



# **Mineral Supply Chain Due Diligence Audits and Risk Assessments in the Great Lakes Region**

## *Analysis Report*

**Final Report for BGR/ ICGLR**

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*For BGR/ ICGLR*





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## **Authorship**

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## **About This Report**

This report was produced for the ICGLR Audit Committee with support by BGR in the framework of the German support program to the ICGLR.

## **About The BGR Module of the German Support Program to the ICGLR**

BGR and GIZ were jointly commissioned by BMZ to implement a support program to the ICGLR, focusing on the ICGLR secretariat and associated regional bodies as well as national stakeholders in several ICGLR member states (Rwanda, Burundi, Tanzania). The BGR module runs from 2011-2015 and includes two components, (1) introduction of the Analytical Fingerprint (AFP) method in the Great Lakes Region, including full skills and technology transfer, and (2) supporting the implementation of the Regional Certification Mechanism and the formalization of artisanal mining in Rwanda and Burundi.

## **About The ICGLR Audit Committee**

The ICGLR Audit Committee represents an independent regional body with tripartite representation of in-region and international civil society, industry, and government. It fulfills two key functions as defined in the manual of the Regional Certification Mechanism (RCM) namely (1) coordinating and monitoring the ICGLR third party audit system to be implemented in ICGLR member states and (2) monitoring the existing RCM standards and procedures and, as systems evolve, proposing adjustments, if necessary. The ICGLR Audit Committee works independently from the ICGLR secretariat and reports to the Steering Committee of the Regional Initiative on Natural Resources (made up of representatives from all member states). The complementary roles and responsibilities of the ICGLR Audit Committee, the ICGLR secretariat, and the Independent Mineral Chain Auditor serve to verify and provide assurance on RCM implementation elements under the responsibility of individual ICGLR member states (that is, mine site inspections, mineral traceability/chain of custody management, mineral export certification).

## Abbreviations and Acronyms

3T	Tin, tantalum and tungsten
3TG	Tin, tantalum, tungsten and gold
AFP	Analytical Fingerprint
ARM	Alliance for Responsible Mining
ASM	Artisanal and Small-scale Mining
ASMO	Artisanal and Small-scale Mining Operator
BGR	Bundesanstalt für Geowissenschaften und Rohstoffe ( <i>German Federal Institute for Geosciences and Natural Resources</i> )
B2B	Business-to-business
B2C	Business-to-consumer
BMZ	Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung ( <i>German Federal Ministry for Economic Cooperation and Development</i> )
CEEC	Centre d'expertise, d'évaluation et de certification (DRC)
CFGS	Conflict-free Gold Standard (WGC)
CFS	Conflict-Free Smelter (Assessment Programme)
CFSI	Conflict-Free Smelter Initiative
CFSP	Conflict-Free Smelter Programme
CMI	Conflict Mineral Initiative
CoC	Chain of Custody
CoP	Code of Practice
CSR	Corporate Social Responsibility
CTC	Certified Trading Chains
DFA	Dodd-Frank Wall Street and Consumer Protection Act (Dodd-Frank Act)
DGA	Dubai Gold Advisory Group
DMCC	Dubai Multi Commodities Centre
DRC	Democratic Republic of the Congo
ELL	Estelle Levin Ltd
EICC	Electronic Industry Citizenship Coalition
FLO-Cert	Inspection and certification body for labelled Fairtrade products
FM	Fairmined
FSC	Forest Stewardship Council
FT	Fairtrade
GeSI	Global e-Sustainability Initiative
GDS	Good Delivery Standard
GIZ	German International Cooperation
GLR	Great Lakes Region
GMD	Geology and Mines Department (Rwanda)
IAASB	International Auditing Standards Board
ICGLR	International Conference on the Great Lakes Region
ICMM	International Council on Mining and Metals
ILO	International Labour Organisation
IMCA	Independent Mineral Chain Auditor
ISAE	International Standard on Assurance Engagement
ISO	International Organisation for Standardisation
iTSCi	International Tin Supply Chain Initiative
KYC	Know Your Customer
LBMA	London Bullion Market Association

LSM	Large-scale mining
MONUSCO	United Nations Organisation Stabilisation Mission in the DRC
MoU	Memorandum of Understanding
NGO	Non-governmental Organisation
OECD	Organisation for Economic Co-operation and Development
OECD Guidance	OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas
OEM	Original Equipment Manufacturer
RCM	Regional Certification Mechanism (ICGLR)
RCOI	Reasonable Country of Origin Enquiry
RGG	Responsible Gold Guidance
RINR	Regional Initiative against the Illegal Exploitation of Natural Resources
RJC	Responsible Jewellery Council
RW	Rwanda
SAESSCAM	Service d'Assistance et d'Encadrement du Small Scale Mining (DRC)
SEC	Securities and Exchange Commission (US)
T.I.C.	Tantalum-Niobium International Study Centre
UAE	United Arab Emirates
UN	United Nations
UN GoE	United Nations (Security Council's) Groups of Experts of the Democratic Republic of the Congo
UNSC	United Nations Security Council
WGC	World Gold Council

## Glossary

<b>Phrase</b>	<b>Definition</b>
<b>1<sup>st</sup> party audit</b>	The audit is conducted by <i>the person or organisation that is undergoing evaluation, e.g. internal audits, peer reviews. (ISEAL 2007, Module 1: 24)</i>
<b>2<sup>nd</sup> party audit</b>	The audit is conducted by a person or body that is related to, or has an interest in the person or organisation being evaluated, such as a client or purchaser of products from the organisation. e.g. Buyer, Trade Association, Paid Consultant (ISEAL 2007, Module 1: 24)
<b>3<sup>rd</sup> party audit</b>	The audit is conducted by a person or body that is independent of the person or organisation being evaluated, and of user interests in that person or organisation. (ISEAL 2007, Module 1: 24)  It is generally understood to be acceptable for the audited party to pay the independent, accredited auditor, as per normal professional consulting practice, provided that the fee is not related in any way to the outcome of the audit itself.
<b>Accreditation</b>	Certification of an individual's or organization's competence, authority or credibility in a specified subject or areas of expertise, and of the integrity of an agency, firm, group, or person, awarded by a duly recognised and respected accrediting organisation. (www.businessdictionary.com)
<b>Assurance</b>	Assurance is the process by which conformance with a normative document is achieved.
<b>Audit</b>	A process for verifying that the requirements of a normative document (e.g. law, policy, standard) have been met. "A systematic, documented process for obtaining records, statements of fact or other relevant information and assessing them objectively to determine the extent to which specified requirements are fulfilled. (adapted from ISO 17000)" (ISEAL Assurance Code, p. 5)
<b>Certification</b>	A procedure involving assessment, monitoring and written assurance that "a business, product, process, service, supply chain or management system conforms to specific requirements" (ISEAL Impacts Code, p.5) Certification can be undertaken by means of a 1 <sup>st</sup> , 2 <sup>nd</sup> or 3 <sup>rd</sup> party audit. In the case of the RCM certification is part of standard export documentation and a validation that a specific mineral shipment has been mined, traded, and handled in accordance with the requirements of the ICGLR's Regional Certification Mechanism.
<b>Conflict minerals</b>	This term is used differently in different discourses. In general terms, conflict minerals may be minerals whose production, trade and/or transport provide(s) benefit, typically financial, to illegal armed groups, they may be minerals with attached conflict risks such as human rights abuses or corruption, or they may mean simply a given mineral (as per the Dodd-Frank Act or the ICGLR's Regional Certification Mechanism).  Under the Dodd-Frank Act, conflict minerals are defined as: (A) <i>columbite-tantalite (coltan), cassiterite, gold, wolframite, or their derivatives; or (B) any other mineral or its derivatives determined by the Secretary of State to be financing conflict in the Democratic Republic of the Congo or an adjoining country.</i> (Dodd Frank Act, Section 1502 (e) (4)) <i>Under this definition, any coltan, cassiterite, wolframite or gold from anywhere in the world must be subject to due diligence in accordance with the US Securities and Exchange Commission Regulation associated with the DFA, to determine if it is from the DRC or adjoining countries as a basis for determining if materials are 'DRC Conflict-Free' or 'Not DRC Conflict-Free'.</i>  By contrast, the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (OECD-UN Guidance) does not

	<p>define ‘conflict minerals’ but rather ties the definition to metals from specific geographies, namely: “Conflict-affected and high-risk areas are identified by the presence of armed conflict, widespread violence or other risks of harm to people. Armed conflict may take a variety of forms, such as a conflict of international or non-international character, which may involve two or more states, or may consist of wars of liberation, or insurgencies, civil wars, etc.</p> <p>“High-risk areas may include areas of political instability or repression, institutional weakness, insecurity, collapse of civil infrastructure and widespread violence. Such areas are often characterised by widespread human rights abuses and violations of national or international law.” (OECD DDG, p. 13)</p> <p>The OECD-UN Guidance has supplements for the 3Ts (tin, tantalum and tungsten) and Gold; other mineral supplements may be developed in time.</p> <p>The RCM handbook equates its ‘designated minerals’ with the ‘conflict minerals’ as per the US Dodd-Frank Act and the minerals targeted by the OECD-UN Guidance. See ‘Designated minerals’.</p>
<b>Designated minerals</b>	<p><i>Appendix 1 of the RCM provides a List of Designated Minerals. These are:</i></p> <ol style="list-style-type: none"> <li>1. <i>Gold: Metals (including derivative metals), minerals, ores and mineral concentrates that contain gold (Au)</i></li> <li>2. <i>Cassiterite: Metals (including derivative metals), minerals, ores and mineral concentrates that contain tin (Sn) (cassiterite and other tin minerals)</i></li> <li>3. <i>Wolframite: Metals (including derivative metals), minerals, ores and mineral concentrates that contain tungsten (W) (wolframite and other tungsten minerals)</i></li> <li>4. <i>Coltan: Metals (including derivative metals), minerals, ores and mineral concentrates that contain niobium (Nb) or tantalum (Ta) (coltan, columbite, tantalite, niobite, pyrochlorite and other Nb-Ta minerals)</i></li> </ol> <p><i>“Explanatory Note: The current list of Designated Minerals consists of gold, cassiterite, wolframite, and coltan. These are the same four minerals designated as ‘Conflict Minerals’ under the US Dodd-Frank act.” They are not strictly the same as those targeted in the OECD-UN Guidance, which, if strict wording was applied, targets the metals contained in the minerals (tin, tantalum, tungsten, and gold) rather than the parental minerals (cassiterite, coltan, wolframite, and gold). However, this is mainly a semantic question; the commodities (minerals) the OECD-UN Guidance and supplements actually refer to in practice corresponds to the Dodd-Frank definition.</i></p>
<b>Downstream</b>	<p><i>The downstream segment of the supply chain encompasses the refiner to the retailer and all tiers in-between. In the case of metals, this is typically component manufacturer (e.g. jewellery wire), product manufacturer (e.g. OEM, bench jeweller), retailer (e.g. jewellery retailer, electronics retailer)</i></p>
<b>Due diligence</b>	<p><i>“Due diligence is an on-going, proactive and reactive process through which companies can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts as an integral part of business decision-making and risk management systems.” (OECD-UN Guidance, Gold Supplement, p. 6-7)</i></p>
<b>Issuer</b>	<p><i>An issuer is a legal entity that develops, registers and sells securities for the purpose of financing its operations. Under the SEC Conflict Minerals Rule and Dodd-Frank Act US issuers are obliged to submit an annual ‘conflict minerals’ report stating whether or not there is mineral in their products that is DRC Conflict-Free, Not DRC Conflict-Free or Undeterminable.</i></p>
<b>Limited assurance</b>	<p><i>Limited assurance results from any audit where insufficient evidence has been collected to conclude that the outcome of the audit would not be materially affected by other evidence that may exist (but which has not been collected and reviewed). In this context, conclusions drawn from the audit are derived solely from</i></p>



	<p><i>the information reviewed.</i></p> <p><i>This means that the assurer is able to attest that s/he did not find anything in obvious non-compliance with a standard. (Negative statement is possible; positive statement is not possible)</i></p> <p><i>“The level of assurance engagement risk is higher in a limited assurance engagement than in a reasonable assurance engagement because of the different “nature, timing or extent of evidence-gathering procedures. However in a limited assurance engagement, “the combination of the nature, timing and extent of evidence gathering procedures is at least sufficient for the practitioner to obtain a meaningful level of assurance as the basis for a negative form of expression.” (International Framework for Assurance Engagements 2005, p. 18; see also World Gold Council 2012b, p. 11)</i></p>
<b>Reasonable assurance</b>	<p><i>Reasonable assurance requires the accumulation of sufficient audit evidence that the auditor can conclude that the outcome of the audit would not be materially affected by evidence that has not been collected and reviewed. In this context, conclusions drawn from the audit, while derived from the information reviewed, also cover other non-reviewed information. [Adapted from: International Auditing Standards Board (IAASB) 2005</i></p> <p><i>This means that the assurer is able to attest that s/he can conclude that the system is in compliance with a standard. (Positive statement is possible)</i></p>
<b>Risk</b>	<p><i>Risks are the “potentially adverse impacts of a company’s operations, which result from a company’s own activities or its relationships with third parties, including suppliers and other entities in the supply chain. Adverse impacts may include harm to people..., or reputational damage or legal liability for the company..., or both.” (OECD DDG, p.13)</i></p>
<b>Risk assessment</b>	<p><i>“The systematic evaluation of the degree of Risk posed by an activity or operation. The process of using the results of Risk analysis to rank and/or compare them with acceptable Risk criteria or goals.” (RJC Certification Handbook 2009, p. 33)</i></p> <p><i>A company assesses risk by identifying the factual circumstances of its activities and relationships and evaluating those facts against relevant standards provided under national and international law, recommendations on responsible business conduct by international organisations, government backed tools, private sector voluntary initiatives, and a company’s internal policies and systems.” (OECD-UN Guidance, p. 13-14.)</i></p> <p><i>Risk assessment underpins effective risk management.</i></p>
<b>Upstream</b>	<p><i>The upstream segment of the supply chain encompasses the miner to the refiner and all tiers between. In the case of conflict minerals from the Great Lakes Region this would typically include a trader, processor, exporter, international trader and refiner, or for large-scale mining, a mining company. Transportation companies also have important roles in handling the mineral in the upstream segment and so tend to be subject to due diligence requirements also.</i></p>
<b>Verification</b>	<p><i>“Confirmation by an Accredited Auditor, through the assessment of objective evidence, that the provisions of the [normative document] have been fulfilled. The results of Verification are used as the basis for a decision on Certification.” (RJC Certification Handbook 2009, p. 34)</i></p>

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## Executive Summary

The International Conference on the Great Lakes Region (ICGLR) is an intergovernmental alliance of 12 member states of the African Great Lakes Region, whose mission is to "attain peace, security, political stability and development in the Great Lakes Region."<sup>1</sup> The Regional Certification Mechanism (RCM) forms part of the ICGLR's Regional Initiative against the Illegal Exploitation of Natural Resources. It aspires to represent an institutionalized mineral supply chain due diligence framework for designated (conflict) minerals in the Great Lakes (GLR) Region fully owned by the ICGLR member states and *"to promote the mineral sector's role in the peaceful economic and social development within the Member States of the Great Lakes Region."*<sup>2</sup>

The ICGLR and partners have developed a procedural framework for the RCM. The procedural framework comprises a number of nationally and regionally implemented elements. At the national level, based on and enforced through national regulations, mandatory activities include inspection and classification of mine sites as green-, yellow- or red-flagged for sourcing purposes; establishment and implementation of chain of custody (traceability/due diligence) management systems; mineral export certification; data and management and exchange. Each Member State is expected to create its own system to operationalize the national elements necessary for effective implementation of the RCM; the Member State is responsible for each of these elements. However, all processes and standards need to fully respect all regional standards as defined in the RCM manual. Regionally, main RCM elements include regional data analysis of mineral flows; a third party audit system; an Independent Mineral Chain Auditor (strictly speaking not an auditor but a special investigator); and a Whistle Blowing Mechanism.

This analysis report is concerned with the third party audit system only, being a regional element of the RCM that is nationally implemented. The ICGLR third party audits annually examine and assure the sourcing practices of each involved mineral exporter in the region. While this involves auditing a sample of mine sites and supply chains (associated with a given exporter) to verify national inspections as part of the overall audit process, they are not intended to audit all national mine sites and supply chains. Nor do they assess the nationally implemented chain of custody systems as a whole, which is the job of the Independent Mineral Chain Auditor.

The ICGLR Audit Committee, in coordination with the ICGLR Secretariat, oversees the design, implementation, and outcomes of the third party exporter audits. The Audit Committee is an independent body with tripartite representation of ICGLR member states as well as international delegates/elected persons. Among others, the ICGLR Audit Committee is tasked with reviewing and revising the RCM standards and procedures concerning aspects of the RCM, as presently set out in the ICGLR's RCM Certification Manual. Their role includes drafting and formalizing the methodology for the third party audits, and reviewing audit reports. Audit reports are also reviewed by the ICGLR Secretariat and the Independent Mineral Chain Auditor.

This analysis report analyzes and compares the audit schemes of the various conflict minerals initiatives with the RCM to inform the ICGLR Audit Committee and others of opportunities for alignment as the basis for future discussions and decision-making. It considers the core systems driving responsible sourcing systems for 'conflict minerals',<sup>3</sup> analyzes the audit components of upstream conflict minerals systems which support mineral supply chain due diligence in the GLR, and considers the needs of downstream conflict minerals systems that require adequate assurance of upstream due diligence activities. In these ways, it provides a starting point for the design of a draft audit methodology for the RCM's third party exporter audit. This 'audit template' will ensure consistency of approach by ICGLR third party auditors and will be used for data compilation during audit preparation and field work, and as a basis for drawing audit conclusions with regards to the RCM compliance of the auditee.

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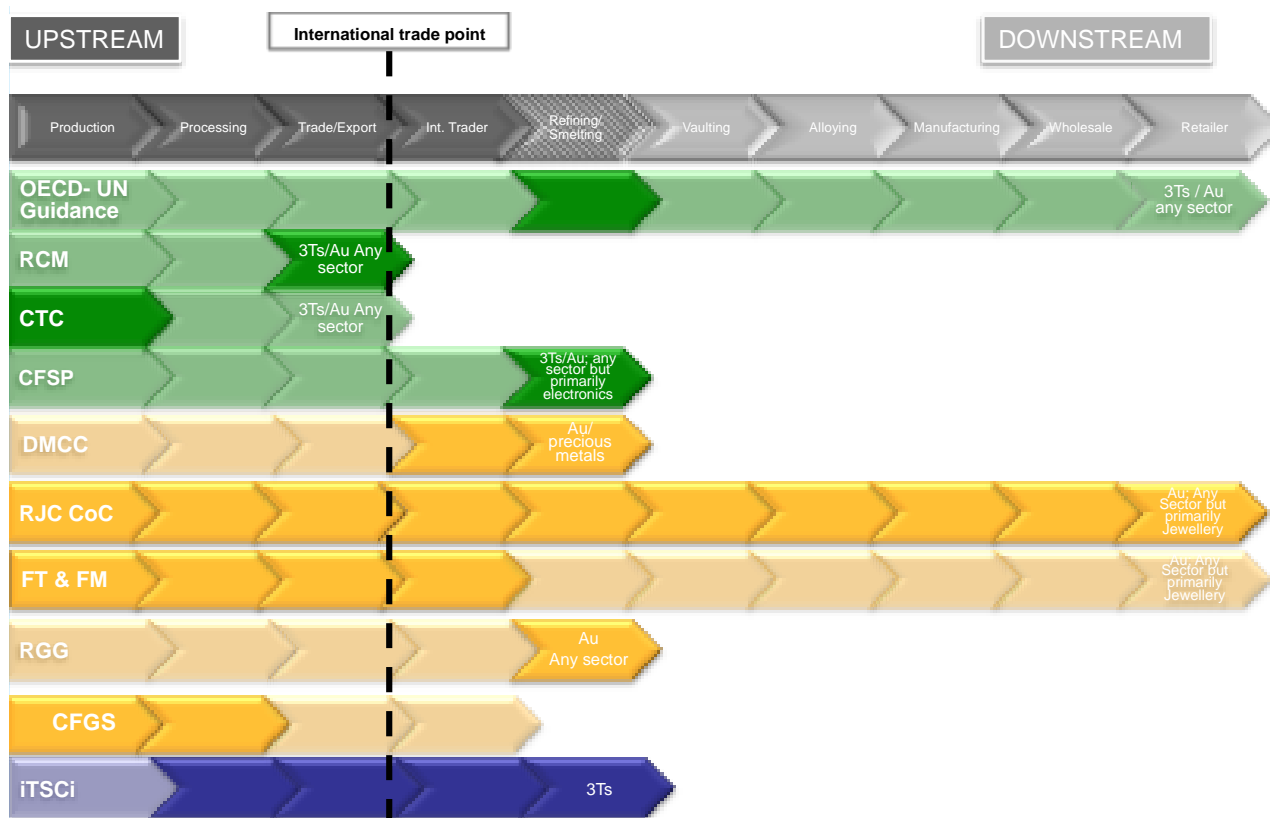
<sup>1</sup> ICGLR 2010

<sup>2</sup> ICGLR, 2011.

<sup>3</sup> See glossary for conflict minerals definition.

This report is primarily intended to inform ICGLR Audit Committee members and associated stakeholders (including the ICGLR Secretariat and others) on the conflict minerals audit landscape and may ideally serve as a base for potential future outreach discussions with non-ICGLR stakeholders regarding system alignment opportunities. Such outreach has begun, with the conflict minerals initiatives analyzed in this report having been consulted as part of the research, and provided with the opportunity to review the sections on their initiatives.

The report differentiates the different initiatives' scope, coverage, issues addressed and audit methodologies, e.g. regarding the scope, focus, object and point of audit within the supply chain.



**Figure 1: Supply chain coverage of conflict minerals initiatives and points of audit**

Please note that in some cases refining will take place before export from the producer country.

This diagram shows the auditee for each initiative in darker colour. This actor is engaged for the audit, but upstream suppliers may also be investigated (including with mine site visits) for some of these audits (e.g. RCM, CFSP, OECD-UN Guidance.)

Green arrows are initiatives covering 3TG; yellow arrows cover gold only; blue arrow covers 3Ts only. Arrow length shows the initiative's supply chain coverage.

Breaking down an audit system into the following elements, analysis of each conflict mineral initiative's audit system is presented as the basis for finding opportunities for alignment between them.

Criteria	Key Questions
<b>Auditee</b>	Who the audit applies to. Whose activities or qualities are being assured (organization, supply chain operators, etc.)?
<b>Focus</b>	Purpose of the audit (Leading standards and core elements it seeks to operationalize, e.g. OECD-UN Guidance, Anti-Money Laundering, DFA, etc.)
<b>Audit Scope</b>	What is audited/ risk assessed (material, issues, supply chain tiers)?
<b>Audit Object</b>	What is audited/ risk assessed (material, organization, operators)?
<b>Audit Cycle</b>	How often are audits/ risk assessment conducted?
<b>Auditor</b>	Who conducts the audit, e.g. certified auditor, selection process of the auditor/ risk assessor, etc?
<b>Audit Methodology</b>	What is the applied audit/ risk assessment methodology (desk-based research, interviews with stakeholders, auditees, etc)?

<b>Audit Process</b>	What steps does the audit/ risk assessment contain? How is the process structured?
<b>Audit Duration</b>	How long does an audit take?
<b>Audit Governance</b>	Role of Audit Committee / governance body
<b>Audit Outcome (compliance statement)</b>	What claims can be made as a result of the audit?
<b>Audit Follow-Up</b>	What happens with the results of audits/ risk assessments?
<b>Audit Funding</b>	Who pays for the audit and how? How much does it cost?
<b>Required Documents</b>	What are the required documents the auditee needs to present? What are the guidelines followed by the audit?
<b>Information Management</b>	How is ownership, collection, storage, public disclosure managed?
<b>Harmonization</b>	What formal integration or harmonization is there between this and other CMI, e.g. cross-recognition of specific elements?
<b>Alignment with RCM</b>	How might this system be aligned with the RCM?

