, p. 172.

GW makes baseless claims on production plausibility

Based on UNGoE (2021) sources GW concludes that ITSCI may be distributing ten times more tags than an appropriate number for what it alleges is plausibly producible on PE76. This assumes that most of the coltan tagged on the SAKIMA PE76 concession originates on the SMB PE4731 concession. While some tags may be associated with fraudulent mineral as this is an ever present risk, GW's claim is exaggerated. **Tag distribution by ITSCI is determined according to the baseline and we believe our baselines reasonably reflect expectations on production** (although figures do change). We monitor tagging and production and raise incidents when we observe indications of tag misuse and production misaligned with baselines.

GW's claim that 350 tonnes, or 75% of actual production from the three mines in PE76 originated from the SMB PE4731 concession in 2020 does not make sense. This could equate to people transporting about one tonne of minerals daily from PE4731 to PE76 going unnoticed by SMB security personnel, SMB themselves, traceability provider BSP/RCS/BM and authorities. **It implies either nobody has control over, or interest in, the movement of minerals off the SMB concession or they ignore the issue.**

Overall, GW presents a chart to support its assertions, claiming that falls in production on the SMB PE4731 concession are broadly matched by rises on the SAKIMA PE76 concession. This simplistic and convenient 'analysis' seems to ignore all other context aside from the view of SMB. In fact, the chart shows that investment and interests in PE76 began to grow from 2017 and PE76 production has steadily increased as result. At the same time, SMB's increasing focus on security, reduced stakeholder engagement, and loss of water sources negatively impacted its business. In section 2.3, GW presents allegations that ITSCI targeted SMB following their departure from our programme. Through studying the chart provided by GW it is evident that **the change in fortune of SMB began prior to their withdrawal from ITSCI, with SMB production almost halving from 2017 to 2018**. GW argument does not seem supported by the chart they provide.

GW's false allegation on ITSCI profit motivation ignores work to address fraud

GW claims that fraudulent allocation of mineral to PE76 rather than PE4731 allows 'ITSCI to collect the levy from the exporters of that coltan' falsely alleging that ITA and its partners 'prefer to ignore' the supposed discrepancy real and reported production for financial benefit. Aside from the lack of merit in GW allegations of large-scale fraud, this sweeping and unsubstantiated statement takes no account of **measures ITSCI has implemented with support of stakeholders to address mineral fraud in the entire Rubaya area and other locations summarised below**.

- Targeted and enhanced checks and monitoring of specific areas of concern. Resultant follow-up with authorities, either bilaterally, or as part of multi-stakeholder committees at local (CLS) and provincial (CPP) level. Continued emphasis on discussions of incidents relating to fraud at the committee meetings, for instance in Masisi, Rubaya, Bweremana, and Goma towns.
 - For example, in January 2022, following discussion at the CPP in Goma, the provincial government dispatched a delegation to Rubaya, where all relevant stakeholders were assembled by the authority for an awareness-raising session. SAEMAPE's provincial leadership then issued a call for negociants, mineral transporters, and all other stakeholders to respect traceability principles and combat fraud. As a result, some **people reportedly involved in fraud were identified and arrested**. Following this mission, plausibility concerns observed at various sites reduced.
- Continued follow-up on the implementation and improvements of the enhanced traceability procedures on PE76 in the past two years. This has resulted in improvements such as multiple discussions and meetings where ITSCI advocated for the implementation of specific measures. Recently, ITSCI highlighted new concerns related to increased plausibility risks in PE76 and thus the need for action. This ongoing follow-up was also recorded as an ITSCI incident to ensure adequate follow-up and increase accountability of concerned stakeholders. As a result:
 - With the active support of SAKIMA's new partner CFM, key recommendations made in the last joint evaluation of these procedures by a provincial delegation in December 2021 were implemented in

March 2022. More specifically, tagging depots in Ngungu sector were moved closer to the mines while **secure storing facilities will also be made available by CFM**. This demonstrates commitment by CFM to improving traceability and due diligence procedures and should create higher confidence in negociants buying from the area.

Overall, GW implies that ITSCI ignores fraud from PE4731 in order to collect funds from exporters from PE76 which we refute. **GW logic is contradictory to that presented elsewhere** (see section 3: ITSCI'S role in Rwanda) where GW argue that ITA and ITSCI enable fraud and smuggling of mineral from DRC to Rwanda, failing to note that levy rates for coltan have historically been lower in Rwanda due to factors such as better infrastructure and lower costs. There is no substance to GW assertions. **ITSCI is operated only at cost without profit, by not-for-profit industry associations and unlike commercial service providers has no profit incentive**. The incentive of all industry schemes is to increase efficiency and improve industry wide standards. We reject all allegations by GW regarding which are wrong.

GW's assertions of ITSCI's 'action against SMB' to supposedly hold up company exports (see section 2.3.4) are wrong. SMB's business was already in decline during 2017-2018 prior to withdrawal from ITSCI as a result of increased violence – as reported by ITSCI against SMB while an ITSCI member. SMB's delayed payments for minerals it sourced from COOPERAMMA was already an issue. **Facts do not support the GW allegations that payment issues and fraud became an issue only after SMB chose to use BSP/RCS/BM. The claims made by GW resonate the view only of SMB.**

GW incorrectly cites SAEMAPE referring to Anemima and Comiale (ITSCI spelling Comialo) as mines when in fact they are cooperatives operating on PE76. The government official might be referring to production from mines where these cooperatives operate, most of which were actively producing in 2020 and contributing to mineral mined on PE76.

2.3.3. An ITSCI key insider allegedly profiting from trafficked minerals

GW states that, again according to the UN, two companies (SOGECOM and CDMC) 'have apparently profited from the coltan trafficked from the SMB PE4731 concession' although in fact those companies legally export minerals produced in the SAKIMA PE76 concession following payment of relevant royalties and documented by government records. Given the allegations put forward in the prior section, it is notable that **GW confirms that ITSCI and UNGoE have reported cross concession smuggling since at least 2018 contradicting their own claims that ITSCI ignores fraud for our own profit**. Having attacked ITSCI for not addressing fraud, GW now appears to attack ITSCI members for not acting on ITSCI reports of fraud.

RESPONSE TO GW BOX: The international businessmen controlling Rubaya's coltan

GW then claims that CDMC is connected to two individuals, John Crawley and Chris Huber. GW states that Crawley has 'close ties' to ITSCI as a former president of TIC in 2017 and 2018, falsely misrepresenting this by use of the phrase 'ITSCI insider'. GW takes a further assumed leap to wrongly claim that 'ITSCI's faulty tagging' has helped these individuals 'maintain control' of Rubaya's coltan. Without attributing merit to the assumed links and assertions, the reports' table indicates that **GW know but have failed to state that CDMC has not maintained control as they have reported CDMC is not the largest exporter in 2020**. Taking a further step back, it appears that GW did not approach the T.I.C. for response in relation to that organisation's committees and presidents.⁷² If GW had done so we presume that GW would have learnt that many there have been other individuals involved in T.I.C. committees and acting as President. **GW provide no explanation or justification on why Crawley is alleged to be an 'insider'** while others who may have held similar positions have not. Above all, we confirm that **neither the T.I.C. president nor T.I.C. Committees have a role in the ITSCI Governance Committee** in which metals are represented by association staff members without commercial interest.

⁷² See <https://www.tanb.org/view/about-the-t-i-c->

It is in the interests of 3T industry to ensure that the ITSCI system credibly and accurately identifies and addresses risks to support responsible sourcing from the Great Lakes Region – there is no incentive to do otherwise and ITSCI moreover has no interests or motivations in favouring any one company. It is notable that **37% T.I.C. members are also ITSCI members, and GW provides no evidence to support false assertions to explain why ITSCI would promote one T.I.C. member when many others also participate in ITSCI on equal terms.**

GW's logic relating to the creation of Congo Fair Mining (CFM) is flawed and again contradictory. If, according to GW, CDMC already has control of coltan through the 'fraudulent tagging process' there would be no need for CDMC or Crawley to invest in a formalised agreement with SAKIMA. **Having invested in the formalised agreement to establish 'control' GW does not explain why CFM would then allow others to continue to purchase a share of that coltan** – something GW either does not appear to be aware of or has chosen to omit. It would be highly surprising for any company, whether CFM or other, to invest in the SAKIMA concession if there are not any significant minerals there but only, according to GW, what can be obtained through cross-concession fraud.

GW has not shown that ITSCI has tolerated or encouraged cross-concession fraud or has the motivation to do so. GW has not fully represented ITSCI's detailed information provided to them in December 2021, and **we consider that GW has no justification for continuing 'to stand by all' the false and unsubstantiated claims which GW has made.**

GW is selective in its historical narrative

GW presents a box containing statements and allegations related to Crawley and Huber and several companies. Some response from those individuals contesting the statements is included in GW report. Some companies are ITSCI members while others are not. We regularly review information on company ownership (as evidenced by company documentation), and note that we provide summary information on the ITSCI website on every company when accepted as a member, including ownership structure and owner's nationality in general terms.⁷³ Publication of this information is not an expectation of an industry programme and goes beyond the level of transparency required by the OECD Due Diligence Guidance.

Regarding Huber we are aware of the Swiss investigation but no further information is available aside from what has been publicly stated.

GW quotes alleged links between Huber and RCD-Goma present DRC around 1998-2003, and alleged purchases from mines linked to armed groups. **GW omits to balance this with other similar historical information** such as UNGoE Reports⁷⁴ indicating collaboration between MHI (now SMB) and CNDP led by General Nkunda around 2006-2007, and later by FARDC-CNDP military officers in MHI's concession in Rubaya. See section 2.3 for more detailed background information.

2.3.4. Violence erupts

As described in Section 2.3.4 **we refute GW's allegation that 'ITSCI's ostensibly took punitive action against SMB, which damaged the company's reputation** and led to the holding up of valuable consignments of the company's minerals from late 2018.' ITSCI was already concerned over the increased number of SMB related incidents occurring prior to, not after, SMB announced termination of their ITSCI membership on 14 December 2018. Many incidents were reported by ITSCI when SMB was a member; on the alleged involvement of SMB in violence, disputes with COOPERAMMA and others, and false accusations of smuggling as determined by DRC courts. **Any incidents reported after SMB left ITSCI have no more or less impact on its reputation.** As we describe, SMB failed to respond to provide information on mitigation of incidents and has withdrawn from stakeholder discussions. Concerns around the behaviour of SMB have been continually reported in local and other media and ITSCI is by no means the only or first to

⁷³ See <https://www.itsci.org/company-management-policies/>

⁷⁴ See S/2008/773 and S/2009/603 available at <https://www.un.org/securitycouncil/sanctions/1533/panel-of-experts/expert-reports>

report such (see below). **There is no evidence to support the false claim by GW that ITSCI damaged SMB reputation – SMB’s reputation is determined by its own actions.**

GW seems over-occupied with SMB business and reputation

GW alleges ITSCI incidents led to blocking of containers and worsening of SMB’s financial difficulties. ITSCI has no direct insight into commercial performance of ITSCI members⁷⁵ **and whether or not any minerals may be traded or exported is the sole mandate of the government.** In 2019, SMB continued with wrongful actions such as export without licence in South Kivu⁷⁶ while making use of ITSCI shipment numbers when not a member⁷⁷ and ignoring South Kivu authorities’ instruction to stop exporting and return all traceability materials.

GW seemingly chooses to misreport that **SMB’s financial situation and difficulties were in fact related to market and commercial factors which do not relate to ITSCI** nor for which ITSCI is accountable. The relations between SMB and its mineral supplier COOPERAMMA, and commercial agreements between the two, have always been strained not least in relation to monopoly of mineral purchase and pricing. SMB’s difficulties in paying miners fairly and on time have been documented prior to 2018⁷⁸, ⁷⁹ and after⁸⁰, ⁸¹. As consequence of violence in 2018 (see below), mining activities were suspended on SMB’s concession which contributed to its financial difficulties. We agree that timely payment for minerals is critical to all mineral trade relations, and we agree that this is where SMB may have failed to maintain good relations with suppliers (see section 2.3.1) however, that cannot be said to be the sole cause of violence associated with SMB over several years.

GW omits to explain tensions in 2018 and suspension of SMB activity

There are many videos, articles and statements of violence in Rubaya⁸² which intensified in the first half of 2018⁸³, initially over exploitation of tourmaline at one site on SMB PE4731, in which rogue elements of the army and mining police were allegedly involved which led to multiple armed clashes. SMB suspended mining at the site on 2 May 2018. Thereafter, **SMB unilaterally decided to suspend all artisanal mining activities on their concession. This action exacerbated tensions with PMH (mines police) and FARDC (army) refusing miners access to the concession.** Furthermore, SMB terminated their Memorandum of Understanding with COOPERAMMA. This resulted in three weeks of protests by artisanal miners.

Several meetings and mediations were held in May 2018 between SMB and COOPERAMMA, first facilitated by CEEC and the Governor in North Kivu, then by the National Minister of Mines. ITSCI also worked to support mediation attempts and stakeholder dialogue. All attempts to mediate failed. As a consequence all mine sites on PE4731 were declared ‘yellow’ by the National authorities in June 2018, which officially suspended artisanal activities until appropriate mitigation of risks. At that time, **SMB was no longer authorised to perform mineral trading which did not improve their financial situation.** Multiple allegations of security forces involved in illegal mining activities on PE4731 continued to be reported. SMB was later permitted to resume trade in August 2018.

⁷⁵ ITSCI December 2021 response, point 60.

⁷⁶ ITSCI December 2021 response, point 55.

⁷⁷ SK-2019-0012 and SK-2019-0121

⁷⁸ See https://www.pole-institute.org/sites/default/files/pdf_publication/Epargne%20dans%20la%20communaute%CC%81%20des%20artisans%20miniers%20de%20Munghalu%2C%20Rubaya%20et%20NyabibweKalimbi%20%20analyse%20des%20initiatives%20existantes%2C%20des%20contraintes%20et%20des%20strate%CC%81gies%20de%20sensibilisation..pdf (page 32)

⁷⁹ See <https://maximpact-asbl.org/wp-content/uploads/2018/12/PRATIQUE-COOPERATIVE-AU-SEIN-DE-LA-COOPERAMMA.pdf>

⁸⁰ UNGoE (2021): Final report of the group of experts on the Democratic Republic of the Congo, S/2021/560, page 172

⁸¹ See <https://laprunellercdc.info/masisi-plus-de-4-000-creuseurs-obliges-daller-en-chomage-pour-non-paiement-de-leurs-minerais-fournis-a-la-smb/>

⁸² See <https://www.reuters.com/article/us-congo-mining-smb-idUSKBN23V1P5>

<https://www.africaintelligence.com/mining-sector/2020/11/30/mining-minister-willy-kitobo-ordered-to-explain-kivu-tensions,109624008-art>
https://deskeco.com.translate.goog/rdc-mines-les-exploitants-artisanaux-et-la-smb-sarl-operant-a-masisi-nord-kivu-convoques-a-kinshasa?_x_tr_sl=fr&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=sc

⁸³ See NK-2018-0034, NK-2018-0072, NK-2018-0077, NK-2018-0105, NK-2018-0129, NK-2018-0148.

COOPERAMMA has made many public complaints about SMB⁸⁴ including after the violence by mining police resulted in deaths that GW references.⁸⁵ **Violence and disproportionate use of force has been reported by the UNGoE^{86, 87} and by the judgement from DRC authorities which condemned SMB.**⁸⁸ ITSCI has reported these incidents when relevant to ITSCI members, including COOPERAMMA.

GW fails to explain SMB's responsibilities for abuses

GW notes that two COOPERAMMA members were shot dead in June 2019 by mining police contracted to SMB to guard their concession. However, **GW failed to explain that the mining police, the company SMB was found by DRC court to be guilty of offences.** The two PMH at the time contracted to SMB were sentenced to 20 years and 5 years imprisonment for their involvement. Both PMH officers, SMB and the Congolese State were also charged with US\$375,000 damages payable to the victims' families and US\$600,000 payable to COOPERAMMA. GW fail to report that the bodies of the victims of SMB remain in the local morgue and have been prevented from release to their families due to lack of execution of the judgment by authorities. GW has not recorded that in early 2022 Edouard Mwangachuchu spent some time in jail in Kinshasa, DRC in relation to these events. **Note that SMB had withdrawn from ITSCI six months before these shootings which occurred when BSP/RCS/BM were providing services to SMB.** It could be assumed that BSP/RCS/BM may have reported this to the supply chain although we have no information on any public report.

