PONTIFICIA UNIVERSIDAD CATÓLICA DEL PERÚ

idehpucp INSTITUTO DE DEMOCRACIA Y DERECHOS HUMANOS

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

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Introduction

Following consultations in New York, London and Johannesburg, the World Gold Council (WGC) convened a consultative roundtable on the Conflict-Free Gold Standards in Lima, Peru, which was hosted by the Institute for Democracy and Human Rights of the Pontificia Universidad Católica del Perú. The roundtable comprised twenty-six constituents from Peru's gold industry, civil society and national government.

I.

Outline of legislative, normative and industry initiatives on minerals and conflict

The World Gold Council (WGC) is an organization consisting of twenty-three leading gold mining companies, including four with mines in Peru. In developing consultation practices for a Conflict-Free Gold Standard, the World Gold Council has employed a "global approach," convening international roundtables to date in New York, London and Johannesburg to generate operational guidelines to ensure that the production of gold in conflict-affected or high risk areas is identified as armed 'conflict free.'

The WGC acts as a market development organization in the investment, jewelry, medical and technology sectors to advance real social and economic development from gold mining.

Legislative and Regulatory Environment
The WGC was closely involved in the development of the Organization for Economic Co-operation and Development (OECD) on due diligence guidelines for responsible supply chain management of minerals from conflict-affected and high risk regions as it relates to gold. The OECD, a multinational initiative, provides a set of due diligence guidelines pertaining to the responsible sourcing of minerals from conflict-affected areas—in particular, the mining and production of tin, tungsten, tantalum and gold. The WGC seeks to operationalize the due diligence norms outlined in the OECD, effectively providing a "bridge" that allows mining companies to integrate its Standard with international norms and industry precedent.

Dodd Frank Law, 1502 (Wall Street Financial Reform and Consumer Protection Act): U.S. federal statute signed into law by President Obama in July of 2010.

Section 1502 pertains to the role of minerals in the funding of armed groups in the Democratic Republic of Congo and surrounding countries. The WGC is concerned that the Dodd Frank Law could lead to a *de facto* boycott of responsibly produced minerals from the region as US companies seek to avoid legal risks and compliance costs. Such a response may destroy livelihoods amongst small-scale miners and is unlikely to help to stabilize the area or lead to greater peace and stability. Like the approach taken by the OECD, the WGC standard is intended to help bring confidence that companies can operate responsibly in areas of high-risk and can provide confidence amongst investors, civil society, and the community. Some participants stressed the need to develop norms across the board as a means to ensure best practice and ethical institutional behavior.

Regarding the situation about minerals and conflict in the host nation of the meeting, it was pointed out that social unrest in Peru is not a severe problem at present – in the sense of 'armed conflict.' However, there is a growing interest in public opinion on conflicts at the national and regional level. Some examples were mentioned of small-scale uprisings of employees in projects, accentuating the need to avoid the use force as a means to quell such outbreaks.

It was noted that the Standard puts into effect a process for addressing grievances. Although a company's adoption of the Standards is voluntary, conformance to the Standard will be supervised by an external assurance provider.

History, Overview and Scope of draft, World Gold Council Conflict-Free Gold Standards and Questions

The WGC Standard focuses on providing solutions for how mining corporations can operate effectively and responsibly in environments of conflict or high risk (armed conflict, militia, civil wars, etc.). The WGC adopts the OECD definition of conflict:

> "Conflict-affected and high-risk areas are identified by the presence of armed conflict, widespread violence, including violence generated by criminal networks, or other risks of serious and widespread harm to people. Armed conflict may take a variety of forms, such as a conflict of international or non-international character, which may involve two or more states, or may consist of wars of liberation, or insurgencies, civil wars, etc. High-risk areas may include areas of political instability or repression, institutional weakness, insecurity collapse of civil infrastructure and widespread violence. Such areas are often characterized by widespread human rights abuses and violations of national or international law."

The WGC, therefore, builds upon existing mining and industry-led practices—integrating the Voluntary Principles on Security and Human Rights, the 'Ruggie' UN Guiding Principles on Business and Human Rights—in an attempt to establish a benchmark for the determination of areas/zones that are conflict-affected. The WGC Standard seeks to develop legislative guidelines and measures already in place.

Pragmatism and credibility
The Standard needs to be credible and based on a demanding set of processes and practices. Terry Heymann emphasized that a company must adhere to the criteria laid out in the Standard once they *voluntarily* commit to participate in its implementation. Participation is not restricted to WGC member companies.

The WGC has received positive feedback from the previous cycle of roundtable events; the first draft was released last June (2011) and the WGC continues to adapt the input it receives from the international community (including governments, civil society, academics, investors and supply chain participants).