There is a fundamental difference between the **core conflict minerals systems, the OECD Guidance and the DFA**, which can make it challenging for a system to align with both systems; an operator may be sourcing responsibly in line with the OECD Guidance, but be ‘Not DRC Conflict-Free’ for the purposes of DFA reporting requirements. The optimal solution to offer downstream users for any GLR system is a differentiation between supply chains of ‘DRC Conflict-Free’ material and supply chains of ‘OECD conformant but not DRC Conflict-Free’ material. This allows buyers to source on the basis of fulfilling what the law requires in practice versus fulfilling what the law is intended to achieve.<sup>4</sup>

Consequently, the RCM should also seek to support reporting by issuers under the **DFA** as having minerals that are ‘not DRC conflict-free but OECD conformant’ to help counter the stigma of reporting as not DRC conflict-free in spite of implementing good practice in terms of due diligence activities. The RCM should also seek to ensure it facilitates delivery of responsibly produced ASM gold (next to industrially produced gold) into international markets, for example through seeking to build an integrated supply chain of ICGLR certified exports from audited exporters in the region to international buyers where the latter supply chain segment is also assured against buyers’ standards such as the DMCC Practical Guidance.

With regards to alignment with the **OECD Guidance**, the RCM third party exporter audit can be used as part of a smelter/refiner’s risk assessment of suppliers under Step 2 of the OECD Guidance. The RCM audit should explicitly state an objective to be supporting downstream users’ risk assessment practices in line with the OECD Guidance’s recommendations.

Turning to **upstream conflict minerals initiatives**, all offer scope for alignment with the RCM. However, it is expected that these other initiatives will need to adapt to the RCM as a core system, since it is being embedded in national laws and regulations. Such alignment would be more efficient and cost-effective, as it would avoid the duplication of processes such as inspections/audits.

The RCM serves a different purpose than the **Certified Trading Chains (CTC)** scheme: While CTC certifies responsible mining practice at a given mine site, following a bottom-up audit approach, RCM certifies product-based supply chain due diligence following a combination of national RCM implementations elements an additionally assured through a top-down audit approach from a given exporter to a sample of associated supply chains up to and including the mine site level. The two systems are complementary but in principle cannot substitute for each other, except perhaps on a case-by-case basis. It is recommended that individual situations are evaluated carefully to judge where this might be possible. A more detailed discussion and potential harmonization of CTC and RCM standards (in particular, CTC including RCM red/yellow flag standards, not just for mines but also for CoC and exports) is necessary to make broader alignment options possible.

<sup>4</sup> See Brooks-Rubin, forthcoming, for a perspective on this distinction

Mutual alignment between RCM and **iTSCi** is logical, desirable and possible if several major hurdles are overcome. First, resolution on the issue of almost complete transparency of information as required by the RCM and partial disclosure (respecting the confidentiality of commercially sensitive information), noting that the ICGLR audit committee itself is in the process of reviewing and potentially adapting such transparency requirements as far as the RCM is concerned. It is however necessary for such discussions to clearly differentiate between the different individual implementation elements of the RCM (both at a national and regional scale), rather than engaging all of these at once, given that different entities are involved within the RCM. Second, improved engagement between the organizations is desirable, noting that iTSCi has expressed difficulty in accessing the right people in the ICGLR. This is a prerequisite to correctly understand the technical details and scope of both schemes, and identify individual potential alignment components of both schemes (such as on-the-ground traceability procedures, data management or audits, and also noting that iTSCi's scope extends beyond the Great Lakes region).

The **WGC's Conflict-Free Gold Standard (CFGS)** covers the same supply chain segment as the RCM, up to the point of export from a GLR country where refining is to take place elsewhere, but the points of control differ in so far as the CFGS applies to mining entities and only covers trade/export/int. trader to the extent that companies undertake due diligence on their transport provider or retain custody of the gold beyond their mine site. In addition, the CFGS is open to any scale of operator but is much more practicable for large-scale mining companies, whereas the RCM is oriented at both industrial mines and artisanal and small-scale mines. Alignment may be achieved as follows:

- The RCM audit could be used as a type of risk assessment for parts C and D of the CFGS.
- The RCM audit could be considered a valid audit for parts C and D of the CFGS, so removing the need for the CFGS assurer to (re)-assure these parts of the Standard.
- The RCM could recognise the CFGS assurance statement as adequate for the purpose of the RCM audit.
- The RCM audit and CFGS assurance statement could potentially be done at the same time.

With regards to alignment between RCM and **Fairtrade** or **Fairmined**, which now operate as different systems but still bear much in common, the report finds that the issue of alignment may be more relevant for Fairtrade, as this initiative is currently working with Ugandan, Tanzanian, and Kenyan gold producers to certify them by 2015. However, alignment will only be relevant should these countries be incorporating the RCM into their legal frameworks in the same time frame. The Audit Committee could consider if Fairmined or Fairtrade certification of ASMOs would be adequate assurance of these ASMOs' compliance with the RCM to prevent the need for site visits by their third party auditors (which wouldn't replace the need to evaluate national RCM implementation elements at these sites, though). Where ASMOs are also exporters, and since Fairmined and Fairtrade audits are annual, then there could be complete cross-recognition of Fairmined and Fairtrade audits by the RCM, though not vice versa given that the Fairmined and Fairtrade initiatives' performance requirements are higher and/or broader than for the RCM.

In terms of **downstream conflict minerals initiatives**, there exists an alignment opportunity between the RCM and the **Conflict-Free Smelter Program (CFSP)** inasmuch as the RCM could be an assessed-conformant scheme for the purposes of the CFSP's 'OECD Guidance Conformance Check' where a refiner or smelter is in the same country as the mineral producer. However, as the RCM audit occurs at the point of the exporter; the RCM can only partially fulfil the CFSP's OECD Conformance Check when it comes to exports of mineral to an international smelter or refiner, as CFSP requires assurance of all trading and transport that occur upstream of the smelter.

The Audit Committee should explore how interoperability might be achieved between the RCM and the **RJC's Code of Practice (CoP) and Chain-of-Custody (CoC) Standards**. This would become a higher priority if there were an indication that in-RJC members were being sought by operators in the Great Lakes Region. Furthermore, the RCM could explore potential recognition of the RJC CoP and CoC certification as a means of achieving some RCM assurance elements provided that any gaps in the RJC's

coverage vis-à-vis RCM requirements could be bolted on to RJC audits (and additionally evaluating how the required national RCM elements would be implemented). The timeframe for RJC CoP audits is every three years. This may be overcome by exploring the possibility of interim RCM audits for those years between the RJC audits. The RJC may choose to do a gap assessment of the RJC CoP and CoC against the RCM Certification Manual to ascertain any gaps in coverage in the interest of achieving alignment.

Alignment opportunities between the RCM and the **LBMA's Responsible Gold Guidance** rest on whether the RCM could provide adequate due diligence assurance for the purposes of the LBMA RGG to enable cross-recognition. Relevance rests on whether any in-region refiner is on the LBMA Good Delivery List.

With regards to the **DMCC Responsible Sourcing Protocol**, the ICGLR Secretariat and Audit Committee could engage the DMCC to investigate what the DMCC's gold industry members require of upstream producers to be able to continue to source gold from the Great Lakes Region and be compliant with the DMCC's Responsible Sourcing Guidance. Greater information on the profile of gold industry members in the DMCC, their existing and historic sourcing practices of gold from the Great Lakes Region, and their needs to ensure integrated responsible supply chains of gold (including artisanal) from the GLR would enable strategic planning as to how the RCM might service these buyers optimally (including whether the RCM could provide adequate due diligence assurance for the purposes of cross-recognition between the respective audit programs). The Audit Committee or/and ICGLR Secretariat could participate in the 2014 Dubai Precious Metals Conference as a means of engaging the DMCC and exploring this opportunity.

As a **conclusion**, the RCM has an important role to play in supporting upstream due diligence of gold, tin, tantalum, and tungsten supply chains from the Great Lakes Region, but it will only be meaningful if it fully supports operators' conformance with the OECD Guidance, and is aligned with the traceability and risk management requirements of downstream users.

With some further design modifications and rigorous application, the RCM particularly provides an opportunity to enable the reintegration of marginalized African producers into formal international markets, and so mitigate the global ramifications of the US Dodd-Frank Act, and the propensity for US issuers (and those supplying them) to avoid sourcing from the DRC and its adjoining countries altogether. These other conflict minerals initiatives offer African governments a second development opportunity, being supporting the achievement of their mineral sector ambitions,<sup>5e</sup> e.g. were the ICGLR to endorse and encourage take-up of systems such as the RJC's CoP (for industrial mines) and Fairtrade and Fairmined systems for artisanal and small-scale mining organisations. For example, promoting RJC membership to gold mining companies, exporters and traders in the GLR would not only ensure adequate due diligence practices for those with CoC certification but would offer best-in-class<sup>6</sup> gold in terms of assurance that broader business practices, human rights, labour, social and environmental risks are managed in line with the newly updated Code of Practices. While the ICGLR could consider endorsing these initiatives as systems for responsible precious metals (and diamonds for RJC) mining and sourcing on a political level, these initiatives could also work with the RCM Audit Committee and ICGLR member states to align their systems and address any gaps in scope between them to make them more appealing to in-region operators as potential 'solutions' to new regulatory pressures.

While all systems seeking to operate in the GLR will have to inevitably align with RCM Standards once embodied in national law, from a capacity point of view, it does not make sense for the Audit Committee to seek to support alignment with all initiatives at once. As a next step, a survey of actual and intended coverage of different conflict minerals and responsible sourcing initiatives by operators in the GLR would help the RCM prioritize which systems to align to when, and how. Such a survey would reveal two important things: the initiatives that are operating in the region but are not yet

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<sup>5</sup> Marieke Van der Mijn, RJC, pers. Comm with Estelle Levin, 12<sup>th</sup> September 2013.

<sup>6</sup> See Stark and Levin, 2010.

aligned and need to be, and the initiatives that need to be operating in the region to support specific types of operator who presently are under-supported in delivering their minerals into responsible markets.

We also advise the ICGLR Secretariat, Audit Committee, and member states to begin a concerted engagement of these initiatives who need to be educated on the RCM as much as ICGLR stakeholders have a need to learn about them as well.



# 1 Introduction

The International Conference on the Great Lakes Region (ICGLR) is an intergovernmental alliance of 12 member states of the African Great Lakes Region, whose mission is to "attain peace, security, political stability and development in the Great Lakes Region."<sup>7</sup> The Regional Certification Mechanism (RCM) forms part of the ICGLR's Regional Initiative against the Illegal Exploitation of Natural Resources. It aspires to represent an institutionalized mineral supply chain due diligence framework for designated (conflict) minerals in the Great Lakes (GLR) Region fully owned by the ICGLR member states and *"to promote the mineral sector's role in the peaceful economic and social development within the Member States of the Great Lakes Region."*<sup>8</sup>

The ICGLR and partners have developed a procedural framework for the RCM. The procedural framework comprises a number of nationally and regionally implemented elements. At the national level, based on and enforced through national regulations, mandatory activities include inspection and classification of mine sites as green-, yellow- or red-flagged for sourcing purposes; establishment and implementation of chain of custody (traceability/due diligence) management systems; mineral export certification; data and management and exchange. Each Member State is expected to create its own system to operationalize the national elements necessary for effective implementation of the RCM; the Member State is responsible for each of these elements. However, all processes and standards need to fully respect all regional standards as defined in the RCM manual. Regionally, main RCM elements include regional data analysis of mineral flows; a third party audit system; an Independent Mineral Chain Auditor (strictly speaking not an auditor but a special investigator); and a Whistle Blowing Mechanism.

This analysis report is concerned with the third party audit system only, being a regional element of the RCM that is nationally implemented. The ICGLR third party audits annually examine and assure the sourcing practices of each involved mineral exporter in the region. While this involves auditing a sample of mine sites and supply chains (associated with a given exporter) to verify national inspections as part of the overall audit process, they are not intended to audit all national mine sites and supply chains. Nor do they assess the nationally implemented chain of custody systems as a whole, which is the job of the Independent Mineral Chain Auditor.

The ICGLR Audit Committee, in coordination with the ICGLR Secretariat, oversees the design, implementation, and outcomes of the third party exporter audits. The Audit Committee is an independent body with tripartite representation of ICGLR member states as well as international delegates/elected persons. Among others, the ICGLR Audit Committee is tasked with reviewing and revising the RCM standards and procedures concerning aspects of the RCM, as presently set out in the ICGLR's RCM Certification Manual. Their role includes drafting and formalizing the methodology for the third party audits, and reviewing audit reports. Audit reports are also reviewed by the ICGLR Secretariat and the Independent Mineral Chain Auditor.

The goal of this analysis report is to analyze and compare the audit schemes of the various conflict minerals initiatives with the RCM to inform the ICGLR Audit Committee and others of opportunities for alignment as the basis for future discussions and decision-making. It considers the core systems driving responsible sourcing systems for 'conflict minerals'<sup>9</sup>, analyzes the audit components of upstream conflict minerals systems which support mineral supply chain due diligence in the GLR, and considers the needs of downstream conflict minerals systems that require adequate assurance of upstream due diligence activities. In these ways, it provides a starting point for the design of a draft audit methodology for the RCM's third party exporter audit. This 'audit template' will ensure consistency of approach by ICGLR third party auditors and will be used for data compilation during

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<sup>7</sup> ICGLR 2010

<sup>8</sup> ICGLR, 2011.

<sup>9</sup> See glossary for conflict minerals definition.

audit preparation and field work, and as a basis for drawing audit conclusions with regards to the RCM compliance of the auditee.

Report findings may also inform discussion on how to improve other elements of the RCM, and further integration and alignment with other existing initiatives oriented at managing risks associated with the extraction, trade and transport of minerals in the GLR. Ideas in these respects have been captured in an Annex to the Audit Template, which was developed in parallel to the present report.

This report is primarily intended to inform ICGLR Audit Committee members and associated stakeholders (including the ICGLR Secretariat and others) on the conflict minerals audit landscape and may ideally serve as a base for potential future outreach discussions with non-ICGLR stakeholders regarding system alignment opportunities.

## 1.1 Purpose of Conflict Minerals Audits

Audits or assurance engagements provide stakeholders a guarantee that an entity (e.g. company, institution, etc.) compliance with a set of principles and requirements embodied in a normative document (Standard or Policy). By complying with the normative document's requirements, the entity should achieve (or contribute to achieving) the higher goal of the standard or policy. For example, the Forest Stewardship Council's mission is to "*promote environmentally sound, socially beneficial and economically prosperous management of the world's forests,*"<sup>10</sup> and entities can provide a guarantee to stakeholders that they are supporting the achievement of this goal by complying with the FSC Principles and Criteria and being audited against it.

In the case of conflict minerals, the goal of a certification system and its normative document is generally to prevent minerals being used to support illegal armed groups, violence and the worst human rights abuses typically associated with conflict. In the case of the RCM, the purpose of the third party audit is to ensure that exporters and their suppliers are fulfilling their responsibilities under the Requirements of the RCM's certification manual, whose purpose is "*to provide sustainable conflict-free mineral chains in and between Member States of the International Conference on the Great Lakes Region*" by preventing "*non-state armed groups and public or private security forces from interfering illegally at any point along the supply chain or committing serious human rights abuses related to the supply chains of minerals.*"<sup>11</sup>

A consistent audit methodology enables improved accuracy and reproducibility of audit results, and increases the level of assurance possible. This analysis report has been written to inform the drafting of the methodology for the third party exporter audits of the RCM, to ensure consistency of audit conclusions regardless of whichever auditor were to do an audit of an exporter.

Companies are subject to a variety of audits by different entities, of which due diligence auditing (in the sense applicable in this report) is but one sub-category. For example, a revenue authority may conduct a tax audit of a company; a company may commission an auditor to certify its compliance with an industry social or environmental accountability standard (e.g. ISO14001); a smelter may subject a supplier to an audit to verify that company-specific risk management or due diligence requirements are being adhered to; or a conflict minerals initiative may commission an audit of a certification system to verify that this system is operating with integrity. These audits are prompted for different reasons and seek to assure different things. However, in a context of global recession and where mining companies, in particular, are subject to a variety of social and environmental audits and are voicing frustration with the escalating costs in a context of squeezed profits, conflict minerals initiatives are seeking avenues for minimizing the audit burden. Since the start the initiatives have sought avenues for harmonization and alignment. Several initiatives have achieved cross-recognition of elements of their systems: RJC's Chain of Custody System, LBMA's Responsible Gold Guidance, and the WGC's Conflict-Free Gold Standard cross-recognise elements of their refiner audits; RJC endorses

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<sup>10</sup> Forest Stewardship Council US, n.d.

<sup>11</sup> ICGLR, n.d.a

Fairmined and Fairtrade Certification for its member mining companies to source gold for their CoC certified supply chains. However, cross-recognition is only possible where audits are seeking to assess the same or compatible things, which is not always the case.

## 1.2 Approach and Methodology

This report separates the conflict minerals initiatives (CMIs) into three types for the purposes of analysis and alignment:

**Core systems:** All of the conflict minerals and responsible sourcing initiatives have been crafted in reference to or in anticipation of the OECD's Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (OECD Guidance), and Section 1502 of the *Dodd-Frank Wall Street Financial Reform and Consumer Act, 2010* (DFA). This report considers these 'core systems' as the starting point for understanding how all the others are structured, and specifically looks at how the RCM audit methodology might ensure alignment with these. Achieving alignment with the assurance expectations of the OECD Guidance and the DFA is essential as the RCM aspires to contribute to institutionalizing the requirements of these systems in the Great Lakes Region. However, some CMI such as the CTC and, to a certain extent, the RCM also deliberately aim to go beyond pure supply chain due diligence standards. How does the RCM support achievement of the OECD Guidance recommendations for upstream and downstream users? Where are the gaps?

**Upstream CMI:** These cover the same segment of the supply chain as the RCM (mine to export) although some schemes go beyond that. These include the Certified Trading Chains (CTC) scheme (developed by BGR and implemented by the DRC and, in the past, by Rwanda); the ITRI Tin Supply Chain Initiative (iTSCi); and the World Gold Council's Conflict-Free Gold Scheme. These four schemes assure the due diligence of the upstream segment of conflict mineral supply chains. All are equally concerned with, and the latter three have already initiated third party audits in a similar context as planned for the RCM. Two additional systems of relevance are the Fairtrade and Fairmined systems, which also offer traceable supply chains of gold. Is it relevant for the RCM third party audit be combined with, build upon or build into these other systems' audits and vice versa?

**Downstream CMI:** Downstream users wishing assurance of due diligence and risk management of upstream supply chains rely on audits done for one or some of these initiatives. Downstream users may depend upon industry initiatives targeting the refiner level to support their conflict minerals due diligence commitments. What do these CMI and their users need in terms of assurance of upstream due diligence practices? How can the RCM provide this? What assurances can't it deliver? These initiatives are EICC's Conflict-Free Smelter Program (CFSP); the Responsible Jewellery Council's Chain of Custody Standard (RJC); the London Bullion Market Association's Responsible Gold Programme (LBMA); and the Dubai Multi Commodities Centre's Responsible Sourcing Protocol (DMCC).

This report has been compiled through a process of desktop research, field work in Rwanda and the Democratic Republic of Congo (4<sup>th</sup> August 2013 – 1<sup>st</sup> September 2013), email and telephone communications with individuals managing the relevant conflict minerals initiatives, and liaison with the Audit Committee advisory group, some of whom accompanied Rupert Cook during field work. The fieldwork itinerary can be found as Annex 1. It was also consulted with the Audit Committee at a three-day workshop in Nairobi in October 2013, facilitated by ELL.

### 1.2.1 Desk research

The desktop research involved analysis of publicly available information on the risk assessments and audit methodologies of the relevant CMI. Attempts were made to access unpublished documents by the initiatives where adequate information was not publicly available. Methods included documentary analysis, participation in webinars, and direct consultation with the individuals who have overseen the systems' development at the World Gold Council, ITRI and Channel Research, BGR, EICC, Fairtrade International, the Alliance for Responsible Mining, and RJC. ELL approached LBMA for input, but was unsuccessful.

ELL considered it vital to refer to the iTSCi audit methodology, given its objective to do chain of custody and due diligence assurance and given that the ICGLR and ITRI have an MOU in place that states *“ITRI and ICGLR will consider the timing, extent and method of auditing in order to provide an appropriate level of buyer and consumer confidence in the most cost-effective and efficient manner. Both Parties will therefore take any opportunity to co-operate in regard to audit method development and implementation, particularly in regard to criteria for selecting auditors, for auditing frequency and for audit scope”*<sup>12</sup>. The MOU also contains several other expectations, including that the two parties will discuss and reach an agreement on access to information and confidentiality before any information is shared. ITRI stated that it had reached out to the ICGLR on several occasions in order to initiate such discussion with limited response. ITRI, as the iTSCi secretariat, therefore considered it had no basis on which to provide direct access to the consultants quoting these difficulties, as well as. a lack of *“available time or resource to respond to the numerous studies that are considering the iTSCi Programme unless there is a specific objective in mind with which we have agreed in advance.”* iTSCi did, however, give extensive and rich feedback on an earlier version of the iTSCi section in this report and has stated a willingness to *“support continuous engagement and a wider discussion on RCM,”*<sup>13</sup> including for ICGLR auditors to accompany their audits if the present barriers are overcome.<sup>14</sup> In particular iTSCi has a concern that the audit objective and checklist of its Program, defined by OECD and international expectations, may not be the same as the audit objective of the RCM and noted an opinion that the audit checklist for RCM would be best considered after a higher level consideration of these different objectives.<sup>15</sup> This opinion ignores, however, that the present report is supposed to serve as a base to inform such considerations and obtain clarity on potentially mutual and divergent objectives both.

### 1.2.2 Field work

Field work was conducted in DRC and Rwanda, in close collaboration with ICGLR Audit Committee members. It included visits to mine sites and exporters, encompassing mine sites producing cassiterite, coltan, and wolframite, both small cooperatives and larger semi-industrial operations, ASM and LSM of gold, large-scale as well as more modest exporters. In DRC, iTSCi and non-iTSCi green-mine sites and iTSCi and non-iTSCi exporters were visited, while in Rwanda all visited sites were participating in iTSCi.

In Rwanda, exporters visited included Phoenix Metal Ltd, the Fédération des Coopératives Minières au Rwanda (FECOMIRWA), and Minerals Supplies Africa Ltd (MSA). Mine sites and mine site operators visited included Gatumba Mining Concessions SARL (GMC), Coopérative de Développement de Butamwa (CODEMIBU), and Natural Resources Development (Rwanda) Ltd (NRD). Meetings were also held with a number of staff from RNRA/GMD, as well as with the respective country project managers for iTSCi/PACT and BGR.

In DRC, exporters visited included WMC and CMM in Bukavu, as well as Banro in both Bukavu and Kinshasa. Mine sites visited included Kalimbi at Nyabibwe and Luntunkulu in Walungu. Meetings were held with the provincial director of CEEC for South Kivu, as well as various CEEC staff at the national level in Kinshasa; the president of the mineral traders of South Kivu; the provincial director of SAESSCAM; the president of the cooperatives of South Kivu; the provincial director of the Division of Mines for South Kivu; MONUSCO personnel involved in mine-site qualification; BGR's DRC project manager for CTC mineral certification; and a roundtable in Bukavu with a number of key South Kivu civil society platforms. Furthermore, the consultant personally accompanied a Banro gold export along the supply chain from South Kivu to Kinshasa, witnessing the CEEC sampling process ahead of ministerial export authorization, and subsequent export to South Africa. Particular attention was paid to the modalities and routes of mineral transport and export, as per the ICGLR standards.

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<sup>12</sup> ITRI; ICGLR 2010:6.

<sup>13</sup> Kay Nimmo, pers comm to Estelle Levin, 12<sup>th</sup> September 2013.

<sup>14</sup> Kay Nimmo, pers comm to Estelle Levin, 7<sup>th</sup> November 2013.

<sup>15</sup> Kay Nimmo, pers comm to Estelle Levin, 7<sup>th</sup> November 2013.

