9th Multi-stakeholder forum on responsible mineral supply chains,
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Baseline study four: Gold trading and export in Kampala, Uganda

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The OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (OECD Due Diligence Guidance) provides detailed recommendations to help companies respect human rights and avoid contributing to conflict through their mineral purchasing decisions and practices. The OECD Due Diligence Guidance is for use by any company potentially sourcing minerals or metals from conflict-affected and high-risk areas.

It is one of the only international frameworks available to help companies meet their due diligence reporting requirements.

About this study

This baseline study is the fourth of five studies intended to identify and assess potential traceable "conflict-free" supply chains of artisanally-mined gold and to identify the challenges to implementation of supply chain due diligence. The study was carried out on gold trading and export in Kampala, Uganda.

This study serves as background material for the 9th ICGLR-OECD-UN GoE Forum on Responsible Mineral Supply Chains taking place in Paris on 4-6 May 2015. It was prepared by Gregory Mthembu-Salter of Phuzumoya Consulting, working as a consultant for the OECD Secretariat.

For more information visit: **mneguidelines.oecd.org/mining.htm**

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Acronyms

DRC	Democratic Republic of the Congo
FARDC	Forces Armées de la République démocratique du Congo
ICGLR	International Conference on the Great Lakes Region
RCM	Regional Certification Mechanism
UCI	Uganda Commercial Impex
UPDF	Ugandan People’s Defence Force
UN GoE	United Nations Group of Experts
URA	Uganda Revenue Authority

I. Introduction and key findings

This is the fourth of five baseline studies of gold supply chains in the Democratic Republic of the Congo (DRC). The studies are based on fieldwork in the DRC, Uganda and the United Arab Emirates (UAE) and aim to assess the level of awareness and implementation of the Recommendation of the Council on Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas (OECD 2013: 7), and provide recommendations to enable further progress towards responsible supply chains of minerals from the Great Lakes region.

The previous studies focused on the DRC, looking at gold in three provinces: Katanga, South Kivu and Orientale. This study shifts the attention to a key point in many, if not most Congolese gold supply chains – the Ugandan capital, Kampala. As numerous studies, including reports of the UN GoE on the DRC have confirmed, Congolese gold has been exported, usually illegally and unrecorded, to Kampala for many years. Yet this trade only began to receive international attention during and after the DRC's 'African War' of 1998-2002, as it became clear that the aims of the Ugandan People's Defence Force (UPDF) and the commercial ambition of some of its senior commanders, which focused particularly on Congolese gold and diamonds, had increasingly blurred.

On 29 March 2007 the UN Security Council Sanctions Committee established under UN Security Council Resolution 1533 (2004) concerning the DRC added UPI and Machanga to the sanctions list imposing measures under paragraphs 13 and 15 of resolution 1596 (2005), on the basis that they bought gold through a regular commercial relationship with traders in the DRC tightly linked to militias.[1]. This was the first and only time the Security Council has imposed sanctions on commercial entities for financing illegal armed groups in the DRC. The Ugandan companies remain on the UN sanctions list. The Ugandan government has since often been criticised, particularly by the UN GoE for doing too little to stem the flow of smuggled gold from the DRC.

During the last few years, however, the Ugandan government has tightened its regulatory requirements for gold traders and taken steps to launch the implementation of the Regional Certification Mechanism (RCM) of the International Conference on the Great Lakes Region (ICGLR).

This report analyses the impact of the Ugandan government's efforts, and also considers the widely held view in Ugandan industry and government circles that since gold smuggling from the DRC cannot be stopped, ways should be found to encourage gold traders to work legally.

A. Key findings

In 2011, the Uganda Revenue Authority (URA) adopted more stringent rules, requiring Ugandan gold traders to produce supporting documentation to prove the origin of their gold. Up until then, Kampala-based gold traders were easily able to misrepresent the origins of smuggled Congolese gold they were openly exporting. This apparently positive modification of the regulatory framework has reduced

[1] See press release SC/8987 http://www.un.org/press/en/2007/sc8987.doc.htm

Uganda's legal gold exports, but has not stopped the trade in smuggled Congo gold. The main difference is that the gold is now smuggled from Uganda rather than declared.

The government has initiated the process to incorporate the ICGLR's RCM into Ugandan law, meaning that gold officially exported from Uganda will in future need ICGLR certificates issued in the country where it was mined. Smuggled artisanally mined Congolese gold is likely to lack these certificates and will thus remain impossible to export legally from Uganda. Attempts at smuggling will hence likely continue and the RCM will change little on the ground for the Kampala gold trade. A larger impact would come from the Ugandan authorities introducing new measures to make it more difficult to smuggle gold from the country, particularly at Entebbe Airport, the only airport in the country with direct flights to international gold markets such as Dubai.

