Advisory Committee on Investment Responsibility (ACIR)
Duke University

Report on Conflict Minerals

May 1, 2012

Contents

1. Summary and recommendations
2. Role of the ACIR
3. The request for action and ACIR proceedings on "Conflict Minerals"
4. Duke's Investments
5. The ACIR's findings

6. Appendices
    - A. Guideline on Socially Responsible Investing (August 2004)
    - B. Creation of PSC and ACIR (November 2004)
    - C. ACIR report on Darfur, pp.1-7 (introduction) (November 2007)
    - D. Board of Trustees resolution on Darfur (February 2008)
    - E. 2012 ACIR Member Roster
    - F. Students' request to PSC on 'conflict minerals' (January 2012)
    - G. PSC memo to ACIR on 'conflict minerals' (January 2012)
    - H. ACIR meeting agendas (February 27, April 4, April 11, and April 26, 2012)
    - I. ACIR advertisement for open forum held on April 4, 2012
    - J. DUMAC 'Proxy Policy' (March 30, 2012)
    - K. Presentation slides submitted by David Shumate, DUMAC (April 4, 2012)
    - L. Stanford University proxy voting guideline on 'conflict minerals' (June 2010)
    - M. Petition signed by Duke students (as of April 4, 2012) (omitting signature pages)
    - N. John Prendergast and Sasha Lezhnev, "From Mine to Mobile Phone: The Conflict Minerals Supply Chain," Enough Project (2009) (10 pp., incl. a Congo Traffic Map on p.5)
    - O. BSR, "Conflict Minerals and the Democratic Republic of the Congo" (May 2010) (33 pp., including a UN map of the DRC region on p.4, and a table of "Industry uses of tin, tantalum, tungsten and gold" on p.28)
    - P. United Nations Group of Experts on the Democratic Republic of the Congo, report S/2011/738 (UN Security Council, December 2, 2011), pp.1-9 (summary and contents)
    - Q. News media coverage –
        - i. Amy Westervelt, "Anticipating New SEC Rules, Tech Companies Shift To Conflict-Free Metals," Forbes.com, October 12, 2011
        - ii. Edward Wyatt, "Behind the Blood Money: Use of 'Conflict Minerals' Gets More Scrutiny From U.S.," NY Times, March 20, 2012, p.B1
        - iii. Duke Chronicle articles and opinion pieces published January 24, April 2, April 3, April 5, and April 10, 2012

1. Summary and recommendations

This report offers advice on a request that Duke University seek transparency and reforms from companies in which the University invests where those companies use "conflict minerals." This report was prepared by the Advisory Committee on Investment Responsibility (ACIR), whose members in 2011-12 included: administrators Ralph McCaughan, Tori Nevois, Scott Gibson, and Tracy Futhey; faculty Philip Morgan, Wayne Norman, and Jonathan Wiener (chair); students Peter Schork and Steven Achatz; and alumna Laura Meyer Wellman; with staff support from Michele Witman. (The full 2012 ACIR member roster is attached as Appendix E.)

Over the past decade, the Duke University community's engagement in issues of socially responsible investing, purchasing, and service has grown. In the late 1990s, Duke students were at the forefront of a national movement to ensure that the branded apparel sold in university stores did not come from sweatshops. In 2004, Duke's Board of Trustees adopted a Guideline on Socially Responsible Investing, and created a process for deliberation on requests "to take ethical factors into account when setting investment policies" (the details of this process and its criteria are set forth in section 2 of this report, below). In 2007, Duke students submitted the first such request, asking the University to refrain from investing in companies doing significant business in Sudan/Darfur – a request that the ACIR recommended to the President, the President recommended to the Board of Trustees, and the Board of Trustees adopted in January 2008. Duke students' culture of active involvement in the world has been broadened and deepened through Freshman Focus clusters that explore global justice and global health issues, and more recently through hands-on opportunities to address these issues in signature programs such as DukeEngage and DukeImmerse. We are now seeing a new generation of students who have been shaped by these programs and who are taking the initiative to learn about and mobilize attention around global issues they find particularly urgent. In its strategic plans and in daily discourse, the Duke University community exhibits a growing commitment to the quest for "knowledge in the service of society."

In January 2012, Duke students submitted a request for investment measures regarding "conflict minerals." This request asked the University to (i) cast its proxy votes in favor of "well-written and reasonable shareholder resolutions that … ask companies for reports on their policies and efforts regarding their avoidance of conflict minerals and conflict mineral derivatives," and (ii) encourage companies to comply with the reporting requirements on "conflict minerals" enacted in section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.[1] This request was referred by the President's Special Committee (PSC) to the Advisory Committee on Investment

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[1] As used here, "conflict minerals" are a set of ores containing metals – notably tantalum, tin, tungsten, and gold – mined and transported amidst the violence in the eastern Democratic Republic of the Congo (DRC) and adjoining countries (such as Rwanda, Burundi and Uganda). The students' request to the PSC on "conflict minerals and [their] derivatives" (January 2012) mentioned these four metals, but did not provide a complete definition of the term "conflict minerals." In section 1502 of the Dodd-Frank Act, the U.S. Congress defined the term "conflict minerals" from the DRC and adjoining countries as: (A) columbite-tantalite, also known as coltan (the metal ore from which tantalum is extracted); cassiterite (the metal ore from which tin is extracted); gold; wolframite (the metal ore from which tungsten is extracted); or their derivatives; or (B) any other mineral or its derivatives determined by the Secretary of State to be financing conflict in the DRC countries. See section 1502(e)(4) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203 (July 21, 2010), adding section 13(p) to the Securities Exchange Act of 1934, 15 U.S.C. 78m(p).

Reponsibility (ACIR). (The specific details of this request, and a later modification of the second part, are set forth in section 3 of this report, below.)

Dodd-Frank Act section 1502 requires companies to report on whether or not the metals used in their products are "DRC conflict free," but implementation of this Dodd-Frank provision awaits a pending rulemaking by the Securities and Exchange Commission (SEC).[2] International organizations such as the United Nations Group of Experts on the Democratic Republic of the Congo[3] and the Organization for Economic Cooperation and Development (OECD) have also launched due diligence and tracking programs. The consumer electronics industry has been the most visible target of activists concerned about the use of conflict minerals (since all four of the metals are used in products like mobile phones and laptop computers), although some of these metals are widely used in other industries as well. Major electronics companies – including Apple, Intel, HP, and many others – have formed a global trade association called the Electronics Industry Citizenship Coalition (EICC) that is collaborating specifically to solve the problem of tracing conflict minerals within global supply chains.[4] In late 2011, the Public-Private Alliance (PPA) for Responsible Mineral Trade was launched by the U.S. State Department, in collaboration with the US Institute of Peace, 20 international high-technology and automotive companies, four industry associations, six non-governmental organizations, and the International Conference of the Great Lakes Region.[5] The PPA is developing pilot programs to demonstrate tracing and validation methods to distinguish conflict and non-conflict minerals in the supply chain.

Meanwhile, so far as we are aware, the only other university to have adopted an investment policy on conflict minerals to date is Stanford, which in June 2010 adopted essentially the same proxy voting provision now requested by the Duke students. (A copy is included here as Appendix L).

Findings:

As detailed further below, the ACIR gathered extensive information, engaged in substantive discourse, and heard broad expressions of concern from the Duke University community. Under the 2004 Guideline on Socially Responsible Investing, the key criteria for action include findings of "substantial social injury" and that action would "have a direct and material effect in alleviating" such injury.

The ACIR finds that the conflict in the DRC and adjoining countries has been extraordinarily violent and horrific, and that trade in conflict minerals contributes to "substantial social injury" – while recognizing that the conflict in the DRC region is complex; it involves neighboring countries and their

[2] US Securities and Exchange Commission (SEC), Proposed Rule: Conflict Minerals, Dec. 15, 2010, at http://www.sec.gov/rules/proposed/2010/34-63547.pdf . The Dodd-Frank law set a deadline of April 2011 for the SEC to issue its final rule, but the SEC has encountered difficulties in determining which companies would be covered by the reporting requirements and how quickly to phase in these requirements, and has still not issued the final rule a year later. See Edward Wyatt, "Behind the Blood Money: Use of 'Conflict Minerals' Gets More Scrutiny From U.S.," NY Times, March 20, 2012, p.B1, at http://www.nytimes.com/2012/03/20/business/use-of-conflict-minerals-gets-more-scrutiny.html .

[3] UN Group of Experts on the Democratic Republic of the Congo, Final Report S/2011/738 (published by the UN Security Council, December 2, 2011), available at http://www.un.org/sc/committees/1533/egroup.shtml .

[4] See http://www.eicc.info/ .

[5] See http://blogs.state.gov/index.php/site/entry/joining_together_to_combat_conflict_minerals/ (posted Nov. 15, 2011).

governments; the trade in minerals is not the only financing source sustaining the conflict; the industries using such minerals are taking steps to identify and avoid sources that help finance the conflict; and the use of such minerals is not limited to electronics (such as computers and cellphones) but also includes machinery, automobiles, jewelry, food containers, and other widely used products. (These findings are set forth in further detail in section 5 of this report, below.)

The ACIR also finds that the requested proxy voting guideline could "have a direct and material effect in alleviating" the "substantial social injury." Support for proxy voting measures calling for reporting and due diligence seems likely to encourage companies to ensure that their supply chains are free of conflict minerals. But, that said, the ACIR finds that the full consequences of action by companies to avoid conflict minerals are complex and uncertain. In the short term, if it remains difficult to distinguish conflict minerals from non-conflict minerals in the long supply chain (from mines to transport to smelters to manufacturing), the consequences of seeking reporting and avoidance of conflict minerals may include inducing companies to avoid all minerals from the DRC region (irrespective of the actual involvement of specific mines or trade in the conflict), thereby unintentionally exacerbating unemployment and poverty among an already destitute population. At the same time, Dodd-Frank Act section 1502 (once it is implemented by the SEC), and related due diligence programs of international organizations and industry groups, are likely to have a much larger impact than a university's (or many universities') proxy voting guidelines. Still, the university's policy may have some impact in the interim before the SEC's final rule becomes effective. And a university may serve its educational function by increasing awareness of an egregious problem, and moreover by increasing understanding of a complex problem and of the full consequences of alternative response measures. In light of this complexity and the potential for unintended consequences, the ACIR sees a need for continuing evaluation of the full consequences of response measures. The ACIR also finds the students' requests to be moderate in their call for reporting and engagement rather than for divestment, and in their call for support of "well-written and reasonable" shareholder resolutions, thereby giving DUMAC flexibility in the exercise of the proxy voting guideline. (These findings on the complexities of assessing whether Duke's actions could "alleviate" the social injury, including potential unintended consequences, are discussed in more detail in section 5.D of this report, below.)

Recommendations:

A. The ACIR recommends to the President that the Board of Trustees of Duke University adopt the requested "proxy voting guideline,"[6] in particular that Duke should vote in favor of "well-written and reasonable shareholder resolutions that ask companies for reports on their policies and efforts regarding their avoidance of conflict minerals and conflict mineral derivatives."

B. Consistent with the University's educational and research mission, the ACIR also recommends to the President that Duke University engage with companies in which Duke directly invests that report continued use of conflict minerals without steps to mitigate harm, or if those companies in which Duke directly invests are prosecuted for violating Dodd-Frank section 1502. This engagement is intended to foster a continuing process of learning, awareness

[6] The phrase "proxy voting guideline" is used in the students' request to the PSC, quoted in section 3 below. It refers to a guideline for Duke's fund managers on how to cast Duke's proxy votes on shareholder resolutions. As discussed in section 4 below, it would be applicable to those investments in which Duke has "direct" ownership holdings and not to "commingled" funds.

and understanding; it offers an avenue for the Duke community to learn more about the full consequences of measures to avoid conflict minerals. To keep this process manageable, the ACIR recommends that the initiation of engagement be based on receiving reports about a company or impacts in the DRC region (rather than obliging Duke University or DUMAC to monitor all companies continuously); and that the timing, form and content of engagement remain in the discretion of the President.[7] It could also be implemented with various activities, outside the area of investment policy, such as events, lectures, workshops, courses, student study groups, and dialogue – on campus, with relevant public and private groups, and with alumni. For example, such engagement could communicate Duke's concern about a company's violation of Dodd-Frank; or could ask whether and why companies continue to use minerals from the DRC region or from specific sources implicated in the conflict, whether conflict-free certification systems are available to distinguish among minerals within the region, and what the full array of consequences may be of seeking to avoid conflict minerals.

C. The ACIR further recommends that the President ask the PSC to review these measures 5 years from their adoption, to revisit them as their full consequences and evolving circumstances become better understood. (Of course, the President and/or the Board of Trustees may revisit and amend these measures at any time as they see fit; the ACIR is simply recommending that some review be built into the process from the outset.)

The first recommendation on a proxy voting guideline would be the same guideline adopted by Stanford University, and similar in intent to the more detailed reporting requirements in the Dodd-Frank Act section 1502 and pending SEC rule.

Duke University would then go further, through Duke's second and third recommendations for engagement and continuing assessment (over time and in 5 years), by seeking to understand and evaluate the activities of companies and the actual consequences of reporting on conflict minerals (including the benefits and risks for the population in the DRC region), with a view to updating Duke's policies as this understanding improves. Duke would thereby recognize that such policies are not one-time interventions, but are continuing exercises of learning and adaptive management as circumstances evolve in a complex world.

At its meeting on April 26, 2012, the ACIR members in attendance voted 8-0 in favor of these recommendations. Two members were unable to attend.

[7] The students' original request to the PSC in January 2012 asked for a prohibition on future investment in companies that violate the Dodd-Frank Act section 1502. Later, in April 2012, the students submitted to the ACIR a revised request replacing the future investment prohibition with a modified request that the President of Duke University engage such companies by sending a letter expressing concern. The ACIR now recommends engagement, as part of a process to learn and improve understanding of these complex issues and policy impacts, but leaving to the President the timing, form and content of such engagement.

2. Role of the ACIR

In its “Guideline on Socially Responsible Investing,” adopted in August 2004, Duke University’s Board of Trustees established a commitment to invest its assets both to maximize the financial returns that support the educational mission of the University, and also to “fulfill its educational and humanitarian purposes” as “a responsible and ethical investor” by managing its investments to avoid causing “substantial social injury” such as “deprivation of health, safety, or civil, political, and human rights.”

In order to implement this commitment, in November 2004 the Board of Trustees created a process for careful deliberation on such questions through two committees: the President’s Special Committee on Investment Responsibility (PSC), and the Advisory Committee on Investment Reponsibility (ACIR). Under this procedure, if the PSC finds that a request from members of the Duke University community raises a “credible allegation of social injury” and “merits further investigation,” the PSC refers the request to the President and the ACIR. The ACIR then undertakes further inquiry to provide advice and a recommendation to the President.

Under the November 2004 procedure creating and governing the PSC and ACIR, the ACIR may “take as an agenda item only matters referred by the President or the PSC.” The ACIR may conduct its own research; “may ask individuals, from within the University or outside of it, to attend its meetings as consultants or otherwise provide advice and information”; and may “sponsor or encourage the convening of occasional public meetings or forums of the Duke community to assess the views of members of the community.”

The ACIR’s role is advisory to the President. According to the November 2004 rules, the President “will review the analysis and recommendation of the ACIR and, if he or she concurs, will forward a recommendation to the Board of Trustees.”

The Board of Trustees then decides what action to take. Under the August 2004 Guideline, when “the University community has engaged in substantive discourse on an issue and expressed broad concern that substantial social injury is being caused by such policies or practices, the president may make a recommendation to the Board of Trustees.” (The PSC/ACIR process created in November 2004 provides the mechanism for such substantive discourse and expressions of concern.) And when “the Board of Trustees finds … substantial social injury, and that a desired change … would have a direct and material effect in alleviating such injury, it may instruct the Duke University Management Company (DUMAC) to take appropriate action” regarding Duke’s investments. These four criteria – (a) substantive discourse, (b) broad expression of concern, (c) substantial social injury, and (d) efficacy in alleviating such injury – are the key predicates in the Guideline for action by the Board of Trustees.

3. The request for action and ACIR proceedings on "Conflict Minerals"

In January 2012, undergraduates "Stefani Jones, Sanjay Kishore, and the Coalition for a Conflict-Free Duke," submitted a request to the PSC. The students' request set forth evidence to satisfy the four criteria noted above, and asked the Board of Trustees to adopt the following:

> "a) *Proxy Voting Guideline* – The University will vote in favor of well-written and reasonable shareholder resolutions that
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> 1. Ask companies for reports on their policies and efforts regarding their avoidance of conflict minerals and conflict mineral derivatives.
> 2. Ask companies to comply with the requirements of due diligence described in Section 13(p) of the Securities and Exchange Act of 1934, which was amended [by section 1502 of] the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.
>
> "b) *Future Investment Guideline* – The University precludes any new, future investments in companies required to disclose information about conflict minerals that have: filed an "unreliable determination," filed false information, or failed to file a report – all as required by section 13 of the Securities and Exchange Act of 1934." [This item (b) was later replaced by the students on April 4 with a revised request for a "Corporate Engagement Guideline," as described below.]

In late January 2012, the PSC, chaired by Provost Peter Lange, sent a memorandum referring the "conflict minerals" matter to the ACIR, stating in part:

> "[The PSC] voted unanimously to request that the ACIR examine the request … [T]he PSC concluded that the issue of conflict minerals and their use in commerce plausibly does cause substantial social injury and that changes in the activities of companies with respect to the usage of conflict minerals could have a direct and material effect in alleviating such injury. In addition, the petitioners demonstrated that there had been sufficient interest and concern among members of the Duke community with regard to the matter of conflict minerals to warrant consideration of this matter by ACIR.
>
> "In forwarding this matter to ACIR, the PSC wishes to note that it is supportive of consideration of actions stipulated under section (a) 1 of the petitioners' request … regarding the exercise of proxy votes and that it assumes that if the soon to be forthcoming regulations under Dodd-Frank require actions by companies in which Duke has investments with regard to conflict minerals, that the companies will comply with those regulations. The petitioners did not request any action with regard to divestiture nor is the PSC ... prepared to ask the ACIR to consider such actions."

The President then asked the ACIR to investigate this issue further. The ACIR membership roster for 2012 is attached as an Appendix. The ACIR held an initial organizing meeting on February 27, and further meetings on April 4, April 11, and April 26. During this phase of inquiry the ACIR and its individual members also gathered information available in the public domain, in order to better understand the issues, and the state of public debate globally, nationally, and within the Duke community.

On April 4, 2012, the ACIR held two sets of meetings: in the morning, an internal fact-finding meeting with invited experts; and in the evening, an open forum to which all members of the Duke University community were invited. During the morning internal fact-finding meeting, from 9:00 am to 1:00 pm, the ACIR heard from the following experts:

- David Shumate, Executive Vice President, DUMAC
- Stefani Jones '14 and Sanjay Kishore '13, Coalition for a Conflict-Free Duke
- Linda Kimball, Manager of Investment Responsibility, Stanford University
- Bill Frederick B'87 and Jacky Haynes B'86, Apple, Inc.
- Stephen Smith, Dept. of African & African American Studies, Duke University
- James Cox, Brainerd Currie Professor of Law, Duke University

The ACIR's findings from these experts are discussed below.

During the presentation by Stefani Jones and Sanjay Kishore on April 4, the students submitted to the ACIR a revised request for a "Corporate Engagement Guideline," to replace their earlier request item (b) for a "Future Investment Guideline." This "Corporate Engagement Guideline" requests that:

> the President of Duke University send "a letter of engagement [notifying a company in which Duke holds shares of possible further shareholder action by Duke] ... to any company after becoming aware [that] (1) the company reports that it is sourcing conflict minerals that facilitate violence in Eastern Congo in its filing under Section 1502 of the Dodd-Frank Act with the SEC, and has not credibly demonstrated that it is taking substantial measures towards remedying the harm; or (2) the company becomes subject to SEC prosecution for materially violating due diligence reporting rules as defined under Section 1502 of the Dodd-Frank Act."

The students pointed out that this revised request for a "Corporate Engagement Guideline" does not request divestment, nor a ban on future investments, nor that companies leave the DRC region. Rather, they said, it requests that Duke communicate with companies to signal that there is demand from shareholders for the companies to improve their activities in the DRC region.

In the evening of April 4, the ACIR held an open forum from 6:00 – 7:30 pm, in room Von Canon A of the Bryan Center. The ACIR widely advertised the open forum in advance, and created a website for the event, http://spotlight.duke.edu/acirforum/ , on which it posted the 2004 Guideline on Socially Responsible Investing, the 2004 rules for the PSC and ACIR, the 2008 Board of Trustees resolution on Sudan/Darfur, the 2012 students' request to the PSC on conflict minerals, the 2012 PSC memo to the ACIR, and the list of current ACIR members. More than 100 people attended the open forum, as well as almost all the members of the ACIR.

At the open forum, ACIR members were impressed by the expression of deep concern by all who spoke, including both informative and emotionally moving details of the agonizing human and ecological toll of the conflict in the DRC region. These findings are discussed further below.

4. Duke's Investments

Duke University's investments are managed by DUMAC, Inc. At the ACIR's internal fact finding meeting on April 4, DUMAC Executive Vice President David Shumate briefed the committee. DUMAC is a separate legal entity controlled by Duke University: DUMAC has its own separate board of directors (appointed by the Duke University Board of Trustees), which reports to the Executive Committee of Duke University's Board of Trustees, and DUMAC's President reports to Duke University's President in addition to reporting to the DUMAC Board. David Shumate described the relationship as "Duke sets objectives and parameters, DUMAC executes."

In general, DUMAC invests Duke's assets to maximize the financial return on these investments, in order to support the educational mission of the University. The 2004 Guideline on Socially Responsible Investing recognizes this primary objective, while adding that the Board of Trustees may in special situations direct DUMAC to include issues of social responsibility in its investment activities. On March 30, 2012, the Executive Committee of the Board of Trustees of Duke University adopted a "Proxy Policy," which directs DUMAC to instruct its fund managers, as one of its "General principles," to "exercise proxy voting rights in a manner calculated to maximize shareholder value." At the end of this Proxy Policy, in a final section on "Proposals related to social issues," the fund managers are instructed to "cast votes in the economic best interests of Duke University, unless otherwise directed by DUMAC."

The ACIR was advised by David Shumate that DUMAC's (and hence Duke's) ability to guide proxy voting is confined to those investments in which Duke holds "direct" ownership. Most of Duke's investments are delegated by DUMAC to many different managers of "commingled" funds, meaning funds that have multiple investors; each investor owns just a fraction of the fund; and the fund owns a large portfolio of many companies. Moreover, in "commingled" funds, the shares held in particular companies may change frequently, even daily. Some of Duke's assets are in its employee retirement plan, subject to the federal ERISA law and not subject to Duke's proxy voting guidelines. Even in the "direct" holdings, DUMAC typically hires external managers to invest these funds, and holds its assets in a variety of types of securities which may change frequently. Thus, any proxy voting guideline adopted by the Board of Trustees, and any policy of Duke engagement with companies in which Duke invests, would only be applicable to the "direct" holdings (i.e. "separate account equities," and a smaller set of funds managed in-house by DUMAC).

David Shumate advised the ACIR that under current institutional arrangements, DUMAC is able to administer a small number of investment guidelines, but that a growing number of guidelines (or guidelines written in mandatory terms rather than guidelines giving DUMAC and its fund managers discretion to exercise judgment) would become costly to administer. Among other costs, it may be more difficult for DUMAC to secure the services of the best fund managers earning the highest returns if Duke's business involves having to adhere to a large number of special requests. Duke University has currently adopted one investment guideline on social issues – the Board of Trustees' January 2008 resolution on avoiding investments in Sudan/Darfur. If adopted, a guideline on conflict minerals in the DRC region would be the second.

The only other university of which we are aware to have adopted an investment guideline on conflict minerals in the DRC region is Stanford University (June 2010). Stanford has adopted more than 15 proxy voting guidelines on social, environmental, human rights, consumer and labor issues, since it began doing so in 1972. These guidelines, and Stanford's overall policies on investment responsibility, are available on its website, http://apir.stanford.edu/ .

At its internal fact finding meeting on April 4, the ACIR was briefed by Linda Kimball, Manager of Investment Responsibility for Stanford University. She reported that Stanford has constructed an institutional infrastructure to develop and administer these numerous investment guidelines, including her own position and several other staff. As David Shumate pointed out, Duke University does not currently have this institutional capacity.

5. The ACIR's findings

The 2004 Guideline on Socially Responsible Investing set forth four key criteria for action by the Board of Trustees: (a) substantive discourse, (b) broad expression of concern, (c) substantial social injury, and (d) efficacy in alleviating such injury.

A. Substantive discourse.

The ACIR finds that "substantive discourse" on the conflict minerals matter was undertaken in the ACIR's process (notably in its internal fact finding meeting with invited experts, and in its subsequent deliberations), in the PSC's initial review, and in the broader Duke community over the past several months.

B. Broad expression of concern.

The ACIR also finds that there has been a "broad expression of concern" across the Duke community about the conflict minerals issue, as represented in the efforts of the student Coalition for a Conflict-Free Duke since 2011[8]; the resolution adopted in February 2012 by the Duke Student Government (DSG)[9]; the petition signed by hundreds of students between November 16, 2011 and April 4, 2012[10]; and the ACIR open forum held on April 4, 2012, at which more than 100 people expressed their deep concerns about the conflict in the DRC region and the role of minerals trade in financing that conflict.

C. Substantial social injury.

The PSC found sufficient evidence of "substantial social injury," and the ACIR agrees. The conflict in the Democratic Republic of the Congo has been horrific. The students' petition to the PSC (January 2012) cites a 2007 estimate by the International Rescue Committee (IRC) of more than 5 million deaths and hundreds of thousands of rapes in the conflict from 1998 to 2007. Subsequent analyses by the IRC and the World Bank indicate that this estimate includes deaths due to disease and malnutrition caused by the conflict as well as deaths from combat, and that the total number of excess deaths due to the conflict may range from 3.1 to 7.6 million, depending on assumptions about the baseline mortality rate that would have occurred in the DRC region in that period absent the conflict.[11] And there have been

[8] See its website, http://conflictfreeduke.org/ .

[9] See http://conflictfreeduke.org/2012/02/23/duke-student-government-resolution-on-conflict-free-investments/ .

[10] Maintained at http://conflictfreeduke.org/petition/ . A printed hard copy of the petition with signatures was submitted by Stefani Jones to the ACIR at the close of the open forum on April 4, 2012.

[11] Tony Gambino, "Democratic Republic of the Congo," World Development Report 2011: Background Case Study, The World Bank (March 2, 2011), p.33. Gambino notes that, paradoxically, the worse the situation had become in

multiple wars in this period, including the overthrow of the dictator Mobutu, the clashes involving the retreating Hutu militias from Rwanda, and rivalries within the Congolese army (FARDC); much of these conflicts were not driven by mineral wealth. Whatever the exact number attributable to the conflict, it seems clear that "millions of people died unnecessarily because of the war."[12]

This conflict since 1998 was preceded by a more than 75% decline in per capita GDP in the country, from $323 in 1960 to just $81 in 2001 (after which per capita GDP appears to have leveled off at about $95).[13] The combination of economic collapse and bloody conflict has meant that the "overall situation across the Congo, not just in its eastern portion, has been (and continues to be) one of acute, abject misery for most of the population."[14]

The UN Group of Experts observed in late 2011 that an array of armed groups continue to vie for political and military primacy in the region, including both rebel groups and groups supported by governments of the DRC and of adjoining countries.[15] The IRC reported recently that "[d]uring the first three months of 2012 alone, more than 220,000 people had to flee their homes due to attacks and reprisal attacks perpetrated by both foreign rebel groups and local resistance groups active in the province" of South Kivu in the eastern DRC.[16]

It is widely observed that armed groups (both rebels and government-backed groups, including rival factions within the Congolese army (FARDC)) finance their activities in part by "taxing" the mining and transport of minerals.[17] Section 1502(a) of the Dodd-Frank Act (enacted in July 2010) states that: "It is the sense of the Congress that the exploitation and trade of conflict minerals originating in the Democratic Republic of the Congo is helping to finance conflict characterized by extreme levels of violence in the eastern Democratic Republic of the Congo, particularly sexual- and gender-based violence, and contributing to an emergency humanitarian situation therein…"

At the same time, the conflict in the DRC region is complex. Prof. Stephen Smith explained these complexities to the ACIR at length in his portion of the April 4, 2012 internal fact finding session. The trade in minerals is not the only financing source of the conflict; other economic activities, and funding from the neighboring country governments with conflicting interests, also help finance and sustain the array of armed groups. Apart from the minerals trade, the neighboring governments may be financing the conflict to combat rebel groups (including those that have moved into other countries' territories) and to achieve gains against rival governments.

The UN Group of Experts reports that the role of minerals in financing the conflict in the DRC region appears to have declined in the past two years:

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the Congo due to prior wars and displacement, the higher the baseline mortality rate before 1998, and hence the lower the estimated "excess" deaths due to the conflict from 1998 to 2007; thus, lower estimates of excess deaths due to the conflict may only reflect an underlying baseline situation that was even worse.

[12] Gambino 2011, p.33 (quoting and agreeing with the IRC).

[13] Gambino 2001, p.2 and p.32 (figures are in constant year 2000 dollars).

[14] Gambino 2011, p.34.

[15] UN Group of Experts, Report S/2011/738 (December 2, 2011), pp.3-4.

[16] Sinziana Demian, "IRC steps up aid for Congolese caught in the middle of armed conflicts in South Kivu," International Rescue Committee, April 23, 2012, at http://www.rescue.org/news/irc-steps-aid-congolese-caught-middle-armed-conflicts-south-kivu-13571 .

[17] John Prendergast and Sasha Lezhnev, "From Mine to Mobile Phone: The Conflict Minerals Supply Chain," Enough Project (2009), available at www.enoughproject.org .

> "The Forces démocratiques de libération du Rwanda (FDLR) remains the most militarily strong and politically significant rebel force in the Kivus … While in the past, FDLR derived much of its funding from mining, its direct access to and control over certain natural resources have been reduced. Instead, the main sources of financing for FDLR are trade in commercial products in mining areas under its control, and taxation and agricultural sales of products such as palm oil and cannabis."[18]

This trend may indicate the influence of US and international reporting requirements encouraging companies to avoid conflict minerals, but it also may illustrate the ability of armed groups to continue the conflict by shifting to other financing sources (and thus the potentially limited efficacy of avoiding conflict minerals in actually reducing the conflict). The magnitude of this effect depends on how fully and easily other financing sources can substitute for reduced mining revenues.

The UN Group of Experts also observes that due diligence appears to have reduced purchases of conflict minerals in some areas but not others, for some minerals more than others, and for some purchasers but not others, all with complex impacts:

> "Since April 2011, most tin, tantalum and tungsten comptoirs in eastern Democratic Republic of the Congo have had no buyers for untagged minerals, with the exception of three — TTT Mining, Huaying Trading and Donson International — which have sold to smelters, refiners and trading companies in China that do not require tags or evidence of due diligence. The Group has evidence that these comptoirs have made purchases that finance armed groups and criminal networks within FARDC. Since Chinese refiners, smelters and trading companies make up a significant proportion of the buyers of tin, tungsten and particularly tantalum from eastern Democratic Republic of the Congo, awareness and implementation of due diligence on the part of such companies are of particular importance. However, the Group was unable to visit China to investigate the due diligence implementation of such refiners and smelters or to discuss with the Government the steps that it is taking to raise awareness and urge implementation of due diligence.
>
> "Few comptoirs in eastern Democratic Republic of the Congo and neighbouring countries are currently implementing due diligence. In non-conflict areas, where comptoirs and other traders have exercised due diligence and introduced traceability systems, mining sector governance has improved, and mineral production and export have risen. In areas where no traceability systems have been introduced, particularly the Kivus and Maniema, mineral production and exports have fallen. This has not only decreased conflict financing, but also weakened mining sector governance, with a greater proportion of trade becoming criminalized and with continued strong involvement by military and/or armed groups." [19]

The extent of due diligence varies by type of mineral:

> "There is good awareness of the Group's due diligence guidelines among international refiners and smelters of tin, tantalum and tungsten ores belonging to the International Tin Research Institute, an industry association, while awareness among non-members is weaker. For many Institute members, a more immediate concern is to attain "conflict-free smelter" status. "Conflict-free smelter" audits require refiners and smelters to show evidence of due diligence, and their form has been significantly influenced by the Group's due diligence guidelines. General

[18] UN Group of Experts, report S/2011/738 (Dec. 2, 2011), p.3.
[19] UN Group of Experts, report S/2011/738 (Dec. 2, 2011), p.5.