Meetings were held with a range of community leaders, local ITRI/iTSCi agents and GMD agents in Rwanda, as well as with SAESSCAM, CEEC and Ministry of Mines agents in DRC, and mine operator and exporter employees at every field visit site.

Besides focused interviews with key stakeholders, the consultant deployed semi-structured participative interviewing with miners at the various mine sites in both DRC and Rwanda, as well as with focus groups made up of ‘*negociants*’, or mineral traders, in DRC.

A crucial consideration for the field work was the need to anticipate and research the various challenges which a third party auditor might encounter, such as an occasional breakdown of transport routes in the Great Lakes Region. This in turn would inform the preparation of the audit methodology and the audit template. Another goal was to be as comprehensive and inclusive in terms of contact with informants, and to canvass different perspectives in order to enhance credibility and thoroughness of the process. Both government and private security force personnel were among interlocutors.

A more comprehensive account with chronological itinerary and complete list of interlocutors is provided in the annex to the audit template.

### 1.2.3 Analytical approach

The purpose of the analysis was to seek ways of aligning the RCM’s audit framework with those of other upstream initiatives and vice versa, and to investigate how it might support the due diligence assurance needs of downstream initiatives and users. It was also intended to throw light on which aspects of an audit methodology remain outstanding vis-à-vis the existing Certification Manual and related documents thereafter. This was done in part through the field work, but also through desk-based research; more specific information on RCM audit methodology is included in a parallel report by ELL establishing a draft RCM “audit template”.

Key elements of an audit framework were disaggregated to form criteria for considering potential for alignment with other upstream activities. These are shown in Table One.

**Table One: Criteria for Analyzing each Audit Approach**

Criteria	Key Questions
<b>Auditee</b>	Who the audit applies to. Whose activities or qualities are being assured (organization, supply chain operators, etc.)?
<b>Focus</b>	Purpose of the audit (Leading standards and core elements it seeks to operationalize, e.g. OECD-UN Guidance, Anti-Money Laundering, DFA, etc.)
<b>Audit Scope</b>	What is audited/ risk assessed (material, issues, supply chain tiers)?
<b>Audit Object</b>	What is audited/ risk assessed (material, organization, operators)?
<b>Audit Cycle</b>	How often are audits/ risk assessment conducted?
<b>Auditor</b>	Who conducts the audit, e.g. certified auditor, selection process of the auditor/ risk assessor, etc?
<b>Audit Methodology</b>	What is the applied audit/ risk assessment methodology (desk-based research, interviews with stakeholders, auditees, etc)?
<b>Audit Process</b>	What steps does the audit/ risk assessment contain? How is the process structured?
<b>Audit Duration</b>	How long does an audit take?
<b>Audit Governance</b>	Role of Audit Committee / governance body
<b>Audit Outcome (compliance statement)</b>	What claims can be made as a result of the audit?
<b>Audit Follow-Up</b>	What happens with the results of audits/ risk assessments?
<b>Audit Funding</b>	Who pays for the audit and how? How much does it cost?

<b>Required Documents</b>	What are the required documents the auditee needs to present? What are the guidelines followed by the audit?
<b>Information Management</b>	How is ownership, collection, storage, public disclosure managed?
<b>Harmonization</b>	What formal integration or harmonization is there between this and other CMIs, e.g. cross-recognition of specific elements?
<b>Alignment with RCM</b>	How might this system be aligned with the RCM?

## 2 Core Systems: OECD-UN Guidance, DFA, RCM and Conflict Minerals Assurance

All of the conflict minerals assurance systems have been designed in line with or anticipating one or both of two systems: the OECD's Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (OECD Guidance), and Section 1502 of the *Dodd-Frank Wall Street Financial Reform and Consumer Act, 2010* (DFA) (including its supporting US Securities and Exchange Commission Rule).

The DFA, Section 1502 is a US law that requires companies publicly listed on the US Stock Exchange to include in their financial reporting an independently audited conflict minerals report which states whether any 'conflict minerals' are DRC conflict-free, not DRC conflict-free or, for an interim period, undeterminable. To do this, companies are required to do due diligence of their supply chains to determine the origin of their minerals (Reasonable Country of Origin Enquiry – RCOI). If that origin is the DRC or one of its adjoining countries, evidence that the minerals in their products did not finance or benefit armed groups means the issuer can report as DRC Conflict-Free. The DFA and its regulations make mandatory requirements of all US issuers.

The OECD Guidance is a voluntary guidance designed to help companies ensure "*responsible global supply chain management of tin, tantalum, tungsten and their ores and mineral derivatives, and gold*,"<sup>16</sup> with particular emphasis on risks associated with mineral supply chains and conflict, violence, the worst human rights abuses, and business practices. The OECD-UN Guidance is referred to in the 2012 regulations published by the US Securities and Exchange Commission as an appropriate system for conducting due diligence in line with the reporting requirements of the DFA.

The OECD Guidance has consequently become the principal framework for guiding how companies can source conflict minerals responsibly, and for assuring their practices in this regard (and particularly for the upstream segment). Assurance is essential for any claims companies make about their sourcing practices to have credibility and stand up to scrutiny. Without such assurance a company would not be deemed to be adequately conducting due diligence of its sourcing practices and so would not be in conformance with the OECD Guidance, and nor would it be able to claim 'DRC Conflict-free' Status under the US Securities and Exchange Commission regulations.

There is a fundamental and extremely important difference between the two systems: if an exporter in DRC or an adjoining country (GLR) is found to have minerals in its supply chains that have violated any of the risks identified in the model supply chain policy (e.g. child labor, widespread sexual violence, support to illegal armed groups, etc.) it can be assured as OECD conformant if it does the following: has in place appropriate risk management systems, conducts adequate risk assessment, upon discovering the violation takes appropriate measures to manage it (which may mean immediate disengagement or else continued engagement and remediation with the affected supplier depending on the issue), and reports this. In short, the OECD asks the supply chain operator to manage (DRC) conflict risks. In the same situation, however, an issuer sourcing from this operator could not report its minerals as DRC Conflict-Free, and would have to report as Not DRC Conflict-Free. The operator may be sourcing responsibly in line with the OECD Guidance, but be 'Not DRC Conflict-Free' for the purposes of US conflict minerals reporting requirements.

**Alignment Opportunity:** Consequently the optimal solution to offer downstream users for any GLR system is a differentiation between supply chains of 'DRC Conflict-Free' material and supply chains of 'OECD conformant but not DRC Conflict-Free' material. Do note that minerals that are 'not DRC conflict-free but OECD conformant' would be judged as *not compliant* for the purposes of the Conflict-Free Smelter Programme audit (see below), but there would be no conformance ramifications for such gold when assured against LBMA's Responsible Gold Guidance or the DMCC's normative documents which prioritise OECD conformance over DFA reporting requirements.

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<sup>16</sup> OECD, 2012, p. 12.

This chapter provides greater explanation as to what is required of the OECD Guidance and the DFA in relation to chain of custody and due diligence assurance as a starting point for interpreting the different audits and approaches to due diligence assurance taken by the other CMLs.

## 2.1 OECD Due Diligence Guidance

The OECD Due Diligence Guidance (“OECD Guidance”) is a framework that provides management detailed recommendations that have been endorsed in an OECD Council Recommendation, and by the then 11 Heads of State of the ICGLR with the intention of enabling “*global responsible supply chains of minerals in order for companies to respect human rights and avoid contributing to conflict through their mineral or metal purchasing decisions and practices.*”<sup>17</sup>. The Five Step Framework is also part of the UNSC1952/2010 on the DRC and the US Securities and Exchange Commission’s Rule for conflict minerals published on 22<sup>nd</sup> August 2012. It is applicable for any upstream and downstream company “*sourcing minerals or metals from conflict-affected and high-risk areas, and is intended to cultivate transparent, conflict-free supply chains and sustainable corporate engagement in the minerals sector*”.<sup>18</sup> It has supplements for the 3Ts and for gold.<sup>19</sup> The Guidance is expected to contribute to efforts of peace-building and stabilisation of mineral-rich fragile areas and cultivate innovative approaches to promote responsible private sector engagement, and broad based economic development.<sup>20</sup>

The Five Step Framework of the OECD Guidance is also reproduced in the 2010 due diligence guidelines of the UN Group of Experts on the DRC, thereby establishing a common OECD-UN approach to corporate due diligence in the mineral supply chain (“OECD-UN due diligence recommendations”). In 2010 and 2011, the UN Security Council in its resolution on the DRC (UNSC1952/2010) supported taking forward the OECD-UN due diligence recommendations, and even designated its use as a basis for determining sanctions against entities possibly providing support to non-state armed groups in the DRC.<sup>21</sup> More recently, the UN Group of Experts on Cote d’Ivoire also recommended that entities dealing or trading in Ivorian gold carry out due diligence in line with the OECD Guidance, and in April 2013 the UN Security Council called on Ivorian authorities to participate in the implementation of the OECD Guidance to prevent the production and trade of gold in Cote d’Ivoire from contributing to conflict.<sup>22</sup>

The OECD Guidance is recognised by the US Securities and Exchange Commission’s Rule for conflict minerals published on 22<sup>nd</sup> August 2012 as an international framework available to companies to perform due diligence for responsible mineral sourcing and thereby help them meet their reporting obligations under the Act.<sup>23</sup> The OECD Guidance is applicable for any upstream and downstream company “*sourcing minerals or metals from conflict-affected and high-risk areas, and is intended to cultivate transparent, conflict-free supply chains and sustainable corporate engagement in the minerals sector*” and is global in its application.<sup>24</sup> It has supplements for 3T minerals and for gold.<sup>25</sup>

The OECD Guidance is a non-binding OECD Council *Recommendation* that has been endorsed by 34 OECD countries plus, Argentina, Brazil,, Colombia, Costa Rica, Latvia, Lithuania,, Morocco, Peru and

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<sup>17</sup> OECD 2011, p. 52.

<sup>18</sup> OECD 2011, p. 52.

<sup>19</sup> The OECD-UN Guidance Supplement for tin, tantalum and tungsten has been available since the end of 2010; the supplement for gold was approved in May 2012.

<sup>20</sup> Tyler Gillard, pers. comm. to Estelle Levin, 6<sup>th</sup> November 2013.

<sup>21</sup> iTSCI, 2012.

<sup>22</sup> UNSC 2013a, 2013b.

<sup>23</sup> The SEC final rule on Section 1502 of Dodd Frank Act repeatedly endorses the OECD Guidance as a “nationally or internationally recognized due diligence framework” for fulfilling Dodd-Frank requirements of conflict mineral due diligence. The SEC says that the OECD Guidance “satisfies our criteria and may be used as a framework for purposes of satisfying the final rule’s requirement that an issuer exercise due diligence in determining the source and chain of custody of its conflict minerals.” (full text available at <http://sec.gov/rules/final/2012/34-67716.pdf>)

<sup>24</sup> OECD 2011, p. 52.

<sup>25</sup> The OECD-UN GuidanceOECD-UN Guidance Supplement for tin, tantalum and tungsten has been available since the end of 2010; the supplement for gold was approved in May 2012.



Romania, and the ICGLR member states.<sup>26</sup> In addition to being endorsed by the ICGLR Heads of State, the Guidance has been integrated into the legal frameworks of the Governments of DRC and Burundi, and Rwanda (through the RCM).<sup>27</sup> The Guidance builds on support from the G8 dating back to 2007 in the Heiligendamm Declaration. More recently, the G8 June 2013 communiqué at Lough Erne emphasized the G8's commitment to extractives transparency and its support of the Guidance and ICGLR framework in particular. However, the OECD Guidance remains voluntary for most countries and companies,<sup>28</sup> though has essentially been made mandatory for certain actors, e.g. where buyers compel suppliers to conform with it or where membership in an organisation depends upon conformance. Adhering countries are expected to promote its observance by companies operating in or from their territories and sourcing minerals from conflict-affected and high-risk areas. In addition, companies operating in countries which are *not* signatories are also choosing to implement it.<sup>29</sup>

The OECD Guidance is a 5-step framework for supporting due diligence of responsible sourcing of minerals from conflict-affected and high-risk areas. It recommends that supply chain operators, including exporters, “establish a system of controls and transparency over the mineral supply chain” by putting in place management systems that allow them to identify a range of information, including the mine of origin and transportation routes.<sup>30</sup> If this is done efficiently, this will give downstream users the information they need for the Reasonable Country of Origin Inquiry required for the purpose of compliance with the Dodd-Frank Act.

Exporters (and other companies) are supposed to do their own determination of whether a source or transportation route country or region would qualify as conflict-affected or high-risk in accordance with the definition provided by the Guidance (see *Definitions*, above).<sup>31</sup> The Dodd-Frank Act essentially treats the DRC and its adjoining countries (those countries sharing an internationally recognised border with the DRC<sup>32</sup>, namely Angola, Burundi, Central African Republic, Congo, Rwanda, South Sudan, Tanzania, Uganda and Zambia) as red flag locations of mineral origin and transit, which would trigger the application of conflict sensitive due diligence. Of those, Angola, Burundi, Central African Republic, Congo, DRC, Rwanda, Tanzania, Uganda and Zambia are member states of the ICGLR, meaning that all ICGLR member states except Sudan and Kenya are affected by the DFA,<sup>33</sup> in so far as if downstream users identify them in their supply chains, they will have to file a conflict minerals report and do due diligence on those sources. For minerals originating in Sudan or Kenya, a downstream company would NOT need to file a conflict minerals report.

The five steps are demonstrated in Figure One, with the cycle indicating on-going risk assessment, risk management, auditing and reporting. The five steps are a process to support effective due diligence so that companies can ensure that they respect (some) human rights and do not contribute to conflict. It is designed to ensure that a company can achieve the commitments stated in its mineral supply chain policy. A model supply chain policy is provided as part of the OECD Guidance in Annex II.

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<sup>26</sup> See UN Security Council 2010 and UN Security Council 2011

<sup>27</sup> Tyler Gillard, pers comm to Estelle Levin, 6<sup>th</sup> November 2013.

<sup>28</sup> OECD 2011a, p.15.

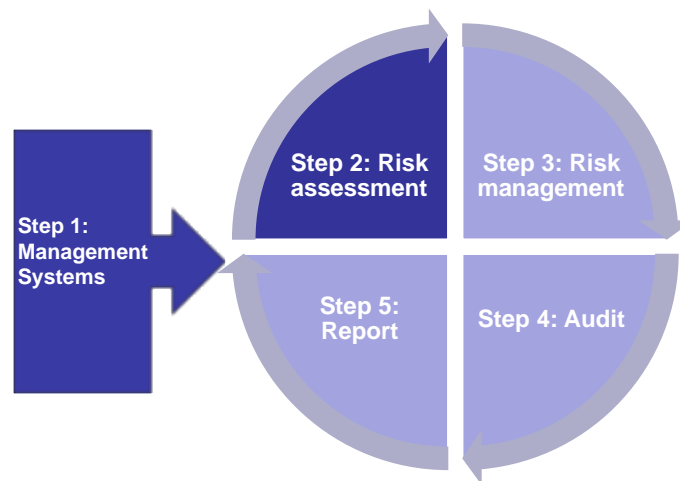
<sup>29</sup> OECD 2011b. In addition, Brazil, Malaysia and the 12 countries of the Great Lakes Region actively participated in the OECD-ICGLR joint consultation.

<sup>30</sup> OECD 2011a, p. 37.

<sup>31</sup> This is not applicable to the UN Group of Expert Guidelines for due diligence for DRC.

<sup>32</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, section 1502, (e), (1).

<sup>33</sup> ICGLR n.d.d.



**Figure One: The five steps of the OECD Guidance's due diligence process.**

Conformance with the OECD Guidance means that operators sourcing from conflict-affected and high-risk areas have instituted management systems, identified and mitigated conflict, some business practices risks, and (the most serious) human rights risks, and that smelters have been audited as to their performance and reported on this on a regular basis. The first two steps – establishing strong company management systems and identifying and assessing risk in the supply chain – are obligatory for all companies (indicated by the darker blue of the diagram.) It is only when supply chain risks are identified (being ‘red flags’ that shall have been specified in the company’s supply chain policy) that steps 3 to 5 are triggered, namely designing and implementing a strategy to respond to the identified risks; carrying out or checking for an independent third party audit of supply chain due diligence by refiners or smelters; and annually reporting on the supply chain due diligence activities undertaken.

The Guidance is supposed to be flexible: a company can adapt the model supply chain policy to create a bespoke policy for its compliance environment, CSR commitments, and suppliers’ requirements; it uses the language of recommendations rather than requirements; it focuses on process rather than outcomes; and it is not too prescriptive in how an audit should be done to ensure that the most appropriate type of assurance can be used based on an operators’ existing assurance commitments, scale, and location. It is this flexibility that makes the OECD Guidance applicable across diverse companies, jurisdictions, minerals, and type of operator (e.g. artisanal vs. corporate).

**Alignment Opportunity:** The Guidance strongly states that step 4 is not supposed to be used as an audit standard in order to allow for different types of assurance engagement to be applicable for the purpose of the audit. The OECD implementation programme supports the development and harmonisation of audit standards as they are developed by various industry or other multi-stakeholder audit programmes<sup>34</sup> The OECD smelter/refiner audit recommends confirmation of the due diligence practices of the smelter/refiner’s upstream suppliers. Since RCM audits exporters and not the refiner<sup>35</sup>, ICGLR audits could potentially provide assurance to minimize the intensity of the smelter/refiner audit.

Due to the 5-step framework, *all of the Conflict Minerals Initiatives involve building management systems, risk assessment, risk management, audit and reporting* components. However not all seek to audit the same thing, as Figure Two shows on page 19. Since the OECD-UN Guidance specifies the need for a third party audit at the level of the smelter/refiner only, any audit that occurs upstream of the smelter/refiner, e.g. the RCM’s audit, therefore falls under Step 2: risk assessment.<sup>36</sup> Consequently, consideration of the audit step of the OECD Guidance is only in scope of this study a.) where the RCM is to audit a refiner or smelter operating in the country of production of the mineral and b.) in light of the

<sup>34</sup> Tyler Gillard, pers comm with Estelle Levin 8<sup>th</sup> July 2013.

<sup>35</sup> Except where there is a refiner/smelter which exports metal in an ICGLR country.

<sup>36</sup> ICGLR and OECD, n.d. See page 7.

fact that upstream suppliers have a duty to ensure the audit has been done satisfactorily through their responsibilities under step 2, risk assessment.

**Alignment Opportunity:** The responsibilities borne by upstream operators to support the refiner's audit include allowing access to the operators' sites and facilities by customers and their representatives (i.e. the refiner's auditors), and furnishing customers with records of due diligence practices and certain documents and information to support their downstream users' risk assessment. If the RCM is to support conformance with the OECD Guidance for the exporters it is auditing, then it would ideally audit that these things have been done and enable smelter/refiner auditors easy access to the relevant documentation.

As the 5-step framework of the OECD Guidance demonstrates, risk assessments and audits are not the same thing. A company may do its own risk assessment or, where this is not possible, rely upon a third party to do this for it as part of its due diligence practice; due diligence audits, on the other hand, must be done by a third party to check the actions and/or outcomes of the entity or its contracted risk assessor. The OECD Guidance allows for both types of risk assessment, but responsibility ultimately remains with the company to ensure it is done right. Consequently, iTSCi, for example, has taken on a role in risk assessment on behalf of corporate members, particularly where it is not cost effective or even feasible for individual companies to assess some of the risks that may be a feature of its sourcing practices or operating environment. This provision allows for sourcing to continue from the artisanal and small-scale mining sector in particular where issues of logistics and cost make ongoing risk assessment prohibitive for individual companies/cooperatives and incentivizes buyers to abandon sourcing from artisanal production systems.

**Alignment Opportunity:** the RCM audit should explicitly state an objective to support downstream users' risk assessment practices in line with the OECD Guidance's recommended actions.

**Alignment Opportunity:** One of the biggest challenges of the conflict minerals initiatives is the marginalization of the artisanal and small-scale mining sector resulting from companies' desire to report as DRC Conflict-Free. Very few initiatives are presently able to support this sector; for example, iTSCi's scalability is constrained and covers the 3Ts only, Fairmined is not yet operational in the region, Fairtrade International has nine ASM organizations preparing for certification in Uganda, Tanzania, and Kenya.<sup>37</sup> Referring to its mission, the RCM could have an explicit objective to provide the assurance the market needs to get more legitimate ASM minerals to market in the interest of regional development and conflict prevention.<sup>38</sup> This would also be an example of possible complementarity with CTC which is especially adapted to ASM, with a support for compliance built into the system (through the integrated improvement concept and the baseline/compliance audit approach). If so, the certification manual would need to be reviewed with this in mind.

## 2.2 Dodd-Frank Act

The US Government's Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act, or 'DFA') came into Law on July 21st 2010.<sup>39</sup> Section 1502 of the DFA requires US issuers to declare whether any "*columbite-tantalite (coltan), cassiterite, gold, wolframite, or their derivatives; or any other mineral or its derivatives determined by the Secretary of State to be financing conflict in the conflict in the Democratic Republic of the Congo or an adjoining country.*"<sup>40</sup> Companies need to report on the due diligence undertaken on the source and on the chain of custody of these 'conflict minerals', provide an independent audit of this report, and make further information available such as "*description of the facilities used to process the minerals, country of origin and the efforts to determine the mine or location of origin with the greatest possible specificity.*"<sup>41</sup> All requested information must be published on the

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<sup>37</sup> Amy Ross, pers. comm. With Estelle Levin, 19<sup>th</sup> September 2013; Lina Villa, pers. comm with Estelle Levin, 20<sup>th</sup> September 2013.

<sup>38</sup> ICGLR 2010

<sup>39</sup> See Dodd-Frank Wall Street Reform and Consumer Protection Act

<sup>40</sup> Other minerals might be added to this list in the future. US Geological Survey 2010: 843

<sup>41</sup> US Geological Survey 2010: 839

company's website. The US Securities and Exchange Commission issued rules on how to apply the DFA on August 22<sup>nd</sup> 2012. Canada and the EU are considering broadly similar legal measures.

According to the US Securities and Exchange Commission's final rule on section 1502 of the Dodd Frank Act, the conflict minerals rule applies to "*any issuer filing reports with the Commission under section 13 a) or 15 d) of the Exchange Act, including domestic companies, foreign private issuers entering the securities market of the US and smaller reporting companies*".<sup>42</sup> The US Securities and Exchange Commission estimates that 6,000 US issuers will be directly affected by the rule,<sup>43</sup> but many companies (including non-issuer companies) within the supply chains of these issuers will also have to comply with it.<sup>44</sup> This has wide-reaching implications for the sector, as downstream users and their suppliers worldwide are preparing to be able to submit conflict minerals reports. It is crucial that RCM is aligned with the Dodd Frank conflict minerals provisions and supports downstream initiatives and users whose approaches to DD are oriented at conflict mineral reporting primarily.

The law requires reporting on due diligence and the conflict-free status of the 'conflict minerals' (coltan, cassiterite, wolframite, and gold), but does not seek to legislatively penalise companies should their sources be found to be not DRC conflict-free. Nonetheless, the brand risks associated with reporting as not DRC conflict-free have compelled many US issuers to seek to report as DRC conflict-free only, and to do this through entirely avoiding minerals from the DRC and adjoining countries, and indeed Africa altogether in some cases. Civil society is now calling on Industry to "*report on the steps they are taking to ensure a conflict-free Congo, not a Congo-free product,*" noting that "*Stakeholders expect issuers to include in their filings to the SEC any initiatives or activities they are undertaking or will undertake to support a clean mineral trade in the DRC.*"<sup>45</sup>

In the meantime, the sector particularly badly hit is ASM, especially for gold as no functional system for gold CoC is yet operational in the region making responsible sourcing appear impossible to downstream users. However, ASM gold is much more easily laundered into legitimate supply chains<sup>46</sup> in other parts of the world than the 3Ts so it is the 3T economy that is worse hit, given the limited coverage iTSCi has been able to achieve in the region to date and the present lack of full-scale alternatives to iTSCi.<sup>47</sup>) Credible and assured supply chains generating 'conflict-free' (or conflict-managed) minerals from DRC and the other countries of the GLR would open the door for US issuers to permit minerals originating in the region back into their supply chains. Should roll-out of the RCM support inclusion of more mines and mineral traders into conflict-free or conflict-managed supply chains, then this will also support improved economic activity for gold and 3T miners and their communities in the GLR. Supporting delivery of goods to buyers assured against the DMCC's Practical Guidance could be particularly beneficial given that Dubai is an important destination for African gold, and 25% of the world's gold (\$70 billion) was traded through Dubai in 2012.<sup>48</sup>

**Alignment Opportunity:** The RCM should seek to ensure it facilitates delivery of gold (including ASM gold) to users of the DMCC Practical Guidance as Dubai is an important destination point for African gold and could potentially become a major trading partner with Africa.

