Due Diligence for Responsible Sourcing of Precious Stones

Discussion Paper

A Study Commissioned by Jewelers of America on behalf of the Precious Stones Multi-Stakeholder Working Group (PS-MSWG)

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DISCLAIMER, ACKNOWLEDGMENTS, LIMITATIONS & SCOPE

This study is prepared from sources and data, which the authorship team believes to be reliable, but the authorship team makes no representation as to its accuracy or completeness. This study is provided for informational purposes and is not to be construed as providing endorsements, representations, or warranties of any kind whatsoever. The authors accept no liability for any consequences whatsoever of pursuing any of the recommendations provided in this study, either singularly or altogether. Opinions and information provided are made as of the date of the study issue and are subject to change without notice.

The information presented in this study uses public and private sources as well as data gathered from semi-structured interviews carried out across a range of stakeholders, including subject-matter experts. The authorship team would like to sincerely thank all those who participated in the interviews for their time, knowledge, understanding, and patience.

This study was undertaken in order to meet client requirements and deadlines based on Precious Stone Multi-Stakeholder Working Group (PS-MSWG) Terms of Reference (TOR). The authorship team was selected by the PS-MSWG. As the PS-MSWG is not a legal entity, Jewelers of America (JA) agreed to act as the contracting party for the authorship team. Given that JA already had a pre-existing contract with Sustainable & Responsible Solutions Ltd (SRS), which formed the majority of the authorship team, that contract was used to engage SRS. SRS subsequently sub-contracted Estelle Levin Limited (ELL) and FAFO. The TOR, Research Approach & Limitations, as well as additional information on the PS-MSWG and the authorship process can be found in Annex A.

This study does not represent the views of the PS-MSWG or its individual members.

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ACRONYMS

Key definitions are available in Annex B

3TG	Tin, tantalum, tungsten, gold
ABC	Anti-bribery/corruption
AML	Anti-Money Laundering
ASM	Artisanal and Small Scale Mining
ASSOGEMME	Associazione Italiana Pietre Preziose e Affini (Italian Association for Precious Stones Companies and their Affiliates)
CFGS	Conflict-Free Gold Standard
CFSI	Conflict-Free Smelter Initiative
CFSP	Conflict Free Sourcing Programme
CFTI	Conflict-Free Tin Initiative
CIBJO	Confederation International de la Bijouterie, Joallerie, Orfeverie des Diamoants, Perles at Pierres (World Jewellery Confederation)
CoC	Chain of Custody
CoP	Code of Practice
CSR	Corporate Social Responsibility
CTC	Certified Trading Chains
Cts	Carats
DD	Due Diligence
DDI	Diamond Development Initiative
DFA	Dodd-Frank Act
DMCC	Dubai Multi-Commodities Centre
DRC	Democratic Republic of Congo
ECOSOC	Economic and Social Council
EITI	Extractive Industries Transparency Initiative
EU	European Union
FATF	Financial Action Task Force
FSC	Forest Stewardship Council
GMO	Genetically Modified Organism
ICGLR	International Conference on the Great Lakes Region
ICMM	International Council on Mining and Metals
IHL	International Humanitarian Law
IIED	International Institute for Environment and Development
IRMA	Initiative for Responsible Mining Assurance
iTSCi	ITRI Tin Supply Chain Initiative
JVC	Jewelers Vigilance Committee
KP	Kimberley Process
KPCS	Kimberley Process Certification Scheme
KYS/KYC	Know Your Supplier / Know Your Customer
LBMA	London Bullion Market Association
LSM	Large-scale Mining
MMSD	Mining and Minerals Sustainability
MNE	Multi-National Enterprise
MSC	Marine Stewardship Council
OECD	Organization for Economic Cooperation and Development
OECD Due Diligence Guidance	OECD Due Diligence Guidance
PS-MSWG	Precious Stones Multi-Stakeholder Working Group
RCM	Regional Certification Mechanism

RESP	Responsible Ecosystem Sourcing Platform
RGG	Responsible Gold Guidance
RJC	Responsible Jewellery Council
SEC	Securities and Exchange Commission
SME	Small and Medium-sized Enterprise
TOR	Terms of Reference
UN	United Nations
UNGA	UN General Assembly
UNGC	UN Global Compact
UNGPs	UN Guiding Principles on Business and Human Rights
UNICRI	UN Interregional Crime and Justice Research Institute
USAID	United States Agency for International Development
USGS	United States Geological Survey
WBCSD	World Business Council for Sustainable Development
WDC SoW	World Diamond Council System of Warranties
WDDF	Washington Declaration Diagnostic Framework
WDMF	World Diamond Mark Foundation
WFDB	World Federation of Diamond Bourses
WGAAP	Working Group for Artisanal and Alluvial Production
WJCEF	World Jewellery Confederation Education Foundation

EXECUTIVE SUMMARY

Serious human rights, environmental, political, labor, and commercial risks are present in colored stone and diamond supply chains. Responsibility for managing these risks rests with the businesses that create and perpetuate them, their regulators, and their customers.

In recent years, the private sector has faced increasing demands for social responsibility, including, at a minimum, respect for human rights. In the late 2000s, years of contentious debate between NGOs, states, and the privates sector over the definition and scope of those responsibilities culminated in a three-fold framework. The framework establishes a state's duty to *protect* human rights, a corporate responsibility to *respect* human rights, and greater access to *remedies* for victims ('Protect, Respect and Remedy'). This framework became the UN Guiding Principles on Business and Human Rights (The Guiding Principles), which were unanimously endorsed by the UN Human Rights Council in 2011. In the same year, the OECD updated its Guidelines for Multinational Enterprises to add a chapter on human rights aligned with the same Protect, Respect, and Remedy framework.

The OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas (Due Diligence Guidance) is a key tool companies can use to fulfill their responsibly to respect human rights and avoid contributing to conflict through their mineral sourcing decisions and practices.

Due diligence is a legal expression referring to a certain standard of care. It is not a norm in itself, but is the fusion of two conceptually distinct processes: (1) the *investigation* of facts related to a business, person or product, and (2) the *evaluation* of those facts in order to demonstrate whether the specified standard of care was exercised.

The OECD Due Diligence Guidance builds upon standard due diligence practice to establish a five-step process for companies to conduct due diligence on their supply chains. In line with the intent of the UN Guiding Principles, the Due Diligence Guidance avoids prescription on *how* things should be done, and focuses on *what* should be done. The Due Diligence Guidance can be used to conduct due diligence on any natural resource supply chain, though it was originally designed for minerals and has supplements nuancing it to the particular needs of the 3Ts and gold.

The jewelry sector – the primary consumer of precious gems – has begun to carry out due diligence on supply chains of metals, and principally gold, in part due to legislative drivers in the US, the EU, and the African Great Lakes Region. No comparable regulatory drivers exist for the precious stones sector. This provides a unique opportunity to the sector to enhance the responsible sourcing of its industry without the pressure of enforceable legislative mandates. Increasing demand for responsibly sourcing of precious gemstones from consumers, civil society, and governments bolsters this opportunity.

National, international, and transnational laws also support responsible sourcing by shaping a consistent framework of what is expected of businesses. Standards of 'good business' are increasingly consistent, and can be used to inform a company's behavior throughout its global supply chain. Foundational to these standards are: the UN Guiding Principles, the UN Global Compact and the OECD Guidelines for Multinational Enterprises.

Despite these expectations, few precious stone supply chain actors are currently conducting due diligence to discern and address the potential impacts of their sourcing practices and their suppliers' operations on third parties, including human rights violations.

Willing businesses face challenges intrinsic to their industry and lack the necessary tools.
Intrinsic challenges include: the complexity and fragmentation of their supply chains; the diverse geography, regulation, infrastructure, and governance their supply chains cross through; and the

preeminence of artisanal and small-scale mining (ASM), which produces 15% of the world's gem-grade diamonds and 80% of its colored stones. While intrinsic, these challenges are not necessarily unique and in many cases are shared by other mining sectors, including the 3T and gold. The jewelry sector has begun to carry out due diligence on supply chains of metals, and principally gold, offering extensive opportunity for cross industry learning and collaboration.

Laudable efforts have been made by the industry to develop tools to support responsible sourcing, however gaps exist. Thus far, industry efforts to promote responsible sourcing of precious stones have produced:[1]

Robust due diligence systems
- Responsible Jewelry Council's Chain of Custody and Code of Practices

Tools that would could due diligence
- ICCM's Sustainable Development Framework & Guidance Note on Human Rights in the Mining and Metals Industry: Integrating Human Rights Due Diligence into Corporate Risk Management Processes*
- UNICRI's Chain of Custody mechanism*
- Diamond Source Warranty Protocol

Standards of Best Practice
- IRMA's Responsible Mining Assurance System

ASM specific tools that could support due diligence
- The Washington Declaration and the Washington Declaration Diagnostic Framework
- The Diamond Development Initiative International (DDII)

Membership organizations to provide expertise and guidance
- World Federation of Diamond Bourses
- International Diamond Manufactures Associations

Further Relevant Organizations
- Assogemme*
- CIBJO or the World Jewellery Confederation*
- RESP*

Each of these systems, tools, frameworks, and organizations contribute to responsible sourcing goals, yet none are capable of comprehensively ensuring responsible sourcing of precious stones for companies. Therefore, additional due diligence measures and guidance are necessary.

For the diamond industry, it is unlikely that the KP will broaden its mandate to include additional due diligence measures on a broader set of risks. It is therefore possible for companies to adopt additional due diligence practices without undermining or duplicating the measures they must take to satisfy their KP obligations.

The colored gemstone industry has no industry wide 'conflict free' assurances or standards to risk undermining or duplicating.

The OECD Due Diligence Guidance is theoretically already applicable to companies operating in precious stones supply chains. However, its operability would be improved with additional guidance for diamonds

1 **= Applicable to colored gemstones*

and/or colored gems. There are two options for this: a companion or appendix to the existing Due Diligence Guidance or a full Due Diligence Guidance supplement. The latter approach offers two primary benefits. First, it enables the establishment of clear expectations for operators along the supply chain that everyone agrees to and can be held to. Second, the clarity of a comprehensive Due Diligence Guidance supplement would make it easier for operators to use the guidance, and less likely to be criticized by observers for making what they perceive as the wrong decisions.

There are challenges to considering additional measures to conduct due diligence including definitional issues, the marginalization of artisanal, small and medium scale companies; and track/traceability requirements. While these are important factors requiring thoughtfulness, they do note preclude exploration of further guidance. Insights into how to approach these issues can be gained from the rich expertise and insights across the precious stones industry, as well as from the experiences of industries such as the 3Ts and gold.

Finally, feasibility is tied to costs. The creation of an OECD Due Diligence Guidance supplement would be more costly than the creation of a companion or an appendix. In either case, creation cost could be shared at the sectorial level (by governments and potentially industry associations) as well as at the company level. The creating of these or alternative tools, and the uptake of due diligence measures may create implementation costs, but not doing so perpetuates costs for others and will create future costs for the precious stones industry.

INTRODUCTION

Labor, human rights, environmental, political and commercial risks are present in colored stone and diamond supply chains. Academics, governments, non-governmental organizations (NGOs) and industry actors report these risks can include labor abuses at the point of manufacturing; money laundering; fraud; conflict financing and alleged terrorist financing; high rates of tuberculosis and HIV infection amongst mine workers; gem 'rushes' in protected areas; as well as a range of issues typically present in the artisanal and small-scale mining (ASM) sector, which extracts the vast majority of colored stones, and a significant minority of diamonds.

Responsibility for managing these risks rests with the businesses that create them, their regulators, and their customers.[2] Due diligence is an integral part of risk management in any domain, be it procurement, operations, or sales. Due diligence involves gathering information about how a business's activities are causing or may cause harm and taking action to mitigate these harms (e.g. through avoidance, reduction or remedy). By reporting on these risks and the meaningful measures undertaken, a company is demonstrating transparency and enabling accountability.

The jewelry sector, being the primary consumer of precious gems, has begun to carry out due diligence on supply chains of metals, and principally gold, in part due to legislative drivers in the US and the African Great Lakes Region.3 Whilst no such regulatory drivers exist for precious gems, at the inaugural meeting of the PS-MSWG in in April 2013, due diligence for precious gemstone supply chains was a core discussion. A key question was whether supplementary guidance demonstrating how due diligence could be conducted in precious gemstone supply chains would be useful to industry. In theory, such guidance could help businesses more efficiently and effectively carry out due diligence and demonstrate to governments that (additional) regulations specific to the gemstone sector are unnecessary.

This paper grew out of those discussions and, consequently, its key goals will be the following:

1. To explicitly consider the applicability of the OECD's Due Diligence Guidance for Minerals from Conflict-Affected and High-Risk Areas to the precious stones sector,
2. To assess the desirability and feasibility of developing a supplement to this guidance for the precious stones sector vis-à-vis other potential measures for enabling and/or improving due diligence.

2 (Ruggie, Report of the Special Representative of the Secretary General on the Issue of Human Rights and Transnational Corporations and other Businesses 2010)

3 US Congress 2010; Government of Burundi 2013; Government of DRC 2012; Government of Rwanda 2012.

PRECIOUS GEMSTONE SUPPLY CHAINS

A key consideration in conducting due diligence for responsible sourcing of precious gemstones is supply chain complexity. A supply chain is defined as "the network of organizations that are involved, through upstream and downstream linkages, in the different processes and activities that produce value in the form of products and services in the hands of the ultimate consumer."[4] In general, the simpler a supply chain, the easier it will be to conduct due diligence the various actors therein. All precious gemstone supply chains (whether diamond, emerald, chrysoberyl, and so on) share common stages (see Figure 1). At each stage, a raw material undergoes at least six stages of transformation and value addition:

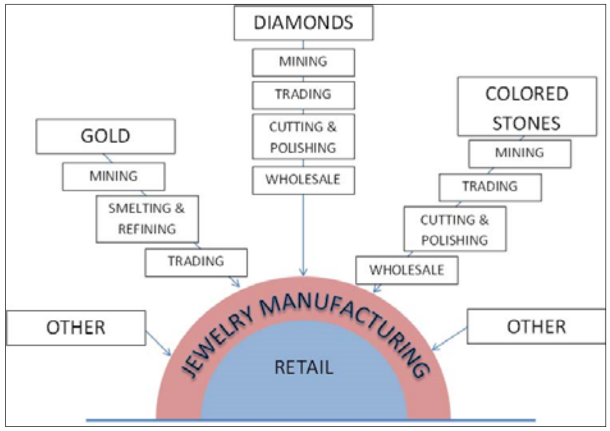

Figure 1: Materials-based Supply Chains Feeding into the Jewelry Sector

- **Production**: e.g. mining or stocks
- **Sorting/trading**,
- **Cutting/polishing**
- **Wholesaling & exporting**,
- **Fabrication** into a finished jewelry product
- **Retail**

Each raw material's supply chain will bear unique manifestations of the common stages; for example, diamonds are neither mined nor traded in the same way as amethyst.

The following introduces colored gemstones with an overview of the sector, and its common supply chains and supply chain risks. A supplemental section on diamonds highlights some of the key similarities and distinctions. This paper is discussing diamonds and colored gemstones separately for the purpose of clarity, and also keeping with the common parlance of government, industry and civil society. The term 'colored gemstones' refers to all non-diamond gems, such as ruby, emerald, topaz, peridot, garnet and sapphire. However, diamonds, emeralds, rubies and sapphires are collectively classified as the four 'precious gemstones'[5] due to their relative high value compared to 'semi-precious stones',[6] such as peridot, garnet, topaz, agate, turquoise and amethyst. [7]

COLORED GEMSTONES

Sector Overview

The colored-gemstone industry—including cut stones, rough gems and jewelry—is estimated to be worth in excess of $10 billion annually.[8] Market demand has been increasing for colored gemstones (despite

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[4] (Mangan, Lalwani, Butcher, & Javadpour, 2012)
5 (Swiss Gemological Laboratory 2015)
6 Although diamonds can be found in all the colours of the rainbow, such stones are exceedingly rare, and thus the industry is most commonly known for its 'white' or colourless stones. For further information, see (Harlow:1998).
7 (Schumann 2013)
8 (Solomons 2015). As with many commodity chains, value and sustainability issues are not distrusted evenly and people tend to earn less with each step up the colored gemstone supply chain (Cross, Van der Waal and De Haan 2010).

experiencing a slowdown in the post-Global Financial Crisis era) and the volume of production has risen accordingly.[9] Additional information on the market and value of gemstones can be found in Annex C.

Artisanal and small-scale mining dominates colored gemstone production, which can pose obstacles to transparency, traceability and risk management. Globally ASM is generally estimated to account for 80% of annual total colored gemstone production.[10] It is a critical livelihood source for tens of millions of people around the world.[11]

ASM is often informal and under-regulated, is labor intensive, and mine sites are often located in less accessible locations, including protected areas.[12] Artisanal miners are frequently distant from market centers and services that could support formalization and professionalization.[13]

The percentage of gems produced by the ASM sector varies, with a higher proportion of more valuable or marketable stones coming from larger-scale operations (e.g., emerald, tanzanite). For example, as of 2013 Gemfields PLC controlled 25% of the world's emerald supply, 40% of amethyst, and was on target to control 30% of the world's ruby supply.[14] Such consolidation of large volumes of supply from few sites controlled by one entity (although through joint venture structures at different sites) makes due diligence easier for buyers.

