Recommendations on due diligence for buyers and companies trading in minerals from eastern Democratic Republic of Congo and for their home governments

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The economic dimension of the brutal conflict which has been tearing eastern Congo apart for the last ten years has not received enough attention. Buyers and companies have continued to buy and trade in minerals benefiting the warring parties, with no regard for the impact of their trade on the violence. A number of recent cases, including a statement by the British government that UK-based mineral trading company Afrimex had breached the OECD Guidelines for Multinational Enterprises, make it clear that companies sourcing minerals from eastern Congo should be exercising enhanced due diligence. They should be ensuring that any commodities that they buy neither finance armed groups or military units, nor involve or contribute to human rights abuses at any point along the supply chain.

The provinces of North and South Kivu, in eastern Democratic Republic of Congo (DRC), are rich in minerals, in particular cassiterite (tin ore), gold, coltan and wolframite. The desire to gain or maintain control of these mines has been a central motivating factor for all the main warring parties since 1998. Ten years on, rebel groups as well as units and commanders of the Congolese national army continue to enrich themselves directly from the mineral trade and are able to access international markets. Some of these groups dig for minerals themselves; others force the civilian population to work for them; others impose 'taxes' which they extort in the form of minerals or cash, at the mines, along the roads or at border crossings. The profits they make enable them to keep fighting, exacting an unbearable toll on the civilian population.[1]

For as long as there are buyers willing to trade, directly or indirectly, with groups responsible for grave human rights abuses, there is no incentive for these groups to lay down their arms. On the contrary, the conflict becomes a lucrative business.

Buyers and companies have so far failed to take responsibility for breaking the link between the mineral trade and the continuing violence in eastern Congo. Some have claimed that it is unrealistic, or too difficult, to find out exactly where the minerals are coming from. Others have not even tried to find out or asked any questions about the

[1] For further details, see Global Witness press release, "Control of mines by warring parties threatens peace efforts in eastern Congo", 10 September 2008.

origin of their supplies. By turning a blind eye to the impact of their business on peace and security, these companies are helping prolong the conflict and may become complicit in the grave human rights abuses committed by the warring factions.

As stated by the Special Representative of the UN Secretary General on human rights and transnational corporations and other business enterprises, the corporate responsibility to respect human rights is a "baseline expectation… 'doing no harm' is not merely a passive responsibility for firms but may entail positive steps."[2]

Global Witness is addressing the following recommendations to buyers, traders and other companies who buy or handle minerals originating from North and South Kivu and to the governments of these companies' home states.

By implementing these measures, economic actors and their governments would help cut off the financial bases of the armed groups and military units inflicting violence and suffering on the population of eastern Congo and make a significant contribution to breaking the link between the mineral trade and the armed conflict. Without sources of funding derived from the mineral trade, the capacity of many of the armed groups terrorising the population of eastern Congo would be considerably weakened.

Recommendations to Congolese and foreign buyers and companies

These steps should be implemented at every stage of the supply chain, including by:

- individuals who buy from the mines at the local level in North and South Kivu
- *négociants* and other middlemen who buy from these individuals
- *comptoirs* and other traders and exporters in towns such as Goma and Bukavu
- importers in neighbouring and other countries
- companies treating and processing the minerals
- foreign and multinational manufacturing and retail companies

1. Exercise stringent due diligence regarding their mineral supplies: find out exactly where the minerals were produced (not only the broad geographical area, but the precise location and mine), by whom they were produced and under what conditions.[3]

2. Refuse to buy minerals where the above information is not available, or where there are indications that the minerals are likely to have passed through the hands of armed groups or army units or benefited them in other ways.

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[2] "Protect, Respect and Remedy: a Framework for Business and Human Rights", Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, 7 April 2008.

[3] For further information on due diligence steps, and the consequences of not applying them, see Global Witness's complaint against UK company Afrimex for breaches of the OECD Guidelines for Multinational Enterprises and the UK government's final statement on the complaint, both available at http://www.globalwitness.org/pages/en/drc_conflict.html Basic due diligence steps for individuals and companies buying minerals from eastern DRC are also outlined in paragraph 85 of the February 2008 report of the UN Group of Experts on the DRC (S/2008/43).

3. Be able to demonstrate, with credible written evidence, the exact origin of their mineral supplies, the routes they have taken and the identity of intermediaries / third parties who have handled them.

4. Do not accept oral or vague assurances from suppliers as to the origin of minerals and whose territory they passed through. Carry out spot checks to verify the sources and the accuracy of suppliers' assurances.

5. Federations and associations of traders and *comptoirs* and other trade bodies should adopt an explicit policy not to buy or handle minerals which are likely to benefit any of the warring parties in eastern DRC. They should require their members to carry out the above due diligence steps systematically, for every purchase and transaction, and to demonstrate precisely where all their supplies come from. Trade federations and associations should set up mechanisms for monitoring and checking whether their members are complying with these requirements.

Recommendations to home governments

Governments should hold to account companies registered in their country who knowingly trade in minerals benefiting the warring parties in eastern DRC and/or who fail to carry out careful due diligence as to the origin of their supplies. In particular, they should:

6. Provide clear guidance to companies purchasing or trading in minerals from eastern DRC or intending to do so in the future. Home governments' ministries of foreign affairs and trade, as well as their embassies in the DRC, should publicly warn these companies that they should proceed with caution, that the government is monitoring the implications of their activities and that they could face a number of liability risks if they are found to be assisting or facilitating human rights abuses.[4]

7. Insist that companies carry out the highest level of due diligence regarding their entire chain of supply, as outlined above, in view of the widespread and grave human rights abuses carried out by armed groups and military units controlling parts of the mineral trade in eastern DRC.

8. Ensure that these steps are taken not only in relation to imports from DRC, but also from neighbouring countries such as Rwanda, Burundi, Uganda and Tanzania: minerals originating from the DRC are sometimes imported from these countries without being clearly identified as Congolese minerals.

9. Actively promote international standards such as the OECD Guidelines for Multinational Enterprises. Effectively monitor companies' adherence to these standards. Reprimand those companies found to be in violation of

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

these standards and formulate strong recommendations for remedying their business practices.[5]

10. Where there are indications that companies may be trading in ways which are exacerbating the conflict in eastern DRC or benefiting groups or individuals responsible for serious human rights abuses, governments should carry out immediate detailed investigations. If credible information confirms this link, governments should officially advise the companies to cease trading and purchasing from that specific area until the companies can demonstrate that they are neither contributing to nor exacerbating the conflict. In cases where complicity can be demonstrated, governments should initiate prosecutions or sanction companies and individuals.

11. Investigate and, where appropriate, prosecute companies or individuals for the crime of pillage within the context of the armed conflict in eastern DRC.

12. Governments should ensure that they are not in any way financially supporting or investing in companies known to be exacerbating the conflict or whose trading activities benefit groups or individuals responsible for serious human rights abuses in eastern DRC.

In view of the gravity of the continuing conflict in eastern DRC, companies cannot risk engaging in any trading activities which may be supporting the parties responsible for the violence. If they cannot be sure that minerals from eastern DRC or from neighbouring countries are not benefiting these warring parties at any point along the supply chain, buyers and companies should refuse to buy them.

[5] The British government's final statement on Global Witness's complaint against Afrimex (see footnote 2) provides a good example of home government action in response to breaches of the OECD Guidelines for Multinational Enterprises.