The WGC requires that an external auditor and assurance provider evaluate the company and to publicly disclose conformance to the standards. In said process, the company is required to demonstrate that it is not fueling conflict, paying bribes or is directly or indirectly enabling illicit criminal activity. This process is necessary to ensure the credibility of the Standard and to demonstrate to mining companies it is practical and implementable.

It was noted by some participants from Peruvian institutions that according to the stated definition of conflict, Africa experiences the majority of armed conflict and high-risk situations associated with gold and mineral production; whereas in some national cases such as Peru, this definition would not be applicable. It was also said that although some countries like Peru do not experience armed conflict in the same way as in the DR Congo or Sudan, they may find themselves in a situation similar to that of Mexico, a country where drug trafficking has elicited widespread violence.

Regarding these concerns, it was said that the Heidelberg Institute for Conflict Research serves as an external point of reference for determining localities and specific regions as conflict-affected. To make a determination if an area is high-risk or conflict-affected is, indeed, challenging and lies at the heart of the Standard.

The Standard is based on a *five step* rubric:

1) Conflict assessment to evaluate whether or not an area should be considered as being conflict-affected; 2) If the area is conflict affected, corporate actions need to be taken with the aim of monitoring payments, formalizing practices related to security, and improving monitoring of supplier relationships so as to make sure it is not fueling conflicts or making payments to groups associated with conflict; 3) Commodity assessment and tracking the gold during its production and transport to ensure that there is no value leakage or extortion; 4) To mandate due diligence steps to ’vet’ externally sourced gold and occasions where companies want to buy gold from artisanal or other external producers; 5) Statement of Conformance Documentation from an external auditor.

II

Discussion of Part A- Definition and Recognition of Conflict

The WGC focuses primarily on armed conflict, widespread violence, as well as violence perpetrated by criminal networks. If an area or region of a given country is defined as a high-risk zone or conflict-affected, a company must certify that it is suitably equipped with the proper management systems to continue its operations without fuelling conflict or causing related human rights abuses. The WGC emphasizes its commitment to prevent the stigmatization of any country that has designated zones of conflict within its borders or those ruled deemed as high-risk as long as operations are able to show if they are working responsibly. The WGC observes that a range of political difficulties and knotty social relations may arise in the determination of what constitutes a high-risk area due to the transmutability of conflicts in a rapidly shifting economic and political environment. A company, therefore, must continue to carry out due diligence about its local security environment. It must also be protected by its right to identify a zone of conflict without the pressure of state or government sanctions. To this extent, the WGC has sought to create a high degree of automaticity in the steps for the recognition of conflict.

The WGC identifies, then, three key sources of guidance for conflict assessment:

1. International sanctions (which may not relate specifically to gold)
2. National legislation (i.e. Dodd Frank)
3. Heidelberg—International Conflict Research (Levels 4 and 5): Limited war as proxies for descriptions of high risk and conflict affected areas.

There were questions about the role of the assessment made by the Ombudsman from a local point of view in a certain country; the connection between that assessment and the international one and whether this would result in a conflict of interests regarding criteria between the two.

Regarding these issues, the WGC makes an attempt to make a distinction between armed and social conflict. If Peru were in a worse general situation, the Ombudsman’s regional reports would be an important barometer for a company’s assessment of the risks.

Discussion of Part B: The Company Assessment

A company must provide assurance to its stakeholders to guarantee that it is not triggering or sustaining conflict, or funding armed groups. All relevant corporate activities, therefore, must be disclosed for full-transparency; all payments made to governments must be disclosed unless there is a law prohibiting it. Likewise, all prior allegations of involvement by the company or its security provider in serious human rights violations must be disclosed to the public.

The WGC Standard mandates that a company reports on its policy and controls over payments and use of corporate assets. Moreover, the WGC requires the implementation of a grievance and complaints process (based on the 2008 Ruggie Report to the UN Human Rights Council).

The key benchmarks for company assessment are the following: the Voluntary Principles on Security and Human Rights, the United Nations' Guiding Principles on Business and Human Rights; the UN Global Compact; the International Committee of the Red Cross and their reference document on business and humans rights law; and the Extractive Industries Transparency Initiative in relation to payments to governments.

There are, then, five major parts to part B: 1) a company's policy commitment to human rights; 2) corporate activities and disclosure; 3) issue of security; 4) a policy on payments to governments and other third parties, including suppliers and communities, on the control and use of assets; 5) processes through which companies engage with local communities and concerns can be raised (employees, suppliers, auditor, etc.) to ensure that they understand the nature of their impacts.

It was noted that problems arise when security providers or other suppliers do not implement the same standards as the companies. What happens in the case when a provider's non-conformance fuels social or armed conflict? Does this lie beyond the political responsibility of the mining companies?