Meanwhile, one of the main historic gold trading families in Kampala has proposed an intriguing pilot project to implement the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (Due Diligence Guidance) in the regional gold trade. The details are discussed below. The proposal is controversial, since the families are alleged by the UN GoE to have continued trading Congolese gold in defiance of UN sanctions, while the families are asking for sanctions to be lifted if the pilot project proves successful. Despite the risks, careful consideration should be given to the pilot project, particularly if it is verified and audited by an independent third party, to determine whether its focus on creating positive incentives for compliance with the Due Diligence Guidance can generate better outcomes than gold trade initiatives based on sanctions and punishment, which have arguably failed to achieve much beyond the unintended consequence of encouraging illegality in the regional gold trade.

II. Overview of gold trading in Kampala

For many years, the main gold traders in Kampala were Machanga Ltd, owned by the Vaya family, and Uganda Commercial Impex (UCI), owned by the Lodhia family. Also significant was A.P. Bhimji Ltd, run by the Bhimji family. Between 2002 and 2006, the three companies controlled 95% of the gold officially exported from Uganda, with 17 other smaller operators making up the difference.[2] Average annual recorded domestic gold production was a mere 28 kilos between 1994 and 2007.[3] Actual production was no doubt higher, but even so, most of the 2-7 tonnes of gold officially exported every year from Uganda during this period appears to have come from from the DRC (see below). The main three buyers in Kampala sourced predominantly from Congolese traders who mainly supplied gold from Orientale Province, and particularly Ituri. Machanga and UCI also sourced gold from the Kivu provinces (DRC), sometimes via Bujumbura (Burundi).

The trade went largely unnoticed until the publication in 2002 of a report of a UN panel of experts on the illegal exploitation of natural resources in the DRC (UN Security Council report S/2002/1146). The report alleged that "an elite network operating out of Uganda", at whose apex sat UPDF Lieutenant General (Ret.) Salim Saleh and Major General James Kazini, was exercising "monopolistic control" over a large area of eastern DRC's natural resources, cross-border trade and tax revenues "for the purposes of enriching members of the network".[4] Saleh is the brother of Ugandan president Yoweri Museveni and Kazini was at the time the chief of staff of the UPDF.

The 2002 report continued that the UPDF "and their associated rebel militias have been used as the de facto enforcement arm of the network" and had "established physical control over areas containing commercially viable natural resources – coltan, diamonds, timber and gold."[5] The 2002 report cited instances in which coltan and diamond trade from eastern DRC had directly benefited the 'network' but was, however, largely silent on the subject of gold.

The Ugandan government at the time strongly disputed the panel's findings. Yet the panel's conclusion that Kazini and other senior Ugandan army officers had illegally personally enriched themselves from Congolese natural resources was subsequently endorsed by a Ugandan judicial commission headed by British-born Justice David Porter (the Porter Commission). However, the Porter Commission's final report, released in May 2003, concluded that there had not been systemic involvement of the country's government or president.[6]

UCI, Machanga and Bhimji were for a time lauded by the Ugandan government for their sterling contribution to the country's export earnings; the three all won export medals between 2002 and 2004[7] but the awards ceremony was cancelled in 2006 following mounting domestic and international concern about Uganda's role in the regional gold trade. The concern came in the wake of the 2006 report of a UN GoE mandated to investigate violations of the arms embargo on the DRC, that had demonstrated solid evidence that Ituri-based non-state armed groups were profiting from gold subsequently

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2 Dan Fahey, *Le Fleuve d'Or*, page 375.

3 Dan Fahey, *op cit*, page 383. Fahey's sources are the annual statistical abstracts of the Uganda Bureau of Statistics, and the annual budgets of Ministry of Finance, Planning and Economic Development.

4 *Letter dated 8 October 2002 from the Chairman of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo*, paragraphs 97 and 98.

5 *Ibid*, paragraph 101.

6 See http://news.bbc.co.uk/2/hi/business/3030515.stm

7 UCI was awarded gold medals three years in a row in Uganda's annual presidential export awards, from 2002 to 2004, and received a bronze award in 2005. Machanga Ltd won silver medals in 2002 and2003 and AP Bhimji Ltd won a silver award in 2004. Dan Fahey, *Le Fleuve d'Or*, footnote 128.

purchased in Kampala by Machanga and UCI. On 29 March 2007, the UN Security Council Sanctions Committee established under UN Security Council Resolution 1533 (2004) imposed sanctions under paragraphs 13 and 15 of resolution 1596 (2005) on the two companies, stating that both had bought gold "through a regular commercial relationship with traders in the DRC tightly linked to militias". This breached the arms embargo that had been imposed on these groups by Resolutions 1493 (2003) and 1596 (2005).[8]

Representatives of the Vaya and Lodhia families subsequently protested that they had not known at the time of the relationships between traders selling gold to them and Congolese non-state armed groups. They and the Bhimjis have also repeatedly insisted that they have not bought gold from the DRC since sanctions were first imposed. Successive UN GoEs, however, have accused the three of continuing to buy smuggled Congolese gold, most recently in their report of January 2015.[9] According to the UN GoE, the families made use of front companies to disguise their involvement, such as Mineral Impex Uganda.[10] In reply, a source close to the Lodhia family said "We maintain that we are not buying gold. Or at least that you cannot demonstrate that we are."[11] UN sanctions against Machanga and UCI, meanwhile, have remained in place.