As illustrated in Figure 2,[15] colored gemstone sources of origin cover all inhabited continents with significant southern hemisphere concentration. For some types of gems, sources are limited to a few countries, and occasionally, to just one or two (e.g. tanzanite in Tanzania). Other gems have over 20 potential sources (such as quartzes, which are very common). Due diligence is often easier to perform on gems with fewer sources, as identifying origin can be a simpler undertaking.

Figure 2: Main Gemstone Supplier Countries

9 (IDEX 2012)

10 (Collet, Curtze and Reed 2013)

11 (ELL 2014)

12 Research for the ASM-PACE programme revealed present or historic colored gemstone mining in protected areas and their buffer zones in Mozambique (Niassa reserve), Nigeria, (Sanga Forest Reserve), Sri Lanka (Sinharaja Forest Reserve; Yala National Park) , and Madgascar, (Isalo, Zombitse-Vohibasia, Ankarana, Ankeniheny – Zahamena Corridor), for example, and in Liberia, (Sapo National Park), Sierra Leone, (Gola Rainforest National Park), and Central African Republic (Dzanga Sangha Reserve) for diamonds. (Villegas et al., 2012).

13 (Buxton 2013); (Bulzomi 2013); (Lucas, Mine-to-Market Solutions to Improve Lives of Artisanal Miners. 2011); (Hayes 2008)

14 (Harebottle 2013)

15 (UNICRI 2013) Main Supplier countries: Africa (Ethiopia; Somalia; Madagascar; Kenya; Uganda; Tanzania; Mozambique; Zambia; Zimbabwe; Malawi; Rwanda; DRC; Angola; Nigeria; Mali; Namibia; South Africa) Asia (Afghanistan; Tajikistan; Kazakhstan; Pakistan; China; India; Sri Lanka; Burma; Vietnam; Thailand; Cambodia; Laos; Iran; Turkey) Americas (USA; Canada; Greenland; Mexico; Dominican Republic; Guatemala; Honduras; Colombia; Peru; Bolivia; Uruguay; Chile; Argentina) Europa (Czech Republic; Russia) Oceania (Australia)

Supply Chains

Colored gemstones supply chains are often complex and fragmented.[16] Gemstones, in their 'rough' (uncut) or 'polished' (cut and polished) form, typically pass through many hands, often at multiple levels of the supply chain. The supply chain begins with miners extracting stones from the ground, and then flows to intermediaries in local markets populated by small dealers and brokers, local cutters and exporters. The stones are then exported to gemstone wholesalers and large cutting centers. They then are sold to jewelry manufacturers, before shipment to retail jewelers who present the merchandise to their clients. Fragmentation is the norm, with businesses at all levels typically only rarely vertically integrated (only about 20% of global gemstone extraction is estimated to be vertically integrated).[17] Notable exceptions to this include the gemstone exploration, mining and marketing companies Gemfields PLC and Columbia Gemhouse. Conversely, gems extracted by the ASM sector tend to move more extensively through intermediary networks (see insert box).

The movement of colored gemstones along the supply chain is typically not well documented, as noted by the United Nations Interregional Crime and Justice Research Institute (UNICRI): " . . . *[the] disclosure of origin on invoices is unregulated and based on the value addition to the premium price paid for superior origins that are traditionally determined by the market*."[18] For examples, a ruby documented as being of Burmese origin can fetch double the price of a Mozambican ruby of equal quality, creating incentives for white-collar crime in the form of fraudulent labeling of origin.[19] In the case of premium gemstones, greater efforts may be made to verify origin and control for the potential of forged documentation.

The colored gemstone middle market segments (between mine and consumer segments) often include **secondary sales** of rough gemstones, cutting and polishing, primary and secondary sales of polished gemstones and jewelry manufacturing. This segmentation enables traders to assemble and reassemble gemstone parcels that will be appropriate for their respective markets while maintaining profitability. In some cases, the same gemstones can be sold and re-sold amongst local traders as many as ten times before progressing further down the supply chain.[20] This horizontal movement can indeed occur at all levels of the supply chain. Furthermore, levels in the supply chain can be leapfrogged: "*Colored gemstones are sold to jewelry brands through wholesalers, which can happen at different stages: In their rough form or after they have undergone cutting, from international markets or in the producing country itself, from a big gemstone seller or from small, local dealers as well as possibly the mine itself.*"[21]

In the last decade, India, China and Thailand have become global cutting centers for colored gemstones; at some point, most colored gemstones will pass through these countries. However, in the past decade a number of gem producer countries have taken proactive steps to implement domestic beneficiation measures through the development of local lapidary sectors, including Tanzania, Brazil and Madagascar.[22]

Major importing countries and territories of colored gemstones are the United States of America (USA), Switzerland, Hong Kong, Thailand and France, together accounting for some 65% of annual global imports.[23] More recently, demand has steadily increased in emerging markets in Asia.[24]

16 Further information on the colored gemstone value chain can be found in: (Collet, Curtze and Reed 2013); (UNICRI 2013); (Cross, Van der Waal and De Haan 2010); and (PWC 2008)

17 (UNICRI 2013)

18 (UNICRI 2013)

19 (Kremkow 2009); (Robertson and Cigdem 2012)

20 (A. Walsh, After the Rush: Living with uncertainty in a Malagasy Mining Town. 2012)

21 (Collet, Curtze and Reed 2013)

22 (Cushman 2009); (Brighouse 2013); (Doulton 2014); (Lucas, The rise of the Brazilian jewellery industry 2013)

23 (Cross, Van der Waal and De Haan 2010)

24 (IDEX 2012)

Risks

The authors of this report operate under the assumption that social, environmental, political and commercial risks are present throughout diamond and colored stone supply chains—a position that is well supported by existing literature.[25] The purpose of this study is to ascertain whether this industry has the necessary guidance to perform its own due diligence on risks,[26] including (but not limited to) those listed below: For additional information on these risks, please see Annex D:

- **Child labor** (in mining and in cutting)[27]
- **Forced labor and slavery[28]**
- **Occupational health and safety risks, living conditions[29]**
- **Negative environmental impacts:** Degradation of protected areas and critical ecosystems; deforestation, soil erosion and degradation, sedimentation and siltation of watercourses[30]
- **Links to war economies, armed conflict and terrorism** [31]
- **Money laundering for drug networks**[32]
- **Financing criminal networks[33]**
- **Corruption[34]**
- **Smuggling and illicit trade[35]**
- **Causing local disputes & conflict[36]**

DIAMONDS

Sector Overview

In 2012, global diamond production totaled 128 million carats (average price/carat $98), with a total value of $12.6 billion. The diamonds produced represent a broad range of grades, including (in ascending order of percentage of annual production) 'gem', 'semi-gem' and industrial grade.

Supply Chains

Diamond supply chains bear similarities to those of colored gemstones and carry many of the same challenges and risks. However, differences exist in where and how diamonds are produced, traded, sorted and priced, the first two features being of particular importance to responsible sourcing. The commercial production of diamonds is limited to only 22 countries.[37] Six countries in Africa (Angola, Botswana, DRC, Namibia, South Africa and Zimbabwe), together with Russia, Canada and Australia, account for more than

[25] (Al Jazeera, 2012); (Cook & Healy, 2012); (Cross, Van der Waal, & De Haan, 2010); (DuPee, 2012); (Economist, 2013); (Egreteau, 2011); (Global Witness, 1998); (Global Witness, 2003); (Global Witness, 2010); (Heywood, 2007); (Hinton & Wagner, 2010); (HRW, 2008); (Hughes, 2013); (IGLHR, 2010); (Khan, 2010); (Lebert, 2010); (Levin, Mitchell, & Macfarlane, Feasibility Study for a Fair Trade Diamond Standard and Certification System, 2008); (Levy, 2001); (Lowe & Doyle, 2013); (Macfarlane, Tallontire, & Martin, 2003); (Reich, 2004); (Roberts, 2007); (Sisodia, 2008); (Smillie, Assessment of the Kimberley Process in Enhancing Formalization and Certification in the Diamond Industry – Problems and Opportunities, 2011); (University of Vermont, 2008); (Van Bockstael & Vlassenroot, Artisanal diamond mining – perspectives and challenges., 2008); (Van Bockstael & Vlassenroot, Diamonds, Rice and a "Maggi" cube – Artisanal diamond mining and livelihoods in Liberia., 2011); (Win, 2012);

26 Which risks exist where and how significant they are to the industry is out of scope

27 (AFP News 2013); (Cross, Van der Waal and De Haan 2010); (Egreteau 2011); (Heywood 2007); (IGLHR 2010); (ILO 2007)(Lebert 2010); (People's Union for Civil Liberties 2008); (The Island 2013); (UCA News 2014); (US Department of Labor 2012);

28 (Levy 2001); (Lebert 2010); (IGLHR 2010); (People's Union for Civil Liberties 2008)

29 (Khan 2010)(Hinton and Wagner 2010);(UNECA 2002)(Cross, Van der Waal and De Haan 2010) (Cartier 2010) (Nandalal n.d.) (University of Vermont 2008) (Gyang, Nanle and Chollom 2010) (Sisodia 2008)

30 (Kambani 2003) (DeLeon 2007) (GIA 2012)(Pardieu, Thanachakaphad, et al. 2009)(Pardieu and Rakotosoana, Ruby and sapphire rush near Didy. 2012)(Pardieu, Rubies from Niassa: A chance for Conservation? 2009)(Cook and Healy 2012)(Villegas, Weinberg, et al. 2012)

31 See, for example, (FATF 2013); (Cross, Van der Waal and De Haan 2010); (UNICRI 2013); (Cook and Healy 2012); (Nikzad 2011); (Rouvee 2012)

32 (Hughes 2013) (Reich 2004)

33 (BBC 2012); (Byrd 2012); (DuPee 2012); (Khan 2010)

34 (Reich 2004)

35 (Bloomberg 2013);

36 (Lowe and Doyle 2013)

37 In 2013, there were official KP exports from 22 producing countries. The USA is not counted as a producer, Venezuela and Cote D'Ivoire were outside the KP system, the CAR produced no statistics and Mozambique had not yet applied to join the KP.

95% of the world's diamond resources. Two sources—Russia and the abovementioned African producer countries—together hold 70% of known global diamond reserves. [38]

Large-scale mining (LSM) dominates diamond production, accounting for an estimated 85% of annual production, with 65% of diamond production originating from just 5 companies.[39] Notably, this oligopolised market structure may be eroding: given the exploration costs and timelines associated with the discovery and development of new kimberlite and lamprorite (below ground) deposits, alluvial (surface deposits) and artisanal sources as well as synthetic stones are expected to be increasingly important sources of supply.[40]

China and India have become dominant cutting and polishing centers for the diamond mass-market, with China surpassing India in 2011. Meanwhile Belgium, Israel and the USA have continued their move toward capturing the higher-quality end of the market. Belgium and the USA remain dominant in the exceptional-stones segment.[41] Overall, the trend in diamond cutting and polishing is toward increasing regionalization and specialization, in response to the significant labor cost variations between the major cutting and polishing centers.[42]

Today, there are six major diamond trading hubs: Hong Kong, Mumbai, New York, Tel Aviv, Dubai, and the largest, Antwerp. Colored gemstone trading hubs are smaller, more localized and more specialized, based on their location and proximity to mining areas for specific gemstones. However, there are hubs whose sizes emulate those of the diamond industry, such as Jaipur and Bangkok.

New sales channels have emerged in the wake of the disappearance of the DeBeers' monopsonistic Central Selling Organization and the emergence of greater competition in the diamond trading sector.[43] Long-term contracts remain important but auctions have significantly increased their total market share, and short-term contracts account for a small percentage of rough diamond sales.[44]

Finally, all major producers of diamonds use similar key criteria to sort and price gem-quality rough diamonds (weight, shape, clarity and color). Similar standards do not exist for colored gemstones. Automation is now widely utilized to sort weight and shape, offering higher accuracy and economic efficiency.

Additional Risks

The risks discussed in relation to precious gemstone supply chains should be considered applicable to diamonds as well. The following risks are of particular relevance to diamonds (further discussion of which is also available in Annex D):

- **Human rights issues[45]**
- **Allegations of State Controlled Violence[46]**
- **Hazardous Child Labor[47]**
- Alternate Currency for Criminal Networks[48]

38 (AWDC and Bain and Company, Inc 2013)

39 See annual reports: (ALROSA, 2014), (DeBeers, 2014), (Dominion Diamond Corporation, 2014) (Petra Diamonds, 2013) (Rio Tinto, 2013)

40 Interviews by co-authors

41 (AWDC and Bain and Company, Inc 2013)

42 (AWDC and Bain and Company, Inc 2013)

43 For a comprehensive analysis of the emergence of competition in the diamond industry, see: (Kyngdon, 2014)

44 (Shor, 2014)

45 (FATF 2014) (Global Witness 2010)

46 (HRW 2009)

47 (VOA 2009) (US Department of Labor 2012)

48 (FATF 2014) (Global Witness 2010)

DUE DILIGENCE (WHAT IS DUE DILIGENCE?)

The previous chapter outlined a suite of examples of human rights, business practice, and environmental risks in diamond and colored gem supply chains. The following considers measures that could be used to identify, assess and mitigate these risks.

Responsibility for managing risks rests with the businesses that create them, their regulators and their customers.[49] Risk management typically happens in three domains of business: procurement, operations and sales. Managing risks in each of these domains allows a business to proactively reduce its impacts and so help achieve its social license to operate.

Due diligence is a key tool for businesses to fulfill the responsibility for managing risk. Besides a company's commercial and legal imperatives for performing supply chain due diligence, there are also moral motivations for seeking to avoid, minimize and mitigate risks to third parties. The section below explains what due diligence means for responsible sourcing of precious stones and how it fits with the Kimberley Process (KP), the government controlled body tasked with eliminating the trade of 'conflict diamonds', and its associated certification scheme. The OECD Due Diligence Guidance is also presented, which provides a framework for conducting due diligence on the sourcing of minerals from conflict-affected and high risk areas, but lacks explicit guidance on applying due diligence to precious stone supply chains.

WHAT IS DUE DILIGENCE?

'Due diligence' is a legal expression referring to a certain standard of care. It is not a norm in itself, but is the fusion of two conceptually distinct processes: (1) the *investigation* of facts related to a business, person or product, and (2) the *evaluation* of those facts in order to demonstrate whether the specified standard of care was exercised. Neither process is mechanical; both rely on the seasoned and informed judgment of an investigator who knows how to seek facts and how to assess the facts revealed by their investigation. The investigator evaluates whether or not the standard of care was applied.[50]

Most businesses will be familiar with due diligence processes as a standard procedure required for undertakings across industry boundaries. One example of routinized due diligence throughout jewelry supply chains is the Know Your Customer (KYC) format. While KYC primarily pertains to anti-money laundering, it is often extended to a general understanding of a customer or partners' businesses. Along the jewelry supply chains, businesses routinely also use due diligence processes to assess business partners for corruption, fraud or money laundering as the basis for compliance with international regulations and national laws.

How is Due Diligence Applied?

A due diligence process typically involves at least three steps.

- **Disclosure**: The individual or organization being evaluated provides extensive information and documentation about relevant activities, connections, or practices. This puts the individual or organization 'on the record' regarding relevant key issues.
- **Assessment**: An investigator uses a risk-based approach to verify the information provided by the organization and individual. The investigator independently identifies adverse information and flags it.
- **Action**: Action is taken on any red flags that identify risks, warnings, or violations uncovered in the process. A first step is often following up with the individual or organization to see whether

49 (Ruggie, 2010)

50 (Taylor, Zandvilet and Forouhar 2009)

they have additional information that can resolve the flag.[51] In all cases, however, it is critical that the company resolves the issues, by taking appropriate steps and documenting their efforts.

For additional information on what these steps might include, please see the example in Annex E structured around conducting due diligence on a prospective business partner.

Types of Due Diligence

Many businesses have long been familiar with performing due diligence to assess and manage commercial (or financial) risks.[52] Commercial risks directly affect the success of a company's national or foreign business operations and may include money laundering, illegal payments to governments, bribery and corruption, fraud, the financial strength of the company, and more. A company may also perform due diligence on specific risks, as mandated by insurers, bankers and national legislation. For example, there are a range of national laws that mandate which types of companies and sectors must perform due diligence and on what; for example, the UK Anti-Bribery Act, the US Foreign Corrupt Practices Act, the Indian Prevention of Money Laundering Act, the South African Diamond Act.

Carrying out due diligence on indirect risks, i.e. where a company's activities pose a risk to third parties and/or may cause harm to the broader business, social, political and ecological environment, is a more recent phenomenon. According to the RJC, "*Human rights due diligence can be included within broader enterprise risk management systems provided that it goes beyond simply identifying and managing material risks to the enterprise itself to include the risks to rights-holders. It is an on-going exercise, recognizing that human rights risks may change over time as the enterprise's operations and operating context evolve*."[53]

Human rights due diligence, discussed below, is of particular relevance to the responsible sourcing of precious stones.