> awareness of the issue of conflict minerals, and of the need for due diligence to mitigate the risk of funding conflict through mineral purchases, has increased internationally in most affected industries, particularly electronics, vehicle manufacture and aerospace. This is most obvious in the United States of America, which has introduced legislative requirements for due diligence disclosure.
>
> "By contrast, Congolese gold is much in demand. Most of the gold trade in the country goes unrecorded, and most transactions are concluded in neighbouring cities such as Kampala, Bujumbura, Nairobi or Mwanza (United Republic of Tanzania). The Group found substantial discrepancies, of more than three tons, between gold import statistics provided by the authorities of the United Arab Emirates and those exports claimed by the Government of Uganda. The gold trade is among the main sources of financing available to Congolese armed groups and FARDC criminal networks. In addition to selling real gold, criminal networks organize elaborate scams in which counterfeit gold is sold to clients ranging from driving instructors to oil magnates.
>
> "Gold comptoirs in eastern Democratic Republic of the Congo and neighbouring countries have not demonstrated significant awareness of the Group's due diligence guidelines. Due diligence implementation on the part of gold refiners, smelters and jewellers sourcing artisanally mined gold has also been weak, although gold industry associations are developing guidelines strongly influenced by those of the Group."[20]

The implementation of due diligence also varies across countries:

> "On 6 September 2011, the Ministry of Mines of the Democratic Republic of the Congo issued a note circulaire obliging all mining operators in the country, at every point of their supply chains, to exercise due diligence as defined in Security Council resolution 1952 (2010) and the guidance provided by the Organization for Economic Cooperation and Development. Other countries in the region have also taken measures to raise awareness of the due diligence guidelines, particularly Burundi and Rwanda, assisted by the International Conference on the Great Lakes Region. It remains unclear, however, how effectively the Rwandan mining authorities have been able to prevent the fraudulent importation of Congolese minerals into Rwandan mines, where they are then tagged as Rwandan.
>
> "On 10 March 2011, the Government of the Democratic Republic of the Congo lifted its suspension of all artisanal mining activity in the provinces of North Kivu, South Kivu and Maniema, which had been in place since 11 September 2010. The Group determined that during the ban, the mining of tin, coltan and wolframite had continued in several areas, often under the control of FARDC or armed groups. The involvement of FARDC units in mining activities sometimes leads to violent conflicts of interest between army units, revealing the persistence of parallel chains of command. Beyond the Kivus, mining activities are much less tainted by armed group or military involvement. Traceability efforts are ongoing in Tanganyika district, North Katanga, which is free from armed group control. In Maniema, the Group found conflict-free trading of minerals in the territories of Kailo and Pinga."[21]

But due diligence can be evaded:

> "Smuggling is a widespread problem. Minerals can pass unrecorded through official crossings, but most smugglers use illegal border crossings. The Group identified a number of such

[20] UN Group of Experts, report S/2011/738 (Dec. 2, 2011), pp.5-6.
[21] UN Group of Experts, report S/2011/738 (Dec. 2, 2011), p.6.

> crossings, including a street controlled by General Bosco Ntaganda in Goma and a small Lake Kivu port north of Bukavu run by elements of the FARDC navy. Smugglers sometimes try to launder untagged material into the International Tin Research Institute Tin Supply Chain Initiative in Rwanda, threatening the credibility of the system.
> "Armed groups continue to generate income from natural resources other than minerals. Among other things, the Group investigated instances of illegal taxation on fishing, timber and charcoal production."[22]

In addition to the UN Group's due diligence program and the pending Dodd-Frank regulation, the industries using such minerals are taking their own steps to identify, trace, and avoid sources that help finance the conflict, through programs such as the Electronics Industry Citizenship Coalition (EICC) and the US State Department's Public-Private Alliance (PPA) for Responsible Minerals Trade.[23]

The use of minerals from the DRC region is not limited to electronics (such as computers and cellphones); depending on the specific metal, it also includes machinery, automobiles, jet engines, jewelry, food containers, and other widely used products.[24] As a result, proxy voting on shareholder resolutions regarding conflict minerals could turn out to arise in numerous companies in a variety of sectors. This question of which companies are covered by a conflict minerals policy has also been a primary reason for the SEC's delay in issuing its final rule under Dodd-Frank section 1502.[25]

D. Alleviating the social injury.

It is difficult for the ACIR to say whether the requested investment guidelines would meet the 2004 Guideline's criterion of promising a "direct and material effect of alleviating" the social injury. The answer may be yes, but this is a complex case, with pros and cons surrounding the uncertain full consequences of each response measure. The fact that the conflict in the DRC region is utterly tragic does not by itself identify how best to respond. Seeing great harm does not by itself reveal the best remedy. For example, knowing that cancer is a terrible disease does not by itself indicate which therapy would be best; different treatments may be more or less effective, and may pose more or less serious side effects, than others. More generally, an intervention to reduce one risk may do so but also turn out to induce other risks; policy needs to be designed to confront and overcome such risk-risk tradeoffs by formulating options that reconcile these dilemmas and, ideally, reduce multiple risks in concert.[26] Notably, one reason for the large use of tin as a solder is the earlier phase-out of lead (Pb) for public health reasons; now the use of tin is drawing concern for its role in financing the DRC conflict; measures to avoid tin and other conflict minerals may in turn increase the use of other metals posing other risks.

In the arena of international human rights, there is a large literature critiquing trade sanctions and related efforts to pressure countries to protect their civilian populations, on the grounds that such

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[22] UN Group of Experts, report S/2011/738 (Dec. 2, 2011), p.6.
[23] Amy Westervelt, "Anticipating New SEC Rules, Tech Companies Shift To Conflict-Free Metals," Forbes.com, October 12, 2011, at http://www.forbes.com/sites/amywestervelt/2011/10/12/anticipating-new-sec-rules-tech-companies-shift-to-conflict-free-metals/ .
[24] BSR, "Conflict Minerals and the Democratic Republic of Congo: Responsible Action in Supply Chains, Government Engagement and Capacity Building" (May 2010), pp.5-9 and p.28, available at www.bsr.org .
[25] See Wyatt (2012).
[26] See John D. Graham & Jonathan B. Wiener, eds., *Risk vs. Risk* (Harvard University Press, 1995).

measures may be ineffective and may end up harming the populations meant to be protected.[27] Others argue that "smart" sanctions carefully targeted at the leadership group, rather than burdening the broad civilian population, can be effective at advancing human rights.[28] While favoring such "smart" sanctions, these authors observe that ordinary "Trade action, in the form of embargos or export restrictions, is a blunt instrument that affects the target economy as a whole. It tends, therefore, to impose economic pain disproportionately on poor and middle class populations by depriving them of essential goods and services for which they are not economically positioned to secure substitutes. Wealthy elites are typically less affected because they have the economic resources and international contacts to secure substitute goods or to circumvent the restrictions via black or gray markets."[29]

The requested proxy voting guideline could encourage companies to help alleviate the social injury of the conflict in the DRC region by shifting over time to conflict-free sources and certification systems, thereby reducing the flow of financing to the armed groups from minerals trade. This may even be the most likely result. But the full consequences of such measures are uncertain. In the short term, it may be difficult for companies to trace and distinguish conflict minerals from non-conflict minerals in the long supply chain (from mines to transport to smelters to manufacturing). The representatives from Apple who spoke with the ACIR in its internal fact finding meeting on April 4 noted that technology companies purchase metals from smelters (often in East Asia and Southeast Asia), and the smelters have already combined ore from multiple sources, making it difficult – absent certification by smelters on the sourcing of their raw minerals – to sort out which minerals were implicated in the DRC conflict and which were not. Companies faced with reporting on conflict minerals may simply avoid any minerals from the entire DRC region altogether (including the DRC and adjoining countries such as Rwanda, Burundi, and Uganda). One industry representative referred to this as a geographic "embargo" – similar to the blunt trade sanctions that are critiqued for harming civilian populations. Stanford University's statement on its proxy voting guideline on conflict minerals recognizes this potential problem (see copy as Appendix L). The UN Group of Experts found in late 2011 that "[a]lthough the [Dodd-Frank] Act does not prohibit or prescribe sanctions for companies that disclose to the Securities and Exchange Commission that their products are not 'DRC conflict free', it has become clear that companies are doing their utmost to ensure that they do not have to make such disclosure. This has led many companies to refuse any gold, tin, tantalum or tungsten that might originate from the Democratic Republic of the Congo or neighbouring countries. "[30] Millions of poor workers depend on the mining industry in the

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[27] E.g., Richard N. Haass, "Sanctioning Madness," Foreign Affairs (November/December 1997) (critiquing trade sanctions as a potentially counterproductive tool to promote human rights); Thomas G. Weiss, "Sanctions as a Foreign Policy Tool: Weighing Humanitarian Impulses," Journal of Peace Research 36: 499-509 (September 1999) (trade sanctions may harm civilian populations meant to be helped); Dursun Peksen, "Better or Worse? The Effect of Economic Sanctions on Human Rights," Journal of Peace Research 46: 59-77 (January 2009) (empirical study finding that trade sanctions are associated with increased human rights violations by target governments); Timothy M. Peterson & A. Cooper Drury, "Sanctioning Violence: The Effect of Third-Party Economic Coercion on Militarized Conflict," Journal of Conflict Resolution 55: 580-605 (August 2011) (empirical study finding that trade sanctions are associated with subsequent military intervention).

[28] Ella Shagabutdinova & Jeffrey Berejikian, "Deploying Sanctions while Protecting Human Rights: Are Humanitarian 'Smart' Sanctions Effective?" Journal of Human Rights 6:59–74 (2007).

[29] Shagabutdinova & Berejikian (2007), p.62.

[30] UN Group of Experts, Report S/2011/738 (Dec. 2, 2011), para. 395, pp.104-05 (adding that "Members of the Electronics Industry Citizenship Coalition, however, have been prepared to purchase materials tagged under the Tin Supply Chain Initiative.").

DRC.[31] One commenter argues that "in the absence of customers, mines are shutting down and workers are losing their jobs, adding fuel to the conflict and making the 'solution' a part of the problem."[32]

Other ancillary effects might include impacts on ecosystems (such as forest habitat for great apes – gorillas, chimpanzees and bonobos). This topic was raised at the open forum on April 4 by Duke faculty Brian Hare and Vanessa Woods, who research bonobos in the DRC.[33] For example, reducing the ability of militant groups to tax the minerals trade might help protect forest ecosystems in the Congo, by reducing the flow of refugees from the conflict who would have intruded into the forests, and by increasing the capacity of governments to guard the forests. On the other hand, a blanket avoidance of minerals from the DRC region might induce greater unemployment, migration, malnutrition, and hence faster conversion of forest habitat to agriculture.[34] Meanwhile, increasing the costs of cellphones might itself have an adverse impact on the poor populations of Africa who increasingly use cellphones for commerce and health.[35]

In order to overcome these tradeoffs posed by a blanket avoidance of all minerals from the DRC region, the electronics industry (EICC) and the PPA are developing pilot programs to trace and distinguish individual mines and transport routes. Some tagging of tantalum, tin and tungsten is beginning to be practiced in the DRC region,[36] and some tantalite smelters are now being certified "DRC conflict free" by the EICC.[37] But in the meantime, and for minerals that are more difficult to trace, the consequences of seeking reporting and avoidance of conflict minerals may include inducing companies to avoid all minerals from the DRC region (irrespective of the actual involvement of specific mines or trade in the conflict), as described above, thereby unintentionally exacerbating unemployment and poverty among the already destitute population that the policy is meant to help.

The UN Group of Experts reported some of these effects since the enactment of Dodd-Frank section 1502 and the EICC's policy of seeking to certify some smelters as "DRC conflict-free" beginning April 1, 2011:

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[31] BSR (2010), p.12.

[32] Westervelt (2011).

[33] See Vanessa Woods, Bonobo Handshake (New York: Gotham Books, 2010).

[34] The net effects of avoidance of conflict minerals on the ecosystems and national parks of the DRC region are difficult to forecast. Studies find multiple causes of past human impacts on wildlife habitats in the DRC region, including refugee movements and institutional disarray due to the civil war; influxes of mining workers seeking minerals; and unemployment and starvation due to economic collapse. The impacts also differ among the several national parks located in different regions of the DRC and with different wildlife, minerals, and accessibility. For detail, see Juichi Yamagiwa et al., "Long-Term Research on Grauer's Gorillas in Kahuzi-Biega National Park, DRC: Life History, Foraging Strategies, and Ecological Differentiation from Sympatric Chimpanzees," ch. 17 in Peter M. Kappeler and David P. Watts, eds., Long-Term Field Studies of Primates (Berlin: Springer-Verlag, 2012); Chris Sandbrook and Dilys Roe, "Linking Conservation and Poverty Alleviation: the Case of the Great Apes," Arcus Foundation, Poverty and Conservation Learning Group (2010); John A. Hart et al., "Human Hunting and Its Impact on Bonobos in the Salonga National Park, Democratic Republic of Congo," in Takeshi Furuichi and Jo Thompson, eds., The Bonobos: Behavior, Ecology, and Conservation (New York: Springer, 2008); Dirk Draulans and Ellen Van Krunkelsven, "The impact of war on forest areas in the Democratic Republic of Congo," Oryx 36: 35-40 (2002); Gretchen Vogel, "Conflict in Congo Threatens Bonobos and Rare Gorillas," Science 287: 2386-2387 (Mar. 31, 2000).

[35] The IRC itself has noticed the health benefits of low-cost cellphones in Africa. See Sinziana Demian, "Using cell phones to track a community's health in Congo," International Rescue Committee, March 13, 2012, at http://www.rescue.org/blog/using-cell-phones-track-communitys-health-congo .

[36] UN Group of Experts, report S/2011/738 (Dec. 2, 2011), para. 368, p.99.

[37] UN Group of Experts, report S/2011/738 (Dec. 2, 2011), para. 349, pp.94-95.

> Because smelters and refiners seeking conflict-free smelter status have not, since 1 April 2011, bought material that they would have previously purchased, this has led to declining exports and production of tin, tantalum and tungsten ores from Maniema and North and South Kivu. The production and export of these minerals from Katanga and Rwanda, where minerals are being tagged, are rising, however. The fall in production in the Kivus and Maniema has led to rising unemployment and worsened poverty among the tens of thousands of people who depend on artisanal mining, with a consequent sharply negative impact for the economies of the affected regions as a whole. The fall in production has also had a severely negative impact on provincial and national governmental revenues.[38]

The Dodd-Frank Act section 1502 (once it is implemented by the SEC), and related due diligence programs of trade groups such as the EICC and international organizations such as the UN and the OECD, are likely to have a much larger impact than a university's (or many universities') proxy voting guidelines. Critics of the impact on poor workers in the DRC region argue that it is Dodd-Frank that is causing these harms.[39] Advocates argue that Dodd-Frank may be helping to shift minerals trade away from armed groups, at least where tracing and tagging are starting.[40] In either case, the Dodd-Frank provision may swamp and render moot the effect of universities' proxy voting guidelines.[41] Still, as Prof. James Cox discussed with the ACIR on April 4, there may be a delay before the SEC's final rule becomes effective, both because the SEC has taken more than a year beyond its deadline to issue the final rule while it tries to sort out which companies will be covered and how to phase in the requirements, and because the SEC rule may then be challenged in court. Indeed the SEC rule might be challenged on the ground that its analysis is inadequate for failure to assess the full economic consequences of its reporting requirements on poor populations in the DRC region.[42]

Although a university's policy might have little effect on the behavior of corporations or militant groups, it may still be a useful signal that raises awareness of the conflict in the US and thereby leads to other beneficial changes in public and private policies. In the face of complexity, Duke University may serve its educational function not only by increasing awareness of an egregious problem, but also by increasing understanding of a complex problem and of the full consequences of alternative response measures. This is a crucial reason for the Board of Trustees' inclusion of the criterion of "alleviating" the social injury. In light of the complexity of the conflict in the DRC region, and the potential for both intended

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[38] Un Group of Experts, report S/2011/738 (Dec. 2, 2011), para. 368, p.99.

[39] David Aronson, "How Congress Devastated Congo," NY Times, op-ed, August 8, 2011, p.A19, at http://www.nytimes.com/2011/08/08/opinion/how-congress-devastated-congo.html ("Unfortunately, the Dodd-Frank law has had unintended and devastating consequences, as I saw firsthand on a trip to eastern Congo this summer. The law has brought about a de facto embargo on the minerals mined in the region. … For locals … the law has been a catastrophe [by worsening poverty, while benefitting smugglers and armed groups].").

[40] See UN Group of Experts, report S/2011/738 (Dec. 2, 2011); Sasha Lezhnev, "A Window for Reform in Eastern Congo: November's Elections and Three Achievable Steps on Conflict Minerals," Enough Project (November 2011).

[41] The UN Group of Experts observed that "the adoption of the Dodd-Frank Act" made the United States the only country thus far "to have adopted legislation requiring individuals and entities using gold, tin, tantalum and tungsten from the Democratic Republic of the Congo and neighbouring countries in their products to implement due diligence and to disclose such implementation. The Act has had a huge impact on awareness and implementation of the Group's due diligence guidelines both in the United States and globally." UN Group of Experts, Report S/2011/738 (Dec. 2, 2011), para. 392, p.104.

[42] Courts have recently rejected SEC rulemakings on the ground that the SEC failed to conduct adequate analyses of the rules' full economic impacts, as required by section 3(f) of the Exchange Act, 15 U.S.C. 78c(f). See Business Roundtable v. SEC, 647 F.3d 1144 (D.C. Cir. 2011); Chamber of Commerce v. SEC, 412 F.3d 133, 143 (D.C.Cir.2005).

and unintended consequences of measures to avoid conflict minerals, the ACIR sees a need for continuing evaluation of the full consequences of response measures. The ACIR finds the students' requested proxy voting guideline to be moderate in its call for reporting rather than divestment and in its call for support of "well-written and reasonable" shareholder resolutions, thereby giving DUMAC flexibility in the exercise of the proxy voting guideline. Linda Kimball of Stanford reported to the ACIR on April 4 that Stanford had not experienced difficulties with its (identically worded) policy. And of the experts interviewed by the ACIR, even those concerned about potential complex effects as noted above, those who commented on the proposed measures suggested that adoption of the moderate proxy voting policy would be likely to have small or no costs and could have some benefits. In addition, the ACIR sees value in a second measure, encouraging engagement with companies and others as part of a process of learning and evaluation of the full consequences of alternative policy options as circumstances change and understanding improves; and in a third measure, seeking a review of the first two recommendations after five years. These recommendations are set forth in section 1 above.

6. Appendices

The Appendices appear on the following pages, and are enumerated in the Table of Contents on page 1 of this report.

Guideline on Socially Responsible Investing
August 20, 2004

To fulfill its educational and humanitarian purposes, Duke University must manage its investment assets wisely. Thus the primary fiduciary responsibility of the Board of Trustees in overseeing the management of the University's investment assets must be to maximize the financial return on those resources, taking into account the amount of risk appropriate for the University.

At the same time, the University wishes to be a good corporate citizen and a responsible and ethical investor. The authority of its Board of Trustees to take ethical factors into account when setting investment policies and practices derives from the very stewardship responsibilities which attend the ownership of endowment securities. We recognize that sometimes a corporation's policies or practices can cause substantial social injury—that they may have a gravely injurious impact on employees, consumers, and/or other individuals or groups that results from specific actions by a company. For example, corporate actions may violate domestic or international laws intended to protect individuals and/or groups against deprivation of health, safety, or civil, political, and human rights.

Thus for investments not governed by the Employee Retirement Income Security Act (ERISA), when the Board of Trustees judges that corporate policies or practices cause substantial social injury, it will give weight to this factor in investment practices related to corporate securities.

Actions the University takes may or may not materially affect an offending corporation, but such actions may have significant symbolic value. When the University community has engaged in substantive discourse on an issue and expressed broad concern that substantial social injury is being caused by such policies or practices, the president may make a recommendation to the Board of Trustees.

Where the Board of Trustees finds that a company's activities or policies cause substantial social injury, and that a desired change in the company's activities would have a direct and material effect in alleviating such injury, it may instruct the Duke University Management Company (DUMAC) to take appropriate action, including the exercise of the University's practicable shareholder rights to seek modification of the company's activities to eliminate or reduce the injury, using such means as

a) direct correspondence with management
b) proxy votes
c) sponsoring shareholder resolutions.

If the Board of Trustees further concludes that the company has been afforded reasonable opportunity to alter its activities, and that divestment will not impair the capacity of the University to carry out its educational mission (for example, by causing significant adverse action on the part of governmental agencies), then it may instruct DUMAC and its managers to divest the securities in question within a reasonable period of time.

11/5/2004

Creation of President's Special Committee on Investment Responsibility and Advisory Committee on Investment Responsibility

Preamble

The Board of Trustees recognizes that Duke University's ability to meet its educational mission and financial goals requires enhancing the value of the endowment over the long term by investing in companies that achieve real growth. It also recognizes the importance of ethical practices. A mechanism is necessary to assist the President in making recommendations to the Board of Trustees in keeping with the Board's Guideline on Socially Responsible Investing, which is attached. The committees noted below provide such a mechanism.

(1) President's Special Committee on Investment Responsibility (PSC)

The President's Special Committee shall consider proposals from the University community regarding specific investment responsibility concerns, first determining whether there is a credible allegation of social injury on the scale envisioned in the guidelines.

If the PSC finds that an issue merits further investigation, it will refer it to the Advisory Committee on Investment Responsibility (ACIR).

PSC Membership

The President's Special Committee on Investment Responsibility shall be composed of the Provost and the Executive Vice President (or their delegates); the Dean of one of the professional schools; the chair of ECAC or faculty member designated by ECAC; and a young trustee designated by the Board.

The PSC chair shall be appointed by the President.

PSC Operations

The PSC shall examine issues of investment responsibility involving the University's endowment securities. If it finds that a company's activities or policies plausibly cause substantial social injury, and that a desired change in the company's activities could have a direct and material effect in alleviating such injury, the PSC will forward to the President a recommendation that the ACIR examine the issue in greater depth. The PSC will determine, on a case-by-case basis, the threshold of evidence necessary to forward a recommendation for further examination to the President.

The Chair is responsible for setting agendas. The Chair accepts written proposals from any member or group of the Duke community for possible inclusion on the agenda.

(2) <u>Advisory Committee on Investment Responsibility (ACIR)</u>
The Advisory Committee on Investment Responsibility is a University body advisory to the President with the following functions:

a. Receive issues referred to it by the PSC;

b. Monitor trends and activities in investment responsibility that have an impact on educational institutional investors;

c. Conduct research, update Duke's files on companies, and provide analyses when requested by the PSC;

d. Make recommendations to the President on how to vote proxies when the committee believes proxies should be voted outside the standard protocol of "economic interest;" whether to sponsor shareholder resolutions; whether to correspond with the management of corporations in which the University holds an identifiable equity position; when to divest; and on any new issues, which may warrant attention.

<u>ACIR Membership</u>
The Advisory Committee on Investment Responsibility shall include ten voting members: one undergraduate and one graduate or professional student nominated respectively by the Duke Student Government and Graduate and Professional Student Council, one alumnus nominated by the Duke University Alumni Association, three faculty members nominated by the Academic Council, the University Counsel or his or her delegate, the Deputy Treasurer or his or her delegate, and two administrative appointees chosen by the President. Each representative body will be asked to nominate two individuals for each position and the President will select who will be invited to serve.

Members shall be appointed for at least two years and may be reappointed, serving until their successors take office.

The ACIR Chair shall be appointed by the President from among the voting members.

<u>ACIR Organization</u>
The ACIR shall meet on call of the Chair.

The ACIR may ask individuals, from within the University or outside of it, to attend its meetings as consultants or otherwise provide advice and information.

To assist in its review of social responsibility proxy issues, the ACIR will have access to data compiled by or on behalf of the University on companies the securities of which are held directly by the University. It is understood that certain pooled or commingled investment vehicles may not permit the degree of disclosure possible for direct holdings.

ACIR Operations

The ACIR shall examine issues of investment responsibility involving the University's endowment securities and propose to the President recommendations for action by the Trustees. Such recommendations shall take into consideration the following factors: (1) the facts and information the ACIR has gathered in its study of the issues; (2) whether the offending firm's culpability is substantial and proven; (3) the opinions expressed within the Duke community regarding the issues, including the degree of consensus; and (4) the legal and financial impact of the recommended action on the companies in question.

The Chair is responsible for setting agendas. The Chair shall take as an agenda item only matters referred by the President or the PSC.

The ACIR may, at its discretion, sponsor or encourage the convening of occasional public meetings or forums of the Duke community to assess the views of members of the community.

In considering an allegation of substantial social injury, the ACIR shall investigate and analyze the allegation in whatever manner it deems appropriate and may then make a recommendation to the President, provided that the recommendation is first approved by the majority of the ACIR's members. Recommendations may call for voting Duke's shares in shareholder resolutions, making representations to management, divestment of securities, or other action as the ACIR deems appropriate.

The ACIR shall make its recommendation in writing to the President. The recommendation shall be accompanied by factual findings and an analysis of the question involved. Voting members of the ACIR who hold dissenting or divergent views may submit them in writing with the ACIR's recommendation.

Where the ACIR indicates a desire to deliberate on a proxy or divestment issue, the President will, where practicable, await a timely recommendation from the ACIR before taking action.

The President will make decisions on all recommendations for action under this policy.

Role of the President

The President will review the analysis and recommendation of the ACIR and, if he or she concurs, will forward a recommendation to the Board of Trustees.

If the President chooses not to forward the ACIR's recommendation to the Board of Trustees, he or she will explain his or her decision in writing to the ACIR.

An annual report published by the President's office will inform the University community of the issues examined by the PSC, recommendations make by the ACIR, and the disposition by the President's office and the Board of Trustees.

November 15, 2007

Sudan, Darfur, and Duke's Investment Policy

Final Report of the President's Advisory Committee on Investment Responsibility (ACIR)

MEMBER LIST

Peter Feaver	Faculty
Tracy Futhey	Administrator
Runeet Kishore	GPSC
Ralph McCaughan	University Counsel's Designee
Tori Nevois	Deputy Treasurer
Paul Slattery	DSG
Martin Smith	Faculty
Laura Wellman	Alumna
Gordon Williams	Administrator
George Tauchen	Faculty and chair
Jim Speckart	Assistant

CONTENTS

I Background

II Sudan and Darfur

III Sudan and a Proposed Exclusionary Investment Policy for Duke

IV Final Action

V Addenda A through O

I Background

In March 2007, the Provost received correspondence from a group of Duke students representing a number of Duke students and student groups. The topic was the elimination of any financial relationships of Duke University with a designated list of companies doing significant business with the Sudanese government. The Provost, as chair of the President's Special Committee on Investment Responsibility, scheduled a meeting with the students, and asked DUMAC for an examination of its holdings. DUMAC reported $560,000 in direct holdings in one company that had recently been sold. The Provost and students met on April 2.The students were pleased to learn that Duke had no current direct holdings relative to Sudan at the time, and they promised to get back to the Provost in writing. The students wrote a letter of April 13, 2007, requesting various actions regarding Sudan, and the letter was endorsed by a number of groups of concerned members of the Duke community.

The students' letter of April 13 instigated action by the President's Special Committee on Investment Responsibility, as per the protocols set forth by the Board of Trustees in 2004. The letter arrived near the end of the academic year, and it was impossible for that committee act immediately given end-of-semester commitments and summer travel schedules. On August 16 that committee met to review the letter, and it determined the matter should be referred to the President's Advisory Committee on Investment Responsibility (ACIR). The Provost's letter of August 28 to the ACIR chair officially set that committee into action. An excerpt from that letter defines the ACIR's mandate:

> **In light of these considerations, the Special Committee on Investment Responsibility recommends that the Advisory Committee on Investment Responsibility be convened to address the following issue: should a recommendation be made to the President that the Duke University Board of Trustees consider requiring DUMAC to undertake no direct investments in any company on the list of companies previously identified as being heavily engaged in business with the government of Sudan and as listed on attachment 4 (and any subsequent updates of that list)?**

The ACIR held its first meeting on September 9. It reviewed the protocols from the Board of Trustees, discussed some other background details, and it undertook a very brief discussion of the Sudan/Darfur issue. Of particular note was the Board's narrowly defined protocol for the ACIR. Specifically, the Board indicates that

1. "*The chair* [of ACIR] *shall take as an agenda item **only** matters referred by the President or the SPC.*" (emphasis added).

2. *The ACIR makes a recommendation to the President. Voting members of ACIR who hold divergent views may submit them in writing with the ACIR's recommendation to the president.*

The ACIR decided to hold a one-day set of fact-finding sessions on October 16. Depending upon the outcome it would deliberate further and then take a final vote on the issue as defined by the President's Special Committee.

The agenda for the fact-finding sessions on October 16 is below:

Closed Sessions, Allen Board Room

Time	Speaker
1:15 - 2:00	David Shumate from DUMAC
3:00 - 3:45	Stephen Smith, Duke professor and expert on Darfur and Sudan
4:00 - 4:45	Andres Luco, representative for student activists on Darfur/Sudan

Public Forum, Social Sciences Room 139

6:00 - 7:30 Public Forum

Before the sessions, the chair met with Frederick "Fritz" Mayer, an informed and concerned faculty member, and Robin Kirk, the Director of the Duke Human Rights Center. Professor Mayer was very helpful in providing background history on Duke and socially responsible investing, and Ms. Kirk was especially helpful with information about human rights issues, and put the ACIR in contact with Professor Smith of Sanford, whose remarks were especially helpful during the October 16 sessions. The chair also met with each speaker just to let them know the format and context of the October 16 events.

The Public Forum was announced by e-mails to relevant members of the Duke community with a request to forward the information on to others. It was also advertised in three issues of the Duke Chronicle and on the Duke news website. Finally, it was discussed in an editorial in the Chronicle the day before the Forum.

The daily sessions were extremely helpful. About 12-15 persons attended the forum, which was lively and informative.

Below is a summary of the ACIR's fact-finding efforts along with so information obtained by committee members in various other contexts. The bulk of the material comes from the October 16 sessions and forum.

II Sudan and Darfur

Sudan consists of a relatively small central region that includes the capital Khartoum and much larger bordering regions and provinces. (A map is included in the Addenda.) It is an Islamist state with significant ethic and religious minorities in the outlying regions. There is a history of tension, including racial and sectarian conflicts, between the central region and the outlying regions. The tension is now is exacerbated because so much of the revenue from oil and other resources flows into the central region and little is allocated to the outlying provinces.

The tension between the central and outlying regions has led to civil strife, and the central government has a history of dealing with insurrections and other rebellious activities. From the 1980s until earlier this decade, there was an extensive and very harsh civil war between the Islamist central region and the largely Christian southern region that killed up to 1.5 million people. Like in Darfur, mass murder and ethnic cleansing campaigns occurred in this war. The central/south civil war was settled in early January 2005, after extensive negotiations brokered by the UN and the United States between the rebels and central authorities. The settlement of this civil war is considered one of the major foreign policies successes of the first term of the Bush presidency.

While there has been unrest in Darfur since the mid-1980s, the current conflict emerged from the settlement process for the central/south civil war. Darfur, which is on the western side of the central region, was left out of the agreement, and therefore it would share in little or none of the southern oil revenues under control of the central government. A west/central rebellion broke out into the conflict that has received such enormous international attention.