According to a member of one of the three families, who said he had "stopped trading gold" from the DRC: "After all those UN reports, the gold traders here all went to ground. But the trade continued. Some of it, though, is in the hands of other Kampala traders now. And some of the trade has shifted from Kampala to other cities, like Nairobi. But as far as I am aware, most of the gold still ends up in Dubai."[12]

Gold buyers and representatives of artisanal miners in Orientale Province have reported that Kampala-based buyers have for a long time pre-financed the Congolese gold traders they buy from, often on the understanding that part of the money is to make its way to the mine sites themselves. This is to ensure that diggers keep working the sites during periods when they are not finding gold.[13]

The 2013 UN GoE alleged that Kampala's gold buyers were systematically cheating the Congolese traders from whom they purchase. According to the UN GoE, at least some Kampala buyers have been using a table that fraudulently under-indicates the gold purity values corresponding to various gold density values. The result, according to the Group, was that Kampala's gold buyers cheat sellers of "more than 200kg" of gold a year.[14]

In 2006, Uganda officially produced 21.9kg of gold and exported 6.9 tonnes of the metal, with most of the balance apparently coming from the DRC. Uganda's official gold exports plummeted after the UN Security Council sanctions were imposed on UCI and Machanga in 2007. Official gold exports from Uganda during the first eleven months of 2013 amounted to a mere 161 kg.[15] In 2014, the official export

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8 See **http://www.un.org/press/en/2007/sc8987.doc.htm**

9 See the *Letter dated 26 November 2014 from the Group of Experts on the Democratic Republic of Congo*, (S/2015/19), paragraphs 204-209.

10 See the *Letter dated 12 December 2013 from the Group of Experts on the Democratic Republic of Congo* (S/2014/42), paragraph 187.

11 Interview with source close to the Lodhia family, Kampala, September 2014.

12 Interview with 'former' gold trader, Kampala, September 2014.

13 Interviews with diggers' representatives, and gold traders, Ituri, DRC, August 2014.

14 *Letter dated 12 December 2013 from the Group of Experts on the Democratic Republic of Congo*, paragraphs 180 and 181, (S/2014/42).

15 *Letter dated 12 December 2013 from the Group of Experts on the Democratic Republic of Congo*, paragraph 182, (S/2014/42).

figure (January to October) had dropped even further, to less than 15 kg.[16] Largely uncaptured by official statistics, meanwhile, Ugandan gold production appears to be rising, but much of it is apparently smuggled across Uganda's eastern border to Kenya.[17] Artisanal gold production in eastern DRC, meanwhile, has shown no signs of slowing either, and the working assumption of recent UN GoEs has been that Congolese gold is being smuggled into Uganda at roughly the same levels as before, but instead of being exported from there legally is now being smuggled out of Uganda too.

The Ugandan government has repeatedly come under fierce criticism, much of it from the UN GoE, for its alleged unwillingness to stop gold smuggling. The government has always denied this, and has often stressed how difficult it is to control the gold trade. The Ugandan government told the UN GoE in 2013 that it had no information on whether or not the Lodhias, Vayas or Bhimjis were involved in gold trading, and further informed the Group that it had not seized any smuggled gold during 2013 and had not arrested anyone for gold smuggling.[18] In October 2014, the government asked the GoE to postpone a planned visit to Kampala because "it had opened investigations into Kampala-based gold traders".[19] The investigations are apparently being carried out by the Ugandan police, and may be a sign of an increased willingness of the Ugandan authorities to tackle smuggling.[20]

In 2011, the country's Ministry of Energy and Minerals Development introduced tough new rules governing the export of gold from Uganda. In the words of a senior official at the Department of Geological Survey and Mines: "Starting in 2011, we began to demand that gold exporters had to show both an export permit and a certificate of origin for the gold. This measure reduced our official gold exports."[21] A senior official in the Uganda Revenue Authority (URA) explained further:

> For gold, we at Customs need to see a certificate of analysis and a certificate of origin. If the gold is from Uganda, the gold mine has to be registered. With gold re-exports, we require the declaration that was made at the port of entry into Uganda. If you cannot show the transit document, you will pay the tax rate for Ugandan gold exports.[22]