GW does not explain why they acknowledge violence here but suggest in section 2.3.1 that ITSCI should not have reported on it. GW appears to allude that reporting incidents of human rights abuses or other OECD Annex II risks should not be done if that reporting may damage company reputation. This is contradictory to the OECD due diligence guidance.

GW wrongly alleges ITSCI actions resulted in violence

On the wrongful and misguided basis that ITSCI was accountable for SMB's financials difficulties, GW incorrectly makes an assumed connection to then allege that ITSCI's actions resulted in violence – even going to say ITSCI's actions 'provoked violence' and that 'ITSCI pursued its competition strategy, exacerbating existing tensions which eventually erupted in clashes' and 'ITSCI effectively undermined its central objective of breaking the connection between minerals and conflict.' **GW's unsubstantiated and biased conclusion is entirely wrong. The facts are that SMB left ITSCI. ITSCI reported incidents related to ITSCI supply chains, as we do for other mineral supply chains. There are long-standing (and prior to 2018) and complex tensions and relations between SMB and COOPERAMMA. ITSCI reported incidents related to our member COOPERAMMA. ITSCI can demonstrate continual engagement with all stakeholders over many years,** including to resolve disputes, and related to tagging and plausibility of mineral production.

GW is wrong to state ITSCI pursued a competition strategy. This is false, misleading and defamatory. ITSCI does not have a competition strategy to undermine any actor because that is not our role. Our role as an industry initiative, as recognised in the OECD Guidance, is to support company due diligence and progressive improvement. **If companies do not meet expectations of the supply chain then, as expected under OECD guidance, potential buyers may choose a strategy of disengagement** and the company may find it more difficult to locate a buyer. ITSCI is a non-profit entity and does not engage in any mineral trading activity.

⁸⁴ See <https://www-7sur7-cd.translate.google.com/index.php/2020/06/05/nord-kivumines-la-cooperamma-traduit-la-smb-en-justice-pour-obtention-illegale-des? x tr sl=fr& x tr tl=en& x tr hl=en& x tr pto=sc>.
<https://kivuactualite-news-blog.translate.google.com/2020/06/04/nord-kivu-une-plainte-deposee-a-la-justice-par-la-cooperamma-contre-la-smb-pour-detention-illegale-de-titre-minier/? x tr sl=fr& x tr tl=en& x tr hl=en& x tr pto=sc>

⁸⁵ See <https://information.tv5monde.com/video/rdc-des-mineurs-tues-dans-le-nord-kivu>, <https://www.youtube.com/watch?v=SfyBXGik IE>.

⁸⁶ UNGoE (2021): Final report of the group of experts on the Democratic Republic of the Congo, S/2021/560; paragraph 65; annex 45.

⁸⁷ UNGoE (2021): Final report of the group of experts on the Democratic Republic of the Congo, S/2021/560; paragraph 61 and 62.

⁸⁸ Judgement from the Garrison Military Court in Goma with references RMP No. 02082/BBL/019 and RP No. 1642/019 dated 23rd January 2020.

2.4. Failures of ITSCI's traceability system in DRC

2.4.1. Lack of oversight and failures of cooperation and enforcement

GW claims that sources revealed 'just how easy it is' to launder minerals in the DRC stating that government officials should act 'as gatekeepers' while also being **critical of the government's** role due to challenges in capacity. The ITSCI system has been set up to support traceability in the prevailing context of a CAHRA, and as explained in our December 2021 response to GW, **we choose to work with and build the capacity of our government partners in a positive way**⁸⁹ We consider this to be the right approach.

GW misleadingly refers to 'green-rated' mines where they claim SAEMAPE is often not permanently present. As explained in section 2.1, 'green' rating arises from a separate validation process related to the ICGLR system⁹⁰ and neither ITSCI, nor ITSCI companies, rely on such. GW seemingly **chooses to ignore the discrepancy between listed validated sites and what actual sites integrated into a system managed by local authorities** with support of national and international due diligence. We repeat that it could be stated that there are currently no officially validated sites in the DRC – green, red or any other colour as reported by IPIS⁹¹ (section 2.1.1).

GW makes contradictory allegations on tag controls

GW uses as the basis for its assertions the infrequency of government agent visits to sites to tag minerals. GW further states that as a result of the absence of government agents bags are 'commonly' tagged by others. We disagree. Tags are kept in lockboxes jointly managed by three different stakeholders (usually SAEMAPE, Mine Division and the cooperative) with one padlock for each stakeholder. This means that tags can only be removed if all stakeholders holding a key are present. Also, tags are distributed by ITSCI to SAEMAPE and stored in the lockboxes on a very regular basis, which means that only the quantity of tags covering that timeframe is made available to state services. Upon each tag distribution, completed records **for the recent period** must be **returned** which further allows various checks, prevents misuse, or rapidly detect issues of misuse if occurring. We can confirm that **there are cases where SAEMAPE agents are not visiting sites on a frequent basis, and this is recorded as incident** and shared with SAEMAPE leadership for action. This has resulted in the past in positive actions and incident resolution, for instance with additional training to SAEMAPE agents or additional state agents deployed on the ground.

GW implies that government agents can obtain, sell or misuse as many tags they wish which is misleading and wrong. ITSCI teams determine and allocate tags based on evaluation of plausible production. We informed GW in our December 2021 response of measures ITSCI has put in place on enhanced controls of tags⁹² and requested evidence allowing us to investigate and report on plausibility concerns, but GW has not provided this. In contradiction to the alleged uncontrolled tag distribution, GW includes on various verbal complaints from government individuals, including how ITSCI **'distribute tagging materials and give orders regarding' its use – exactly what ITSCI staff should be doing to control tag use** although in this instance GW does not seem to approve. Similarly, another complainant apparently stated that Pact (ITSCI) do not generally inform him of incidents preferring to share only with the Secretary General of Mines in Kinshasa. This again contradicts other allegations that incident information is spread widely and ignores the fact that incidents are discussed directly with all key stakeholders individually and during ITSCI facilitated stakeholder meetings (CPP and CLS)⁹³.

GW makes statements such as government officials feeling exploited by ITSCI because they are not paid for their work for ITSCI, but fails to recognise that through increased formalisation and improved statistics available **as a result of ITSCI implementation the government agencies are now significantly more likely to receive shares of official tax**

⁹⁰ The second edition of the RCM indicates inspection to occur once a year and even includes a new status (blue) which a mine can keep for 3 years if not inspected by government.

⁹¹ IPIS Map: <https://www.ipisresearch.be/mapping/webmapping/drcongo/v6/#3.2640882242070433/27.250266889871682/5.306495053143227/4/1/2.668yrk,6.0>

⁹² ITSCI, Opportunity to comment response, 15/12/21, points 37, 49.

⁹³ Listings of stakeholder meetings available here: <https://www.itsci.org/region-committee-minutes/>

thereby allowing them to pay their agents. GW seems to suggest that ITSCI should pay for government agents salaries which is highly surprising and clearly problematic as it is not ITSCI's mandate to take on the government's role, and this would create a conflict of interest⁹⁴ and undermine our overall objective to strengthen mining governance in the DRC.

GW wrongly alleges ITSCI does not share or cooperate with government

GW goes on to state that ITSCI does not provide government officials with baseline assessments choosing to ignore information we shared in our December 21 statement regarding how state agents directly participate in our baseline study visits where possible and are able to work with ITSCI teams in this capacity. While we advocate for a cooperative and transparent approach, we have found that in sharing baseline estimates on production widely can tend to 'increase' to what is the perceived maximum level and this is not helpful in our systems of controls.⁹⁵ It can also be counterproductive in terms of capacity building. ITSCI does not share baseline information publicly since production capacity is data that can impact competition and mineral pricing; the **OECD guidance recognises 'business confidentiality and other competitive concerns'⁹⁶ and does not expect or require such data to be public.** While GW may not agree we encourage all organisations to respect the multi-stakeholder agreed guidance.

Pact asserted in December 2021 that it was false they attempted to undermine government hierarchies, with a reminder that Pact does not have the role or the authority to direct any government officials or demand anyone in government to take action yet GW has not reflected this response. Pact's role is to offer observations, develop capacities, and make recommendations according to recommendations for on-the-ground teams in the OECD guidance. At national level, **Pact is in direct communication with several government authorities from the Ministry of Mines as well as various state services, at a provincial level Pact are in constant communication and exchange with multiple officials.** GW further alleges that Pact have a 'very limited number of agents' and 'representatives are rarely present at mines'. GW appears to misunderstand the role of ITSCI teams vs the role of the government, ignoring the benefits of our risk-based approach to staffing in maximising efficiency and lowering costs for companies. GW has unfortunately not provided any concrete suggestions on how ITSCI could a) pay government salaries, b) employ many times more field staff to permanently sit at mine sites, while c) reducing costs to miners (see section 2.4.4). By implying that ITSCI staffing is limited GW contradicts the logic of other allegations regarding control government agents.

GW cite SAEMAPE, stating 'slow validation' is one reason for contamination of the supply chain without explaining any background or other information on the challenges with this process which are well known⁹⁷ yet unrelated to ITSCI. Please refer to section 2.1 for further comment on the validation system.

2.4.2. Mineral laundering as unofficial policy

GW alleges that fraud is endemic and further that this is 'seemingly' unofficial general policy is supported by government agents 'competing' for the right to tag minerals. This contradicts the earlier allegation by GW that agents do not wish to perform tagging as they apparently resent the work. GW also alludes to the enthusiasm of DRC government agents to tag as a patriotic duty to prevent illicit tagging in Rwanda suggesting both that **DRC agents have bought into the tagging system and that controls in DRC are strong** and have not allowed rampant smuggling to Rwanda as GW section 3 otherwise appears to allege.

⁹⁴ ITSCI provides funds for meeting logistics (paper for reports, pen, water, etc.) as well as possible room rentals and transport of participants to attend those meetings. Committee members do not receive any per diem or other payments to attend the meetings, despite this being fairly standard practice in the region..

⁹⁵ ITSCI, Opportunity to comment response, 15/12/21, 32.

⁹⁶ OECD DDG footnote 34 and others.

⁹⁷ 'Despite some progress in implementation, notably in the Democratic Republic of Congo and Rwanda, and more recently in Burundi and Tanzania, the RCM remains only partially executed and weakly enforced. See <https://www.levinsources.com/knowledge-centre/insights/rcm-series-second-edition-icglr>

GW relies on interviews without analysis of agendas

In the Great Lakes mineral sector it is possible to find every possible rumour and view – views frequently repeated by more the three sources and triangulated – but not necessarily with any basis in fact. It is for this reason that regular presence and engagement with local stakeholders is essential to enable fair and accurate reporting. In the DRC in 2021 for example ITSCI held 324 stakeholder meetings and carried out 3,477 mine site visits, 3,129 exporter visits and 622 training sessions reaching 8,637 participants. We stated our expectation that GW will report these example figures in the interests of fairness and balanced reporting. They have not. No comment from ITSCI was included in this section.

2.4.3. ITSCI's apparent complicity and conflict of interest

GW claims that there is evidence of ITSCI agents being aware of the laundering of minerals but that it 'appears' they tend not to interfere and further 'in some cases' reportedly assist with the abuses. This allegedly involves ignoring production statistics and collecting illegal payment for assistance.

These claims arise from GW's earlier wrongful conclusions on the failure of estimated baseline production. We explained in section 2.1.1 GW's misunderstanding of validation around the discrepancy between green sites and what actual sites are integrated into the supply chain and. Refer to sections 2.1.1, 2.1.2 and 2.1.3 for discussion on Nzibira, Lubuhu trading centres and Rubaya town respectively.

In relation to specific or generalised allegations on their staff, Pact consistently applies internal processes to identify cases of misconduct. **Four cases of misconduct with ITSCI staff have been reported in the last five years across the DRC. These have been documented as ITSCI incidents and transparently communicated.** In all cases, based on the level of evidence collected from multiple sources as well as explanations provided by the concerned staff themselves, the decision was made to terminate their contract. Pact, and ITSCI, take a zero-tolerance policy towards corruption.

GW wrongly alleges ITSCI complicity in fraud, including for profit

GW state that 'the sheer scale of illicit tagging of minerals which in some cases has been reported before suggests that not only the ITSCI and government agents on the ground, but also their senior management, is aware of the issue but ignore it. GW is inferring senior management wrongdoing based on unquantified and incorrect assumptions on 'sheer scale'. This is conjecture and misrepresentation. **We refute entirely that senior management ignores or tolerates fraudulent tagging.** As a programme we do not tolerate deliberate misuse of the ITSCI system or laundering of smuggled minerals. This also ignores incidents that have been and continue to be recorded in that regard.

GW claims that there is a 'serious problem' as ITSCI is incentivised to maximise quantity of minerals for financial incentive. This is wrong. **ITSCI is operated at-cost with no profit incentive.** ITSCI funds are held in trust for sole use of the programme and any surplus or deficit from one year is rolled over to following years. Therefore, in circumstances when mineral volumes increase it is possible for the ITSCI levy rate per tonne of mineral to be reduced as ITSCI does not require or aim to obtain excess funds. There have been several rate reductions over the course of ITSCI operations. ITSCI is not a commercial traceability provider or consultancy but acts as a joint industry programme with the aim to provide efficient on the ground teams for the benefit of all.

We refute entirely that there is a conflict of interest with ITSCI Governance. ITSCI is a joint industry programme as recommended by the OECD due diligence guidance. ITSCI is governed by two not-for-profit organisations, ITA and TIC. This governance is undertaken by staff members of those organisations who have no interest in commercial matters. The governance of ITSCI is maintained entirely separately from the two organisation's other activities. **No member companies are, or have been, involved in ITSCI governance. Persons with commercial interest in either the promotion or reduction of trade in the Great Lakes Region are not eligible to undertake governance.** We clarified in our December 2021 response to GW the roles of all parties and requested they correctly reference each aspect of the

ITSCI Programme when making allegations against yet GW appears to have failed to do so, conflating the roles of ITA and ITSCI rather than recognising the separation and the structures in place to respect that. GW has incorrectly claimed that the ITSCI programme manager at ITA does not report to any supervisory committee – the ITSCI programme manager has no other role and reports to the Governance Committee. With respect to OECD recommendations from the referenced alignment assessment, ITSCI appointed a dedicated Programme Manager who oversees management of the Programme.

We also refute that there is an inherent conflict of interest between any industry scheme and the goal of responsible sourcing, and suggest that **GW objection is based on their ideologies** related to their corporate accountability campaign, rather than well substantiated information and balanced evidence. It is in the interests of all stakeholders to ensure that the ITSCI system credibly and accurately, identifies and addresses risks to support responsible sourcing from the Great Lakes Region – there is no incentive to do otherwise and no conflicts of interest.

GW argues that the Rubaya case study (section 2.3) shows how the ITSCI scheme can be abused by members to access ‘trafficked’ minerals and that ITSCI actions ‘against SMB’ have ‘stoked violence’ (p.47). As we detail in that section, the wrongful allegation is based entirely on incorrect conclusions about the highly complex Rubaya situation and unbalanced consideration of events and actions in relation to SMB leaving the ITSCI programme.

GW outlines ITSCI and Pact responses but still states it ‘stands by all the claims that it has made’ without any substantiation or explanation.

2.4.4. *Economic injustice*

GW recognises the positive role of ITSCI in establishing greater state presence, and in turn positive effects from higher taxation. GW also acknowledge that ITSCI ‘has given the Ministry of Mines a tool to administer artisanal mineral flows more effectively’. We are pleased to receive this acknowledgment from GW but note the contradictory nature of allegations in previous sections where, for example, GW claims lack of cooperation with government agencies and even implying ITSCI should take on the role of government.

GW fails to acknowledge ITSCI advocacy for cost sharing

GW further claim that ‘miners appear to get little in return for the taxes they pay’ which may or may not be the case but is entirely unrelated to ITSCI. **It is extraordinary that an organisation like GW which campaigns for tax transparency questions increased tax revenue from formalisation.**⁹⁸ Notwithstanding this, it is notable that ITSCI and ITSCI members have constantly raised concerns regarding lack of cost sharing in supply chains, including advocating for direct action by the OECD to achieve fairer cost sharing resulting in a 2021 OECD paper.⁹⁹

GW go on to qualify their endorsement of positive outcomes of ITSCI by again questioning whether minerals come from ‘green’ validated mine sites. We have explained extensively why GW’s underlying reliance on ‘validation’ is flawed and incorrect. If our production statistics are accurate, as they are, and we effectively address issues relating to fraud where they are reasonably identified, as we do, then de facto ITSCI is effectively playing the positive role GW recognises.