To put down the rebellion, the government of Sudan employed various militias as proxy armies, including the notorious Janjaweed. That tactic has been employed before by the Sudanese government and many other governments as well, in various conflicts. It is important to keep in mind that the Darfur conflict is primarily political, not racial. For hundreds of years, Darfur was an independent Islamic sultanate until annexed to Sudan by the British in 1916, out of fear it would enter the First World War on the side of the central powers. The Darfur conflict is best characterized as a political rebellion that feeds on racial and cultural differences between lighter skinned Arab Muslims and darker skinned African Muslims. There is no denying that the use of proxy armies led to the large scale deaths in the Darfur conflict.

One could give a misguided argument that the government of Sudan could be absolved of blame on the excuse that the deaths were a byproduct of a civil war in which the government employed a clumsy tactic in an effort to put down an internal insurrection. This argument would say that since the army of Sudan includes many Darfuri, the Sudanese government had limited official military options to fight the civil war.

This argument does not hold up under scrutiny. From past experience, the Sudanese government knew that the proxy armies would employ despicable tactics, and that civilians would be killed, not only as inescapable accidents of military conflict, but also out of deliberate large-scale terrorism. Furthermore, it knew that as this offensive ended, chaos and anarchy would emerge as fractious conflicts broke among loosely allied rebellious factions.

The culpability of the Sudanese government for the ghastly events in Darfur is undeniable. More than two hundred thousand people have been killed, and the Sudanese government knew this outcome would occur.

III Sudan and a Proposed Exclusionary Investment Policy for Duke

By executive orders from both President Clinton and current President Bush, no U.S. person or business entity may engage in transactions with other companies that do business with the government of Sudan. The executive orders understandably exclude transactions related to humanitarian assistance. Thus, any portfolio comprised only of U.S. publicly-traded or privately-owned companies is automatically divested from Sudan. Nonetheless, Duke's direct investments include significant foreign holdings.

As previously noted, Duke has no holdings of companies doing business with Sudan as of last spring. The issue, then, is whether to impose on DUMAC new exclusionary investment restriction relative to Sudan.

Would an exclusionary investment policy by Duke have any direct economic effect on the Sudanese government? The answer has to be yes; the only debate can be over the magnitude. Most any neo-classically trained economist, mindful of triangulation strategies, would say the very direct economic effect alone is negligible. Of course, some of those same economists would still ardently support an exclusionary policy on other grounds.

An exclusionary policy by Duke would be part of a larger global effort that affects Sudan in economic and signaling terms. By imposing the policy, Duke would be joining forces with many other state and local governments along with private endowments and foundations that have taken such actions. For example, the state of North Carolina recently imposed divestment on state pension and endowment funds by unanimous vote from both houses of the legislature. According to activists, Duke would not be a leader in this larger collective movement, but rather it would be in the middle or possibly closer to the end of the group action. Nonetheless, Duke's name would be an important contribution. Activists note that Sudan has reacted to economic pressures, and thus feels that the group action is having an effect on the Sudanese government.

Interestingly, perhaps the most compelling argument for the effectiveness of economic actions or sanctions is a connection to the 2008 Olympics in Beijing. Chinese-based companies have extensive business relationships with Sudan, especially in the oil sector.

The Chinese government is highly sensitive to any sort of international action that would affect the success of the 2008 Olympics. In response to criticism, the Chinese government recently assigned to Sudan a special envoy on human rights. This action is unprecedented for China. Thus, putting pressure on China has become an avenue to encourage or force Sudan to change its behavior. Examples like this show how Duke's participation in global action could have substantial impact.

There is also a philosophical view to consider: that an exclusionary investment policy relative to Sudan is the morally correct thing for Duke to do. The ACIR can only express moral views through the committee members' individual votes and accompanying personal statements.

DUMAC does not now have any restrictions on its investment strategy, apart from common sense restrictions such as not investing in organized crime activities. Although DUMAC had little or no Sudan-related holdings at the time the activists contacted the Provost, that outcome was not the result of some form of proactive tacit divestment planning by DUMAC. Instead, the lack of Sudan-related holdings at that time was coincidental.

The financial cost of an exclusionary restriction is hard to gauge, but the committee understands it to be small relative to the total income of DUMAC. The most difficult aspect of cost estimation is that DUMAC holds most of the critical information. Without that information, a cost analysis by ACIR would seem hastily done and poorly executed. The requisite information for a proper cost assessment could be obtained using the authority of the President, since he is a member of the executive committee of the board governing DUMAC. That would entail possibly months of delay in reaching a recommendation for a decision that is perhaps overdue as it is.

IV Final Action

The ACIR voted on a motion patterned after the instructions from the President's Special Committee on Investment Responsibility. The motion and final vote are contained in the cover letter to President Brodhead.

Addenda follow.

V Addenda

V-1 ACIR's general view

A. The ACIR's general recommendation on Duke's investment policy and large scale mass murder

V-2 The history from the Provost's meeting to final committee vote

B. The students' letter of April 13, 2007
C. The Provost's letter (and attachments) of August 28, 2007, to the ACIR chair
D. A political map of Sudan
E. "The Politics of Death," by Gerard Prunier
F. State of North Carolina Resolution on Sudan
G. The agenda of the fact finding session of October 16, 2007
H. Advertisement of Public Forum; appeared in the Duke Chronicle Oct 10-12
I. The transcript of the fact finding sessions of October 16, 2007
J. The committee vote of November 13, 2007

V-3 Supplementary Details

K. The minutes of the ACIR meeting of September 9, 2007
L. The minutes of the ACIR meeting of November 13, 2007
M. Board of Trustees documents specifying the protocols on investment responsibility (included to make the document self contained).
N. Why the term "genocide" does not appear in ACIR reports.
O. Statement of dissenting voter.

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RESOLUTION
RELATING TO THE RECOMMENDATION OF THE PRESIDENT'S ADVISORY COMMITTEE ON INVESTMENT RESPONSIBILITY

WHEREAS, the President's Advisory Committee on Investment Responsibility (ACIR) has carried out extensive deliberations regarding the issue of Sudan/Darfur and Duke's investment policy; and

WHEREAS, the ACIR in its deliberations adhered as closely as possible to the protocols set forth in 2004 by the Board of Trustees to handle issues related to socially responsible investment, and in particular, the ACIR considered only the issue put to it by the President's Special Committee on Investment Responsibility: that is, divestment from Sudan; and

WHEREAS, the ACIR has recommended that the University adopt a policy related to investments and Sudan/Darfur and that policy has been duly considered and adopted by this Board of Trustees by the resolutions herein.

NOW, THEREFORE, BE IT RESOLVED, that DUMAC, LLC, be prohibited from making direct investments in companies identified as heavily engaged in business with the government of Sudan, and that DUMAC, LLC, is to identify those companies by utilizing the list from the international group Sudan Divestment Task Force, or a more authoritative list if DUMAC has access to one; and

BE IT FURTHER RESOLVED, that this policy shall remain in effect until the United States government lifts sanctions defined in Executive Order 13067 (1997, Clinton) and Executive Order 13412 (2006, Bush); and

FURTHER RESOLVED, that the appropriate officers of the University are hereby authorized and directed to take such further actions as they shall deem necessary and appropriate, and as may be required to fully implement these resolutions; and

FURTHER RESOLVED, that any action which has heretofore been taken by any of the officers of the University in connection with the foregoing resolutions or the matters contemplated thereby is hereby ratified, approved and confirmed.

Submitted to the Board of Trustees on February 29, 2008.

Approved by the Board of Trustees on February 29, 2008.

Signed: ____________________
Richard V. Riddell
Vice President and University Secretary

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TO: Members of the President's Special Commission on Investment Responsibility
FROM: Stefani Jones, Sanjay Kishore, and the Coalition for a Conflict-Free Duke
RE: Responsible investments in corporations using "conflict-minerals"

As outlined by the guidelines for the President's Special Committee on Investment Responsibility (PSC), the PSC shall examine issues of investment responsibility involving the University's endowment securities, ultimately deciding whether or not to make a recommendation to the Advisory Committee on Investment Responsibility (ACIR) to examine said issues in greater depth. In doing so, the guidelines direct the PSC to take two factors into consideration:

a) **That a company's activities or policies plausibly cause substantial social injury**
b) **That a desired change in the company's activities could have a direct and material effect in alleviating such injury.**

Believing that both criteria, detailed below, have been met and that the issue has been seriously discussed throughout the University community, we propose the following action by the Duke University Board of Trustees:

a) ***Proxy Voting Guideline*** – The University will vote in favor of well-written and reasonable shareholder resolutions that:
    1. Ask companies for reports on their policies and efforts regarding their avoidance of conflict minerals and conflict mineral derivatives
    2. Ask companies to comply with the requirements of due diligence described in Section 13(p) of the Securities and Exchange Act of 1934, which was amended as a result of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

b) ***Future Investment Guideline*** – The University precludes any new, future investments in companies required to disclose information about conflict-minerals that have: filed an "unreliable determination", reported false information, or failed to file a report—all as required by Section 13 of the Securities and Exchange Act of 1934.

I. Industry use of "conflict-minerals" contributes to substantial social injury

Unprecedented violence in DRC fueled by minerals

- With over 5 million individuals killed in the last decade, ethnic violence perpetrated by multiple armed militias in the Democratic Republic of Congo (DRC) has been declared the deadliest conflict since World War II.[1]
- Sexual violence used as a weapon of war. UN administrators have deemed DRC the "rape capital of the world", with an estimated 48 rapes occurring every hour[2,3]

- Warring parties, including rebel militias and Congolese national army, depend on mineral trade to subsidize atrocities[4]
    - DRC possesses vast reserves of minerals vital for consumer electronics (tin, tantalum, tungsten, and gold).[3]
    - Over 50% of mines in Eastern DRC are controlled by armed militias; an estimated 80% of mineral wealth is smuggled out of the nation[3]
    - Forced labor, extortion, and excessive "taxation" are among many methods utilized by armed groups to fund conflict.[4]

Electronics corporations can leverage influence to ensure ethical supply chains

- Independent experts have ranked oversight measures of 21 major producers; to date, none have acted to guarantee "conflict-free" products[5]
    - Ex: Apple + HP have implemented minerals-tracing policies; Sharp has not reached out to suppliers
- The US government has recognized the connection between business practices and social injury:
    - In a 2009 visit to the DRC, Secretary of State Hillary Clinton called for action to "prevent the mineral wealth from the DRC from ending up in the hands of those who fund the violence."[6]
    - Congress passed a "conflict-minerals" provision (Sec. 1502) in the 2010 Dodd-Frank Act calling on corporations to "exercise due diligence" in establishing "conflict-free" supply chains[7]
    - In 2011, the State Department launched a Public-Private Alliance for Responsible Mineral Trade to support pilot "conflict-free" initiatives.[8]

II. **Industry action can have a direct and material effect in alleviating social injury**

- Since the passing of the 2010 Dodd-Frank Act and its provision on conflict minerals, electronics companies have accelerated their efforts to reform supply chains.
    - Some companies are beginning to audit the procurement procedures of tantalum smelters through a conflict-free smelter program with the Electronics Industry Citizenship Coalition (EICC).[9]
    - The EICC is planning to expand its processes to include tin, tungsten, and gold, but the timelines for this and how many smelters will be included are still unclear.[9]
- In October 2011, the UN Group of experts on Congo stated that the Dodd-Frank provision was working, and that private sector purchasing power and due diligence has reduced conflict financing and is promoting good governance in the region.[10]
- Without consumer demand and strong industry action, the potential for greater change in the Congo will be lost. Industry action is not a panacea for all of the

problems in the Congo, but it is a necessary step that has already had tangible impacts.

III. Duke community has engaged in a "substantive discourse" on this issue

- Creation of the Coalition for a Conflict-Free Duke, which over fifteen different student groups have signed on to.[11]
- More than 300 students have signed a petition calling for Duke to enact a "proxy-voting" resolution addressing companies utilizing "conflict-minerals"[12]
- Duke Financial Procurement issued a statement of support for "conflict-free" electronics[13]
- More than 120 students attended the "Eureka Symposium", featuring independent experts from the **Enough Project** (affiliated with Center for American Progress) who provided background and context for university action on the issue of conflict-minerals[14]
- Over 800 individuals recommended our October editorial introducing "conflict-minerals" on Facebook.[15]
  - Eight subsequent Chronicle columns have since cited the issue of "conflict-minerals."
- Duke Student Government passed a unanimous resolution calling for a broader university policy addressing conflict-minerals[16]

IV. Proxy-voting resolution is a meaningful yet feasible action Duke should enact

- Powerful statement indicating Duke's priorities and commitment to this cause – leverages our shares for socially-responsible practices instead of divesting from given corporations
- Stanford is the only university in the nation to have shifted investment policy (via a proxy-voting resolution); Duke would become the second institution to do so.[17]
  - Stanford's resolution pledged support to shareholder resolutions requesting information on a given company's avoidance of "conflict-minerals."
  - Pending Dodd-Frank SEC regulations to be released in December, Duke could follow similar action or pledge support to resolutions advocating for tracing/auditing measures of minerals.
- Presents no cost to Duke's endowment in uncertain times, but potentially high benefits to our reputation by taking such a socially responsible measure.

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STANFORD UNIVERSITY

STAND
A Student Anti-Genocide Coalition

Official Press Release

Stanford University Takes Lead on Conflict Minerals:

Board of Trustees Adopts Conflict Minerals Investment Guideline

Responding to a student-led initiative, Stanford becomes the world's first University and the first major institutional shareholder to adjust its investment policy to help prevent the funding of the ongoing mass atrocities in the Democratic Republic of the Congo. Such early leadership on a major new investment responsibility issue is unprecedented in the University's history.

Stanford STAND: A Student Coalition to End and Prevent Genocide and Mass-Atrocities is delighted to report that the Stanford University Board of Trustees has voted in favor of the adoption of a new proxy voting guideline regarding the "conflict minerals" that sustain armed groups in the Democratic Republic of the Congo (DRC). This vote makes Stanford University the first major institution to adopt an investment policy with respect to conflict minerals. The guideline states that the University will:

"…vote in favor of well-written and reasonable shareholder resolutions that ask companies for reports on their policies and efforts regarding their avoidance of conflict minerals and conflict mineral derivatives."

The term "conflict minerals" refers to the minerals that come from illegally controlled mines in the eastern part of the DRC. Civilians are caught in the deadly middle as armed militias struggle for control of mines and smuggling routes. According to the International Rescue Committee, over 5.4 million deaths have occurred as a result of the conflict. What's more, because of the widespread use of sexual violence against local populations as an intimidation tactic, the DRC has been called the rape capital of the world. Fueling this conflict is the lucrative process of mining and trading minerals like tantalum, tungsten, tin, and gold.

Though these atrocities are being perpetrated thousands of miles away, Stanford University has now realized its potential to take a vital step toward an end to the conflict. The minerals fueling the conflict in the DRC enter the global supply, where they are ultimately used to manufacture everyday electronic products like cell phones, laptops, and video game consoles. Although there is not yet an established mechanism for tracing the supply chains of the companies that use these minerals, industry initiatives have begun the process and legislation in Congress is currently in conference as an amendment to the financial reform bill.

What is needed now — where Stanford University has now taken its leading role — is to demonstrate the popular demand that exists for a more responsible supply chain. As a major institutional investor, Stanford can influence the companies in which it invests to further develop their policies regarding conflict minerals. Historically, Stanford University has been cautious in taking action to adjust its investment policy in response to humanitarian issues. Nonetheless, faced with the blunt facts of the underlying crisis in the DRC, and with the ability of major US electronics and technology companies to alter their role with respect to a humanitarian crisis, the Board of Trustees agreed last Thursday that the University will lead by example, focusing national and international attention on an issue of which too many remain ignorant.

Though by itself a small step, this use of Stanford's voice as a conflict-conscious investor makes a powerful statement. The proxy voting guideline clearly demonstrates Stanford University's commitment to the ethical imperatives associated with this deadly conflict. Considering that electronics companies are some of the largest end users of these conflict minerals, Stanford's position in the heart of Silicon Valley makes its leadership on this issue especially meaningful. As such, we at Stanford STAND sincerely congratulate the Board of Trustees on their decision to take action on this issue with a groundbreaking statement to the companies in which the University is invested.

The adoption of the new conflict minerals guideline is the result of the effort and support of a rapidly growing group of students, alumni, and faculty led by Stanford STAND, which represents the major constituencies across the Stanford community. While working within the institutional structures available to us at Stanford, we built awareness and support for our cause within the Stanford community. In the course of the months leading up to the Board of Trustees' decision, we found that the main obstacles were not ideological or political differences, but rather bureaucratic inertia and a lack of awareness. When the decision makers were assembled in a room and the basic underlying facts of the situation in the DRC were described, however, consensus was achieved.

In particular, Stanford STAND's efforts included:

- We partnered with members on the Advisory Panel on Investment Responsibility and Licensing (APIR-L) to draft the language of the guideline, and to demand and obtain votes on the guideline at all relevant levels of University decision making.
- The guideline was first approved by the Human Rights Sub-Committee of the APIR-L in March subsequent to STAND pressure for a vote.
- An APIR-L member presented the guideline and received unanimous approval from the APIR-L as a whole after a thorough debate on Friday, April 23.
- We obtained key Stanford faculty support by approaching professors whose backgrounds spanned a broad cross-section of University expertise. Made aware of the pressing nature of the issues at hand and impressed by Stanford STAND's integrity, research, and commitment to the issue, virtually all faculty members pledged their support.
- New York Times columnist and leading human rights journalist Nicholas Kristof expressed support for the issue by Tweeting about the initiative on June 3 with a link to a May Stanford Daily article, which reached his approximately 950,000 Twitter followers.
- Stanford STAND's public outreach team contacted various media outlets—both virtual and print—and received considerable coverage from diverse blogs, newspapers, and special-interest journals. Press coverage ranged from guest blog posts to open letters to the Board of Trustees to feature articles that pressed the Trustees to vote in favor of the guideline and spoke to the importance of the issue. This media coverage

not only attests to the significance of the initiative, but also aided in the essential process of building awareness more broadly on the issue to stimulate efforts at other institutions and universities.

- As a result of these diverse efforts, Stanford STAND received mounting expressions of support and encouragement from hundreds of other students, faculty and alumni, which in turn helped convince decision makers about the broad underlying support of the resolution within the Stanford community.
- Stanford STAND eventually won the right to be represented by one of its advocates at the Board of Trustees' Special Committee on Investment Responsibility (SCIR) meeting on Thursday, June 10 at which the resolution was presented. The Trustees were asked to approve the resolution immediately in light of the urgency of the underlying issue.

Upon recommendation from the SCIR, the full Board subsequently approved the guideline the same day. We wholeheartedly congratulate the Board of Trustees on their decision to take action on this critical issue.

"We at Stanford STAND believe that the Stanford University Board of Trustees' decision reaffirms the compelling nature of the issue and will spark further institutional, educational, and corporate efforts," said Mia Newman '12, incoming co-president of Stanford STAND. "We call on the students, faculty and alumni of other academic institutions to hold accountable companies in which their schools invest for unknowingly funding the ongoing atrocities perpetrated by Congolese armed groups. We hope that the story behind Stanford's unprecedented action can serve as a model for similar efforts elsewhere."

References: stand.stanford.edu,
Stanford Daily (http://www.stanforddaily.com/2010/05/03/stanford-panel-votes-on-conflict-mineral-guidelines-2/), New York Times: Bay Guardian
(http://www.nytimes.com/2010/06/13/us/13bcminerals.html), Huffington Post
(http://www.huffingtonpost.com/2010/06/14/conflict-minerals-stanfor_n_610888.html), The ENOUGH Project (http://www.enoughproject.org/blogs/stanford-paving-way-conflict-free-investing)

Contact Information:
Mia Newman, '12 – mmnewman@stanford.edu, 415.722.6126
Nina McMurry, '10 – nina.mcmurry@gmail.com, 206.605.6768

Stanford STAND first began its work with the University on the issue of conflict minerals in January of this year. Stanford STAND is a student organization that seeks to end and prevent genocides in the world around us. To that end, we have chosen to focus on the current genocide in Sudan as well as the mass atrocities currently occurring in The Democratic Republic of the Congo and in Burma. We also are working for the creation of a permanent anti-genocide constituency to ensure that genocide prevention becomes an institutionalized foreign policy issue. We work on the Stanford campus, in the local Bay Area, and in Washington D.C., using a three-pronged approach: advocacy, awareness, and fundraising.

STAND was founded in 2005 in order to address the genocide in Darfur, Sudan. It has since expanded its mission to include other conflicts, particularly those resulting in a large number of civilian casualties, namely the conflicts underway in the Democratic Republic of the Congo and Burma. Stanford STAND is a leading chapter of the national STAND organization, which is the student division of Genocide Intervention Network.

- **Join Us!**

STAND meets Tuesdays at 9PM in the DK Room of the Haas Center. New members are always welcome!

January 13, 2012

HUFF POST IMPACT
THE INTERNET NEWSPAPER: NEWS BLOGS VIDEO COMMUNITY

Stefani Jones and Sanjay Kishore

Duke Students Appeal to 'Favorite Dukie,' Apple CEO Tim Cook, for Conflict-Free iPhone

Posted: 1/12/12 10:40 AM ET
React
>

Dear Mr. Cook,

As students from your alma mater, Duke University, we're writing to you -- our favorite Duke alum -- to join our cause for conflict-free electronics. The time is ripe for change.

You've heard this story before. Violence in Congo has become the worst conflict in the world since WWII, with over 5 million killed by war. The UN has deemed the nation the "rape capital of the world," with hundreds of thousands of women who have been raped. The worst part? Mining of minerals that power Apple electronics -- tin, tantalum, tungsten, and gold -- are subsidizing the armed militias that commit these atrocities.

This is not a new problem. Congress has called for action. Hillary Clinton has called for action. Stanford University, resting in the heart of Silicon Valley, has called for action. And now, over 70 schools, including students at Duke -- the institution that helped give you the business skills to lead the most valuable corporation in the world -- are following suit.

As one of the first electronics corporations to map out your entire supply chain, we appreciate that Apple has become a national leader in the "conflict-free" movement. But, Apple has never been one to settle for "good enough" -- you have always strived for excellence. In the midst of election instability and war, this is a pivotal moment for Congo. This is not a time for rhetoric or strategic plans--it is a time for action.

Change.org has partnered with the Congolese activist Delly Mawazo Sesete to release an international petition calling upon you to commit Apple to produce "conflict-free" electronics by the 2013 holiday season.

Please take a moment to view our video message to you:

We are not asking you to leave the Congo -- rather, be a catalyst for change by monitoring your existing supply chains and setting the model for the entire industry.

The mission of our alma mater revolves around a key principle: "to help those who suffer." Every day at Duke, we students are trained to leverage our education to guarantee human rights across the world. We are currently lobbying our administration to enact an investment resolution to encourage leaders like you to stand up for peace in Congo, and we can guarantee that there is a strong constituency here at Duke that wants to buy conflict-free products from Apple. But, as a former Dukie, we have a feeling you already know the right thing to do.

Once a Blue Devil, always a Blue Devil.

In solidarity,

Stefani Jones '14 and Sanjay Kishore '13

The Coalition for a Conflict-Free Duke

From: Peter Lange
Sent: Friday, January 20, 2012 4:14 PM
To: Jonathan B. Wiener, J.D.
Cc: Tallman Trask; Susan Lozier; David F. Levi; James S. Roberts, Ph.D.; grwagonerjr@gmail.com; Richard Brodhead, Ph.D.; Richard Riddell, Ph.D.; Neal Triplett, M.B.A.; Adrienne Clough (acc37)
Subject: Decision by President's Special Committee on Investment Responsibilities

MEMORANDUM

To: Jonathan Weiner, Chair, Advisory Committee on Investment Responsibility (ACIR)

From: Peter Lange, Provost and Chair President's Special Committee on Investment Responsibility (PSC)

C: Richard Brodhead, Rick Wagoner, Neil Triplet, Richard Riddell

This is to inform you that the PSC met on Friday, January 13, 2012 to consider a request from students that the University establish conditions governing the exercise of its proxy voting rights in companies in which it may have investments with regard to the use by those companies of "conflict minerals"(see attached documents from students for description of conflict minerals and other documents supporting their request). During its hearing, the committee (all members present with the exception of Vice Provost James Siedow) heard from the students, examined their supporting materials and questioned the petitioners on certain matters.

Upon completion of this hearing, the committee met in closed session and voted unanimously to request that the ACIR examine the request, as stipulated in the University's Board of Trustees Guidelines on Socially Responsible Investing and the subsequent guidelines establishing the PSC and ACIR. In forwarding this matter to the ACIR, the PSC concluded that the issue of conflict minerals and their use in commerce plausibly does cause substantial social injury and that changes in the activities of companies with respect to the usage of conflict minerals could have a direct and material effect in alleviating such injury. In addition, the petitioners demonstrated that there had been sufficient interest and concern among members of the Duke community with regard to the matter of conflict minerals to warrant consideration of this matter by ACIR.

In forwarding this matter to ACIR, the PSC wishes to note that it is supportive of consideration of actions stipulated under section a) 1 of the petitioners' request (see attached) regarding the exercise of proxy votes and that it assumes that if the soon to be forthcoming regulations under Dodd-Frank require actions by companies in which Duke has investments with regard to conflict minerals, that the companies will comply with those regulations. The petitioners did not request any action with regard to divestiture nor is the PSC be prepared to ask the ACIR to consider such actions. Additionally, the PSC suggests that the student petitioners and the ACIR draw upon campus faculty expertise on Africa in further exploring the issue of "conflict minerals" and the social injury and political role they appear to play.

I am happy to discuss this matter further with the ACIR should it be requested.

Advisory Committee on Investment Responsibility (ACIR)
Duke University

Meeting of February 27, 2012
10:00-11:30 am
Allen Building Board Room 201

Agenda

1. Introductions
2. Role, Tasks and Procedures of the ACIR
3. Referral from the PSC to the ACIR regarding “conflict minerals”
4. Timeline
5. Discussion with President Brodhead
6. Planning for ACIR meetings, information gathering, report drafting, and recommendation

Handouts

1. ACIR member roster 2012 (1 page)
2. Guideline on Socially Responsible Investing (August 20, 2004) (1 page)
3. Creation of President’s Special Committee on Investment Responsibility (PSC) and Advisory Committee on Investment Responsibility (ACIR) (November 5, 2004) (3 pages)

4. Memo to Jonathan Wiener, Chair, ACIR from Peter Lange, Provost and Chair, PSC, referring the request on “conflict minerals” to the ACIR (January 20, 2012) (1 page)
5. Memo to the PSC from Stefani Jones, Sanjay Kishore, and the Coalition for a Conflict-Free Duke (undated, probably January 13, 2012) (9 pages, including press release on Stanford and letter to Tim Cook)

6. Coalition for a Conflict-Free Duke, website excerpts (February 1, 2012, and December 1, 2011) (3 pages)
7. Stefani Jones, “How I Got Apple To 'Think Differently',” Huffington Post, January 27, 2012 (2 pages)
8. Kristie Kim, “Student petition advocates for a ‘Conflict-Free Duke’,” Duke Chronicle, January 24, 2012 (3 pages)
9. Publicity for talk by Prof. Stephen Smith, “Conflict Minerals: What Does Thoughtful Global Advocacy Look Like?” at Perkins Library (February 22, 2012) (1 page)

10. Excerpts from ACIR Report on Sudan/Darfur (November 15, 2007) (7 pages)
11. Resolution of the Board of Trustees on Sudan/Darfur (February 29, 2008) (1 page)

Advisory Committee on Investment Responsibility (ACIR)
Fact Finding Meeting & Open Forum
Wednesday, April 4, 2012

Closed Committee Fact Finding Meeting:
Gross Chemistry Building, Room 100A, 9a-1pm

Agenda

9:00am	Welcome and introduction – Jonathan Wiener
9:15am	Guest Speaker David Shumate, Executive Vice President DUMAC, Inc.
9:45am	Guest Speaker Stefani Jones and Sanjay Kishore Coalition for a Conflict-Free Duke University
10:15am	Break
10:30am	Conference Call Linda Kimball Manager, Investment Responsibility Stanford Management Company, Stanford University
11:00am	Conference Call Bill Frederick B'87 Jacky Haynes B'86 Apple, Inc.
11:30am	Guest Speaker Stephen Smith African & African American Studies Sanford School of Public Policy, Duke University
12noon	Guest Speaker Jim Cox Brainerd Currie Professor of Law Duke Law
12:20pm	Box Lunch served
12:45pm	Conclusion & Summary
1pm	Adjourn

Open Forum

Bryan Center, Von Canon A
6:00pm-7:30pm
Website: http://spotlight.duke.edu/acirforum/

Advisory Committee on Investment Responsibility (ACIR)
Conference Call & Final Meeting
April 11 and April 26

<u>Wednesday, April 11 – Conference call regarding draft report</u>

9:00am	Welcome and introduction – Jonathan Wiener
10:30am	Call adjourns
Attendees:	Jonathan Wiener, Ralph McCaughan, Scott Gibson, Tracy Futhey, Wayne Norman, Steven Achatz, Laura Wellman

<u>Thursday, April 26 – Final meeting, Law School, room 3171</u>

12noon	Welcome and introduction – Jonathan Wiener
1:15pm	Richard Riddell joins the committee
2:00pm	Meeting adjourns
Attendees:	Jonathan Wiener, Ralph McCaughan, Scott Gibson, Tracy Futhey, Wayne Norman, Steven Achatz, Philip Morgan, Peter Schork

Appendix I

ACIR Open Forum:

Investment Responsibility and Conflict Minerals

Wednesday, April 4, 2012
6:00-7:30 PM
Von Canon Room A, Bryan Center

We invite you to share your views at an Open Forum on Investment Responsibility and 'Conflict Minerals.' The President's Advisory Committee on Investment Responsibility (ACIR) will hold an open forum to hear views of the Duke community (including students, faculty and staff) regarding the university's investments with companies who may use conflict minerals. 'Conflict minerals' refer to metals that are mined in conflict-torn areas such as parts of Central Africa; these minerals may be incorporated into electronics and other products.

Please visit the ACIR website for more information and materials:
http://spotlight.duke.edu/acirforum/

Or contact Michele Wittman at:
mwittman@duke.edu

PROXY POLICY

Introduction

This statement establishes the policy and procedures regarding the exercise of proxy voting rights of securities of Duke University. This statement applies to all proxy voting rights with respect to securities administered by DUMAC which DUMAC has delegated to the Manager(s) unless specified otherwise. These guidelines are intended to provide a general framework for the exercise of proxy voting rights, and do not attempt to address every specific issue that might be subject to a shareholder vote. Furthermore, notwithstanding the guidelines set forth in this statement, the exercise of proxy voting rights of securities shall be in accordance with the applicable fiduciary standards of the Uniform Prudent Management of Institutional Funds Act of North Carolina, as amended.

General Principles

Certain general principles consistent with governing fiduciary standards are applicable to the exercise of proxy voting rights of securities, and are set forth below.

• The right to vote a security constitutes a right that can be valued, and therefore, should be viewed as part of the asset itself.

• In exercising proxy voting rights, the Manager(s) should engage in a careful evaluation of issues that may affect the rights of shareholders and the value of the security.

• Consistent with general fiduciary principles, the exercise of proxy voting rights must be conducted with care, prudence, and diligence.

• In exercising proxy voting rights, a manager should conduct itself as a fiduciary with respect to the ultimate beneficial owners of the securities.

• Managers shall make every attempt to exercise fully all proxy voting rights.

•DUMAC (including its officers and employees) and its managers (including their officers and employees) shall not accept any item of value in consideration of a proxy voting decision.

• Consistent with the above principles, the Manager(s) should exercise proxy voting rights in a manner calculated to maximize shareholder value .

Proxy Voting Procedures

Manager(s) shall maintain a record of all proxy voting decisions for a period of three years. If the Manager votes contrary to the guidelines as set forth below, the record shall indicate the reason for such a vote. Upon the request of DUMAC, the Manager(s) shall make voting records available to DUMAC personnel on a periodic basis for review.