According to Partnership Africa Canada (PAC), Mineral Impex was unable to export gold after the new rules, apparently because it could not produce the necessary documentation. PAC, however, reported on another case concerning Westcorp Mining, which imported 40kg of gold and presented a South Sudanese certificate of origin that Ugandan mining officials considered to be genuine. Yet the issuing ministry on the certificate was wrong, the website on the certificate is not hosted by the South Sudanese government and the email address and telephone number on the certificate are not in service. In another instance, in June 2013, a new Ugandan company called Treasure Highland Caves requested a Ugandan import permit for 156kg of gold from North Kivu (DRC). North Kivu mining officials, however, told PAC that they did not know the company and had not issued the certificate. PAC

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16 *Letter dated 26 November 2014 from the Group of Experts on the Democratic Republic of Congo*, paragraph 199 (S/2015/19).
17 Interviews with gold industry and government representatives, Kampala, September 2014.
18 *Letter dated 12 December 2013 from the Group of Experts on the Democratic Republic of Congo*, paragraph 187, (S/2014/42).
19 *Letter dated 26 November 2014 from the Group of Experts on the Democratic Republic of Congo*, paragraph 203 (S/2015/19).
20 Interview with senior government official, Entebbe, September 2014.
21 Interview with senior official, Department of Geological Survey and Mines, Entebbe, September 2014.
22 Interview with senior official, Uganda Revenue Authority, Entebbe, September 2014.

reported that the Ugandan authorities did not issue any import permit because Treasure Island failed to pay the required tax.[23]

Gold from other countries that is officially re-exported from Uganda used to be subject to a tax of 0.5% of its declared value, but this was increased to 1% in 2013. The tax rate for gold produced in and officially exported from Uganda was increased from 3% to 5% at the same time. Industry sources allege that the Ministry of Finance insisted on the tax increases against the advice of the Ministry of Energy and Minerals and that the initial plan was to push the export tax for Ugandan gold up as far as 11%.[24]

According to the URA, official gold re-exports have become "very rare" since the 2011 change of rule.[25] While prior to this gold re-exporters had to declare the origin of their gold, they were not required to produce supporting documentation. Exporters would typically declare their gold – wherever it was from - as being South Sudanese, that way avoiding the higher export tax rate that Ugandan gold incurs and the difficult questions that could follow a declaration of the gold as Congolese.[26]

The main change since 2011 appears to be that Congolese gold is now smuggled both into and out of Uganda. The 2013 increase in export taxes on Ugandan gold has provided a further incentive to smuggle, and is another reason why the country's official gold exports have declined so steeply.[27]

Interviewees reported that Congolese gold generally travels to Kampala by road rather than by air. The main border crossings are reported to be Ariwara/Arua and Mahagi/Nebbi. From there the gold is transported to Kampala, often via Gulu.[28]

While some Congolese gold probably exits Uganda by road to Kenya along with smuggled production from eastern Uganda, interviewees said they thought most Congolese gold was being smuggled from Uganda by air through Entebbe Airport (located 36 km from the capital Kampala). Gold traders allege that the two best gold smuggling options at Entebbe Airport are via cargo or as hand luggage. The URA has licensed three handling services to manage cargo at Entebbe Airport: Entebbe Handling Services, DAS, and Fresh Handling. The companies secure cargo at the airport until the URA has inspected it and checked the paperwork. According to a senior URA official at Entebbe Airport: "Entebbe Handling Services deals with the Dubai flights. I do not have information on this but it is conceivable that people there could have relations with gold traders. If the gold was concealed in cargo, we as customs might not know, as it is not possible to check everything."

The official said that detecting illegal imports was a much higher priority for his staff than detecting illegal gold exports: "We have 73 people doing three shifts at the airport, so that means there are about 25 people active at any one time. But of these, only two are looking at exports. We are focused on imports. That is what makes the money… If the URA received the money from gold exports perhaps we would be more interested. But the export tax goes to the Geology and Mines Department."[29]

23 Partnership Africa Canada, *All That Glitters is Not Gold*, PAC, Ottowa, 2014, page 9.
24 Interview with mining company executive, Entebbe, September 2014.
25 Interview with senior official, Uganda Revenue Authority, Entebbe, September 2014.
26 This conclusion is based on an inspection of Ugandan gold export documentation during 2010-11, when the author was a consultant with the UN GoE.
27 Interview with senior official, Department of Geological Survey and Mines, Entebbe, September 2014.
28 IPIS, *Supply Chains and Transport Corridors in East Africa* (2014), page 42.
29 Interview with senior URA official, Entebbe Airport, September 2014.