**Alignment Opportunity:** The RCM should seek to support reporting by issuers under the DFA as having minerals that are 'not DRC conflict-free but OECD conformant' to help counter the stigma of

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<sup>42</sup> US Securities and Exchange Commission, Final rule on conflict minerals, 1.c, p. 48

<sup>43</sup> US Securities and Exchange Commission, Final rule on conflict minerals, p. 310

<sup>44</sup> Ernst and Young, n.d.

<sup>45</sup> Fenwick and Jurewicz, 2013.

<sup>46</sup> Gold is high value, low volume making it easy to conceal valuable amounts

<sup>47</sup> Field research in South Kivu, in August 2013, indicated that the previously legitimate/formalized 3T market had been hard hit. A number of certified exporters in Bukavu have closed in the preceding two years, with only 3 or 4 currently operating. However, that does not necessarily mean that demand for illegitimate mineral exports has dried up. There was much anecdotal and circumstantial evidence that this demand continued. On the other hand, with the increasing exigency of downstream certification, and more widespread downstream compliance, it is highly likely that it will over time prove harder to launder 3Ts, which will almost certainly negatively impact the livelihoods of ASM miners. Also, regardless of international certification initiatives, illicit and informal markets (so, non-certified) tend over the medium to long-term to victimize ASM miners, due to the buyer's advantage.

<sup>48</sup> DMCC 2013b

reporting as not DRC conflict-free in spite of implementing good practice in terms of due diligence activities. This may encourage more companies to re-engage with supply chains from the Great Lakes Region. Note provision above, however, in section 2.1.

### 3 Regional Certification Mechanism

The RCM is one of the six tools provided within the ICGLR's Regional Initiative on Natural Resources (RINR). The commitment to implement both the RINR and the RCM was signed by ICGLR heads of state at a special summit in Lusaka in December 2010. The RCM standards and procedures were formally included as national regulation in the DRC (ministerial regulation no. 57 Cab.Min/Mines/01/2012 of 29 February 2012) and Rwanda (ministerial regulation no. 02/2012/MINIRENA of 28 March 2012). As such, all mineral supply chain actors operating in Rwanda and the DRC are bound by Law to fulfil all RCM requirements, including submitting to ICGLR third party audits against the applicable RCM standards.

The ICGLR Regional Certification System (RCM) is concerned with 3TG. It focuses on all supply chain operators upstream of the export point, including large-scale mines, ASM, traders, processors and refiners/smelters. It operates on both the national and regional levels. Its main features, on a regional level, are regional data analysis of mineral flows, third party audit system overseen by the ICGLR Audit Committee; Independent Mineral Chain Auditor (IMCA); whistle-blowing mechanism. On the national level, it concerns itself with inspection and classification of mine sites as green-, yellow-, or red-flagged for sourcing purposes; establishment and implementation of CoC (traceability/due diligence) management systems; mineral export certification; data management and exchange.

RCM implementation is primarily left in the hands of government at the ICGLR member state level, as far as mine site inspections and export certification is concerned. Chain of custody management may be performed by the government or partly outsourced to an independent party as long as certain transparency standards are respected. As such, iTSCi may operate under the umbrella of the RCM but is in itself insufficient to comply with all RCM requirements as defined in the respective ministerial regulations. Independent audits and risk assessments are (planned to be) performed for both the RCM and iTSCi, albeit not to the same standards at the moment.<sup>49</sup>

The RCM Certification Manual provides the methodological framework for the national standards and procedures of mine site inspections, CoC systems and export certification requirements. The RCM system is grounded on the OECD Guidance and includes CTC standards as progress criteria at the mine site level (meaning that CTC standards are monitored but not enforced). It allows states the latitude to use whichever chain of custody systems are most appropriate for supporting traceability of their mineral supply chains, and also establishes "*common regional standards for transparency... working conditions, environmental performance and community consultation.*"<sup>50</sup>, noting, however, that progress criteria are not enforced and hence not certified under the RCM.

While the ICGLR Steering Committee (as mandated by the ICGLR heads of state) set the RCM framework, the ICGLR's twelve Member States are obliged to implement, enforce and police these standards and procedures.<sup>51</sup> They are expected to integrate the RCM into their respective legal systems so that it can be legally enforceable.<sup>52</sup> Indeed the RCM is envisaged as an "umbrella" under

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<sup>49</sup> Philip Schütte, pers. comm. to authors, 23<sup>rd</sup> September 2013.

<sup>50</sup> ICGLR, 2011d.

<sup>51</sup> The observation was made by a senior SAESSCAM official in the DRC that currently red and yellow flag status leads to the paradox whereby, while the entity cannot export minerals, it also cannot be inspected by agents – which begs the question of what actually happens to those minerals, especially pertinent as the vast majority of mine sites in eastern DRC are and will be red flagged for the foreseeable future. It is important to note that the DRC's policy of suspending export both red and yellow flagged sites is not related to RCM compliance. (Cf. Annex A, to the 'ICGLR Third Party Audit Methodology/Template') In cases where national standards of MS diverge from or are non-compliant with ICGLR RCM standards, the ICGLR Independent Mineral Chain Auditor could be expected to make recommendations on whatever actions are needed for MS compliance with the RCM standards.

<sup>52</sup> ICGLR, 2011d, p. 3: "*an ICGLR Mineral Tracking and Certification Scheme for minerals will only be credible if all Member*

which various initiatives in the region may be implemented - thus creating an intentional latitude for national authorities to own and develop their own operationalization, provided that any such procedures are in full accordance with ICGLR RCM standards. While all member states apply the same ICGLR standards criteria, there are differences of inflection and detail in the two countries which have proceeded with integration already (Rwanda<sup>53</sup> and DRC), based upon the respective regulatory regimes. So, for example, in the case of the involvement of children in the supply chain, Rwanda's minimum working age prohibits any employment of children under the age of 16 in exploitation at the mine site. However, DRC's regulatory regime stipulates a minimum working age of 15 years, with the qualification that any such employment has to involve light as opposed to heavy labour.<sup>54</sup> Despite an ostensible discrepancy, both member states will be issuing the same ICGLR export certificate, as this is in accordance with the ICGLR standards, which proscribe "the worst forms of child labour".<sup>55</sup>

The RCM works by designating certain circumstances and/or outcomes of production as red-, yellow- or green-flags. Red flag status "*means a violation of one of the system critical criteria of either the standards and procedures for mine site inspection and approval ... or a violation of one of the system-critical criteria for Third Party Audits.*"<sup>56</sup> Its use of flags is quite different to how flags are used in the OECD-UN Guidance; in the RCM, the flags provide a compliance indication, whereas in the OECD-UN Guidance they indicate the existence of a risk whose circumstances must be assessed and which must then be managed.

Flags can be awarded through two different processes. First, Member States are responsible for annually assessing mine site compliance and so assigning a compliance 'flag' to each site, according to the (red/yellow) status criteria (i.e. conflict, child labour, traceability, tax and license conformity, AFP) and progress criteria (working conditions, environment, formality/transparency, community development) in the RCM manual. Note that the ICGLR defines two sets of mine site standards for "industrial" (higher standard) and "artisanal" (lower standard) mines; in total, there are 35 mine site standards (13 red flags, 9 yellow flags, 13 progress criteria). These Member State findings are later double checked by independent third party audits<sup>57</sup> of a sample of an exporter's suppliers, with the auditor making recommendations to the ICGLR (or Member State?) as to altering a site's flag status and also awarding a flag status to the exporter.<sup>58</sup> However, primary responsibility for mine site inspection lies with Member States.<sup>59</sup>

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*States have established procedures for credible mine site auditing systems designed to confirm that mine sites meet ICGLR regional standards, internal chain of custody tracking systems designed to eliminate the presence of designated minerals in the chain of production, trade, transport and export of designated minerals within their own territories, and certification procedures designed to confirm each certified export was produced, traded, processed and exported in compliance with regionally established ICGLR standards, while taking into account that differences in production methods, trading practices, and institutional controls may require different approaches to meet the accepted ICGLR regional standards".*

<sup>53</sup> Rwanda Ministry of Natural Resources, 2012.

<sup>54</sup> Another difference in implementation between DRC and Rwanda is the former's proscription of any pregnant women involved in exploitation at the mine site. There is no injunction in the RCM standards against pregnant women being involved in exploitation at the mine site. This an example of the DRC applying its own national standard.

<sup>55</sup> In DRC, it may be problematic to confirm the age of children under the age of 18 years. Children, under 18 years, are not issued with ID cards. Rather they would possess a 'carte d'élève', indicating age. However, if the child does not go to school he/she has no 'carte d'élève'. Thus, while the absence of an ID card would indicate that the child is under 18 years, there may be no way of definitively ascertain whether under 15 years. Cf. Annex B to The ICGLR Third Party Audit Methodology/Template.

<sup>56</sup> ICGLR, 2011d, p. 8.

<sup>57</sup> The ICGLR RCM does not envision third party audits of *all* mine sites supplying particular exporters. In most cases, this would not be feasible, in terms of budget and time constraints. Rather, the expectation is that third party audits can be based upon a 'representative sample by formula, or as agreed with the Audit Committee'. The issue of sample size is discussed in the annex to the third party audit template.

<sup>58</sup> Cf. Annex A, to the 'ICGLR Third Party Audit Methodology/Template' for discussion of third party auditor's role in changing flag status.

<sup>59</sup> Cf Annex B, to the 'ICGLR Third Party Audit Methodology/Template' for discussion of the hypothetical situation whereby an exporter sources from a mine site which, having been green-flagged by the member state, over the subsequent 12 months falls into non-compliance with ICGLR standards. Does the exporter still bear responsibility for appropriate ongoing risk assessment to identify that subsequent non-compliance? Each time the flag status of the mine site changes the exporter must react. That is why exporters need to document the status of the mine site at the same of purchase for each mineral lot. This would be much facilitated were iTSCi to require this information to be noted on the logbook sheets (such that exporters may directly refuse red-flagged minerals). iTSCi have been requested to do this, but up to now this has not been included.

In the case of major non-compliance by an exporter, and thus the issuance of a red flag, Member States are obliged to cease issuing export certificates to the respective export entity for a period of six months, and until such time afterwards that a follow-up audit by a third party auditor removes the red flag status. Moreover, the Member State must also ensure that the red-flagged entity does not stockpile minerals during the period of red flag de-certification for subsequent export following the lifting of the red flag.

In the case of a yellow flag, the exporter is essentially on probation, with notice served that if a follow-up audit within the next six months does not change the status to full compliance the exporter will be designated as red flagged, so a case of major non-compliance.<sup>60</sup>

Green flag compliant status, according to ICGLR standards, has a duration of one year in line with the anticipated frequency of RCM audits. If any entity subject to inspections/audits with a 12 month frequency fails to submit to an inspection/audit within that time period it will be un-certified, and listed as red-flagged.

The most significant difference between the member states is perhaps the DRC's legislation which makes mandatory the suspension of all mining activity not only at red flagged *but also yellow flagged* mine sites.<sup>61</sup> Again, it is important to note that this difference is not linked to any RCM criteria, and is not connected to RCM compliance.

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<sup>60</sup> From 1<sup>st</sup> October, with the implementation of the ICGLR RCM in the DRC, the situation in DRC will diverge from the scheme as originally envisaged by the ICGLR. Currently, the DRC considers both red flagged and yellow flagged entities as suspended from export. This anomaly could be an example of a situation, which behooves further examination by the IMCA.

<sup>61</sup> Key to the long-term viability of the ICGLR RCM will be MS homogenous and strictly uniform interpretation/application of the RCM Standards.

**Table Two: Key Elements of the RCM Third Party Exporter Audit**

Criteria	Key Questions
<b>Auditee</b>	Primarily focused on the exporter Also samples associated mineral supply chains, from mine site to exporter, including the transportation route
<b>Focus</b>	ICGLR regional standards, themselves including OECD UN Guidance (enforced) and CTC (monitoring)
<b>Audit Scope</b>	3TG On-site inspections all along the mineral chain up to and including point of export Risk assessment role – investigating, evaluating and reporting on the ‘conflict environment’ for consideration by the Audit Committee
<b>Audit Object</b>	Exporter compliance with ICGLR RCM standards as applicable for a given section of the supply chain (export; CoC; mine site) Due diligence (conflict risks); child labor, mineral origin/traceability/plausibility, transparency Chain of custody of (certified) mineral shipped by an exporter, and a sample of the operators who handled that mineral up to the point of extraction, up to including mine sites.
<b>Audit Cycle</b>	Annually, at minimum
<b>Auditor</b>	Accreditation of the auditor to be carried out by the ICGLR Audit Committee itself, or an outside agency, as mandated by committee Selection criteria for accreditation of the audit team includes independence (from auditee exporter, suppliers, traders, miners, contractors & subsidiaries), local knowledge/deep experience in the region, linguistic knowledge, professional knowledge of auditing principles, demonstrated ability to carry out independent third party auditing <sup>62</sup>
<b>Audit Methodology</b>	Desk-based research and literature review; interviews with management and staff of exporters; local government officials; mineral traders, formal producers/mine site operators, artisanal producers, porters; civil society; relevant national/international experts Forensic, <i>detailed</i> examination of records pertaining to exporters, traders, miners, transporters, and all other actors in mineral chain Capacity review – cross-checking whether volume of minerals produced/traded/exported is consistent with capacity of mine site/trader/supplier/exporter; optional employment of AFP to investigate/confirm mineral origin; Field visits of several days duration (depending on scale of operations and logistical context) to trading centers and mine sites Transport route verification
<b>Audit Process</b>	Literature review; risk assessment; interviews on the ground; review of records; field visits to exporters and mine sites; transport route verification; optional AFP control sampling; Auditor should submit audit report within 30 days of completing field research Review of audit draft by the auditee <sup>63</sup> Auditor should keep field notes for a period of five years
<b>Audit Duration</b>	Contingent upon scale of auditee operations <sup>64</sup>
<b>Audit Governance</b>	Audit Committee, or outside agency, as mandated by Audit Committee

<sup>62</sup> Cf. Annex A to The ICGLR Third Party Audit Methodology/Template for discussion of auditor accreditation – the issue of individual vs organization/legal entity accreditation.

<sup>63</sup> Cf. Annex A to ‘The ICGLR Third Party Audit Methodology/Template’ for discussion of a proposed review of the third party audit by the auditee

<sup>64</sup> Duration is not specified in the ICGLR Certification Manual or Appendices. However, given the relatively wide spread re: exporter scale, it is not advisable to predetermine duration. This might best be decided on an ad hoc basis, following agreement between the Audit Committee, or its designated outside agency, and the auditor, subsequent to or included in agreement on sample size. Cf. Annex A to ‘The ICGLR Third Party Audit Methodology/Template’.



	<p>Review third party audit reports</p> <p>Withdraw or suspend accreditation of the third party auditor</p> <p>Develop, review and revise requirements and procedures for third party auditors</p>
<b>Audit Outcome</b>	<p>The Auditor ascribes a 'flag' status to the auditee (exporter):</p> <p>Red flag (non-compliant, un-certified)</p> <p>Yellow flag (probationary six month grace period)</p> <p>Green flag (full compliance)</p> <p>The auditor may also alter the status of spot-checked mine sites which have been inspected by government agents according to ICGLR RCM standards.</p>
<b>Compliance statement</b>	ICGLR Regional Certification for Designated Minerals
<b>Audit Follow-Up</b>	<p>Red flag – suspension for six months. After six months eligible for follow-up audit. No stockpiling or trading allowed.</p> <p>Yellow flag – grace period of six months. If follow-up audit within six months finds full compliance, status changes to green flag. If follow up audit does not occur within six months, or if follow up audit finds red/yellow flag, status change to red flag.</p> <p>Green flag – no follow up</p>
<b>Audit Funding</b>	Audit is to be funded by the exporter <sup>65</sup>
<b>Required Documents</b>	<p>All financial documents – e.g. taxation invoices &amp; payment receipts, book-keeping, salary records, transaction records of mineral purchases from suppliers, transaction records downstream from the exporter, all fees paid to government agencies for license to export</p> <p>Personnel records, to be correlated with salary records</p> <p>Relevant company policy documents</p> <p>Company registration documents, licenses,</p> <p>All records relating to CoC</p> <p>All records of traders, miners, mine site operators, transporters</p> <p>The review of documents should take place in the actor's place of business</p>
<b>Information Management</b>	<p>Notification of member state government</p> <p>Publication in internet/media of exporting entity status</p> <p>ICGLR Database of Exporters</p> <p>Ensure that contents of third party audits are accessible to the public<sup>66</sup></p>

<sup>65</sup> Cf. Annex A, to the 'ICGLR Third Party Audit Methodology/Template' for discussion of modalities of payment for third party audit.

<sup>66</sup> Cf. Annex A, to the 'ICGLR Third Party Audit Methodology/Template' for discussion regarding publication of the third party audit.

The ICGLR Independent Mineral Chain Auditor (IMCA) is another pillar to the RCM. However, the IMCA is more focused on regional and systemic compliance with ICGLR standards, as opposed to the third party auditor's role as verifier of specific exporter supply chain compliance.

The IMCA will be appointed by the ICGLR Executive Secretary for a three year term. The IMCA has three principal areas of responsibility. The first is to examine MS CoC, verifying and/or requesting modifications to ensure that they meet ICGLR standards. The second is to investigate potential cases of armed group involvement in the mineral chain, beyond the capacity of the third party auditor; or to investigate large-scale cases of mineral smuggling; or to investigate anomalous situations whereby production does not match productive capacity, whether of mine, region or member state; or investigate cases brought to the attention of the IMCA through the whistle-blowing mechanism. The third is to furnish rolling updates for a continuous risk assessment of conflict and conflict financing from mineral exploitation and trading in the region.<sup>67</sup>

To avoid confusion, it is important to underline that the IMCA's role is distinctly different to that of the third party auditor. The IMCA's investigative audit of the MS CoC, effectively a meta-audit, concentrates on the systemic whereas the third party auditor is focused on the specific sourcing and due diligence activities of an individual exporter. The work of the latter will undoubtedly inform that of the IMCA, especially through the conflict risk assessment.

Rwanda and DRC both issued RCM national regulations as a base for implementation in early 2012. Since then, both countries have partly introduced the various national-level RCM implementation steps: mine site inspections, CoC management, and, based on these, export certification. In Rwanda, a RCM-compliant national mine inspection template was developed and the inspection process has started, albeit with variable implementation quality. In the DRC, so-called "joint missions" are conducting inspections of mine sites, so as to assign mine site status. However, these inspections ignore most RCM standards and hence are not per se compliant with the RCM. Both the DRC and Rwanda are implementing the iTSCi programme in cooperation with ITRI and PACT; the conformance of the iTSCi programme with ICGLR CoC standards has yet to be demonstrated through an independent evaluation.

At the export stage, both Rwanda and DRC have (through a third party) printed ICGLR certificates to be attached to individual export shipments. In Rwanda, 2,000 certificates were printed, representing ca. 5 years of anticipated national demand. In the DRC, 100,000 certificates were printed, representing ca. 100 years of anticipated national demand. In Rwanda, a certification unit was formed between RNRA and the Rwanda Bureau of Standards to oversee the export certification process; initial certification is envisaged in October-November 2013. In the DRC, CEEC will be in charge of the process and plans to issue certificates starting from October 2013 for a price of \$250 per certificate (shipment).

Pilot steps of RCM implementation have taken place in other countries, notably Uganda and Burundi. Eventually, the system is envisioned as principally applicable in all 12 ICGLR member states (provided they are producing or trading 3TG minerals). All national-level RCM implementation steps need to be verified (partly as spot checks) through independent 3<sup>rd</sup> party audits and the work of the IMCA, as well as monitoring by the ICGLR secretariat (e.g., whistle blowing; regional database analysis).

**Alignment opportunity:** The RCM third party exporter audit can be used as part of inform a smelter/refiner's risk assessment under Step 2 of the OECD-UN Guidance.

**Alignment opportunity:** The OECD-UN Guidance audit of the refiner includes site visits to be done by the refiner's auditor, including to exporters and mine sites. Could the RCM exporter audit be adequate for the purposes of the OECD-UN Guidance auditor's site visit to save two audit visits? Is cross-recognition a possibility? Why/not?

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<sup>67</sup> While the RCM certification manual stipulates that the IMCA will make use of "those sections of the Third Party Audit reports that investigate and report on the conflict conditions prevalent at each step in the mineral chain", it would also seem apposite for the third party auditor to draw upon IMCA reports to support the third party audit risk assessment.

**Alignment question:** To what extent will the RCM assure a supply chain's conflict-free status vs. OECD conformant status (as per the distinction iTSCi makes)?

## 4 RCM Alignment with the Upstream CMIs and Their Audits

All of the conflict minerals systems seek to provide some type of assurance of origin (chain of custody) and that due diligence and risk management are conducted in line with international expectations, namely the recommendations of the OECD-UN Guidance. The CMIs are differentiated on the basis of which minerals and which parts of the supply chain are in scope, and which sector is driving demand, Figure Two captures these distinctions, as well as the point of audit. Different colors show which conflict minerals are in scope, e.g. the 3TG, 3Ts only or gold only.