Specific Guidelines

Prudence

In making a proxy voting decision, the Manager(s) shall give appropriate consideration to all relevant facts and circumstances, including the value of the securities to be voted and the likely effect any vote may have on that value. Since proxy decision-making should be an informed judgment, investigation should be a critical minimum step.

Conflict of Interests

The Manager(s) should normally exercise proxy voting rights on the basis of its good faith determination as to how to maximize shareholder value. Decisions should not be made by the Manager(s) solely on the advice of third parties, particularly those that might have a personal or financial interest in the outcome of the vote, although managers may consult third parties such as Institutional Shareholder Services. In the event of a conflict of interest, the General Principles (above) applicable to the exercise of proxy voting rights shall apply.

Maximizing Shareholder Value

Determining whether a specific proxy resolution will increase the market value of a security is a matter of judgment. In determining how a proxy vote may affect the economic value of a security, consideration may be given to both short-term and long-term values.

The balance of this statement provides more specific criteria for voting on specific management and shareholder proposals.

Specific Criteria

Routine Actions:

Director Nominees in a Non-Contested Election

Manager(s) generally will cast votes in favor of management proposals on director nominees. However, Manager(s) should vote against any director or slate of directors if the Manager believes that the director or slate of directors has not acted in the best economic interest of all shareholders.

Director Nominees in a Contested Election

Where management's proposed nominees are opposed, a board candidate or slate usually runs for the purpose of seeking a significant change in corporate policy or control. Therefore, the economic impact of a vote in favor of or in opposition to nominees in a contested election must be analyzed using a higher standard appropriate to changes in control. In a contested election, manager(s) should evaluate the qualifications of each nominee, the performance of the current board and other relevant factors, and should vote in the manner it believes will maximize shareholder value.

Selection of Auditors

Manager(s) generally will cast votes in favor of proposals to ratify independent auditors, unless the manager has reason to believe the auditing firm is no longer performing its required duties or has had its independence impaired.

Stock Related Matters:

Increase in Authorized Common Stock

Manager(s) generally will cast votes in favor of proposals to authorize additional shares of common stock for appropriate corporate purposes, except where the proposal establishes classes of stock with superior voting rights.

Blank Check Preferred Stock

Manager(s) generally will cast votes in opposition to management proposals authorizing the creation of new classes of preferred stock with unspecified voting, conversion, distribution or other rights. In addition, votes will generally be cast in opposition to management proposals to increase the number of authorized blank check preferred shares.

Targeted Placement

Manager(s) generally will cast votes in favor of shareholder proposals requesting that companies first obtain authorization before issuing voting stock, warrants, rights, or other securities convertible into voting stock to any person or group, unless the voting rights at stake in the placement represent less than 5% of existing voting rights.

Preemptive Rights

Manager(s) generally will cast votes in favor of shareholder proposals to create or restore limited preemptive rights.

Matters Relating to Board of Directors:

Director Liability and Indemnification

Manager(s) generally will cast votes in favor of proposals limiting director liability.

Classified Boards

Manager(s) generally will cast votes in opposition to classified boards.

Issues Related to Restructurings or Changes in Control:

Approval of Mergers

Manager(s) generally will cast votes in opposition to proposals that require a super-majority of shareholders to approve a merger or other significant business combination. Similarly, managers generally will support proposals seeking to lower super-majority vote requirements for approval of a merger or other significant business combination.

Approval of Reincorporation

Manager(s) generally will cast votes in favor of reincorporation proposals that specify satisfactory business reasons and have no significant negative impact on matters of corporate governance and management accountability. Manager(s) generally will cast votes in opposition to reincorporation proposals seeking a more favorable legal structure to resist hostile takeovers.

Approval of Share Repurchases

Manager(s) generally will cast votes in favor of share repurchase plans in which all shareholders may participate on equal terms.

Shareholder Rights Plans (Poison Pills)

Manager(s) generally will cast votes in opposition to poison pill plans and in favor of shareholder resolutions asking companies to put poison pill proposals to shareholder vote.

Fair Price Provisions

Manager(s) generally will cast votes in opposition to fair price provisions that would require a potential acquiror to pay a fair and uniform price to all shareholders in an acquisition, unless it determines that such provisions would not discourage acquisition proposals.

Considering Non-Financial Effects of a Merger Proposal

Manager(s) will cast votes in opposition to proposals that allow boards to consider non-financial effects of a merger, unless directed otherwise by DUMAC.

Anti-Greenmail Proposals

Manager(s) generally will cast votes in favor of proposals to require shareholder approval of any "greenmail" payment (payment of a premium price to repurchase shares and avert a hostile takeover), and generally will vote in opposition to the payment of "greenmail" for any reason.

Golden Parachutes

Manager(s) generally will cast votes in opposition to proposals for golden parachutes.

Opt Out of State Anti-takeover Law

Manager(s) generally will cast votes in favor of bylaw amendments requiring a company to opt out of state anti-takeover statutes.

Compensation Matters:

Compensation Proposals

Manager(s) will cast votes on a case-by-case basis, generally in favor of reasonable incentive plans designed to attract and hold quality professional management. However, managers generally will cast votes in opposition to excessive incentive plans to executives without prior approval by shareholders, which might include:

• Options plans that, if exercised, could dilute the earnings-per-share of existing shares by more than 5%;

• Replacing or re-pricing underwater options;

• Proposals that include reloading of stock options (the granting of additional options to replace options that have been exercised) or pyramiding of shares (i.e., using shares received upon exercise of a stock option to satisfy the exercise price of additional stock options); and

• Omnibus stock plans that give directors broad discretion to decide how much and what kind of stocks to award, when, and to whom.

Compensation of Non-Employee Directors

Manager(s) generally will cast votes in favor of stock-based formulations as substitutions for cash compensation for outside directors if they appear reasonable and contain fixed exercise rules. Manager(s) generally will cast votes in opposition to proposals in which management controls the structure or exercise of options, jeopardizing the independence of outside directors.

Shareholder Rights:

Confidential Voting

Manager(s) generally will cast votes in favor of confidential voting by shareholders and against any attempt or proposal to curtail the confidentiality of the voting process.

Equal Access to the Proxy

Manager(s) generally will cast votes in favor of shareholder proposals asking that management allow large shareholders equal access to management's proxy materials to discuss and evaluate management's director nominees, or to nominate candidates for election to the board.

Limiting Shareholders' Rights

Manager(s) generally will cast votes in opposition to any proposals for the elimination or restriction of shareholders’ rights, or any significant transfer of authority from shareholders to directors. This includes proposals designed to limit shareholders' rights to remove directors, amend bylaws, fill board vacancies, call special meetings, nominate directors, or take other actions that may limit or abolish the rights of shareholders to act independently.

Social Issues:

Proposals Related to Social Issues

With respect to all social issue related shareholder proposals, managers always will cast votes in the economic best interest of Duke University, unless otherwise directed by DUMAC.

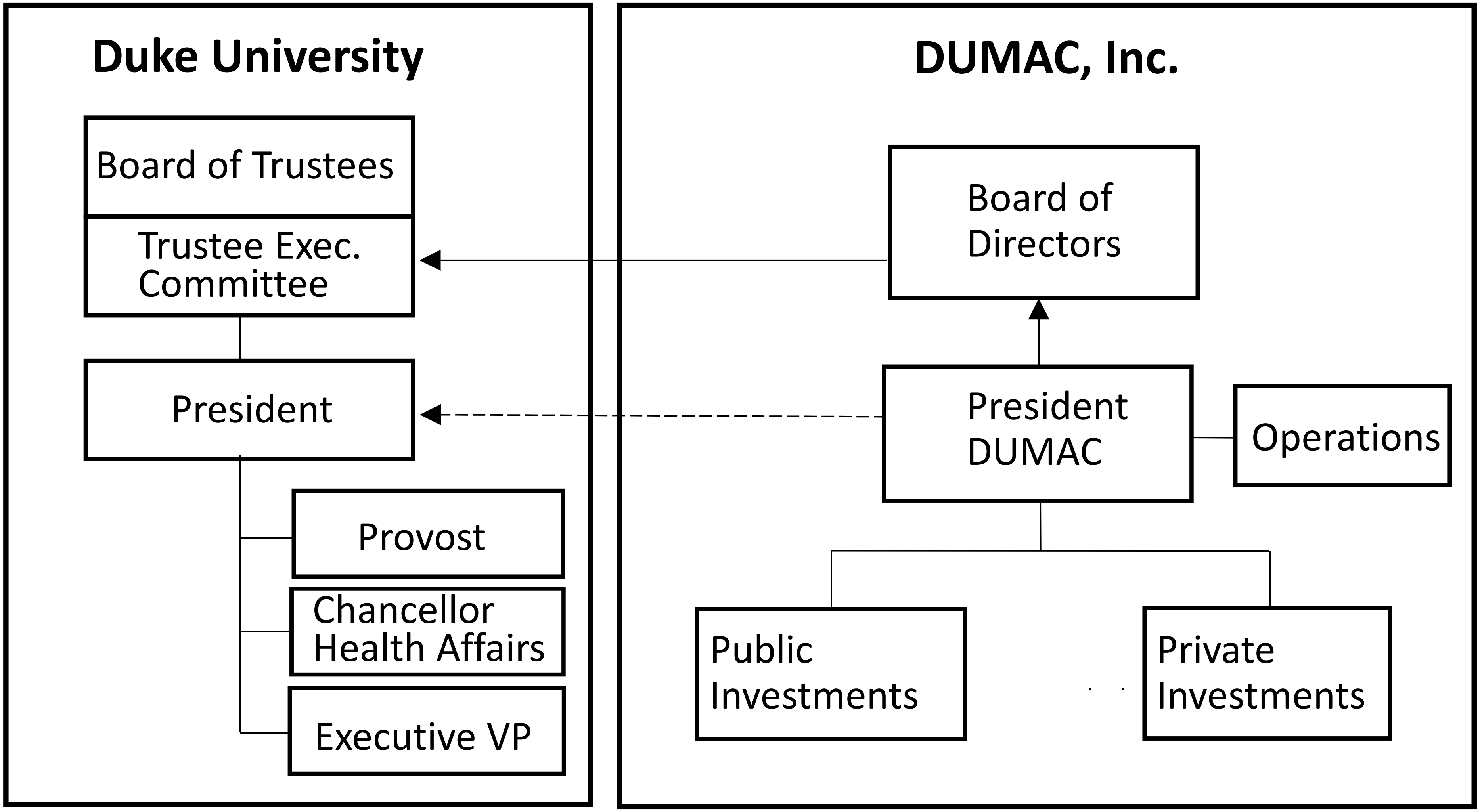
DUMAC, Inc.

ACIR Presentation
April 4, 2012

DUMAC Organization

- Separate Board of Directors composed of highly qualified investment professionals
- Professionally-staffed investment management organization
  - Established by the Trustees in 1989
    - Evolved over time to DUMAC, Inc.

Governance



Duke University
Board of Trustees
Trustee Exec. Committee
President
Provost
Chancellor Health Affairs
Executive VP
DUMAC, Inc.
Board of Directors
President DUMAC
Operations
Public Investments
Private Investments

Assets Managed

As of February 29, 2012

Pool	Total Assets
Long Term Pool (LTP)	$6.5 Billion
DUHS Pool (HSP)	$1.6 Billion
Employee's Retirement Plan	$1.2 Billion
The Duke Endowment	$2.7 Billion
Total	**$12.0 Billion**

ASSET ALLOCATIONS BY ASSET CLASS AS OF FEBRUARY 29, 2012

(All dollar amounts are in thousands)

	LTP $	HSP $	Total
GLOBAL EQUITY	$1,858,100	$515,388	$2,373,488
HEDGED STRATEGIES	1,437,365	391,253	1,828,617
PRIVATE CAPITAL	1,258,729	240,536	1,499,265
REAL ESTATE	790,212	149,851	940,063
NATURAL RESOURCES	678,955	129,530	808,485
COMMODITIES	406,748	133,151	539,899
FIXED INCOME	272,470	86,122	358,592
CASH MANAGEMENT	(232,287)	(67,914)	(300,201)
TOTAL	$6,470,291	$1,577,917	$8,048,208
SEPARATE ACCOUNT EQUITIES	$320,150	$84,655	$404,805

STANFORD UNIVERSITY
Investment Responsibility

CORE SOCIAL ISSUE PROXY VOTING GUIDELINE
Human Rights

SUBISSUE: Conflict Minerals (Expansion of corporate human rights policies for doing business in countries with a history of systemic human rights violations in conflict areas)

RESOLUTIONS: Resolutions acknowledge the issue, and ask companies to actively address this issue, and report to shareholders regarding efforts to end the violence against civilians in the Democratic Republic of the Congo (DRC) by avoiding the use of conflict minerals and their derivatives.

DESCRIPTION: Specifically, resolutions ask companies to make public statements condemning the use of conflict mineral revenues that fuel ongoing human rights abuses. Further, resolutions ask companies to adopt steps, develop policies and procedures, and report to shareholders their efforts and methods for identifying and tracking the source of raw materials; block the introduction of conflict minerals into the supply chain; prohibit the use of conflict minerals in corporate products; work with suppliers throughout the entire supply chain to ensure internal sourcing policies are adhered to, with NGOs, industry associations, investors, and other stakeholders to support diplomatic, political, and economic strategies to address one of the primary causes of the conflict. Conflict Minerals are defined as "minerals mined in conditions of armed conflict and human rights abuses, where there are reasonable grounds to believe that revenue from the sale of the minerals contribute to the funding of those who are committing these human rights abuses" in the Democratic Republic of the Congo (DRC).

PROPONENT'S ARGUMENT: Proponents believe it is essential for companies to acknowledge and take steps in the Democratic Republic of the Congo, to address the egregious human rights abuses that have continued for over two decades resulting in more than 5.4-million deaths to date. By not acting to adopt policies and methods of identifying, tracking, and monitoring source minerals, companies have allowed members of various armed militias to violate the basic human rights of large- and small-scale (Artisanal) miners, mineral transporters, their families including the most vulnerable - women and children – all the time claiming to protect civilians, while actually siphoning off corporate profits and the earnings of individual workers by demanding "taxes" (bribes) from those they are charged with protecting.

OPPONENT ARGUMENT: Some corporations indicate that they have a current Human Rights Policy in place but that it is difficult to hold their supply chains responsible for implementing and monitoring standards, and/or identifying the source of minerals in a conflict area, and that resolutions that mandate avoidance of conflict minerals are premature prior to the establishment of a reliable tracing mechanism. Further, requests to stop buying *any* minerals from the DRC are opposed on the grounds that this would harm those trying to make a legitimate living in the mining industry.

DISCUSSION: It has previously been established that Stanford agrees that companies must be aware of allegations of substantial social injury in countries with a history of systematic human rights abuses, and in which they operate, and that these companies should take appropriate action to adequately confirm and attempt to remedy those abuses in order to reduce financial and reputation risks. As was determined by Stanford with respect to its investments in companies doing business in South Africa at the time of Apartheid, it is appropriate to ask companies to take reasonable actions to help end human rights abuses in countries in which they do business.

VOTING POLICY: Stanford votes **“Yes”** on well-written and reasonable shareholder resolutions that ask companies for reports on their policies and efforts regarding their avoidance of conflict minerals and conflict mineral derivatives.

Board of Trustees Approved 6/10/10

as of 4/4/2012
Appendix M

Dear Members of the Duke University Board of Trustees,

As the deadliest conflict since World War II, violence in the Congo has claimed more than five million lives in the past decade. United Nations officials have called Congo the "rape capital of the world," where hundreds of thousands of women lay victim to unspeakable acts of sexual violence. Mineral mining is the largest contributor to violence in the region; the profits are used by armed groups to purchase weapons and sustain violence. What's even worse is that we're contributing to the problem right here at our university—these "conflict minerals" sourced from mines in the Congo can be found in all of our consumer electronics products. Without a consumer demand for conflict-free products, there is little hope for the capacity for peace in the region.

As one of the leading institutions for higher education in the country, we can use the power of our investments to create real change in the Congo. Our peers have already begun to take action: in June 2010, Stanford University's Board of Trustees passed a proxy voting guideline that instructs the University to vote for conflict-mineral conscious shareholder resolutions within companies in which it invests.

We, the undersigned, call for the enactment of a similar proxy voting resolution at Duke. We also call for Duke to explore further actions as a shareholder advocate and an educational leader. We represent a substantial university discourse on the issue of conflict minerals, and we implore you as a governing body to take action on this serious matter.

For more information, please visit: www.ConflictFreeDuke.org

Sincerely,

enough

The project to end genocide and crimes against humanity

From Mine to Mobile Phone

The Conflict Minerals Supply Chain

John Prendergast and Sasha Lezhnev

Increasing pressure on electronics companies to ensure that their products do not contain illicit minerals from the killing fields in eastern Congo is beginning to have a significant impact. With bills on conflict minerals moving through Congress, the electronics industry has spent about $2 million per month lobbying Senate offices to relax the legislation, which would increase transparency in the supply chains for tin, tantalum, and tungsten, or the 3Ts.[1] These mineral ores, as well as gold, are key elements of electronics products including cell phones and personal computers, and also are the principal source of revenue for armed groups and military units that prey on civilians in eastern Congo. Congo's mineral wealth did not spark the conflict in eastern Congo, but war profiteering has become the fuel that keeps the region aflame and lies beneath the surface of major regional tensions.[2]

Secretary of State Hillary Clinton highlighted the link between armed conflict, sexual violence, and minerals when she visited eastern Congo in August 2009, arguing that the world needs to do more "to prevent the mineral wealth from the DRC ending up in the hands of those who fund the violence."[3] The most effective way to achieve this goal is to ensure transparency in the consumer electronics supply chain to certify products as conflict-free. But many electronics companies maintain that their supply chains are too complex for this, because of the sheer number of actors involved in moving minerals from mines in Congo all the way to the gadgets in our pockets.

We traveled to eastern Congo shortly before the Secretary's trip to better understand how the 3Ts and gold make their way from conflict-ravaged areas in North and South Kivu all the way to cell phones, laptops, MP3 players, and video game systems. From this ground level view, the conflict minerals supply chain is far less intimidating than the industry would have consumers believe. In fact, the journey from mine to mobile phone can be broken down into six major steps that make the supply chain relatively easy to understand.

The supply chain in six steps

1. **The mines** — A gold rush with guns
2. **Trading houses** — looking the other way
3. **Exporters** — Minerals enter international markets
4. **Transit countries** — Origins obscured
5. **Refiners** — Minerals to metals
6. **Electronics companies** — Conflict minerals in your phone

Step 1: The mines: A gold rush with guns

"This region [eastern Congo] has so much of this coltan, you just dig on any hill and you find it."
- Denis, miner, Bukavu, South Kivu

"When the FDLR come to a mine, the first thing they do is get the girls and abuse them. Then they force many people to work and kill those who don't want to work."
- Jacques, former militia commander, Nyangezi, South Kivu

The journey of a conflict mineral begins at one of eastern Congo's many mines.[4] A recent mapping exercise by the International Peace Information Service, or IPIS, identified 13 major mines and approximately 200 total mines in the region.[5] Many geologists and companies believe that there may be a much greater abundance of minerals below the surface in eastern Congo, but decades of war have precluded large-scale geological exploration.

Kaniola gold mine, South Kivu.

Source: Grassroots Reconciliation Group / Sasha Lezhnev

Of the 13 major mines identified by IPIS in eastern Congo, 12 are currently controlled by armed groups. Some of the mines are controlled the Democratic Forces for the Liberation of Rwanda, or FDLR—a Rwandan militia led by organizers of the 1994 genocide in Rwanda. Other mines are managed by the Congolese army as a means of personal enrichment—a flagrant violation of Congo's mining laws, which prohibit the presence of the army in the mines. The soldiers, many of whom were militia fighters who only just recently integrated into the army, illegally "tax" miners, abuse the population—particularly the women and girls—and pay workers very poor wages. Both the United Nations and IPIS estimate that armed groups and military units control over 50 percent of the 200 total mines in eastern Congo.

Armed groups control the mines in different ways. For example, at some mines the FDLR forces people to work, while at others their relationship to the local population is more strictly commercial.[6] Working conditions at the mines are abysmal. As a leading minerals expert from the region described, "In the FDLR mines in Burinyi, the local population is there, but they are like slaves."[7] There are no health and safety standards for miners in the area from which the 3Ts and gold originate. The average wage for a miner is between $1 and $5 a day, and as the World Bank has documented, the mines are also filled with child laborers between the ages of 10 and 16, now missing out on precious years of school. Ben, 15, told us that he had worked in a mine since he was 10 and narrowly avoided a mine shaft collapse last year, a common occurrence. The conditions are slightly better in some of the mines, but as Robert, a local youth leader and civil society activist told us, "Overall, mine workers get very little from mining; in the armed areas it is only worse." Meanwhile, the armed groups rack up the profits at the mines, earning up to 90 percent of the profits in some areas.[8] Every dollar captured by the armed groups is a dollar that does not go into improving Congolese lives through better schools, health care, or jobs.

Child miner Patrice, 15, started working at the mine when he was eight years old.

Source: Grassroots Reconciliation Group / Sasha Lezhnev

Step 2: Trading houses: Looking the other way

> **Minerals dealer:** *"Look, this cassiterite [tin ore] is from one mine, and this on the right is from another mine."*
> **Government inspector:** *"Yes, and this one is from Shabunda, in the area where the FDLR is."*
> *- Dialogue at a minerals trading house, Bukavu*

From the mines, the minerals get transported to trading towns and then on to the two major cities in the region, Bukavu and Goma. For the gold trade, Butembo and Uvira are also key trading hubs.

Mineral trading house in Bukavu, South Kivu.

Source: Grassroots Reconciliation Group / Sasha Lezhnev

The 3Ts are brought by individuals—called *negociants* in French, or buyer-transporters—on their backs, by large trucks, and/or by planes in sacks the size of small garbage bags. The minerals are then sorted by trading houses called "*maisons d'achat*," or trading houses, which process the minerals. The majority of these traders are paid in advance by the exporters to whom they sell the minerals (see Step 3).

Gold is much more valuable by weight compared with the 3Ts. Illustratively, the going price of processed tin is just under $7 per pound, whereas gold is currently valued at more than $15,000 per pound. So while the 3Ts are hauled around in heavy sacks, gold can easily be concealed in a backpack or pocket. As a result, it is very easy to smuggle gold.

In the case of the 3Ts, because they trade in much larger volumes and have to be transported out of Congo by trucks or planes, the 3Ts are harder to conceal, making them potentially easier to register, document, and regulate. But on the whole, the majority of the transporters and trading houses currently operate in violation of Congo's mining laws without proper licenses and registration. Part of the problem is that the government charges $500 for licenses, which the association of traders told us was a prohibitively high price to pay. We were informed that only one in ten transporters in Bukavu were officially registered with the government, meaning that 90 percent operate illegally. However, people who know the business, such as government inspectors, told us that such dealerships and transporters are widely known: there are approximately 100 trading houses each in Bukavu and Goma.

A minerals dealer compares tin ore from a rebel-held mine and a government-controlled mine.

Source: Grassroots Reconciliation Group / Sasha Lezhnev

Contrary to what some companies allege, we found that it is fairly straightforward to tell from where the minerals originate, as both dealers at the buying houses and government mining inspectors demonstrated to us. Each sack of minerals had different coloration and texture, depending on which mine it came from.

But it is a dangerous business to provide transparency to this trade. One leading merchant told us that he would be killed if he went on camera to talk about how the trade works.

Armed groups control much of the transport from the mine to the buying house. They either take a large percentage of the profit from transporters—up to $40 per sack—or they transport the minerals themselves. According to our estimates, the armed groups generated approximately $75 million from mineral transport last year, out of the total of $180 million earned by armed groups from the mineral trade.

Step 3: Exporters: Minerals enter international markets

> *"The comptoirs [exporters] ask us if we buy minerals from the FDLR, but it's easy to lie and get around that. They don't check" - Thomas, trader, Bukavu*

Export companies then buy minerals from the trading houses and transporters, process the minerals using machinery, and then sell them to foreign buyers. These companies, known locally as *comptoirs*, are required to register with the government, and there are currently 17 exporters based in Bukavu and 24 based in Goma. Just as the exporters provide financing to their suppliers, the majority of them are paid in advance for their minerals by international traders from Belgium, Malaysia, and other foreign countries.

An exporter cited by UN experts as purchasing minerals from the FDLR.

Source: Grassroots Reconciliation Group / Sasha Lezhnev

In 2008, the U.N.-appointed experts tasked with monitoring the links between natural resources and conflict in eastern Congo identified several major exporters as actively purchasing minerals from mines controlled by the FDLR and other armed groups. Although the associations of exporters in both North and South Kivu have denied these accusations and insist that they only purchase minerals through legal channels, there are many loopholes that still allow conflict minerals to enter into the supply chain at this state.

At present, the only system that the exporters use to avoid buying conflict minerals is verbal assurance: they simply ask, "Did you get this from a conflict area?" If the seller says no, without providing any proof of where the minerals came from, then the exporter goes ahead with the purchase. According to our interviews, there has not been a single case where an exporter refused a batch of minerals because they believed it originated in a conflict mine. Also, the laws prohibiting exporters from buying minerals from unregistered traders are weakly enforced, making it all too easy for minerals of dubious origin to enter the market. So smugglers, even armed fighters themselves, can easily walk into an exporting company and sell the minerals without difficulty.

There are also massive concerns with the gold trade. According to Congolese government sources, in 2008 Congo legally exported only 270 pounds of gold, compared with an estimated 11 thousand pounds of production.[9] This means that the lion's share of the profits for the gold trade accrues to the armed groups, further fueling the cycle of violence in Congo.

Step 4: Transit countries: Origins obscured

> *"The border patrols don't check when you come across from Congo. Then you sell at one of two houses here [in Uganda]. They never ask for papers about where the gold comes from. Then they sell to Dubai. This business is very big, millions of dollars."— Frank, former minerals smuggler, Kampala, Uganda*

From the exporter the minerals are sent mainly by road, boat, or plane to the neighboring countries of Rwanda, Uganda, and Burundi.[10] Some minerals are legally exported, with taxes paid to the Congolese government, while others are smuggled across Congo's porous borders. Either way, conflict minerals form a major portion of the trade.

Gold powder is tested and weighed within dealerships.

Source: Grassroots Reconciliation Group / Sasha Lezhnev

Vast inconsistencies in the statistics recorded by neighboring countries attest to the scale of the smuggling, as minerals from Congo are labeled as having originated in Uganda, Rwanda, or Burundi. For example, Uganda officially produced less than $600 worth of gold in 2007, yet exported over $74 million worth of gold.[11] Similarly, Rwanda produced $8 million worth of tin ore but officially exported at least $30 million of tin.[12]

Congolese sellers either working independently or sent by the exporting companies work with buying houses and companies in Rwanda, Uganda, and Burundi. In Uganda and Burundi, these shops are unmarked houses. In Rwanda, buying companies mix Congolese minerals with those produced by Rwandan mines. In all three countries, the companies' proprietors rarely ask questions about where the minerals come from.

Congo Traffic Map

In Uganda and Burundi, buying shops also work closely with officers in the security services—the army and police of the country—so that their investments are "protected." Military officers receive cuts from this trade, and use their security connections to keep business flowing smoothly. This climate of repression and the real threat of violence is enough to dissuade most whistleblowers. Some of these traders have been put on United Nations sanctions lists for trading in conflict minerals, so they maintain underground profiles to avoid the spotlight and further sanctions.

There is nothing inherently wrong with neighboring countries importing and exporting Congolese minerals, but given the history of regional governments direct involvement in the illicit minerals trade, linkages between these governments and business and military elites who dominate the trade, and the continuing lack of transparency and due diligence on the part of these governments, much greater scrutiny of this step in the trade is necessary. These countries should insist that verifiable documentation accompanies the minerals, documenting the chain of custody to ensure that they are conflict free, and that they have been legally taxed by the Congolese authorities. Moreover, they need to start holding smugglers to account. The government of Rwanda has recently started a program to certify the origin of much of Rwanda's domestic mineral production. This is a step in the right direction and full implementation of this policy by all minerals companies in the country, as well as in Uganda and Burundi, should be encouraged.

Step 5: Refiners: Minerals to metals

> *"Minerals used to create the metals in electronics products are often mixed from various sources and exchanged in ways that prevent tracing."*
> *– Electronic Industry Citizenship Coalition statement on minerals used in electronics products.*

In order for the minerals to be sold on the world market, they have to be refined into metals by metal processing companies.[13] These companies, based mainly in East Asia, take the Congolese minerals and smelt or chemically process them together with metals from other countries in large furnaces.[14]

For tin, the most lucrative conflict mineral in eastern Congo last year, 10 main smelting companies process over 80 percent of the world's tin, almost all of which are based in East Asia.[15] For tantalum, four companies make up the overwhelming majority of the chemical processing market, based in Germany, the U.S., China, and Kazakhstan. For tungsten, there are several processing companies in China, Austria, and Russia. The main destination for Congolese gold is Dubai in the Middle East, though recent records indicate that Switzerland, Italy, and Belgium may also be processing gold from eastern Congo.

When it comes to tracing supply chains back to their sources, refiners are the critical link. After the mineral ore is refined into metal, it becomes impossible to distinguish tin or tantalum that originated in Congo from other sources, and supplies from all over the globe are mixed together at this step in the chain. This is why it is essential that these companies take pains to document where they are sourcing from and make their records subject to independent audits.

The International Tin Research Institute, or ITRI, a membership association consisting of major tin smelters, has developed an initiative to improve due diligence for tin from eastern Congo. Together with certain metal traders and Congolese exporters, they have developed a three-step approach to developing a more traceable supply chain. So far, the measures taken remain insufficient, but with a more robust system of independent audits that would ensure that companies are not responsible for policing themselves, this initiative could positively impact the trade.[16]

Inside a tin smelter.

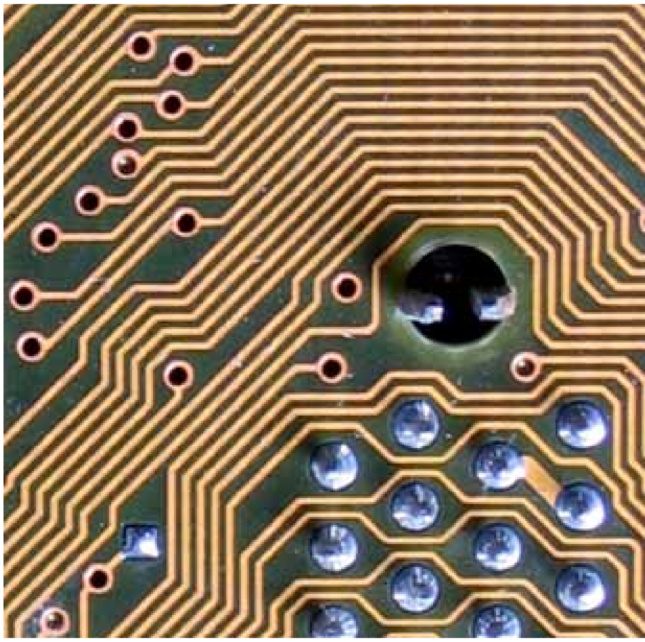
Source: AP Photo / Dado Galdieri

The U.S. Congress, led by Senators Sam Brownback, Russ Feingold, and Dick Durbin, has also proposed legislation that would require companies to trace the 3T minerals sourced from Central Africa back to their original mines. The House of Representatives, led by Rep. Jim McDermott, is working on a similar bill, which would put in place audits of refining facilities to help ensure they are conflict free. These are all welcome steps in the right direction, although their success will depend on the results they deliver on the ground.