Human Rights Due Diligence

In recent years, the private sector has faced increasing demands for social responsibility with respect to human rights.[54] Years of contentious debate between NGOs, states and the private sector over the definition and scope of those responsibilities was transformed in the late 2000's by the work of John Ruggie, a Harvard Professor and United Nations Special Representative of the Secretary General on Human Rights and Transnational Corporations and other Business Enterprises. Ruggie's three-fold framework established a state's duty to *protect* human rights, a corporate responsibility to *respect* human rights, and greater access to *remedies* for victims ('Protect, Respect and Remedy').[55] This framework became the UN Guiding Principles on Business and Human Rights (The Guiding Principles), which were unanimously endorsed by the UN Human Rights Council in 2011. In the same year, the OECD updated its Guidelines for Multinational Enterprises to add a chapter on human rights aligned with the same Protect, Respect, and Remedy framework.[56] For more on The Guiding Principles and the Guidelines for Multinational Enterprises, please see below.

The practice of conducting due diligence on social issues is increasingly becoming standard practice in the private sector. In addition to providing definitions and a framework, the Guiding Principles adapted due diligence. Businesses now regularly conduct due diligence to gauge not just risks that directly threaten their own business, but how their business activities may cause harm to stakeholders and the political,

51 (Leonard 2012)

52 Generally, commercial due diligence relates to a business partner or customer's ability to do business and to do so legally. Commercial due diligence might investigate a customer's ability to pay, access to financial capital for managing liquidity, likelihood of being sued or of taking legal action against a business partner, etc.

53 (RJC 2013)COP 6: Human Rights p.32

54 (Taylor, Zandvliet and Forouhar 2009)

55 (UN News, 2011; UNGC, 2010)

56 (OECD, 2012)

social, and economic environment in which their company operates.[57] This is a natural and pro-business extension of one's due diligence when one accepts that a healthy, stable, and prosperous environment matters for a company's long-term success.

According to the International Finance Corporation (IFC),[58] well-structured human rights due diligence approaches will identify:

- How the company affects (positively or negatively) the human rights of their affected stakeholders
- The potential and/or actual human rights risks that can affect the company's business operation
- The processes the company has in place to address the potential and/or actual human rights risks and impacts

In practice, human rights due diligence is "*the steps and processes by which a company understands, monitors and mitigates its human rights impacts*."[59] The process can look much the same as other due diligence investigations (as discussed above). By taking these steps and utilizing these processes, the company becomes aware of, prevents and addresses any potential and/or actual risks arising from its business activities that may infringe the human rights of its stakeholders. According to the Guiding Principles, the human rights at risk of being violated are those captured in the International Bill of Human Rights and the International Labor Organization's Declaration on Fundamental Rights and Principles at Work.[60]

Tracking and Traceability Systems as Key Tools for Supporting Due Diligence

Tracking and traceability systems must be considered when determining whether the development of further due diligence tools or initiatives is appropriate for the gemstone sector. In this section, the systems are outlined and their relationship to due diligence is established. What tools are currently available to the precious gemstone industry to facilitate traceability and tracking and whether or not these are sufficient is considered in below.

Tracking and Traceability are defined as follows:

- **Tracking** is following the material down the supply chain from origin to end-user. It documents real time movements. *Purpose*: a.) Prevent theft or laundering of material into a supply chain, and b.) Support traceability by the downstream users and their auditors.
- **Tracing** is following the material or its owners/handlers up the supply chain from end user to origin. Tracing is done using documentary evidence only. *Purpose*: Map the historical movement of material, from origin to user, by revealing each prior tier of the supply chain.

They are used to provide 'chain of custody' information and establish a basis of assurance to a customer, and support due diligence in two ways. Firstly, social and environmental risks are typically a product of an operator's behavior or environment, so knowing who has handled the material and where is an integral part of risk assessment and management. Secondly, tracking and traceability provide evidence to a company or auditor that a claim being made about a mineral (e.g. country of origin, sustainability dimensions, conflict-free, etc.) is in fact true.

The degree of tracking necessary for a claim on a material or supply chain operator to be made and verified as true for the purposes of risk assessment, risk management and reporting as per the UN Guiding Principles and OECD Due Diligence Guidance depends on two factors.

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57 This paradigm shift towards business recognizing its role as 'corporate citizens', both creating and created by the state of society and the environment is wed to a second paradigm shift whereby accountability for a business' behavior is now played out in the markets increasingly more than in the courts. This is tied to the broad adoption of neoliberalism as the guiding ideology across many countries. The transparency agenda is at the heart of this: companies are incentivized to report on what measures they are taking to safeguard society and the environment from externalities associated with their operations and sourcing practices, and can then be held to account for what they report.

58 The IFC is a member of the World Bank Group. It is the largest global development institution focused exclusively on the private sector in developing countries. See www.ifc.org

59 (IFC 2012)

60 (UN 2011) P. 13; Paragraph 12

First it is worth considering the symbiosis of these two aspects to the chain of custody – or the path the mineral takes from mine to retail customer. While tracking can be performed without traceability, traceability cannot take place without some form of tracking.

Secondly, tracking can be done using record-keeping only (without physical segregation) to be meaningful, but physical segregation has no meaning/utility to purchasers or downstream users without some form of record-keeping and passing information down the supply chain. One could differentiate in this way between a chain of responsibility (where the entities along a supply chain are identified, their achievement of specified standards verified and one can make a claim about these entities) and a chain of material (where a chain of responsibility is established and a claim on the product as well as the entities can be made).

There is a wide range of chain-of-custody systems in operation across various industries and product types. These systems can be categorized into four main models: track-and-trace, bulk-commodity, mass-balance, and book-and-claim.[61]

Model	Description	Example	Mineral Example
Track-and-trace	Traces product from source (producer, region or country), physically segregating & tracking it through supply chains. Allows for 100% certainty & traceability back to origin.	Marine Stewardship Council (MSC) fish.	GeoTraceability, iTSCi, MetTrak, MineralCare
Bulk-commodity	Physically segregates certified from non-certified product to prevent mixing, but does not lead to a claim on origin.	GMO and non-GMO soybean.	One can see the same thing happening with metal smelting/refining, where a smelter or refiner will have two operations on one site – one processing metal which meets certain market specifications and so can achieve a certain price (e.g. conformant with the LBMA's Responsible Sourcing Protocol), and a second processing metal which does not meet those market specifications. .
Mass-balance	Each company keeps track of the amount of certified product it buys and sells. The segregation is administrative, not physical.	Forest Stewardship Council (FSC) credit system for mixed sources of paper. With 100% track-and-trace to that point. This in fact how the CFSP also works for the 3Ts too.	The new Fairtrade Gold Standard allows for mass balancing at the point of the Refiner.
Book-and-claim	The trade in physical products is completely	Renewable electricity	Fairmined Gold has also adopted a book and claim certificates model.

[61] (RJC, 2010)

decoupled from the trade in certificates. Usually a central 'Issuing Body' is responsible for issuing and redeeming traded certificates.	

Table 1: Chain of Custody Systems – the Four Models[62]

Traceability and tracking are an aid (an often vital aid) to due diligence, but they do not on their own constitute due diligence. Simply put, 'a paper trail is not enough.'

THE OECD DUE DILIGENCE GUIDANCE

The OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas (Due Diligence Guidance) is a key tool companies can use to respect human rights and avoid contributing to conflict through their mineral purchasing decisions and practices.[63] For the purposes of this study, the authors have used the OECD definition of "conflict-affected areas", namely: "*Conflict-affected areas are identified by the presence of armed conflict, widespread violence or other risks of harm to people. Armed conflict may take a variety of forms, such as a conflict of international or non-international character, which may involve two or more states, or may consist of wars of liberation, or insurgencies, civil wars, etc. Such areas are often characterized by widespread human rights abuses and violations of national or international law*."[64]

The Due Diligence Guidance is applicable to all mineral supply chains, but was initially developed for companies throughout mineral supply chains that potentially use tin, tungsten, tantalum and/or gold (3TG) from conflict or high risk areas. Many tools, initiatives, and laws designed to facilitate responsible sourcing of minerals rely on, make reference to, incorporate or are compatible with the Due Diligence Guidance. This includes many of the tools, initiatives and memberships presented later in this paper. Harmonization has been an intentional process across initiatives. Whether further guidance specific to precious stones is desirable and feasible is the main focus of this paper. To this end, the following section outlines the Due Diligence Guidance, so as to better understand if gaps exist, what they are and the extent to which they are already being addressed.

Background

In October 2009 the OECD began work on due diligence for conflict free supply chains. The resultant Guidance was developed with support from a diverse multi-stakeholder working group, including:[65]

- **OECD membership states**: Belgium, Canada, Germany, UK, and USA
- **Key African countries:** Democratic Republic of Congo (DRC) and Rwanda
- **International organizations:** International Conference on the Great Lakes Region (ICGLR), United Nations Organisation Stabilisation Mission to the DR Congo (MONUSCO), the United Nations (UN) Group of Experts on the DRC, World Bank
- **Industry and trade groups:** Electronics Industry Citizenship Coalition (EICC), Global e-Sustainability Initiative (GeSI), ITRI, Responsible Jewellery Council (RJC), World Gold Council (WGC), London Bullion Markets Association (LBMA), International Council on Mining & Metals (ICMM)
- **Private Sector**: AngloGold Ashanti, Apple, Ford, Intel, Malaysia Smelting Co., Rand Refinery, Thaisarco
- **Civil Society**: Amnesty International, Enough Project, Global Witness, Revenue Watch

62 Table 1 adapted from (RJC 2010) p. 62

63 (OECD, Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas 2013)

64 (OECD, Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas 2013)

65 (Gillard 2012)

The working group derived the Guidance from the UN Guiding Principles (see section below). It was built on and designed to be consistent with the OECD Guidelines for Multinational Enterprises and the OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones.[66] Whereas the UN Guiding Principles, the OECD Guidelines for Multinational Enterprises and the OECD Risk Awareness Tool **established principles and standards** for social, environmental and business practices performance, the Due Diligence Guidance **provides a process** by which such commitments can be achieved.

Approach

The OECD Due Diligence Guidance process involves a five-step framework[67]:

Step 1	Establish strong company **Management Systems**	Defining your company's conflict minerals policy, committing resources for due diligence documentation, data management, and supplier communications
Step 2	Conduct **Risk Assessments** to identify and assess risks in the supply chain	Investigating: Who are the different actors in ones supply chain? How do you know? Do those actors carry out due diligence?
Step 3	Carry out a **Risk Management** strategy to respond to identified risks	Build due diligence capacity in a supply chain through training and support. Collaborate with industry to encourage suppliers, importers and refiners to improve their due diligence and participate in audits
Step 4	Participate in independent third-party **Audits**	Be audited yourself of deliver necessary information to the entity that is being audited
Step 5	Annually **Report**	Publicly disclose company's due diligence activities, describing all the steps taken to conduct due diligence; ideally, publish on your company's website

Figure 3: The steps of the OECD-UN Guidance's due diligence process.

The five steps are demonstrated in Figure 3 as a cycle, including **Step 6**: an on-going process of Continuous Improvement.

In line with the intent of the UNGPs (see section below), the Due Diligence Guidance avoids prescription on *how* things should be done, and focuses on *what* should be done. The Due Diligence Guidance include

66 (OECD, Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas 2013) p. 65

67 (OECD, Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas 2013) Annex I; additional examples and explication provided by (Gillard, Responsible Gold Supply Chains: The OECD Due Diligence Guidance, regulations and implementing initiatives 2011)

a 'Model Supply Chain Policy' annex,[68] covers the minimum risks: serious human rights abuses associated with the extraction, transport or trade of minerals; support to non-state armed groups and public or private security forces; bribery and fraudulent provenance claims; money laundering; and tax avoidance. While an implementing company's policy must include these risks, it need not be limited to them. Companies are free to expand the supply chain policy to include other risks on which they wish to make due diligence commitments. This might include environmental considerations, CSR commitments, or other customer requirements. This flexibility allows companies to define the risks that are most likely and impactful on and by their business operations and relations, and capture these in a policy commitment to manage these. Further flexibility is provided by which initiative or tool a company uses to meet their responsibilities under each step. The diversity of tools and initiatives available to support the Due Diligence Guidance are illustrated below.

The OECD Due Diligence Guidance Guidelines for Multinational Enterprises, and by extension the Due Diligence Guidance, address the gap of smuggling routes by including 'high-risk areas' as well as 'conflict-affected' areas. 'High-risk areas' *"may include areas of political instability or repression, institutional weakness, insecurity, collapse of civil infrastructure and widespread violence. Such areas are often characterised by widespread human rights abuses and violations of national or international law."* And are thus extremely likely to include geographies where the plausibility of smuggling of minerals is judged to be high. For example, if the Due Diligence Guidance were being applied to the diamond sector, smuggling routes for diamonds that are presently originating the Central African Republic (CAR) (being presently subject to sanctions under the Kimberley Process) would be in scope for stronger due diligence measures than countries for which the smuggling of CAR diamonds is less plausible.

Application

The Due Diligence Guidance enjoys widespread support. It has been endorsed by all 34 OECD member countries plus Brazil, Argentina, Peru, Lithuania, Latvia, Morocco and Romania, who pledged to ensure that companies operating in or based in their borders use the Due Diligence Guidance eleven member states of the ICGLR and the UN Security Council in two resolutions on the DRC.[69] The Due Diligence Guidance is voluntary for many companies, however its recommendations have been integrated into the ICGLR's Regional Certification Mechanism and now the Government of DRC's legal framework.[70] In certain situations it has been made mandatory, such as where buyers compel suppliers to conform to it[71] or where membership to an organization depends upon Due Diligence Guidance conformance.[72] Endorsing countries are expected to promote its observance by companies operating in or from their territories and sourcing minerals from conflict-affected and high-risk areas.

The Due Diligence Guidance is applicable to any upstream and downstream company sourcing metals or minerals from conflict-affected and high-risk areas. Notably, it is intended to cultivate transparent, conflict-free supply chains as well as sustainable corporate engagement in the minerals sector. [73] The Due Diligence Guidance is thus intended to promote engagement and reward steady improvement. As demonstrated in section below, this is distinct from the Kimberley Process, which seeks to accomplish conflict-free supply chains through exclusion rather than inclusion and steady improvement.

The Due Diligence Guidance's scope is confined geographically to the sourcing of minerals from 'conflict-affected and high-risk areas'. It provides a definition of conflict-affected and high-risk but leaves it to the

68 (OECD, OECD Guidelines for Multinational Enterprises 2011) Annex II

69 See (UNSC 2014)

70 (OECD, OECD Guidelines for Multinational Enterprises 2011) p. 15

71 Such as through the Signet Responsible Sourcing Protocol

72 Such as through the London Bullion Market Association

73 (OECD, Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas 2013) p. 52

implementing party to determine whether a source or transportation route country or region would qualify. [74] For more information on diverse definitions of conflict, please see section below.

Applicability to the Precious Stones Sector

The Due Diligence Guidance can be used to conduct due diligence on any natural resource supply chain, though it was originally designed for minerals and has supplements for the 3Ts and gold.[75] It is presently applicable to companies operating in precious stones supply chains, even without the creation of a dedicated supplement.

A Note on The Kimberley Process Certification Scheme & Human Rights Due Diligence

The Kimberley Process Certification Scheme (KPCS), World Diamond Council (WDC) System of Warranties and Diamond Source Warranty Protocol[76] offer some assurance to buyers that a diamond has been sourced from a country that is presently in compliance with the Kimberley Process and, as such, is not a 'conflict diamond'. The original definition of 'conflict diamond', however, does not include violence and human rights abuses perpetrated by state actors or private security firms. In this sense, while compliance with the KPCS is essential, it does not provide assurance against diamonds being connected with other types of conflict-affected or high-risk situations affecting the diamond supply chain. It is also important to be aware that transactions in diamonds that comply with the KPCS could still be illegal if they involve individuals, entities or organizations that have been targeted by national or international sanctions.[77]

The KPCS relies upon participating governments to exert adequate control over their intra-national trading chains such that rough diamonds produced elsewhere cannot be laundered as originating in their countries. This is particularly challenging for producer nations with large ASM sectors, where much of production and trade is informal.[78] For these reasons companies may operate entirely in compliance with the KPCS and WDC System of Warranties, but additional due diligence will be necessary in order to fulfill other compliance obligations.

In the section below adaptations and extensions of the Kimberley Process are considered, but for the purpose of this paper—to evaluate due diligence for responsible sourcing of precious stones, the KPCS is neither a sufficient mechanism as it does not assess risks beyond conflict. For more on the background and approach of the Kimberley Process, please see Annex I.

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74 "Conflict affected and high risk areas are identified by the presence of armed conflict, widespread violence or other risks of harm to people. Armed conflict may take a variety of forms, such as a conflict of international or non-international character, which may involve two or more states, or may consist of wars of liberation, or insurgencies, civil wars, etc. 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." (OECD 2013)

75 The OECD-UN Guidance Supplement for Tin, Tantulum and Tungston has been available since the End of 2010; The supplement for Gold, discussed in detail in section x, was approved in May 2012.