⁹⁸ See example <https://www.globalwitness.org/en/press-releases/750-million-mining-revenues-fails-reach-treasury-democratic-republic-congo/>.

⁹⁹ See <http://mneguidelines.oecd.org/costs-and-value-of-due-diligence-in-mineral-supply-chains.pdf>.

2.5. ITSCI's Flawed Due Diligence System

GW claims suggest their research 'reveals' how ITSCI has abused our incident reporting.

GW downplays ITSCI incidents and the GW role on ITSCI Advisory Panel

We are glad that GW ultimately acknowledges that incident reporting is a critical element in due diligence despite over- focus on traceability in its reporting. Nevertheless GW seeks to dismiss ITSCI's incident system, firstly, on the basis that a) we have not reported incidents related to GW's allegations of Lukoma mines contaminating ITSCI supply chains (section 2.1.1) and b) questioning the level of seriousness allocated to a handful of disputed incidents (section 2.1.1). This is entirely disproportionate and unjustified. ITSCI has reported incidents related to Lukoma mine, and reported the best available information and the most likely risk in the disputed incidents.

To ensure accurate context and fact, **ITSCI has reported more than 1,000 incidents each year for the past 5 years and are approaching 10,000 since we started reporting in 2011.** ITSCI acts to report incidents independently of who its members are in an unbiased way according to the same established procedures. It is well known that stakeholders do not always hold the same view of events and risks and/or may have certain agendas to their statements, and that in the Great Lakes Region written information and evidence is less commonly found than verbal reports, making all reporting subjective and open to some level of variation. **The limited alleged examples provide by GW in their report hardly present a wide-scale systematic issue and do not justify the headlines in their reporting.** We stand by our incident methodology and success of our work in driving progressive improvement.

While GW has downplayed their own role on the ITSCI Advisory Panel between December 2011 and April 2018 (GW report footnote 2), during that period GW staff received the same extensive information set of ITSCI information as any of our members. **In that advisory role GW was able to review and comment on all ITSCI incident reports, whether as full monthly updates on all incidents, or on ITSCI alerts** sent out in the case of Level 1 high risk. ITSCI had a professional and workable relationship with GW over that period and while we had discussions on various challenges, the multiple allegations of 'large' scale fraud and general contradictory conspiracy theories were not raised as a concern.

We informed GW that incidents are recorded on all aspects of UNGoE reporting whether or not we find any evidence to support UNGoE assertions but this is not reflected by GW. For avoidance of doubt, ITSCI opens incidents based on enquiries from the UNGoE to ensure follow-up on the ground, including ensuring local and provincial stakeholders are informed of UNGoE concerns and can address risks raised in those reports. In most cases however, such incidents cannot be verified or resolved, in part due to lack of evidence either from the UNGoE or other sources. Many more incidents on topics discussed by the UNGoE are opened by ITSCI prior to any enquiry from them and it is **highly misleading and wrong of GW to suggest ITSCI does not open important incidents unless prompted.** This allegation is not supported by available evidence.¹⁰⁰

Secondly, GW make assertions that ITSCI has not published statements regarding wrongdoing by some companies. We have addressed these allegations in section 3.3.1, explaining how several GW assertions arise from a legal case between Bay View Group LLC and the Spalena Company LLC versus the Republic of Rwanda. **ITSCI understands that these claims have been tested through the legal process and the views of the company complainants have not been upheld.** The Republic of Rwanda has successfully defended their case.^{101, 102}

Thirdly, in regard to section 2.3.1, GW seems to contradict themselves, suggesting on one hand that ITSCI does not record or downplays incidents but on the other that we should not report on concerns relating to section 2.3 on SMB.

¹⁰⁰ ITSCI, Opportunity to comment response, 15/12/21, point 24.

¹⁰¹ See https://www.africaintelligence.com/mining-sector_courts-and-advisory/2022/05/03/bay-view-suffers-setback-in-mining-dispute-with-kigali_109782057-art

¹⁰² Respondents Post-Hearing Brief ICSID Case No. ARB/18/21 <https://www.italaw.com/sites/default/files/case-documents/italaw16330.pdf>

Allegations on fraud and smuggling frequently made by SMB against competitors over many years have also been disproved in court.¹⁰³

We also stand by our views regarding the credibility of the NGO that GW supports in section 2.1.1.

Further, **GW comment that our incident reporting should not rely on government counterparts is an astonishing statement** for an NGO to state that we should not involve stakeholders in mitigation, also noting this is a requirement of Step 3 of the OECD guidance.

3. ITSCI'S ROLE IN RWANDA

In this section GW falls back on the old agenda of the Second Congo War (1998-2003) without any apparent purpose.

GW then continues to summarise allegations that minerals have continued to be smuggled from the DRC to Rwanda on a large scale and that supposed evidence 'suggests' ITSCI drives the illegal activity. GW claims ITSCI 'obscured mineral origin and facilitated laundering of 'tainted minerals' under 'a veneer of legitimacy' willingly accepted by the international community. GW targets ITSCI and member companies.

We show in the sections below that GW presents an inaccurate and incomplete description of events using sources that may lack credibility.

3.1. The large scale laundering of smuggled minerals from DRC

3.1.1. The ITSCI scheme's incentivising of smuggling

GW states that 'ITSCI first started operating in DRC at a slow pace, the scheme was rolled out much faster in Rwanda'. This and similar statements are then used to claim that ITSCI incentivises smuggling.

GW misrepresents the driver for establishing ITSCI

Smuggling of course exists in central Africa as in every other location in the world. Differences in progress in Rwanda, various provinces of the DRC, Burundi and other countries adjoining the DRC did exist but were primarily driven by Dodd Frank and the consequent de-risking by downstream companies leveraged through their supply chains. Architects of Dodd Frank including campaign groups such as **GW^{104, 105, 106} played a key part in creating a situation on the ground in which smuggling could have seemed to be a positive option.**¹⁰⁷ Upstream actors were faced with an impossible task to implement a solution, whether ITSCI or any other option, within just a few months^{108, 109, 110}. We consider the rate of integration of mining areas into our system was rapid, especially considering lack of coordinated support or resource from external parties. We consider the de-risking approach of downstream, in response to advocacy campaigns, to be the root cause incentivising smuggling due to reluctance to allow progressive improvement.

GW states that the first ITSCI pilot mine in South Kivu (Kalimbi) 'was established in 2010 and remained the only mine in the province covered by the scheme until the end of 2013'. GW goes on to say that 'this slow roll out was mainly due to a blanket suspension of mining imposed by the DRC government in North Kivu, South Kivu and Maniema

¹⁰³ See <https://www.thecitizen.co.tz/news/1840340-5249250-9arvgb/index.html>.

¹⁰⁴ See <https://www.globalwitness.org/en/archive/under-mining-peace-tin-explosive-trade-cassiterite-eastern-drc/> GW 2005.

¹⁰⁵ See <https://www.globalwitness.org/en/campaigns/democratic-republic-congo/faced-gun-what-can-you-do/> GW 2009.

¹⁰⁶ See <https://www.globalwitness.org/en/archive/hill-belongs-them-need-international-action-congos-conflict-minerals-trade/> GW 2010.

¹⁰⁷ "But to make an omelette, you're going to have to break an egg or two. There is going to be some disruption to the mafia economy, and that's going to lead to short- to medium-term lessening of income for some people in the mining sector." Interview with John Prendergast, ENOUGH. See <https://www.yalejournal.org/publications/us-foreign-policy-state-building-and-humanitarianism-in-africa>.

¹⁰⁸ See <https://www.itsci.org/2009/05/05/traxys-to-halt-dr-congo-purchases/>

¹⁰⁹ See <https://www.itsci.org/2009/09/18/thaisarco-suspends-drc-purchases/>

¹¹⁰ See <https://www.itsci.org/wp-content/uploads/2018/01/ITRI-conflict-mineral-bill-statement.pdf>

provinces'. Also adding that in North Kivu 'ITSCI roll out started only in 2014 after the government signed a peace agreement with the Rwandan backed armed group M23' and noting that 'in the far less challenging context of Rwanda, ITSCI was launched in 2010'. **GW presents an inaccurate and incomplete description of events and drivers;**

- ITSCI was not present at Kalimbi between September 2010 and November 2012¹¹¹
- The DRC mining suspension was in place for a limited time between September 2010¹¹² and March 2011^{113, 114}
- ITSCI did launch in early 2011 in Rwanda, and at the same time in Katanga province, DRC
- CFSI (now RMI) smelter audits imposed a 1st April 2011 deadline for fully traceable 'conflict-free' mineral creating de-facto embargo - no system could easily be implemented when the mineral sector was not operating¹¹⁵
- ITSCI roll out was limited by lack of funding, due diligence expertise and de-risking of buyers
- ITSCI launched in South Kivu¹¹⁶ and Maniema¹¹⁷ in 2012
- ITSCI launched in North Kivu in 2014 once satisfied with the security situation^{118, 119}
- ITSCI launched in Burundi in May 2014¹²⁰

GW seeks to justify their claims that ITSCI and ITA colluded with actors in Rwanda to enhance Rwandan business at the expense of DRC. **If ITSCI had aimed to maximise smuggling into Rwanda as alleged ITSCI would not have launched in Katanga in 2011 nor in any other adjoining locations at other times.** Facts do not support the logic of GW's claim.

GW place significant weight on information from a now failed arbitration case

GW base a number of their assertions including for example that no miners were working at some Rwanda mine sites on interview with a former Pact manager. GW similarly use several references and make assertions on documents from a legal case between Bay View Group LLC and the Spalena Company LLC versus the Republic of Rwanda with which the aforementioned Pact manager has become associated. **GW seems to favour the complainant's version of views although ITSCI understands that these claims have been tested through the legal process and have not been upheld.** As a result, GW assertions based on these references are also brought into question. The Republic of Rwanda has successfully defended the allegations as summarised in the post-hearing brief;¹²¹

Para 2 – "The hearing demonstrated the absence of merit in the Claimants' case. Whilst the lack of substance in the claim was visible in the pleadings and the written evidence previously submitted, the evidence given at the hearing put matters beyond doubt. It is a case entirely unsupported by the facts, and which fails both on jurisdiction and on the merits."

*Para 4 – "The testimony of Mr Marshall exemplified the weakness of the Claimants' case. He was **an untruthful witness, whose uncorroborated statements were wholly undermined by the documentary record.** Mr Marshall contrived to make new allegations against Rwanda and the witnesses giving evidence on its behalf, and he put forward implausible and shifting explanations when faced with the documents which undermined the Claimants' claims."*

*Para 5 – "...the Claimants' case continued to shift during the hearing. **Key parts of their case, including the false allegations regarding smuggling, were quietly abandoned** by the Claimants' counsel, who evidently considered (rightly) that there was no proper basis upon which they could be put..."*

¹¹¹ See <https://www.itsci.org/2012/09/18/conflict-free-tin-initiative-announcement/>

¹¹² See <https://www.bbc.co.uk/news/world-africa-11269360>

¹¹³ See https://www.itsci.org/wp-content/uploads/2018/01/ITRI_statement_on_Kabila_suspension.pdf

¹¹⁴ See <https://www.itsci.org/2011/03/09/lifting-of-drc-mining-suspension-future-of-itsci/>

¹¹⁵ See <https://www.itsci.org/wp-content/uploads/2018/01/02.03.11-Letter-J-Meyers-Intel-re-EICC-GeSI-Tin-Smelter-Audits.pdf>

¹¹⁶ See <https://www.itsci.org/governance-assessments-public/>

¹¹⁷ See <https://www.itsci.org/2012/12/18/itsci-expands-into-maniema-province-bringing-more-conflict-free-minerals-to-the-market/>

¹¹⁸ See <https://www.itsci.org/2014/02/03/itsci-extends-into-conflict-free-areas-of-north-kivu-drc/>

¹¹⁹ GW endnote 371 does not reference the peace agreement but explains that ITSCI could be launched due to generally improving security situation. ITSCI had performed our own evaluation of security reported in have a governance assessment which has not been referenced by the GW report. it is noticeable that this governance assessment includes extensive information on the background of mining company SMB (then MHI) which the GW report tends to support. See RUBAYA GA, November 2013 <https://www.itsci.org/governance-assessments-public/>

¹²⁰ See <https://www.itsci.org/2014/05/20/itsci-programme-starts-activities-in-third-country-burundi/>

¹²¹ Respondents Post-Hearing Brief ICSID Case No. ARB/18/21. See <https://www.italaw.com/sites/default/files/case-documents/italaw16330.pdf>

'Mining experts' which GW rely on are referenced to the case mentioned above, with the former Pact manager for example claiming that 'only 10% of minerals exported by Rwanda were actually mined there' not only when ITSCI started but also in the following years (GW has not specified dates). This claim is made apparently and surprisingly by reference to observations and production data from before ITSCI started in Rwanda, at a time that Rwandan authorities were not resourced to manage or develop the sector and had less developed statistical records. ITSCI has been unable to make use of any pre-existing statistics before starting any of our activities whether in Rwanda, DRC, or Burundi as our first challenge has always been to establish basic information on where mining may be occurring and approximate production that may be expected. **Claims which are based on production data apparently from before ITSCI implementation cannot be considered fully credible.**

GW does not acknowledge development of Rwandan mining

We do agree that prior to April 2011 the mineral sector in Rwanda was focused on re-processing of minerals from other sources. This was an entirely legitimate activity and approach which benefited both Rwanda and DRC producers. Mineral processing equipment available in Rwanda was able to better extract the desirable metal content from the minerals due to fewer infrastructure challenges in that country compared to in more remote locations in DRC and thus achieve better prices from the international market for higher quality concentrate. It is also correct to say that **following the release of the Dodd Frank Act the Rwandan government acknowledged the importance of understanding, investing in, and developing the own mining sector** to reduce reliance on other sources and maximise potential opportunities for the mineral resource which exists in Rwanda.

GW goes on to state that 'the failure to stop smuggled minerals from entering the ITSCI supply chain combined with other factors to encourage smuggling' referring to **the April 2011 CFSI (RMI) deadline for 'conflict-free' mineral. We do agree that deadline drove the unintended consequences of Dodd Frank** and the challenges which ITSCI faced in our extensive efforts to support all mining and mineral trading activities within the Great Lakes Region who committed to progressive improvement according to the OECD due diligence guidance.

GW further suggests that a new legal requirement for traceability introduced in the DRC in 2012 meant that in the difficult context of the DRC meant that most minerals could not be legally exported anymore. GW does not provide figures to support this statement. In fact, **exports of 3T from DRC fell most dramatically in April 2011** as a result of the factors above, not in 2012.

3.1.2. The disparity between Rwanda's mineral production and its exports marked by lack of transparency

GW first states that both they and other organisations have 'continually pointed out that Rwanda's mineral export figures cannot plausibly correspond to the production of its relatively small mining sector' quoting references to its own reports of July 2009, December 2010 and May 2011.¹²² **During that time (before April 2011), Rwanda was well known to import and legitimately re-process minerals as GW explains in endnote 388** but has chosen to omit from the core report text. GW's only other reference for this statement is the UNGoE report of 2014. Use of these references does not adequately support GW's wide ranging assertions.

GW misunderstands or misrepresents basic information on Rwandan mineral production

GW further alludes to regular documentation of smuggling of 3T minerals from DRC to Rwanda as well as other neighbouring countries by UNGoE reports of 2012, 2014 and 2015 claiming that smuggling 'likely' accounts for the supposed but unparticularised 'difference' between production and export. No figures or precise information have been provided.

¹²² Global Witness (2009): Faced with a gun, what can you do? p.71; See <https://www.globalwitness.org/en/campaigns/democratic-republic-congo/faced-gun-what-can-you-do/>;
Global Witness (2010): The hill belongs to them: The need for international action on Congo's conflict minerals trade, p.13; See <https://www.globalwitness.org/en/archive/hill-belongs-them-need-international-action-congos-conflict-minerals-trade/>;
Global Witness (2011): Congo's minerals trade in the balance, p.21; See <https://cdn.globalwitness.org/archive/files/congo's%20minerals%20trade%20in%20the%20balance%20low%20res.pdf>

GW reports speaking to an ‘industry expert’ regarding this and, in particular, coltan figures however the reference is incorrect referring to a 2014 presidential order not any expert. Other expert interviews quoted suggest Rwanda’s coltan production from its own mines is only ‘5-7 tonnes’ per month (by multiplication equal to 60-84 tonnes a year). ITSCI can confirm that Rwanda exported between ‘1,100-2,400 tonnes’ of coltan a year for every full year of ITSCI implementation in Rwanda since 2012 as GW reports. This is entirely plausible when considering all forms of coltan production at Rwandan mine sites. In Rwanda, as well as in parts of the DRC, coltan is mined together with cassiterite and wolframite in various mixtures. ITSCI terms these mixed minerals in our data and analysis. It would seem that **GW’s ‘experts’ have only considered mine production of coltan when extracted as a single mineral type and have omitted the contribution of the mixed minerals containing coltan which are produced in much greater quantities** in the country.