The main risk with sending the gold as cargo, it seems, is theft. In late 2011, over 14kg of gold (then worth around US$830,000) in a cargo container were stolen at Entebbe Airport, and since then Kampala's gold exporters have reportedly mostly avoided the option.[30]

The state service dealing with handheld luggage at Entebbe Airport is Aviation Security. It is well aware of the issue of gold smuggling at the airport, and has procedures to address it. According to a representative of Aviation Security at the airport, its agents regularly find gold:

> The first thing we do when people arrive at the airport is to scan their baggage with an X-ray scanner. If we find gold, we ask to see all the documentation. Many people declare gold at this point. We see someone at least once a week, usually travelling on the Emirates flight to Dubai. They are usually carrying 1-5kg of gold. We know exactly what documents are required – the gold mining licence and clearance from Customs. If we are in doubt we contact Customs and they come and verify for us. At the boarding gate there is another scanner. This machine is more powerful. If the first one did not find the gold, the second one probably will. Again, if we find gold, we ask for documents. Sometimes people bring fake documents, but their body language often gives them away.[31]

If the X-ray scanners are indeed as powerful Aviation Security believes them to be, that would suggest that gold is being smuggled out in hand luggage from Entebbe Airport with the collusion of the Aviation Security employees who operate the equipment. The official conceded: "There has been some connivance from our staff, and we have taken action against it. We have also conducted stings. Our agents say they will co-operate and then call the police. We have caught people like that."[32] Despite Aviation Security's efforts to stop the corruption of its staff by gold traders, it seems that gold, much of it smuggled from the DRC, still regularly keeps getting through in handheld luggage at Entebbe Airport, destined for Dubai. Additional resources and focused training on risks associated with gold trade could support the efforts of the airport services and Ugandan Customs to tackle this.

[30] Interview with 'former' gold trader, Kampala, September 2014.
[31] Interview with Aviation Security official, Entebbe Airport, September 2014.
[32] Interview with Aviation Security official, Entebbe Airport, September 2014.

III. Conflict links and other Annex II risks

A. Direct or indirect support to state and non-state armed groups

No evidence has recently emerged of direct profiteering from the DRC's natural resources by senior commanders in the UPDF, as was alleged during the early 2000s by the UN GoE and the Porter Commission. Nonetheless, the apparent ease with which Congolese gold continues to be smuggled into and out of the country and the Ugandan authorities' inability to apprehend those doing so has done little to dispel suspicion that the government's efforts are less enthusiastic in this matter then they could be. This suspicion has prompted allegations from some journalists and non-governmental organisations (NGOs)[33] that the lack of commitment might be linked to the financial interests of powerful members of the Ugandan political and military elite.[34]

No mechanism currently exists to trace the origin of gold smuggled from the DRC and sold in Kampala, so while the buyers there will often have a good general idea about where the gold they are purchasing has come from, they are unlikely to know its precise origin. Earlier baseline studies and a host of reports from the UN GoE and NGOs have repeatedly concluded that many non-state armed groups finance themselves through artisanal gold mines in eastern DRC; such groups include the *Forces Démocratiques de Libération du Rwanda* (FDLR), *Mai-Mai Morgan* and *Mai-Mai Yakutumba*, and/or criminal networks in the *Forces Armées de la République du Congo* (FARDC; the armed forces of the DRC). Because much of this gold is traded in Kampala, it is therefore highly likely that the city's gold trade provides direct and indirect support to these criminal networks and to non-state armed groups.

B. Serious abuses associated with the transport and trade of minerals

Aside from the allegations cited above of the 2013 UN GoE concerning the alleged systematic cheating of gold sellers by Kampala's gold buyers, there is no evidence of serious abuses associated with the transport and trade in gold to and from Kampala.

C. Bribery and the fraudulent misrepresentation of minerals

In addition to shortfalls in capacity and resources at Entebbe Airport and with the customs authorities, systematic bribery of Ugandan state officials is the most plausible explanation for how gold continues to be smuggled into Kampala by road and out again by air without the apprehension and arrest – during 2013 at least – of any smugglers. Aviation Security at Entebbe Airport has acknowledged the risk of collusion between its staff and smugglers, and has said it works hard and with some success to mitigate

33 Reference to be identified

34 NGO activists have noted in this regard that a major shareholder in Entebbe Handling Services is Samba Kahamba Kutesa, a former Ugandan foreign minister who is currently the president of the General Assembly of the UN in New York. Kutesa's daughter Charlotte is married to Brigadier Muhuzi Kainurugaba, a senior UPDF commander and Museveni's son. Neither Charlotte nor the Brigadier apparently has shares in Entebbe Handling Services. Reference to be identified.

this risk.[35] Yet the majority of interviewees indicated that gold continues to be regularly smuggled in hand luggage from the airport, apparently principally to Dubai.

The fraudulent misrepresentation of gold used to be a major issue in the Kampala gold trade, but changes to the rules in 2011 have made this more difficult, and since then official gold re-exports from Uganda have all but dried up. As discussed above, the rule change has instead resulted in Kampala's exporters of Congolese gold smuggling it out of Uganda too.