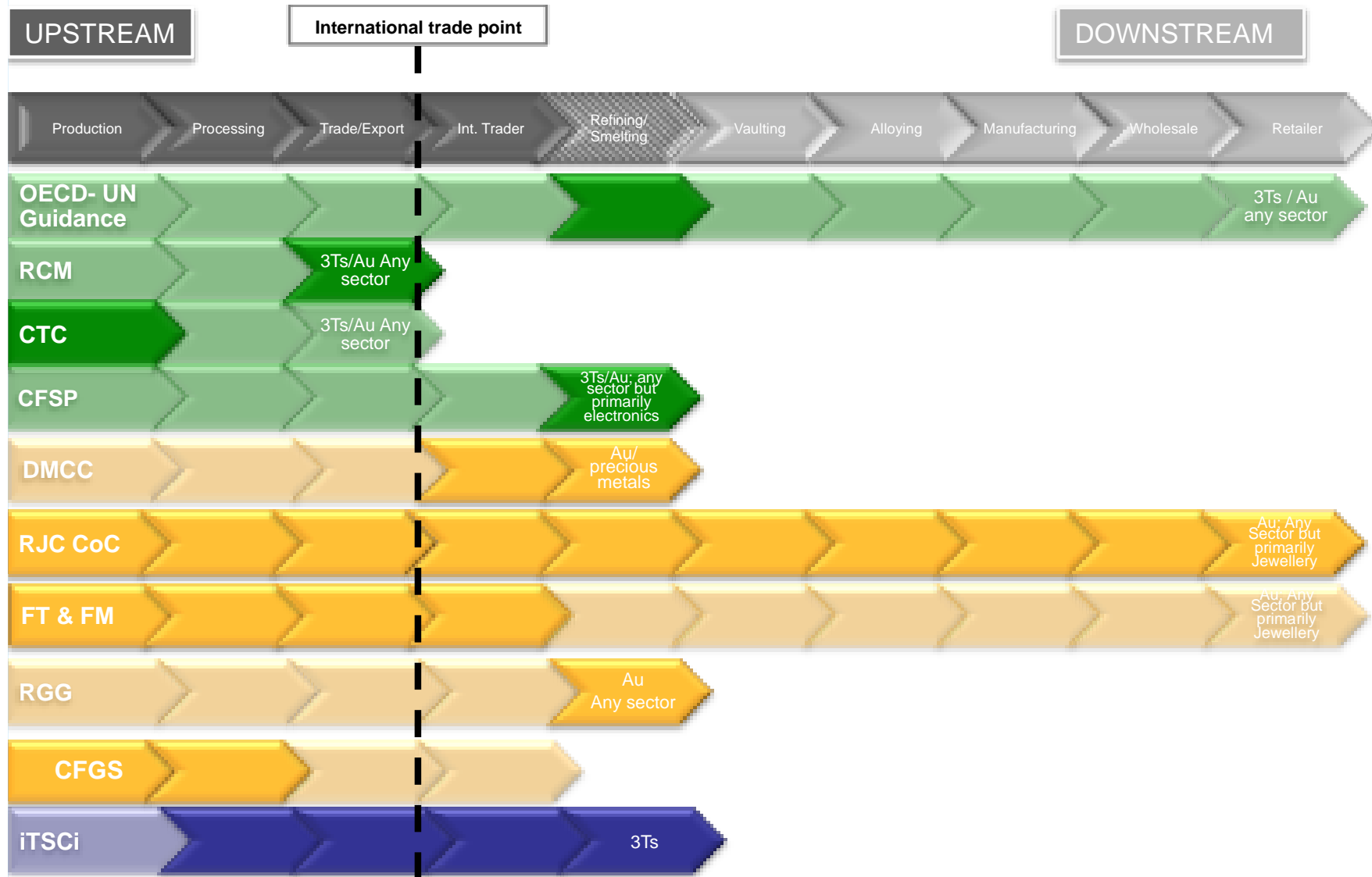
The initiatives also differ in terms of which risks and geographies are within scope and how. Figure Three presents this coverage. All are theoretically applicable in the Great Lakes Region, but actual application there is generally extremely limited, except for iTSCi which already covers significant geographic areas, mineral quantities and numbers of actors in Rwanda and DRC as well as the international purchasing segment.<sup>68</sup> An analysis of actual coverage would identify which initiatives may need engagement and support to get greater uptake by industry in the Great Lakes Region, e.g. RJC CoP in the upstream segment has no entities certified in the GLR, Fairtrade is piloting pre-certified ASMOs in Tanzania, Kenya, and Uganda, the WGC has two members with operations in the GLR who may decide to apply the CFGS (though non-members have also indicated their intention to do so)<sup>69</sup>, iTSCi is operational in Rwanda and DRC, CTC has been incorporated into the RCM and introduced as a pilot scheme in both Rwanda and DRC; the RCM is implemented in Rwanda and, partly, in DRC; data needs to be gathered for the remaining programs although it appears that none have made significant effort to engage in region.

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<sup>68</sup> Kay Nimmo, pers comm to Estelle Levin 29<sup>th</sup> October 2013.

<sup>69</sup> Terry Heyman, pers comm to Estelle Levin, 30<sup>th</sup> October 2013.

**Figure Two: The Supply Chain Coverage of the Different Conflict Minerals Initiatives and Points of Audit**



See notes on the following page. The above diagram shows the auditee for each initiative in darker colour. This actor is engaged for the audit, but upstream suppliers may also be investigated (including with mine site visits) for some of these audits (e.g. RCM, CFSP, OECD-UN Guidance) or as a pre-condition for these audits, hence the lighter colour.

Green arrows are initiatives covering 3TG; yellow arrows cover gold only; blue arrow covers 3Ts only. Arrow length shows the initiative's supply chain coverage. Please note that in some cases refining will take place before export from the producer country.

**Figure Three: Scope and Issue Coverage of the Different Conflict Minerals and Responsible Sourcing Initiatives**

Issues covered	Initiative										iTSci	DMCC
	OECD DDG	CFGS	RGG	CFSP	RJC CoC / CoP	Fairtrade and Fairmined	RCM	CTC				
Geographic Scope	Global, (high-risk & conflict affected only)	global	global	global <sup>2</sup>	global	global <sup>1</sup>		GLR DRC and RW	DRC RW (historically)	DRC, RW	Global	
Conflict financing												
Fraud and Money laundering												
Legality of Supply Chain Operators					(CoP)							
Worst Human rights violations & Human Security					(CoP)							
Chain of Custody		?										
Community development	*	#			*			* +	*			
Environment					(CoP)			+				
Labour issues					(CoP)			+				
Other Social / Political / Economic		**			** (CoP)			+				

Color coding: Green = issue covered; Yellow = issue party covered.

\* With regard to ASM formalisation & professionalization, and or grievance mechanism.

\*\* If it comes from a conflict area, further checks on the current level of security and political stability are required.

+ No enforcement, monitoring only.

<sup>1</sup> presently operational in Latin America but being expanded to Africa and Asia in 2013/14.

<sup>2</sup> Audits smelters/refiners globally, but only requires conflict-sensitive due diligence for DRC and neighbouring countries

Consequent to the different scopes of the various conflict minerals initiatives, their audits also verify different things.

**Table Three: Summary of Audits for each Scheme**

INITIATIVE	AUDIT SUMMARY
<b>UPSTREAM ONLY</b>	
ICGLR Regional Certification Mechanism (RCM)	Third party auditor verifies that the supply chains of a sample of shipments of Designated Mineral (conflict minerals) by an exporter that received an ICGLR regional certificate were in compliance with the requirements of the RCM. The object of the audit is the chain of custody of (certified) minerals shipped by an exporter (with the applicable RCM standards for each segment of the supply chain), and the operators who handled that mineral up to the point of extraction in a top-down approach. Applicable to gold and 3Ts both.
ITRI Tin Supply Chain Initiative (iTSCi)	Third party auditor, Channel Research – delivers company pre-audits, company field audits, and governance assessments. For field audits, focused on both mine-site operators and exporters (and smelters; iTSCi members), and the supply chains between them. Supposedly annual audits. Applicable to 3Ts only.
Certified Trading Chain (CTC)	Baseline and compliance audits – bottom-up from mine site to associated exporter. Baseline audits give recommendations to auditee towards becoming compliant. Compliance audits, if passed, form the base for CTC certification of responsible mining practice at a given mine site (and associated trading chain). Theoretically applicable to gold and 3Ts both but in practice only realized for 3Ts so far.
Conflict-Free Gold Standard (CFGs)	Third party assurer provides “limited or reasonable assurance on the company’s Conflict-Free Gold Report”, ensuring that companies have reported on the right parts of the standard and in conformance with the WGC’s Conflict-Free Gold Standard. Companies are required to report their conformance with the standard over a 12 month period, and assurance of the company’s disclosure must be published within 4 months of the conflict-free gold report’s publication date. <sup>70</sup>  Scope includes assessments of conflict assessment, company, commodity, and externally sourced gold, and transportation routes.  In theory all scales of gold producer are eligible, but in practice only larger gold mining companies would be able to achieve the requirements.
<b>DOWNSTREAM ONLY</b>	
Conflict-Free Smelter Program (CFSP)	The audit covers “tin/tantalum/tungsten inventory, receipts and product shipments during this audit period as well as closing inventory at the time of the audit.” <sup>71</sup> CFSP auditor does not audit upstream activities, but must verify that an OECD-UN Guidance audit has been done for upstream activities. Otherwise the smelter / refiner is not eligible for a CFSP audit. <sup>72</sup>  CFSP auditor may do site visits of upstream operators, but is checking material flows only.  Applicable to the 3Ts or gold. Only option for CoC audit of tin and tantalum smelters. <sup>73</sup>

<sup>70</sup> WGC, 2012b.

<sup>71</sup> Electronic Industry Citizenship Coalition Inc; Global e-Sustainability Initiative 2012b:4

<sup>72</sup> Electronic Industry Citizenship Coalition Inc; Global e-Sustainability Initiative 2012b:13

<sup>73</sup> Tungsten smelters can now be serviced by the Tungsten Industry – Conflict Minerals Council. See <http://www.ti-cmc.org>.

INITIATIVE	AUDIT SUMMARY
London Bullion Market Association (LBMA)	Applicable to gold only.  The auditor applies either ISAE 3000 approach or ISO 19011:2011 approach. Under the ISO 19011:2011 approach auditors are required to evaluate the existence of appropriate management systems at the Refiner. These assessments include information gathering and on-site visits to the Refiner. <sup>74</sup> Under ISAE 3000, a risk-based approach is adopted which includes “risk assessment, planning and performing assurance procedures, gathering sufficient appropriate assurance evidence” <sup>75</sup>
Dubai Multi Commodity Center (DMCC) Responsible Sourcing Guidance	The DMCC Guidance is fully aligned with the OECD Guidance. The auditor applies either ISAE 3000 approach or ISO 19011:2011 approach. The auditor reviews the auditee’s management systems, supply chain risk assessment, risk mitigation plan and reporting according to the 5 steps of the standard. The auditor conducts on-site visits to the auditee and gathers information through interviews, visual observation and document review (on the auditee’s supply chain management systems, due diligence measures and transactions). <sup>76</sup>
ENTIRE SUPPLY CHAIN	
OECD Guidance	Third party auditor verifies the smelter/refiner’s due diligence process is in conformance with the standards and processes of the Due Diligence Guidance. Upstream suppliers (mineral concentrate traders, re-processors, and exporters) may be subject to in-site investigation.  Any audits conducted by upstream suppliers are considered as contributions to the refiner’s risk assessment process.
Responsible Jewelry Council’s Code of Practice	Third party audit of an RJC member, which can be any company at any point of the gold commodity or gold jewelry supply chain. Broad scope in terms of issues covered, and high standards of risk management along jewelry supply chains. Now includes element on human rights and responsible sourcing, directed at supporting conformance with the OECD Guidance and CoC.
Responsible Jewelry Council’s Chain-of-Custody	Third party audit of RJC member’s system for sourcing gold, designed to assure the material’s supply chain. Can be of a subsidiary or site of RJC member only rather than full member. ASM gold can enter a CoC supply chain provided it was produced by a recognized system, e.g. Fairtrade or Fairmined.  Third party auditor verifies the auditee’s systems for managing chain-of-custody. The audit covers “all applicable provisions in the standard at all facilities in the certification scope” <sup>77</sup> , which include all facilities under the control of the auditee that the auditee “intends to use for the extraction, processing, manufacturing, storage, handling, shipping and receiving, and marketing of CoC Material” as well as all Outsourcing Contractors that the auditee “intends to use for the processing and manufacturing of CoC Material.” <sup>78</sup> A sampling of facilities is allowed at the auditor’s discretion “where there are common management systems applied in similar contexts.” <sup>79</sup>
Fairmined	High performance standards for artisanal and small-scale gold mining. Includes chain of custody for 100% gold produced by the artisanal/small-scale mining operator (ASMO) <sup>80</sup> Incorporating revisions into the new draft of the Fairmined Standard to support conformance with the OECD Guidance (due end 2013).

<sup>74</sup> LBMA 2013b:8

<sup>75</sup> LBMA 2013b:8

<sup>76</sup> DMCC 2013a:9-10

<sup>77</sup> RJC 2012b:8

<sup>78</sup> RJC 2012b:5

<sup>79</sup> RJC 2012b:8

<sup>80</sup> ARM 2013a: Section 1.4.1

INITIATIVE	AUDIT SUMMARY
	<p>Includes third party audit of the ASMO. The ASMO must accept audits of their premises and subcontracted premises.<sup>81</sup> Third party processing plants subcontracted by the ASMO are subject to special traceability rules. <sup>82</sup> However, “where full compliance with physical traceability requirements imposes disproportional costs, ASMOs are exempt from physical traceability requirements.”<sup>83</sup></p> <p>Traders are audited against the market annex and the traceability criteria. There are two routes to the market, either fully traceable or the B2B model which goes up to the export point. Refiners are subject to audits only if they are located in the export country; in cases where the trader exports to a refinery elsewhere, the refiner does not undergo audits for B2B.<sup>84</sup></p> <p>All actors making a product claim on Fairmined have to undergo a documental audit. If this audit raises any alarms of mismatch of sourcing and sales, a physical audit is conducted.<sup>85</sup></p>
Fairtrade	<p>High performance standards for artisanal and small-scale gold mining. Includes chain of custody for 100% gold produced by the artisanal/small-scale mining operator (ASMO). Incorporating revisions into the new draft of the FAIRTRADE Standard to support conformance with the OECD Guidance (due end 2013).</p> <p>Includes third party audit of the ASMO. The ASMO must accept audits of their premises and subcontracted premises.<sup>86</sup> Third party processing plants subcontracted by the ASMO are subject to special traceability rules. However, “where full compliance with physical traceability requirements imposes disproportional costs, ASMOs are exempt from physical traceability requirements.”<sup>87</sup></p> <p>All actors in the supply chain who take legal ownership of the product must be certified. The traders and licensees certified by FLO-CERT or National Fairtrade Organisations are audited. Every trader up to the Licensee (any entity that has been granted the right to use the Fairtrade Label by Fairtrade International (FLO) or a FLO National Member / Labeling initiative) needs to keep evidence of constant compliance with each criterion of the certification requirements.<sup>88</sup> Refiners are checked against the public compliance criteria for traders.<sup>89</sup></p>

<sup>81</sup> ARM 2013a: Section 1.1.2

<sup>82</sup> ARM 2013a: Section 0.2.2

<sup>83</sup> ARM 2013a: Section 1.4.2

<sup>84</sup> Villa, L., personal communication with Estelle Levin, 20.09.2013

<sup>85</sup> Villa, L., personal communication with Estelle Levin, 20.09.2013

<sup>86</sup> Fairtrade 2013, Section 1.1.2

<sup>87</sup> Fairtrade 2013, Section 7.1.3

<sup>88</sup> Morera, L., personal communication with Estelle Levin, 23.09.2013

<sup>89</sup> Morera, L., personal communication with Estelle Levin, 23.09.2013



**Table Four: Dashboard of Audit Approaches for Upstream Initiatives**

Criteria	RCM	CTC	iTSCi	Fairtrade	Fairmined	CFGS
<b>Applies to (auditee)</b>	<i>Exporter (top-down to sample of associated mine sites)</i>	<i>Mine sites (bottom-up to associated exporter); Baseline and Compliance Audit</i>	<i>Mine sites Traders / processors Exporter Smelter</i>	<i>ASM Organisation Traders and licensees certified by FLO-CERT or National Fairtrade Organisation<sup>90</sup> (first purchase point) Refiners (checked against public compliance criteria for traders)<sup>91</sup></i>	<i>ASM Organisation and its Fairmined system of production up to point of sale Traders Refiners only if they are located in the export country. Every entity making a product claim on Fairmined gold undergoes documental audit, and if there is a mismatch of sourcing and sales, a physical audit is conducted.<sup>92</sup></i>	<i>Gold Mining Companies</i>
<b>Focus</b>	<i>ICGLR regional standards (based on OECD-UN Guidance and partly including monitoring of CTC standards)</i>	<i>CTC Standards</i>	<i>OECD-UN Guidance DFA ISO 19011</i>	<i>Adaptation of Generic Fairtrade Standard to Gold ILO Core Labour Standards OECD Guidance UN Declaration on Human Rights</i>	<i>ARM's Vision and Principles for Responsible ASM Adaptation of Generic Fairtrade Standard to Gold ILO Conventions OECD-UN Guidance</i>	<i>Conflict-free OECD-UN Guidance Voluntary Principles on Security and Human Rights ICMM's Sustainable Development Principles, Sarbanes-Oxley Act ISO certifications GRI report assurance</i>
<b>Audit scope (material, issues)</b>	<i>3TG  Criteria for Conflict/ due diligence; limited</i>	<i>3T (G)  Criteria for Traceability (including CoC</i>	<i>3T  Criteria for management systems, system of</i>	<i>Gold, silver, platinum.  Production standards: Social Development, premium governance,</i>	<i>Gold and associated precious metals: Traceability Legality, Transparency and accountability in</i>	<i>Gold</i>

<sup>90</sup> Morera, L., personal communication with Estelle Levin, 23.09.2013.

<sup>91</sup> Morera, L., personal communication with Estelle Levin, 23.09.2013.

<sup>92</sup> Villa, L., personal communication with Estelle Levin, 20.09.2013

Criteria	RCM	CTC	iTSCi	Fairtrade	Fairmined	CFGS
	<i>monitoring of, Working Conditions, Environment, Formality and Transparency, Community Development. Optional AFP</i>	<i>system, production plausibility, security)/Transparency, Labor &amp; Working Conditions Security Community Development Environment Optional AFP.</i>	<i>controls/transparency re: mineral supply chain, supply chain risk assessment, community engagement, security &amp; armed presence CoC system, production capacity &amp; validation</i>	<i>environmental protection, Labour Conditions Trading/processing standards: Product description, Scope, Buying from certified producers, Pricing and premium, Trading relationships and contracts, Pre-finance, Traceability, Product composition,</i>	<i>ASMO's Non discrimination – gender considerations Environmental friendly practices (mercury and cyanidation); Labour standards; Premium use; Premium governance; Other issues such as forest management (where applicable), forced labour and child labour/ worst forms of exploitation, amalgam burning practices in habitat areas and water management</i>	
<b>Audit Object</b>	<i>Due diligence of supply chain from mine-site to point of export Top-down (material and suppliers) Global market access Includes monitoring mining practice</i>	<i>Transparency and traceability of mineral trading chains Responsible mining practices Bottom-up Enables responsible sourcing; due diligence; progressive improvement</i>	<i>Assess the extent to which the company has implemented OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas Evaluate adherence to iTSCi traceability and due diligence procedures</i>	<i>Miners' production practices Trading relationships</i>	<i>Miners' organisational and production practices Trading relationships between the ASMO and its buyers, including traceability from mine to refiner supply chain (either physically traceable for Fairmined consumer products or documental traceability downstream for Incorporating Fairmined supply)</i>	<i>3<sup>rd</sup> party assurance of due diligence (verification of disclosure) Conflict assessment: Operations located in or transport through 'conflict-affected or high-risk' areas; Company assessment: commitment to human rights, corporate activities, security, payments and benefits in-kind, engagement, complaints and grievances Commodity assessment: Nature of gold production, control of</i>

Criteria	RCM	CTC	iTSCI	Fairtrade	Fairmined	CFGS
						<i>gold at the operation, transport Externally sourced gold assessment<sup>93</sup></i>
<b>Audit outcome</b>	<i>Certification of compliance with all relevant ICGLR standards – including the standards referring to the mine-site, CoC, &amp; exporter. Audit certifies compliance with Status Criteria, not Progress Criteria</i>	<i>CTC certification of responsible mining practice, in line with 20/21 CTC standards</i>	<i>iTSCI/ITRI assurance as conflict-free or OECD conformant</i>	<i>FAIRTRADE certification of a supply chain entity (all actors taking legal ownership of the product) by FLO-CERT<sup>94</sup> FAIRTRADE labeling of gold (optional)</i>	<i>FAIRMINED certification of a mining entity or trader FAIRMINED certification of gold Other downstream users are licensed.</i>	<i>Assurance statement provided on Conflict-Free Gold Report</i>
<b>Compliance statement</b>	<i>ICGLR Regional Certificate for Designated Minerals awarded to each export shipment<sup>95</sup></i>	<i>National CTC Certificate of Compliance</i>	<i>Conflict-free or OECD Conformant</i>	<i>The ASMO is FAIRTRADE certified The trader is FAIRTRADE certified The gold is FAIRTRADE certified and may be labeled as such., according to the licensee's contract<sup>96</sup></i>	<i>The gold and associated metals are FAIRMINED certified and may be labelled as such with the 'FAIRMINED consumer Products' Market Approach.</i>	<i>A. Conformance B. Deviation from conformance with an Remedial Action Plan implemented = Conformance C. Deviation from conformance without Remedial Action Plan implemented = Non-conformance<sup>97</sup></i>
<b>Follow-Up</b>	<i>Red-flag –</i>	<i>CTC participation is</i>	<i>Action plan developed</i>	<i>Certification = A</i>	<i>Certification decision is</i>	<i>Every 12 months and</i>

<sup>93</sup> World Gold Council 2012c:10,15.

<sup>94</sup> Morera, L., personal communication with Estelle Levin, 23.09.2013.

<sup>95</sup> Cf. Annex B, to the 'ICGLR Third Party Audit Methodology/Template' for discussion regarding the ICGLR third party audit compliance statement. Effectively the audit paves the way for issuance of the ICGLR Certificate. The certificate is contingent upon the audit certifying that the exporter is compliant with ICGLR Standards.

<sup>96</sup> Morera, L., personal communication with Estelle Levin, 23.09.2013.

<sup>97</sup> World Gold Council 2012c:16.

Criteria	RCM	CTC	iTSCi	Fairtrade	Fairmined	CFGS
	exports to cease for 6 months until issues resolved; Yellow-flag – exports continue on probationary period for 6 months before re-audit.	voluntary. There is follow-up in terms of providing assistance to ASM towards becoming compliant, following a baseline audit.	with auditee based on identified issues, with resolution time frames being immediate or within a 3 month timeframe,	'permission to trade' valid for 9 months is issued if no major non-conformity. 98 Any non-conformity must be corrected within a fixed timeframe to maintain certification or permission to trade. ASMOs are presented with a list of corrective measures and must conform when re-audited (on site or document check) 3 months later. If unaddressed, then they are delisted. 99	made. Entry requirements have to be complied with within defined time-frames, progressive requirements within 3, 6 or 9 years.. <sup>100</sup>	within 4 months of a company publishing its conflict minerals report". <sup>101</sup> Create and implement a Remedial Action Plan within 90 days of becoming aware of a deviation from the Standard <sup>102</sup>
<b>Audit governance</b>	ICGLR Audit Committee	National regulatory regime	iTSCi Governance Committee ensures technically accurate information is presented, no commercial information is released, and auditor presents sufficient evidence for findings., Ombudsman, and Advisory Group. Roles in audit governance explained in non-public documents..	Standard setting and certification are independent from each other. FLO-Cert as an independent limited company acts as the certification body. Fairtrade International is the standard setting body. <sup>103</sup>	Auditor makes recommendation; certification body decides to grant certification or not. ARM and certification bodies have a joint committee to address issues with certification, such as compliance difficulties and standard interpretation. The CB has to have a complaint and an allegation procedure. ARM provides producer support, contact and	The Assurance guidance refers to ISAE 3000 or Accountability AA1000AS The WGC is not 'governing' the standard and its use, though it may seek to update or improve it if, following experience of application, it is subject to critical input by communities, governments, civil society, companies and other stakeholders. <sup>104</sup>

<sup>98</sup> Morera, L., personal communication with Estelle Levin, 23.09.2013.

<sup>99</sup> Morera, L., personal communication with Estelle Levin, 23.09.2013.

<sup>100</sup> Villa, L., personal communication with Estelle Levin, 20.09.2013

<sup>101</sup> World Gold Council 2012c:18,20

<sup>102</sup> World Gold Council 2012c:16

<sup>103</sup> Morera, L., personal communication with Estelle Levin, 23.09.2013.

<sup>104</sup> Terry Heyman, pers. comm. with E. Levin, 30 August 2012.

Criteria	RCM	CTC	iTSCi	Fairtrade	Fairmined	CFGS
			<i>As defined in the iTSCi audit manual prepared by expert advisor (not public)</i>		<i>communication with certification bodies and is responsible for market development.</i>	
<b>Auditor</b>	<i>Auditor accredited by ICGLR Audit Committee</i>	<i>Historically, auditor appointed by CTC national working group (BGR and national institutions) In DRC, planned pool of national accredited auditors</i>	<i>Channel Research, appointed by iTSCi Support provided by iTSCi audit advisor</i>	<i>Third party assured auditor. Auditors are trained by FLO-CERT directly. FLO-CERT works with staff doing audits and local freelance auditors.<sup>105</sup> FLO-CERT's certification system is accredited against ISO65 standards, which covers the process of hiring and training auditors.<sup>106</sup></i>	<i>Third party under non-exclusive contracts with certification bodies, e.g. like SGS, IMO Control, FLO-CERT (could also be accredited)</i>	<i>Companies commission their own auditors. These auditors will be accredited by international or national professional bodies. The CFGS provides guidance on selecting the 'assurance provider' in sections 3.9 and 4.3.<sup>107</sup> 2012b, 18..19</i>
<b>Audit Funding</b>	<i>To be funded by auditee (exporter)</i>	<i>DRC and Rwanda - funding through German technical cooperation projects implemented by BGR</i>	<i>Funded by iTSCi, from the general program budget</i>	<i>ASMO / Trader pay FLO-Cert; FLO-Cert commissions auditor.</i>	<i>Auditee pays for audit directly to certification body. Level of existing certifications is estimated at \$4-8000 depending on the number of mines, the size of the mining area and the number of "domestic" and "semi-industrial" processing units.</i>	<i>The company pays for the assurance. Cost is contingent on a number of factors: assurance provided through other initiatives &amp; audits, how much of the CFGS is deemed applicable (from A to E), number of sites to be visited, etc. The assurance statement is brief (no lengthy reporting is required).<sup>108</sup> The system is designed to be as cost efficient as possible.</i>
<b>Audit Cycle</b>	<i>Annual</i>	<i>three years</i>	<i>Dependent on level of</i>	<i>Annually</i>	<i>Annually.</i>	<i>Supports refiner due</i>

<sup>105</sup> Morera, L., personal communication with Estelle Levin, 23.09.2013.