The graph included in the GW report page 52 covers the period before ITSCI implementation in 2011, and an incomplete data set after ITSCI implementation running only until 2017, four years ago. It is well known¹²³ that extreme adverse market conditions existed in the period 2015-2016 and for this reason mine production and exports in many areas fell from an earlier peak. **GW omits to show that Rwandan mine production bounced back and increased again in 2017 as market conditions improved.** ITSCI holds higher export figures for coltan in 2017 than is shown on the GW graph. We also observe the same trend pattern in mine production and do not consider that there are huge disparities in plausibility between production and export as suggested by GW without convincing evidence.

GW has chosen not to highlighted remarks by the President of the UN Security Council at that time regarding ‘improved **efforts to trace the origin of tin, tantalum and tungsten [which] had reduced the ability of armed groups to benefit** from the exploitation and trade of those minerals’ as detailed in the UNGoE report of 2017.¹²⁴ That UN report recognises continued challenged with smuggling but fairly acknowledges real progress. GW has also omitted to refer to the 2017 US Government Accountability Office (GAO) report¹²⁵ which highlighted published data on the reduced presence of armed groups at 3T sites, while noting very little progress with regard to gold.

GW’s graphic/chart disproves their commentary

We can make other observations regarding GW’s graph, for example by looking at coltan exports from both Rwanda and DRC in 2014. This was the year that ITSCI began working together with SMB at the coltan mine in North Kivu and therefore, if the theory put forward by GW was correct, it should be expected that coltan exports of 2014 should have reduced in Rwanda. In fact, our records show coltan exports remained similar if not slightly higher than the previous year while at the same time coltan exports from the DRC significantly increased by more than 800 tonnes in that year. **While the GW graph on page 52 may not be precise it does in fact show this increase in both DRC and Rwanda exports in 2014.** This increase was the result of increased acceptability of Central African coltan as the market became more confident in the management of risks, which further enabled investment and reopening of mining areas perhaps abandoned in 2009 or even before. GW appears to have misunderstood or misrepresented its graphical evidence in written text.

While GW further quotes another industry ‘expert’ as well as a ‘former mine operator’, generally questioning production figures it seems unlikely that information from these individuals is credible when considering the basic errors arising from omission of mixed mineral production figures in the general analysis. There are many individuals in the Great Lakes Region who are happy to provide views on production or export figures which in general terms are extremely over- or under- evaluated depending on the agenda on which they wish to present. In order **to support their opinion GW mentions that most mining companies lack basic equipment. While true, this does not mean that artisanal miners cannot produce significant quantities of minerals. Almost all 3T production in the Great Lakes before around 2015 was through artisanal mining.** Companies investing in concessions for large scale production may tend to misunderstand the potential of artisanal mining and similar assumptions have been observed in discussions around

¹²³ See <https://www.itsci.org/2015/12/23/itsci-calls-for-funding-in-open-letter-to-downstream-business-and-donors/>

¹²⁴ The text of the report itself goes further to say, that not only have instances of direct benefit to armed groups from the 3T sector considerably reduced, but that opportunities for indirect benefits from these minerals are also decreasing in contrast to the situation with gold. <https://www.itsci.org/2017/09/05/un-reports-reduced-conflict-financing-opportunities-associated-3t-minerals/>

¹²⁵ See <https://www.itsci.org/2017/10/10/us-gao-confirms-reduced-armed-groups-3t-drc-sites/>

the failed Bay View Group LLC arbitration case versus Rwanda¹²⁶ quoted elsewhere by GW. **ITSCI concurs in general terms with the views of the Rwandan government and strongly refutes the generalised statements made by GW.** We consider the GW headline to be incorrect and misleading as there is no significant disparity between production and export figures.

ITSCI continues work to improve plausibility due diligence

Of course, ITSCI does not claim the ability to prevent smuggling in its entirety and could not expect any other organisation or authority to be able to credibly make such a claim. We are very well aware of pressures for fraudulent activity at every level of the supply chain, and in every geography, and report issues on a regular basis as can be transparently observed in our incident reports. **We continually seek additional and innovative measures to evaluate plausibility, and encourage companies to also evaluate plausibility.** A specialised enhanced due diligence list in Rwanda encourages buyers of minerals to undertake risk assessment and follow up with suppliers, thereby working together with authorities with the mandate to control the mining and mineral trade sectors. We strongly believe that **allegations based on the context of 2010-2015 which GW has put forward bear no relation to the more recent or current situation** in which further progressive improvements have been made. We question GW's purpose in re-reporting such historic allegations.

We would add that ITSCI has engaged in regular cooperation with the UNGoE, including the provision of information to support their work to the extent possible within our role as a data holder. **The activities of ITSCI have been evaluated by the UNGoE on a continual basis.** The extremely limited arguments put forward by GW in their report do not seem to be well evaluated or meaningful and do not add any credible view.

GW puts forward demands for commercial data contrary to OECD guidance

GW suggests that publication of disaggregated mine production figures would reveal some kind of evidence to support its claims noting that the Rwandan government does not publish production figures. This again quotes the failed Bay View arbitration case. GW then demands that mine production data should be published, stating that GW themselves do not consider origin to be a commercial secret. It seems that GW is more familiar with the situation of large-scale mining companies who of course wish to promote successful production figures for the interest of their shareholders and potential investors. The 3T sector in the Great Lakes has been dominated by artisanal mining which presents an entirely different perspective when considering trading patterns. In this scenario, **knowledge of artisanal mining areas with higher production does represent a commercial interest for buyers who are competing for mineral sources.** Production of mine level data is considered as competitive information and is therefore commercially sensitive and not public. GW contests the response ITSCI provided on this matter discounting our view through reference to publications by the DRC Ministry of Mines. With respect, ITSCI works on a day-to-day basis with companies on an international level and is well aware of various antitrust and competition laws as well as regulations regarding holding data. The DRC Ministry of Mines can of course take its own approach but the Ministry is not governed or impacted by the same expectations.

Despite this, **ITSCI does publish relatively detailed information on production to national and sub-national level which should easily be sufficient for commentators to understand overall production figures and make simple comparisons to overall export figures.** GW unfairly claims that ITSCI exhibits 'secrecy around basic data' by implying that very detailed information was not ultimately made public although this was considered early in the programme only in early 2011.

We point GW towards downloadable files on the information section of our website specifically the section entitled mineral tonnage data¹²⁷ and quarterly summaries.¹²⁸ Reports are available for Rwanda as well as other locations where

¹²⁶ See <https://www.italaw.com/sites/default/files/case-documents/italaw16330.pdf> ICSID Case No. ARB/18/21

¹²⁷ See <https://www.itsci.org/mineral-tonnage-data/>

ITSCI operates. The reports which provide information on Rwandan data from around 2012 in fact include a great deal of information including;

- Quarterly and annual production figures per mineral type
- Quarterly and annual export figures per mineral type
- Figures on monitored mine sites, miners and average monthly mine production
- Incidents raised, categories and status
- Consultation forums and their locales

GW makes exaggerated claims of secrecy

While it is **true that ITSCI has not published production data to each mine it is disingenuous to extrapolate that into an allegation of ‘secrecy’**. Note for example that the Advisory Panel, members and governments receive production data to the district level disaggregated by mineral type, including the different mixed mineral types that have been mentioned above. Bearing in mind that there are around 30 districts within Rwanda the information has been provided to a reasonable disaggregated level which allows any commentator to make their own assessment. **GW states that it is not aware of any of the information which it lists to have been made public - evidently GW has not thoroughly researched the information provided on the ITSCI website** where for example it may find average prices in the Rwandan data reports from the relevant period. Aspects of GW’s statement in this matter are factually wrong.

Publication of mine site information by companies is not envisaged or recommended by the OECD due diligence guidance. ITSCI does not need to publish any mineral tonnage data but we voluntarily decided to go beyond expectations for added transparency. We understand that advocacy groups such as **GW may prefer publication of all business data but this is not what was agreed by the multi stakeholder group** which developed the OECD due diligence guidance and included GW themselves. We encourage GW to respect that guidance.

It is entirely **unreasonable for GW to focus on very early discussions and documents created by ITSCI, specifically a five-year-plan submitted as part of comments to the SEC in 2011 before the programme was fully operational**. GW alludes and gives the impression that the promise of release of this aggregated data was made in exchange for international support. In fact, no support was forthcoming despite efforts by ITSCI to encourage engagement with upstream supply chains struggling to implement the Dodd Frank and consequential CFSI audit system. Lack of engagement by external parties who could have been in a position to provide support is a huge frustration. ITSCI makes no apologies for our efforts and work. We consider that the second half of the GW headline claiming that ITSCI ‘lacks transparency’ in order to ‘mask’ production and export figures to be unsupported by fact and wrong.

We also note that GW seems to discount a response from the Rwandan government stating that 200 tonnes of 3T minerals were impounded in 2012. Information reporting such actions are readily available online ¹²⁹ . We hold incidents of other examples of Rwandan authorities seizing minerals reportedly from the DRC at a similar time covered by incident reports RW-2012-0072 and RW-2012-0090, as well as Rwandan authorities suspending multiple companies allegedly involved in fraudulent activities (see for instance RW-2014-0004).

3.1.3. Trade in smuggled minerals crowds out mining initiatives

GW begins this section by a statement from an industry ‘expert’ which simply claims that according to him when he had tried to map out Rwanda’s coltan mines in 2016 he had found only a few sites with limited production and that even promising sites were not active because it was much cheaper to buy tags and minerals from the DRC than to invest in legitimate mining in Rwanda’. There is no factual evidence presented to support this far-fetched claim which can be discounted as rumour designed to forward the agenda of certain individuals.

¹²⁹ See <https://www.bbc.co.uk/news/world-africa-15570648>

GW claims of limited Rwandan production arise from sources lacking credibility

Further apparent ‘evidence’ is provided by a statement from a former mine employee claiming that smuggled minerals are cheaper than mined minerals. It is correct that investment in large scale mining requires significant upfront investment as well as ongoing costs however this does not automatically mean that mines in Rwanda cannot economically produce minerals for themselves. There have been very **significant efforts from the Rwandan government to formalise and organise the structure of the mineral sector including but not limited to 3T**. Artisanal mines have been required to improve their environmental practises for example in water management, and workers are required to wear personal protective equipment. The mineral sector in Rwanda has made significant improvements over the last 10 years. Many international governments have supported Rwanda to achieve this progress.



From informal mining and poor washing methods (2011 - left) to safe tunnels and modern washing plant (2015 – right). Musha, Kirimbari and Busoro mine sites, Rwanda

GW uses this thin evidence from two statements to claim that smuggled minerals have been allowed to pass through Rwanda and therefore crowd out domestic mining initiatives. Such a claim is embarrassing in its lack of detail and we consider it, as well as the headline, to be unsupported by fact and wrong. ITSCI has found that as a result of increased confidence in the Great Lakes new investors have entered the sector with the aim of establishing large scale mines or even smelting companies. In our experience **a large number of these new investors do not fully appreciate the operating context of the region and may be overly ambitious in their plans**. We believe it likely that GW may have interviewed persons connected with unsuccessful investments.

3.1.4. ITSCI ignores minerals smuggled to Rwanda

GW quotes more recent UNGoE reports from 2019 to 2021 in which minerals smuggling is said to continue. ITSCI does not deny that the possibility of smuggling has always, and will always exist. This is a risk which ITSCI is fully aware of and has procedures in place in efforts to identify, report, and resolve. We will not dive into detail of specific UNGoE reports as we continue our cooperation and communications with that organisation as requested and have already provided full comment to support our views. The situations described are not black and white and our extensive

discussions consider different views of the context and likely events. **In many cases, ITSCI has existing incident reports on the topics of concern prior to UNGoE inquiry and in other cases we open incidents as a result of UNGoE reporting. In all cases incidents continue to be evaluated for a period of six months** to establish whether mitigation has been successful. Commentators may find information on all incidents related to UNGoE reports in the normal way on our website, and all issues raised by UNGoE are recorded and acted on.

GW fails to acknowledge control efforts and government responsibility

ITSCI also does not deny that tags can be misused in a variety of matters including selling them as suggested by the reference quoted by GW. For this reason **we have processes in place in order to establish anomalies in traceability** information including unusual timescales, use of tags at sites to which they were not allocated and distributed, mass-balance and other checks. In relevant cases tag and logbook numbers are cancelled.

GW further relies on the former Pact manager mentioned in section 3.1.1 including a suggestion that ITSCI working hours impacted the extent of potential smuggling, and that his proposals to tackle smuggling were not accepted by ITA. It is correct that there may be a higher risk of smuggling minerals in the hours of darkness between 5:00 PM and 8:00 AM however, whether or not ITSCI staff were working during those hours does not impact enforcement. **Responsibility for enforcement of illegal behaviour, as well as checking mineral deliveries to sites, rests with government agents not ITSCI staff.** This thin statement does not substantiate the extent of smuggling implied by GW in earlier sections nor any claims that ITA itself ignored smuggled minerals. **ITSCI, Pact and ITA strongly refute such allegations of wilfully ignoring evidence as already made clear to GW** yet GW has not provided additional evidence to support these claims.

GW seem to object to risk reporting preferring to protect company interests

GW alleges ITA is selective in publishing incidents and targets smaller companies which consequently had to close, while protecting companies exporting larger volumes of smuggled minerals such as MSA and Tawotin. We strongly reject and deny any selectivity and confirm our process is balanced and objective. For our response on MSA, and Tawotin and alleged ties to Chris Huber see sections 3.2.1 and 3.2.2 respectively. Below is the full response¹³⁰ we provided to GW prior to report publication regarding **allegations of selective publication of incidents and refute any such** allegation in the strongest possible terms since it is entirely wrong;

*Pact, as the field operator of ITSCI, is responsible for collating and reporting ITSCI incidents as well as progressing mitigation and reporting progress of such. **ITA does not select (or de-select) incidents to be published.** All incidents which can be categorised as an Annex II risk, or other additional risk defined by ITSCI, are included in monthly incident listings which are first provided to members, and other stakeholders such as the Advisory Panel, and then made public.*

*On rare occasions incident details are **redacted to protect information sources but even in such cases the incident number remains in the listing.** The number of redacted incidents is less than a handful in the course of the entire ITSCI programme. Hence, it would be entirely obvious to any stakeholder if ITA had removed incidents from Pact listings since numbering would no longer be sequential.*

*ITSCI has no reason to remove incidents against or 'protect' any company, government or stakeholder. It is our role to report risks transparently and ITSCI does so to follow DDG and to maintain credibility of our systems. Selectively 'removing' incidents would act against our objective and undermine our credibility. **ITSCI has and will publish incidents involving or related to MSA, Tawotin and any other member or non-member company or stakeholder.** Should you wish to research you will see that ITSCI issued around 83 incidents related to MSA and around 25 related to Tawotin.*

*Your **allegation does not provide any evidence or detail on timescales, subject matter and involved parties** of the incidents which you allege to have been removed from publication by ITA. Your allegation is not adequate or factual.*

As in other report sections (2.3.1), **GW seems to on one hand allege that ITSCI does not report risks, and on the other hand objects to ITSCI's transparent reporting of OECD Annex II risks due to alleged negative impacts on companies.**

¹³⁰ ITSCI, Opportunity to comment response, 15/12/21, point 93.

According to the theory put forward by GW companies may have to close if any incidents are raised against them. That GW should put forward such a concern is extremely surprising at several levels;

- a) GW campaigns for transparency, normally arguing that risk reporting does not lead to negative consequences
- b) GW claims support for OECD due diligence which recommends reporting of risks to supply chains¹³¹
- c) Facts show that ITSCI issues vast numbers of incidents on members who still remain in business
- d) The GW 'Laundromat' report itself makes unsubstantiated allegations that impact reputations

In practice, due diligence means that risks and incidents should be reported to supply chains (as ITSCI does), and that companies in the supply chain should assess whether the situation remains acceptable in relation to their own standards. Companies should consider the extent that reported risks are mitigated when making their evaluation on supplies. Some companies may be more averse to risks and take a simpler de-risking approach, other companies may take a more positive approach of continued engagement and support to supply chains to achieve progressive improvement. As **GW agrees in their recommendations, how any company responds to reported risks is entirely their own responsibility.** This is un-related to ITSCI.