76 described below in section below

77 (RJC, 2013)

78 (Le Billion, 2008) (Van Bockstael S. , 2014) (KP, 2014)

RESPONSIBLE SOURCING (WHY DO DUE DILIGENCE?)

The precious stones industry contains a diversity of opinions on what constitutes 'responsible sourcing'. Nevertheless, globally agreed principles that define 'responsible business' do exist. These principles are embodied in international standards and incorporated into international, transnational and national laws. While the specific requirements of these different standards and laws vary, they provide a *framework of expectations* and a *foundation for consensus* on what constitutes responsible sourcing generally and thus in the precious stone industry. This framework and foundation are further bolstered by *demand* for responsibly sourced minerals from civil society, industry and consumers.

As the discussion of the foundation of consensus, framework of expectations and demand for responsibly sourced minerals illustrate below, the residual issue is not whether, but how to translate the commonly agreed definition of responsible business into a tool for responsible sourcing of precious stones. This section also presents the lessons that can be drawn from the 3TG sectors, which illustrate the potential feasibility and benefits of a commonly agreed tool for responsible sourcing of precious stones.

Framework of Expectations: Legal Regimes and Existing Standards

Due diligence is not an arbitrary practice; it is frequently required by law for specific sectors and risks.[79] For example, the USA, under the Dodd-Frank Act Section 1502, now requires SEC-reporting companies to conduct due diligence and disclose the presence of 3TG originating in the DRC or adjoining countries in products they manufacture or contract to manufacture.[80] The European Union (EU) is likewise considering legislation for due diligence of 3TG supply chains, but it will likely be voluntary and applicable only to mineral importers.[81] Currently, no comparable legal impetus exists for the precious gemstones sector. Nevertheless, there are several ways in which existing laws may create liabilities for businesses associated with armed conflict and human rights risks.[82]

The following section introduces these potential legal liabilities and illustrates how extensive and complicated these expectations can be across a supply chain. Furthermore, it will consider the extent to which due diligence processes help companies understand and fulfill their responsibilities and/or obligations.

There are three forms of law that apply to responsible sourcing of precious stones: transnational law, national law and international law, which are explicated below:

International Law[83]

International law consists of "*the rules and principles dealing with the conduct of states and international organizations in their international relations with one another or with private individuals, groups, and transnational companies*."[84] As discussed below, the risk of direct prosecution under these laws is small; nevertheless, the two subsets of international law – International Human Rights Law[85] and International Criminal Law – add to the framework of expectations for responsible sourcing of precious stones.

International Human Rights Law

The foundational piece of international human rights law is the Universal Declaration of Human Rights (UDHR), which establishes 30 articles based on a faith in "*fundamental human rights, in the dignity and*

79 (Bracking and Sharife 2014)

80 (United States 2010)

81 For more information on the Dodd-Frank Act or the EU legislation, please see Annex H

82 For a handy reference guide for businesses about liability risks in such situations, see "Red Flags: Liability Risks for Companies Operating in High-Risk Zones" (FAFO and International Alert 2008)

83 This section should in no way be seen as comprehensive, but introductory and illustrative of the most relevant pieces of international law to the current discussion of responsible sourcing of supply chains.

84 (Beckman and Butte n.d.)

85 Here we will primarily consider International Human Rights law, although International Humanitarian Law may also be applicable to supply chains. According to the International Committee on the Red Cross, the two bodies of law are complementary. Both strive to protect the lives, health and dignity of individuals, albeit from a different angle. The difference is that while International Humanitarian Law applies to situations of armed conflict, International Human Rights Law protect the individual at all times, in war and peace alike. (ICRC, 2004)

worth of the human person and in the equal rights of men and women."[86] The UDHR was adopted by the UN General Assembly in 1948.[87] Since then, nearly all International Human Rights instruments elaborate the UDHR. For example, the International Covenant on Economic, Social and Cultural Rights were developed from the UDHR ideal that a free human being must enjoy the freedom from fear and want – which can only be achieved through conditions that guarantee economic, social and cultural rights.[88]

The International Labour Organisation (ILO) is a second source of international human rights law relevant to precious stone supply chains.[89] In 1998, member states of the ILO adopted the Declaration on Fundamental Principles and Rights at Work. The Declaration commits members states to respect and promote rights in four categories: (1) freedom of association and the effective recognition of the right to collective bargaining; (2) the elimination of forced or compulsory labor; (3) the abolition of child labor; and (4) the elimination of discrimination in respect of employment and occupation.[90]

The UDHR, plus the International Covenant on Economic, Social and Cultural Rights (CESCR), as well as the International Covenant on Civil and Political Rights (CCPR) form the International Bill of Human Rights.[91] The International Bill of Human Rights is not directed at companies, however, the UN Guiding Principles (described in section below) establish that companies have a responsibility to respect the rights enshrined in them and elaborates what those responsibilities are.[92] Human rights due diligence is the process by which those responsibilities and the responsibilities clarified under the Declaration on Fundamental Principles and Rights at Work can be met.

International Criminal Law

A second relevant subset of international law is international criminal law (ICL). ICL is relatively new and is based upon International Human Rights Law and International Humanitarian Law.[93] To a large degree, ICL was developed as a response to mass violations of human rights by states against citizens and persons within their territory.[94] A key distinction is that while most international law concerns the conduct of states and international organizations, International Criminal Law focuses on individuals.[95] Opinion on the scope of crimes ICL should address varies. The most commonly agreed crimes within its scope are:[96] genocide, crimes against humanity, war crimes, and crimes of aggression.[97] Other international activities that are frequently considered include: slavery, terrorism, piracy, and drug trafficking.[98] As discussed in section above and Annex D, many of these risks are relevant to diamond and colored stone supply chains; they are also somewhat raises as core risks upon which due diligence must be done in Annex II of the OECD Due Diligence Guidance.

Enforcement

States are primarily responsible for enforcing international human rights law within their borders.[99] Where a country fails to fulfill these responsibilities, enforcement mechanisms vary. The UN Security Council uses such measures as financial sanctions; travel bans and weapons embargoes, as well as expert investigations, and peacekeeping missions. Decentralized actions include collective action, sometimes

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[86] (Universal Declaration of Human Rights, 1948) [preamble.]
[87] (UN, 2015)
[88] (OHCHR, 1996)
[89] (RJC, 2013)
[90] (ILO, 1998)
[91] (UN General Assembly, 1952)
[92] (RJC, 2013) [COP 6 p. 30]
93 See footnote above for more on International Humanitarian law
[94] (Glanville, 2012)
[95] (International Criminal Law Services, 2012)
96 These crimes have been tried under the jurisdiction of an international or hybrid court, such as for the International Military Tribunal at Nuremberg, the International Criminal Tribunal for the former Yugoslavia or the International Criminal Tribunal for Rwanda, or under the International Criminal Court (ICC)
[97] (International Criminal Law Services, 2012)
[98] (International Criminal Law Services, 2012)
[99] (Damrosch, 2014)

understood as the "right to protect" where a coalition of several states come together to intervene.[100] Enforcement options also include national and international tribunals, multilateral enforcement through the United Nations Security Council and other international organs, and police and military capabilities.

Prosecution of individuals under International Criminal Law is rare.[101] The foremost examples are criminal tribunals following the cessation of a conflict, such as the International Military Tribunal at Nuremberg or the International Criminal Tribunal for the former-Yugoslavia. The International Criminal Court's (ICC) jurisdiction and mandates are broader,[102] but has thus far had only 22 cases in 9 situations brought before it.

It is possible for a company to be liable for international crimes, however the precedent is very limited.[103] Nevertheless, *"the notion that individuals may be criminally responsible for certain acts that constitute international crimes under international law, regardless of the law of their own state, is now well recognized."* [104] Further, international laws and principles inform the framework of expectations of how nations, countries, and individuals should behave at a minimum. Negative impacts on brands and entire industries found or suspected to be in violation of international human rights law can be devastating and long lasting. Finally, international human rights law informs many national and transnational laws and standards that are directly relevant to supply chains and rigorously enforced.

National Law

National law is the most likely to create immediate legal liabilities for actors within precious stones supply chains. It is outside the scope of this report to analyze in detail national legal frameworks. Rather, this section will introduce two different emerging themes in national laws relating to supply chain due diligence: national expectations as expressed through gemstone laws and national due diligence requirements.

Expectations of National Precious Stone Laws

The existence and application of national legislation that is relevant to the precious stones supply chain is often highly varied between countries. This can make it challenging for actors in the gemstone industry to understand their obligations in terms of their own operations and those of their suppliers (and sometimes customers).

The Republic of South Africa's Diamonds Act, 1986 legislates that no person or entity can mine, possess, sell, buy, manufacture or export rough diamonds without possessing the appropriate license, permit or certificate.[105] Canada's Export and Import of Rough Diamonds Act is designed to enable the state to fulfill its obligations as a signatory to the KP, an international agreement (see more in Annex I). In order for rough diamonds to be imported into or exported out of Canada, or to transit through the state, the Minister for Natural Resources must issue a 'Canadian Certificate', which is national recognition of those diamonds possessing a valid KP certificate. Under this law, rough diamond importers and exporters must also ensure that their suppliers and/or customers are KP participants.[106]

As it is recognized by the KP that its anti-conflict diamond measures will only work if participating countries have instituted *"internal systems of control designed to eliminate the presence of conflict diamonds in the chain of producing, exporting and importing rough diamonds within their own territories"*[107], the majority of KP participants have, like Canada, developed stringent national laws that control the trade of diamonds within their borders (if laws and internal controls are found to be

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[100] (The Levin Institute, 2015) (International Criminal Law Services, 2012)
101 (Foakes 2011)
102 Not without controversy. Among others, China, Turkey, Pakistan, Egypt, Iran, Russia, India, Israel, Sudan, Indonesia, and the USA have not ratified.
[103] (Ballentine & Taylor, 2004)
104 (Foakes 2011)
[105] (Republic of South Africa, 2006)
[106] (Canada Ministry of Justice, 2002)
[107] (KP, 2013)

inadequate by the KP, participants can be classified as 'non-compliant' and removed from the participants list).[108] Such laws directly affect members of the gemstone industry, often placing an onus on them to account for the legitimacy of their suppliers and customers.

Governments may also have regulations in place to protect gemstone consumers. The USA's Federal Trade Commission (FTC) has detailed Jewelry Guides that specify how retailers must accurately describe gemstones in order to reflect their true characteristics. If a gemstone has been treated (in terms of heating, irradiation, impregnating, fracture filling, diffusion treatment, dyeing, bleaching or laser-drilling) to a degree that significantly affects its value, or in a way that will change over time or require special maintenance by the consumer, the seller must inform the consumer of these treatments.[109] If the seller fails to do so, they may be found to have engaged in deceptive/misleading conduct by the FTC. For retailers to comply with these requirements they must have adequate knowledge of the treatments undergone by the gemstones they sell; if they buy the stones pre-treated, they therefore need to have due diligence systems in place to ensure that their suppliers disclose treatments, can be trusted to do so truthfully, and have enough knowledge of their own supply chains to do so with confidence.

National Due Diligence Requirements

There is increasing evidence that nations use due diligence when seeking to encourage or require business to meet a standard of responsible behavior: a comprehensive study published in 2012 found over 100 due diligence provisions in the laws of 20 different countries, including in areas of law which protect standard human rights (e.g. labor law, consumer protection, environmental protection).[110] This shift has been termed the 'hardening of soft law'.[111] For example, the UK's Modern Slavery Act 2015 requires that commercial organizations submit an annual slavery and human trafficking statement, which can include the following details:

a) The organization's structure, its business and its supply chains;
b) Its policies in relation to slavery and human trafficking;
c) Its due diligence processes in relation to slavery and human trafficking in its business and supply chains;
d) The parts of its business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps it has taken to assess and manage that risk;
e) Its effectiveness in ensuring that slavery and human trafficking is not taking place in its business or supply chains, measured against such performance indicators as it considers appropriate;
f) The training about slavery and human trafficking available to its staff.[112]

Although this law does not mandate a specific due diligence framework (or the explication of one in the required statement), much of the information that must be furnished by companies can only be (reliably) obtained through the use of due diligence processes. The resultant flexibility available to businesses in choosing/designing and implementing due diligence frameworks is somewhat both a blessing and a curse; it gives them the freedom to recognize their individual circumstances and the realities of their supply chains, but it also may overwhelm them with choice, making the process seem daunting. It has been argued, however, that in relation to human rights, 'core elements of due diligence procedures'[113] can be pin-pointed in associated national laws, and include the following central tenets of the UNGP:

(i) Identify actual or potential impacts;
(ii) Prevent and mitigate impacts thus identified; and

108 For an example of a non-compliant country that withdrew itself from the KP participants list, see: (PAC, 2006)
109 (USA FTC)
110 (De Schutter, Ramasastry, Taylor, & Thompson, 2012)
111 (Nieuwenkamp, 2015)
112 (UK, 2015)
113 (De Schutter, Ramasastry, Taylor, & Thompson, 2012), p.55.

(iii) Account for impacts and responses to them.[114]

Nonetheless, small and medium-scale enterprises (SMEs) in minerals supply chains may lack the resources to develop their own systems, and thus, may prefer explicit due diligence guidance.[115] The gemstone sector is dominated by SMEs, making this issue particularly relevant to the discussion at hand. This matter will be further explored in the 'Challenges to Additional Measures' portion of this paper.

Transnational Law

The term transnational law refers to any law that eclipses state lines. The most obvious examples are anti-corruption and anti-money laundering legislations and international treaties, which have been adopted by hundreds of states around the world, both developed and developing.[116] States may refer to international obligations in justifying national laws and their rigorous implementation; for example, Australia makes the following statement in support of its Foreign Bribery Law: *"Australia is a party to the Organisation for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the Anti-Bribery Convention). Australia is also a party to the United Nations Convention Against Corruption (UNCAC). Australia's obligations under the Anti-Bribery Convention and UNCAC include making foreign bribery an offence and prosecuting the individuals and companies who engage in it."*[117]

Under this law, Australia has a responsibility to investigate and prosecute bribery carried out by a citizen or resident outside it borders. For example, an Australian gem dealer bribing a government official in India would be violating this law and be liable to prosecution within Australia.

Anti-money laundering legislation typically encompasses issues ranging from tax evasion and transfer pricing to the more headline grabbing 'terrorism financing'—which, it is important to note, the diamond and gemstones sectors have notably been exposed to in: al-Qaeda reportedly used diamonds mined in West Africa to fund terrorist attacks, including 9/11,[118] and the Taliban reportedly extracts and trades gemstones in Afghanistan to fund its domestic and international terrorist activities.[119] Anti-money laundering laws typically require due diligence to be conducted by the legal entity to ensure that its customer is legitimate, particularly when 'suspicious' activities are witnessed. For example, the Financial Action Taskforce on Money Laundering of the Group of Eight[120] requires members to institute laws based on the FAFT Recommendations.

In relation to businesses that deal in precious metals and/or gemstones, FAFT recommends that due diligence be carried out when:

- Establishing business relations;
- Carrying out occasional transactions: (i) above the applicable designated threshold (USD/EUR 15,000); or (ii) that are wire transfers in the circumstances covered by the Interpretative Note to Recommendation 16;
- There is a suspicion of money laundering or terrorist financing; or
- The financial institution has doubts about the veracity or adequacy of previously obtained customer identification data.[121]

[114] (De Schutter, Ramasastry, Taylor, & Thompson, 2012)
[115] (Kyngdon-McKay, Levin, & Jorns, 2015)
[116] (Sharman, 2008) (OAS, 1996) (OECD, 1997); (UN, 2005)
[117] (Commonwealth of Australian, 2015)
[118] (Farah, 2004)
[119] (UNSC, 2015)
120 G8 members are: Canada, France, Germany, Italy, Japan, Russia, UK, USA and the EU.
[121] (FAFT, 2013)

The due diligence measures recommended by FAFT include:

- Identifying the customer and verifying that customer's identity using reliable, independent source documents, data or information;
- Identifying the beneficial owner;
- Understanding and, as appropriate, obtaining information on the purpose and intended nature of the business relationship;
- Conducting ongoing due diligence on the business relationship and scrutiny of transactions undertaken throughout the course of the relationship.[122]

The FAFT Recommendations therefore provide guidelines as to when due diligence should be conducted by precious gemstone dealers, and what those due diligence measures should achieve. They do not, however, provide a framework for conducting due diligence. However, existing due diligence processes, such as the Due Diligence Guidance, provide a unified standardized approach endorsed by many countries that gemstone supply chains travel through. The Due Diligence Guidance, which will be explored further below, helps companies, especially those with complex supply chain spanning many countries meet legal obligations at every stage, to ensure that their customers and trading partners are known, and their wares are responsibly sourced.