Step 6: Electronics companies: Conflict minerals in your phone

> *"I hear these minerals are used in mobile phones, but I don't know how. Why don't the big companies make sure they are not buying from the FDLR? They have that power and money, surely."*
> *– Robert, youth civil society activist, Bukavu,*

Finally, the refiners sell Congo's minerals onto the electronics companies. The electronics industry is the single largest consumer of the minerals from eastern Congo. The now-processed metals usually go through a few sub-stages here—first to circuit board and computer chip manufacturers, then to cell phone and other electronics manufacturers, and finally to the mainstream electronics companies such as Intel, Apple, Nokia, Hewlett Packard, Nintendo, etc. These companies then make the products that we all know and buy—cell phones, portable music players, video games, and laptop computers. Because companies do not currently have a system to trace, audit, and certify where their materials come from, all cell phones and laptops may contain conflict minerals from Congo.



Tin solder is used to affix components to circuit boards.

Source: flickr.com / quapan

The electronics industry is not the only one that uses the 3Ts and gold, but it is the largest. Other industries with a significant stake include tin can manufacturers, industrial tool and light bulb companies for tungsten, and aerospace and defense contractors, as well as the banking and jewelry industries in the case of gold.

Steps toward a solution

These six steps connect our cell phones and computers to the conflict in eastern Congo. This connection presents an opportunity for consumers to make a difference by demanding that companies sell us verifiably conflict-free products.

A recent Enough Project strategy paper provided an overview of a comprehensive policy to end the trade in conflict minerals, incorporating corporate responsibility, security measures, governance reforms, and livelihoods initiatives.[17] Consumers and companies have a critical role to play, by demanding three steps to enable Congo's minerals to benefit its people rather than the armed groups that prey upon them:

- **Trace:** Companies must determine the precise sources of their minerals. We should support efforts to develop rigorous means of ensuring that the origin and production volume of minerals are transparent.

- **Audit:** Companies should conduct detailed examinations of their mineral supply chains to ensure that taxes are legally and transparently paid to the Congolese government and guard against bribery and fraudulent payments. Credible third parties should conduct or verify these audits.

- **Certify:** For consumers to be able to purchase conflict-free electronics made with Congolese minerals, a certification scheme that builds upon the lessons of the Kimberley Process will be required. Donor governments and industry should provide financial and technical assistance to galvanize this process.

What you can do

Your cell phone doesn't have to fuel the deadliest war in the world. Use it to change the equation for Congo. It's your call to make.

Call, email, or meet with your Senators and urge them to both cosponsor *and* help strengthen the Congo Conflict Minerals Act of 2009 (S.891). Talking points can be found at www.raisehopeforcongo.org or you can dial the U.S. Capitol switchboard at (202) 224-3121.

Help us increase demand for conflict-free electronics. Visit www.raisehopeforcongo.org to email the biggest buyers of Congo's conflict minerals—major electronics companies—and let them know that you want to buy conflict-free products. The message is clear: "If you take conflict out of your cell phone, I will buy it."

Stay in touch! Text the word "Congo" to 228488 (ACTIV8) to get updates and actions from RAISE Hope for Congo.

Endnotes

1 There is also currently a House bill being drafted by Rep. McDermott, which would require audits of minerals refining facilities, and which some electronics companies have reportedly supported. Jonathan Broder, "In the Business of Change," Congressional Quarterly, September 14, 2009.

2 For a background on the crisis, see John Prendergast and Noel Atama, "Eastern Congo: An Action Plan to End the World's Deadliest War," (Washington: Enough Project, 2009).

3 Janine Zacharia, "Clinton Calls on Congo to Stop Mineral Wealth Funding Conflict," Bloomberg News, August 11, 2009.

4 The 3Ts are produced from mineral ores: tin from cassiterite, tungsten from wolframite, and tantalum from columbite-tantalite, known throughout Congo as coltan. To the untrained eye, these minerals look like ordinary rocks, and are often found together in the same ore. For gold, there are three types of mines – underground, in which miners carve out a section of a mountain and dig tunnels beneath the earth; pit, in which miners dig in open ditches; and alluvial, which is panning for gold in rivers, similar to the methods used during the California gold rush over a century ago. See also Dan Fahey, "Le Fleuve D'Or: The Production and Trade of Gold from Mongbwalu, DRC," (L'Afrique des Grands Lacs Annuaire 2007-2008).

5 This includes North and South Kivu, and the major mines are identified as Minembwe, Misisi, Mpofi, Bisie, Gakombe, Bwina, Benzia, Wamiti, Lugushwa, Kinyinya Millimani, Ihana group, Bibatama – Rive Gauche, and Mugerero, each of which have over 500 workers at the mine site. See, "Interactive map of militarised mining areas in the Kivus (August 2009)" available at http://www.ipisresearch.be/maps/MiMiKi/Areas/web/index.html.

6 At the mines that are not controlled by armed groups, civilians work together with local chiefs to exploit the minerals. In addition, there are sizeable mines located outside of the conflict zone in the neighboring provinces of Katanga and Maniema, whose trading routes pass through the Kivus. See also, Steven Spittaels and Filip Hilgert, "Accompanying note on the interactive map of militarised mines in the Kivus", available at http://www.ipisresearch.be/fck/file/20090810_mining_kivus.pdf.

7 Interview with civil society mining expert, Bukavu, June 10, 2009

8 Interviews with mining inspectors and civil society representatives, June 10, 2009

9 Cadet Abedi, "La RDC perd 70 millions $US à cause de la fraude du métal jaune," AllAfrica.com, July 15, 2009, available at http://fr.allafrica.com/stories/200907150336.html

10 Sometimes this stage is skipped, and the minerals are flown directly to refiners in Step 5. In other cases, metals trading companies based mainly in Europe buy the minerals from Congo and Rwanda and sell them onto refiners.

11 "Uganda Ministry of Energy and Minerals, Annual Report for 2007".

12 The official price reported in Rwanda in 2007 was US$7.09 per kg of tin ore, but the world price for tin in 2007 was US$14.10. While allowing for lowered prices of tin ore before it is smelted, there is still potentially a price discrepancy here, meaning that the real value of exported tin ore from Rwanda could be higher. There is a vast discrepancy between what H.C. Starck paid for tin ore from Rwanda (an average of $12,410 per ton in 2007) and what other companies paid (an average of $7,603 per ton). The overwhelming majority of these minerals came from eastern Congo. See Nicholas Garrett and Harrison Mitchell, "Trading Conflict for Development: Utilising the Trade in Minerals from Eastern DR Congo for Development," (Resources Consulting Service LLC, 2009).

13 The refiners sometimes also have related companies which process the metals into alloys and solder, in order for them to be usable in electronics and related products.

14 Some of the minerals, such as tantalum, are chemically processed using a heated salt mixture rather than smelted into metals. There are currently no smelting or chemical processing facilities in Central Africa, although there is a tin smelting plant in Gisenyi, Rwanda that may soon reopen.

15 The top 10 companies produced 259,711 combined tons of tin in 2007, and the United States Geological Survey estimates that world tin production in 2007 equaled 320,000 tons. ITRI, "Review of Tin Use and Recycling for 2007"; United States Geological Survey, "Report for Tin," 2009.

16 ITRI Fact Sheet, "Tin Supply from the Democratic Republic of Congo," available at http://www.itri.co.uk/POOLED/ARTICLES/BF_PARTART/VIEW.ASP?Q=BF_PARTART_310250

17 The Enough Project with Grassroots Reconciliation Group, "A Comprehensive Approach to Congo's Conflict Minerals," (2009), available at http://www.enoughproject.org/publications/comprehensive-approach-conflict-minerals-strategy-paper

Enough is a project of the Center for American Progress to end genocide and crimes against humanity. Founded in 2007, Enough focuses on the crises in Sudan, Chad, eastern Congo, northern Uganda, Somalia, and Zimbabwe. Enough's strategy papers and briefings provide sharp field analysis and targeted policy recommendations based on a "3P" crisis response strategy: promoting durable peace, providing civilian protection, and punishing perpetrators of atrocities. Enough works with concerned citizens, advocates, and policy makers to prevent, mitigate, and resolve these crises. To learn more about Enough and what you can do to help, go to www.enoughproject.org.

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BSR

Conflict Minerals and the Democratic Republic of Congo

Responsible Action in Supply Chains, Government Engagement and Capacity Building

May 2010

www.bsr.org

About this Report and the DRC Conflict Minerals Forum

This report was originally written to provide background information and resources for participants in the multi-stakeholder Democratic Republic of Congo Conflict Minerals Forum, held May 12-13 in Washington, DC, and has been updated to reflect learnings from that forum. The Forum was jointly convened by BSR and the Responsible Sourcing Network, a project of As You Sow. Both the report and Forum were made possible by a grant from the GE Foundation.

The Conflict Minerals Forum has grown out of two concurrent efforts. In October 2009, Dell, HP, Intel, Motorola and Philips sponsored a BSR-hosted meeting of industry representatives and stakeholders to develop wider industry support and alignment on conflict minerals issues. Shortly thereafter, the Responsible Sourcing Network initiated monthly multi-stakeholder calls focused on DRC conflict minerals, which continue to provide a venue for participants to discuss ongoing efforts, learnings, and opportunities for engagement.

This report is based on literature review and resources provided by organizations engaged in raising awareness and addressing concerns about conflict minerals, as well as information shared at the DRC Conflict Minerals Forum. It has a particular focus on identifying opportunities for company involvement in addressing DRC conflict minerals issues.

The author would like to thank those who contributed to and reviewed the report. Any errors that remain are those of the author. Please direct comments or questions to Marshall Chase at mchase@bsr.org.

ABOUT BSR
A leader in corporate responsibility since 1992, BSR works with its global network of more than 250 member companies to develop sustainable business strategies and solutions through consulting, research, and cross-sector collaboration. With six offices in Asia, Europe, and North America, BSR uses its expertise in the environment, human rights, economic development, and governance and accountability to guide global companies toward creating a just and sustainable world. Visit www.bsr.org for more information.

Photos: All photos in this report are courtesy of Pact, www.pactworld.org

Contents

1 I. Introduction

5 II. Tin, Tantalum, Tungsten and Gold: Context and Supply Chain Descriptions
» Tin Sourcing and Uses
» Tantalum Sourcing and Uses
» Tungsten Sourcing and Uses
» Gold Sourcing and Uses
» Supply Chain Complexity
» Related Issues
» Observations

11 III. Supply Chain Responsibility
» Approaches
» Challenges
» Current Efforts
» Opportunities for Company Engagement
» Opportunities for Stakeholder Engagement
» Observations

18 IV. Government Engagement
» Approaches
» Challenges
» Current Efforts
» Opportunities for Company Engagement
» Opportunities for Stakeholder Engagement
» Observations

24 V. Development and Capacity-Building
» Approaches
» Challenges
» Current Efforts
» Opportunities for Company Engagement
» Opportunities for Stakeholder Engagement
» Observations

27 VI. Conclusion

28 Appendix A: Industry Uses of Tin, Tantalum, Tungsten and Gold

I. Introduction

The conflict in the Democratic Republic of Congo (DRC) has claimed more than 5.4 million lives since it began in the late 1990s. Now centered in the east of the country, it involves a range of militant groups - local militias, Congolese and Rwandan rebels, and the Congolese army - that use control over the country's rich mineral deposits as a source of financing.

Photo courtesy of Pact, www.pactworld.org

Over 50% of the mines in the eastern DRC are controlled by armed groups,[1] who demand taxes, bribes or other payments for the minerals extracted from the mines. Although extremely difficult to know the amount of funding with certainty, one estimate from the Enough Project, an NGO leading a campaign focused on crimes against humanity, places the figure between $140 and $225 million in 2008.[2]

This issue cuts across industries and requires the support of a variety of stakeholders. As a result, there is a clear incentive to take a collaborative approach to eliminating conflict minerals from all supply chains and addressing the critical situation in the DRC.

The contribution of eastern DRC mineral resources to funding the conflict, and the need to sever this link, has been widely discussed by a range of organizations and governments. Although much of the public focus has been on conflict minerals use in the electronics industry, they feed a range of complex supply chains, serving as raw materials for component parts in everything from cell phones and cutting tools to jet engines and jewelry. NGO campaigners, development organizations, governments, industry working groups and others are attempting to address the link between minerals and the conflict in a variety of ways. The electronics and tin industries have been among the most active in identifying approaches to prevent conflict minerals from entering product supply chains, while recent NGO efforts have focused on raising awareness about connections between conflict minerals and the jewelry and auto industries.

Government actions have included legislative proposals to encourage supply chain verification schemes, support for regional peacebuilding, programs to strengthen governance in the DRC, and other efforts.

Solutions that effectively address DRC conflict minerals cut across a number of industries and require action from a variety of stakeholders. Efforts should be aligned and mutually supporting, and should communicate with each other to limit duplication of effort. As a result, there is a clear incentive to take a collaborative approach to eliminating conflict minerals from all supply chains and addressing the critical situation in the DRC.

This report offers an introduction to the key issues related to conflict minerals from the DRC. It gives an initial overview of the key minerals involved, their supply chains and contribution to the conflict. It then examines three areas for action, highlighting the need for holistic approaches that align and encourage communication among efforts in all areas as well as noting potential opportunities for corporate and stakeholder engagement in existing efforts. These action areas are:

- Supply chain responsibility
- Government engagement
- Economic development and capacity-building

Additional background information about the conflict itself and its link to minerals sourcing can be found in reports and websites from a range of sources, including the United Nations,[3] Enough,[4] Global Witness,[5] Resource Consulting Services,[6] and others.

Summary: Opportunities for Company Engagement

Companies need a holistic approach to this issue that includes an understanding of supply chain, government and local development efforts and how they interact, and considers potential action in each area.

The sections below highlight a range of opportunities for company engagement. These are not exhaustive lists, and points may not be relevant for every company, but they are intended as discussion starters for the DRC Conflict Minerals Forum. It should also be noted that, although these opportunities are broken out into distinct categories, companies need a holistic approach to this issue that includes an understanding of supply chain, government and local development efforts and how they interact, and considers potential action in each area. The opportunities highlighted below include:

Supply Chain Responsibility:

- Public commitments not to purchase conflict minerals or include conflict minerals in any final products, supported by substantive supply chain efforts
- Internal procurement review and engagement with suppliers to identify and address potential conflict mineral use and sources in company supply chains
- Engagement in industry efforts focused on supply chain tracking, tracing and due diligence, such as the GeSI-EICC Extractives Workgroup
- Support for efforts to align, expand and strengthen various supply chain responsibility programs (such as those from ITRI, GeSI-EICC, BGR and ICGLR) across industries and minerals from the region
- Highlighting conflict minerals as an issue with relevant industry associations

Government Engagement:

- Engage with legislative and regulatory efforts to support supply chain transparency, for example by supporting efforts to enact such legislation, or helping to inform lawmakers of the uses and limitations of such efforts
- Consider supporting or contributing to the development of broader (non-supply chain focused) legislation to improve the situation in the Congo through efforts such as development assistance and peace-building. By improving local conditions, such programs would also help stabilize supply chains for critical raw materials.
- Partner with international aid programs (including public-private partnerships) that can assist in local development[7]
- Consider providing tools and equipment to support good governance in the region
- Support improved governance practices, for example through EITI and company-government interactions that can be supported by industry associations and others, or by supporting steps to formalize the artisanal mining sector in the DRC
- Becoming a signatory of the Voluntary Principles, or encouraging suppliers operating in the DRC to do so.
- Publish position statements laying out what signatories think should be done to address conflict minerals issues
- Participate in or support existing government efforts to address the conflict minerals issue. For example, ITRI and others attended the recent ICGLR meeting focused on a regional minerals certification scheme.

Development and Capacity-Building:

- Work with community-based efforts to ensure local benefit from mining revenues
- Support for the development of legitimate local trade and transport networks, perhaps through emerging certification schemes
- Support local efforts to encourage formalization of mining, possibly in conjunction with government efforts
- Engagement with community-based efforts through corporate philanthropy efforts
- Identification of ways to link “bottom-up” on-the-ground efforts to produce conflict-free minerals with more “top-down” certification efforts being driven by industry groups and governments

Summary: Opportunities for Stakeholder Engagement

Similar to opportunities for company engagement, the sections below highlight a range of opportunities for stakeholder (NGO, investor and other) engagement. These are not exhaustive lists, and points may not be relevant for every organization, but they are intended as discussion starters for the DRC Conflict Minerals Forum. These opportunities include:

Supply Chain Responsibility:

- Providing up-to-date information on the situation on the ground in Eastern DRC
- Contribution to and review of certification schemes and accountability measures

» Encouraging companies to implement supply chain responsibility policies and practices

» Encouraging various schemes and industries to align their efforts

Government Engagement:

» Engage with legislative, regulatory and other efforts to help inform them and generate effective solutions through multi-stakeholder meetings and other efforts

» Providing up-to-date information on local and regional rule of law and good governance efforts in the DRC, its neighboring countries, and with home countries and multi-national corporations

» Contribute to national and DRC legislative and diplomatic efforts

» Support or contribute to the development of broader diplomatic and political action to address the conflict, such as efforts to develop regional peace talks

Development and Capacity-Building:

» Strengthen relationships with local NGOs and support their efforts (promotion of activities and/or fundraising)

» Support local community involvement in developing traceability and verification schemes and safe mining practices

» Support efforts to diversify work opportunities to alleviate the pressure on mining revenues

» Ensure the stories of community groups are told to corporate boards of directors, investors and faith-based stakeholders

» Push for the formalization and appropriate taxation of artisanal and large-scale mining


Photo courtesy of Pact, www.pactworld.org

II. Tin, Tantalum, Tungsten and Gold: Context and supply chain descriptions

The Eastern DRC is a rich source of tantalum, tin, and tungsten (the “3Ts”), as well as gold, and these minerals have helped to fund the continued fighting in the region for years.[*] In the context of this report, “conflict minerals” are those that result in profits for any of the various armed groups in the Eastern DRC and surrounding region, including:

» Congolese rebel groups
» Units of the Congolese army
» Local militias
» Rebel groups and armed forces from neighboring states such as Rwanda and Uganda

These groups differ in their dependency on the minerals trade. Although it is difficult to develop accurate estimates and circumstances are constantly changing, Resource Consulting Services (RCS) estimated that in 2008 the Forces Démocratiques de Liberation du Rwanda (FDLR, a Rwandan Hutu rebel group) obtained up to 75% of its revenue from the taxation of DRC minerals (predominantly gold), while that figure was up to 95% for a brigade of the Congolese National Army (the Forces Armées de la République Démocratique du Congo, FARDC), and up to 15% for the Congrès National pour la Défense du Peuple (CNDP, a former Congolese rebel group being integrated into the FARDC).[8]

There are two significant ways that these groups profit from the minerals trade in the Eastern DRC:

» The groups may control mines directly: A recent mapping exercise conducted by IPIS[9] found 13 major mines and over 200 total mines in the Eastern DRC. Of these, 12 major mines and over half of all mines are controlled by armed groups.
» The groups may illegally “tax” the transport and trade of minerals along routes that they control.

These revenues are a major source of funding for armed groups: An “average” estimate developed by the Enough project (using statistics from RCS) suggested that Eastern DRC armed groups may have seen $185 million from the minerals trade in 2008.[10] An AK-47, in comparison, may cost $30,[11] while individual combatants are paid little.[12]

At the same time that these mines support armed groups, they also contribute to the livelihood of a large number of Congolese and others. As many as one million people in the Great Lakes Region are economically dependent on the minerals trade,[13] while the World Bank estimates 10 million Congolese (16% of the population) in total are in some way dependant on the artisanal mining industry in the country.[14]

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[*] Cobalt, copper and diamonds are also significant resources in the DRC, but are generally not mined in the Eastern DRC conflict region and their extraction does not immediately involve armed groups.

Tin (Cassiterite)

DRC SOURCING AND GLOBAL CONTEXT

At present, cassiterite ore (which is refined to produce tin) is the leading mineral in terms of dollar value contributing to armed groups in the DRC. The country is the world's sixth leading producer of tin, although estimates of total production vary. The Enough Project calculates that the eastern DRC produces over 24,000 metric tons of tin, or 6-8% of global production.[15] This likely contributed about $115 million to armed groups in 2008.[16] Over half of this material comes from the Bisie mine in North Kivu, which has changed hands among armed groups several times and is currently controlled by a unit of former CNDP rebels now integrated into the Congolese army.[17]

Demand and prices for tin have fluctuated considerably over the past several years. A 2008 Reuters news report suggests that instability in the DRC and tight supply contributes to this global price volatility, demonstrated by a 31% price increase coinciding with a rebel offensive against the country's primary tin trading center.[18]

USES

According to statistics from ITRI, the leading tin industry association, over half of global tin supply is used in solders (predominantly for electronics), where its use has rapidly increased with the phase-out of lead-based solders. Significant amounts are also used in tinplate (providing a corrosion-resistant coating for steel food cans and other materials), and a range of chemical applications including catalysts and PVC stabilizers. Notable amounts are also used in brass and bronze, and glass manufacturing.[19] (See Appendix A for more detailed breakdown of uses for tin and other metals).

Tantalum (Coltan)

DRC SOURCING AND GLOBAL CONTEXT

Although coltan ore (refined to produce tantalum) is not as significant as cassiterite in its financial contributions to the conflict in the DRC, it was the first conflict metal from the DRC to be the subject of global concern in the early 2000s, as the price for the mineral spiked in conjunction with growing demand from the electronics industry. The DRC is one of the leading producers of this material, estimated by one source at 155 metric tons (tantalum equivalent) annually, or 15-20% of global production[20] (in contrast, nominal U.S. Geological Survey (USGS) figures estimate 100 metric tons of production in 2009 and 8.6% of the global total,[21] indicating some of the variability in statistics related to these minerals). This may have provided armed groups with about $12 million in 2008.[22]

USES

USGS estimates that tantalum capacitors for use in automotive electronics, cell phones, computers and other applications account for over 60% of global use of the metal.[23] Other documents estimate that an additional 10% may be used in superalloys (e.g. for jet and power plant turbines),[24] 10% in corrosion-resistant chemical equipment,[25] and 5% in cutting tools.[26]

Tungsten (Wolframite)

DRC SOURCING AND GLOBAL CONTEXT

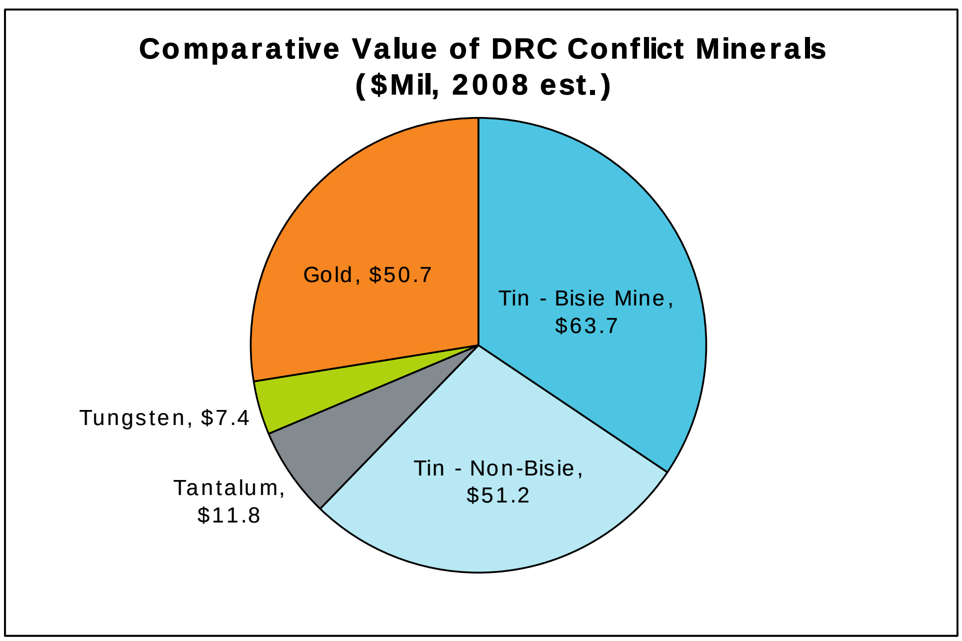
The Enough Project estimates that annual production of wolframite (tungsten ore) in the eastern DRC is equivalent to 1,300 metric tons of tungsten, approximately 2-4% of global production.[27] This would make the DRC the world's fifth largest producer of the mineral according to USGS statistics.[28] Overall, tungsten is a smaller but still significant total contributor to the coffers of armed groups, contributing perhaps $7.4 million in 2008.[29]

The end uses of tungsten are far more widely distributed and less visible to end consumers than the other three conflict minerals. Where the electronics industry is the dominant user of tin and tantalum, and jewelry is the leading use of gold, cemented carbides and tungsten steel are used in a large number of different supply chains.

USES
The use of tungsten is heavily concentrated in cemented carbides ("hardmetals," 60% of global use) and tungsten steel (20% of use), materials used in heat and wear-resistant applications such as cutting tools. These materials are used in a wide range of industries, from mining and steelmaking to precision machining and manufacturing (e.g. automotive and aerospace components). Tungsten is also used in other alloys for wear-resistant components like valves, bearings and pistons; superalloys used in jet and power plant turbine components; filaments and electrodes in many types of electric lighting; and in a variety of applications in the electronics industry.[30] Geographically, China has become the leading global consumer of tungsten in recent years.

Notably, the use of tungsten is far more widely distributed across industries and less visible to end consumers than the other three conflict minerals. Where the electronics industry is the dominant user of tin and tantalum, and jewelry is the leading use of gold, cemented carbide or tungsten steel cutting tools and other components are used in a large number of different supply chains, and may not make it into consumer-facing products.

Figure 1.



Source: The Enough Project / RCS Data

Gold

DRC SOURCING AND GLOBAL CONTEXT
Gold from the eastern DRC is the smallest conflict mineral by volume, at 6.5 tons, but second only to tin in its contribution to armed groups—estimated at about $50 million in 2008.[31] Gold's high value, low-volume nature makes it much easier to conceal and transport than the "3T" metal ores, and Resource

Consulting Services notes that 95% of the eastern DRC's gold is traded informally.[32] In 2008, for example, the country legally exported only 270 pounds of gold, compared with an estimated 11 thousand pounds of domestic production.[33] Although not all of the profits from unaccounted for gold may accrue to armed groups, a significant portion does (particularly to the FDLR, a Rwandan Hutu rebel group), and this ease of concealment may make it hard to establish formal on-the-ground tracking mechanisms for the metal. Although it is an important mineral in funding the conflict, the country produces less than one percent of the global total of gold.

USES

Nearly 80% of the gold produced globally is used to make jewelry.[34] Other applications include the financial industry (e.g. coinage) and some uses in electronics, medical equipment and aerospace.

Supply Chain Complexity

Conflict minerals move through complex and non-transparent supply chains, beginning with artisanal mines, becoming blended with minerals sourced from other regions, and go into the manufacture of a range of products, including electronics, aircraft components, medical devices, jewelry, and others.

As discussed in a variety of sources including a recent report from RESOLVE,[35] these minerals move through complex and non-transparent supply chains, beginning with artisanal mines, becoming blended with minerals sourced from other regions, and go into the manufacture of billions of items in a range of industries, including electronics, aircraft, medical devices, jewelry, and others.

As noted above, over 200 mines have been identified in the eastern DRC. Virtually all of this mining is artisanal (done with minimal mechanization, usually on a small scale). The Congolese government generally does not recognize the legitimacy of artisanal mining, and as a result their activities are usually illegal, or at best exist in a legal gray area. Engaging with these miners may be difficult because of their extra-legal activity, both because there is no central government record of them and because they may be reluctant to disclose their activities to others. Operating on the legal margins also leaves artisanal miners open to exploitation by armed groups, because they cannot go to the government for protection against such exploitation.

Minerals from these mines are transported via a variety of routes, and pass through the hands of a range of négociants (sales agents), comptoirs (trading houses), exporters and traders before reaching a smelter or other processor in the global marketplace (see Figure 2). At any point in this chain, minerals from various mines (both "conflict" and "conflict free") can be mixed together, and records of mineral origins may not be kept or passed to new owners.

Neighboring countries, including Rwanda, Uganda, Burundi and Tanzania play a significant part in these mineral trade routes. A recent UN Group of Experts report[36] highlighted the following, among other points:

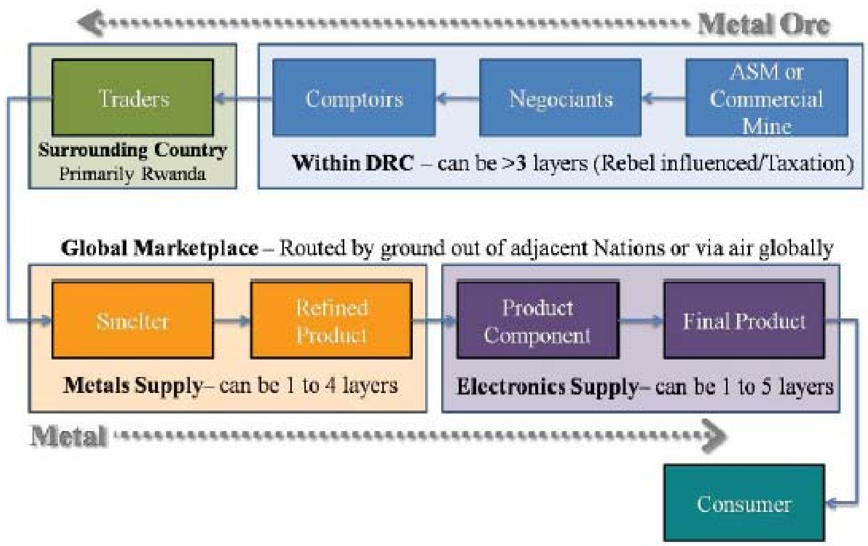
» The FDLR and other armed groups are estimated to obtain millions of dollars yearly from gold that is trafficked through Uganda and Burundi to the United Arab Emirates

» Allegations that Tanzanian officials support an arms dealer to the FDLR desiring to retain their influence over the smuggling of mineral resources from South Kivu to Tanzania

» Ugandan gold traders have allegedly been encouraged to declare Congolese gold they imported or re-exported from Uganda as gold of southern Sudanese origin on their official documentation

» Documentation providing evidence that significant amounts of cassiterite are smuggled from the DRC to Rwanda, which has helped finance CNDP and FARDC units.

Figure 2. Example mineral supply chain from DRC to consumer product



Source: RESOLVE, "Tracing a Path Forward," p10, adapted from EICC-GeSI Extractives Workgroup product

These minerals ultimately reach world markets and make their way into a wide variety of products. There is some aggregation by industry or product category, but that does not mean that supply chains are simple or easy to trace. For example, although tin and tantalum are predominantly used in the electronics industry, these minerals (as well as tungsten and gold) are used in small amounts in billions of electronics and other products worldwide. These products are sold under a large number of brand names, with products and components manufactured by a much larger number of suppliers.

Related Issues

Although this paper focuses specifically on the relationship between minerals sourcing and the armed conflict in the region, there are a number of related issues that are also a concern when examining minerals supply chains in the region. These include human rights and labor issues, environmental degradation, and large-scale mining efforts—touched on very briefly here:

HUMAN RIGHTS AND LABOR ISSUES

The conflict in the eastern DRC includes significant human rights abuses, including attacks on civilians[37] and sexual violence conducted by armed groups.[38] There are also extensive mining labor rights and safety concerns in the eastern DRC and elsewhere in the country. For example:

» The U.S. Department of Labor has noted that the DRC demonstrates "the worst forms of child labor," including forced labor in the mining sector.[39]

» Gender issues are very important, as women play significant roles in mining in the region and face particularly significant challenges including sexual violence and abuse, and gender discrimination.[40]

» There are no enforced health and safety standards for mines in the region, and mine shaft collapses are a common and often deadly occurrence.[41]

ENVIRONMENTAL DEGRADATION
Mining is linked with deforestation and environmental degradation in the conflict areas, caused for example by the dumping of mine tailings into river systems.[42]

LARGE-SCALE MINING
Some larger mining companies do have claims in the conflict area,[43] and one Canadian junior miner (Banro Gold) has begun operating in the region. Large-scale mining operations could become sources of 'conflict-free' minerals from the region, but such operations have also been subject to criticism for their displacement of artisanal mining, and poor human rights and environmental records.[44]

Observations

If solutions—such as substitutes or verifiably conflict-free minerals—are found for one industry such as electronics, or for one mineral such as tin, then it will do little to change the overall situation—the conflict minerals will likely continue to be purchased by other organizations outside of effective supply chain governance schemes, and the use of minerals to finance armed groups will continue.