GW further suggests that ITSCI auditor's 'were aware of the disparity between' Rwanda's production and export figures thereby attempting to discredit our audits. Since, as explained in section 3.1.2, there is no significant disparity between Rwanda's production and export figures if taking into account all mineral types produced and the claim does not appear to be based in any fact. Setting this aside, we note that **ITSCI is not the only organisation to perform audits on exporters in Rwanda, in particular the ICGLR** has set itself an objective to perform audits as part of the regional certification mechanism. While it is challenging to find many ICGLR audit reports online there are examples relating to companies named by GW, MSA¹³² and wolfram mining and processing (WMP¹³³), which also do not find significant issues. Taking into account that companies in Rwanda have always experienced significant scrutiny from all external stakeholders it is notable that **no real evidence justifying questions of audit reports has been quoted by GW.**

GW wrongly accuses ITSCI of cover up of incident information

GW seeks to justify ITA/ITSCI's alleged non publication of information through a further statement associated with the aforesaid failed Bay View arbitration case. While GW provides no detail we may suppose that this relates to incident RW/2013/0154 opened 8 December 2013 and the report from an exporter for which information is available on ITSCI website; *"On 13 December, another exporter declared that it received suspicious lot from (Union Mines)....."* GW selects limited information from ITSCI on this matter putting its own spin on our comment 'raised his suspicion only after other incidents were raised' to claim that 'that **ITSCI does not necessarily report known incidents if it has reported on similar cases before**'. **This is an incorrect assumption twisting the meaning of ITSCI's comment** which was to explain the exporter's report to ITSCI was on the 13th and 5 days after the opening of the ITSCI incident on 8th. For the avoidance of all doubt, ITSCI does reopen or create additional incidents in situations where risks reoccur or are not adequately resolved and present serious threats to the supply chain. Had GW properly researched all incident reports available online this would have become readily apparent to them. There is **no evidence for GW assumption which is misleading and wrong.**

GW has not presented any concrete examples to justify its headline alleging that ITSCI (or ITA, the allegation itself is confused) ignores minerals smuggled to Rwanda. On the contrary, **ITSCI incidents do report plausibility in the Rwandan supply chain, at least 24 speak to cross-border smuggling since 2017-2021, and in 2022 we have so far open 63 incidents in North Kivu and Rwanda** since January 2022 and March 2022 due to particular circumstances prevailing in this period.

¹³¹ See <https://www.globalwitness.org/en/blog/managing-risk-illegal-mining-and-conflict-minerals-global-supply-chains/>

¹³² See https://icglr.org/images/MSA%20Third%20Party%20Audit%20Executive%20Summary_Edition%202016.pdf

¹³³ See https://icglr.org/images/WPM%20Third%20Party%20Audit%20Executive%20Summary_Edition%202016.pdf

3.1.5. ITSCI's roll-out In DRC reduces smuggling to Rwanda but facilitates the laundering of tainted minerals in DRC

The initial statement made by GW to introduce this section claiming that 'laundering DRC's illicit minerals' was/is profitable business for Rwanda appears to be pure opinion based on inadequate understanding of facts. GW reports that Rwanda applies a royalty on exported minerals which earns revenue, which is unsurprising as it is a normal expectation that countries will wish to benefit from the value of their natural resources. GW attempts to claim that a significant amount of the revenue is on smuggled minerals by **making some generalised and simplistic statements regarding Rwandan mineral export figures and complete omission or failure to understand impacts in change of mineral prices** on revenues.

GW omits basic evaluation of trend drivers

In essence, the argument put forward by GW is that exports increased following ITSCI's implementation in Rwanda up to 2013-2014 and then declined. Note that;

- Wolframite – the trend pattern assumed by GW is not even proven by its own quoted figures shown in the graph on page 51. The figures themselves demonstrate that exports declined between 2013 and 2017 and then increased to 2022.
- Coltan – the trend pattern assumed by GW is in some respects correct, although ignoring a low point in exports in 2016, as well as an increase in exports in 2021 (omitted from the graph).
- Cassiterite – similar to coltan, the trend pattern presented by GW is in some respects correct although omitting to show an increase in exports in 2021 and failing to explain the high figure of 2011.

In the **highly simplistic view of GW put forward in one short paragraph they wrongly attribute all changes in trend patterns to smuggling completely and utterly failing to take into account, recognise or explain the multiple other factors** that affect mineral business, in particular the status of the international market, demand and pricing. For example at a very high level GW fails to recognise;

- High exports in 2011 which arise from release of mineral from the DRC mining suspension being traded prior to the April 2011 CFSI deadline.
- The negative market situation gradually exacerbating reduced incentives to mine between 2014-2015¹³⁴ with a severe price crisis at the end of 2015.¹³⁵
- Increased investments in mechanisation of some mines.
- Disruption arising from efforts by the Rwandan government to restructure and formalise the sector.
- External factors relating to changes in production or demand in other 3T areas outside Africa such as changing quotas or taxes.
- The direct connection between export revenue and international metal prices, with no price analysis.
- The impacts of COVID, in 2020 in particular.
- The fact that companies use other due diligence services or options and therefore ITSCI figures will not be directly equivalent to national figures.

GW acknowledges progress in decreased smuggling

GW reports the view of academics and an industry 'expert' that smuggling has decreased (although not entirely stopped) attributing this only to roll out of ITSCI in DRC basing its claim on the wildly simplistic and incorrect presentation relating to 'decline in 3T exports' highlighted above. **ITSCI welcomes GW acknowledgement that smuggling has decreased** and we consider our important efforts contributing to this decrease to be a significant success of our work, but reject GW's reasoning. It is highly surprising that an advocacy group such as GW who strongly campaigned for the introduction of Dodd Frank and other regulations and who claim to support the approach of the

¹³⁴ LME tin price data is not online for such historic timescales but can be found elsewhere such as <https://www.focus-economics.com/commodities/base-metals/tin>

¹³⁵ See <https://www.itsci.org/2015/12/23/itsci-calls-for-funding-in-open-letter-to-downstream-business-and-donors/>

OECD due diligence guidance towards progressive improvement is apparently unable to recognise that reduction in smuggling is a success.

GW makes further generalised statements such as ‘in the face of the continued smuggling of DRC’s minerals to Rwanda for tagging’ without providing any contextual information or facts on the supposed extent of this continued smuggling. GW further states that DRC Ministry officials use the ITSCI system to increase the share of DRC’s minerals going into legal channels so that the DRC itself will benefit from tax revenue. ITSCI supports formalisation which leads to increased revenues for government; those revenues are partly used to develop capacity within the mining services to advise and control the mining sector. GW takes issue with the DRC approach based on its own view of the mine validation system i.e. whether minerals are from a validated mine or not. Please see section 2.1.1 which further explains the context and limitations of GW’s own definition of how validation should be considered.

GW falls back on simplistic and wrong interpretation of data

GW continues with its simplistic comparisons of export data while failing to understand or present the very basic facts, for example seemingly alluding to ‘patriotic duty’ of DRC officials ‘facilitating large amounts of minerals’ to enter the system (presumably alluding to ITSCI system). **GW appears to find it somehow surprising that ‘DRC’s exports [of coltan] increased significantly from 2013 - if it had considered facts relating to the gradual integration of more and more mining areas into ITSCI particularly up until 2015 it would have been able to understand** that an increasing number of mines produce an increasing number of minerals. GW could also have considered the development of mechanisation at ITSCI mines producing coltan in Katanga since 2011, as well of course ITSCI support to the SMB mine in North Kivu in 2014.

GW concerns are focused again on whether DRC mines are ‘validated’ or not validated. Please again refer to section 2.1.1 regarding the irrelevance on this point. We repeat that whether or not a mine is validated does not impact whether or not that mine is connected to armed groups or human rights abuses. In fact, GW themselves recognise this fact on page 16 and has selectively chosen to ignore this fundamental point throughout the text of this report.

GW confuses certification and due diligence

GW incorrectly concludes, based on an almost entire lack of evidence and a most simplistic analysis, that ITSCI ‘appears to be used to launder and rubber stamp smuggled and often conflict affected minerals with what is widely perceived as a conflict free certificate on which actors in the 3T and electronics markets rely’. **This statement misrepresents the situation at every possible level** and is entirely wrong. ITSCI has specifically communicated to GW that we are not a certification scheme, and do not make guarantees on the conflict-free nature of minerals as demonstrated through incident reports which highlight issues such as illegal taxation by non state or state armed groups. **We repeat that ITSCI identifies, reports and where relevant, assists in the mitigation of OECD annex II risks according to the expectations of the OECD guidance.** GW appears to be attempting to unfairly and wrongly apply responsibility of perceived due diligence failures of actors further downstream to ITSCI.

RESPONSE TO GW BOX: Rwanda's long history of profiting from DRC's mineral resources

GW recaps historical information from past wars for example reported by the UN more than twenty years ago in 2001. It is unclear why this information is of relevance to the current discussion - **the circumstances which existed in 2001 are far removed from the circumstances in 2010 when Dodd Frank was finalised - and the circumstances in 2022 are also far removed from the situation in 2010.** Please see section 0 commenting on the alleged link between ITSCI and James Kabarebe. This focus by GW on past events such as these risks deterioration of relations between many stakeholder groups which could lead to potential negative impacts and harm. As stated on multiple occasions ITSCI is focused on progressive improvement engaging all stakeholders who demonstrate a commitment to OECD due diligence; we would recommend that GW takes a similar approach.

3.2. The early profitters from the ITSCI scheme

3.2.1. Minerals Supply Africa

In this section, **GW reporting is an open invitation for past competitors and others with negative agendas to pursue attacks on an individual (David Bensusan) who passed away** some time ago and has no opportunity to reply. We consider GW's decision to make use of this situation as somewhat unprincipled. Bensusan was of course well known to all stakeholders as manager of Mineral Supply Africa (MSA).

GW acknowledges that MSA changed to legally import

Amongst a number of statements and figures which GW quotes in relation to the business of MSA there is an acknowledgement, supported by the referenced UNGoE report of 2010, that **MSA had begun to legally import minerals from the DRC based on encouraging signs of a new similarity between Congolese exports and Rwandan re exports from mid-2009. This change coincided with the introduction of the first phase of the ITSCI programme on 1st July 2009.** The first phase included engagement by tin smelters with their suppliers to encourage formalisation and risk evaluation as well as voluntary audits by those tin smelters regarding their sources. This action was voluntarily undertaken by the tin sector with the support of ITA in advance of any implementation of CFSI (now RMI) smelter audits and well in advance of the development of the OECD due diligence guidance. The upstream tin sector remains proud of our pro-active and leading work on these supply chain concerns.

GW state that MSA's exports 'soared' between 2011 and 2013. It is perhaps worth noting that in 2011 a different company exported 65% more than MSA. That company did become progressively less successful over time and it seems likely that the GW reference 423 is the former CEO of that company who may have a competitor's view of MSA.

GW allegations of smuggling are vague and unparticularised

GW states that 'Bensusan's soaring business was allegedly still based almost entirely on mineral smuggled from the DRC'; refer to comments in section 3.1 which explain that GW's research and analysis on smuggling, as well as use of certain sources, has fundamental flaws. By implication this further claim that the business was based entirely on smuggling can also be discounted. **GW has not provided any substantive evidence to justify claims of large, huge, vast, or any other non-quantitative allegations of smuggling** and we strongly contest the assumptions and apparent conclusions. It is notable that the subtitle to the photograph on page 54 is extremely vague stating that the MSA compound may have been the location where 'allegedly hundreds if not thousands of tonnes of smuggled minerals from DRC' have been treated. 'Hundreds' being less than 1 tonne would represent around 0.006% of the MSA business. Assuming 'thousands' are perhaps 10 times that amount, that would still only represent 0.06% of MSA business. As ITSCI has stated previously, **fraud is a constant risk which all actors should consider and which we make efforts to address, however, GW allegations lack detail, are weak and present a misleading and exaggerated impression of risk.** We note that GW acknowledge MSA did trade minerals mined in Rwanda although stating this is 'a tiny proportion' whatever 'tiny' may mean.

GW claims to identify a large supplier are inaccurate

GW quotes another three industry sources highlighting the H&B Mining Company Ltd as one of MSA's most productive suppliers, and comparing to an ITSCI baseline of October 2011 showing low production estimates. **This is wrong; our figures show H&B Mining Company provided insignificant volumes of mineral to MSA in 2011** (approximately 1%) and 29 other mining companies provided greater amounts of mineral. We note that one reference justifying their claims in relation to this mining company quotes a press release of 2018 which is 7 years after 2011 - this situation at mine sites changes very frequently on a monthly basis and it is misleading and incorrect too tempting to compare figures across such a time scale.

3.2.2. Chris Huber's network of companies in Rwanda

GW alleges that 'another mineral trader (Chris Huber) apparently used' ITSCI for 'laundering purposes'. We address GW comments on Huber in section 2.3.3.

GW makes various alleged connections between different companies, Huber and Crawley. Among these GW states that the 2009 UNGoE reported that one company, African Ventures, sourced 'conflict minerals' from the DRC. According to that UNGoE report the minerals were from Mwangachuchu Hizi International¹³⁶ (MHI, the former name of SMB) – see section 2.3 for further background. There is no indication why GW has focused reporting on certain individuals alleged to be trading minerals, yet omit allegations on the supplier of those minerals.

GW alleges data discrepancies which are not accurate

One company alleged to be linked to Huber is Rwanda Rudniki. GW says Rwanda Rudniki 'did not buy minerals from other mines in Rwanda' and therefore **suggests that the discrepancy between production from the company's mine and export by that company cannot be accounted for by purchases. This does not agree with information which ITSCI holds.** Noting that the company held a licence allowing it to buy minerals from Rwandan sources it would not make logical sense for the company not to purchase local minerals. In their response to GW in December 2021, Rudniki stated that [for 2012 & 2013] 'these figures about right for the mine production but you should know that Rwanda Rudniki also was a licensed comptoir. Rwanda Rudniki was therefore also able to purchase ITSCI tagged tonnage from approved Rwandese mines which we only did after due diligence.' GW discounts this based only on the 'industry source' and leaps to a conclusion that most minerals were smuggled.

A second company GW alleges indirect links to Huber is Tawotin. GW presents export figures of 2013, 2016, and 2017 then assuming that 'given Rwanda's low coltan production' it is unlikely these minerals were from Rwanda. As explained in section 3.1.2, **GW seems to misunderstand production is not only coltan alone (which is low) but coltan as part of mixed mineral production** in Rwandan mines. ITSCI holds similar records for Tawotin tonnages and has not had any reason to record plausibility concerns.

GW further claims that with Tawotin employees Huber ran '**dummy mines' to apparently fool ITSCI and provide locations to where smuggled minerals could be channelled.** GW does not recognise or provide any information on regular ITSCI mine visits, both announced and unannounced, nor the fact that our field teams collect information from multiple stakeholders at and around mines and observe on-site mineral production and washing to test for the possibility of 'dummy mines' with lower likely mineral production.

A third company with alleged ties to Huber is WMP. GW again quotes various figures this time from 2012, 2013, 2016, 2017 which in themselves are generally correct, but then goes on to misleadingly compare to very low figures from a 2011 Pact baseline. We informed GW that 2011 was of course a time of massive disruption in the Great Lakes, including extreme challenges in selling 3T minerals internationally, especially wolframite, due to the stigma created by Dodd Frank. **Any baseline from 2011 in the first months of ITSCI implementation in Rwanda cannot be credibly compared to production even in later months, let alone later years as GW has done.** ITSCI baselines are updated as conditions at mine sites change. It is well known that WMP has developed a significant tungsten mine since 2011 and ITSCI baselines reflect those changes.

3.3. How ITSCI became an instrument for legitimising the trade in minerals smuggled from DRC to Rwanda

GW notes that ITSCI set up a 'system covering almost all of Rwanda's exported 3T minerals in a very short time' implying this what's possible only through strong backing of 'certain players'. This section then goes on to imply Bensusan of MSA was core to that and makes further alleged links to a Rwandan defence minister.

¹³⁶ See para 230 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N09/601/43/PDF/N0960143.pdf?OpenElement>

GW fails to understand initial set-up of ITSCI for DRC

In fact, ITSCI efforts to establish in Rwanda following release of Dodd Frank were **accelerated primarily due to all previous work that had been carried out in, and for, mineral supply chains in eastern DRC**. As is evident from timelines described in section 3.1.1, the tin industry was already taking a proactive approach to engaging supply areas in high risk locations, to understand local context and views, seek and implement new innovative solutions and at the same time engaging at the policy and systems level in the development of the OECD guidance and initial ideas for auditing systems and smelters.