Trafficking in persons or in stolen goods across borders is also an increasing focus of the international community.[123] Forced, trafficked and child labor has been documented in the gemstone industry; the U.S. Department of Labor's List of Goods Produced by Child Labor or Forced Labor has recognized the following states and gemstones as being tainted by child labor (^) or both forced and child labor (*):

- Angola: diamonds*
- Burma: rubies*
- Central African Republic: diamonds^
- Colombia: emeralds^
- DRC: diamonds^
- Guinea: diamonds^
- India: gems^
- Liberia: diamonds^
- Madagascar: sapphires^
- Sierra Leone: diamonds*
- Tanzania: tanzanite^
- Zambia: gems^[124]

The 185 states that have ratified the International Labor Organization's (ILO) Protocol of 2014 to the Forced Labor Convention, 1930 are encouraged to facilitate "*due diligence by both the public and private sectors to prevent and respond to risks of forced or compulsory labour*"[125] Although the ILO is currently developing a guidance tool on how businesses can combat child labor in their supply chains (which will contain due diligence recommendations),[126] there is no equivalent guidance for forced labor. However, the United Nations Global Initiative to Fight Human Trafficking (UN.GIFT) has developed a Proposed Action for Business Against Human Trafficking, which contains due diligence recommendations for business.[127]

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[122] (FAFT, 2013)
[123] (UN, 2004) (UN, 2000) (UN Protocol Against the Smuggling of Migrants by Land, Sea and Air, 2000)
[124] (US DOL, 2015)
[125] (ILO, 1930)
[126] (International Labour Organisation)
[127] (Hunter & Kepes, 2012) Annex 2.

The Role of Due Diligence

A common thread which runs through international, national, and transnational legal regimes is the potential for due diligence to be the basis for assessing business compliance and excluding prohibited activities from global value chains. This is not to say that businesses do not face dilemmas. They do, principally because significant challenges remain with respect to implementation of global standards by states. Nonetheless, existing laws, treaties, conventions and their supporting guidelines suggests a framework for responsible sourcing is emerging that can aid business in managing these dilemmas and that this framework is consistent with the compliance standards in many national legal systems.

FOUNDATION OF CONSENSUS

International standards of 'good business' are relatively consistent, and can be used to inform a company's behavior throughout its global supply chain. These principles and guidelines are not legally binding however, they consider international and national legal expectations, both in the interests and rights they protect as well as in the modes of enforcement they use.[128]

There are three international standards that provide mandate and guidance for doing due diligence meaningfully: the UN Guiding Principles, the UN Global Compact and the OECD Guidelines for Multinational Enterprises.[129] The approach and relevancy to the precious stones industry of each standard are included below.

The United Nations Guiding Principles

Background

The United Nations Human Rights Council endorsed the UN Guiding Principles (UNGP) on Business & Human Rights on 16 June 2011, in Resolution 17/4, a document put forward by then-UN Special Representative for Business and Human Rights, Prof. John Ruggie.[130] The Guiding Principles represent two unprecedented steps for the UN. First, they are the only authoritative guidance the Human Rights Council and its predecessor, the Commission on Human Rights, have ever adopted on the subject of business and human rights. Second, this is the only time that either committee endorsed a normative text on any subject that governments had not negotiated themselves.[131]

Approach

The UNGP focus on: (1) the duty of states to protect individuals against human rights abuses by third parties, including business (**Protect**); (2) the corporate responsibility to respect human rights (**Respect**) and (3) the need for access by victims to both judicial and non-judicial remedies against abuse (**Access** *or* **Remedy**). The UNGP embody the international expectation for governments and businesses: the acceptance of the 'Protect, Respect, and Remedy' framework for human rights.

The UNGP acknowledge that:

- States have existing obligations to respect, protect and fulfill human rights and fundamental freedoms
- Business enterprises have roles as specialized organs of society that perform specialized functions which require them to comply with all applicable laws and to respect human rights
- The need for rights and obligations are to be matched to appropriate and effective remedies when breached.

128 (UK Government, Foreign and Commonwealth Office 2013)

129 The Extractive Industry Transparency Initiative (EITI) is another non-binding initiative that is critical to the general movement towards responsibility and transparency. See more in Annex F

130 (CORE 2010)

131 (UN 2011)

Based on these principles, the UN Guiding Principles provide guidance to States and Businesses on how to discharge their obligations to protect and respect human rights as well as to provide access to remedies when human rights are violated. The key tool for implementing this guidance is due diligence.

Due Diligence Requirements

Under the UNGP, Businesses discharge their responsibility to respect by:

- Avoid causing or contributing to adverse human rights impacts through their own activities, via causation, contribution or direct linkage through a business relationship, and address such impacts when they occur;
- Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.

According to Ruggie, "[for corporations] *to discharge the responsibility to respect requires due diligence*."[132] This was intentional; the UNGP recognized due diligence as something businesses would be familiar with. In many countries, companies are legally required to have information and control systems in place to assess and manage financial and related risks, meaning that comparable processes and institutional experience with due diligence would typically already be embedded in companies. [133]

Businesses, however, are not expected to bear this burden alone. According to the guidance, States' have a duty to help businesses achieve their obligation to respect human rights, including helping businesses identify, prevent and mitigate the human rights-related risks of their business relationships.[134] However, it must be noted that the UNGP assign businesses with a 'responsibility' to respect, rather than a 'duty' to do so. To this end, due diligence is a pragmatic approach to the complexity of global businesses and global supply chains. It can be argued that the effectiveness of human rights due diligence is thus dependent on the moral commitment of corporations rather than a legalistic submission to a law.[135]

Applicability to the Precious Stones Sector

The UNGP is an integral feature of good corporate governance.[136] To this end, they provide an overarching policy framework for directing a.) How precious stone and jeweler companies conduct due diligence on human rights along their supply chains and b.) How states with important[137] precious stone and jeweler sectors can support the private sector in fulfilling their responsibility to respect.

Under the UNGP, every industry and company should design and implement its own due diligence system taking into consideration its unique situation, i.e. company size and scale of operations, location, complexity of supply chains, and so on. Every company is expected to proactively take steps to assess and address its impacts on human rights, and have 'the responsibility to respect' as an inherent part of its operating policies and procedures.[138] This does not mean every company has to reinvent the wheel; cooperation to develop industry specific due diligence guidelines to fulfill this obligations is ideal. For example, the OECD Due Diligence Guidance was developed to equip the 3T and G sector fulfill its obligations under the UNGPs.

Opportunities and Gaps

The UNGP reliance on due diligence is a pragmatic solution: it is more practical for companies to follow a *process* to ensure compliance with national laws and management of human rights abuses, rather than seeking to know with certainty that they are respecting all human rights. In other words, due diligence

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132 (Ruggie, Report of the Special Representative of the Secretary General on the Issue of Human Rights and Transnational Corporations and other Businesses 2010)

133 (Ruggie, Report of the Special Representative of the Secretary General on the Issue of Human Rights and Transnational Corporations and other Businesses 2010) p. 17

134 (Ruggie, Comment on Surya Deva & David Bilchitz's Book "Human Rights Obligations of Business: Beyond the Corporate Responsibility to Respect?" 2013)

135 (Fasterling and Demuijnek 2014)

136 For a list of applications of the UNGPs, see (Ruggie, Report of the Special Representative of the Secretary General on the Issue of Human Rights and Transnational Corporations and other Businesses 2010),

137 By important, we mean based on contribution to the national economy *and* contribution to a specific supply chain tier or sub-sector of the precious stones sector.

138 (Ruggie, Report of the Special Representative of the Secretary General on the Issue of Human Rights and Transnational Corporations and other Businesses 2010)

doesn't ask, 'are we respecting human rights?' but rather 'do have adequate systems in place to discharge our responsibility to respect (i.e. prevent human rights abuses)'? The measurement of success of the 'respect' aspect of the framework is therefore systems-based, rather than outcomes-based, with the assumption that good due diligence systems will ensure good human rights outcomes.

The UNGP provides clear expectations and standards, and recommends due diligence as the mechanism via which those expectations can be met. To maximize applicability to all businesses and states, the UNGP do not provide a due diligence tool, but rely on the public and private sectors to develop approaches that meet their individual needs.[139] However, the OECD Due Diligence Guidance is based on the UNGP and is broadly applicable to the precious gemstone sector. While guidance does not exist on how to adapt the Due Diligence Guidance (and by extension the UNGP) to the diamond or colored gem sectors, as there is for 3TG, such modification would appear feasible. While beyond the scope of this study, more research should be conducted to determine how this could be achieved.

The United Nations Global Compact

Background

At the 1998 World Economic Forum in Davos, then-UN Secretary-General Kofi Annan's declared, "*Let us choose to unite the power of markets with the strength of universal ideals. Let us choose to reconcile the creative forces of private entrepreneurship with the needs of the disadvantaged and the requirements of future generations*."[140]
This speech propelled on-going efforts to formalize global efforts by industry, civil society, and governments to promote sustainable businesses practices. In July 2000, a voluntary corporate sustainability initiative was launched: The United Nations Global Compact (UNGC).

Approach

The UNGC consists of 10 principles (see table below), Each well developed from and firmly supported by international norms and laws.[141] Their application to businesses and the responsibilities they possess are clearly established.[142]
Companies that wish to join the UNGC must write a letter of intent, signed by the CEO, to the UN Secretary General indicating their willingness to commit to the 10 principles. They also must participate in a UN due diligence process for potential private sector partners.[143] Once a year, the member companies must publish a 'communication on progress' report including a statement of continued support by the CEO; a description of what has been achieved in the four areas of human rights, labor, environment, and anti-corruption; and a measurement of outcomes.[144] The report is displayed on the UNGC homepage.
In 2011, the UNGC introduced a 'differentiation program'. This program differentiates the engagement of participants with the ten principles by sorting them into one of three categories (learner, active, or advanced) according to their performance.

Due Diligence Requirements

The 10 Principles unequivocally establish that all human rights have the potential to be relevant to all businesses and that the responsibility to respect human rights—meaning not causing, contributing to, or being directly linked by business relationships to adverse human rights impacts—is the baseline standard for all business in all situations. Human rights due diligence[145] is the key tool to help businesses respect human rights and avoid complicity in human rights abuses.

139 (Muchlinski 2012)

140 (Annan, Unite power of markets with authority of Universal Values, Secretary-General Urges at World Economic Forum 1998) and

141 The Universal Declaration of Human Rights; The International Labour Organization's Declaration on Fundamental Principles and Rights to Work; The Rio Declaration on Environment and Development; The United Nations Convention against Corruption

142 For extensive information on the theoretical foundation and practical application of each principle, please see: (UNGC 2013)

143 (UN 2012)

144 (UN Global Compact n.d.)

145 (UNGC 2014)

The UNGP advocates that the due diligence process be ongoing and include the following key steps. Note their compatibility with the OECD Due Diligence Guidance 5 Step framework (Figure 3, above):

- **Identify and assessing human rights impacts**: take proactive, ongoing steps to understand how your activities may cause or contribute to human rights impacts
- **Integrating findings**
- **Take action**
- **Track effectiveness of response** through monitoring and auditing
- **Communication**: report on your activities

There are no standardized reporting requirements and no in-depth reviews of the reported content by the UN. However, a 5 step framework (akin to the Due Diligence Guidance) could be used to implement and measure progress of the ten principles. Although the OECD Due Diligence Guidance Model Framework[146] includes indicators relating to specific human rights, as noted in the above section, the Due Diligence Guidance is flexible. The Model Framework can be adapted to include additional management systems and policies relating to Human Rights, Labor and Environmental goals aligned with the 10 Principles.

UN Global Compact 10 Principles	
Human Rights: Businesses should…	
1	support and respect the protection of internationally proclaimed human rights;
2	make sure that they are not complicit in human rights abuses
Labor: Businesses should uphold…	
3	the freedom of association and the effective recognition of the right to collective bargaining
4	the elimination of all forms of forced and compulsory labor
5	the effective abolition of child labor
6	the elimination of discrimination in respect of employment and occupation
Environment: Businesses should…	
7	support a precautionary approach to environmental challenges
8	undertake initiatives to promote greater environmental responsibility
9	encourage the development and diffusion of environmentally friendly technologies
Anti-Corruption: Businesses should…	
10	work against corruption in all its forms, including extortion and bribery.

OECD Guidelines adhering countries

Applicability to the Precious Stones Sector

The UNGC is highly applicable to the precious stones sector. It is not a regulatory instrument, but rather a voluntary initiative that relies on public accountability, transparency and disclosure to complement regulation and to provide a space for innovation and collective action.[147] It is the largest voluntary corporate responsibility initiative in the world with over 12,000 corporate participants and stakeholders from over 145 countries.[148]

The 10 Principles and resources are intended to support business sectors at all levels i.e. small, medium and large scale. There are many tools published by the UNGC to facilitate and develop membership, learning and reporting. A notable example is the UNGC Self Assessment Tool,[149] which can be used to test a company's performance on all of the UN Global Compact principles to establish how well these issues are being managed. The Self Assessment Tool is designed to help companies identify which due diligence processes are needed.[150]

Opportunities and Gaps

146 (OECD 2013) Annex II

147 THE UNGC holds voluntarism as a core value, based on findings that it voluntary initiatives: (1) instill a culture of corporate leadership and innovation; (2) move corporate responsibility from concept to fact and (3) give voice to people's concerns, helping companies build trust and confidence in their communities (UNGC 2010)

148 (UNGC 2013)

149 (UNGC 2010)

150 (UNGC 2010)

The Self Assessment Tool represents a strong first step for companies beginning to engage with human rights responsibilities, irrespective of their size. The UNGC also offers extensive opportunities for capacity development and dialogue by engaging participants through three mechanisms: dialogue events, learning events and partnership projects, which establish local networks and encouraging discourse on specific policy areas. Given the modest requirements for membership, there would appear to be few obstacles or barriers to entry for businesses and trade associations in the precious stones industry to become members, as long as they have the motivation and manpower to do so.

Furthermore, businesses and trade associations that are existing members may be well positioned to offer mentorship and guidance to interested companies as to which tools and resources within the UNGC are most applicable to the precious gemstone industry.

The UNGC does not, however, provide a due diligence framework with which member companies can conduct human rights due diligence. The OECD Due Diligence Guidance may be an appropriate tool for some companies from the precious gemstone sector, but as previously argued there is no existing gemstone supplement on the Due Diligence Guidance.

Australia	New Zealand
Austria	Norway
Belgium	Poland
Canada	Portugal
Chile	Slovakia
Czech	Slovenia
Republic	Spain
Denmark	Sweden
Estonia	Switzerland
Finland	Turkey
France	UK
Germany	USA
Greece	*non-OECD:*
Hungary	Brazil
Iceland	Colombia
Ireland	Costa Rica
Israel	Egypt
Italy	Jordan
Japan	Latvia
Korea	Lithuania
Luxembourg	Morocco
Mexico	Peru
Netherlands	Romania
	Tunisia

The OECD Guidelines for Multinational Enterprises

Background

The OECD Guidelines for Multinational Enterprises (The Guidelines), were first adopted in 1976. They have been reviewed five times, most recently in 2011, to ensure they remain the most relevant tool to promote responsible business in the global economy.

All 34 OECD countries and several non-OECD countries adhere to the Guidelines. A country may choose to make observance of the Guidelines mandatory through their domestication into national law. An ambitious application of this is a French legislative proposal designed to mandate supply chain due diligence in accordance with the Guidelines for any French company employing 5,000 or more domestically or 10,000 or more employees internationally. The companies would be required to conduct due diligence for human rights, environmental and social risks or face a fine of up to 10million euros.[151]

Approach

The Guidelines are the world's most comprehensive set of government-backed recommendations on responsible business conduct. [152] They are consistent with a vast range of national laws and internationally recognized standards.

Observance of the Guidelines by enterprises is voluntary and not legally enforceable, however they "*clarify the shared expectations for business conduct of the governments adhering to them and provide a point of reference for enterprises and for other stakeholders*."[153]
To this end, the countries adhering to the Guidelines make a binding commitment to implement them, which may include derived legislation or enforcement mechanisms at the national level. See figure above for a list of countries that have committed to implementing the Guidelines.

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[151] (Assemblée Nationale, 2015) [Referenced in] (Nieuwenkamp, 2015)
152 (OECD 2015)
153 (OECD, OECD Guidelines for Multinational Enterprises 2011)

The May 2011 revisions include a new chapter on human rights, "*a new and comprehensive approach to due diligence and responsible supply chain management*," and changes to the chapters on Employment and Industrial Relations; Combating Bribery, Bribe Solicitation and Extortion, Environment, Consumer Interests, Disclosure and Taxation."[154]

Due Diligence Requirements

The Guidelines recommend companies carry out risk-based due diligence, to identify, prevent and mitigate actual and potential adverse impacts, and to account for how these impacts are addressed. They also recommend that companies "*seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship*."[155]

The Guidelines encourage companies to be pragmatic and strategic. Reasonableness in the nature and extent of due diligence is applied through using a number of filters. First, companies with large numbers of suppliers are encouraged to use risk assessments to prioritize conducting due diligence where the risk of adverse impacts is most significant. [156] Second, a company is expected to take into account its size, the context of its operations, the Guidelines' specific recommendations and the severity of its adverse impacts when deciding what actions would be appropriate.