It is evident from the figures above that the electronics industry is the leading user of tin and tantalum, and as a result, has a key role to play in addressing the issue of DRC conflict minerals in the supply chain. It is also important to note, however, that this is a snapshot in time, and an exclusive focus on tin, or on the electronics industry, does not adequately consider issues that create substantial variability over time. Changes in minerals prices, production, industry uses and other factors over time can significantly alter the mix of minerals and their impact on the conflict. For example, the use of tin in the electronics industry has dramatically increased as that metal has replaced lead in solders. At the same time, the price of gold has increased dramatically relative to other minerals over the past several years—particularly when compared with tungsten, the price of which has remained relatively stable.

If solutions such as substitutes or verifiably conflict-free minerals are found for one industry such as electronics, or for one mineral such as tin, then it will do little to change the overall situation. The conflict minerals will likely continue to be purchased by other organizations outside of effective supply chain governance schemes, and the use of minerals to finance armed groups will continue. As a result, it is important that multiple industries support coordinated supply chain due diligence down to the mine level, while also working with mutually-supporting government engagement and local capacity-building efforts.

III. Supply Chain Responsibility

As discussed above, minerals from the eastern DRC conflict zones are destined for a range of industries and products, from electronics and jewelry to cutting tools and aircraft engines. Developing a clear picture of these supply chains and determining whether conflict minerals form a part of them is a necessary step in efforts to eliminate the link between the minerals and conflict in the country. Such efforts can help identify and reduce incentives for armed groups in the region to use bribes, violence and other means of coercion to control mining areas and trade. As a result, supply chain efforts have received significant attention from NGOs, industry and governments, and a range of efforts are being developed (outlined below).

Identifying the chain of ownership and origin of these minerals, however, can be challenging. The supply chains include multiple entities, from small scale producers, to local consolidators and traders all over the world, as well as smelters and other processors. In addition, the smelting and refining of minerals often combines ore from multiple sources—various mines in various regions—making it extremely difficult to trace their origin after refining occurs. There are also a range of challenges and differing points of view about how supply chain responsibility efforts should be implemented. Some groups suggest that the schemes being developed are insufficiently detailed to ensure the elimination of conflict minerals from supply chains, others are concerned that such efforts may result in blanket minerals bans that would increase hardship for millions of people dependent on artisanal mining in the region, and others feel that a paper trail without sufficient people monitoring the situation on the ground could lend itself to bribery and falsification.

Supply Chain Approaches

Resource Consulting Services identifies four primary approaches that can be used in combination to begin to understand and address conflict minerals in supply chains:[45]

- Due diligence: Market to mine **tracing** mechanisms to assure mineral legitimacy and legality
- Certificate of origin: in-country **tracking** measures to assure site or country of production
- Investigation or punitive measures, typically against individuals or companies
- Geographical and geological mapping of various mine sites and their minerals, contributing to scientific 'fingerprinting' of mineral supply chains

The Enough Project proposes three key supply chain steps, in a somewhat different but not opposing approach:[46]

- **Trace:** Companies must determine the precise sources of their minerals, which requires efforts to develop rigorous means of ensuring that the origin and production volume of minerals are transparent.
- **Audit**: Companies should conduct detailed examinations of their mineral supply chains to ensure that taxes are legally and transparently paid to the Congolese government and guard against bribery and fraudulent payments. Credible third parties should conduct or verify these audits.
- **Certify**: For consumers to be able to purchase conflict-free electronics made with Congolese minerals, a certification scheme that builds upon

the lessons of the Kimberley Process will be required. Donor governments and industry should provide financial and technical assistance to galvanize this process.

BANNING EASTERN DRC MINERALS SOURCING: "RESPONSIBLE" OR NOT?

If companies have sufficient understanding of their supply chains, they may attempt to eliminate conflict minerals by stopping any purchases of materials that contain minerals from the region, as European metals dealers AMC and Traxys did last year, and has been discussed by others. Similarly, governments may attempt to ban the purchase, sale, export or import of these minerals, as the DRC's Ministry of Mines did when it banned trade in cassiterite from Walikale (the location of the large Bisie cassiterite mine) in 2008, or as has been suggested to the UN Security Council in the past.

There is significant debate about potential bans like this. Companies may favor banning conflict minerals from their individual or industry supply chains because, if effective, it would simplify their own risk management and potential responsibility related to the DRC conflict. NGOs such as Global Witness point out the difficulty of accurately verifying whether specific minerals purchases from the eastern DRC help fund the conflict, and note that a market for conflict minerals will continue to exist unless a ban is put in place. Given that, it is argued that a ban lasting until the conflict and human rights conditions improve is the only way to ensure that mineral sourcing does not go to fund the conflict.

Others such as Resource Consulting Services and Pact suggest that banning the trade in conflict minerals is unlikely to sever the link between minerals sourcing and the conflict. Because minerals extraction in the DRC is poorly monitored and the resulting metals are undifferentiated commodities, it is relatively easy get around bans, particularly in supply chains where minerals from many sources are blended in a variety of supply chain steps. The 2008 Ministry of Mines effort, for example, simply rerouted minerals from the banned area to another region not subject to the ban. Just as importantly, blanket bans (if they are effective) will affect sources that do not contribute to the conflict, as well as those that do. Millions of people in the Congo depend in some way on the minerals trade, and a large-scale ban could significantly increase hardship for them. Those in favor of a ban acknowledge this hardship, and note that such a ban should be accompanied by significant international development efforts promoting peace and sustainable livelihood development.

The implication for companies in this debate is that the end goal of supply chain responsibility efforts should not be a ban on minerals from the Eastern DRC. It may be that a temporary, carefully-implemented ban (coupled with large-scale regional assistance and probably managed through international institutions) could form part of a solution, but the ultimate goal should be to develop effective, verifiably conflict-free sourcing from the region, in collaboration with industry, NGO and other efforts.

Key Challenges for Building a Supply Chain Approach

As suggested above, there are a range of challenges that make it difficult to build a supply chain approach to addressing conflict minerals issues. Among them:

- Most of the minerals produced in the Eastern DRC are from mines which are illegal or part of the informal economy, and therefore no formal records are kept.

It is difficult for supply chain programs by themselves to succeed in reducing overall trade in conflict minerals and resulting revenue flows to militants. Given the current structure of mineral supply chains, if one company or industry attempts to eliminate conflict minerals from its supply chain, then new ways may be found to disguise their origins, or they may simply move to other supply chains with less rigorous standards.

- Smuggling minerals to neighboring countries, including Rwanda, Burundi and Uganda, is commonplace and encouraged by the fact that the DRC levies export tariffs on minerals, unlike the other countries in the region. The smuggled minerals are then reported as local production in the new countries and sold to smelters on the global market.
- Metals from multiple mines and other sources are typically undifferentiated and mixed at various points in the supply chain, including by traders, exporters, and smelters, making it extremely difficult to trace their origins
- Although over half of the mines in the Eastern DRC are a controlled by armed factions, many are not, and there needs to be a way to identify minerals from both "conflict free" mines and "conflict" mines to avoid punishing those who deal in local conflict-free minerals
- Global Witness reports that increasing levels of extortion and bribery is happening along the minerals trade routes, so even if minerals come from a "conflict free" mine, armed groups may still profit from the trade
- A supply chain approach may need to address other concerns in addition to conflict minerals from the DRC, such as conflict minerals from other sources, or sources with significant forced labor or environmental degradation problems
- Supply chains for these minerals are very complex, involving a large number of stages from mine to finished product, and billions of final items
- Mineral specific challenges:
  - Tin may be processed and mixed at any stage of the supply chain, thus making changes in traceable physical characteristics such as batch weight and chemistry inevitable. In addition, some minerals are sold through sales agents (négociants) or consolidators, while others are sold directly to trading houses (comptoirs), increasing the challenge of tracking.
  - Tracing tantalum ore supplies using their trace element composition is challenging, as tantalum ores are frequently partially processed at or near the production site. Processing the ore changes its chemical characteristics by altering the mix of trace elements that can be useful in identifying the mine of origin. Typing ore is therefore intrinsically difficult in the most optimistic circumstances. Moreover, producers and traders can blend ores from multiple sites, rendering them anonymous.[47]
  - The facts that gold is very valuable in small quantities, and its mining is geographically dispersed, make it much easier to conceal and transport than the other metals
  - Tungsten has diverse industry uses, contributes a smaller amount of money to the conflict, and Congo contributes a smaller percentage of global volume than tin or tantalum, which may result in less industry focus on this metal

With these challenges, particularly for gold and tungsten, it may not be surprising that there are currently no fully operational supply chain responsibility programs in the Eastern DRC, and most of those being developed are focused on tin and tantalum. In addition, the challenges mentioned above make it difficult for supply chain programs by themselves to succeed in reducing the overall trade in conflict minerals and its resulting revenue flows to militants. Given the current structure of mineral supply chains, if one company or industry attempts to eliminate conflict minerals from its supply chain, then new ways may be found to disguise their origins, or they may simply move to other supply chains with less rigorous standards.

Current Efforts in Supply Chain Tracking and Tracing

As the issue of conflict minerals has moved into the spotlight over the last few years, a number of organizations have sought ways to increase transparency in mineral supply chains. Some of these efforts have also started to identify areas of convergence and explore collaboration. The efforts highlighted here represent some of the leading efforts in the area, but this is not intended to be an exhaustive list.

International Tin Research Institute—ITRI, the international trade body of the tin industry, initiated the ITRI Tin Supply Chain Initiative (iTSCi) in 2009 to establish a traceability system for cassiterite. The first phase of the traceability scheme was implemented in July 2009 and established a requirement for the provision of official and industry documents as well as written declarations of lack of involvement of illegal armed groups in the upstream supply chain by all comptoir exporters. The second phase of the initiative aims to improve traceability from the mine to the comptoirs through the use of unique serial numbers on every bag of minerals produced at mine sites, as well as records of other features of the bags including their weight. Pilot projects have been proposed to test the system before full implementation, and the organization is beginning implementation of Phase 2.[48]

EICC/GeSI Efforts—The Electronics Industry Citizenship Coalition (EICC) and Global e-Sustainability Initiative (GeSI), two electronics industry associations focused on sustainability and responsible manufacturing, are working collaboratively on a set of supply chain initiatives, and these groups are also supporting the ITRI effort focused on tin. These efforts are spearheaded by the Extractives Workgroup,[49] which is also open to participation from non-ICT industry representatives. The scope of the Workgroup includes determining due diligence for each step in the supply chain to support responsible minerals sourcing, with an ultimate goal of having one process for all metals across all industries.[50] Efforts include the following:

- **RESOLVE Research:** EICC and GeSI contracted the nonprofit organization RESOLVE to research the supply chain for electronics products starting with three metals: tin, tantalum, and cobalt. In April 2010, RESOLVE published findings from the research which included a supply chain tracking/tracing survey and mapping, as well as desk-based research on other supply chain initiatives with relevance to the industry. The findings aim to support multi-stakeholder collaboration in eliminating conflict minerals from the supply chains of electronics companies.[51]
- **Tantalum Smelter Validation Plan:** Based in part on research that identified a limited number of smelters as a key choke point in the tantalum supply chain, EICC/GeSI companies are working on an electronics industry effort to validate the tantalum supply chain that is focused on review of smelters and the material they purchase. This effort is expected to require documentation of mine origin, transport, export licenses and certificate of analysis for 12 smelters' purchased materials, with more detailed review for African and DRC-sourced materials to ensure that they do not come from a conflict mine or become subject to illegal taxation while being transported. It is expected that initial audits will begin late in 2010.

Kimberley Process—Although the Kimberley Process Certification Scheme (KPCS) to stem the flow of conflict diamonds is not being applied to the Eastern DRC (as diamonds are, at most, a very small contributor to financing the conflict), it provides useful lessons for the region. The KPCS imposes extensive requirements on its 75 member countries to enable them to certify shipments of rough diamonds as 'conflict-free.' Under the terms of the Process, participating states must meet minimum requirements and must put in place national legislation and institutions; export, import and internal controls; and also commit to transparency and the exchange of statistical data. Participants can only legally trade with other participants who have also met the minimum requirements of the scheme, and international shipments of rough diamonds must be accompanied by a KP certificate guaranteeing that they are conflict-free The KPCS uses a "voluntary self-regulation" approach on the part of the diamond industry and a peer review system to ensure compliance. While trade in conflict diamonds has dramatically declined since the implementation of the KPCS in 2003, in the last few years the process has been criticized by NGOs including Human Rights Watch, Global Witness and others for lacking accountability, authority and commitment to suspend membership for states that do not comply.

German Federal Institute for Geosciences and Natural Resources (BGR)—Over the last few years, the German government through the Federal Institute for Geosciences and Natural Resources (BGR) has been testing the feasibility of 'fingerprinting' coltan (tantalum) samples based on mineralogical characteristics. The findings helped BGR develop a technique to analyze ore attributes that reduces the average time needed for geological tracing. It is currently being expanded to look at tin (cassiterite) and tungsten (wolframite) ore concentrates using the same instrumentation.

BGR is also developing a chain of custody assurance system (certified trading chains - CTC), which includes certification of specific mine sites by third party audit and the introduction of minimum standards (based on OECD guidelines) for origin and Corporate Social Responsibility (CSR) through voluntary certification. This is currently being explored through a pilot in Rwanda where companies and their mine sites are assessed according to five principles related to transparency of the trading chain, finance, health, safety and environment. Similar to the Kimberley Process, the critical piece of these trading chains is the certificate of origin, which includes an appraisal based on plausibility checks of the documentary system as well as the trading volume. The fingerprinting method is incorporated as a possible additional checking instrument in case of doubt. This process also advocates an internationally accredited auditor to ensure compliance with the guidelines. As a next step, technical cooperation between BGR and the Congolese Ministry of Mines will begin with the aim of introducing a certification system for coltan, cassiterite, wolframite and gold. The cooperation will combine pilot implementation of CTC (with a focus on transparency of origin and finance) at selected mining sites in South Kivu with capacity building of sector institutions.[52]

International Conference on the Great Lakes Region Regional Certification Mechanism—In April 2010, the International Conference on the Great Lakes Region (ICGLR) adopted a set of key principles for a regional minerals certification process, and is working to further develop this process. When in place, the system will include:[53]

- Chain of custody tracking from mine site to export, implemented by national governments prior to export and founded on ICGLR Regional Certificates to serve as proof of compliance
- Regional tracking of mineral flows via a publicly-accessible ICGLR database, which will be analyzed to determine areas where minerals flows (e.g. imports and exports) do not balance.

- Regular independent third-party audits, which all actors must submit to and pass if they are to be considered compliant
- A fully-independent mineral chain auditor to monitor the full chain for discrepancies and anomalies, who has the authority and resources to initiate investigations at their discretion.

This proposal was initially developed by Partnership Africa Canada, and is based on lessons learned from the Kimberley Process.

The Initiative for Responsible Mining Assurance (IRMA) is a multi-sector effort launched in Vancouver, Canada, in June 2006 to develop and establish a voluntary system to independently verify compliance with environmental, human rights and social standards for large-scale mining operations. Participants include mining companies, jewelry retailers, NGOs and trade associations, but the effort is not currently operational in the DRC.[54]

Initiatives for artisanal gold mining—There are a range of voluntary initiatives focused on encouraging responsible artisanal gold mining globally. Although none are currently active in the Eastern DRC, they provide useful illustrations and potential opportunities to support responsible gold development in the region. These efforts include:

- Alliance for Responsible Mining (ARM) / Fairtrade Labeling Organizations (FLO)
- EcoAndina
- Mammoth Tusk Gold (MTG)
- Oro Verde™

More information about these efforts is contained in "The Quest for Responsible Small-Scale Gold Mining."[55] In addition, the No Dirty Gold campaign (led by EARTHWORKS and Oxfam America) has developed the "Golden Rules" principles for responsible sourcing of precious metals. These principles include a commitment to work to ensure that gold is not being sourced from areas of armed conflict, and[56] have been signed by over 60 jewelry retailers.

Opportunities for Company Involvement in Supply Chain Responsibility

As noted in the GeSI-EICC and other examples above, companies are working on supply chain responsibility in a variety of ways. Key areas of focus for company action and collaborative industry efforts in this arena may include:

- Public commitments not to purchase conflict minerals or include conflict minerals in any final products, supported by substantive supply chain efforts
- Internal procurement review and engagement with suppliers to identify and address potential conflict mineral use and sources in company supply chains
- Engagement in industry efforts focused on supply chain tracking, tracing and due diligence, such as the GeSI-EICC Extractives Workgroup
- Support for efforts to align, expand and strengthen various supply chain responsibility programs (such as those from ITRI, GeSI-EICC, BGR and ICGLR) across industries and minerals from the region
- Highlighting conflict minerals as an issue with relevant industry associations

Opportunities for Stakeholder Involvement in Supply Chain Responsibility

Stakeholder support of company actions and industry efforts may include:

» Providing up-to-date information on the situation on the ground in Eastern DRC

» Contribution to and review of certification schemes and accountability measures

» Encouraging companies to implement supply chain responsibility policies and practices

» Encouraging various schemes and industries to align their efforts

As with the other segments of this paper, these are not intended to be exhaustive lists of options, and the most appropriate area for action will vary substantially depending on the position and influence of a given company or stakeholder.

Observations

Supply chain responsibility efforts have significant limitations and will take time to implement. They need to be supported by on-the-ground efforts to improve governance, demilitarize the mines, and ensure that minerals extraction benefits the local population, as well as by domestic and international government efforts.

Supply chain tracking, tracing and certification efforts have received a great deal of attention from companies and others as a way to cut the ties between mineral sourcing and armed conflict in the eastern DRC. Such programs are a critical component to an overall solution for the region, and are essential to help companies understand whether their supply chains utilize conflict minerals. However, such efforts have significant limitations and will take time to implement, as noted above. They may negatively affect the livelihoods of millions of people dependent on the minerals trade, and may force conflict minerals into other outlets rather than encourage their demilitarization. As a result, these efforts need to be complemented with on-the-ground efforts to improve governance, demilitarize the mines, and ensure that minerals extraction benefits the local population. In addition, domestic (Congolese) and international policy, regulatory, and other government efforts are needed to reinforce the implementation and effectiveness of supply chain efforts.

Photo courtesy of Pact, www.pactworld.org

IV. Government Engagement

Supply chain efforts are necessary but not sufficient to sever the relationship between minerals and the conflict in the eastern Democratic Republic of Congo. Weak local governance institutions, porous borders and limited transparency in international supply chains create significant challenges for supply chain schemes, and need to be remedied through engagement and support of constructive government efforts.

Weak local governance institutions, porous borders and limited transparency in international supply chains create significant challenges for supply chain schemes, and need to be remedied through engagement and support of constructive government efforts.

At the local level, weak governance has been identified as a root cause of the conflict in the DRC,[57] and it is unlikely that the overall conflict will be resolved without significant efforts to strengthen government authority. Governments and international institutions both in the region and globally have a critical role to play in supporting improved local governance and promoting formalization in the mining sector.

In addition, various countries in the region have been implicated in supporting both the ongoing violence and the illicit mineral trade in the eastern DRC, as noted above. Various international organizations, countries and companies have significant diplomatic and financial influence in the region, which may be used to encourage regional dialogue and peace-building measures.

Internationally, governments of countries that serve as transit points or destinations for potential conflict minerals and the products they are used in can also support supply chain responsibility efforts in a variety of ways.

Overall, government effectiveness programs, intergovernmental assistance and anticorruption measures need to work together with regional peace-building and supply chain responsibility programs to make a significant difference in the DRC.

Approaches

Company engagement with governments to address conflict minerals can take a variety of forms, including the following:

- Informing and advocating for government requirements for the identification and potential removal of conflict minerals in company supply chains
- Public-Private Partnerships may reduce companies' risks through the offer of insurance and improved financing terms (such as those offered by the U.S. Overseas Private Investment Corporation), or other guarantees that encourage investment and support of the local economy in the DRC
- Supporting stronger international diplomatic efforts to broker a peace deal involving all regional players
- Given the weak government presence in the eastern DRC, companies can engage with and support local government efforts by providing needed tools. For example, junior Canadian miner Banro Corporation is constructing the first modern gold mine in the region, and has purchased computers for government offices that help to speed local decision-making in customs and other areas.[58] Efforts like this must be handled carefully to avoid corrupt practices, but there are significant opportunities to enhance local government capacity and transparency through improved ICT infrastructure ("e-government") and other means.

Photo courtesy of Pact, www.pactworld.org

Challenges

Government efforts to address conflict minerals sourcing and company efforts to engage in them involve their own set of challenges:

- » As with industry-led supply chain work, government efforts may result in trade bans or embargoes on minerals from the Congo that result in redirecting minerals trade (e.g. smuggled into alternate trade routes) or increased problems for local communities, many of which rely on mining as a source of income
- » The DRC government is seen as highly corrupt (it ranks among the most corrupt in Transparency International's 2009 Corruption Perception Index, at 162 out of 180 countries[59]), and the country is a difficult place to do business (ranking 182 out of 183 countries in the World Bank Doing Business Guide to country business climates), so companies are likely to face significant challenges if attempting to work with the country's government
- » Governments (whether in the DRC or elsewhere) might not have the political will or capability to develop or implement solutions
- » A comprehensive solution to conflict minerals issues in the region will have to include the governments of Rwanda, Uganda, and others. Each of these governments has unique and potentially conflicting interests, and in some cases may profit from the illicit cross-border minerals trade with the DRC as discussed above.

Current Efforts

Government and international community efforts have changed with the nature of the conflict over the years. Current efforts include international pressure and support for governance improvement, in combination with local efforts; local, regional and international efforts to encourage supply chain transparency; and support for local development and stabilization initiatives. The efforts listed here include some prominent efforts, but this is not an exhaustive list.

DRC Government - The DRC government lacks substantial control over the mineral-rich areas of North and South Kivu and neighboring provinces. There remains a significant discrepancy between the legal framework governing mining and trade in the DRC and practices on the ground. Although the DRC's Mining Code was revised in 2002 to bring it into accord with international standards, it is effectively disregarded in the conflict zone, or, even worse, as Resource Consulting Services' Nicholas Garrett argued, it is "used by the powerful to exploit artisanal miners through manipulation, harassment, and extortion."[60] Overall, an intricate patchwork of government agencies and regulatory bodies are responsible for oversight and taxation of mining and trade in minerals.[61]

According to a recent report from the Enough Project, however, the federal and provincial governments show increasing attention to reforming the mining sector, with a particular focus on supply chain traceability. There are also attempts to implement a stabilization plan that deals with the natural resources issues by moving toward demilitarizing the mines and encouraging a range of reforms.[62]

U.S. Legislative Efforts—Several bills have been introduced in the U.S. Congress attempting to address DRC conflict minerals issues. Current efforts include the Conflict Minerals Trade Act[63] (H.R. 4128) in the House, sponsored by Rep. James McDermott (D-WA), which was recently advanced by the House Committee on Foreign Affairs; and the Senate's Congo Conflict Minerals Act (S. 891) cosponsored by Senators Sam Brownback (R-KS), Dick Durbin (D-IL) and Russ Fiengold (D-WI).[64] The Senate bill would require U.S.-registered companies using coltan, cassiterite, or wolframite, or their derivatives, to annually disclose the origin of their mineral supplies to the Securities and Exchange Commission, and if the country of origin is the DRC or neighboring countries, the mine of origin would have to be disclosed. Similarly, the House bill would require importers of goods on a proposed potential conflict goods list to declare that their imports either contain conflict minerals, or are conflict minerals-free. In addition, both bills call for greater U.S. efforts to improve livelihoods in mining-dependent Eastern DRC communities, a U.S. government strategy to address conflict minerals, and other requirements.

In late May 2010, the Senate approved an amendment to its key financial regulation bill based on the language introduced by Sen. Brownback and including language based on his conflict minerals bill. This bill is currently in conference committee with the House.[65]

U.S. State Department and USAID—The conflict in the DRC has been one of the focuses of recent U.S. State Department efforts in Africa. In August 2009, U.S. Secretary of State Hillary Clinton urged the country's officials and people to address the issues of sexual violence and corruption during a visit to the DRC, including the eastern city of Goma. More recently, the U.S. Assistant Secretary of State for the Bureau of African Affairs (the State Department's top diplomat for Africa) highlighted the need to improve the country's economic climate in discussions with the DRC's leaders[66] and testified in Congress regarding U.S. policy in the region, including discussion of the State Department's recently-approved "Strategic Action Plan for Conflict Minerals in the Eastern DRC."[67]

In addition, the U.S. facilitates the Tripartite-Plus Joint Commission which brings together senior government officials from Rwanda, Uganda, Burundi and the DRC. It is also a member of the Great Lakes Contact Group that includes the U.S., EU, UN, and several European nations. The Contact Group works to address political, diplomatic, security, and development issues in the region, and since 2008 has included a task force focused on the illegal trade in natural resources.

USAID efforts in the DRC focus on mining related issues such as peace and security, governance, and economic growth.[68]

United Nations—The UN has been actively involved in the Eastern DRC in a variety of ways, including peacekeeping, research into the conflict, and peace-building efforts. Since 2001, the UN has recommended a variety of measures to address conflict minerals in the DRC, ranging from an embargo on select conflict minerals to softer measures such as a traceability system for mineral supply chains or due diligence requirements for companies buying minerals from the region.[69] The UN maintains a Group of Experts that conducts research and issues regular reports on the region that document some of the connections between minerals trade and armed groups in the region.[70]

European Union—According to the EU Special Representative for the African Great Lakes, Roeland van de Geer, the EU has confirmed its commitment to more formal and legal ways of cooperating in the fight against illegal exploitation of conflict minerals, and leads the Great Lakes Contact Group task force on natural resources. But so far, the EU has not introduced legislation to prevent conflict minerals from eastern DRC entering Europe.[71] General EU activities in the DRC include assistance for mining-related issues such as governance and human rights, as well as others.[72]

German diplomatic efforts—A long-term initiative being championed by the German government and the G-8 includes the development of Certified Trading Chains, or CTCs, with legitimate mining sites linked to international purchasers. This initiative is connected with the BGR efforts mentioned above to "fingerprint" the origin of specific minerals and enable their traceability. The German government has bilateral assistance programs with both Congo and Rwanda to help develop such a monitoring system for tantalum, with possible expansion to also include other minerals (see supply chain section for more information).

International Conference on the Great Lakes Region—In accordance with protocol 11 of the ICGLR (established in 2003), Member States agreed to put in place regional rules and mechanisms for combating the illegal exploitation of natural resources. In addition to the regional certification system mentioned above, the ICGLR's Regional Initiative against the Illegal Exploitation of Natural Resources (RINR) steering committee has adopted the following pillars of its strategy to combat illegal practices:[73]

- » Review of Member States' legislation and harmonization of laws to prevent mineral flows based on differences in mineral taxation
- » Set-up of a regional database to track trade flows, in order to identify irregularities in trade statistics
- » An anonymous whistle-blowing system for the identification of irregularities
- » Formalization of informal artisanal mining in pilot regions

The Extractives Industry Transparency Initiative—The EITI is a coalition of governments, companies, civil society groups, and others that focuses on improving governance in resource rich countries by increasing transparency. Specifically, the organization focuses on the publication and verification of company contracts, payments and government revenues from extractives.[74]

The Voluntary Principles on Security and Human Rights—The Voluntary Principles (VPs) are guidelines for security and human rights issues in the extractives sector, which provide guidance on risk assessment and engagement with public and private security forces. They were launched in 2000 by the U.S. and UK governments, and include companies and NGOs as participants. The VPs can help companies improve security by supporting more effective monitoring of local situations, improved local relations, and greater professionalism in security forces. They can also help address potential reputational risks by creating relationships and alliances with NGOs and other companies. The VPs are being implemented in the DRC.

OECD Guidelines for Multinational Enterprises—The OECD Guidelines[75] are recommendations made by governments to multinational enterprises regarding responsible business conduct in a range of areas. The effort includes a Risk Awareness Tool for Multinational Enterprises working in weak governance zones,[76] and there is currently a project to develop guidance for due diligence for responsible mineral supply chain management from conflict-affected and high-risk areas, in particular from the DRC.[77]

PROMINES—The World Bank with a range of other actors and the Congolese government is implementing an effort focused on "Growth with Governance in the Mining Sector," a multi-year reform effort that supports improved governance of Congolese mining sector and increased volume and value of mineral production. It is doing this by improving the national geological database, strengthening mine management capacity, improving tax transparency and collection, improving revenue distribution, and promoting sustainable development based on mining. The DRC government has designated PROMINES as the coordination mechanism for all donor and other interventions in the development of the DRC mining sector.[78]

Trading for Peace—The UK Department for International Development (DFID) and USAID have been working with the Common Market for Eastern and

Southern Africa (COMESA) and the East African Community on an effort to better understand how trade in natural resources and other materials can support peace-building and poverty reduction in the Great Lakes region of Africa. The program supports discussions among relevant parties, training, research and investment in border equipment. Efforts include research exploring value chain structures and financial flows, building cross-border networks, and strengthening trade across borders.[79]

Opportunities for Company Involvement

Companies will see different avenues for involvement in government-led efforts to address the conflict and related minerals issues, depending on their activities and opportunities for influence. Mining companies or others with active, on the ground operations may focus primarily on a combination of generating support for their operations from their home governments and improving governance through efforts such as the Extractives Industry Transparency Initiative. Other companies without operations on the ground in the DRC may choose to engage their own governments in dialogue about conflict minerals issues in an effort to improve pending legislation or regulation, or engage governments collectively through their industry associations.

Companies are engaging with governments in a variety of ways, and areas of focus for action and collaborative efforts may include the following:

- Engage with legislative and regulatory efforts to support supply chain transparency, for example by supporting efforts to enact such legislation, or helping to inform lawmakers of the uses and limitations of such efforts
- Consider supporting or contributing to the development of broader (non-supply chain focused) legislation to improve the situation in the Congo through efforts such as development assistance and peace-building. By improving local conditions, such programs would also help stabilize supply chains for critical raw materials.
- Partner with international aid programs (including public-private partnerships) that can assist in local development[80]
- Consider providing tools and equipment to support good governance in the region
- Support improved governance practices, for example through EITI and company-government interactions that can be supported by industry associations and others, or by supporting steps to formalize the artisanal mining sector in the DRC
- Becoming a signatory of the Voluntary Principles, or encourage suppliers operating in the DRC to do so.
- Publish position statements laying out what signatories think should be done to address conflict minerals issues
- Participate in or support existing government efforts to address the conflict minerals issue. For example, ITRI and others attended the recent ICGLR meeting focused on a regional minerals certification scheme.

Opportunities for Stakeholder Involvement

- Engage with legislative, regulatory and other efforts to help inform them and generate effective solutions through multi-stakeholder meetings and other efforts

- Providing up-to-date information on local and regional rule of law and good governance efforts in the DRC, its neighboring countries, and with home countries and multi-national corporations
- Contribute to national and DRC legislative and diplomatic efforts
- Support or contribute to the development of broader diplomatic and political action to address the conflict, such as efforts to develop regional peace talks

Observations

Local and international government efforts overlap significantly with both supply chain responsibility efforts and on-the-ground development and capacity-building needs. It is critical that private sector endeavors like the ITRI and EICC/GeSI supply chain programs work with government efforts such as those from ICGLR and U.S. legislation, so that end results are mutually supporting and do not end up with potentially conflicting and confusing requirements.