These positive engagement processes were driven by tin smelter members of ITA (Malaysia Smelting Corporation and Thailand Smelting and Refining Co), and supported by ITA staff (Kay Nimmo and others). **Smelters were able to leverage suppliers to engage them in work to improve practices even before this concept was formally enshrined in the OECD due diligence guidance**. The work of ITA smelters and Kay Nimmo led to the formation of the ITA working group which also included a large trading company active in the region at the time (Traxys). Traxys was a significant buyer for minerals from the DRC at that time.

The ITA working group devised a 3 phase plan;¹³⁷

1. Document collection from the supply chain and voluntary smelter audit
2. Establishing on the ground activities and additional due diligence¹³⁸
3. Consideration of development beyond conflict¹³⁹

The improvement of document collection from supply chains for **ITSCI Phase 1 implemented in July 2009 lead to the recognised improvement in both Congolese and Rwandan export statistics** as explained in section 3.2.1 regarding MSA. As is well known, MSA re-processed minerals in Rwanda that were exported from the DRC. Bensusan was engaged in that Phase 1 as were all cassiterite suppliers from the DRC.

ITA proceeded to plan and work on **Phase 2 of ITSCI to establish improved documentation (traceability) and add further elements of due diligence such as on the ground checks**. Kay Nimmo visited the DRC to organise this work including to communicate with the DRC government, to identify local partners and to understand reality on the ground in the mining areas in the Kivu Provinces. Conversations included local private sector actors such as negotiants and exporters as well as groups, particularly the FEC.¹⁴⁰ Conversations also included other local actors such as NGOs. As a result of this work, **ITA achieved support from the DRC government in October 2009¹⁴¹ to move forward with a pilot project on the ground which aimed to work at one site in South Kivu (Kalimbi) and one site in north Kivu (Bisie)**. The South Kivu pilot operated for a few weeks prior to the DRC mining suspension announced by the government in September 2010. Preparatory visits had also been undertaken for the North Kivu pilot but this had not started prior to the mining suspension.

GW fails to recognise changing ITSCI scope driven by Dodd Frank

As noted earlier, several disruptive actions including the mining suspension were driven by release of the Dodd Frank Act. At that point ITA received several requests to establish a system in general aligned with the not yet published OECD due diligence guidance in areas impacted by Dodd Frank Act i.e. areas of the DRC outside the Kivu provinces, and countries adjoining the DRC such as Rwanda. **Phase 2 of ITSCI was established in areas where governance and the local context enabled** our then new project partners Pact to implement activities within the almost impossibly short time scales prior to 1st April 2011 audit deadline off CFSI (RMI). **Rwanda was one such location¹⁴²**, another province of DRC was a second location. Further integration of additional areas continued over the course of several years according to risk and the availability of resources.

¹³⁷ See <https://www.itsci.org/2009/07/10/drc-tin-supply-chain-initiative/>

¹³⁸ See <https://www.itsci.org/2010/03/19/supply-chains-unite-to-start-itsci-mineral-traceability-project-in-drc/>

¹³⁹ See <https://www.itsci.org/funding-opportunities/>

¹⁴⁰ Fédération des Entreprises du Congo – Congolese Business Federation; also involved in drafting OECD due diligence guidance

¹⁴¹ See <https://www.itsci.org/2009/10/09/drc-government-backs-itri-traceability-scheme-asks-amc-and-traxys-to-resume-tin-ore-purchases/>

¹⁴² See <https://www.itsci.org/2010/11/08/tin-and-tantalum-industries-target-31st-march-2011-for-full-implementation-of-itsci-conflict-mineral-tagging/>

GW claim that Bensusan anticipated the Dodd Frank Act and saw that a ‘fraudulent traceability scheme would offer a way to continue trading in smuggled and conflict affected minerals from DRC’. This claim is not supported by any of the facts regarding why and how ITSCI was established, misrepresents the truth and is wrong. The core driver for the upstream private sector was to resolve issues reported by the UNGoE, through working primarily with the DRC, at a time before consideration of any conflict mineral provisions under Dodd Frank. **ITA and the tin sector participated in, and aimed to work according to ongoing multi-stakeholder discussions¹⁴³ which later led to the formation of the working group to establish the OECD due diligence guidance.¹⁴⁴**

GW falsely implies ITSCI is a fraudulent scheme

Whether or not Bensusan saw that a ‘fraudulent’ traceability scheme would serve his apparent alleged purpose, Bensusan was not a key decision maker in determining how ITSCI would operate. Bensusan, now being deceased, is unable to provide his right of reply. In any case, ITA required not only a traceability scheme, but a system of due diligence which is not fraudulent and which supports the supply chain in purchases from the region. **A ‘fraudulent’ scheme would not serve the purpose of ITA which has demonstrated commitment to improving practices** through all actions, over more than 10 years - not only through ITSCI, but through other projects, engagement, and advocacy. ITSCI was established through multi-stakeholder discussions and in line with multi-stakeholder aims as an industry programme.

If Bensusan had been concerned that without an industry scheme it may become impossible for companies to purchase 3T minerals from the Great Lakes in the wake of Dodd Frank he would have been correct. The impact of Dodd Frank was very real and immediate across large areas of the DRC which suffered from de facto embargo. As described above, **ITA was engaged with both DRC and Bensusan well before any indications of Dodd Frank, therefore, GW claims that ITSCI was established to support Bensusan’s alleged smuggling activities in the wake of Dodd Frank makes no logical sense**, misrepresents the situation, and is wrong. MSA had already moved to formalise their supply chains from June 2009, as acknowledged by GW, more than one year prior to Dodd Frank.

GW attempts to justify its inaccurate and damaging claim implying that ITSCI is fraudulent by a reference to a single ‘confidential memorandum from an industry source’. It seems possible that the ‘confidential memorandum’ has issues of credibility and conflict of interest in the same way that ‘industry experts and sources’ associated with the failed Bay View arbitration case have been determined to lack credibility. **This confidential source quoted by GW may also be from a person or persons who have commercial business interests and disputes with Bensusan and/or other business players.**

GW’s false implied claims of collusion

GW’s claim that Kay Nimmo was ‘sent to Rwanda to set up a traceability and due diligence scheme’ together with a later comment that in MSA offices Bensusan and Nimmo sometimes joked that ITSCI was ‘a laugh’. Nimmo denies this. GW seems to intend to **wrongly imply that Nimmo was in Rwanda for a significant time on a semi-permanent or permanent basis.** She was not in Rwanda frequently. We are not in a position to comment on Bensusan’s alleged comments however it is highly likely that Bensusan made unusual remarks in various settings. Large numbers of stakeholders are likely to have visited his offices such as researchers, government or project representatives such as the German government through BGR. Many such stakeholders were based in Rwanda while Nimmo was not.

By implication GW is alleging that all ITSCI’s staff, contractors, members, governments and local stakeholders are complicit in the supposed ‘fraudulent’ scheme from 2009 to date. By implication **GW seems to be suggesting that all parties who have previously made use of, known about or evaluated any of ITSCI’s activities, information or companies are either complicit in the supposed ‘fraudulence’ or were incompetent.** Such an implied allegation is nothing short of fantastical and is certainly insulting to all parties who have spent vast efforts applying the internationally agreed OECD due diligence framework which GW purports to support.

¹⁴³ Council of European Union, meeting of invited experts on Task Force on illegal exploitation of natural resources, 14th and 24th July 2009

¹⁴⁴ OECD consultation on due diligence in the mining sector, Paris, 8th December 2009 and subsequent OECD meetings and fora

GW's false claims on government collusion and non-existent MOU

GW allude to connections between Bensusan and the Rwandan government which allowed him to drive the direction of the Rwandan government not only with regard to establishing ITSCI but also with regard to the implementation of a traceability law. Bensusan may or may not have had good relations with the Rwandan government and he is of course unable to comment. Nevertheless in the experience of ITSCI, **the Rwandan government is well known for its independent thought and actions.** The traceability law which GW alleges was for the purpose of creating 'a de facto monopoly for ITSCI' was not specific to ITSCI but refers only to tagging of minerals for transport. Any other system of tagging could be used and indeed has been used. ITSCI is not the only due diligence system operating in Rwanda. Traceability of supply chains, whether as a concept, recommendation or law, is not in unusual, and even common in sectors such as agriculture.

GW claim that a **first MOU on the implementation of ITSCI was signed not only between ITA and the Rwandan government but also 'apparently' by MSA's parent company Cronimet Central Africa AG. GW's statement and claim is entirely false.** There is no 3-way agreement. The document establishing cooperation between ITA and the Rwandan government is signed by those two parties alone. GW has been informed of this fact by ITSCI yet has deliberately chosen to continue to put forward this false and misleading information. The sources referenced in support of this false claim again includes the 'confidential memorandum' from the industry source potentially with a competitor's view of MSA. The logic of this claim also fails since it would have been far more likely for any three way agreement to have included the signature of the Rwandan company MSA not a foreign company as falsely alleged. GW has not put forward any information to justify why they continue to misreport claims in this regard.

GW false allegations of misuse of whistleblowing and implied links to defence

GW claim that Bensusan bragged that being a party to the MOU allowed him to be the "best whistle- blower" to ITA, as he could tell Nimmo which competitors he wanted to "get rid of". Setting aside the fact that Bensusan was not a party to any 3-way MOU, **ITSCI's whistleblowing procedure anticipates possible misuse.¹⁴⁵ Should Bensusan have been involved in malicious whistleblowing he would have risked incidents raised against him,** and/or potential company suspension or expulsion from ITSCI membership. It would also be impossible for Bensusan to 'get rid' of competitors simply by whistleblowing. **Companies can only be suspended or expelled from ITSCI membership based on evidence** of actions contrary to the due diligence guidance and/or ITSCI procedures. Such decisions by the ITSCI Governance Committee are dully documented. Additionally, any such supposed objective would be unsuccessful since companies can and do also perform their own due diligence or opt for other due diligence support outside of the ITSCI programme.

It is notable that GW also claim from the same industry sources that **Bensusan was in a strange kind of smuggling triangle with James Kabarebe and Huber. We have no information on any rumour suggesting such a connection** which seems to have been alleged by the same 'confidential memorandum' from the industry source. GW do not explain why Bensusan and Huber would work together in such a way if both were allegedly seeking out the same 'smuggled' minerals.

GW seeks to make a link between past history noted in the box on page 53 and their current claims alleging a continued and current strategy by Rwanda to support smuggling rather than any other means to develop their own mineral sector. Calling the description on page 53 'Rwanda's recent military endeavour's' seems wildly exaggerated considering the time that has passed since the events described. Logically, **it would seem incredible for Rwanda which seeks to formalise and develop as a responsible and credible player in the international community, as a hub for the development of the Central African region, supported by numerous donors and external agencies to choose a path**

¹⁴⁵ "Whistleblowers should not use the mechanism for making false allegations against competitors or others that could affect their business. Disclosures which are found to have ulterior motives such as related to financial gain, competition, or are false and malicious statements deliberately injurious to a person or body's reputation will be dismissed. Action may be considered against member companies and staff who deliberately raises a false concern and deliberately abuses the ITSCI Whistleblowing Policy or Procedure." https://www.itsci.org/wp-content/uploads/2018/02/ITSCi-Whistleblowing-Procedure_v1-FINAL-MW_sp.pdf

of illegality and smuggling when they are able to choose the path of legality, formalisation, development, and responsible use of their own natural resources. Rwanda has engaged in multiple projects to support its mineral sector both before and after the implementation of ITSCI, as has DRC, for example the Certified Trading Chains project of BGR which started in 2007. The claims made by GW are not credible.

In the box on page 53 GW also seeks to imply a **connection between Kabarebe and ITSCI for the purpose of facilitating smuggling. We refute any such allegation** in the strongest possible terms since it is entirely false and without evidence.

GW appears to be focused on certain individuals, and certain companies, apparently forgetting that a number of other companies in Rwanda would have been exporting more of the same supposed smuggled minerals if the claims that 90% of the minerals exported by Rwandan companies were not from Rwanda. This further **suggests that the sources of information used by GW are not entirely without conflicts of interest** and there is a lack of balance in GW reporting.

4. TAINTED MINERALS ENTERING INTERNATIONAL SUPPLY CHAINS

GW claims there is compelling evidence that large quantities of minerals smuggled, trafficked and potentially connected to armed conflict and human rights abuses, are 'laundered' into the ITSCI system and enter international supply chains. However, we find that the **report has not provided evidence of quantities or direct connections to abuses** and appears to significantly over-state the level of risk. As extensively explained in our response to sections 1, 2 and 3, GW's reliance on 'green validation' of mines and analysis of mineral trade data is incorrect and many of their claims are inadequately substantiated. Allegations are notably presented in non-definitive terminology such as 'appears', 'potentially' and similar.

There are of course many challenges in CAHRA, both those indicated by GW and others, as well as those evident from our own publications. We strive to make continuous improvements in all our systems within the prevailing context and are proud of our efforts. GW themselves state within their conclusion that even if another actor 'could do a better job' regarding traceability that experiences show 'some of the difficulties inherent' in that approach. We consider that **GW has over-focused on traceability to exploit these challenges for reporting headlines** while failing to adequately recognise improved risk identification and mitigation by ITSCI, with engagement with government, industry and civil society stakeholders. The introduction and title to section 4 illustrates how GW expectations seem to deviate from the multistakeholder agreed OECD due diligence approach, and a misinterpretation of Dodd Frank. These frameworks focus on transparency and mitigation of identified risks and not certification or guarantee that no 'tainted' or 'conflict-free' minerals enter supply chains. GW appears to be reverting to the harmful campaign approach of 'name and shame' which drove de-risking and the market towards 'DRC-free' minerals in the early 2010's. Such an approach tends to damage rather than encourage company transparency.

As evidenced by the extensive information which ITSCI makes available to members and the public, we report around 1,300 incidents of OECD Annex II risks each year.¹⁴⁶ **ITSCI incidents include reports of armed groups and human rights abuses and explain when there is a link to minerals. High-risk incident information is sent as an alert** to our members, governments and partner stakeholders.¹⁴⁷ Our reports also indicate relevant improvements or mitigation efforts and the level of success of that mitigation. This information is available for company due diligence. It is disappointing that GW does not recognise and support our transparent approach.

¹⁴⁶ See <https://www.itsci.org/incident-summaries-public/>

¹⁴⁷ See ITSCI information release policy; <https://www.itsci.org/info/>

4.1. Conflict minerals and trafficked minerals from DRC entering international supply chains

South Kivu sources (sections 2.1.1 and 2.1.2)

We have explained in sections 2.1.1 and 2.1.2 why we consider GW **'findings' alleging links to militia-occupied mines, tagging of conflict-linked minerals and children working to be overly simplistic, reliant on questionable information and selective interpretation** of the ICGLR related validation mechanism relied on throughout the report.

It is positive that the sources of information used by GW to 'reveal' that the exporters SOGECOM and Ets Rica purchased from the areas of alleged concern are the annual OECD Step 5 reports of those companies which are transparently published, along with many others, on the ITSCI website.¹⁴⁸ ITSCI has encouraged all member companies to provide public and transparent information and **the number of Step 5 annual reports has increased as a result of our work.**¹⁴⁹ It is unfortunate that GW does not recognise that progress rather than make use of good faith efforts for 'name and shame' reporting. GW includes some general remarks from the two companies acknowledging that they disagree with GW 'findings' but **fails to provide any explanation on why GW consider their own view to be more credible than that of companies** who have performed their own due diligence on the ground on a regular basis.

GW further alludes to the above-named exporters, as well as CDMC and CJX, reportedly buying minerals from one of the alleged sources of concern according to a Ministry of Mines database. GW then states that minerals are sent to traders Star Dragon, Halcyon, Noviva and to smelters Thaisarco or MSC according to DRC export statistics. We presume that the government database and statistics record the names of likely mineral buyers but note that commercial intentions may change and final verification of actual purchases is only possible through tracking to international companies. **A company named as intended buyer may or may not be the final recipient.** This is the reason that ITSCI confirms supply chains only once minerals reach the smelter.

