

Report of the World Gold Council: Standards for Conflict-free Gold

A roundtable seminar

VENUE: Jan Smuts House
University of Witwatersrand, Johannesburg
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Introduction

Following consultations in New York and London, the World Gold Council (WGC) convened a consultative roundtable on the Conflict-Free Gold Standards (“the Standards”) in Johannesburg, South Africa, which was hosted and facilitated by the Governance of Africa’s Resources Programme of the South African Institute of International Affairs. The roundtable included a range of 25 stakeholders from the gold industry, civil society and government. The group reflected regional diversity, including participants from Burundi, Kenya, Ghana, South Africa and the United States.

The discussions covered a variety of perspectives, and while not achieving a consensus on specific issues such as the definition of conflict, identified certain common themes during the course of the day. Participants emphasised that the Standards must be aligned with other emerging transparency codes and legislation, such as the US legislation, the OECD guidance and the ICGLR due diligence framework and the codes emerging from the electronics and jewellery sectors - thus avoiding duplication and limiting the cost of compliance. Furthermore, it was recognised that the Standards do not address all areas related to conflict free gold and mineral revenue transparency. It was therefore important to be clear on the scope of the Standards to ensure their legitimacy. Conflict gold was recognised as an issue of particular relevance to small scale and artisanal gold miners, but it was acknowledged that the Standards were primarily a necessary and important mechanism through which large-scale gold miners, including WGC members, could provide assurance of ethical practices in their activities.

Defining Conflict

There was considerable discussion of the appropriate mechanism for the recognition and definition of conflict. It was argued that, rather than developing a unique definition, the Standards should refer to international humanitarian law, based on the Geneva Convention, as well as the resolutions of the United Nations, which were widely accepted.



It was warned that identifying a country or area as a conflict zone had significant socio-economic implications and could cause considerable reputational damage to countries. It was therefore essential to develop a credible process through which such identification would take place. It was noted that the Standards – like the US legislation on ‘conflict minerals’ - may have unintended socio-economic consequences. For example, in Ghana artisanal gold mining is an important economic activity that provides significant employment and wealth creation opportunities. If smelters were no longer able to accept gold from artisanal miners, because it could not be proven that their mining activities did not contribute to or finance armed conflict, this would have severe adverse effects on the economy, particularly among poorer sectors of society.

There were a variety of perspectives on how broad the definition of conflict should be and whether the Standards defined conflict too broadly to be politically acceptable, by including government forces as possible perpetrators of human rights abuses. It was emphasised that “conflict is not just when you have two armies shooting at each other” – conflicts are dynamic and complex situations. It was pointed out that governments were responsible for state security and to some extent the security of formal mining operations in their territories, and it was therefore their duty to control illegal mining activities, which often led to conflict with artisanal miners. It was difficult for governments to avoid the potential for their security forces to be implicated in human rights abuses in such circumstances. The scenario of secessionist groups taking up arms to demand a greater regional share of revenues from mining was put forward as a situation in which a government could not avoid conflict. Certain areas may be in a pre-conflict or a post-conflict situation that may be described as having high conflict potential. The Kimberley Process Certification Scheme used a narrower definition of conflict for diamonds, consistent with the UN’s definition, which pertains only to ‘armed groups aiming to undermine legitimate governments’. This helped to ensure buy-in from governments, but presented challenges when dealing with forms of conflict that fall outside the parameters of the definition – as has recently been the case in Zimbabwe.

It was emphasised that in identifying a conflict zone consideration should be given to locality and regional issues. How, for example, does one determine the borders of a conflict zone, particularly as these seldom correspond to national borders? What about situations in which smuggling of gold is taking place across borders, for example, from the DRC into Uganda? Should gold mining in the neighbouring countries to a conflict zone be included for assessment? The lack of data on where gold exported from Uganda was coming from had been identified as a problem for the ICGLR. It was also possible for gold to originate in one country, but fuel or finance conflict in another.

Who is responsible for identifying a country or area as a conflict zone?

The OECD Guidance on the Responsible Sourcing of Minerals from Conflict-Affected or High Risk Areas currently requires companies to identify whether a country or area of operation

should be considered a conflict zone, pending the establishment of a bespoke, multi-stakeholder group. The OECD had been clear that the burden of determining if there is a conflict zone lay with the companies operating there. However, this had the potential to create significant tensions in their relationship with the host government and ‘stigmatisation’ of the company that identified conflict. There is thus a clear preference for the establishment of a multi-stakeholder group or the use of impartial criteria, for example the Heidelberg Conflict Barometer or the Uppsala Conflict Data Programme. It was proposed that the multi-stakeholder group should be informed by or include an expert advisory body of conflict analysts. The International Conference on the Great Lakes Region (ICGLR) had devised a method for evaluating whether an area was in conflict or not, which was offered to the WGC for inclusion in the Standards.

A concern was also raised that if the risks of operating in a zone of conflict came to be seen as too high, or the costs too great, companies would simply disengage from these areas, or possibly from entire countries or regions, thereby increasing the vulnerability of the host country to conflict .

Creating and Maintaining Credibility

The discussion on the credibility of the Standards included broader concerns of legitimacy – without a sense of ownership among affected states, even a technically credible process may not be considered legitimate. The role of governments in regulating conflict gold was discussed, with several participants arguing that African governments had to be more involved in the process to ensure the Standards’ credibility – the US conflict minerals legislation, for example, had involved no input from African governments. It was pointed out that external, international initiatives cannot replace government regulation and monitoring of conflict minerals. For example, the Kimberley Process only works in countries with efficient governments. It does not work well in Zimbabwe, the DRC or Angola, according to one participant. It was emphasised that any process developed through the Standards should support national legislation and oversight institutions.