At the same time, there are opportunities for companies and stakeholders to go beyond dialogue with governments exclusively about supply chain responsibility for conflict minerals. They can encourage and support government efforts to work toward diplomatic and local development solutions to the conflict that both help to address the conflict's humanitarian concerns and encourage a stable, resilient and fair mineral supply chain.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V. Development & Capacity-Building

As discussed above, supply chain efforts are unlikely to be successful without efforts to build local capacity, support formalization of mining and local supply chains, and empower local communities. Perhaps the most significant criticism of the supply chain efforts being developed by ITRI, EICC/GeSI and others is that they may not consider some important details on the ground. Examples may include the ability to identify whether minerals are illegally taxed by armed groups while in transit between mines and markets, or how tagged bags will be verified with certainty. A recent Reuters article highlighted this challenge, quoting a Global Witness representative saying "Any scheme that does not include on-the-ground investigation on a regular basis, looking at the routes the minerals take as well as the mines is meaningless." This stands in contrast to an ITRI statement that "if we can find a way to collect information along the trading route we will, but spot checks are not practical…. We're not going to go off into the jungle and ask the army what they are doing."[81]

Despite this debate and the need for such on-the-ground efforts in the DRC, there has been relatively limited focus on a "bottom-up" approach to conflict minerals issues in the DRC that emphasizes improving conditions at mines and on local trade routes. Some industries, governments and NGOs are working on improving local mining and trading issues (as discussed in the sections above), but there may be much more that organizations and companies can do in this space, particularly to cover the "first mile" local trade route concerns in the DRC.

Approaches

Development and capacity-building efforts in general can encompass a wide range of efforts and issues, from small business and infrastructure development to women's education and support for local NGOs. This discussion will take a narrower focus on efforts that address mining communities and local minerals trade. Such efforts may address the following, among other issues:

- Effective local oversight of mining and trade practices and ensuring they are not contributing to the conflict, or harming workers or the environment
- Assurance that local communities are able to benefit from revenues from the minerals trade
- The movement of illegal or informal mining activities into the formal sphere
- Community engagement and conflict management efforts that attempt to prevent or address conflict between outside mining companies and local communities and artisanal miners
- Local economic development that generates income for members of mining communities and discourages a return to conflict

Challenges

The Eastern DRC conflict, legal structures, and other factors create challenges for local development and capacity-building efforts related to mining:

- Security concerns resulting from the conflict in the Eastern DRC may prevent access to mining communities, limiting the ability to implement local development and capacity-building efforts
- Groups with vested interests in the status quo may attempt to disrupt local development efforts

- With approximately 200 small-scale mines, the artisanal mining sector in the eastern DRC is extraordinarily broad and diffuse, making it extremely difficult to have large-scale impact in the short term
- Lack of clear land rights or legal recognition of artisanal mining creates challenges for bringing small-scale miners into the formal economy and supporting their activities
- Development efforts may be poorly or inconsistently funded
- End-users of minerals from the region may feel that local development efforts deep in their supply chain are less significant or more difficult to act on than other opportunities

Current Efforts

As with the sections above, this is not intended to be an exhaustive list, and focuses exclusively on efforts closely related to the mining sector:

Pact is an NGO working extensively on local development efforts, particularly related to artisanal mining in the DRC and elsewhere. The organization assists artisanal miners with efforts such as:[82]

- Training in financial management, small enterprise development, and agriculture
- Training of mine supervisors in safety standards
- Supporting the legalization of artisanal mining activities
- Establishing consultation efforts between large-scale and artisanal miners

Pact is supporting the implementation of the PROMINES efforts related to artisanal mining discussed above.

Others—There are overlaps in this area with local and international government activities, as governments may fund development NGO efforts, while NGOs may support efforts to improve government capabilities. In addition, some supply chain responsibility programs may include local development efforts. As a result, some of the efforts listed in the government engagement and supply chain sections above are also relevant here.

Opportunities for Company Involvement

As with previous sections discussing opportunities for company involvement, these points are intended to help generate ideas discussion, but are not an exhaustive list, and the relevance of opportunities will vary with the position of individual companies and industries.

Opportunities may include:

- Work with community-based efforts to ensure local benefit from mining revenues
- Support for the development of legitimate local trade and transport networks, perhaps through emerging certification schemes
- Support local efforts to encourage formalization of mining, possibly in conjunction with government efforts
- Engagement with community-based efforts through corporate philanthropy efforts

- Identification of ways to link “bottom-up” on-the-ground efforts to produce conflict-free minerals with more “top-down” certification efforts being driven by industry groups and governments

Note that efforts to directly engage in the DRC mining sector should liaise with PROMINES, as the government-designated coordinating mechanism for interventions.

Opportunities for Stakeholder Involvement

- Strengthen relationships with local NGOs and support their efforts (promotion of activities and/or fundraising)
- Support local community involvement in developing traceability and verification schemes and safe mining practices
- Support efforts to diversify work opportunities to alleviate the pressure on mining revenues
- Ensure the stories of community groups are told to corporate boards of directors, investors and faith-based stakeholders
- Push for the formalization and appropriate taxation of artisanal and large-scale mining

Observations

As discussed in previous sections, local development and capacity-building efforts will be vital for the effectiveness of conflict minerals supply chain responsibility efforts. In the bigger picture, they also meet a critical need to improve livelihoods and provide alternatives to conflict. Such efforts face considerable challenges as a result of the ongoing conflict, and there are significant opportunities to expand these efforts alongside growing supply chain and government efforts.

VI. Conclusion: Putting the pieces together

Addressing the links between minerals sourcing and the conflict in the DRC requires an integrated, multi-stakeholder and multi-sector approach. Actions by individual companies to prevent conflict minerals from entering their supply chains must work with industry efforts, national and international governance efforts and capacity building in the region if they are to be effective and contribute to long-term solutions.

Supply chain responsibility efforts are certainly necessary and a leading element of any effective, long-term solution. Blanket efforts to eliminate Eastern DRC minerals from individual company supply chains, however, will only shift the use of these minerals to other supply chains. As a result, any such efforts need to be carefully established in cooperation with others. It should also be done in a way that supports a transition of mines to the jurisdiction of Congolese government and creates the opportunity to improve labor and environmental conditions, as well. Supply chain efforts will only be successful at reducing the conflict if they are supported by local economic development and capacity-building work that increases opportunities for local populations to benefit from mining, reduces corruption and supports legitimate government authority.

Governments also play a critical role in these efforts. Strengthening Congolese institutions so that the government's civilian authorities can exercise effective jurisdiction over the mines will help to reduce the funds that flow from minerals sourcing to armed groups. But unless stronger authorities are coupled with a range of improvement and support efforts (including better border controls, trade route monitoring, international tracking and tracing schemes, formalization of artisanal miners, and anticorruption efforts), they may allow significant problems to continue while introducing new ones like corrupt government officials and increasing marginalization of artisanal miners.

While the supply chain is often the clearest and most traditional point where companies should address conflict minerals issues, the best efforts will include a more holistic exploration of opportunities for responsible action. There are significant opportunities to support local capacity-building and domestic and international government efforts to address the conflict in the DRC. Action in all of these areas, and alignment and coordination among them, are needed to support real improvement in the DRC conflict regions and genuinely stable, conflict-free supply chains.

Appendix A. Industry Uses of Tin, Tantalum, Tungsten and Gold

Mineral	Primary Uses	Key Industries
Tin	• Solders for electronics (44%) and industrial applications (8.8%) • Tinplate (16.4%) • Chemicals (13.9%) • Bronze (5.5%) • Float glass (2.1%)	• ICT (e.g. cell phones) • Automotive • Jewelry • Medical • Food (e.g. cans)
Tantalum	• Electronic components such as capacitors in portable phones, pagers, PCs, automotive electronics (60-70%) • Super alloys for jet engine and turbine components (10%) • Chemical equipment (10%) • Carbide cutting tools (~5%)	• ICT • Automotive • Medical (e.g. prosthetic devices, skull plates, etc) • Aerospace • Energy
Tungsten	• Cemented carbides (60%) • Tungsten steel (20%) • Other—super alloys, electron emitters, tungsten wire in copiers & printers, electronic circuit boards & heat sinks, etc	• Manufacturing • Automotive • Jewelry • Medical • Aerospace • Energy
Gold	• Jewelry (80%)	• Jewelry

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Security Council

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Letter dated 29 November 2011 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council

On behalf of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo, and in accordance with paragraph 5 of Security Council resolution 1952 (2010), I have the honour to submit herewith the final report of the Group of Experts on the Democratic Republic of the Congo.

In this connection, I would appreciate it if the present letter, together with its enclosure, were brought to the attention of the members of the Council and issued as a document of the Council.

(*Signed*) Maria Luiza Ribeiro **Viotti**
Chair

11-55632 (E) 291211

Enclosure

Letter dated 18 October 2011 from the Group of Experts on the Democratic Republic of the Congo addressed to the Chair of the Security Council Committee established pursuant to resolution 1533 (2004)

The members of the Group of Experts on the Democratic Republic of the Congo have the honour to transmit herewith the final report of the Group, prepared in pursuance of paragraph 5 of Security Council resolution 1952 (2010).

(*Signed*) Fred **Robarts**

(*Signed*) Nelson **Alusala**

(*Signed*) Ruben **de Koning**

(*Signed*) Steven **Hege**

(*Signed*) Marie **Plamadiala**

(*Signed*) Steven **Spittaels**

Summary

Foreign and Congolese armed groups are positioning themselves for the campaign and post-electoral periods in eastern Democratic Republic of the Congo. Despite further reorganization, the Forces armées de la République démocratique du Congo (FARDC) is still divided by parallel chains of command, with many former soldiers of the Congrès national pour la défense du peuple (CNDP) still loyal to General Bosco Ntaganda, who has encouraged them to resist attempted reforms. Some mineral processors, traders and end-users have made encouraging progress in implementing due diligence, but the mining sector as a whole remains some distance from adequate implementation of the due diligence guidelines produced by the Group of Experts on the Democratic Republic of the Congo, which the Security Council unanimously supported taking forward in paragraph 7 of its resolution 1952 (2010).

Foreign armed groups

The Forces démocratiques de libération du Rwanda (FDLR) remains the most militarily strong and politically significant rebel force in the Kivus, despite being riven by internal tensions stemming from the hard-line leadership of its commander, General Sylvestre Mudacumura. Since the arrests of several of the most senior FDLR leaders in Europe during 2009/10, the group's remaining political representatives have gone into hiding, although telephone logs demonstrate their continued communication with these international contacts and senior commanders in the Kivus.

While in the past, FDLR derived much of its funding from mining, its direct access to and control over certain natural resources have been reduced. Instead, the main sources of financing for FDLR are trade in commercial products in mining areas under its control, and taxation and agricultural sales of products such as palm oil and cannabis.

FDLR has been subject to little military pressure from FARDC, in 2011, aside from joint operations of the Rwandan Defence Forces (RDF) and FARDC in Rutshuru, and has continued to build alliances with Congolese armed groups. Negotiations between FDLR and the Government of the Democratic Republic of the Congo concerning the group's relocation to the country's Maniema Province lost momentum owing to disagreement over the Government's requirement that FDLR disarm first.

There is widespread interest among rebel groups, including FDLR, in an alliance with the South Africa-based political opponents Patrick Karegeya and Kayumba Nyamwasa. To date, however, the Group has not found conclusive evidence indicating that the dissidents themselves have provided either financial or material support to FDLR or any other group in eastern Democratic Republic of the Congo.

Activity by the Lord's Resistance Army (LRA) in the Democratic Republic of the Congo decreased during the second half of 2011, owing to the fact that most units have moved to the Central African Republic. LRA continues to subsist on looted food and goods and does not appear, from the available evidence, to be benefiting from external support.

During the reporting period, the Ugandan Allied Democratic Forces regained control over territory that it had previously lost to FARDC. The movement continues to receive income from money transfers, taxation on small gold mines and timber production, and has recruited members from Uganda, the Democratic Republic of the Congo, Burundi and the United Republic of Tanzania, and from among Somali refugees within Kenya.

Combatants belonging to the Forces nationales de libération (FNL) of Burundi have continued to use the province of South Kivu as a rear base for their remobilization efforts, having built a strong alliance with the Congolese rebels of Mai Mai Yakutumba, in Fizi territory. While it has yet to announce a formal identity and structure, FNL benefits from political, material and financial support from political leaders belonging to the Alliance démocratique pour le changement-Ikibiri. The FNL combatants also have support from within both Burundian and Congolese security forces, and have procured weapons in the United Republic of Tanzania. The arming by FNL of Mai Mai Yakutumba has emboldened the latter to expand its involvement in the mineral trade, piracy and attacks against members of the rival ethnic Banyamulenge local population.

Congolese armed groups

Congolese armed groups have been readying themselves for possible outbreaks of unrest as a result of post-electoral disputes. Those already integrated into FARDC, particularly the Coalition des patriotes résistants congolais (PARECO), CNDP and the Forces républicaines fédéralistes, have sought to consolidate their grip on key command positions and territories, hoping to ensure maximum support for the campaigns of their own candidates and the campaign of President Kabila. Having joined the Alliance pour la majorité présidentielle, these former armed groups have stated to the Group of Experts on the Democratic Republic of the Congo that important aspects of current peace arrangements would be jeopardized by an opposition victory.

The Government of the Democratic Republic of the Congo orchestrated a reform of army units in the eastern part of the country, made possible in part by the presidential suspension of mining activities from September 2010 to March 2011, which was accompanied by orders to demilitarize mining sites. Although one objective of the restructuring into regiments was to break parallel chains of command and address systematic insubordination, ex-CNDP member General Bosco Ntaganda ultimately hijacked the process by placing his most loyal officers in critical positions throughout North and South Kivu. In order to ensure a common front for elections, Ntaganda also reconciled with officers loyal to General Laurent Nkunda, still imprisoned in Kigali.

For their part, non-integrated armed groups, such as Mai Mai Yakutumba in South Kivu and PARECO LaFontaine in North Kivu, have found fertile ground in the pre-electoral period as they seek to capitalize on anti-Kabila and anti-CNDP sentiment in the two provinces. Some senior FARDC officers support these groups owing to their discontent at being marginalized by the army reform process. Most Congolese armed groups have not sought to disturb the electoral process, but rather have consolidated their forces, strengthened alliances with other groups and positioned themselves to respond to the election results. A few, such as the Alliance des patriotes pour un Congo libre et souverain and Nduma-Defence for Congo, have supported their political allies by maximizing voter registration in their home territories and, in the case of the latter’s leader, running for elected office.

Natural resources

The Group evaluated the impact of its due diligence guidelines and examined steps taken by Member States to urge importers, processing industries and consumers of Congolese mineral products to exercise due diligence by applying the guidelines.

Since April 2011, most tin, tantalum and tungsten *comptoirs* in eastern Democratic Republic of the Congo have had no buyers for untagged minerals, with the exception of three — TTT Mining, Huaying Trading[a] and Donson International — which have sold to smelters, refiners and trading companies in China that do not require tags or evidence of due diligence. The Group has evidence that these *comptoirs* have made purchases that finance armed groups and criminal networks within FARDC. Since Chinese refiners, smelters and trading companies make up a significant proportion of the buyers of tin, tungsten and particularly tantalum from eastern Democratic Republic of the Congo, awareness and implementation of due diligence on the part of such companies are of particular importance. However, the Group was unable to visit China to investigate the due diligence implementation of such refiners and smelters or to discuss with the Government the steps that it is taking to raise awareness and urge implementation of due diligence.

Few *comptoirs* in eastern Democratic Republic of the Congo and neighbouring countries are currently implementing due diligence. In non-conflict areas, where *comptoirs* and other traders have exercised due diligence and introduced traceability systems, mining sector governance has improved, and mineral production and export have risen. In areas where no traceability systems have been introduced, particularly the Kivus and Maniema, mineral production and exports have fallen. This has not only decreased conflict financing, but also weakened mining sector governance, with a greater proportion of trade becoming criminalized and with continued strong involvement by military and/or armed groups.

There is good awareness of the Group's due diligence guidelines among international refiners and smelters of tin, tantalum and tungsten ores belonging to the International Tin Research Institute, an industry association, while awareness among non-members is weaker. For many Institute members, a more immediate concern is to attain "conflict-free smelter" status. "Conflict-free smelter" audits require refiners and smelters to show evidence of due diligence, and their form has been significantly influenced by the Group's due diligence guidelines.[b] General awareness of the issue of conflict minerals, and of the need for due diligence to mitigate the risk of funding conflict through mineral purchases, has increased internationally in most affected industries, particularly electronics, vehicle manufacture and aerospace. This is most obvious in the United States of America, which has introduced legislative requirements for due diligence disclosure.

By contrast, Congolese gold is much in demand. Most of the gold trade in the country goes unrecorded, and most transactions are concluded in neighbouring cities such as Kampala, Bujumbura, Nairobi or Mwanza (United Republic of Tanzania). The Group found substantial discrepancies, of more than three tons, between gold import statistics provided by the authorities of the United Arab Emirates and those exports claimed by the Government of Uganda. The gold trade is among the main sources of financing available to Congolese armed groups and FARDC criminal

[a] S/2010/596, para. 188.

[b] See http://www.un.org/sc/committees/1533/egroupguidelines.shtml.

networks. In addition to selling real gold, criminal networks organize elaborate scams in which counterfeit gold is sold to clients ranging from driving instructors to oil magnates.

Gold *comptoirs* in eastern Democratic Republic of the Congo and neighbouring countries have not demonstrated significant awareness of the Group’s due diligence guidelines. Due diligence implementation on the part of gold refiners, smelters and jewellers sourcing artisanally mined gold has also been weak, although gold industry associations are developing guidelines strongly influenced by those of the Group.

On 6 September 2011, the Ministry of Mines of the Democratic Republic of the Congo issued a *note circulaire* obliging all mining operators in the country, at every point of their supply chains, to exercise due diligence as defined in Security Council resolution 1952 (2010) and the guidance provided by the Organization for Economic Cooperation and Development. Other countries in the region have also taken measures to raise awareness of the due diligence guidelines, particularly Burundi and Rwanda, assisted by the International Conference on the Great Lakes Region. It remains unclear, however, how effectively the Rwandan mining authorities have been able to prevent the fraudulent importation of Congolese minerals into Rwandan mines, where they are then tagged as Rwandan.

On 10 March 2011, the Government of the Democratic Republic of the Congo lifted its suspension of all artisanal mining activity in the provinces of North Kivu, South Kivu and Maniema, which had been in place since 11 September 2010. The Group determined that during the ban, the mining of tin, coltan and wolframite had continued in several areas, often under the control of FARDC or armed groups. The involvement of FARDC units in mining activities sometimes leads to violent conflicts of interest between army units, revealing the persistence of parallel chains of command. Beyond the Kivus, mining activities are much less tainted by armed group or military involvement. Traceability efforts are ongoing in Tanganyika district, North Katanga, which is free from armed group control. In Maniema, the Group found conflict-free trading of minerals in the territories of Kailo and Pinga.

Smuggling is a widespread problem. Minerals can pass unrecorded through official crossings, but most smugglers use illegal border crossings. The Group identified a number of such crossings, including a street controlled by General Bosco Ntaganda in Goma and a small Lake Kivu port north of Bukavu run by elements of the FARDC navy. Smugglers sometimes try to launder untagged material into the International Tin Research Institute Tin Supply Chain Initiative in Rwanda, threatening the credibility of the system.

Armed groups continue to generate income from natural resources other than minerals. Among other things, the Group investigated instances of illegal taxation on fishing, timber and charcoal production.

Arms and ammunition

Armed groups continue to obtain most of their arms, ammunition and uniforms from FARDC. Leakage from FARDC stocks, whether through small-scale barter, larger transactions, abandonment or seizure on the battlefield, is widespread and largely uncontrolled. State-owned arms are not yet marked or registered before being issued.

Human rights

Finally, the Group looked into a number of human rights violations perpetrated by members of armed groups or FARDC. The recruitment and use of children remains a common practice within most armed groups. Within the national army, former CNDP officers continue to recruit minors, targeting those formerly associated with armed groups.

Contents

			Page
I.	Introduction		18
	A.	Mandate	18
	B.	Methodology	18
	C.	Cooperation with States and organizations	19
II.	Political and security context		20
III.	Foreign armed groups		25
	A.	Allied Democratic Forces	25
	B.	Lord's Resistance Army	31
	C.	Forces démocratiques de libération du Rwanda-Forces combattantes Abacunguzi	31
	D.	Forces démocratiques de libération du Rwanda splinter groups	44
	E.	Forces nationales de libération	46
IV.	National armed groups		52
	A.	Mai Mai Yakutumba (Forces armées alléluia)	53
	B.	Nduma Defence for Congo (Mai Mai Sheka)	59
	C.	Alliance des patriotes pour un Congo libre et souverain	65
	D.	Forces patriotiques pour la libération du Congo	70
	E.	Armée de résistance populaire	71
	F.	Other groups	71
V.	Challenges to the integration or demobilization of armed groups		78
	A.	Groups integrated in 2011	79
	B.	Groups integrated in 2009	81
VI.	Evaluation of the impact of the Group's due diligence guidelines		90
	A.	Evaluation of the impact of the due diligence guidelines on individuals and entities purchasing, processing or consuming minerals from red-flag locations	91
	B.	Evaluation of the impact of the due diligence guidelines on the mining sectors of eastern Democratic Republic of the Congo and other red-flag locations	99
	C.	Civil society	100
	D.	Member States	100
	E.	International organizations	107
VII.	Natural resources		109
	A.	Minerals	109
	B.	Non-mineral natural resources	139

VIII.	Arms and ammunition		141
	A.	Cross-border movement of arms and ammunition	141
	B.	Diversion of arms, ammunition and military equipment of the Forces armées de la République démocratique du Congo	141
	C.	Stockpile management	143
	D.	Community disarmament	145
	E.	Notifications to the Committee on deliveries of military equipment and the provision of training to the Forces armées de la République démocratique du Congo	147
	F.	Control mechanisms	148
IX.	Updates on sanctioned individuals and entities		149
	A.	General Bosco Ntaganda	149
	B.	Colonel Innocent Zimurinda	155
	C.	Tous pour la paix et le développement	156
X.	Violations of international humanitarian and human rights law		156
	A.	Individuals operating in the Democratic Republic of the Congo and committing serious violations of international law involving the targeting of children or women in situations of armed conflict	156
	B.	Political and military leaders operating in the Democratic Republic of the Congo and recruiting or using children in armed conflicts in violation of applicable international law	160
	C.	Obstruction of the distribution of or access to humanitarian assistance	163
XI.	Recommendations		163
Annexes			
1.	Mandate of the Group of Experts on the Democratic Republic of the Congo pursuant to Security Council resolution 1952 (2010), as specified in its interim report (S/2011/345)		168
2.	Current list of individuals and entities designated for targeted sanctions by the Security Council Committee established pursuant to resolution 1533 (2004)		170
3.	List of organizations and authorities with which the Group met during its mandate		172
4.	The principal ADF training centre at Mwalika camp		178
5.	Semliki River in Beni territory, North Kivu, used by ADF as a critical transport route for supplies, fishing and the arrival of recruits		179
6.	The former headquarters of Ugandan rebel group ADF at Nadui, located east of Erengeti, Beni territory, North Kivu, which was retaken by the group after it had lost it to FARDC in 2010		180
7.	List of known aliases used by Jamil Mukulu		181
8.	British passport used by Jamil Mukulu, including alleged entry stamps to the United Kingdom of Great Britain and Northern Ireland		182
9.	Underground tunnels found by FARDC in 2010 during its occupation of the ADF Nadui camp		183

Amy Westervelt,

Forbes.com

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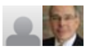
http://www.forbes.com/sites/amywestervelt/2011/10/12/anticipating-new-sec-rules-tech-companies-shift-to-conflict-free-metals/

Anticipating New SEC Rules, Tech Companies Shift To Conflict-Free Metals



No one wants to think that the money they just spent on a shiny new iPad or smartphone is putting a machine gun in the hands of a Congolese rebel. That's the image that activists have used to scare U.S. tech companies into getting off of what they call "conflict minerals," namely tantalum, tin, gold and tungsten sourced from mines in the Democratic Republic of Congo, and surrounding regions, that are, in many cases, controlled by armed militia. Last year, amidst the financial regulations included in the Dodd-Frank Wall Street Reform and Consumer Protection Act was a requirement that the Securities Exchange Commission (SEC) require companies to report their sources of certain conflict minerals.

Although it seemed like a small, albeit odd, addition to a major financial reform packet at the time, Section 1502 is having an industry-wide impact in the tech sector. The language of the regulation expresses a Congressional concern that "the exploitation and trade of conflict minerals originating in the Democratic Republic of the Congo and adjoining countries (together called 'DRC countries') is helping to finance conflict characterized by extreme levels of violence in the eastern Democratic Republic of the Congo, particularly sexual- and gender-based violence, and contributing to an emergency humanitarian situation therein…"

The SEC has yet to finalize its rules on the matter, but in the meantime U.S. tech companies, eager to avoid a P.R. nightmare, are moving away from Congolese suppliers.

Apple was made the poster-child for conflict-free minerals last year, after a Yes Men prank advertised a conflict-free iPhone. Although company spokespeople noted that not only is Apple far from the only company to source such minerals, but also that conflict minerals are not necessarily the root of the Congo's troubles (true on both counts), the company nonetheless moved quickly to address the issue in its 2011 Supplier Responsibility progress report, and to join others in the industry, such as HP and Intel, in strategizing a solution. Nokia is the latest company to be hit with bad P.R. over conflict minerals, thanks largely to its starring role in the documentary *Blood in the Mobile*.

While some companies are looking to simply opt out of the Congo's resources, the problem with simply pulling out of the region is two-fold: First, there is not necessarily an abundance of conflict-free minerals available elsewhere, and second, in the absence of customers, mines are shutting down and workers are losing their jobs, adding fuel to the conflict and making the "solution" a part of the problem.

In an effort to craft an alternate approach, the Electronics Industry Citizenship Coalition (EICC, the largest electronics industry trade group) has launched several initiatives aimed at converting Congolese mines to conflict-free sources, and improving transparency of the supply chain from mine to smelter to export product. With leadership from Apple, Intel, HP and others, the EICC has created a common reporting template, which will help companies capture data from their suppliers, and from their suppliers' suppliers. The template has been made available for free to all companies, both within the electronics industry and beyond it.

These metals are relevant to many companies," says Jay Celorie, supply chain energy program manager at HP, which has been heavily involved in the push for conflict-free minerals. "Any product that uses electrical current, from a hair dryer to a toaster to a microwave to cars and airplanes, is going to have these minerals. Then you've got the metallurgy industry, as well, so steel manufacturers and the jewelry industry, for example. I know the attention on conflict minerals has been disproportionately focused on laptops and mobile phones, and that's unfortunate, because we need all industries to do their part."

The EICC also is pinpointing conflict-free smelters in the region, starting with a list of compliant tantalum smelters and eventually adding tin, gold, and tungsten. Together, both tools will help companies meet the regulations outlined in Dodd-Frank (and expected to be mirrored in the SEC provisions), which don't disallow the use of minerals from the Congo, but do stipulate that companies must report where their minerals are sourced, and that companies with audited conflict-free supply chains may label their products as "conflict-free."

Now tech companies are beginning to throw their collective weight behind the new Public-Private Alliance for Responsible Minerals Trade, an alliance between private companies, the U.S. State Department, the U.S. Agency for International Development, various industry trade associations, non-governmental organizations working in the regions, and the International Conference on the Great Lakes Region (ICGLR). So far Intel, Sony, and HP have all indicated their intent to join the Alliance, which is expected to officially launch by the end of the year.

We joined the alliance to join with other stakeholders to convene resources, and work with the State Department to sponsor mostly existing initiatives in the region that need funding," Celorie explains. "The goal is to help create responsible trade between the mines, concentrators, traders, smelters and exporters. As these minerals go from a mine in the jungle through the smelter to the export point, that's where the risk of illegal or armed militia taking advantage of these minerals comes in. We want to create a responsible mineral trade in-region that allows smelters to source conflict-free minerals, with auditing and documentation that certifies that the minerals are conflict-free, which then allows those materials to enter our supply chain."

While the first companies to voice support of the Alliance are in the electronics industry, the hope is that the PPA will eventually include those in other industries as well. In addition to the SEC rulings, the industry will likely be expected to adhere to the due diligence guidelines put forth by the Organization for Economic Cooperation and Development (OECD). The OECD's due diligence guidance on conflict minerals, with supplements for tin, tungsten, and tantalum has been released, and HP has agreed to a one-year pilot implementation of the guidance, after which time they will provide feedback that the OECD will use to improve the guidance. The supplement on gold is still in the draft stages, and the jewelry industry has been more involved with its drafting, given the importance of gold to its products.

Whether or not going conflict-free in the Congo will translate to higher consumer electronics prices (and, as some industry watchers point out, more trouble competing with China), remains to be seen. The SEC estimates that compliance costs could total over $71,000,000 and impact over 5,000 companies.

However, HP's Celorie says that as exploitation of the minerals is reduced, the conflict-free system will be self-funding. "If everyone is getting their fair piece of the pie as the metal makes its way from mine to export, the cost of the metal is driven by the world market, and smelters will source minerals where they can get them, but they won't source from the Congo unless they can find conflict-free minerals there," he explains. "The PPA is really aiming to jump-start that, with the expectation that it will be self-sustaining once you eliminate the extortion happening now. In terms of an issuer, doing compliance reporting, this just becomes part of our business cost."

Comments

- Called-Out
- Expand All Comments

- dschatsky 5 months ago

  It's worth noting that estimates of the cost and complexity of complying with these rules vary widely, partly because the specifics of implementation are as yet unknown.

  For those interested in following news and practical information about Section 1502 of Dodd-Frank, please visit http://section1502.com.

  - Called-out comment

  Reply

- chuckblakeman 5 months ago

  Starting a “pilot program” (PPA) doesn’t solve the issue. The issue is that thousands of tribes have lost their livelihood and are starving to death. A pilot program will allow giant corporations to buy coltan from a few giant corporate mines, but it will do nothing for the hundreds of thousands of people whose mines don’t fall into this pilot program, if it even gets underway. People are dying right now because of Dodd-Frank and we’re all standing around debating future potential solutions that will be spear-headed by a government bureaucracy that has yet to be created. Not encouraging, especially to all those tribes that don’t have jobs anymore that won’t even be part of this initiative.

  Our Congo-based company works with Congolese tribes to help them export without a dime going to conflict groups. Dodd-Frank has been disastrous for them.

  I challenge Dodd-Frank and PPA supporters to take a poll of those they are supposedly trying to protect. The response would tell them that, while Dodd-Frank and PPA was well-meaning, it is an unmitigated disaster in practice. COCABI, COMIMPA and COMIDER represent 20,000 miners in the conflict area. They all say they’ve never even been contacted. This is just another western, colonialist treatment of people who are being given no say in developing the solution – we know what’s good for them.

  There are six regions from which Dodd-Frank minerals are mined, and only one of them has ever had anything to do with conflict. Dodd-Frank has put them all out of business before it is even enacted. The World Bank says it has negatively affected 10 million Congolese.

  Wouldn’t it make sense to FIRST declare any minerals coming out of those five unattached regions to be clean and immediately encourage companies to go back in and start buying?

  I was in Tanzania last week to help a chief export his coltan using a visible, well-documented process that ensures not a dime goes to conflict. His people will go hungry because the smelters, citing Dodd-Frank, have vanished. The chief is devastated, as are the millions who find their meager livelihoods destroyed by this over-reaching act.

  The issue with Dodd-Frank is that it is a nuclear option that demonizes minerals instead of criminals. It’s no different than burning down every house in town to stop a burglar from stealing, who will simply steal from somewhere else. PPA does not change this. Instead it reinforces the ridiculous notion that minerals are bad and need to be monitored, when in fact criminals are bad and need to be monitored and eradicated.

Dodd-Frank has burned down the entire mining industry in the Congo in hopes that their scorched earth policy will catch a militia group in its path. They are willing to take down every innocent man, woman, and child who live off mining. Such massive collateral damage is not acceptable under any circumstance.

Remove mining from the equation and the militia will exact its pound of flesh from the locals by other means. This should be handled by targeting militias, not mining. Dodd-Frank takes the route of universal collateral damage, which, before the bill is enacted, has already destroyed the livelihoods of the innocents who depend on it.