On the basis of the assumed supply chains above, GW further assumes Thaisarco and MSC 'probably both sourced' from a non-ITSCI mine of concern (Lukoma) and that those smelters are in the supply chains of international brands on the basis of their smelter lists; again benefiting from good faith and transparent reporting by companies. Note GW misleadingly states that MSC and Thaisarco are smelters in 3T supply chains omitting to clarify that they are solely tin smelters, not smelters of all 3T. **GW states that companies have a responsibility to assess and mitigate risks in their own supply chains, according to the OECD Due Diligence Guidance and we agree.** ITSCI supports member companies in this regard, including through direct engagements with companies to review and track incident resolution measures, and including reference to ITSCI incidents in their annual reporting.¹⁵⁰

North Kivu sources (section 2.3.3)

We have explained in section 2.3.3 why we consider **GW's allegation regarding minerals fraudulently trafficked from SMB PE4731 to SAKIMA PE76 concessions in the Rubaya area in North Kivu as misguided, exaggerated, selective and inconsistent with other sources.** GW makes no specific mention of ITSCI incident reports regarding risks of fraud in the relevant Rubaya area and does not recognise that these are transparently reported and available to ITSCI members, including those purchasing minerals from the area.

GW further claims that the 'large' amounts of minerals 'trafficked' from SMB's concession are bought by the exporters CDMC and SOGECOM without quantifying or evidencing what is 'large'. The report again assumes links to traders from government statistics but has not identified smelters receiving ITSCI tracked minerals. GW does reference a 2020 UNGoE report regarding exports of minerals by SMB from its own concession to Jiujiang Jinxin, Cheng Du and Kalon Resources. **These minerals are unrelated to ITSCI, being exported after SMB withdrew from ITSCI.**

GW has failed to include further comment on those minerals which it has recognised are connected to violence on the SMB concession. SMB due diligence and traceability was provided by the Better Sourcing Programme (BSP/Resource Consulting Services (RCS)/Better Mining (BM) at the time referred to. While surely being aware that SMB chose to work

¹⁴⁸ SOGECOM and Ets Rica Step 5 Annual Reports through 2021 are available here <https://www.itsci.org/company-annual-reports-public/>

¹⁴⁹ Out of the 37 active members within the DRC, greater than half have submitted an annual due diligence report to ITSCI. This is a significant improvement since 2015, when only 5% of companies had submitted their annual reports.

¹⁵⁰ See <https://www.itsci.org/2017/05/09/itsci-incidents-referenced-in-apples-2016-cmr/>

with that provider from the end of 2018¹⁵¹, **GW apparently chose not to report accurately on other actors involved in alleged failures of due diligence**, again illustrating the potential bias in this aspect of their reporting.

Separately, GW appears to entirely misunderstand trade structures around PE4731 and PE76 stating that minerals from certain mines (Biholo and Kamatale) have 'frequently been sold to SAKIMA for onward sale to CDMC' then continuing to make further assumptions regarding onward markets. It is very well known that SAKIMA, as the holder of the concession rights to PE76, does not undertake its own mining, and infrequently purchases minerals instead mainly benefiting from the collection of royalties under various legal agreements. **SAKIMA is extremely unlikely to sell to CDMC. GW's statement is based on false assumption likely to mislead**, and it undermines credibility of their reporting.

Company responsibility

ITSCI agrees with, and promotes the approach highlighted by GW that companies have responsibility to assess and mitigate risks in their own supply chains as recommended in the OECD due diligence guidance. However, companies at every stage of the supply chain have their own responsibilities and an overfocus on smelters is unhelpful. All relevant communication materials of ITSCI indicate that companies have their own ultimate responsibility including evaluating the relevance of ITSCI incident reporting to the companies own supply chains.

GW alludes to the alignment assessment undertaken by the OECD in 2018 of five industry programmes but does not recognise that ITSCI achieved a unique 100% alignment of standards,¹⁵² which included ensuring that company responsibility was always noted. **GW states that the 2018 assessment found that 'smelters relied exclusively on ITSCI and took its assessments for granted'. This selectively mis-quotes findings from the CFSI (now RMI) assessment** that 'the structure of the CFSP requirements had, perhaps unintentionally, resulted in smelters or refiners effectively 'outsourcing' their due diligence responsibilities. While the alignment assessment did indicate an over reliance of companies on ITSCI, this was not exclusively relating to smelters and did not reflect the written standards of ITSCI.

The alignment assessment suggested that ITSCI as a programme could do more to build capacity of companies which is something we have taken on board. **GW did not inquire about our views or actions taken regarding their concern but chose to report based on 2018 information only.** We have further encouraged member companies not to 'over-rely' on ITSCI, for example providing increased training to exporters on risk management. GW makes an incorrect connection between the alignment assessment and the so called 'flaws of ITSCI's due diligence system' again failing to represent due diligence as a means towards progressive improvement. ITSCI is not involved in any companies' business decisions, compliance or reporting. The OECD guidance emphasises that companies retain full responsibility for their due diligence decisions under all circumstances.

It is noticeable that while GW refers to the alignment assessment, and presumably supports the methodology¹⁵³ of that assessment having been a member of the working group¹⁵⁴ which developed it, GW has selected not to explain either the difference between standards and implementation assessment, nor the fact that **industry programmes can be considered aligned without achieving 100% perfection in all aspects of their work. Due diligence is not certification.** Due diligence is making good faith efforts to make progressive improvements in supply chains. ITSCI considers that reporting of significant numbers of incidents as we do represents positive progress which we would have expected to be recognised by GW in a fairer and more balanced manner.

It is a concern that unintended consequences may result from naming certain companies as examples, discouraging transparent corporate reporting and encouraging de-risking; especially if the approach is disproportionate, selective and not in line with due diligence expectations of continuous improvement and transparent reporting.

GW further states that downstream companies 'rely on' RMI's RMAP Process for smelters and refiners. This may or may not be the case but is a matter for those companies. We note that **ITSCI has no relationship with, or responsibility to, downstream companies who do not engage with, or contribute to our activities.** The reliance of downstream companies on smelter conformance listings which can encourage tick box compliance rather than understanding the

¹⁵¹ See <https://www.reuters.com/article/idUSKBN2460K2>

¹⁵² See <https://www.itsci.org/2018/07/31/itsci-achieves-highest-rating-in-independent-oecd-alignment-study/>

¹⁵³ See <https://mneguidelines.oecd.org/OECD-Due-Diligence-Alignment-Assessment-Methodology.pdf>

¹⁵⁴ From 75 in 2011 to 1,300 by 2021

value of upstream programmes in managing risks has been a topic of concern for upstream companies over many years. For the avoidance of doubt, ITSCI supports the concept of company responsibility and expects that any company electing to use an industry programme should understand how that programme operates and what information it can or cannot provide.

GW states that RMI's RMAP 'relies heavily on ITSCI' and 'accepts both ITSCI and RCS's Better Mining as upstream assurance mechanisms'. GW infers that smelters can 'demonstrate conformity with the RMI standard when sourcing from conflict affected and high risk areas' through use of these and potentially other mechanisms. Questions regarding RMI's decision to recognise programmes and present them as assurance mechanisms is an issue solely for RMI. In fact, **ITSCI does not support the concept of recognition as we believe this drives companies towards reliance on schemes when we consider companies should understand and fill any gaps in schemes themselves**¹⁵⁵. ITSCI does not present itself as a programme which provides assurances or guarantees, ITSCI makes good faith efforts to provide the most balanced and credible information possible from complex high-risk areas. GW has not requested information on ITSCI's view on this matter and has made further incorrect and misleading assumptions in the report.

ITSCI understands that in the 2017 RMAP standard auditors are expected to assess the management systems and processes of smelters, including whether smelters use information from any upstream source for their own risk management. That information may be from industry programmes, or from suppliers or other sources.

In other sections of the report GW makes several unsubstantiated, misleading and damaging allegations regarding the International Tin Association (ITA) and false statements suggesting negative intentions on the part of ITA in establishing ITSCI. ITA's long term demonstrable commitment to the drafting and implementation of OECD due diligence guidance acts in contradiction to these GW allegations. Of relevance here is that **ITA also does not support recognition process for upstream systems in smelter auditing standards, and has worked to explain and promote company responsibility even in situations where information may be sourced from programmes**. This is most evident in the joint ITA-RMI Assessment Criteria for Tin Smelting Companies¹⁵⁶ which explains on page 8 what companies must do to understand any systems they select, and all due diligence steps companies should make when using joint industry programmes, including by completing the own evaluation of the appropriateness of information provided.

It is notable that the varied **selected quotes from ITSCI members which GW includes at the end of the section all disagree with GW's findings and explain how the companies review information, not only from ITSCI but also from their own field visits and other sources** i.e. smelters and other upstream companies do not rely only on ITSCI. GW appears to have dismissed important information from these stakeholders and omitted to request comment from ITSCI.

4.2. Minerals smuggled from DRC to Rwanda entering international supply chains

GW focuses on export of 'apparently smuggled' minerals by companies in Rwanda allegedly connected to one individual between 2011 and 2017 and making assumed links to two smelters. The report further focuses in a second paragraph on exports by an entirely different company to three other named smelters. GW later continues to assume links between specific mineral exports and particular downstream companies which 'may have' sourced minerals which it considers to be of potential concern. Such **supply chain links are assumed only**. As explained in section 4.1, exporters and final buyers listed on documents in the source country may or may not represent the actual ultimate buyer of minerals in question which can only be validated by tracking through the supply chain. For example, GW acknowledges that Yunnan Tin Company (YTC) confirmed to GW that it does not have procurement records for Rwandan exports, and ITSCI also has no records of the alleged supply chain links between Rwanda and YTC in the relevant period, yet GW maintains their allegations without any substantiation aside from the industry 'source'.

As noted elsewhere, it is likely and expected that **mineral trading actors have vested interests and this should be taken into consideration in relation to any sources**, especially historic claims linked to company disputes in Rwanda as relied on by GW. For example, GW states that 'two mining industry sources' approached delegations of international companies, including several downstream companies, to warn that up to 90% of minerals exported from Rwanda were

¹⁵⁵ Private communications between ITSCI and a number of organisations including RMI, 2021-2022.

¹⁵⁶ See <https://www.internationaltin.org/tin-assessment-criteria/>

smuggled. GW has not provided evidence aside from these ‘sources’ which as explained in section 0 seem to lack credibility.

ITSCI understands **fraud is a constant and present risk and detecting and managing fraud is a challenge not only in CAHRA but globally. We continually work to improve systems** to identify fraud and encourage follow up and will continue to do so. Misrepresentation of the origin of mineral is clearly stated as an OECD Annex II risk which can take a period of time to mitigate. Nevertheless, as we have explained in section 3.1 we do not agree with the analysis, logic or findings which GW has presented regarding Rwanda.

GW states there has been ‘ample published evidence that minerals from DRC have been smuggled to Rwanda on a large scale and for a protracted period’ simply referencing its own GW reports from as far back as 2009 and 2010 (prior to ITSCI establishment in Rwanda) as well as UNGoE reports of 2012, 2014, 2015. As we have extensively explained in section 3, the **claim made by GW is not quantified, is incomplete, uses selective sources and simplistic evaluation** of statistics. There is almost no reference to recent information or recognition of progressive improvement to the current date although GW themselves state that ‘the quantity of DRC minerals smuggled to Rwandan has reduced’ (section 3.1.5). This positive statement does not appear in any GW headlines.

As explained in section 4.1, **ITSCI information which identifies incidents and risks in supply chains is available to members upstream and downstream and to the public**. ITSCI encourages member companies to make use of the information for their own due diligence but has no influence on the extent to which other non-members and stakeholders choose to use our information. ITSCI continues to encourage 3T users and downstream companies to engage and to reach out directly to ITSCI for further understanding and dialogue regarding any upstream supply chain matters.

As in other sections, GW has included brief comments selected from responses by companies, including ITSCI members but has not explained why GW consider their views to be more credible than those of relevant companies. **GW has omitted reference to audits on Rwandan companies carried out by parties entirely independent from, and unrelated to ITSCI** in the historic period being discussed although likely to present credible supplementary evidence. WMP reminded GW of audits undertaken by the German organisation BGR which occurred as indicated in 2010 but also at other times. ICGLR audits have also been carried out in Rwanda presumably on several of the companies which GW alleges of wrongdoing yet are not referenced.

5. CONCLUSION

In their conclusion GW repeats some of the more sensational allegations claimed to have been revealed through the core of the ‘Laundromat’ report. GW then goes further to expand on the supposed ‘failures’ of ITSCI, to failures of other parties. This suggests the target of GW reporting is much wider than only ITSCI and explains why GW has seemingly grasped at thin evidence and made use of questionable information sources to create their publication.

Our response to each and every allegation made by GW can be found in the core sections of this document, and summarised elsewhere (Executive Summary). We will not repeat everything in any detail here but confirm that, in general, we refute GW allegations regarding ITSCI’s ‘failure’, to ‘certify’ minerals by ‘ensuring traceability’ and thereby apparently allowing or even facilitating ‘large’ volumes of ‘unvalidated’ minerals to enter supply chains, including ‘linked to armed conflict, human rights abuses and child labour’.

GW is surprised that ITSCI does not agree with their allegations. We do not agree with them since in general, and following full evaluation, we believe they are misinformed and wrong. Of course there are risks in supply chains in every context, but especially in conflict-affected and high risk areas, yet GW presents a hugely exaggerated picture of risk, and fails to acknowledge risk mitigation and other progressive improvement.

We also refute GW allegations and assumptions regarding ITSCI Governance and incentive. GW has over-focused on targeted individuals making weak arguments to imply ITSCI is operated for the benefit of certain companies or ‘insiders’. These assumptions are unsubstantiated, misleading and wrong. The incentive for any industry programme is to drive progress in that industry, reduce risk for participating actors and stakeholders, and enable continued economic opportunity at every level. We believe ITSCI has made significant strides to achieve those aims.

We do not accept GW's extraordinary assertion that ITSCI's actions led to fatal violence. It is based on flawed logic from selective omission of information on long-standing complexity and tensions in Rubaya area, and the views of a single company (SMB) which many local stakeholders, including the Provincial Government of North Kivu¹⁵⁷, would reject.

Based on the inaccurate, and exaggerated allegations made on the basis of thin evidence and 'expert' sources (as above), GW then suggests ITSCI undermines the aims of UN, OECD and ICGLR to establish responsible supply chains. This is also an extraordinary, unfounded and wrongful claim which utterly fails to acknowledge the demonstrable commitment of ITSCI, industry associations, 3T companies, governments and wider stakeholders to OECD due diligence and the progress that has been achieved.

GW itself is the organisation which appears to fail to understand OECD due diligence, falling back on the idea that minerals are 'rubber stamped' or certified. As we previously emphasised to GW, companies are responsible for their due diligence decisions, whether utilising support from an industry programme such as ITSCI or any other. Due diligence expects companies to remain engaged and support mitigation of risks to drive improvement, not to de-risk, disengage and create de-facto embargo through demanding guaranteed 100% clean supply chains.

GW state that industry self-regulation does not work. Introducing that concern in the concluding remarks perhaps reveals more about GW's own incentives and campaign platforms than the reality itself. Industry schemes have an important and significant role to play. GW's lack of balance is again highlighted by omissions in comparison of other scenarios, for example 3T to gold for which no on-the-ground scaled industry programme has been established.

GW further extends its criticism to others who it also claims to have 'failed'. Once again, GW's view of failure seems to be allowing 'tainted minerals' into supply chains. GW is contradicting OECD due diligence by apparently suggesting mitigation and resolution of risks if not allowable. Expecting perfection, sensationalist reporting, and name and shame of company and individuals does not support progressive improvement of supply chains. GW's report is more likely to do harm and destabilise than have any positive impact.

GW then surprisingly suggests other systems may fare no better than ITSCI, falling back on expectations on government and stakeholders to somehow do a better job, and again failing to recognise those party's full engagement and achievements. GW appears to suggest sourcing from high risk areas is not possible. GW also proposes costs of upstream due diligence should be shared across the supply chain – failing to realise that ITSCI agrees with, and continually advocates for, action to address that subject.

Entirely randomly, GW finalises with 'attention must also be paid to the question of what should happen to material excluded from the supply chain of responsibly produced minerals – a question which the current system unfortunately hardly ever addresses.' GW failed to enquire on that question during its 'research', the answer is that mineral potentially associated with serious abuses such as armed groups is held by companies until incidents are mitigated and resolved.