<sup>106</sup> Morera, L., personal communication with Estelle Levin, 23.09.2013.

<sup>107</sup> World Gold Council 2012b:18-19

<sup>108</sup> World Gold Council 2012b:20,24-26

Criteria	RCM	CTC	iTSCi	Fairtrade	Fairmined	CFGS
			<i>risk and availability of trained auditors</i>		<i>ASMO audits can take between 2 days and an entire week or more (depending on the extension of the System of Production: entities and number of miners). The audit duration and fee rationale will be developed within the next months.</i>	<i>diligence for mined gold under LBMA, RJC and EICC</i>
<b>Methodology</b>	<i>Desk-based review Field research, site visits, interviews, transportation routes</i>	<i>On-site interviews, review of documents, inspection of sites Off-site interviews, inspection of documents Data analysis</i>	<i>Opening meeting to prepare company interviews with range of company staff, review of documents, data analysis, visits to some supplier mine sites Closing meeting to present findings According to the iTSCi audit manual (not public)</i>	<i>Auditor may require access to documents, field visits, interviews, stock checks, and others.<sup>109</sup> Process: Scheduling and preparation for the audit; conducting of the audit; closing meeting; evaluation by responsible certification analyst; certification.<sup>110</sup></i>	<i>Physical inspections: on-site document checks, data cross-checks with ARM's Operator Data Base, interviews (miners, community members), physical inspection of mines and processing units. Methodology to be tested in November in Peru.  Process: Opening Meeting, rational scope for onsite visits, physical inspections, documentary review and function tests, interviews with miners and the community ARM is developing an Audit Manual to be</i>	<i>Desktop and field research, e.g. "Management interviews; Document review; Site tours; Review of risk assessments; Evaluation of other audit and assurance processes/ controls and determining the extent to which they may be relied upon; Testing internal controls for prevention and detection of material errors in reported information; Sample testing the integrity of underlying information; Review of management methodology documents; Assessment of the design</i>

<sup>109</sup> FLO-CERT 2013, p. 12.

<sup>110</sup> FLO-CERT 2013, p. 12-14

Criteria	RCM	CTC	iTSCi	Fairtrade	Fairmined	CFGS
					further developed by the respective certification bodies.	and implementation of the process.” <sup>111</sup>
<b>Required documents</b>	Financial, exporter, CoC, records	Mine site operator records & documents	Company documents; due diligence documents; financial records ; iTSCi logbooks and any other information required by the auditor	Not stated.	Registration of miners and entities in the Fairmined system of production, sketch maps of the ASMO’s mining area indicating Fairmined system of production components, administrative documentation, all legal documents and relevant licenses mandated by law, documentary evidence of internal traceability (internal control system), etc. Must be provided by the ASMO, and need to be available during onsite inspections of operations and processing / cyanidation plants or certain entities of the System of Production	See appendixes in the Standard document, in the Guidance for Assurance Providers and the Guidance for Implementing Companies
<b>Harmonization</b>	To be determined	Most CTC standards included as progress criteria for monitoring under the RCM. However, only CTC audits assure compliance with	Recognized by CFSP as sufficient for purposes of ‘OECD Conformance audit	Cross-recognition by RJC CoP & COC, and LBMA RGG for responsible sourcing from ASM Cross-recognition with FAIRMINED TBD	Cross-recognition by RJC CoP, COC, and LBMA RGG for responsible sourcing from ASM Cross-recognition with Fairtrade could eventually be taken in	Supports due diligence activities required by the OECD-UN DDG and the LBMA Responsible Gold Guidance, and may support, if appropriate, requirements of

<sup>111</sup> World Gold Council 2012b:10

Criteria	RCM	CTC	iTSCi	Fairtrade	Fairmined	CFGS
		<i>these standards. In that sense, CTC and RCM (and/or iTSCi, potentially) may complement each other with CTC certifying responsible mining practice, in particular in an ASM environment.</i>			<i>consideration FLO-CERT would not recognize FAIRMINED certification for policy reasons of FLO e.V.</i>	<i>legislation such as the Dodd Frank Act<sup>112</sup> CFGS assurance = compliance with the conflict-free and due diligence requirements for the mining sector in the RJC's CoC and CoP</i>
<b>Alignment with RCM</b>	<i>n/a</i>	<i>RCM and CTC aim to assure different items namely supply chain due diligence (RCM) vs. responsible mining practice (CTC) beyond pure due diligence questions. Hence, these systems work complementary to but do not substitute each other.</i>	<i>Through iTSCi complementarity to CTC, in Rwanda and DRC, synergies with RCM (theoretically) However, iTSCi alignment with ICGLR standards and coordination with the ICGLR Audit Committee – or alignment of ICGLR with the OECD standards would be needed to avoid duplication and make iTSCi members compliant with national regulations</i>	<i>FAIRTRADE requirements are more demanding than those of the RCM Certification Manual in some places; gaps in relation to conflict and transparency and formalization requirements of RCM. A proper compatibility analysis with the final FAIRTRADE standard should be done. A FAIRTRADE certified entity that exports its own gold would not need a full third-party audit of the exporter under the RCM as FAIRTRADE is planning a 'bolt-on' set of audit requirements for exporter ASMOs in the GLR.</i>  <i>Fairtrade is operational in the GLR.</i>	<i>The FAIRMINED standard goes over and above the requirements of the RCM Certification Manual in some places; gaps in relation to conflict and transparency and formalization requirements of RCM. A proper compatibility analysis with the final FAIRMINED standard should be done. A Fairmined certified ASMO that exports its own gold may need to undergo additional audit of conflict and transparency / formalization requirements; Fairmined is aware of gaps and seeking to address them in this standard revision.</i>  <i>Fairmined is not yet</i>	

<sup>112</sup> World Gold Council 2012c: 24



Criteria	RCM	CTC	iTSCi	Fairtrade	Fairmined	CFGS
					<i>operational in the GLR.</i>	
<b>Information Management</b>	<p><i>ICGLR database</i></p> <p><i>Complete transparency, as per ICGLR standards, accessible to public</i></p> <p><i>Publicly accessible via internet, "or such other means and media as may be required or desirable".</i></p>	<i>National mining authority</i>	<p><i>ITRI database</i></p> <p><i>Commercially sensitive information not accessible to public. Detailed audit checklist containing such information not accessible to public.</i></p> <p><i>Summary of audit including improvement requirements and other recommendations publicly accessible, published on ITRI website</i></p>	<i>Compliance reports are not shared publicly, only certification status is made public..<sup>113</sup></i>	<p><i>FAIRMINED Operator Data Base System, where the actors share the required information for each trade as soon as final payments are made.</i></p> <p><i>Contracts between the certification body and the auditee contain information security agreements. Contracts with licensees and traders ensure information-sharing between them, Fairmined and the certification body.</i></p>	<i>As the companies are paying for their audit, they own it. But they should annually report on this type of information.</i>

<sup>113</sup> Morera, L., personal communication with Estelle Levin, 23.09.2013.

## 4.1 Certified Trading Chains

The Certified Trading Chains (CTC) scheme, developed by the German Federal Institute for Geosciences and Natural Resources<sup>114</sup> (BGR), is implemented by national authorities (e.g., in Rwanda and the DRC), with the support of BGR. It certifies that mine sites are ‘CTC-compliant’. It involves third party assurance of “*trading chain traceability, transparency, and the ethical quality of mineral production ... against a set of standards derived from international regulations such as the OECD Guidelines for Multinational Enterprises, Risk Awareness Tool,*” and anticipating the parts of the contents of the OECD-UN Guidance.<sup>115</sup> With the focus on supply chain due diligence aspects and ASM good governance/responsible mining practice, it is more in keeping with triple bottom line expectations than the other conflict minerals standards because it incorporates more social and environmental considerations than the OECD-UN Guidance or iTSCi, for example.

In contrast with iTSCi, the CTC system is government-led. It has been initiated and developed by BGR, in partnership with the governments of Rwanda and the DRC. The process has involved input from multiple stakeholder groups, bringing perspectives from different geographies, scales, supply chain tiers and sectors. CTC can be applied to tin, tantalum, tungsten and gold supply chains<sup>116</sup> and is presently being implemented only in Rwanda and DRC under a co-operation agreement between each of these governments and the government of Germany. In the DRC, CTC is still managed by BGR, with a national twelve-year programme currently in its second phase and envisaged to run until 2021, though conditional upon results-based targets. CTC certification and traceability manuals were jointly developed by the DRC Ministry of Mines and BGR, and have been integrated into national mining legislation. In Rwanda, after a pilot project from 2008-2011, ownership of CTC has passed to the Rwandan government, which has incorporated CTC standards into the Rwanda Mining and Quarrying Code of Practice, issued by the Rwandan Bureau of Standards<sup>117</sup> but otherwise has not followed up on any specific CTC implementation issues since 2011.

CTC aims to improve “*supply chain due diligence and good governance in the artisanal and small-scale mining sector*” in Rwanda and DRC.<sup>118</sup> CTC contains “*twenty*<sup>119</sup> *certification standards on mineral origin and traceability, mining conditions, and supply chain due diligence elements based on OECD and other integrity instruments, adapted to practical applicability within the central African ASM*”.<sup>120</sup> Whereas iTSCi, the OECD-UN Guidance, CFSP and CFGS are concerned with chain of custody and risk management of the most serious human rights abuses and benefits to illegal armed groups, CTC also considers labour and working conditions, the behaviour of security forces, community consultation and development, and environmental protection.

The CTC scheme rates the company’s performance at a given mine site with respect to the above listed requirements on a scale of five level descriptors per standards (0-4). An average level of 4 (=level descriptor 3) for all standards is required for a mine site to be certified as “CTC-compliant”. Importantly, CTC was developed with a special focus on ASM where cooperatives or small companies may have limited capacities. Therefore, CTC includes an integrated improvement concept where the auditee – through a baseline audit – receives compliance recommendations and technical support by BGR prior to a compliance audit taking place.

BGR has also developed the Analytical Fingerprint (AFP) technology that is “*represents a forensic tool developed by BGR to independently verify the origin of minerals without relying on any artificially added traceability information (e.g. tagging)*.”<sup>121</sup> Tin, tungsten and tantalum ore minerals are ideally suited to

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<sup>114</sup> Bundesanstalt für Geowissenschaften und Rohstoffe

<sup>115</sup> Adapted from Roesen and Levin, 2011

<sup>116</sup> In DRC, there has been consideration of its extension to copper, cobalt and diamonds.

<sup>117</sup>

<sup>118</sup> BGR 2011b, p.2.

<sup>119</sup> In Rwanda CTC had 20 standards. In DRC, CTC currently has 21 standards, due to differences in the trading chain and an extra standard on migration. In both countries, the standards fall under the rubric of five principles – traceability/transparency, labor and working conditions, security, community development and environment.

<sup>120</sup> BGR, 2011b, p.1.

<sup>121</sup> BGR 2013b

AFP where AFP determines the “DNA” (special, unique geochemical trace element composition) of these minerals and stores it in a reference database. However, AFP technology does not exist for gold.

AFP is an optional exercise to verify chain of custody and is being integrated into the International Conference on the Great Lakes’ Region’s (ICGLR) Regional Certification Mechanism (RCM), with a database of samples already underway, sample preparation and storage facilities in Bujumbura, Kigali and Bukavu being completed, an AFP Management Unit directly installed at the ICGLR secretariat in Bujumbura, as well as plans for a regional laboratory. AFP is available as an optional tool for ICGLR third party auditors, the IMCA, and other official ICGLR-related parties to verify supply chain integrity and CoC documentation.

The beauty of the AFP for downstream users who wish to confirm that their minerals are conflict-free is that it allows for positive mineralogical confirmation of origin for mines where BGR and their national partners have been able to gain a sample. While the cost of using the technology means its application is intended for selective circumstances, rather than as a matter of course,<sup>122</sup> AFP may also play an important deterrent role, “discouraging illegitimate actors in the first place, thus further increasing the credibility of the integrated mineral traceability schemes being applied as standard traceability tools (e.g. iTSCi tagging).”<sup>123</sup> Additionally, all AFP activities related to the ICGLR are fully funded by BGR/BMZ until, at minimum, 2015 such that actual costs for RCM stakeholders are largely theoretical at this stage.<sup>124</sup>

BGR has also worked with the ICGLR to incorporate the CTC and AFP into the RCM. This means that all mineral supply chains across the Great Lakes Region for the 3TG will need to conform with CTC standards embedded in the RCM and classified as red or yellow flag indicators by ICGLR, if they are to receive the ICGLR export certificate; this refers to relatively few standards though.<sup>125</sup> Most CTC standards (on environment, working conditions, formality/transparency, and community development) have been classified as “Progress Criteria” by ICGLR and will hence simply be monitored, rather than enforced through the ICGLR RCM. However, member states can also, on a national level, designate CTC-based standards - such as environment, working conditions, formality/transparency and community development, otherwise non-enforceable as progress criteria in RCM, as enforceable, which has partly been the case in Rwanda, where non-compliance can lead to temporary suspension (though this arrangement is yet to be formalized).

**Alignment opportunity:** While there is a certain degree of alignment as far as standards are concerned (from CTC towards the RCM; not the other way around), it should be noted that RCM and CTC serve quite different purposes: CTC, based on two connected third party audits (baseline and compliance), certifies responsible mining practice at a given mine site (and supports the auditee to get there) while the RCM certifies product-based supply chain due diligence (and uses third party audits to provide assurance on this for individual supply chains). CTC certification of a mine site remains valid for three years whereas RCM certification refers to individual mineral export shipments and, thus, largely represents a continuous process. As such, both systems principally complement, but do not supplement each other and the actual audit framework is quite different. The RCM does not foresee baseline audits and hence is not compatible with the CTC integrated improvement approach. In terms of third party audit approach, the CTC audit is bottom up from a mine site following up on the associated supply (trading) chain; the ICGLR audit is top-down from an exporter to a sample of associated supply chains. An RCM audit might hence substitute for a CTC compliance audit at a given mine site although that would necessitate significant time to be spent at the mine site in order to evaluate standards in detail (which might not be justified given that the RCM is exported-focused).

Additionally, it is important to note that CTC audits do not substitute for RCM audits in scope unless one is dealing with a closed pipe supply chain with only a single mine site attached to the exporter. In

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<sup>122</sup> BGR, 2010.

<sup>123</sup> BGR 2013b, p. 30

<sup>124</sup> Philip Schütte, personal communication to authors, 23<sup>rd</sup> September 2013.

<sup>125</sup> Red and yellow flag indicators include, for example, instances of child labour, traceability, the Analytical Fingerprint method, tax conformity, payment transparency (for LSM sites) and some CSR standards.

each of these cases, however, the auditor would need to fully audit against the CTC and RCM standards criteria because a) CTC by far does not cover all RCM standards; b) RCM, though integrating most CTC standards as progress criteria, actually does not include all CTC standards; and c) RCM further doesn't include CTC level descriptors and has a different compliance mechanism. Therefore, individual situations need to be evaluated very carefully on a case-by-case basis so as to obtain clarity regarding which way CTC and RCM might substitute, rather than just complement each other; generalizations are not permissible. A more detailed discussion and potential harmonization of CTC and RCM standards (in particular, CTC including RCM red/yellow flag standards, not just for mines but also for CoC and exports) would be necessary in order to allow for broader alignment options to materialize.

## 4.2 iTSCI

iTSCI<sup>126</sup> is a joint initiative between ITRI (acting as the iTSCI secretariat) in cooperation with the Tantalum-Niobium International Study Centre (T.I.C.) and several countries in the Great Lakes region (notably Rwanda and DRC). The Programme also has an MOU with Burundi and the ICGLR itself. It assists upstream companies of all scales and at all supply chain tiers from mine to smelter comply with the five steps of the OECD-UN Guidance, as well as the recommendations of the DRC United Nations Group of Experts by expanding due diligence to include criminal networks, and sanctioned individuals and entities.<sup>127</sup> iTSCI covers tin, tantalum and tungsten ores (mineral concentrates), but *not gold*. Mineral exporters in the region wishing to participate in the iTSCI programme need to become an official iTSCI member.

iTSCI works through the operationalisation of three components: (1) Chain of custody tagging and monitoring of mineral origin (this is done in cooperation with government authorities in Rwanda and the DRC, based on MOUs and SOPs and includes mineral tagging and documentation), (2) on the ground assessment and monitoring of mine sites, transportation routes, companies and the macro-level situation<sup>128</sup> to identify and manage conflict-related risks, including human rights abuses, and (3) Independent third party audit of all operators joining iTSCI, evaluation of the macro-level situation<sup>129</sup>, and also the system data.<sup>130</sup> Point 2 includes a continuous incident reporting mechanism in place with local-regional structures to follow up on reported incidents as well as the facilitation of local stakeholder meetings and discussion of mitigation. Point 3 is currently performed by Channel Research, an independent consulting company contracted by ITRI in its function as the iTSCI secretariat. ITRI is the secretariat and on the governance committee with TIC.

In Rwanda and DRC, in-country implementation of iTSCI is managed by the international NGO, PACT, who train and assist Government agents to perform the traceability function at mine, processor and exporter (i.e. tagging and data recording). GMD agents in Rwanda and SAESSCAM and Division of Mines agents in DRC are responsible for performing that task contributing to capacity building and improved governance of local personnel. iTSCI agents are responsible for ensuring that the Government agents collect and return the tagging logbooks to ITRI in London, for inputting into the iTSCI database.<sup>131</sup> Currently 25,000 transactions are entered in the database each week. iTSCI agents also carry out regular spot-checks on mine-sites and exporters, as well as maintaining a continuous supervision of the tagging system's integrity.<sup>132</sup> They are also responsible for performing mine baseline studies, maintaining master mine lists of active sites, assisting local companies in understanding the Programmes due diligence requirements such as producing conflict minerals

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<sup>126</sup> Much of the uncited information in this section was provided to Estelle Levin through edits to an earlier version by Kay Nimmo, ITRI, 29<sup>th</sup> October 2011.

<sup>127</sup> UN ITU, 2012.

<sup>128</sup> The scope of the macro-level risk assessments depends on the geographical scale. As an example: the macro-level risk assessment for Rwanda addresses the whole country, for DRC it is done at the provincial level.

<sup>129</sup> The scope of the macro-level risk assessments depends on the geographical scale. As an example: the macro-level risk assessment for Rwanda addresses the whole country, for DRC it is done at the provincial level.

<sup>130</sup> UN ITU, 2012.

<sup>131</sup> As this involves inputting from a hard copy, there is an inevitable time lag, and always the risk of typographical human error. However, real time inputting into the database through tablets/PDA's is currently being trialed in the field. This would eliminate time lag; and, in tandem with continuing hard copy cross-checking, at least reduce the risk of human error.

<sup>132</sup> Information based on field work by Rupert Cook, August 2013.

policies and due diligence plans, as well as liaising with stakeholders and facilitating stakeholder meetings.

Third party audits are carried out by Channel Research. iTSCi member companies undergo both a pre-audit on application to the Programme in order to establish ownership, potential conflict links, history of trading and possible risk level, as well as regular third party on-site audit according to a checklist relating to both OECD recommendations and iTSCi chain of custody procedural requirements as well as the level of considered risk. Audits extend beyond the region to international actors and audits and other information is designed to provide required inputs to smelter audits, and ultimately assist with SEC reporting. An audit advisor with experience in a variety of audit types, and specifically in timber due diligence auditing provides input to ensure audit standards are appropriate for purpose.<sup>133</sup>

The iTSCi Secretariat carries out important work to understand supply chains both in region and internationally, and is able to influence the due diligence practices of member companies in a positive way towards progressive improvement. The Secretariat also performs data analysis (including provision of information required by smelters for their separate audits), as well as acting as a third party to hold confidential commercial information.<sup>134</sup>

ELL was not able to access direct information from ITRI for the purposes of this analysis. However, in the field ELL was able to gather information from the national co-implementers of iTSCi - RNRA/GMD in Rwanda, and SAESSCAM in the DRC, as well as ITRI's partner on the ground, PACT, and various iTSCi member companies. ITRI also provided ELL with extensive comments on an earlier version of this section.

There is a gap between the significant demand for iTSCi and the initiative's financial capacity to rapidly scale up its operations. iTSCi identified in early 2011 that *"limited funding, huge capacity building needs, the geographical and logistical challenge posed by the location of mine sites, the inadequacy of local infrastructure (e.g. electricity and telephone black-outs) in DRC"* as the major constraints.<sup>135</sup> <sup>136</sup> iTSCi is the Programme preferred by upstream supply chain actors in that it provides Chain of Custody assurance of the 3Ts in line with what is required under the OECD-UN Guidance and initiatives such as the CFSP for the ASM sector, and no complete alternatives fully accepted by CFSP have been developed to date.<sup>137</sup> However, until iTSCi, or any other alternative scheme accepted by the industry, is able to expand throughout the entire region, tin, tantalum and tungsten ore miners around the Great Lakes Region will have few options but to market their minerals either for far inferior prices<sup>138</sup> to buyers whose downstream supply chain is not oriented at countries requiring supply chain due diligence, or through fraud and smuggling.<sup>139</sup> Donor funding which assisted the Programme start-up in Rwanda, Katanga, Maniema and South Kivu and further input could ensure expansion across all areas. The Government of DRC has called on donors to assist iTSCi expand through upfront funding, which is now the principal barrier to expansion.<sup>140</sup>

A major point of divergence between iTSCi and the RCM is that the industry-driven system, iTSCi, does not accept the same degree of almost complete transparency as envisioned in the ICGLR standards but observes the expectation in the OECD guidance that supplier relationships and other commercially

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<sup>133</sup> Kay Nimmo, ITRI, pers comm to Estelle Levin and Rupert Cook 10<sup>th</sup> September 2013.

<sup>134</sup> Kay Nimmo, ITRI, pers comm to Estelle Levin, 29<sup>th</sup> October 2013.

<sup>135</sup> Roesen and Levin, 2011.

<sup>136</sup> In some provinces, iTSCi-certified exporters have severely restricted options for sourcing iTSCi-tagged minerals both due to technical and quality issues with the minerals, and the funding roadblock to expand to additional areas. This has led to operation significantly below capacity, as in South Kivu. The concern is that increased certification of exporters needs to be matched by iTSCi certification of mine sites. However, this issue is not unique to iTSCi, but also affects the national certification system. Cf. Annex B, to the 'ICGLR Third Party Audit Methodology/Template'.

<sup>137</sup> The other CoC initiative is in its early stages in Rwanda and was deemed "promising" by Partnership Africa Canada in February 2012. See PAC, 2012 for more information about how this system could be extended to the DRC.

<sup>138</sup> However, field research in South Kivu indicated that Chinese non-iTSCi *comptoirs* had the reputation for offering higher prices than the iTSCi-certified comptoir, WMC. This is related to mineral quality and type of contained impurity.

<sup>139</sup> OECD, 2011b.