It is unconscionable that we are focusing on minerals instead of on criminals. The UN and the United States need to both grow a backbone and go after the problem, the militia. Until they do, the bumper sticker will read, “If minerals are outlawed, only outlaws will sell minerals.”

See http://ChuckBlakeman.com for more information in support of the people of the Congo whose lives are being destroyed by this emphasis on demonizing minerals instead of criminals.

NY Times, March 20, 2012, p.B1
http://www.nytimes.com/2012/03/20/business/use-of-conflict-minerals-gets-more-scrutiny.html

Behind the Blood Money:

Use of ‘Conflict Minerals’ Gets More Scrutiny From U.S.

By EDWARD WYATT

WASHINGTON — An iPhone can do a lot of things. But can it arm Congolese rebels?

That is the question being debated by a battalion of lobbyists from electronics makers, mining companies and international aid organizations that has descended on the Securities and Exchange Commission in recent months seeking to influence the drafting of a Dodd-Frank regulation that has nothing to do with the financial crisis.

Tacked onto the end of that encyclopedic digest of financial reform is an odd provision. It requires publicly traded companies whose products use certain minerals commonly mined in strife-torn areas of Central Africa to report to shareholders and the S.E.C. whether their mineral supply comes from the Democratic Republic of Congo.

The measure is aimed at cutting off the brutal militia groups that have often taken over the mining and sale of so-called conflict minerals to finance their military aims. Just about every company affected by the law says they support it, but many business groups have also been pushing aggressively to put wiggle room in the restrictions, calling for lengthy phase-in periods, exemptions for minimal use of the minerals and loose definitions of what types of uses are covered.

Nearly every consumer product that includes electronic parts uses a derivative of one of the four minerals: columbite-tantalite, which when refined is used in palm-size cellphones and giant turbines; cassiterite, an important source of the tin used in coffee cans and circuit boards; wolframite, used to produce tungsten for light bulbs and machine tools; and gold, commonly used as an electronic conductor (and, of course, jewelry).

Given their broad application, the minerals have been a primary target of humanitarian groups concerned about genocide, sexual violence, child soldiers and other issues that have been common outgrowths of conflicts in Central Africa.

“We don’t think you need to have people being killed in order to have these metals in our cellphones,” said Corinna Gilfillan, who heads the United States office of Global Witness, which has worked on the issue for several years.

But manufacturers question the effectiveness — not to mention the practicality and expense — of tracing every scrap of refined metal back to its original hole in the ground.

“The challenge is that conflict minerals are a symptom,” said Rick Goss, vice president for environment and sustainability at the Information Technology Industry Council, a trade group. “The entrenched powers in these countries have plenty of other means to raise money. Simply cutting off one source of revenue to a warlord or military rulers is not going to stop the genocide.”

The Dodd-Frank law on conflict minerals is already having an effect in Eastern Congo, damping or halting production at many mines even before the disclosure regulations for companies are in place.

“It is causing, I would say, a sort of embargo on traders and diggers in Eastern Congo,” Serge Tshamala, an official at the Embassy of the Democratic Republic of Congo. “The longer it takes the S.E.C. to come up with guidelines, the worse it is for our people.” Mr. Tshamala and other Congo government officials met with the agency’s staff members in June, urging them to speed completion of the regulations.

The agency is moving slowly, however. The Dodd-Frank law set an April 2011 deadline for completion of the rules. After proposing regulations in December 2010, the agency took comments for 30 days, and received so many suggestions that it extended the period by a month.

After missing the April deadline, the agency in October conducted a roundtable for its commissioners to hear directly from manufacturers, mining companies, advocacy groups and institutional investors. This month, Mary L. Schapiro, the agency’s chairwoman, said the agency hoped to complete the process “in the next couple of months.”

The commission already has decided to include a phase-in period to allow companies time to build networks to trace their mineral supply. But an exemption for use of trace amounts of the metals is unlikely, Ms. Shapiro said.

As Bennett Freeman, a senior vice president for sustainability research and policy at Calvert Investments put it during the roundtable last year, a very small amount of gold is used as a conductor in a cellphone, “but when one takes into account the fact that there were 1.6 billion cellphones sold globally last year, that adds up to be a very significant volume of that particular metal.”

Still undecided — and the subject of more than 100 meetings between lobbyists and S.E.C. officials since the rule was proposed — is just how the commission will decide who is covered by the conflict minerals requirement. The law says that the minerals must be “necessary to the functionality or production of a product manufactured by” a company.

Simple as it seems, that definition gives rise to a tangle of questions. Is mining "manufacturing"? Is a coffee can made with tin "necessary to the functionality" of the coffee being sold?

The hair-splitting answers to those questions will be the basis on which the law could be challenged in court, and it is that prospect that accounts for much of the agency's deliberate progress in fashioning the rules.

Administrative law requires an agency like the S.E.C. to conduct a cost-benefit analysis of rules. Last year, a federal appeals court cited insufficient cost-benefit research in striking down one of the agency's new regulations, and S.E.C. insiders say that decision has the agency operating in perpetual fear of a repeat occurrence.

There is little agreement on what it will cost companies to comply. The agency estimates companies will have to spend $71 million to comply with its regulations. The National Association of Manufacturers estimates the regulations will cost $9 billion to $16 billion.

Whatever the answer, part of the burden would fall on a given company's supply chain — companies, that is, that are very likely not to be covered by the regulation's reporting requirements, which cover only publicly traded companies.

Irma Villarreal, chief securities counsel for Kraft Foods, said during the S.E.C. roundtable that Kraft produced 40,000 distinct products and used 100,000 suppliers, creating a Herculean task of auditing supply chains for conflict minerals.

Nonprofit groups that support the new regulation say a growing number of companies — Intel, Motorola and Hewlett-Packard among them, according to the Enough Project, a nongovernmental organization that works against genocide and crimes against humanity — have already made significant steps to inspect and adjust their supply lines to avoid tainted sources of conflict minerals.

"Our hope," said Darren Fenwick, a senior manager of government affairs for the Enough Project, "is that the rule is strong enough that companies in industries that aren't doing anything will start to feel the pressure in their supply chains."

http://www.dukechronicle.com/article/returning-our-roots-acir-and-conflict-minerals

Returning to our roots: ACIR and 'conflict-minerals'

By dPS | Duke Chronicle, April 3, 2012
Comments (0)
Print

By most standard measures, Duke was supposed to have a pretty typical year in 1997. President Nan Keohane was returning to office, hoping to initiate a university-wide dialogue on the importance of race relations on campus. Our beloved Coach Wojo was the starting point guard for our basketball team, recently coming off an ACC regular season championship. Indeed, that Duke might not have looked that much different than ours today. Although the year started off in rather ordinary fashion, the Duke community—as well as the nation—was in for an extraordinary surprise.

It all started when a group of undergrads, led by student Tico Almeida, returned back to campus with an ambitious dream. After it became apparent than inhumane working conditions were being forced upon workers in garment and clothing factories, they were moved that such injustice was so commonly accepted within an entire industry. How could this be normal in the modern era? They couldn't be quiet. Realizing apparel carrying the Duke brand was itself licensed to manufacturers who were violating fundamental human rights, they decided it was time to stand up and leverage the voice of our University to call for social justice.

What followed was the birth of a movement. Students Against Sweatshops took campus by storm, mobilizing Duke students to voice their opinions and call for action and even hosting a 31-hour peaceful sit-in in President Keohane's office. Their campaign set a historic precedent, pushing Duke to be the first university in the nation to require all apparel vendors to sign an ethical code of conduct and disclose locations of their production factories. Their progress sent shockwaves, receiving coverage in outlets like The New York Times and placing the issue squarely in the realm of public debate. Within a year, their movement had spread to over 100 universities, and major clothing manufacturers like Nike and Adidas had no choice but to pay attention and act.

This year marks the 15th anniversary of the Students Against Sweatshops movement, and perhaps fittingly, we've arrived at a similar moment where Duke students have the ability to stand up and lead in a movement for human rights. Tomorrow, Wednesday, April 4, Duke's Advisory Committee for Investment Responsibility is convening for the first time in five years to deliberate on investments in companies sourcing "conflict-minerals" from eastern regions of the Democratic Republic of the Congo. War in the area has claimed over five million lives, and due to an epidemic of sexual violence U.N. Representative

Margaret Walström has called the region the “rape capital of the world.” Numerous armed militias have ravaged the region through sustained warfare, and in many cases, have exploited Congo’s vast mineral reserves through coercion and taxation of miners as a key source of financial sustainability. These minerals (tin, tantalum, tungsten and gold) are utilized by a wide variety of industries, but most notably by the consumer electronics industry. In 2010, a provision of the Dodd-Frank Wall Street Reform Act called upon corporations with possible connections to the DRC to disclose information about their mineral supply chains. But unfortunately, regulations to be issued by the SEC have been delayed for over a year and a half.

Now, more than ever, it’s time for us to stand up. The hearing on Wednesday commences a multi-week deliberation period when ACIR consults experts and decides whether to recommend a resolution to President Brodhead, who can then pass it on to the Board of Trustees. If passed, Duke would join Stanford and become only the second university to pass a “proxy-vote” resolution, which would pledge our support to shareholder movements supporting oversight and transparency within relevant companies in which we invest. Though the proxy-voting resolution is a small, symbolic act compared to the Students Against Sweatshops movement, it is a humble first step that will signal to other universities, the general public and most importantly, technology companies, that ethical supply chains are a key priority.

We’re not that much different today from those students who came 15 years before us, and we never really have been. Our thoughts and aspirations still center around a vision of social change—as did theirs. Our minds, hearts and guts still have visceral reactions to gross injustice—as did theirs. Our convictions still tell us that this University has the moral courage to not just describe the status quo, but to transform it—as did theirs. Together, we can write a new chapter to this lasting story. We hope you stand with us at the ACIR hearing Wednesday evening as we pay tribute to a legacy of action at Duke.

Liz Hannah, Trinity ’14, Saira Butt, Trinity ’15 and Sanjay Kishore, Trinity ’13 are members of the Coalition for a Conflict-Free Duke. This column is the 11th installment in a semester-long series of weekly columns written by dPS members addressing civic service and engagement at Duke. Follow dPS on Twitter @dukePS

Showing 3 comments

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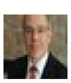
- 

  Chuck Blakeman Collapse

  I would implore you to study this issue further from both sides before you attach yourself to the simplistic "cell phones are evil" message. Dodd-Frank is quite possibly the most colonial/imperialistic passive tragedy perpetrated on Africa in at least the last 100 years. In all of the political and NGO meetings organized in the last two years on this subject not a single Congolese chief or tribe have even been invited, let alone represented.

We represent many chiefs and their tribes who are doing artisanal mining, with the objective of helping them build local economies that will not be dependent on minerals, which are a short-term revenue source for them. Dodd-Frank is making this impossible in every way.

Imagine the following situation: An advocacy group convinces the United States to drop a nuclear bomb on Pakistan in order to get Bin Laden. Thousands die, 100,000's lose their homes and employment, and 1 million people are directly affected.

Would you back that advocacy group?

That is the question you have to answer if you are going to accept the advocacy of Global Witness, Enough Project and others saying "cell phones are evil".

Dodd-Frank legislates mineral trade in 10 central African countries. The Congo is the size of everything east of the Mississippi. Central Africa is the size of the continental United States. The conflict area is the size of Vermont, and is not even connected by a single road to the rich mineral areas hundreds and over a thousand miles to the west and south. Lumping all of central Africa together under Dodd-Frank has paralyzed the entire region.

We are a Congolese-owned and based company who leaves most profits locally, uses mineral wealth to diversify local economies and break the dependence on minerals, which will eventually be depleted. Since September of 2010, minerals from honest, innocent artisanal miners all over central Africa are not selling. There is a 100% embargo on most artisanal minerals, moving 1 million people from abject poverty to utter destitution.

One woman who left farming and worked as a miner to avoid rape, "Now what am I supposed to do? Go back to farming?" Dodd-Frank is sentencing her and thousands like her to unspeakable horrors in front of them.

Less than 1% of all central African minerals are attached to conflict. What this article doesn't address is that the UN Panel of Experts has proven smuggling by militia has "increase significantly" while exports of legitimate artisanal minerals all over central Africa has evaporated.

You don't hunt Osama bin Laden with a nuclear bomb and you don't solve a very localized militia problem by destroying the livelihoods of everyone throughout the entirety of 10 central African countries. The "minerals are evil" message could be the worst passive tragedy perpetrated by the west on Africa in 100 years.

I offered to pay for Enough Project and Global Witness to come to Stanford University to debate this issue. I met with students at Stanford without them. I'll make the same offer for Yale. Invite us (and Enough Project and Global) and we'll bring at least one Congolese Chief with us.

Demonize criminals, not minerals. Four years after Kimberley was implemented to rid Sierra Leone of militia groups selling diamonds, the only way they were eradicated was when the British army went in and routed them out. Global Witness quit Kimberley earlier this year, announcing it be an abject failure. They are the ones who have coached Enough Project on how to model Dodd-Frank after Kimberley.

As Eric Kajemba, head of a Congolese civil society said, "If the advocacy groups are against us, who is for us?" The world is upside down.

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  sanjayk5

  Please do come down to Duke! We're hoping to host a conference on the issue of CSR and "conflict-minerals" with stakeholders in the Fall -- and would love to host a constructive dialogue. As students, we have disengaged from the "cellphones are evil" narrative -- we know this issue is much more complex. We realize that the implementation of Dodd-Frank (especially ambiguity surrounding exact rules and regulations as defined by the SEC) contributed to the de-facto embargo you cited above -- that's why our proposal does not call for our university to leave or divest from any company.

  However, some vocal critics of the effects of Dodd-Frank (including Eric Kajemba) have applauded the spirit of the legislation -- and, as students, we also believe corporate accountability and transparent supply chains are a worthy goal. The fact is, the same UN Group cited above has estimated that between 20-40% of financing of armed groups in DRC occurs through the illicit trade of minerals -- additionally, the UN has affirmed its support for corporate due diligence re: "conflict-minerals" (releasing guidelines along with the OECD).

Steve Hege, head of the UN Group of Experts in DRC, has said the only solution for addressing these consequences of Dodd-Frank is for the exact rules to be published by the SEC - which has stalled for about a year and a half. At this critical juncture, we think it's important for Duke to stand up and affirm its commitment to corporate social responsibility.

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  Chuck Blakeman

  Sanjay, Give me the dates with some lead time and we'll be there.

  FYI - Corporate social responsibility isn't responsible if it creates an environment where 10 million Congolese are adversely affected and 1 million are moved from abject poverty to utter destitution while the militia are the only ones who are benefiting.

  There isn't a single example in history where removing 20-40% (or 100%) of financing of armed groups led to their dissolution, including the Kimberley diamond process, which was supposed to rid Sierra Leone of militia (the British Army did it three years later).

  And again, the militia are flourishing in the Vermont-sized conflict zone while an area the size of the United States has lost its principal economic engine. What part of that reflects "corporate social responsibility"?

  Also, ambiguity surrounding the Dodd-Frank rules has nothing to do with the embargo. The embargo started long before Dodd-Frank was even passed, and every single smelter we talk to says Dodd-

Frank is NOT the reason they don't buy from central Africa. The reason they give is that the NGOs, particularly Global Witness and Enough Project, have created a public relations nightmare for them with their "cell phones are evil" message. Until that message is reversed and replaced with "militia is evil" there will be no solution to this problem.

The two biggest smelters of coltan in the world have posted messages that they will never again buy from central Africa, no matter how good the tracking mechanism is when it is implemented. And all the others we talk to (there are only a couple dozen coltan smelters in the world) verbally say the same thing - why would they risk the PR nightmare created by these NGOs when they can buy the same minerals many other places without having to fight this simplistic message? They aren't looking for clarity from the SEC; they're looking for the NGOs to stop telling people that cell phones are evil, and start telling people that the militia is evil (not a great fundraising message, but a much more accurate one).

If you invite us and we bring a Congolese chief, it could possibly be the first time that a Congolese who is directly affected by this bill has been invited into the discussion. That should tell us something about the validity of the discussion to this point. It's the new colonialism.

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http://dukechronicle.com/article/student-petition-advocates-conflict-free-duke

Student petition advocates for a 'Conflict-Free Duke'

By Kristie Kim | Duke Chronicle, January 24, 2012
Comments (1)

A group of Duke students is making strides in its petition to make the University more conscious about conflict minerals and its investments.

Coalition for a Conflict-Free Duke is calling on the University to actively support the crisis in the Democratic Republic of Congo. To date, these efforts have resulted in an official statement from the University's procurement department regarding conflict minerals earlier in the Fall and a unanimous Duke Student Government resolution, which called for a more robust University purchasing policy that would favor companies that do not use conflict minerals in their products. Now, the coalition is trying to take their cause to the Board of Trustees.

"We are proud that Duke is one of eight colleges that have issued a statement on conflict minerals, but now we are interested in the implementation of these proposals," said junior Sanjay Kishore, president of the Duke Partnership for Service and member of the CCFD board.

The group wants to alter the University's investment strategy with respect to electronic companies and conflict minerals, Kishore said. These minerals—materials mined from conflict-stricken areas, such as the Congo— are often found in electronic consumer products. Rebel groups in Congo use the profits from the mineral trade to control local populations and perpetuate the ongoing crisis.

According to its online petition that launched in early December, CCFD wants the University to implement a proxy voting guideline that would instruct the University to vote in favor of conflict-mineral conscious shareholder resolutions within companies in which it invests.

Members of CCFD met with the President's Special Committee on Investment Responsibility Jan. 13 to discuss the viability of this petition.

Provost Peter Lange, chair of the President's Special Committee, said the committee voted unanimously to clear the petition and pass it onto the Advisory Committee of Investment Responsibility. The Advisory Committee on Investment Responsibility is a University body that was formed in 2004—along with the PSC—after the Board of Trustees adopted a policy on socially responsible investing.

If the ACIR agrees to pass the resolution, it will then be presented to the Board of Trustees, Lange said. DUMAC, the firm that manages investments for the Duke University Endowment, details its long-term framework for the endowment’s return on the University’s website. According to the framework, the University strives to invest roughly 38 percent of its endowment in public and private equity. Lange was unable to disclose which of these companies include conflict minerals in their supply chain.

If the Board of Trustees approves the petition, Duke would be the second university to implement a proxy voting guideline for its investors, said sophomore Stefani Jones, founding member and chair of the CCFD board. Stanford University adopted a similar policy in June 2010.

“We are crossing our fingers for the same results,” Kishore said.

A special appeal

Jones, along with fellow CCFD members, appealed to Apple CEO Tim Cook, who graduated from the Fuqua School of Business in 1988, in a video posted on Facebook in late December. The video, which urges Cook to embrace production of conflict-free Apple products, was picked up by The Huffington Post Jan. 12. Mining of minerals that power Apple electronics—such as tin, tantalum, tungsten and gold—subsidize the armed militias in the Congo, Jones said in the appeal.

“It is the responsibility of Duke students, who are major consumers of such electronics, to use their power as thought leaders to lead the movement against this atrocity,” Kishore added.

Kristin Huguet, manager of corporate public relations for Apple, said that neither Cook nor a representative from Apple have responded to the appeal. Huguet added that Apple published its 2012 Supplier Responsibility Progress Report Jan. 13, but that there is no correlation between the report’s release and The Huffington Post article. Apple’s report briefly addresses Congo’s conflict minerals by stating that small quantities of the specified metals are required in the manufacturing of their devices.

‘Forerunner for change’

The coalition, which is part of the national Conflict-Free Campus Initiative, sponsored the Eureka Symposium in October. Kishore said the group met a roadbloack when the athletics department did not allow CFCI to bring in a guest speaker from the Enough Project—a human rights organization based in Washington, D.C.—to speak about conflict minerals.

Representatives from Duke Athletics were unavailable to comment.

“It was a missed opportunity for [Duke] to make a decision for principle and not for money, and the athletic department knuckled under too quickly,” said Robin Kirk, program director of the Duke Human Rights Center.

Kirk added that one of the most difficult and important tasks for the coalition will be education about their initiative.

“At this point, people don’t really understand the [conflict minerals] issue, which makes it harder to conceive that they will easily give up devices that are so ubiquitous and necessary on a day-to-day basis,” she said.

Both Kirk and Kishore said that given Duke’s legacy in the history of civil rights, the University has potential to make a difference in the national use of conflict minerals in electronics.

“Duke has been a leader in civil rights changes in the past, and we hope that with continued efforts of its students and faculty, it will be a forerunner for change once again,” Kishore said.

The Chronicle

Transparency crucial to conflict-free Duke

By Editorial Board | April 2, 2012

The time has come for the University to elucidate its investment process and establish its commitment to ethically responsible investing. Since last October's debacle, when the Coalition for a Conflict-Free Duke was barred from bringing awareness to the issue of investment responsibility during Countdown to Craziness, the CCFD has implemented a more savvy approach in prompting the University toward this goal. Their petition, which is currently under deliberation in the advisory committee of investment responsibility of the Academic Council, calls for the University to demand proxy voting rights for shareholder resolutions encouraging movement away from the use of conflict minerals within companies in which the University invests. Conflict minerals are mined from countries such as the Democratic Republic of Congo, a region that still has not recovered from civil war, and are used to directly finance warring factions that commit egregious crimes. Because many technology companies do not exercise oversight regarding the sourcing of their materials, these minerals turn up in consumer products. In order for the Board of Trustees to approve any proposal regarding control of investment practices, it must pass through two committees: the president's special committee on investment responsibility and ACIR. After passing the PSC unanimously approved CCFD's petition Jan.13, the request has yet to pass through ACIR, as the committee has recently entered its three-week deliberation process. The CCFD's endeavor highlights problems with the University's handling of investment responsibility. It is unclear why there must be two bodies in place to consider proposals thoughtfully before presentation to the Board of Trustees—the only body in the long list with real decision-making power. A single committee that answers to students, faculty and the Board of Trustees may be more effective. Moreover, it is regrettable that ACIR convenes on an ad hoc basis, which just adds to the elbow grease necessary to pass a proposal. Perhaps what is most concerning about our institution's investments is that even administrators may be in the dark about where some of the endowment money is being thrown. Currently, the Duke Management Company (DUMAC) manages Duke's endowment and, although it does not disclose its asset allocation, it likely invests in funds that themselves do not disclose their assets and equities. This means enforcement of the CCFD proposal is doubly handicapped: Students cannot enforce against DUMAC because it is opaque, and DUMAC cannot enforce against its own opaque investments. The impetus is on the University to hold our managing partners accountable as much as possible. While it is unrealistic to call for divestment from the technological companies that use conflict minerals, Duke has a lot of power in demanding that the procurement policies of these corporations are in line with socially responsible principles. After all, there are no foreseeable financial ramifications of simply supporting resolutions among shareholders for companies to oversee their source chain. The University's compliance with the CCFD's proposal would be largely symbolic. This is a vital first step in changing Duke's investment practices. Duke now needs a commitment to **greater**

transparency (http://www.dukechronicle.com/article/show-duke-money) regarding our financial holdings. We hope that ACIR will pass the Coalition for a Conflict-Free Duke's resolution and bring it to the Board of Trustees. And we hope that Duke students will take a stand and produce a coherent response in support for this proposal at ACIR's public hearing Wednesday

Advisory committee hears students for a 'conflict-free' Duke

BY CHARLIE HALEY
THE CHRONICLE

Duke is making progress on a path to potentially become free of conflict minerals and the interests of companies using the materials.

For the past six months, the Coalition for a Conflict-Free Duke has been pushing the University to consider a shareholder resolution that would ask Duke to take conflict minerals into account when investing in electronic companies. For the first time in five years, the Advisory Committee on Investment Responsibility conducted an open session Wednesday, where a crowded room discussed Duke's financial relationship with conflict minerals in Africa. If the initiative is successful, Duke will be the second university in the nation, following Stanford University, to pass a shareholder resolution regarding conflict mineral trade.

The sale of conflict minerals is largely responsible for fueling violence in the Democratic Republic of the Congo.

"It's high time that we're talking about investment responsibility at Duke," said CCFD Chair Stefani Jones, a sophomore. "There's something wrong ... when we don't know if our cellphones are funding the deadliest war since World War II."

CCFD's proposed voting guide would request that shareholders vote to approve resolutions asking companies for information and increased transparency regarding their involvement in conflict mineral trade.

The committee hopes to advise President Richard Brodhead about conflict mineral investment policy by the end of the semester, said ACIR Chair Jonathan Wiener, William R. and Thomas

SEE CONFLICT-FREE ON PAGE 12

JISOO YOON/THE CHRONICLE

Stefani Jones, a sophomore, speaks during a meeting of Duke's Advisory Committee on Investment Responsibility.

ON THE RECORD

"...naturally, I am one of few constituents who enjoys keeping up with the latest DSG news."

—*Samantha Lachman in "Bore-aucracy."* ***See column page 11***

CONFLICT-FREE from page 1

L. Perkins professor of law. The committee meets only when requested and provides investment recommendations to Brodhead, who can then present the recommendations to the Board. Only the Board has the power to influence shareholder policy.

The forum provided an opportunity for the ACIR to gain insight about how the conflict mineral trade causes substantial social injury and how CCFD's desired change would have a direct effect in alleviating this injury.

The Democratic Republic of the Congo has suffered 15 years of violence and unrest, with more than five million casualties, according to an informational document provided by the CCFD at the event. It has also gained designation as the rape capital of the world. This violence has been fueled in part by the illicit trade involving minerals widely used in consumer technology products, as well as food packaging and industrial goods.

Between 20 and 40 percent of the Congo's warlords' revenue comes from these conflict minerals, Jones said.

"Tonight was about getting that real, personal connection," said junior Sanjay Kishore, CCFD member and president of Duke Partnership for Service. "It wasn't about us at all—it was about hearing from folks who are in the Congo, who do research in the Congo, who have some kind of connection."

Rachel Shukuru, a political refugee from the DRC who attended the event, said it is necessary to convince companies to take responsibility for their actions.

"Thank you for working to help Congo, to help those people who are suffering," Shukuru said to the crowd.

Sophomore Nyuol Tong, a student from South Sudan and a columnist for The Chronicle, spoke at the event about a sense of guilt and moral obligation regarding problems in Africa throughout Western society.

"The issue will be solved by the people on the ground," Tong noted. "But if [Duke stops] supporting these companies, that will be a mitigating factor."

In addition to affecting people, the conflict mineral trade also affects plant and animal life in the DRC, noted Brian Hare, assistant professor of evolutionary anthropology. Eastern Congo is one of the most biodiverse places in the world, he noted, adding that he studies the psychology of great apes, some of which only live in the DRC.

"When people are suffering in eastern Congo, so are all of the endangered species that live in the forest" Hare said. "When people are exploiting the forest for minerals, they are also exploiting the native species—it's adding insult to injury."

Several students also noted that efforts to eliminate the illicit conflict mineral trade should not have a negative effect on mines in the region that are already regulated.

"When dawn strikes in the Congo tomorrow, what will they be waking up to?" said junior Alikiah Barclay. "If there's anything we can do to change that for the better, let's do it."

The Chronicle

Uni. considers conflict mineral investment rule

By Lauren Carroll | April 10, 2012

Duke is assessing the potential impact of a resolution that would make the University a more socially conscious investor. By the end of the Spring, the Advisory Committee on Investment Responsibility hopes to assess an investment resolution proposed by the Coalition for a Conflict-Free Duke and to present a recommendation on it to President Richard Brodhead—who may then take the proposal to the Board of Trustees. University administrators do not anticipate any significant financial consequences for Duke's investments if the resolution passes, but the question remains what the impact of the action could be. The resolution proposes a proxy vote—that Duke's investment managers vote in favor of all shareholder resolutions asking companies to be more transparent with their policies regarding conflict minerals as well as any efforts to reduce social injury caused by conflict minerals. The illicit trade of conflict minerals—such as tin, tungsten and gold—is largely responsible for fueling violence in Central Africa. These materials are widely used in consumer technology products, as well as food packaging and industrial goods. If the CCFD resolution is approved through all the proper channels, it would act as a guideline for the investment managers at DUMAC, the corporation that manages the $5.7 billion Duke University Endowment, said Executive Vice President Tallman Trask. The investors' objective is to make decisions that maximize return on investments within legal and ethical boundaries. Passing this resolution would create a new ethical boundary but still allow Duke to be a prudent investor. Duke would not consider any proposal that could potentially have a considerably negative financial impact, Trask said. This resolution would likely have no significant impact on Duke's investments, however, so administrators will probably not base their decisions on the proposal's financial implications. "[DUMAC is] required to be prudent managers of investment, but I don't think we're going to get near that point," he said. "Our shares are not substantial." Trask said details of the investments maintained by DUMAC that might be affected by the resolution are not available to the public. President and CEO of DUMAC Neal Triplett, Trinity '93, declined to comment because the company does not typically make public statements. A symbolic measure This particular proposal is only the second of its kind. In June 2010, Stanford University passed a similar resolution. Although resolutions of this nature might show that universities such as Duke and Stanford are taking a stand, the new investment policies are not expected to stop the conflict because Duke is only a minor investor in any company and has limited influence among shareholders, Trask noted. "[Enacting this policy] is consistent with Duke's general pattern of trying to be responsible around certain social issues," he said. Trask added that Duke tends to be aggressive about issues of social responsibility compared to other universities, noting previous policy changes regarding labor rights, the environment and the genocide in Darfur. But the issue of conflict minerals has not gathered the same momentum among college students nationwide as other human rights concerns have in the past, he noted. It is possible, however, that a few major universities making a statement about how they view conflict minerals could cause a domino effect. "The impact is largely symbolic, but that doesn't mean it's not worth doing," Trask said. CCFD Chair Stefani Jones, a sophomore, said that if enough stakeholders make it known that they are taking active steps to address the conflict mineral issue, it could cause companies to change their policies. "It shows a symbolic measure," Jones said. "Duke is a thought-leader, and that's the main point. It has a symbolic say in the dialogue of the country." Trask noted that the proxy voting resolution would not have as direct an impact as one that would address Duke's procurement of various electronics. Instead of simply advising the investors, a procurement policy could involve boycotting particular products. Jones noted that CCFD previously considered a procurement proposal but found that it would be difficult to manage the procurement of conflict minerals because they contribute to a wide range of products that Duke uses. Due process Jones said the coalition did as much research as possible when drafting the proposal, but it was still difficult to assess how impactful the resolution would be. DUMAC is not transparent with its investments, so CCFD had to make assumptions about whether Duke invests in electronics companies that are involved in conflict mineral trade. "You have to take a shot in the dark in order to guess [electronics] are something we're investing in and [the issue] is something Duke would take seriously," Jones said. Even with the uncertainties, CCFD submitted their proposal to the President's Special Committee on Investment Responsibility in November. In January, CCFD officially met with PSC—charged with assessing whether such proposals address issues that cause serious social injury. PSC then decided that the negative effects of conflict minerals were important enough that the University should officially consider the proposal, Provost Peter Lange, chair of the committee, wrote in an email Sunday. The proposal was then sent to the ACIR. Last Wednesday, ACIR held a closed fact-finding meeting and open forum to gather the general opinions and sentiments of Duke and its stakeholders. According to an agenda provided to The Chronicle, ACIR met with representatives from CCFD, DUMAC, the Stanford Management Company and Apple as well as multiple Duke professors at its fact-finding meeting April 4, before hearing the thoughts of the public at the open forum. ACIR Chair Jonathan Wiener, William R. and Thomas L. Perkins professor of law, declined to comment on ACIR's current leanings regarding the proposal. He emphasized that, because ACIR is an advisory board, whether it does or does not recommend the resolution will not ultimately determine whether or not Brodhead presents the proposal to the Board. Jones noted that it took many weeks for CCFD to create a proposal that would be able to move this far along in the process because the resolution has to be well researched and plausible. As a result, the administration has been receptive and supportive overall, she said. "At the point when people have proposals that are sound, [administrators] are willing to listen," she said.