It was suggested by Oxfam that the WGC should look to include additional reference documents and benchmarks, specifically the International Finance Corporation and World Bank Performance Standards which have been used as applicable standards by the leading international project finance banks. They mentioned the importance of the inclusion of safeguards and policies established by financial institutions such as the Inter-American Development Bank, which also consider the human rights issue, since most of the larger mining companies receive funding from them.

The objective of the Standard is to circumvent conflict that arises from or may be funded by gold production. The WGC addresses, both the role of the operating company and of the role of security providers and other relevant suppliers and the importance of due diligence. Artisanal mining, which is a salient phenomenon in many mining countries, exists in a "gray area" and it should be taken into account that the standards do not cover this broader scope of mining activity, nor address the thirty-five percent of gold production that comes from recycled sources. The OECD Guidance does, however, cover all major feedstock and relies, to a considerable extent, upon the role of gold refineries as the key 'pinch point' in the supply chain. Refiners will exercise due diligence across their sources of supply based in part upon Know Your Customer and Anti-Money Laundering processes.

Discussion of parts C and D

Commodity Assessment and Interfaces with Artisanal and Small Scale Gold (including Appendix One of the OECD Gold Supplement)

The WGC stipulates that companies must have in place regulatory procedures and strong management systems to ensure that the gold under production is not sourced from contraband and that is not connected to criminal activity. Both miner and refiner bear the onus to guarantee custody, responsibility, and secure transportation of its gold. Part D involves the sourcing of gold, including for processing, from external sources. This is relatively rare for mines owned by leading international operators. Where it does occur, the company is obliged to exercise due diligence and to disclose information on the source of its minerals, locality of extraction, and means of transportation as part of a procedure that requires the documentation of externally sourced gold in “areas of responsibility.” The WGC stresses, moreover, that greater due diligence and control over the production of gold is not intended to have the effect of excluding artisanal miners nor of increasing illicit flows of gold as a result of small-scale artisanal production being pushed increasingly in to the hands of illegal networks.

Appendix 1 of the OECD Gold Supplement indicates that informal, small-scale gold producers are often vulnerable to pressure and exploitation by a variety of third parties and criminal groups. The WGC maintains that the formalization of the sector will reduce this vulnerability and act as a lever for improved safety, social and environmental practices. The formalization and legalization of mining activity at the artisanal level, however, is not a cost-free practice, requiring the cooperation of international organizations, national governments and regional governments, civil society and companies to produce stability in the gold market.

It was suggested by Peruvian participants that the WGC should also take into account socio-environmental damages, especially water pollution, which affects nearby towns and, in certain cases, triggers larger social and armed conflicts. It was suggested that the Standard should consider the more localized contexts and not only zones of violence and armed conflict, because conflicts surrounding artisanal mining practices often incite human trafficking, poor labor conditions, etc.

To these concerns, it was replied that water plays a critical role in social conflicts in terms of its social capital. In relation to artisanal mining, the debate is maturing, and it is expected that there will be more regulations and standards that address this sector in the near future. The role of national government and international donors has been critical in developing a variety of initiatives. An initiative involving the Swiss Government and Swiss gold watch makers and Peruvian gold was noted. Relating to the standards, WGC has promoted dialogue with fair trade and fair mining to assess whether or not this should be a key reference point for externally sourced gold.

The participation of multinational stakeholders groups, including governments at the national, regional and local level, is critical to addressing standards concerning illegal and informal mining.

The OECD gold supplement has not yet been officially finalized. The text is available on the OECD website. It includes the gold supplement as well as Appendix 1. It is expected to be formally approved by the council of ministers shortly.

Assurance, Non-Conformances and Remediation

As an effort to prevent conflicts of interest, the WGC will not certify whether companies are in compliance with the Standard. Any mining outfit has the right to adopt these standards and to have their compliance checked through an external auditor. The WGC does not provide a list of qualified assurance providers, nor does not it restrict assurance providers from participation. In the case of non-conformance, a company must exercise a best faith effort to execute a remedial action plan addressing the violations to the Standard. A company has a specified period to implement this plan.

The WGC notes that the penalties and consequences for non-conformance are determined by investors, governments, and the market. The promotion of such best-practice behavior, the WGC acknowledges, is linked to the growing trend toward socially-responsible investing.

Understanding the impact of mining companies is critical. The WGC Standard lays out the steps for external reporting that need to be undertaken, but this is a minimum requirement and many companies, do in fact, go beyond this. Mining outfits in the formal sector report on the social and economic impact and development opportunities associated with the extraction industry. This transparency is a result of greater communication and trust established between companies, governments, civil society, and the community.