D. Money laundering, payment of taxes, fees and royalties

According to the IMF, the trade in precious metals, and particularly gold, has strong links to illicit financial flows.[36] Gold traders in the DRC and Dubai have often claimed that Kampala-based traders purchase gold with illicit funds for the purpose of money laundering.[37] The claim was plausible while it was easy to export gold from Uganda by official channels while at the same time fraudulently misrepresenting its origin, since in this way illicitly-obtained funds could be 'cleaned' via the trade. But, as we have seen, this has been largely prevented by gold export rule changes introduced in 2011, which have led to most Congolese gold subsequently being smuggled from Uganda. Traders smuggling this gold will want to conceal through money laundering the origin of their profits from this trade. This, however, makes it unlikely that the same traders are purchasing Congolese gold in Kampala for the purpose of money laundering.

No export duties are paid on smuggled gold and the Ugandan government earns considerably less in direct taxation[38] from the trade now than it did before the 2011 rule change, when more gold was exported from the country officially. While this official source of revenue is now almost entirely dried up, the Ugandan government, however, continues to benefit indirectly from the gold trade, including (though there are of course no statistics on this) through taxes levied on the many and varied goods Congolese gold traders buy with the funds they earn from selling their gold in Kampala. Additional revenues accrue to the tax authorities (and the Ugandan economy) from the living expenses of the Congolese traders while they are in the country. For many Congolese traders meanwhile, the profit they earn on re-selling these goods in the DRC is often as high or higher as their earnings from selling their gold in Kampala.[39]

[35] Interview with senior official, Aviation Security, Entebbe Airport, September 2015.

[36] E. Mathias and B Feys, *Implementing AML/CFT Measures in the Precious Metals Sector: Preventing Crime While Increasing Revenue*, IMF, Washington, 2014, page 1. In addition, in 2014, the OECD published a report on "Illicit Financial Flows from Developing Countries" (**http://www.oecd-ilibrary.org/development/measuring-oecd-responses-to-illicit-financial-flows-from-developing-countries_9789264203501-en**).

[37] Interviews in Kisangani, Bunia and Dubai, 2014-2015.

[38] Source to be identified

[39] Interview with gold traders in Bunia, DRC, August 2014, and in Kampala September 2014.

IV. Awareness and levels of implementation of the Due Diligence Guidance

The Ugandan government has gained awareness of the Due Diligence Guidance over the years chiefly through participation in OECD-ICGLR-UN GoE Forum meetings. In-depth understanding of the Due Guidance Guidance and its implications across relevant Ugandan government departments, however, has remained limited, and is even more constrained within the domestic mining sector and natural resource NGOs, even though it is the principal standard of compliance in the major gold markets.[40]

Interestingly, awareness and knowledge of the Due Diligence Guidance was high among 'former' gold traders in Kampala. This knowledge is in part the result of the traders' interactions with the UN GoE, particularly since the GoE presented its own detailed guidance in 2010, precisely matching the essentials of the Due Diligence Guidance.[41] Several 'former' traders had suggestions for how it could be implemented in the gold sector, which are discussed below.

Though direct awareness of the Due Diligence Guidance among Ugandan stakeholders as a whole is weak, there is a far higher level of indirect awareness because of rapidly growing familiarity with the ICGLR's RCM. Partnership Africa Canada (PAC) has been working successfully to train Ugandan stakeholders in the RCM, and the government has been further encouraged by the implementation of the RCM in Rwanda and the DRC. The criteria of the ICGLR's RCM are (for the most part[42]) explicitly based on the Due Diligence Guidance and are designed to ensure that minerals with ICGLR certificates have been mined and traded in strict accordance with it. According to a Ugandan mining consultant:

> Not many here have understood Due Diligence Guidance. Here, it is all about certificates and traceability and ICGLR. Very few Ugandan mining industry players have attended OECD meetings. It has mostly been the government that has attended so far. In civil society, no one is onto this. They are all excited by oil and gas. But people know RCM and ICGLR. People say that if you do RCM, everything has been done.[43]

In another sign of increased government willingness to tackle the issues of responsible mineral supply chains, the Ugandan President Yoweri Museveni convened a presidential retreat on the mining sector in December 2013 where implementation of the RCM was high on the agenda, and the Prime Minister's office and Ministry of Energy and Minerals were tasked with taking the process forward. A government team was subsequently dispatched to Rwanda to learn how its government had managed thus far to implement the RCM.[44] Strikingly, despite Uganda having been cited so often for its role in the trade in Congolese 'conflict gold', the only focus of the discussion on RCM implementation at the presidential retreat and since has been on the domestic tin and tantalum mining sectors.[45]

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40 Interviews with government officials and mining consultants, Entebbe and Kampala, September 2014.

41 Interviews with 'former' gold traders, Kampala, 2010, 2011, 2014.

42 There are some differences between the OECD Guidance and the RCM's standards as they currently stand, particularly with regards child labour and the presence of armed groups.