Nevertheless, the Guidelines are clear on where a company's responsibility starts and ends. First, beyond immediate operations relationships, the scope of responsibility includes franchising, licensing, and subcontracting. Second, if an enterprise has leverage over an adverse impact, it should use it, defining leverage as being "*considered to exist where the enterprise has the ability to effect change in the wrongful practices of the entity that causes the harm*." [157] Third, companies are encouraged to "*observe the Guidelines' recommendations to the fullest extent possible*."[158]

The Guidelines have a chapter specifically on human rights due diligence, which refers to the UN Guiding Principles (see section above). The chapter recommends and describes human rights due diligence in a way compatible with the OECD Due Diligence Guidance 5 step process (see section above): the process entails "*assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses as well as communicating how impacts are addressed*."[159]

Applicability to the Precious Stones Sector

Businesses from adhering countries investing in, sourcing from or operating in adhering countries are expected to observe the guidelines, e.g. concession holders, mining companies and investors in mining companies. Of the adhering countries, Australia, Belgium, Canada, Israel, USA, Brazil and Colombia are amongst the most important countries for precious stones supply chains based on the value of gems mined, traded and/or manufactured therein.[160]

Several countries important to the precious stones sector with documented human rights issues are not Guideline adhering countries including, Afghanistan, CAR, DRC, Madagascar, Myanmar and Sierra Leone. [161] In this case, the Guidelines would still be applicable to precious stone mining, trading and manufacturing companies whose owners are nationals of adhering governments (e.g. the USA) but are operational in a non-adhering jurisdiction (e.g. Sierra Leone). For example, domestic precious stones

154 (OECD, Annual Report on the OECD Guidelines for Multinational Enterprises 2013)

155 (OECD, OECD Guidelines for Multinational Enterprises 2011) p. 21

156 (OECD, OECD Guidelines for Multinational Enterprises 2011) p. 24

157 (OECD, OECD Guidelines for Multinational Enterprises 2011) p. 24

158 (OECD, OECD Guidelines for Multinational Enterprises 2011) p. 18

159 (OECD, OECD Guidelines for Multinational Enterprises 2011) p. 34

160 See (US Geological Survey, 2013)

161 (Matthysen and Clarkson 2013)(Dalby 2011)(Crisis Group 2010)(Heywood 2007)(Win 2012)(Sisodia 2008)(HRW 2009)(DuPee 2012)(Byrd 2012)

enterprises in non-adhering countries could find that the Guidelines are still relevant if customers incorporate their requirements into contracts.

Opportunities and Gaps

The OECD Guidelines provide clear definitions, standards and expectations for what responsible business means in the global economy. They recommend due diligence as a key tool to meet these expectations. The Guidelines are directly related to the OECD Due Diligence Guidance,[162] which is the best tool for companies from the precious gemstone sector to conduct the kind of due diligence required by the Guidelines. As previously argued, however, the absence of a gemstone supplement to the Due Diligence Guidance is notable, and the potential for addressing that gap should be further explored.

DEMAND FOR RESPONSIBLY SOURCED MINERALS

Large sections of the 3TG industry were motivated to conduct due diligence by the passage of the US Dodd-Frank Act and the EU's decision to address the importation of conflict minerals into its region. In lieu of comparable regulation, the precious stones sector has a unique opportunity to enhance the responsible sourcing of its industry without the pressure of enforceable legislative mandates. Increasing demand for responsibly sourced precious gemstones from consumers and civil society, as well as governments bolsters this opportunity.

Demand from Consumers & Civil Society

Jewelry consumers increasingly expect their purchases to meet the following criteria:

1. They have not funded conflict;
2. Their extraction and manufacture has not harmed people or the environment,
3. Labor rights have been respected.[163]

This trend is unlikely to end. Media reports on ASM and gem and jewelry manufacturing sectors are often cautious if not grim.[164] Likewise, a wide range of NGO campaigns have increased consumer awareness of the existence of risk in the precious stones and precious metals supply chains.[165] To this end, responsible sourcing is increasingly connected to issues of reputational risk, and sometimes, brand enhancement. Jewelers that actively 'brand' themselves as "ethical" are growing in numbers and market share, year on year.166

On the other hand, US-based jewelers in particular are struggling to attract business from the 'Millennial' generation, who are value-driven consumers in every sense of the word[167].

A recent review of the KPCS highlighted the impact of public attention and expectations on responsible sourcing in the diamond industry. While the failure of the KP to extend its mandate beyond 'conflict' and into the protection of human rights is well known within the industry and NGO sector, others were disappointed to learn of its limitations.[168] For example the Guardian published an article blasting the entire process, "*The Kimberley Process was never perfect but the June 2011 decision to allow exports from Zimbabwe's Marange diamond fields rendered it ridiculous. Diamond exports from the area were suspended from June 2009 because state security agencies were found to have committed killings, beatings and have used forced labour."*[169]

162 (OECD, Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas 2013) p. 65

163 (BJA 2015)

164 See for example this 2015 New York Times article (Gomelsky 2015); while generally a positive piece about the sector, the article highlights the U.S. embargo on Myanmar rubies due to "human rights violations" and juxtaposes this with the story of Gemfields "a proponent of ethical and transparent sourcing."

165 Such as (Global Witness 2014) or (Agger 2014) or (McDougall 2010) or

166 (Ethical Consumer, 2014)

167 The Industry Starts to Feel the Millennial Pinch/ http://www.jckonline.com/blogs/cutting-remarks/2015/05/01/industry-starts-to-feel-millennial-pinch?utm_source=JCK+eNewsletters&utm_campaign=301bfc8d27-2015_05_01_Fashion_Friday&utm_medium=email&utm_term=0_56301e74d4-301bfc8d27-334040197

168 (HRW, 2009)

169 (Nicolson 2013)

The public and acrimonious withdrawal of well-known NGOs such as Global Witness from the KP,[170] as well as the lack of reform during its most recent review process brought renewed public attention to the system's weaknesses. Furthermore, sustained attention has been brought to human rights issues or business practice risks prevalent at the mine site, at points of trading in-country, trading post-export and manufacturing, which are beyond the scope of the KP.[171]

Demand from Governments

There are three distinct, but interlocking, reasons why governments would wish to incentivize industry operating in their jurisdictions to perform supply chain due diligence:

First, governments have duties and obligations they themselves must abide by, generated by national law, international legislation or treaties, or by international political agreements such as the KP or the Extractive Industry Transparency Initiative (EITI)[172] and are required to enforce these in their own territories. These obligations pertain to a wide array of issues, including but not limited to human rights, climate change, as well as anti-money laundering.

Second, governments have domestic political necessities and agendas to address. The Dodd-Frank Act, section 1502, which has had a massive impact on number of industries and businesses along the 3T G supply chains, was based on the sense of the U.S. 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..."*[173] Because the U.S. Congress linked 3TG and the conflict in the DRC, domestic law in this market economy was instituted that has had a global impact (in both the public and private sectors) and particularly in manufacturing and producing nations.

Governments may likewise demand due diligence efforts to ensure the most vulnerable groups in their society are protected, particularly where institutions are weak and risks high. They further have financial imperatives to ensure smuggling and other financial offences are minimized, to increase domestic revenues (via taxation).

Finally, a government may wish to make requirements of businesses in its country and provide them with the necessary tools and assistance to compete on the world stage. For example, Rwanda and the DRC have domesticated the Regional Certification Mechanism (discussed further in Annex G), which is designed to ensure that the 3TG industry in the upstream segment is in conformance with the OECD's Due Diligence Guidance, making it the law of the land in both countries.[174]

Encouraging the implementation of due diligence by the precious stones supply chain may assist governments to abide by their national and international commitments, equip their businesses with the tools they need to meet the needs, indeed demands, of their major clients on the one hand and respect the human rights of stakeholders on the other. It could also bring transparency to a sector that could greatly benefit from increased supply chain controls.

Demand from Industry

Verifying and protecting a company's reputation for responsible business conduct is progressively being acknowledged as a crucial competitive factor in markets as well as in securing access to assets (e.g. mineral rights, labor) and funding. Insurers' and investors' terms increasingly incorporate corporate behavior on environmental, social, and governance into their investment analysis and portfolio

170 (Eligon 2011)

171 (Rhode 2014)

172 For more on the Kimberley Process, please see Annex I for more on the EITI, please see Annex F

173 (United States, 2010); P.L. 111–203 SEC. 1502. Conflict Minerals

174 (ICGLR, 2006)

construction.[175] Such is that pressure from Governments for example, that the Canadian Government has advised that mining companies operating in a way that is incompatible with Canadian legislation whilst in foreign jurisdictions will find it more onerous to gain approval from regulators for mining licenses in Canada.[176]

Businesses across the precious gemstone industry are featuring responsible sourcing as a leading component in their brand. Examples include the aforementioned Gemfields PLC, which includes a responsible business proposition in its brand and marketing,[177] as well as Nineteen48, which aims to "*provide a completely transparent and traceable route to market for all of our gemstones, so that [the customer has] guaranteed peace of mind*".[178] Other examples include Ruby Fair, Columbia Gem House, Fair Gems Process and Brazil Gems.[179]

Many public companies incorporate some mention of ethics or corporate responsibility into their brand. An emerging trend for large jewelry retailers is to clarify that by 'ethical supply chains' they mean supply chains that have been verified through a due diligence process. Increasingly, their suppliers are asked to adopt supply chain due diligence measures into commercial supplier/client agreements. Signet PLC, Tiffany & Co. and Cartier are among the leaders in this effort.

At the 2014 World Diamond Congress, Signet announced that it would be requiring its diamond suppliers to provide evidence of their due diligence practices in accordance with the OECD Due Diligence Guidance—something its gold suppliers having already undergone. How precious gemstone suppliers will meet these new requirements and expectations is not clear. While there are reportedly some businesses already implementing the OECD Due Diligence Guidance, interviews conducted for this report established that the vast majority are not.

Nonetheless, it should be recognized that a brand like Signet would only place such demands on its suppliers if it believed they were reasonable. This suggests that the Due Diligence Guidance is suitable for application to the diamond industry, and perhaps colored gemstones. Future research should be conducted into how Signet's diamond suppliers fulfill this requirement to determine if a gemstone Due Diligence Guidance supplement is necessary/desirable/feasible.

Finally, the adoption by the OECD in 2011 of the Due Diligence Guidance, the subsequent supplements for the 3Ts and gold (in 2012), together with the passage of the US Dodd-Frank Act (see Annex H), have generated considerable external pressure for industry compliance and increased public awareness of risk in the jewelry industry's supply chains in general.[180] From the perspective of retail jewelry businesses, which stand as the face of the entire value chain to the consumer, the existence of legal requirements to undertake due diligence to ascertain whether some of their components may have come from conflict-affected or high-risk areas in the vicinity of the DRC, simply brings added focus to bear on the supply chains of all materials, including precious stones.

175 (USSIF, 2014)

176 (Canadian Foreign Affairs, Trade and Development Department, 2014)

177 (Gemfields, 2014)

178 (Nineteen48, 2015)

179 (Ethical Consumer, 2014)

180 (BJA, 2015)

ADDITIONAL BENEFITS

Conducting due diligence on a company's supply chain can facilitate responsible business practices. There are also many additional secondary benefits, including: [181]

Relationship Knowledge

- Improved insight into a Supplier's capacity and willingness to do due diligence—size, attitude to risk management generally and resource constraints
- Knowing customers better and enhancing relationships with trust and cooperation
- Your materiality to your suppliers—will they take on this burden to satisfy you or are you just not important enough?
- Entry point for exerting wider controls: companies work with suppliers to get due diligence on critical issues established first, and can more easily start to address other issues (e.g. carbon management, water management etc.) once general supply chain due diligence systems are in place.

Industry knowledge

- Suppliers' individual and comparable materiality to you – how much of which mineral do they supply? Under what conditions (regular, tight markets, shocks/blockages in principal supply lines)? How important are they to your business?

Operational Knowledge

- Greater control over your supply chain
- Exposure of other risks you were not looking for, but which pose a threat to your business or adherence to your commitments
- Opportunities to make positive claims about your supplier engagement activities and materials
- Supply chain weaknesses: How dependent are you on which suppliers, and do you need to diversify supply to build supply chain resilience more generally?
- Establishment of systems for managing the transfer of commercially sensitive information along supply chains in ways that do not violate competition law.

[181] (Mangan, Lalwani, Butcher, & Javadpour, 2012)

CURRENT LANDSCAPE (HOW TO DO DUE DILIGENCE)

Enhanced efforts to advance responsible sourcing for precious stones must complement existing initiatives, not undermine or replace them. Laudable efforts have been made by the precious stones sector to self-regulate its operations to try to enable responsible operations and sourcing. This chapter considers the range of tools that exist to enable businesses to do due diligence on human rights in precious stones supply chains. Note that significantly more tools are available to the diamond sector than the colored gemstones sector. Tools and initiatives that are directly applicable to the colored gems sector are marked with an asterisk (*).

Robust Due Diligence Systems

- The De Beers Best Practice Principles Assurance Programme
- Responsible Jewelry Council's Chain of Custody and Code of Practices
- China Chamber of Commerce of Metals, Minerals, and Chemicals Importers and Exporters

Support Tools

- ICCM's Sustainable Development Framework & Guidance Note on Human Rights in the Mining and Metals Industry: Integrating Human Rights Due Diligence into Corporate Risk Management Processes*
- UNICRI's Chain of Custody mechanism*
- Diamond Source Warranty Protocol

Standards of Best Practice

- IRMA's Responsible Mining Assurance System

ASM Specific Tools

- The Washington Declaration and the Washington Declaration Diagnostic Framework
- The Diamond Development Initiative International (DDII)

Membership Organizations

- World Federation of Diamond Bourses
- International Diamond Manufactures Associations

Further Relevant Organizations

- Assogemme*
- CIBJO or the World Jewellery Confederation*
- RESP*

Each is evaluated below to determine its applicability to the precious stones sector. For more information on the history and approach of each, please see Annex I.

**Applicable to colored gemstones*

ROBUST DUE DILIGENCE SYSTEM

The De Beers Best Practice Principles Assurance Programme (BPP)

The De Beers Best Practice Principles Assurance Programme (BPP) is the most extensive and robust ethical supply chain management system within the diamond industry. De Beers role through the BPP is not to 'police the industry', but to provide a platform to manage and improve ethical accountability in the diamond pipeline. [182]

182 (SGS United Kingdom Ltd. De Beers Group Report to Society 2013)

The De Beers Group entities and it's customers are required to comply with a set of principles including labor, environmental, and non-conflict standards.[183] The standards are described in a manual, which is updated regularly and guides participants through the process.[184]

Participants fill out risk-based self-assessment workbooks online for each entity within their group's diamond pipeline.[185] The workbook is individually tailored to the specific risk profile of each facility. [186]

The BPPs use a robust triple-layer verification method. First, 33% the self-assessments per Group are checked by a third party external auditing company for completeness, accuracy, and correlation to any previous year's self-assessments. Second, the third party, auditing company (that in itself has its own auditing quality control system in place) physically audits 10% of the entities per Group each year. Finally, in a unique 'audit of the auditors' step, an external assurance company audits the De Beers internal audit system and the third party auditing companies.[187]

The BPP rates participants based on compliance:

- Full compliance
- Improvement opportunities
- Minor infringements
- Major infringements
- Material breaches

Any operation that receives a material breach, such as the use of child labor, trade in conflict-diamonds, or causing a significant adverse effect to the environment, is liable to have their customer status terminated. The same is true for those that have more than three major infringements.[188] All minor and major infringements are expected to have corrective action plans that will be checked at the latest during the following years auditing process depending on the severity of the infringement.

Harmonization

Since the launch of the Responsible Jewellery Council's System (See above), De Beers has worked towards complete compatibility by incorporating the new RJC requirements into the BPPs.[189]

Impact

The BPPs have a greater reach than any other system currently operating in the diamond industry. The assurance program covers all De Beers entities and all the diamond entities of all those companies that buy diamonds from De Beers in any way. It does not matter whether any particular entities are or are not using De Beers diamonds, if a part of the client buys diamonds, all diamond related entities within the group are subject to the BPP's. The BPPs also apply to "significant contractors" who receive 75% of more of their annual turnover from a Sightholder. [190] Customers are required to sign a Letter of Best Endeavors on behalf of their contractors under the 75% threshold Letter of Best Endeavors stating they do not materially breach the BPP standards. In 2012, the scope was expanded to also cover contractors under the threshold who source to four or more Sightholders or those receiving "external or media interest due to alleged unethical behavior." [191] Approximately 370,000 diamond industry employees are covered by

183 (De Beers 2015)

184 (De Beers 2015)

185 (UNGC 2011)

186 (UNGC 2011)

187 (De Beers 2015)

188 (De Beers 2015)

189 (UNGC 2011)

190 (De Beers 2015)

191 (SGS United Kingdom Ltd. De Beers Group Report to Society 2013)

the BPP Programme , from mines to retailers, , making it the best placed initiative for initiating innovations and increased standards in the sector, should De Beers see fit to do so.