An alternative view was that the gold industry should move ahead with implementing the Standards, without allowing inter-governmental politics to slow down the process. The example of how long it took for governments to reach consensus on the system of the Kimberley Process was given to justify keeping the conflict gold Standards as primarily an industry initiative. The gold industry should therefore proceed as best it can. Pursuing government buy-in may delay or even derail the implementation of the Standards.

At the same time, it was noted that the broad involvement of the international community was required to ensure the credibility of the Standards. It was suggested that the governments of China, India and the United Arab Emirates in particular should be included in consultations on conflict gold emanating from Africa.

As a general principle, for creating and maintaining credibility, the simpler the system, the better. Thus the conflict free gold standards needed to be auditable, focusing on data such as: (1) geological evidence of where gold was located; (2) prospecting licenses, location of mines and investors' details (such as banks); (3) evidence of gold exports, such as customs and excise and tax data, and (4) evidence of where the gold was being exported to.

It was proposed that mining companies should have to disclose their production figures on a monthly basis, so that the amounts they were buying, if any, from artisanal miners would be more transparent.

Practical issues around due diligence requirements were raised to do with the companies transporting gold in Africa. A transportation company's first question before taking on business was always 'who are you?', but there were no rules relating to identifying couriers of gold. The transportation company's only defence in rejecting a request to carry gold was that they do not deal with individuals, only companies. Despite the best efforts of the two largest, legitimate transportation companies operating in Africa, illicit gold 'moves anyway', because of the high demand for it. For example, a participant had observed people arriving in Dubai with suitcases full of gold dore for refining and declaring this openly to customs officials.

The Mechanism

Discussion of how the mechanism of the conflict gold Standards would work in practise continued in session 3 on 'the mechanism'. Transparency was identified as an important factor in the success of the Standards. It was noted that the issue of transparency was addressed to some extent by the Extractive Industries Transparency Initiative. The Standards should therefore be aligned to the EITI rather than "reinventing the wheel" with the addition of payments to other agents of government such as those providing security services to mines. Consideration should also be given to the appropriate level of disclosure. The expectations of disclosure of material from risk assessments was high within the overarching OECD guidance but it may be necessary for some information to be redacted or withheld where it deals with information that may either put the safety of sources of information at risk, which is too politically sensitive or which, if published might aid the commission of a crime.

Countries differ in terms of transparency and in certain cases requirements of the Standards may come into conflict with national legislation. It was observed that WGC members should be asked to support an initiative that would require the publication of mining contracts in

order to increase transparency and encourage accountability for mining revenues received by the state.

The role of gold refineries in the process of ensuring conflict free gold was discussed. For example, Rand Refinery, based in Johannesburg, along with other leading refineries is subject to 'know your customer' requirements, while it was responsible for refining approximately 90% of African gold, mostly from large-scale, formal mines, but also from artisanal miners and scrap. Because South African gold mining had been in decline for a number of years, the Rand Refinery has the capacity to source gold from countries such as Ghana and Tanzania. Scrap gold was also 'big business' for the Rand Refinery, and refineries worldwide (making up almost 40% of gold production), but held reputational risk if the source of this gold could not be identified.

A problem relating to implementation of the mechanism was that conflict gold does not disappear. It may be embargoed for some time if it is associated with a specific incident of conflict, but then make its way back into the system later on.

The Standards should be applied to the entire lifecycle of a mine, and could be incorporated into the earliest phase of exploration and environmental and social impact assessments.

The Big Picture

Discussion of the importance of bringing governments 'onboard' the conflict free gold initiative continued during the final session of the roundtable. This was necessary at both a political and a technical level, so that governments would go beyond the issue of responsible mining to implement sound economic policy and good governance more broadly, including the responsible expenditure of mining revenues. It was noted that the standards did not provide 'solutions' for artisanally-mined gold or recycled gold in relation to conflict. Thus initiatives like the OECD guidance would have to provide a bridge between the different sections of the gold supply chain. The WGC standards do not claim to be a comprehensive answer but merely represent a contribution from the formal gold mining sector to eliminate the chances of its activities fuelling conflict and associated human rights abuses.

Addressing the 'big picture' also required inclusion of civil society in the monitoring of the initiative. Independent conflict analysts should work closely with this initiative to identify where and how conflict is manifested differently in different places.

In conducting risk analysis, companies would need to weigh up the incentives for mining gold in areas of conflict (such as the DRC), against the burden of compliance with the Standards and potential for wider stigmatisation, particularly if gold mined in conflict zones is only a fraction of total gold production.

An important question was ‘what can be done to make the Standards easier to understand for a broad audience beyond industry stakeholders?’ Suggestions were that (1) the language of the documents should not be too technical and should avoid or explain gold mining jargon; (2) the diagrams of the process should be integrated into the body of the two documents, rather than printed as appendices; and (3) the language of the Standards should be aligned with the work of John Ruggie, Special Representative to the UN Secretary General on Business and Human Rights.

Conclusion

It was noted that the gold mining sector faced various challenges related to artisanal mining, but that these broader concerns should not detract from the efforts to develop and implement the Standards among WGC members.

In conclusion, the Standards would need to certify conflict free gold without hindering economic development. This aim was especially relevant to African development objectives, and would be central to the success of this initiative in Africa.