43 Interview with Ugandan mining consultant, Kampala, September 2014.

44 Interview with Peter Lokeris (MP), State Minister for Minerals, Kampala, September 2014.

45 According to one participant: "It was all about the 3 Ts at the retreat. We didn't talk about gold at all." In the words of a member of the Ugandan Chamber of Mines: "Soon we will start on traceability on the 3 Ts. But there is nothing on gold. No

Peter Lokeris, the Minister of State for Minerals states, however: "We want to get our minerals certified. All of them. And according to the ICGLR process. So far, though, it has been mostly about the 3Ts and we have not really taken gold seriously. But we want to trace gold, to tag it."[46]

At the presidential retreat tin miners in Uganda expressed their frustration at their inability to export to anyone but Chinese buyers purchasing at a discount. This is because the Malaysia Smelting Corporation (MSC), the main smelter of African tin that does not purchase at a discounted rate, only accepts cassiterite (tin ore) from the continent with tags issued by the ITRI Tin Supply Chain Initiative (iTSCI). iTSCI, however, is not operational in Uganda. There is a hope among Ugandan tin miners that even if iTSCI does not start up in the country, MSC might accept Ugandan output with ICGLR RCM certificates instead.[47]

The tin miners' frustration appears to be contributing to a souring of Ugandan mining industry perceptions of the RCM and natural resource due diligence in general. The Chamber source said that of the "three to four" small-scale gold miners in the country, "one or two" are in the Chamber, but none of Kampala's 'former' gold traders are members. The source alleged, controversially: "In the private sector, we do not really care about this. But unfortunately we are being made to."[48]

A. Initiatives to mitigate Annex II risks

The Ugandan government's current priority policy initiative for mitigating Annex II risks is without doubt the implementation of the ICGLR's RCM. As discussed above, RCM implementation so far has focused exclusively on the 3Ts, and not gold. However, in the short to medium term, and as evidenced in this report, the mere implementation of the ICGLR RCM in Uganda is unlikely to yield significant results if it is not fully supported by general increase in the understanding of due diligence expectations and requirements. This is particularly important since international markets and buyers use the Due Diligence Guidance – and not the ICGLR RCM – as the standard for compliance. Use of the Due Diligence Guidance in Uganda will also leverage foreign investment and trade to support and finance implementation of due diligence on the ground, rather than those costs being borne by local industry and authorities alone. Furthermore, as envisaged in the ICGLR RCM manual, private sector led due diligence should strengthen and enhance the credibility of the ICGLR certification process through monitoring of risk. As is already the case in the DRC, Rwanda and Burundi, the integration into Ugandan law of the Due Diligence Guidance would probably usefully complement the implementation of the RCM in the country.

In a move, however, that would affect the country's gold trade, or at least the small percentage of it that operates within the law, Minister Lokeris said that the government intends to incorporate new minerals traceability requirements into proposed new mining legislation.[49] Eddie Kwizera MP, the chair of the Ugandan parliament's Committee on Natural Resources, explained that the idea was to require

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one is even attempting it." Interview with presidential retreat participant, Entebbe, September 2014 and interview with senior member of the Ugandan Chamber of Mines, Kampala, September 2014.

46 Interview with Peter Lokeris (MP), State Minister for Minerals, Kampala, September 2014.

47 Interview with tin mining executive, Entebbe, September 2014.

48 Interview with senior member of the Ugandan Chamber of Mines, Kampala, September 2014.

49 Interview with Peter Lokeris (MP), State Minister for Minerals, Kampala, September 2014.

exporters to show proof either that their minerals were legally mined in Uganda, or that they were legally imported from elsewhere: “What we want is that if minerals are from Uganda, they must have been mined under licence. And if the minerals are from elsewhere, they must have been imported by someone licensed to do so.”[50]

Concerning the much larger percentage of the gold trade that takes place illegally, usually exiting Uganda by air, the work of the URA at Entebbe Airport to inspect cargo and of Aviation Security to check hand luggage were detailed earlier. Despite the URA and Aviation Security’s efforts, the Ugandan government told the UN GoE in 2013 that it had apprehended no-one for gold smuggling that year (see above).

In late 2014, the government informed the UN GoE that it had launched investigations into the persistent allegations of the Group that the Lodhia, Vaya and Bhimji families still secretly trade Congolese gold.[51] One of these families, meanwhile, has expressed interest in financing a pilot study to implement the Due Diligence Guidance in the DRC-Uganda gold trade. Sources close to the family have said it wants the pilot study to be monitored by an independent third party. The idea for the pilot study thus far is that a new company to be established by the family would finance a select group of Congolese gold buyers to purchase gold from pre-identified ‘conflict-free’ artisanal mine sites in the DRC. The Congolese buyers would be required by the new company to furnish evidence and official documentation to prove the origins of their gold. A further proposal is that if the Congolese gold buyers can show evidence of where their gold was sourced, but not of export taxes having been paid in the DRC, the company would make the tax payments to the DRC authorities. If the pilot study proved successful, the family has said it hoped this would pave the way for UN sanctions against its gold buying business to be lifted.[52]

[50] Interview with Eddie Kwizera (MP), Kampala, September 2014.