Gaps and Opportunities

The BPPs establish a precedent of due diligence for the diamond industry. The Workbook guides participants to conduct their own due diligence to ensure they have met requirements and to raise red flags where their compliance falls short. Like the OECD DDG, the BPPs are intended to help companies move towards compliance progressively and to operate ethically amidst complex and risk filled environments. The BBP policy is to encourage continuous improvement year-to-year through a 'staircase model'. Where actions are flagged, participants are supported to develop and implement action plans to rectify the situation.

The BPPs enforcement ability and transparency remains a key area for development. BPPs utilize an inclusive, progressive approach where organizations are supported to continuously improve. Even in extreme cases, where a participant is rated as stage five "material breach", and the group might face termination of its contract, but is still given opportunities and support to improve. Prior to 2014, only one sightholder had (possibly) had its allocations taken away for breaches of Best Practice Principles.[192] In early 2008, De Beers suspended six Antwerp Sightholders for their role in the Brenig invoice-falsification case.[193] By April, following closed door meetings with the Sightholders and their lawyers, De Beers acknowledged the suspension had been rescinded and the companies fully reinstated.[194] Some industry observers raised concerns that the details of this process were not transparent.[195] In their 2013 Report to Society, De Beers reported that all 193 infringements of the BPPs were 'rectified during 2013 through corrective action procedures' but gave no further details.[196]

By contrast, in 2014, De Beers revoked Sightholder allocations from an Antwerp client for a 'labor issue at a Chinese factory' and another Sightholder for an unspecified BPP breach.[197] This indicates that enforcement of the BPPs is taken seriously; greater transparency on this decision-making would bring greater reassurance to third parties and stakeholders.

Expanding the scope of the BBPs likely has limits. First, the BBPs are only applicable to the diamond industry and those companies connected to De Beers. The program is mandatory because its continued partnership with De Beers is contingent on compliance.
Consultation and collaboration with De Beers on any further tools to support responsible sourcing of diamonds should be fundamental. Their experience harmonizing the BBPs with the RJC is an important precedent for further efforts to avoid duplication and redundancy. Any further guidance for the diamond industry should take into consideration the BBPs both for harmonization and for lessons learned.

Responsible Jewelry Council's Code of Practices

The RJC's Code of Practices and Chain of Custody mechanism provide the most robust due diligence system for precious gemstones, however only the diamond industry is within its stated scope.

The RJC is a standards setting and certification organization established to reinforce consumer confidence in the jewelry industry by advancing responsible business practices throughout the supply chain. RJC membership is open to any commercial company actively involved in the diamond, gold and/or platinum group metals jewelry supply chain as well as any trade association whose members are actively involved therein.[198]

192 (Bates 2014)

193 (Bates, Sightholders Dropped for BPP Violations 2008)

194 (Bates, DTC Lifts Sightholder Suspensions 2008)

195 (Bates, DTC Lifts Sightholder Suspensions 2008) Said a De Beer spokesperson, "*I cannot go into detail, but suffice to say that all discussions [with the sightholders] resulted in our reinstating supply.*"

196 (SGS United Kingdom Ltd. De Beers Group Report to Society 2013)

197 (Bates 2014)

198 (RJC 2013)

The CoP

RJC members commit to the RJC Code of Practices (CoP) in their own business operations and are required to undergo audits on a periodic basis by external auditors accredited by RJC to verify conformance. The member pays for the audits.[199]

The CoP, which covers social, ethical and environmental factors, was substantially updated in 2013 through an extensive process of multi-stakeholder consultation.200 This update included (but was not limited to) new provisions related to the UN Guiding Principles on Human Rights, Sourcing from Conflict-Affected Areas and from Artisanal and Small-scale Miners, as well as Provenance Claims in the diamond, gold, and platinum group metals supply chains.[201]

The revised CoP, valid since November 2013, has 'Responsible Supply Chains and Human Rights' as a core element of its scope to *"increase the use of due diligence in supply chains of Diamonds, Gold and Platinum Group Metals in order to support respect for human rights, community development, anti-corruption efforts, and to manage sourcing risks*."[202]

In practice, the new standards align RJC members with the OECD Due Diligence Guidance process (see Figure 3). Members must:

- Have a written policy on human rights (COP 6.1a)
- Carry out Human Rights Due Diligence process, at a scale relevant to the business (COP 6.1b) (for which the RJC has developed training) [203]
- Have a remediation process, where this identifies human rights impacts (COP 6.1c)

The RJC is also forming a Human Rights Forum, which offers RJC members a formal structure to better understand, address and mitigate human rights risks in the jewelry supply chain. The Forum is open to all interested members and invited stakeholders and experts.[204]

The RJC launched a voluntary Chain of Custody (CoC) Standard in March 2012. The CoC is for gold and platinum group metals[205] only. The CoC Standard aims to support claims for responsibly sourced jewelry materials (known as CoC Material) produced, processed and traded through the jewelry supply chain. RJC defines responsibly sourced as conflict-free as a minimum, and responsibly produced at each step of the supply chain. Together both standards support Members' conformance with the OECD Due Diligence Guidance, with the CoP providing assurance on the responsible business practices of each entity in the supply chain, and the CoC providing assurance on an entity's sourcing practices and claims about the material that it acquires and sells (traceability of material).

Harmonization

RJC certified companies can demonstrate conformance with 29 international policy frameworks, including the UN Guiding Principles, the OECD Guidelines for Multinational Enterprises, the OECD Due Diligence Guidance, the UNGP, the EITI, CIBJO regulations for product integrity and disclosure, the KPCS and the World Diamond Council's System of Warranties.[206]

The RJC recognizes comparable standards from other initiatives; for example, for gold refiner due diligence audits compliance with the Dubai Multi Commodities Centre (DMCC), CFSP, and LBMA standards

199 (Bossetta 2014)
200 (RJC, 2013)
201 (RJC, 2013)
202 (RJC, 2013)
203 Available, here: http://www.responsiblejewellery.com/rjc-certification/human-rights/
204 (RJC, 2014)
205 platinum, palladium, and rhodium
206 (RJC 2014) p. 23

satisfies certain requirements of the CoP and CoC.[207] The RJC also recognizes the Fairtrade and Fairmined standards as Recognized Responsible Mining Standards for ASM sector.[208]

Impact

As of February 2015, the RJC had 599 members, which represents more than a doubling of membership numbers since 2010. In the same time frame, 397 members had been certified against the CoP, as opposed to just three in 2010.[209] Of these, over 200 were in the Diamond Trader, Cutter & Polisher category and four were diamond-mining companies.[210]

As of April 2014, more than 5,500 facilities had achieved RJC certifications in more than 49 countries; 80% of these (4,413) were in the USA and the UK.[211] The RJC has prioritized ramping up membership in key jewelry geographies, such as India, where presently over 100 facilities are certified.

Gaps and Opportunities

RJC membership and certification against the CoP is a credible option for some diamond producers, traders and manufacturers. However, some artisanal, small, and even medium-sized companies argue that the cost of audits (borne by the company) can be prohibitively expensive.[212] Meanwhile, the RJC Chain of Custody Standard is not applicable to the diamond sector, however provisions 26 and 27 of the CoP seeks to address this in part through requirements on product disclosure, and the KPCS and WDC system of warranties respectively.

RJC membership and certification (CoP and CoC) is an option for jewelry manufacturers and retailers but supply chain due diligence will only be possible up to the level of diamond cutting & polishing using the CoC, after which provisions 26 and 28 amount to the extent of supply chain due diligence expected by the RJC.

RJC membership and certification is not an option for colored gemstone entities in an official sense. While only RJC members can be certified against either the CoP or CoC, both Standards are publicly available so that non-members can use them to develop supply chain integrity. Entities could seek to independently apply the RJC CoP in how they conduct their business and have this audited by a third party.[213] It is also conceivable for members with diverse sourcing portfolios to use it to support their sourcing of minerals that are outside of the RJC's stated scope, for example for colored gems or silver. It is not inconceivable that RJC could expand its scope to include coloured gems if its members and board saw this as desirable.[214]

The RJC's CoP goes a long way to satisfy conformance with the OECD Due Diligence Guidance, but a Chain of Custody standard for use by diamond entities would be necessary to satisfy full conformance with the Due Diligence Guidance. While according to the RJC "*consultation continues on applicability to diamonds*", diamond industry members reportedly categorically opposed this effort in 2011.[215] The Antwerp World Diamond Centre explained the opposition by saying that a CoC Standard would have costs that small businesses would be unable to carry resulting in "*segregation of two diamond chains—one RJC CoC-compliant, and one non-RJC CoC-compliant.*"[216] Existing diamond tracking systems used with

207 (RJC 2013)
208 (RJC 2014)
209 (RJC 2015)
210 (RJC, 2014)
211 (RJC, 2014)
212 (Bossetta 2014)
213 (RJC 2013)(RJC 2010)
214 In November 2014, Swarovski Gems, who manufactures colored gems, joined the RJC. (RJC, 2014)
215 Reported in interviews, see also, for example, (R. Bates, Chain of Custody Battle: Where Do Your Jewelry Materials Come From? 2012)
216 (R. Bates, Chain of Custody Battle: Where Do Your Jewelry Materials Come From? 2012)

manufacturing companies, such as Fantasy, and tracking and due diligence systems such as DiamCare[217] or Branded Trust offer possibilities for supporting a diamond CoC system were one to be developed.

The China Chamber of Commerce of Metals, Minerals, and Chemicals Importers and Exporters Guidelines (CCCMC)[218]

In October 2014, a government-affiliated Chinese mining industry association – China Chamber of Commerce of Metals, Minerals, and Chemicals Importers and Exporters (CCCMC) – launched a piloting document. The *Guidelines for Social Responsibility in Outbound Mining Investments (Social Responsibility Guidelines)* provide instructions to Chinese companies on responsible overseas mining.

The Social Responsibility Guidelines apply to '*all mineral exploration, extraction, processing and investment cooperation projects, […] in foreign countries, in which Chinese companies have invested*'. [219] The document builds on existing international standards and does not limit its scope to specific mineral resources. Further, the Guidelines provide guidance on a wide range of responsible corporate behaviors, including: organizational governance, fair business conducts, value chain management, environment, human rights, labor rights, occupational health and safety, and community engagement.

The Chinese DDG (under development)

The CCCMC is also in the process of developing the *Chinese Due Diligence Guidelines (DDG) for Responsible Mineral Supply Chains* to address conflict minerals. In the Chinese Social Responsibility Guidelines, Clause 2.4.6 requires that a company '*conduct[s] risks-based supply chain due diligence in order to prevent engagement with materials that may have funded or fuelled conflict*'. More specifically, it asks companies to carry out assessment, due diligence measures, and monitoring regarding potential involvement with conflict minerals. The CCCMC is working to develop the Chinese DDG in a partnership with the OECD, in order to bring the desired supply chain checks to implementation.[220]

As of May 2015, the Chinese DDG is being finalized and expected to launch by the end of the year. Although public information on the provisions of this document is limited, this DDG carries great anticipation as Chinese companies play major roles in mining and sourcing from conflict-affected and high-risks areas.

Impact

These actions have attracted much attention from stakeholders around the globe and are seen as 'ground-breaking' steps taken by the Chinese to regulate Chinese companies conducting mining business overseas.[221]

The Chinese DDG will apply to all Chinese mining companies that are using or are engaged at any point in the supply chain of minerals and related products. It categorizes supply chain risks into two types: Type 1 risks are in line with those identified in the OECD DDG, but Type 2 risks go even further, covering serious misconducts in relation to issues such as environment, land rights, and rights of indigenous people.

The Guidelines also sets up a 5-step due diligence framework that is aligned with the OECD DDG.[222] Initially, CCCMC will prioritize due diligence of the 3TG supply chain, and gear audit protocols and supplementary materials to these four mineral resources.

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217 DiamCare grew out of the experience of the credential system developed in 1999 by SAO Belgium and used in Angola during the civil war to guarantee that no blood diamonds could penetrate external supply chains. It has since given rise to a more generic mineral tracking and due diligence solution called MineralCare, which has been endorsed as a requirement for use by Dubai Good Delivery Refiners by the Dubai Multi Commodities Centre for gold. MineralCare, " MineralCare can be used for any mineral product, from diamonds to gold to tantalum. Motmans, 2014.

218 Nb- As of publication, the CCCMC guidelines were still under development, so while germane to this paper's scope, details of the guidelines are likely to change and evolve.

219 CCCMC, Guidelines for Social Responsibility in Outbound Mining Investments, 2014

220 Presentation by CCCMC at the 9th OECD-UN GoE-ICGLR Forum on Responsible Mining, 5 May 2015

221 For example, note discussion & comments during the 9th OECD-UN GoE-ICGLR Forum on Responsible Mining, 5 May 2015

222 Presentation by CCCMC at the 9th OECD-UN GoE-ICGLR Forum on Responsible Mining, 5 May 2015

The implementation of the Guidelines is on a voluntary basis but CCCMC commits to carry out evaluations and to report on performance of Chinese companies engaged in outbound mining investment. The impact of these Guidelines can go beyond the over 6,000 member companies of CCCMC and serve as the reference piece and code of conduct for all Chinese state-owned and private companies in the mining industry.

Harmonization

The Chinese Social Responsibility Guidelines have taken into consideration and sought conformance with relevant criteria in a number of current standards, including the UN Guiding Principles, Global Compact, OECD Guidelines for Multinational Enterprises, ISO 26000, RJC's CoP, Bettercoal Code, EITI standards, and a series of ILO conventions and ICMM's position statements.

RJC's CoP is one of the most referenced standards, where almost 70% of the issues covered by the Chinese Guidelines are also raised in the CoP to a varying degree. Regarding the Chinese DDG, CCCMC places great emphasis on obtaining mutual recognition from existing certification schemes and initiatives, such as LBMA's standards for gold, and iTSCi and CFSI for 3Ts.

Gaps and Opportunities

Theoretically, both the Chinese Social Responsibility Guidelines and the Chinese DDG can apply to the gemstones sector, as their scopes encompass all minerals. However, they are unlikely to fill all gaps in the international norms regulating gemstones sourcing. This is due to the fact that so far both guidelines are designed to *only* apply to Chinese companies, which significantly limits their global reach. Within its scope, the Chinese DDG is likely to focus on 3TG at the initial stage, so will not cover gemstones.

Despite their constraints, companies in the gemstones sector can refer to the Chinese guidelines to develop responsible supply chain policies. Although regulating gemstones sourcing is less of a priority to CCCMC at the moment, it can be of great interest to them to do so in the future. CCCMC is also exploring options, such as establishing an independent body among others, to assess companies' conformity with the Chinese DDG. Therefore it is conceivable in the future that CCCMC will prescribe responsible sourcing guidelines on gemstones sector, accompanied by compliance certification. There are potentials to align different certification schemes with the Chinese DDG or to seek cross-recognition in the gemstones sector when the time comes.

TOOLS TO SUPPORT DUE DILIGENCE ON SUPPLY CHAINS

UNICRI's Chain of Custody Mechanism

As discussed above, traceability is a significant challenge for the precious stones industry. The United Nations Interregional Crime and Justice Research Institute (UNICRI)
has undertaken a project for colored gemstones in cooperation with the Vienna International Justice Institute and the International Colored Gemstone Association.[223] The four year, 4.5 million euro project is scheduled to finish in 2016. The project aims to "*establish and enhance the commercial and security frameworks by setting up a cross-border verification tool and corresponding tracking system*."[224] The initial focus countries are Brazil, Colombia, Kenya, Madagascar, Mozambique, Myanmar, Sri Lanka and Tanzania.[225]

The tool proposed is a Chain-of-Custody (CoC) mechanism that would focus on traceability, tracking and origin certification for colored gemstones. UNICRI has stated its intention that while its mechanism may

223 (VIJI, 2013)

224 (UNICRI, 2013)

225 (Vienna International Justice Institute 2012)

not always generate mine-to-client traceability, it will promote compliance with international ethical, security standards, labor rights, and national regulations and procedures. To this end, the mechanism is intended to cover the entire production process. The proposed mechanism involves export and origin certification.[226]

Gaps and Opportunities

While the project is currently underway, a tracking or traceability scheme for colored gemstones is yet to be announced.[227]

UNICRI's CoC mechanism will reportedly be designed to align with the Regional Certification Mechanism (RCM) of the International Conference of the Great Lakes Region (ICGLR) (see Annex G for more information on both). The RCM was expressly designed to be conformant with the OECD Due Diligence Guidance, as it is presently intended to provide assurance to downstream buyers of minerals from the Great Lakes Region that adequate due diligence has been carried out.[228] UNICRI has stated the five key principles of the CoC will include adaptability, mandatory third-party and independent audits, and continuous adaption. The CoC mechanism will thus likely be compatible with the OECD Due Diligence Guidance.[229]

ICCM's Sustainable Development Framework & Guidance on Integrating Human Rights Due Diligence into Corporate Risk Management Processes

The International Council on Mining and Metals (ICMM) is a member organization drawing together mining associations representing hundreds of mining companies from 68 countries. ICMM members are audited against its Sustainable Development Framework, a set of principles that align closely with the UN Guiding Principles Protect Respect Remedy Framework (see section above): poverty reduction, revenue management, regional development planning, local content, social investment and dispute resolution.