6. RECOMMENDATIONS

1. International Tin Association and Tantalum- Niobium International Study Center:

- a) *Reform the governance structure of the ITSCI system to avoid conflicts of interest between its members and the traceability and due diligence functions of the system.*
 - b) *Publish detailed mine-level production data for minerals tagged by ITSCI along with other information that ITSCI has promised to make public.*
 - c) *Cooperate with in independent investigations into the structural and systematic failing of the ITSCI scheme.*
- GW appears to misunderstand and therefore misrepresents how ITSCI is governed. We emphasise that ITA or T.I.C. members have no access to ITSCI information except as ITSCI members or when made public and that **ITSCI members, as commercial companies, are neither eligible for governance positions, nor**

¹⁵⁷Office of the Provincial Governor, Province of North Kivu, Response of The Provincial Government Of North Kivu To The Report Of The Ngo Global Witness No. 01/624/CAB/GP-NK/2022, 01/06/22

play any role in programme decisions.¹⁵⁸ Governance is undertaken by experts independent from any commercial interests with the incentive and objective to support progressive improvement in 3T supply chains. ITSCI operations in the field are managed by an independent NGO. GW has not demonstrated conflict of interest.

- By recommending publication of mine-level production data, GW appears to set aside the OECD due diligence guidance which does not recommend such and explicitly notes¹⁵⁹ that **publications should take due regard of information which is business confidential and/or can impact competition**. While GW may not fully support this approach it has been agreed in the multi stakeholder forum¹⁶⁰ and reflects other antitrust and competition laws.
- ITSCI takes all allegations seriously and has followed-up GW concerns in detail. However, as demonstrated in other sections of our response¹⁶¹ we have found the allegations to be based on selective and simplistic sources and analysis which have not shown structural or systematic failings. **We regularly provide extensive input to investigations by the UN Group of Experts**, for example, five extensive responses to enquiries from 2017 to date. We believe that ITSCI is one of the most extensively studied and scrutinised supply chain programmes although studies frequently misrepresent our work to support company due diligence. ITSCI will remain focused on facilitating resolution of practical challenges and risks on the ground.

2. Government of the Democratic Republic of Congo:

- Conduct a thorough, independent assessment of the implementation of the ITSCI scheme and depending on the findings of this, consider revoking the scheme's permission to operate and consider the options for replacing ITSCI with a scheme run by an independent institution.*
- Ensure that government personnel are paid adequately and on time.*
- Penalise personnel who fraudulently introduce minerals into traceability schemes.*
- Improve links between, on the one hand, due diligence and traceability processes and, on the other hand, formalisation of artisanal mines and local sustainable economic development, in order to create incentives for upstream stakeholders to support responsible supply chains.*
- Strengthen efforts to disarm, demobilise and reintegrate members of non-state armed groups.*
- Penalise members of the army, particularly high-ranking officers, who illicitly profit from minerals.*
- Enforce regulation of companies' due diligence reporting.*

- The government of the DRC has existing means of evaluating traceability providers. In a recent evaluation of due diligence projects carried out by DRC authorities, it was found that **ITSCI was the only system which was abiding by the government's expectations and requirements**. GW suggests 'replacement' of ITSCI but has not evaluated the potential strengths or weaknesses of other options. Throughout the report GW seeks to rely on mine validation processes associated with the ICGLR Regional Certification Mechanism despite known limitations¹⁶² and, elsewhere, conversely questioning reliance on schemes for due diligence.
- We agree that increased staffing numbers and regular payment of government personnel could reduce challenges on the ground for ITSCI. We believe payment of local government agents has improved since the implementation of ITSCI due to **improved statistics and collection of formal tax which GW acknowledges as a positive effect of ITSCI** in the main content of its report.¹⁶³
- ITSCI works with government hierarchy to encourage sanctions and accountability for rogue government personnel engaged in negative behaviour. This mitigation recommendations and outcomes are reported in ITSCI incident reports and we are pleased to **benefit from good cooperation from senior authorities in the**

¹⁵⁸ As set out in all relevant programme agreements and documentation.

¹⁵⁹ OECD Step 5 footnotes 34, 35, 36

¹⁶⁰ Session on confidentiality and disclosure OECD Forum November 2012.

¹⁶¹ ITSCI, Opportunity to comment response, 15/12/21, point 101, 102, 103.

¹⁶² Despite some progress in implementation, notably in the Democratic Republic of Congo and Rwanda, and more recently in Burundi and Tanzania, low implementation capacity has meant the RCM remains only partially executed and weakly enforced.' See <https://www.levinsources.com/what-we-do/case-studies/revision-rcm-icglr>

¹⁶³ GW recognises the positive role of ITSCI in establishing greater state presence, and in turn positive effects from higher taxation; GW section 2.4.4.

large majority of cases. We would welcome any additional information on individual cases¹⁶⁴ and specific proposals from GW on how accountability for fraudulent behaviour can be further improved.

- GW's recommendation on ASM formalisation seems to relate to their claim that 'miners appear to get little in return for the taxes they pay'. We are **surprised that GW may be questioning whether increased tax revenue from formalisation is positive.** ITSCI has achieved improved formalisation in 3T supply chains at every tier.
- We believe that there have been **multiple efforts**^{165, 166, 167, 168, 169} **supported by many donors to disarm and reintegrate non state armed actors.** Increased success of these efforts would indeed reduce challenges on the ground for ITSCI and we would welcome coordinated efforts to achieved progress in practice.
- As noted above, ITSCI **works with local, provincial, and national level government agencies to encourage accountability** for illegal and fraudulent activity. ITSCI incidents transparently record positive actions of government in accountability and application of sanctions and conversely any lack of accountability actions.
- Although not acknowledged by GW report, **ITSCI already encourages company disclosure through annual Step 5 reporting** and currently has ~450 reports available through our website¹⁷⁰. While we would welcome any further efforts to support reporting by government enforcement, this seems unrelated to the focus of GW's reporting.

3. Government of Rwanda:

- Enforce measures to intercept smuggled minerals entering the country and to repatriate them to the country of origin.*
 - Dismantle the smuggling networks.*
 - Publish key data for each mine, including production data, number of miners, location and the holder of the mining title.*
 - Facilitate the wide use of the 'analytical fingerprint' technology which allows the origin of 3T minerals to be determined.*
- ITSCI **welcomes any enhanced measures to control any illegal or fraudulent activity** within Rwanda or any other country within our operating area.
 - ITSCI **welcomes dismantling of smuggling networks** and we report relevant information on, for example, illegal processors to the Rwandan government for follow up under their mandate. We also report potential plausibility issues within supply chains in Rwanda which are then addressed by individual or joint visits with the government and also reported¹⁷¹ through our incident system.
 - While we welcome any tool to improve supply chain controls, we understand that fingerprinting may have some technical limitations, potentially most useful for occasional spot checks rather than continual controls of large volumes of minerals of mineral batches which have been mixed to a significant extent. The German agency BGR¹⁷² has **expended extensive efforts on fingerprinting over at least 10 years although it seems to not yet be in regular use.** ITSCI previously requested fingerprinting analysis from BGR in relation to a certain incident but unfortunately support was not available.

4. 3T exporters in the Democratic Republic of Congo and Rwanda:

- Conduct supply chain due diligence in line with the OECD Due Diligence Guidance, including identifying and mitigating risks, and reporting in detail, as legally required, on the risks encountered and the steps*

¹⁶⁴ ITSCI whistleblowing procedure and contacts available online <https://www.itsci.org/contact/>

¹⁶⁵ See <http://www.mdgfund.org/node/586>

¹⁶⁶ See <https://www.sdgifund.org/case-study/womens-participation-stabilization-and-conflict-prevention-north-kivu>

¹⁶⁷ See <https://www.accord.org.za/conflict-trends/disarmament-demobilisation-reintegration-democratic-republic-congo/>

¹⁶⁸ See <https://peacekeeping.un.org/en/drc-monusco-supports-new-demobilization-program-ex-combatants>

¹⁶⁹ See <https://monusco.unmissions.org/en/capacity-building-stabilization-and-reconstruction-plan-starec-eastern-drc>

¹⁷⁰ See <https://www.itsci.org/company-annual-reports-public>, 450 in total

¹⁷¹ On average 273 incidents relating to chain of custody in Rwanda per year over last three calendar years (2019-2021)

¹⁷² See https://www.bgr.bund.de/EN/Themen/Min_rohstoffe/CTC/Analytical-Fingerprint/analytical_fingerprint_node_en.htm

taken to mitigate these risks on an annual basis.

b) *Make full use of the diverse sources of secondary information available and complement these with information generated by their own on-the-ground spot checks on their supply chains.*

- GW's sweeping recommendation implies that **exporters do not perform due diligence is not supported by evidence, ignores company responses provided to GW and is unbalanced**. While more can always be done, OECD due diligence is expected to be achieved through progressive improvement of supply chain understanding and mitigation is expected over time with engagement of stakeholders. ITSCI information is readily available to enable evaluation of the performance of exporters of 3T from DRC or Rwanda.
- Exporters participating as **ITSCI members are always encouraged to make use of all information that is available to make their own evaluation of risks and determination of purchase decisions** as is the expectation of the OECD due diligence guidance. Exporters are known to produce additional site visit reports and can share these with ITSCI. GW has not fully researched and has misrepresented the role that ITSCI plays with regard to encouraging company due diligence.

5. International Conference of the Great Lakes Region:

a) *Critically assess the implementation of the Regional Certification Mechanism and act upon abuses.*

- We encourage GW and all stakeholders to **compare the implementation achievements of ITSCI with like-for-like achievements in the implementation of other systems** and schemes. Unfortunately, GW has not discussed other mechanisms in the core of the report in a balanced manner.

6. Responsible Minerals Initiative:

a) *Reduce reliance on ITSCI and other upstream assurance mechanisms by requiring smelters to conduct their own due diligence beyond reviewing data from upstream assurance mechanisms.*

b) *Clearly and publicly, in a prominent place on its website, state companies' responsibility for due diligence and the limitations of industry schemes.*

c) *Make audit guidance documents publicly available.*

- **ITSCI retains similar concerns to GW that RMI communications on 'upstream assurance mechanisms' encourage company reliance** and in recent conversations we have sought to understand what 'assurance' RMI anticipates upstream systems provide.¹⁷³ ITSCI is not and does not claim to be an assurance or certification system and does not guarantee that there are no links to armed groups or human rights abuses in mineral supply chains. We work according to OECD guidance to help companies avoid such links by identifying, reporting, and facilitating the mitigation of such risks.
- **ITSCI welcomes clearer statements from all industry schemes regarding what they do and do not provide**. Clear statement of purpose from ITSCI can be found on our website¹⁷⁴. We welcome further discussion regarding what is 'conformance' to due diligence which per the OECD guidance is a flexible and progressive system of improvements as we suggested following the 2018 alignment assessment.¹⁷⁵
- **ITSCI supports publication of audit summary reports which transparently demonstrate sufficient level of detail on auditing implementation processes** such as the period of auditing or any timescales for recommended improvement and similar. ITSCI audit reports are available on our website as an example.¹⁷⁶

¹⁷³ ITSCI-RMI discussions 27 July 2021, 27 August 2021, 3 September 2021, 21 December 2021, 2 January 2022, 23 March 2022

¹⁷⁴ See <https://www.itsci.org/about-itsci/>

¹⁷⁵ 'This progressive approach which is adopted by ITSCI adds further complexity to the assessment since not all programme members are at the same stage of 'progress' at any one time. The evaluation uses a generalisation of the performance of member companies and we believe that the selection of shadow audits, as well as how 'progress' is defined, and recognised, is critical to achieving a fair and meaningful assessment.' See <https://mneguidelines.oecd.org/Alignment-assessment-of-industry-programmes-with-the-OECD-minerals-guidance.pdf>

¹⁷⁶ See <https://www.itsci.org/info/>

7. US government:
- a) *Enforce section 1502 of the Dodd–Frank Act with respect to companies sourcing minerals from the African Great Lakes region.*
 - b) *Closely review Conflict Minerals Reports filed by companies and impose penalties on companies that file incomplete, false or misleading reports.*
- While ITSCI supports enforcement of all and any regulation we find this recommendation by GW to be unclear and somewhat unrelated to the main content of the report. **Dodd Frank requires public reporting, including of identified risks in supply chains, which is information that ITSCI reports.**
 - ITSCI **welcomes engagement by downstream companies** seeking to understand the context, challenges and issues in upstream supply chains. Enhanced engagement such as through downstream company membership of ITSCI could potentially improve wider Conflict Mineral Reporting; member companies receive timely and extensive information including alerts regarding serious risks in supply chains.
8. European Commission:
- a) *Fully scrutinise and hold accountable audited companies and companies that are members of recognised industry schemes, to ensure that they meet the full requirements of the Minerals Regulation and do not rely solely on the membership of a scheme or an audit to meet the relevant obligations.*
 - b) *Review the implementation of the Minerals Regulation, close loopholes and enforce it with penalties.*
- ITSCI supports enforcement of all and any regulation although notes that there are currently no European Commission recognised industry schemes. In recent conversations **ITSCI has put forward the same view as GW presents i.e. that schemes should not replace the responsibility of companies** and that companies must themselves fully understand the purpose, activities and role of any scheme which they elect to make use of.
 - ITSCI welcomes implementation of the EU Mineral Regulation and retains concerns regarding disconnects between due diligence obligations of upstream and downstream. We **would welcome public guidance on how companies are implementing the regulation and how member states are applying enforcement measures.**
9. EU Member States:
- a) *Investigate 3T importers thoroughly and proactively, without exempting them from scrutiny because they are part of an industry scheme or source from white- listed smelters or refiners.*
 - b) *Disclose the names of importers.*
- As above in response to 8b ITSCI **welcomes further clarity on implementation, expectations, government responsibility for, and enforcement of the EU Mineral Regulation.**
 - ITSCI **does not support publication of importer names** which may reveal commercial confidential or competitive information and supplier relationships. According to the OECD due diligence guidance due regard must be taken regarding publication of such information.
10. European Union:
- a) *Ensure that the Corporate Sustainable Due Diligence Directive (CSDDD) becomes an effective mechanism for holding corporates to account for their mineral sourcing, and is not undermined by reliance on ineffective third-party verification systems, weak transparency and disclosure requirements, and the absence of meaningful stakeholder engagement.*
- ITSCI would be happy to **support effective mechanisms which would encourage downstream companies to understand, engage with and value upstream** supply chains. However, we again note that ITSCI does not provide assurance or ‘verification’, and reject any allegation of weak transparency which is not supported by the very extensive information disclosed to all stakeholders via the ITSCI website.
11. Countries without due diligence legislation for minerals from conflict-affected and high- risk areas:
- a) *Put in place legislation mandating responsible supply chain due diligence in line with OECD Due Diligence Guidance requirements and sanction companies not adhering to this.*

- ITSCI **supports this recommendation** although noting that it has not been discussed or explained within the bulk of the GW report. Additional regulation in mineral producing areas should be well planned with large-scale support and resourcing to avoid unintended consequences as seen with Dodd Frank.

12. Organisation for Economic Co-operation and Development:

a) *Conduct a new alignment assessment of ITSCI and other industry schemes, evaluating whether the scheme's implementation is aligned with the OECD standard, based on a detailed on-the-ground assessment.*

- ITSCI has already discussed and agreed the best way forward for **a second alignment assessment and is going forward with an appropriate process**. We highlight that in the 2018 alignment assessment ITSCI achieved the highest implementation score, and second highest governance score of all schemes evaluated. However, due diligence is about progress, and perfection is not required for 'full' alignment. To expect 100% perfection in the challenging contexts of CAHRA is unrealistic and promotion of such goals would lead to immediate de-facto embargo. It remains unclear what GW aims to achieve through its reporting. ITSCI has requested¹⁷⁷ and supported increased transparency in publication of alignment assessor qualifications, conflicts of interest, and results from the alignment assessment tool.

13. Downstream companies:

a) *Demand high-quality reports from suppliers, engage with and follow up on the risks identified and report on these in their own annual due diligence reports.*

b) *Conduct their own due diligence and avoid as far as possible reliance on assurances from industry schemes.*

- ITSCI **supports engagement of downstream companies with upstream** either via participation in upstream schemes or by any other meaningful approach. ITSCI is happy to provide extensive information to participating members.
- ITSCI **agrees with GW that no company should rely solely on an industry scheme**. We do not use the word assurance and do not support its use by others when referring to any scheme as due diligence should always remain the responsibility of companies. We believe and promote¹⁷⁸ the need for any company to understand the scope purpose and results of any industry scheme or private sector service provider which they elect to use in order to understand gaps and fill potential gaps through their own company actions.

¹⁷⁷ ITA-OECD discussions in recent years.

¹⁷⁸ ITA-OECD discussions in recent years.