[51] *Letter dated 26 November 2014 from the Group of Experts on the Democratic Republic of Congo*, paragraph 203 (S/2015/19).

[52] Interview with ‘former’ gold traders, Kampala, September 2014.

V. Conclusion and Recommendations

As we have seen, during and after the DRC's African War (1998-2002) there was, according to the UN GoE and a Ugandan judicial commission, direct involvement of senior commanders in the UPDF in the illicit trade in minerals from the DRC. The commanders were mostly concentrated on the DRC's diamonds and to a lesser degree on cassiterite and coltan, but probably profited from artisanally mined gold too. Furthermore, Congolese militia that at various times, according to UN GoE reports, were supported by the UPDF profited illegally from Congolese artisanal gold. But times appear to have changed and in recent years there seems to be little or no evidence, despite all the attention devoted to the subject, of direct UPDF involvement in the Congolese minerals trade.

Even before the African War, Uganda has for decades been a crucial conduit for artisanally mined Congolese gold, apparently heading for the UAE. Some of this gold has funded illegal armed groups in the DRC and/or the FARDC. Until 2011, it was straightforward for Kampala-based gold traders to fraudulently declare the smuggled Congolese gold they had purchased and were now exporting as having been mined elsewhere – usually South Sudan. But a new rule in 2011 required Ugandan gold traders to produce supporting documentation to prove the origin of their gold. While this was in principle a much-needed initiative, without further resources and capacity building for enforcement, the change to the rule has reduced legal gold exports from Uganda and pushed the trade further underground - rather than stopping the illicit gold trade. Today, Congolese gold is still exported from Uganda, often in hand luggage from Entebbe Airport, only now it is smuggled rather than declared.

The Ugandan government's main policy to mitigate Due Diligence Guidance Annex II risks is currently the implementation of the ICGLR RCM, and its incorporation into Ugandan law. This is likely to mean that gold officially exported from Uganda will in the future require an ICGLR certificate issued in the country from where it was mined. Artisanally mined, smuggled gold from the DRC, however, will probably not have ICGLR certificates, or at least not legitimately so. This will mean that, as is the case today, it will not be possible to export smuggled Congolese gold legally from Uganda. As a result, RCM implementation is unlikely to impact much, if at all, on Kampala's role as a conduit for smuggled Congolese gold that may have financed conflict. The issue will thus remain what steps the Ugandan government is prepared to take to make it harder for Kampala-based traders to smuggle Congolese gold from Uganda. The ongoing Ugandan police investigation into allegations that the Vayas, Lodhias and Bhamjis are still covertly trading Congolese gold might act as a deterrent to gold smuggling. But there is also a strong case for the Ugandan government, assisted if necessary by donors, strengthening security measures at Entebbe Airport to make it harder for gold to be smuggled from there as cargo or hand luggage.

While this would constitute a disincentive to smuggling, it is also worth giving more consideration to creating incentives of how to encourage illegal gold traders to use legal channels. One of the historically biggest gold trading families in Kampala proposed that it finances a Due Diligence Guidance-compliant pilot study for gold trading from the DRC. If the pilot study were endorsed, however conditionally, by national, regional and international stakeholders, and implementation was verified by an independent third party, and succeeded in demonstrating that the Due Diligence Guidance was not only possible in the regional gold trade, but also compatible with making reasonable profits for each link in the supply chain, that would indeed constitute a major incentive to encourage illegal gold traders in the region to turn to legal practices.

A. Recommendations

- The Ugandan government should extend its ICGLR RCM implementation to the gold trade and at the same time should boost the capacity of the URA and Aviation Security to detect smuggled gold, with support from the OECD and other experts. Donors should assist.

- The Ugandan authorities should ensure clear reference to the Due Diligence Guidance in any relevant regulations, in order to harmonize with other ICGLR countries and international market expectations.

- The customs authorities in the United Arab Emirates should equally require certificates of origin for gold imported from the DRC and neighbouring countries. Resources and capacity-building opportunities should be allocated to support these changes.

- The OECD and supportive organisations and institutions, for instance those involved in the implementation programme of the OECD Due Diligence Guidance, should raise awareness in Uganda of the Due Diligence Guidance, in particular showing how it connects to and complements the ICGLR RCM.

- Ugandan NGOs focused on natural resource governance have largely ignored 'conflict minerals' to date, but should improve their understanding of the issue and of the Due Diligence Guidance.

- The Due Diligence Guidance pilot project proposal for the trade in gold from the DRC to Kampala, discussed above, deserves serious consideration from stakeholders.

- The Uganda government should respond to the call of the Financial Action Task Force to speed up the implementation of its action plan to address the remaining deficiencies in its anti-money laundering regime. It should in particular establish a fully operational and effectively functioning financial intelligence unit, perhaps with support from the International Monetary Fund. This would support and complement the recent efforts of the government to update and adapt its national regulation on transparency requirements of supply chains of minerals.

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