<sup>140</sup> ITRI 2013.

confidential information should not be published. There is concern among exporters that the RCM's policy of almost complete transparency, except in cases which might endanger informants or relate to pricing information, could lead to the publication of commercially sensitive information. Unless this issue is addressed there may be less enthusiastic buy-in from industry actors for the RCM.<sup>141</sup> iTSCi is not able to act as a component within the larger framework of the RCM (e.g., to provide CoC management) when this consideration has not been taken into account – even though this is the ultimate objective. This was recognised in the content of the MOU between iTSCi and ICGLR signed in November 2010 where ICGLR recognised iTSCi as an appropriate system (subject to independent evaluation as foreseen in the RCM) for use under the RCM, and both parties agreed full access to iTSCi data by ICGLR would be possible as long as commercial considerations were taken into account in relation to restrictions to then be made public. However, it seems it has not been possible to implement this initial agreement.<sup>142</sup>

This does not correspond with the legal framework in the DRC and Rwanda, according to which all exporters have to submit to third party audits carried out under the RCM. At the same time iTSCi is already on the ground implementing its own audit scheme according to OECD and international expectations, albeit without any reference to RCM standards and procedures. As a result, with the RCM being progressively rolled out in the near future, partial duplication seems inevitable at this stage.

**Alignment opportunity:** Concern was expressed by a number of exporters over the course of research for this study that the burden of annual ICGLR third party audits and iTSCi third party audits would be over-onerous for exporters – in terms of both time, and cost. The obvious solution would seem to be technical alignment and partial cross-recognition. However, this is only possible if both schemes understand and respect each other's standards and procedures and respect the national regulatory framework, based upon regional-level RCM standards approved by the ICGLR heads of states as well as international expectations and requirements embodied by OECD guidance. These standards go beyond the pure due diligence focus of iTSCi and in themselves add burden and cost which an industry funded programme cannot justify without supporting funds to make it possible

Coordination and communication with RCM is also a significant challenge: While iTSCi is centrally managed through ITRI as its secretariat and with a clear governance and operational structure, the RCM has several, mutually independent addressees (not all of them fully operational yet) such as national authorities (for mine site inspections, CoC operations and export certification), the ICGLR Audit Committee (e.g., to oversee third party audits), the Independent Mineral Chain Auditor (e.g. to control system-level CoC standards) and the ICGLR secretariat (to facilitate data publication, though the actual decision on which data is to be shared is made by other bodies) as well as different advisors. These different RCM entities ensure ownership by in-region stakeholders while also providing credibility through independent operations from each other. As such, it is often unclear who needs to be engaged on a specific RCM question; the ICGLR secretariat would theoretically be the logical facilitator of such coordinated communication but seems to lack technical capacity to adequately perform this function to date.

### 4.3 World Gold Council's Conflict-Free Gold Standard

The World Gold Council is the market development organisation for the gold industry. Working within the investment, jewellery and technology sectors, as well as engaging in government affairs, the WGC's purpose is to provide industry leadership, whilst stimulating and sustaining demand for gold. Based in the UK, with operations in India, the Far East, Europe and the US, the World Gold Council is an association whose 22 members comprise the world's leading gold mining companies.<sup>143</sup> Two member companies have operations in the Great Lakes Region: African Barrick Gold (Tanzania) and AngloGold Ashanti (DRC and Tanzania).<sup>144</sup>

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<sup>141</sup> Cf. Annex A, to the 'ICGLR Third Party Audit Methodology/Template' for discussion of this issue.

<sup>142</sup> Kay Nimmo, ITRI, pers comm to Estelle Levin, 29<sup>th</sup> October 2013.

<sup>143</sup> World Gold Council, n.d.

<sup>144</sup> Heyman, T. pers. comm. with Estelle Levin, 30<sup>th</sup> August 2013.

The WGC's Conflict-Free Gold Standard is intended "to provide a common approach by which gold producers can assess and provide assurance that their gold has been extracted in a manner that does not cause, support or benefit unlawful armed conflict or contribute to serious human rights abuses or breaches of international humanitarian law."<sup>145</sup> The framework is applicable to armed conflicts globally and can be used by WGC members or any gold producer, including artisanal miners, (though feasibility for this group is highly questionable). It is designed for use at the group level, but assessment of activities at individual mines is triggered through the assessment tree.

The CFGS is intentionally aligned to the requirements of Section 1502 of the US Dodd-Frank Act and the 2012 gold supplement to the OECD-UN Guidance. Its output is an assurance statement on a company's Conflict-Free Gold Report, which one can see is an immediately useful offering for issuers required to publish a conflict minerals report under the DFA. It also goes beyond the OECD-UN Guidance by encompassing requirements on money laundering and public disclosure of payments made to governments.

The standard seeks to manage risk only, with scope limited to "activities which, directly or indirectly, finance or benefit armed conflict and the extreme levels of violence which contribute to abuses of human rights."<sup>146</sup> Its scope goes beyond the OECD-UN Guidance slightly in that it includes assessment of "the interaction between the mine and the community through the ability of the community to raise concerns or worries about the operational activities" by assessing that the mine "operates a process through which the public can raise legitimate concerns" but note it makes no mention of the quality of process in how a company consequently handles those grievances.<sup>147</sup> This is in keeping, more or less, with Progress Criteria 4.4.1 of the RCM, "The mine site operator organizes regular consultations regarding mineral exploitation and related topics with the local community (including representatives of local women's groups or associations, and local civil society organizations) and local authorities."<sup>148</sup>

In order to comply with the standard, a company must:

- 1) Adhere to the requirements in the Standard set out as the 'criteria' in Parts A-E
- 2) Report Publicly on their conformance in an annual Conflict-Free Gold Report
- 3) Obtain independent assurance of the Conflict-Free Gold Report

In order to assess risks, in relation to the standard, the company must follow a decision tree split into five sections (Parts A-E)<sup>149</sup>:

Table 1: Applicable parts of the World Gold Council Standard

Standard	Relevant parts of Standard for each mining operation		
	Is the operation located in an area assessed to be 'conflict-affected or high risk'?		
Part A – Conflict Assessment	Yes	No	
		Is gold transported through an area assessed to be 'conflict-affected or high-risk' while in the custody of the company?	
		Yes	No
Part B – Company Assessment	✓	✗	✗
Part C – Commodity Assessment	✓	✓	✗
Part D – Externally Sourced Gold Assessment	✓	✓	✓
Part E – Management Statement of Conformance	✓	✓	✓

The assessment of these risks is based on the existence of adequate processes to avoid or mitigate against undesirable outcomes.

The CFGS is designed to build upon a company's existing audit and assurance activities, including internal audits on the Voluntary Principles on Security and Human Rights, conformance with the ICMM's Sustainable Development Principles, meeting the requirements of the Sarbanes-Oxley Act, ISO

<sup>145</sup> WGC, 2012b, p. 1.

<sup>146</sup> World Gold Council, 2011a.

<sup>147</sup> World Gold Council, 2011a

<sup>148</sup> ICGLR, 2011c

<sup>149</sup> Excerpted from WGC, 2012c, page 14.

certifications, and/or GRI report assurance on the company's sustainability performance. This allows companies to use whichever system they deem to be most appropriate for conducting their due diligence.<sup>150</sup>

The CFGS was finalised in 2012 with an effective start date of 1 January 2013. Companies are required to report their conformance with the standard over a 12 month period so the earliest 'Conflict-Free Gold Reports' could be published is 1 January 2014.<sup>151</sup> Meaningful data is unlikely to come out of this process till later in 2014.

Published assurance of the company's disclosure of its conformance must be obtained within 4 months of the conflict-free gold report's publication date, and assurance planning and site visits by the assurer may take place prior to the year-end reporting period.<sup>152</sup>

The WGC is not a certification body and as such has not registered take-up of its system, but it intends to monitor which companies publish Conflict-Free Gold Reports in line with the Standard.

**Alignment opportunity:** The RCM and CFGS cover the same supply chain segment, at least to the point of export from a GLR country where refining is to take place elsewhere. An assessment of the compatibility of scope / coverage between the RCM and CFGS is required. Pending this analysis, alignment may be achieved as follows:

- The RCM audit could be used as a type of risk assessment for parts C and D of the CFGS.
- The RCM audit could be considered a valid audit for parts C and D of the CFGS, so removing the need for the CFGS assurer to (re)-assure these parts of the Standard.
- The RCM could recognise the CFGS assurance statement as adequate for the purpose of the RCM audit.
- The RCM audit and CFGS assurance statement could potentially be done at the same time.

Limiting factors to consider when planning for alignment:

- The CFGS has been largely based on financial accounting principles to guide the audit, not social accounting principles, although the Guidance for Assurance Providers refers to both ISAE 3000 and AccountAbility AA1000AS.
- In all cases, while in theory the audit time-frame is compatible (12 months), there is the possibility of assurance for a longer time period being achieved if the RCM and CFGS audits do not happen within a short time period of each other.

It might be helpful to survey the intention of medium- and large-scale gold mining companies operating in the GLR to use the CFGS to guide conflict-free gold reporting to ascertain what take-up is anticipated.

#### 4.4 Fairtrade and Fairmined

Fairtrade International and the Alliance for Responsible Mining (ARM) published a joint Fairtrade-Fairmined Standard for Gold from Artisanal and Small-scale Miners including Associated Precious Metals in March 2010. Production was originally confined to Latin America. The formal partnership ended on 22<sup>nd</sup> April 2013. Both organisations are presently finalizing separate and revised Fairtrade Precious Metals and Fairmined Gold and Associated Precious Metals Standards, whose coverage includes Africa. Although these new standards are not yet published, one can still give general consideration to their utility for and potential alignment with the RCM.

The Fairtrade and Fairmined systems are to be applied by artisanal and small-scale mining organisations (ASMOs) mining gold and associated precious metals. Fairmined is working to certify

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<sup>150</sup> World Gold Council 2012b

<sup>151</sup> World Gold Council 2012b:4

<sup>152</sup> WGC, 2012b.



ASMOs in Burkina Faso, Senegal, and Mali and has prospects in parts of the Great Lakes Region.<sup>153</sup> Fairtrade production is due to start in 2015 with nine ASMOs in Kenya, Tanzania, and Uganda<sup>154</sup>. If these organisations will also export the gold directly, they will be subject to RCM third party auditing as exporters. If they will be providing gold to another exporting entity, they would be subject to due diligence by the exporters and potentially visited as part of the RCM third party audit. Only the Tanzanian and Ugandan production would be subject to Dodd-Frank conflict minerals reporting.

The purpose of the Fairtrade standard is to, “*promote the formalization of the ASM sector, bringing with it improved working conditions for producers, strengthened producer organizations with the capacity to lobby for legislation and public policies that promote a responsible ASM sector, improved environmental management (including mitigating the use of mercury and ecological restoration), social security, gender equality, child protection and the elimination of child labour in mining communities, the well-being of families and children, fairer market access, benefits to local communities in mineral rich ecosystems, and improved governance to this sector.*”<sup>155</sup> The FAIRMINED Standard’s purpose is a variation on the same.<sup>156</sup>

The Fairtrade and Fairmined systems both involve strict Chain of Custody systems and high standards for social, labour, environment, and trading performance.<sup>157</sup> Many FAIRTRADE or FAIRMINED certified ASMOs would qualify as ‘industrial’ mines under RCM definitions, so both industrial and artisanal criteria must be taken into account. Though there are some gaps in their coverage (see next page), their requirements are over and above what the RCM requires as red-flag or yellow-flag criteria for working conditions, the environment, and community development, and generally equivalent to or superior to all progress criteria (essentially optional under the RCM but mandatory under CTC). This is to be expected given that the Fairtrade and Fairmined systems are intended to work with the most ‘responsible’ ASM, whereas the RCM is designed to apply to *all* mines and traders in the Great Lakes Region; the bar must inevitably be lower.

There are some important gaps in their treatment of the *Conflict* and *Formality and Transparency* Standards of the RCM, however, and they do not make specific mention of risks along transportation routes though chain of custody is obviously managed here.

The Draft new versions of the Fairtrade and Fairmined Standards include provision for preventing ‘conflict minerals’ from entering Fairtrade or Fairmined Supply Chains by specifying certain exclusions to scope (called ‘Red-Flag Limitations’ in the Fairtrade Standard), including for conflict-affected areas (see 0.2.10 of Fairmined Standard, V 2.0 2013 and 0.2.7 of Fairtrade Standard, V1.0). The language is as follows:

**FAIRMINED: Conflict-Affected and High-Risk Areas**

This exclusion refers to all areas identified as “red-flagged” conflict-affected or high-risk areas, according to the definition of the “Appendix 1” of the “Supplement on Gold” of the “OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.” ASMOs in such areas may only apply for certification if they can credible ensure not to be involved in “direct or indirect support to non-state armed groups or public or private security forces through the extraction, transport, trade, handling or export of gold” as defined in the OECD Guidance. Where deemed appropriate (based on a case-by-case analysis) by the certification body, a due diligence process according to the OECD Guidance shall be performed to confirm that gold produced by the ASMO is “conflict-free”.

**FAIRTRADE:** “Red-Flags are raised where the ASMO is operating in ... e) areas of armed conflict. This exclusion refers to all areas where there is a risk of ASM and commercial activities related to it, contributing to conflict and human rights abuses. ... (T)he ASMO

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<sup>153</sup> Lina Villa, ARM, pers comm with Estelle Levin 20<sup>th</sup> September 2013.

<sup>154</sup> Amy Ross, Fairtrade International, pers comm with Estelle Levin, 19<sup>th</sup> September 2013.

<sup>155</sup> Fairtrade, 2013, p. 1.

<sup>156</sup> ARM, 2013a, Section 0.1.

<sup>157</sup> ARM, 2013a; Fairtrade International, 2013.

and its miners can receive an exception and apply for certification only if they can demonstrate to an independent party that the ASMO and its miners are not benefiting from armed groups, are not obstructed by armed groups or the economic powers behind them (for example industrial mining or organized crime) and are not victimizers (which refers mainly to generating the physical displacement of local people). ... *The request for exclusion of specific areas for certification of ASM must specify the exact areas and the reasons for exclusions. Identification of ... conflict areas must be specific and should, where possible, not cover entire provinces or countries. ... Exceptions from conflict areas recognizes that in conflict and post-conflict areas, ASM can be part of the peace-building solution as ASM is often a preferred livelihood of choice for former combatants, and is also an important part of conflict-resilient livelihoods for conflict-affected people.*"

**Alignment opportunity:** As both Standards are in the process of finalization in the coming months, there is an opportunity for these issues to be taken into account in this present revision but this may not be necessary. Fairmined is not yet operational in any GLR country. Fairtrade is working to certify Ugandan, Tanzanian, and Kenyan producers by 2015 so the issue would be more urgent for Fairtrade, *provided that these countries shall be incorporating the RCM into their legal frameworks in the same time frame too.* The authors have made both initiatives aware of these gaps and the context. Fairtrade is considering having FLO-Cert apply for accreditation by the RCM, and have FAIRTRADE auditors use a supplementary RCM audit checklist that will address the existing gaps when assessing Fairtrade exporter entities, until such time as the FAIRTRADE Standard is revised again (anticipated for 2015).<sup>158</sup>

**Alignment Opportunity:** The Audit Committee could evaluate whether FAIRMINED or FAIRTRADE certification of ASMOs would be adequate assurance of these ASMOs' compliance with the RCM (pending resolution of the issues above) to prevent the need for site visits by their third party auditors (however, this would not replace separate additional engagement with national authorities regarding national elements of RCM implementation). Where ASMOs are also exporters, and since Fairmined and Fairtrade audits are annual, then there could be complete cross-recognition of Fairmined and Fairtrade audits by the RCM, though not vice versa given that the Fairmined and Fairtrade initiatives' performance requirements are higher and/or broader than for the RCM.

Lastly, while both Fairtrade and Fairmined are focused on gold only at this point in time, it is not inconceivable that either system could adapt its system to 3Ts supply chains if there were a clear business case for doing so. Both new Standards include Business-to-Business supply chain options for downstream users of certified metals which now makes it possible for end-users who do not wish to label their products as 'Fairtrade' or 'Fairmined' to use the metal as part of broader responsible sourcing practices and mix it with other sources. This makes these systems very attractive for interlacing with gold supply chains oriented at electronics and other industrial downstream users.

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<sup>158</sup> Greg Valerio, pers comm with Estelle Levin, 26<sup>th</sup> September 2013.

## 5 RCM Alignment with the Downstream CMIs and Their Audits

For the purposes of conformance with the OECD-UN Guidance the RCM's third party exporter audit contributes to the risk assessment components of these downstream initiatives.

**Table Five: Dashboard of Audit Approaches for Downstream Initiatives**

<i>Criteria</i>	<i>CFSP</i>	<i>LBMA's RGG</i>	<i>RJC CoC</i>	<i>DMCC</i>
<b>Applies to (auditee)</b>	<i>Primary and secondary refiners and smelters and some product manufacturers with alloy refining operations<sup>159</sup>. Smelters processing tin, tungsten, tantalum, and refiners processing gold.<sup>160</sup></i>	<i>LBMA member refiners; mandatory condition of listing</i>	<i>Any entity (RJC member or its facility) along the gold and jewelry supply chain</i>	<i>DMCC licensed members and non-members within the UAE's gold and precious metals industry.<sup>161</sup> Mandatory for DMCC-accredited Dubai Good Delivery refiners<sup>162</sup> based globally</i>
<b>Focus</b>	<i>Country of origin and Due Diligence Dodd-Frank Act</i>	<i>OECD Guidance Know Your Customer Anti-Money Laundering</i>	<i>RJC CoP OECD Guidance Anti-money Laundering (KYC requirements)  DFA Compliance</i>	<i>OECD Guidance, KYC, AML/CFT</i>
<b>Audit scope (material, issues, SC tiers)</b>	<i>Gold or 3Ts  Material analysis (mass balance calculation of inputs, outputs, stocks) Business process review (demonstration of management systems, e.g. conflict minerals policy, 100% documentation of chain of custody; and reasonable identification of origin). OECD Conformance check.</i>	<i>Gold</i>	<i>Gold (and platinum group metals)</i>	<i>Gold and precious metals from conflict-affected and high-risk areas. Focus on refiners, but guidance for all UAE (and international) market participants<sup>163</sup></i>

<sup>159</sup> Bob LEet, pers comm to Estelle Levin, 21<sup>st</sup> October 2013.

<sup>160</sup> EICC 2012

<sup>161</sup> DMCC 2012:1. Members include a wide range of companies, being any organisation operational in the JLT Free Zone including, for example, shipping, IT, advertising companies, as well as metals traders, refiners, and jewellery manufacturers. See <http://www.dmcc.ae/jltauthority/about-dmcc/>

<sup>162</sup> SGS 2013

<sup>163</sup> SGS 2013

<b>Criteria</b>	<b>CFSP</b>	<b>LBMA's RGG</b>	<b>RJC CoC</b>	<b>DMCC</b>
<b>Audit outcome</b>	Validated Smelter / Refiner List  Enables companies to demonstrate sourcing from smelters/refiners capable of supplying conflict-free minerals and meet DFA obligations	Good Delivery Accreditation	CoC Certification	"Fully compliant, compliant with low-risk deviations, non compliance: medium risk, non compliance: high risk." <sup>164</sup>
<b>Audit Object</b>	Smelter or Refiner's mineral supply chain	Refiner's gold supply chain	Supply chain from mine to retail <sup>165</sup>	Gold and precious metals supply chain
<b>Audit governed by</b>	ISO/IEC 17021:2011	ISAE 3000 or ISO 19011:2011	ISO 17011 <sup>166</sup>	ISAE 3000 or ISO 19011:2011 <sup>167</sup>
<b>Audit Cycle</b>	Audit period covers 1 year prior to the date of audit, with the audit deemed to start when the Line-item Summary is provided to the auditor. "The audit must be scheduled for within 30 calendar days of when the Summary was provided or a new Line-Item will be required, unless an extension is granted." <sup>168</sup> Re-audits must take place within 12 months of the prior audit. If not, the SOR will be removed from the compliant smelter list unless the audit is conducted within 2 months of the expiration date or an extension is granted by CFSP. Audits which take place following being removed from the compliant list cover the entire period of non-compliance, up to 2 prior years. <sup>169</sup>	Every 12 months to 3 years; higher risk requires higher frequency	Certification audit every three years <sup>170</sup> Surveillance audit within 12-18 months after Certification <sup>171</sup>	"Full reasonable assurance review every three years. Limited assurance review every 12 months. If result was non-compliant: High-risk, a follow up review is to be conducted within 90 days" <sup>172</sup>
<b>Audit Governance</b>	Audit Review Committee validates audit conclusion and applies exceptions where appropriate.  CFSI approve eligibility of audit firms to conduct the audits; intentionally, only three global firms are	Auditor qualification and competences specified in the Third Party Audit Guidance. Refiners should use auditors recommended by LBMA or get	Auditors have to be RJC accredited. <sup>175</sup>	"Auditor competences specified in review protocol but assessment of auditors not defined. Audit companies are approved by DMCC and listed on

<sup>164</sup> SGS 2013, table 4

<sup>165</sup> SGS 2013:14

<sup>166</sup> SGS 2013:17

<sup>167</sup> SGS 2013

<sup>168</sup> Electronic Industry Citizenship Coalition Inc; Global e-Sustainability Initiative 2012b:3-4

<sup>169</sup> Electronic Industry Citizenship Coalition Inc; Global e-Sustainability Initiative 2012b:4

<sup>170</sup> RJC 2012b:5; SGS 2013:19

<sup>171</sup> RJC 2012b:5; SGS 2013:19

<sup>172</sup> SGS 2013, table 4

<b>Criteria</b>	<b>CFSP</b>	<b>LBMA's RGG</b>	<b>RJC CoC</b>	<b>DMCC</b>
	presently eligible in order to maintain "auditor consistency during the early phases of the Program." <sup>173</sup>	review and approval from LBMA for their preferred auditors. <sup>174</sup>		the DMCC website." <sup>176</sup>
<b>Follow-Up</b>	Results of the audit are reviewed by the Audit Review Committee. "Subsequent audits (re-audits) are required to maintain a compliant status. Re-audits will be performed within a year of the prior audit." <sup>177</sup> Prior to a facility Conflict Free achieving complaint status, all corrective items have to be closed.	90 days	Corrective action plans required and to be completed in advance of next audit. Re-certification required at end of 3 year Certification Period	"Full reasonable assurance review every three years. Limited assurance review every 12 months. If result was non-compliant: High-risk, a follow up review is to be conducted within 90 days" <sup>178</sup>
<b>Information management</b>	Compliant smelters/refiners and their CFS policy made available publicly, Country of Origin Information (COI) provided to members of CFSI for their due diligence needs, but detailed data from the audit is only available to the CFS Audit Review Committee. <sup>179</sup>	Published documents: LBMA Summary Report (ISO) or Assurance Report with Refiner's Compliance Report (ISAE) Unpublished: LBMA Refiner Report	No requirement for annual reporting, but RJC members have to publish their commitment to RJC CoP, CoC and key policies. <sup>180</sup> Certified entities published on RJC website (incl. certification scope, certification period and auditor's recommendation) <sup>181</sup>	Audit summary included in company's annual report. Guidance requires "to publicly report on due diligence for responsible supply chain" annually.
<b>Harmonisation</b>	RJC CoC certification is accepted by the CFSP as an alternative audit. CFSP audit is equivalent to assurance of part 10 of the RJC CoC Standard and step 4 of LBMA.	Audit Recognition: RJC CoC certification removes need for LBMA audit. CFS audits = Responsible Gold Requirement (step 4) of LBMA LBMA audit is equivalent to assurance of part 10 of the RJC	Audit Recognition: LBMA, CFSP, DMCC = conflict-sensitive sourcing only (part 10) for CoC certification purposes. RJC CoC certification can	RJC and DMCC have cross recognized their audits. Signet Jewelers have accepted DGD standard as meeting their SRSP's responsible sourcing requirements and GJEPC, India have supported the import of

<sup>175</sup> RJC 2012b:5

<sup>173</sup> EICC and GeSI, 2012.

<sup>174</sup> LBMA 2013b:13-14

<sup>176</sup> SGS 2013, table 3

<sup>177</sup> Electronic Industry Citizenship Coalition Inc; Global e-Sustainability Initiative 2012b:4

<sup>178</sup> SGS 2013, table 4

<sup>179</sup> Electronic Industry Citizenship Coalition Inc; Global e-Sustainability Initiative 2012a:8

<sup>180</sup> SGS 2013:16

<sup>181</sup> RJC 2012b:11

<i>Criteria</i>	<i>CFSP</i>	<i>LBMA's RGG</i>	<i>RJC CoC</i>	<i>DMCC</i>
		<i>CoC Standard.</i>	<i>be used to support audits for CFSP, LBMA, DMCC, WGC, OECD DDG, Dodd-Frank 1502<sup>182</sup></i>	<i>DGD bars into India, so that jewelry produced from DGD bars is automatically responsibly sourced, therefore India can export its jewelry to USA (and in compliance with US regulation Dodd Franck Act)<sup>183</sup></i>
<b><i>Alignment with RCM</i></b>	<i>RCM could partially support the 'OECD conformance check' for the refiner Relevant to RCM is the requirement for smelters "sourcing from the DRC or adjoining countries an OECD Guidance conformance audit of their sourcing scheme(s) is required, up to and including themselves if necessary."<sup>184</sup></i>		<i>?</i>	<i>To be explored in due course</i>

<sup>182</sup> RJC 2012b:6-7

<sup>183</sup> DMCC website – see press releases on (1) DMCC and RJC; (2) DMCC Signet - GJEPC

<sup>184</sup> Electronic Industry Citizenship Coalition Inc; Global e-Sustainability Initiative 2012b:4

## 5.1 Conflict-Free Sourcing Initiative and Conflict-Free Smelter Program (CFSI and CFSP)

The Conflict-Free Sourcing Initiative (CFSI) has grown into one of the most utilized and respected resources for companies addressing conflict minerals issues, including a voluntary program which “determines if smelters and refiners have sourced conflict-free minerals.”<sup>185</sup> It involves a number of tools, one of which is a third party audit of a smelter’s procurement and processing activities and determines if the smelter showed sufficient documentation to demonstrate with reasonable confidence that the minerals they processed originated from conflict-free sources.<sup>186</sup> This audit is called the Conflict-Free Smelter Programme (CFSP).

The CFSP is primarily an audit that verifies the origin of a smelter’s input streams and includes a mass balance calculation to ensure inputs, outputs and stocks balance (taking into account a 10% margin for loss / gain of mass). Where the minerals have been sourced from or passed through specific countries (e.g. those of the Great Lakes Region or where there is evidence of smuggling or transit of conflict mineral), the CFSP auditor must verify that the smelter/refiner demonstrates that it conforms to the OECD Guidance, and that the smelter has suitably responded to any identified risk that the minerals may have contributed to conflict in the DRC.<sup>187</sup> Smelters/refiners can show conformance with the OECD Guidance either by individually having their sources assessed against the OECD Guidance by an independent third party **OR** by using an assessed-conformant scheme, at this point just iTSCi to do this for them.<sup>188</sup> This checks OECD Guidance conformance at the level of the smelter/refiner, as well as its suppliers.

The CFSP was developed by the Electronic Industry Citizenship Coalition (EICC)<sup>189</sup> and the Global e-Sustainability Initiative (GeSI)<sup>190</sup> in 2007/8.<sup>191</sup> The CFSP is global in scope, and so applicable to smelters/refiners all over the world. The CFSP is being progressively implemented across tin, tantalum, tungsten and gold smelters/refiners. The harmonized protocol for tantalum, tin, and tungsten, called the “3T audit protocol” is being updated in 2013 (in progress as of this draft), and the 2012 gold protocol is due to be updated by year-end. The EICC recommended the authors use the 3T audit protocol only for considering how to align the RCM with the CFSP audits.<sup>192</sup> Roughly 50 CFSP audits have been conducted and some smelters have been audited more than once.<sup>193</sup>

The CFSP seeks to support companies’ compliance with the Dodd-Frank Act, first and foremost, and so any issues of incompatibility between the OECD Guidance and the DFA lead to privilege of the DFA’s position over the OECD Guidance’s.<sup>194</sup> It focused on providing conflict-free supply chains only; anything else is considered non-conformant.

The CFSP relies on chain of custody systems to demonstrate in-region traceability on behalf of artisanal miners or mining organizations. CFSP smelters will be compelled to avoid producers, traders and places where traceability/chain of custody programs are not operational or which cannot provide proof of chain of custody back to the mine *as well as* management of risks in line with the OECD Guidance through another system<sup>195</sup>. The CFSP was largely designed to fit neatly with iTSCI and ensure no overlap between these systems, though there are some fundamental differences in scope.<sup>196</sup>

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<sup>185</sup> Electronic Industry Citizenship Coalition Inc; Global e-Sustainability Initiative 2012d

<sup>186</sup> Bob Leet, CFSI, pers comm to Estelle Levin, 21<sup>st</sup> October 2013.

<sup>187</sup> EICC and GeSI 2010.

<sup>188</sup> Roesen and Levin, 2011.

<sup>189</sup> For more information, see EICC, 2009.

<sup>190</sup> For further information on the GeSI see Global e-Sustainability Initiative, 2011.

<sup>191</sup> Mike Loch, CFSI, pers comm with Estelle Levin, 22<sup>nd</sup> October 2013.

<sup>192</sup> Bob Leet, pers comm with Gisa Roesen, 17<sup>th</sup> July 2013.

<sup>193</sup> Bob Leet and Michael Rohwer, pers. Comm with Levin, 30<sup>th</sup> August 2013.

<sup>195</sup> For example, Source 44’s Conflict Mineral Program for supply chain tracing. See Source 44, 2012.

<sup>196</sup> Bob Leet and Michael Rohwer, pers. Comm with Levin, 30<sup>th</sup> August 2013. See also Roesen and Levin, 2011.

**Alignment opportunity:** The RCM could be an assessed-conformant scheme for the purposes of the 'OECD Guidance Conformance Check' where a refiner or smelter and mineral producer are in the same country.

**Alignment gap:** For exports of mineral to an international smelter or refiner, the RCM can only partially fulfil the CFSP's OECD Conformance Check as the RCM audit occurs at the point of the exporter; the CFGS requires assurance of all trading and transport that occur upstream of the smelter. The gap between what is in scope of the RCM audit (mine to exporter) and the scope of the CFGS's OECD-UN Guidance conformance requirement is transportation from the point of export to the smelter, the conformance of the smelter against the OECD Guidance, and any other trading point in between.

**Alignment opportunity:** Were iTSCi or the CFGS to recognise the RCM audits as adequate for their own audit purposes, then it may be possible for the RCM to cover mine to exporter and the CFGS / iTSCi to cover post-exporter to the smelter/refiner. The major gap is for systems feeding artisanal gold to refiners, though Fairtrade or Fairmined certified gold could fulfil that gap for some of the region's most professional mines.

## 5.2 RJC Code of Practices and Chain of Custody

The Responsible Jewellery Council (RJC) Standards are applicable to gold, diamonds and platinum group metals (not the 3Ts), and along the entire supply chain from miner to jeweller. There are two Standards, one of which is mandatory for members (the Code of Practices) and the other is voluntary (the Chain of Custody Standard).

The RJC was incorporated in 2005 by fourteen organisations, as the Council for Responsible Jewellery Practices, changing its name in 2008. Today the Council has over 452 members<sup>197</sup> of which 305 had been certified against the Council's core normative document, the Code of Practices. Of these 452 members, there are 6 gold mining companies and 29 in the metals trader, refiner, and hedger forum.<sup>198</sup> Seven entities (which may be subsidiaries or facilities of members) are certified against the Chain of Custody Standard.

RJC's mission is *"to promote responsible ethical, human rights, social and environmental practices, which respect human rights, throughout the diamond and gold jewellery supply chain."*<sup>199</sup> RJC's Code of Practices (CoP) is effectively a meta-standard<sup>200</sup> that seeks to assure best practice in managing social and environmental liabilities for all scales of mines. While artisanal and micro (...) mines could join RJC, there are other standards such as Fairmined which more directly service this sector and RJC works in partnership with the Alliance for Responsible Mining on standards harmonisation.<sup>201</sup> The CoP has just been revised and the new version is to be published at the end of 2014. The revised version has Responsible Supply Chains and Human Rights as a core element, the purpose of which is, *"to increase the use of due diligence in supply chains of Diamonds, Gold and Platinum Group Metals in order to support respect for human rights, community development, anti-corruption efforts, and to manage sourcing risks."*<sup>202</sup> It thus includes expanded standards and guidance for responsible sourcing from ASM, and human rights issues, and guidance on operating in or sourcing from conflict-affected areas. The new COP and the CoC have been designed to build upon and extend the OECD-UN Guidance.

Whereas the CoP assures the member company, the Chain of Custody (CoC) Standard for Precious Metals is designed to assure the material's supply chain. The CoC Standard was published in March 2012 and applies to Gold and Platinum Metals only.<sup>203</sup> The Standard requires implementation of the

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<sup>197</sup> Marieke Van der Mijl, RJC, pers. comm with Estelle Levin, 12<sup>th</sup> September 2013.

<sup>198</sup> Fiona Solomon, RJC, pers comm with Estelle Levin 23<sup>rd</sup> October 2013

<sup>199</sup> RJC, 2012.

<sup>200</sup> A 'meta-standard' builds on existing Standards. See Dehue et al., 2007.

<sup>201</sup> Fiona Solomon, RJC, pers comm with Estelle Levin 23<sup>rd</sup> October 2013

<sup>202</sup> RJC 2012 (Code of practices, draft for review by standards committee.)

<sup>203</sup> RJC, 2012a.



CoP to support responsible practices through the precious metals supply chain. The RJC's chain-of-custody certification is "a voluntary, complementary element to the RJC certification process" as it cannot be compulsory owing to competition and anti-trust laws.<sup>204</sup> While only RJC members can be certified, the Standard is publicly available so that non-members can use it to develop a "robust chain-of-custody system for disclosure or reporting purposes."<sup>205</sup> Furthermore, it would be possible for mines that are not RJC members to be part of an RJC-assured Chain of Custody provided that the mine is certified against another approved Standard recognised by the RJC. At present this is only the Fairtrade-Fairmined Standard of 2010; the new Fairtrade and Fairmined Standards due to be published in 2013 will be taken through a technical review to extend the recognition to the now separate standards.

The RJC CoC Standard also cross-references other conflict minerals chain of custody and due diligence initiatives such as the CFGS, CFSP, OECD-UN Guidance, DFA, the LBMA RGG and the DMCC, with the aim of inter-operability to keep implementation practicable and cost-effective for supply chain operators (especially refiners). It has incorporated a requirement that mined materials cannot benefit armed groups to ensure that entities implementing the CoC are conformant with the OECD-UN Guidance.<sup>206</sup>

**Alignment opportunity:** The RJC should be engaged by the Audit Committee to explore how interoperability might be achieved between the RCM and part of the RJC's CoC Standard. This would become a higher priority if there were an indication that RJC membership was being sought by operators in the Great Lakes Region.

Membership in the RJC is open to any business or association that participates in the diamond, gold or platinum jewellery supply chain or engages in activities that impact consumer confidence in these industries. Compliance with the RJC Code of Practices (CoP) is compulsory for companies seeking membership. New members are able to become CoC Certified before they are certified against the CoP so that they can begin the process of responsible sourcing as soon as possible.<sup>207</sup>

**Alignment Opportunity:** The RCM could choose to recognise the RJC CoP and CoC certification as a means of achieving RCM assurance provided that any gaps in the RJC's coverage vis-à-vis RCM requirements could be bolted on to RJC audits via a combined or expanded audit process.. The timeframe for RJC CoP audits is every three years, but the 2013 COP Revision is introducing risk-based mid-term auditing which provides for mid-certification period or annual audits where relevant for harmonisation with other programs. This would provide a structure for interim RCM audits for those years between the RJC audits. The RJC may choose to do a gap assessment of the RJC CoP and CoC against the RCM Certification Manual to ascertain any gaps in coverage in order to achieve alignment.

### 5.3 LBMA's Responsible Gold Guidance

The London Bullion Market Association (LBMA) is a London-based international trade association representing the gold and silver bullion market. Its 140 member companies are either directly involved in the London market or provide related services. The association serves a global clientele including "the majority of the central banks that hold gold, private sector investors, mining companies, producers, refiners and fabricators."<sup>208</sup>

The LBMA maintains a Good Delivery list of gold and silver refiners which meet the LBMA's requirements for assaying accuracy and bar quality. The refiners included in this list produced a total of more than 4,000 tonnes of gold in 2009, well above the 2,611 tonnes produced in mines worldwide.<sup>209</sup>

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<sup>204</sup> RJC, 2012c

<sup>205</sup> RJC, 2011

<sup>206</sup> RJC, 2011

<sup>207</sup> RJC, 2011

<sup>208</sup> LBMA, n.d.a

<sup>209</sup> LBMA, n.d.a

Since January 2012, the LBMA requires all refiners on the Good Delivery list to comply with its Responsible Gold Guidance (RGG) The RGG aims “to combat systematic or widespread abuses of human rights, to avoid contributing to conflict, to comply with high standards of anti-money laundering and combating terrorist financing practice.”<sup>210</sup> It is intended to assure investors and consumers that all London gold stocks are conflict-free due to compliance with an audited, conflict-free process.<sup>211</sup>

The RGG expands the scope of the LBMA’s requirements of membership, to incorporate risk-based due diligence into refiners’ existing Anti-Money Laundering, Know your Customer and security policies, management systems, and audit processes. Though it bases these extra requirements on the OECD-UN Guidance, it goes above and beyond the Guidance with additional requirements encompassing existing Anti-Money Laundering, Combating Terrorist Financing, and Know Your Customer management systems and regulations. Through the RGG, the OECD-UN Guidance is made mandatory for all refiners wishing to sell into the London Bullion Market.

The RGG requires auditors to use ISAE 3000 and ISO 19011:2002 auditing standards in order to include both US (ISAE) and EU (ISO) auditing systems. The LBMA has agreed mutual recognition of audits with the CFSP and RJC CoC and supports WGC CFG and the Fairtrade and Fairmined Standards.<sup>212</sup>

**Consideration for Audit Committee:** Is it important to incorporate both US and EU auditing systems or other auditing systems in how the third party exporter audits should be done?

**Alignment Opportunity:** Could the RCM provide adequate due diligence assurance for the purposes of the LBMA RGG to enable cross-recognition?

**And vice versa:** If an in-region refiner is on the LBMA Good Delivery List, is this adequate assurance that RCM red- and yellow-flag requirements have been met? An alignment assessment is necessary. One could imagine a CFGS assured gold mine in-region, whose gold is refined in an LBMA listed refinery in-region; would the export of the mined gold and the refined gold also need to be third-party audited for the purposes of the RCM? Next steps would be to ascertain if there are any LBMA refiners in the GLR.

## 5.4 DMCC Responsible Sourcing Protocol

The Dubai Multi Commodities Centre (DMCC) is an initiative by the Government of Dubai tasked with developing Dubai into a global trading hub for commodities.<sup>213</sup> The DMCC has developed a Good Delivery Standard called “Dubai Good Delivery” (DGD) which specifies best practice for the gold and silver industry. It also includes requirements for company management and product quality for refiners and establishes an inspection and testing process. Currently, 17 gold refineries and 13 silver refineries from 14 countries are accredited to the DGD.<sup>214</sup>

Building on the DGD, the DMCC published its Practical Guidance for Market Participants in the Gold and Precious Metals Industry (DMCC Guidance) in 2012.<sup>215</sup> The guidance aims at assisting both DMCC members and other industry participants in the UAE to “enforce acceptable standards of due diligence and responsible supply chain management when sourcing gold and precious metals from conflict-affected and high-risk areas.”<sup>216</sup> Compliance with the guidance was subsequently made mandatory for all

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<sup>210</sup> LBMA, n.d.a

<sup>211</sup> LBMA, n.d.a

<sup>212</sup> LBMA, n.d.a

<sup>213</sup> SGS 2013:3, DMCC, n.d.a

<sup>214</sup> SGS 2013:3

<sup>215</sup> DMCC, n.d.b; SGS 2013:3

<sup>216</sup> DMCC, n.d.b

member refineries on the DGD list.<sup>217</sup> In order to ensure compliance and provide guidance for auditors, the DMCC further issued the 'Responsible Sourcing of Precious Metals Review Protocol'.<sup>218</sup>

The Guidance is based on the five steps of the Gold Supplement of the OECD Guidance and focuses on adequate due diligence management systems to enable downstream companies to identify conflict-free refiners.<sup>219</sup> The guidance requires companies to “develop the policy and processes to include common principles, standards and processes for responsible supply chains”, conduct a risk assessment on all upstream parties, including suppliers, exporters and transporters, to develop and implement a risk mitigation plan, and to carry out an independent third-party audit of the company’s due diligence practices.<sup>220</sup> Companies are also required to publicly and annually report on their responsible supply chain due diligence.<sup>221</sup>

The DMCC Authority constituted the Dubai gold Advisory Group (DGAG) in 2003 as “an independent advisory body to work with the DMCC to position Dubai as an international hub for precious metals by contributing ideas, insights and expertise that would enhance Dubai’s reputation as an international precious metals refining, production, financing, trading and jewellery manufacturing hub.”<sup>222</sup> Its mandate is to “provide DMCC strategic insights, advice and expertise to develop the gold industry in the emirate.”<sup>223</sup> The group convenes each month and provides a forum for discussion of developments impacting the industry and potential solutions.<sup>224</sup>

On 6-7 April 2014, the DMCC is hosting the 3<sup>rd</sup> edition of the Dubai Precious Metals Conference in Dubai. The theme is “Engaging with Africa.”<sup>225</sup>

**Alignment Opportunity:** the Audit Committee and/or ICGLR Secretariat could engage the DMCC to investigate what the DMCC’s gold industry members require to be able to source gold (including industrial and artisanal) from the Great Lakes Region and be compliant with the DMCC’s Responsible Sourcing Guidance and Review Protocol. Greater information on the profile of gold industry members in the DMCC, their existing and historic sourcing practices of gold from the Great Lakes Region, and their needs to ensure integrated responsible supply chains of gold (including artisanal) from the GLR would enable strategic planning as to how the RCM might service these buyers optimally (including whether the RCM could provide adequate due diligence assurance for the purposes of cross-recognition between the respective audit programs). The Audit Committee and/or ICGLR Secretariat could participate in the 2014 Dubai Precious Metals Conference as a means of engaging the DMCC and further exploring this opportunity.

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<sup>217</sup> DMCC, n.d.b; SGS 2013:3

<sup>218</sup> DMCC, n.d.b; SGS 2013:3

<sup>219</sup> SGS 2013:14

<sup>220</sup> DMCC 2012:3,6,11,12;SGS 2013:15

<sup>221</sup> DMCC 2012:13

<sup>222</sup> Ameinfo.com 2010

<sup>223</sup> Ameinfo.com 2010

<sup>224</sup> Ameinfo.com 2010

<sup>225</sup> DPMC, n.d.

## 6 Conclusion

The RCM has an important role to play in supporting upstream due diligence of gold, tin, tantalum, and tungsten supply chains from the Great Lakes Region because it is intended to be universally implemented across all supply chains, traders, processors, and exporters. It will only be meaningful, however, if it offers what industry requires of due diligence systems oriented at supporting legal mineral sectors where serious risks are managed. To that end, it is imperative that it is conformant with the OECD due diligence guidance, and aligned with the traceability and risk management requirements of downstream users.

In particular, given the global ramifications of the US Dodd-Frank Act, and the propensity for US issuers (and those supplying them) to avoid sourcing from the DRC and its adjoining countries altogether, the RCM is an opportunity to enable the reintegration of marginalized African producers into formal international markets. Whilst this is a larger strategic issue for the ICGLR at the political level, there are a couple of ways in which the RCM might help manage the much bigger (and continental) issue of disengagement from ASM supply chains by downstream buyers who are seeking to source 'responsibly'.

First, there is a gap between what upstream supply chains are offering (OECD Guidance conformance) and what downstream players are looking for: 'DRC Conflict-Free' status. Which system does the RCM privilege or can it do both? The certification manual clearly refers to both initiatives in its introduction, and the OECD (with support by PAC) have produced a document that explains how these systems are aligned (provided that all RCM implementation elements are operationalized completely and consistently), but would an explicit statement and effort to support CM reporting by downstream users in line with the DFA be a lifeline for encouraging re-engagement by 'responsible' buyers in the region?

Second, with 25% of the world's gold (and including artisanal gold from Africa) traded through Dubai, is the DMCC Guidance a way of getting more artisanal African gold into legitimate, responsible supply chains?

Besides this opportunity to ensure (re-)engagement in African minerals markets, there is also an opportunity for the ICGLR to endorse and encourage take-up of systems which are oriented at 'best-in-class' performance by mining organisations, e.g. the RJC's CoP (for industrial mines) and Fairtrade and Fairmined systems for ASMOs. In these cases, it is not just a question of aligning their systems – though this is a necessary first step and is something that Audit Committee can help bring about – but also seeing how they might support each other in achieving their respective (and largely compatible) missions through a variety of collaborations, which is most likely a job for the ICGLR Secretariat at the political level.

For example, the RJC, Fairtrade and Fairmined have limited take-up in Africa with only Fairtrade operational in the GLR. All of these initiatives would be open to strategic partners to be able to capture membership (RJC) or eligible ASMOs (Fairtrade and Fairmined). Encouraging the use of voluntary sustainability standards like these by mining companies or ASMOs in Africa can support African governments achieve their mineral sector development ambitions.<sup>226</sup> The ICGLR (at the political level) could consider endorsing these initiatives as systems for responsible precious metals (and diamonds for RJC) mining and sourcing, and encourage take-up amongst companies operating in the region. These initiatives could work with the RCM Audit Committee and ICGLR member states to address any gaps in scope between them, e.g. through 'bolt-on' audit checklists to their existing standards or adaptation of their systems to the RCM during the next Standard revision.<sup>227</sup> Promoting RJC membership to gold mining companies, exporters and traders in the GLR would not only ensure adequate due diligence practices for those with CoC certification but would offer best-in-class<sup>228</sup> gold

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<sup>226</sup> Marieke Van der Mijl, RJC, pers. Comm with Estelle Levin, 12<sup>th</sup> September 2013.

<sup>227</sup> RJC's COP, Fairtrade, and Fairmined Standards have all undergone revision this year.

<sup>228</sup> See Stark and Levin, 2010.

in terms of assurance that broader business practices, human rights, labour, social and environmental risks are managed in line with the newly updated Code of Practices.

Two other systems currently operational in the GLR – CTC & iTSCi – both offer scope for alignment with the RCM. CTC, with its integrated compliance support for ASM to the system’s implementation (through combined baseline and compliance audits) and certifying responsible mining practice, would be complementary to the RCM’s focus on supply chain due diligence. iTSCi has had widespread take-up in the region, and significant industry buy-in, and portions of it (e.g., its traceability component) represent critical contributions to the RCM. However, like the other upstream initiatives, iTSCi would need to adapt so as to be compliant with the RCM, e.g., with its CoC standards. Additional alignment potential exists where certain processes (e.g., audits) are due to be performed in parallel (albeit not to identical standards) for the two schemes.

Given that the ICGLR RCM is the legal framework for the GLR, all systems seeking to operate in the GLR will have to inevitably align with ICGLR Standards. From a capacity point of view, it does not make sense for the Audit Committee (or the ICGLR Secretariat or its Member States) to seek to support alignment with all things at once. We recommend a survey of actual and intended coverage of different conflict minerals and responsible sourcing initiatives by operators in the GLR to help the RCM prioritize which systems to align to when, and how. That coverage should be considered in terms of *geography* (which mines and trading locations are presently covered – and which important places aren’t?), *mineral*, and *scale* (what type of operators are covered, and which aren’t?) This will reveal two important things: the initiatives that are operating in the region but are not yet aligned and need to be, and the initiatives that need to be operating in the region to support specific types of operator who presently are under-supported in delivering their minerals into responsible markets.

We also advise the ICGLR Secretariat, Audit Committee, and Member States to begin a concerted engagement of these initiatives who need to be educated on the RCM as much as the ICGLR has a need to learn about them as well.

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