The ICMM produces a range of guidance that seeks to promote best practice in addressing the key risks faced by (and posed by) mining entities. In the last five years, the following three human rights guidance documents have been published:[230]

- **Human Rights in the Mining and Metals Industry** (2010): Overview, Management Approach and Issues - providing guidance on management approaches for human rights.
- **Human Rights in the Mining and Metals Industry** (2010): Handling and Resolving Local Level Concerns & Grievances 2010 - focuses on integrating human rights due diligence into corporate risk management processes.
- **Human Rights in the Mining and Metals Industry** (2012): Integrating human rights due diligence into corporate risk management processes

Gaps and Opportunities

The 2012 guidance is particularly relevant to this paper. The Guidance introduces and explains what is meant by human rights due diligence and the central role it plays in delivering on the corporate responsibility to respect human rights. The guide aims to assist mining companies in reviewing their existing risk management processes, identifying how they can build on them to ensure they are adequately addressing human rights and whether their existing processes are consistent with the UN Guiding Principles.[231] This guidance is of utility in providing a framework for judging a large mine's efforts to know and manage its human rights risks, as part of a buyer's responsible sourcing due diligence. Has the mine used this guidance to design its human rights due diligence and management system?

226 (UNICRI, 2013)

227 Result of interviews. No recent updates were publicly available on the websites of UNICRI or VIJI

228 It should be noted, however, that the RCM presently does not apply to colored gems or diamonds – only the 3TG are in scope – and though expansion to other minerals is not out of the question, it is unlikely.

229 (Blore and Smilie 2010)

230 (ICMM, 2012)

231 (ICMM, 2012)

ICMM represents an extensive body of stakeholders across mining and mineral industries. The documentation produced and experience gained by its member companies and organizations could prove to be extremely valuable in managing human rights issues in precious stone supply chains. It would also be valuable to learn from the ICMM's experience engaging with smaller producers, perhaps via the national association members, and in particular how far upstream from the mining industry has their work pervaded. ICMM may also be able to offer insights into whether their approach, as promoted by large-scale mining companies, is not only having a vertical impact through the supply chain to customers but a horizontal impact as well (i.e. between suppliers both large and small).

World Diamond Council's System of Warranties

The World Diamond Council System of Warranties is a certification tool used in the Kimberley Process (KP) (*for more information on the Kimberley Process, see Annex I*).

Once a KP certificate is issued against a shipment, the World Diamond Council System of Warranties is a program of self-regulation whereby shipments of diamonds are tracked through the supply chain. The System of Warranties requires all diamond suppliers and diamond jewelry manufacturers must pass on a warranty statement each time diamond goods change hands, assuring the next buyer that the diamonds originated within the KP system[232]. The KP requires assurance of physical control over the material at the international trading point for all rough diamonds that are within the system, such that a claim about the product can be made, i.e. 'this diamond is conflict-free' because it is KP-certified'. [233] The World Diamond Council's System of Warranties is a paper-based form of traceability that does not provide origin, but simply assures that a diamond has at some point had a KP certificate.

Gaps and Opportunities

It is not possible to state that the World Diamond Council's System of Warranties is functioning as it was intended because, based on the authors' experience and reinforced by many of the interviews for this research, the following requirement is rarely audited by any government agency (Belgium excepted): "*In addition, each company trading in rough and polished diamonds is obliged to keep records of the warranty invoices received and the warranty invoices issued when buying or selling diamonds. This flow of warranties in and warranties out must be audited and reconciled on an annual basis by the company's own auditors. If asked for by a duly authorized government agency, these records must be able to prove that you are in compliance with the Kimberley Process*." Without the evidence of any audit or proof, most of the statements of 'warranty' are little more than claims.

Diamond Source Warranty Protocol

The Diamond Source Warranty Protocol (DSWP) is a business tool developed in 2011 by several US trade associations including the Jewelers of America, the Jewelers Vigilance Committee and the Diamond Manufacturers & Importers Association of America,234 working in conjunction with US retailers and diamond manufacturers.[235]

The Protocol provides legal language for use in commercial contracts when purchasing diamonds or items containing diamonds. When the language is included in a contract, the seller gives the buyer a warranty[236] that they had in place 'qualified inventory control procedures' capable of tracking the stone's origin. The protocol also requires that an independent auditor review the tracking procedure.[237]

232 (KP, 2013)

233 (Responsible Jewellery Council, 2014)

234 (JVC Legal, 2012)

235 (R. Bates, Industry Groups Announce New Way to Track the Origin of Diamonds 2012)(Jewelers of America 2012)

236 a written guarantee, or promise, with legal implications

237 (JVC Legal, 2012)

In theory, the Protocol provides a framework for businesses to ask and subsequently certify a mineral's origin.

Gaps and Opportunities

The Protocol aims to go further than the World Diamond Council System of Warranties, which, as illustrated above, is a paper-based form of traceability that does not certify origin, but simply assures that a diamond has a KP certificate. The DSWP provides dealers with an option of making auditable claims about the origin of their diamonds, should they put this in their contracts, it provides assurances on the gems.

The Protocol is a freely available tool appropriate for use by any members of the diamond supply chain and is likely adaptable for use by others in the precious stone sector. As the tool is available for download and use without charge, its prevalence and impact cannot be tracked.

The Protocol is only contractual language and does not specify how the diamond has been, or should be, tracked. It would only be useful in jurisdictions where commercial contracts can be readily enforced.

STANDARDS OF BEST PRACTICE

The existence of clear standards is a critical step for due diligence, as due diligence is a process which audits against compliance of such standards. Standards establish 'best practices' relevant to the sector which their members must implement and against which their members are audited.

IRMA's Responsible Mining Assurance System

The Initiative for Responsible Mining Assurance (IRMA) independently verifiable system consists of six vital integrated elements:[238]

- Standards, endorsed by key stakeholders from all key stakeholder groups, that describe environmentally and socially responsible mine operation and legacy mine site management
- A trusted, independent, third-party mechanism to verify implementation of the standards
- A membership program designed to generate and maintain long term support for the system from all key stakeholder groups
- Communication tools (such as certificates, approved claims and labels) that generate rewards for effective implementation by participating enterprises.
- An organizational structure sufficient to ensure the long term stability and success of the system as a whole (for example through one or more legal entities and associated personnel, governance and financial resources)
- A mechanisms for resolving disputes

The IRMA Standard is targeted at industrial-scale mines but promises to collaborate with initiatives for responsible ASM. IRMA also collaborates with other sustainability standards initiatives for the extractives sector with regard to certification, traceability and labeling.[239]

IRMA has announced that it will soon be coming out with new mining Standards for environmental and social issues relating to mining, including: labor rights; human rights; indigenous peoples and cultural heritage; conflict response; pollution control; and site closure.[240] Mine site certification is expected to become available in 2015.[241]

238 (IRMA, 2015)
239 (IRMA, 2015)
240 (IRMA, 2015)
241 (IRMA, 2015)

Gaps and Opportunities

According to the NGO, Earthworks, '*There is currently no mechanism to independently verify the mining operations that might operate responsibly, or to offer these incentives. It is this need that IRMA seeks to meet*."[242] The initiative states that it strives for full compliance with the ISEAL Codes of Good Practice for standard setting and assurance.[243] The standard will then be well positioned to participate in due diligence systems. However, as IRMA focuses on industrial-scale mining, the applicability to the precious stones sector is limited, and would primarily benefit the diamond industry. However, as stated above, IRMA has expressed openness to cooperation and coordination with schemes that focus on the ASM sector.

ASM TOOLS

As highlighted in figure above, the artisanal and small-scale mining (ASM) sector produces 15% of the world's gem-grade diamonds and the majority of its colored stones (with higher proportion of low-value gems than precious ones). The unique characteristics of this sector's mining industry present unique challenges for implementing due diligence. The following tools have been specifically designed to serve the ASM sector.

The Washington Declaration and the Washington Declaration Diagnostic Framework

The Washington Declaration and the Washington Declaration Diagnostic Framework (WDDF) are the products of the Kimberley Process Working Group for Artisanal and Alluvial Production (WGAAP). The Declaration was agreed to in 2012 and is applicable to all KPCS Member States but is particularly relevant to those that have ASM diamond sectors.[244]

The Washington Declaration is a policy document that recognizes that the development of the ASM sector through formalization initiatives and improved social conditions in ASM communities would be strong incentives to bring rough diamonds into legitimate chains of custody.[245]

The Diagnostic Framework provides practical guidelines for the implementation of the ideals of the Declaration, and is designed to help diamond-producing countries better understand the status of their domestic ASM sectors, as well as assess and monitor the implementation of the Declaration's thirteen policy goals relating to a range of issues including formalization, social conditions in ASM communities and occupational health and worker safety.[246]

Gaps and Opportunities

The Diagnostic Framework is an important step forward for due diligence in the diamond sector in so much as it allows governments to better understand their ASM sectors. It can also reveal the barriers to formalization, and so inform a strategy for gradually formalizing and professionalizing their diamond sectors so making their diamond production increasingly attractive to companies seeking to source diamonds responsibly. Whilst the WDDF was designed for use in the diamond sector, it could form the basis for an initiative in the precious stones sector—or indeed any ASM sector. It may be informative for UNICRI's colored stones ambitions, for example. As the WDDF enables the gradual formalization of the ASM sector, it could also enhance due diligence and risk management in the precious stone industry by enabling the establishment of controls over previously informal supply chains.

The Diamond Development Initiative International

The Diamond Development Initiative International (DDII) brings together NGOs, government and the private sector to address challenges in the African ASM diamond sector, with special attention given to illicit ASM in post-conflict countries. Responsible sourcing is central to the DDII's mandate as it works to

242 (Earthworks 2014)
243 (IRMA, 2015)
244 (KP 2012)
245 (KP 2014)
246 (KP, 2012)

produce 'development diamonds': "*diamonds that are produced responsibly, safely, with respect of human and communities' rights, in conflict-free zones, which benefit communities and pay fair prices to miners*.[247]

DDII implements donor-funded projects focusing on a range of ASM development needs relevant to this study including diamond production tracking and human rights education for miners. Most recently, this includes a World Bank funded initiative in the DRC on behalf of the national government that facilitates the registration and organization of community associations, the provision of training and best practice education, an introduction to standards and building the entrepreneurial skills of the miners.[248]

Gaps and Opportunities

The DDII focuses on diamond ASM, however the experience drawn from its projects is also likely to have relevancy to the responsible sourcing of colored gemstones. The DDII and its affiliates are likely to bring a rich experience and knowledge of the complexities and opportunities for conducting due diligence in the ASM sector.

In supporting development in ASM, DDII projects are fostering the establishment of elements that could support source verification and supply chain tracking. While this may still be in the early stages, it would be critically important to the exercise of due diligence by businesses in the diamond (and colored gemstones) supply chains. These include, in particular the registration of miners, miner education in human rights, and development diamond standards.

MEMBERSHIP ORGANIZATIONS

The World Federation of Diamond Bourses (WFDB) and the International Diamond Manufacturers Association (IDMA) are two membership organizations that represent distinct sections of the precious stone value chains. Each organization offers a Standard that members agree to implement and is internally enforced by the organization, as is explored below.

World Federation of Diamond Bourses

The World Federation of Diamond Bourses (WFDB) is a collective of diamond bourses from around the world, and it operates under its own byelaws and a Code of Principles. Members must abide by these byelaws and a judicial system is in place that can be enforced by any member bourse.[249] WFDB notes its enforcement mechanism is outstanding, "*whilst a number of organizations have introduced sets of best business practices, almost no [one else in the sector has] managed the more difficult task of creating systems for auditing, monitoring and enforcement*."[250]

The WFDB is also in the process of developing a consistent set of Anti-Money Laundering (AML) and Know your Supplier/Client (KYS/KYC) criteria across all its bourses, which will be a considerable step forward in tackling crime in the diamond industry. According to a WFDB President Ernest Blom, "*The introduction of this policy in all WFDB affiliated bourses will clearly identify the rogue elements attempting to tarnish the high standards of our trade.*"[251]

Gaps and Opportunities

The scope of WFDB's membership is limited both to the diamond sector and to a narrow sector of the supply chain (traders). What level of due diligence the WFDB requires is not clear, nor is how far up or down the supply chain responsibility extends. Nevertheless, the level of expertise acquired by the WFDB

247 (DDI 2007)
248 (Initative Diamant et Developpement, 2015)
249 (WFDB, 2014)
250 (WFDB, 2014)
251 (Financial Crime Asia 2014)

in creating and developing its system could provide the PS-MSWG with rich and valuable insights for developing precious (colored) gemstone due diligence guidelines, if required.

International Diamond Manufactures Association

The International Diamond Manufacturers Association (IDMA) draws together 16 national diamond trade associations primarily representing the manufacturing sector (cutting and polishing).

IDMA members abide by a Code of Conduct, which includes general statements of ethics and "*avoidance of activities that may damage or reflect adversely upon the good name, reputation and worldwide image of the diamond industry."* The Code of Conduct also includes rules and statements on business conduct including: Fair and Ethical Labor Practices, Commitment to the Best Interests of Customers and Consumers, Trade Relationships and Commitment to Society and the World at Large.[252]

Gaps and Opportunities

There is no direct mention of 'due diligence' in IDMA's Code of Conduct but many of the 'rules' may be interpreted as being geared toward this. There is also no mention of precious stones in the IDMA literature and therefore its members and reach are likely to limited to the diamond sector. However, relationships could be developed between the IDMA and colored gemstone trade associations to enable knowledge sharing.

Additional Organizations to Learn from & Liaise with on Due Diligence Efforts

Assogemme

The Italian Association for Precious Stones Companies and their Affiliates (Assogemme) is charged with protecting the 'Made in Italy' jewelry brand. Relevant to this study is the fact that, Assogemme seeks to ensure that precious stones used by Italian companies are conflict and child labor free.

Assogemme is reportedly working towards establishing a code of conduct and professional ethics, introducing the possibility of quality certification of Italian gem manufacturers. It is also promoting the introduction of legislation in Italy and at the European level to require behavior consistent with its objectives. It also organizes a range of professional courses for gem manufacturers.[253]

Gaps and Opportunities

It would be useful to ascertain the extent to which Assogemme intends to harmonize its work with that of other initiatives seeking to tackle child labor and conflict gems (to the point of manufacture). This information was not available at the time of publication.

CIBJO or the World Jewellery Confederation

CIBJO,[254] also known as the 'World Jewellery Confederation' is a confederation of national trade associations involved in the jewelry supply chain. Its primary mission is to protect consumer confidence in the jewelry industry and its products.[255] CIBJO's statues are general, stating only that members are expected to "*comply with CIBJO standards and trade practices as set out in approved CIBJO publications*."[256] This would include the principle in CIBJO's Code of Ethics that "*the injury and hardship suffered by local populations (and the potential for it) when conflicts arise in gemstone producing areas*

252 (IDMA, 2015)
253 (Assogemme 2014)
254 The Confédération International de la Bijouterie, Joaillerie, Orfèvrerie des Diamants, Perles et Pierres (
255 (CIBJO, 2014)
256 (CIBJO, 2013)

are unacceptable, as is seeking to profit from such conflicts." There does not appear to be systems for auditing, monitoring, or enforcing member compliance.

CIBJO, along with the IDMA and WFDB, are the main organizations representing individuals and companies within the diamond industry and are therefore critical to any due diligence that might emerge from the PS-MSWG group.

Gaps and Opportunities

CIJBO's membership comprises international jewelry trade organizations from more than 40 countries around the world.[257] It is clear that its outreach capacity via its membership and stakeholder engagement would be invaluable. CIBJO has also developed CSR curriculum with Branded Trust and Gem-A, which may provide insight into key challenges and opportunities specific to the industry.[258]

Responsible Ecosystem Sourcing Platform

The Responsible Ecosystem Sourcing Platform (RESP) is an NGO committed to sustainability across several sectors. One of its four multi-stakeholder International Working Groups, is dedicated to Colored Gems (IWG-CG).[259]

The IWG-CG has four main work streams, namely the improvement of working conditions, mining restrictions in protected areas, environmental impact assessment, and environmental remediation and restoration. The group is presently in an information-gathering phase to identify opportunities for pilot projects. The present focus of the group is on the most valuable and popular colored gemstones: ruby, sapphire, and emerald, but attention may expand to other gems.[260]

Gaps and Opportunities

RESP is not a responsible sourcing initiative, nor is it developing its own standard or Code of Conduct to support and demonstrate responsible sourcing practices. RESP is seeking to apply best practice principles for environment conservation, and the enhancement of positive livelihood outcomes, associated with responsible colored gemstone mining and trading especially in areas of high conservation importance (either due to biodiversity or ecosystem services). RESP also seeks to contribute to the development of other organizations' standards and codes of conduct, and potentially also establish common value chain specifications that members could agree to apply voluntarily. Although due diligence of human rights and conflict financing issues is not a core aspect of its work, through its pilot projects opportunities could arise for risk-managed sourcing.

OTHER MINERAL SECTORS (HOW OTHERS DO DUE DILIGENCE)

A range of mineral specific standards, initiatives and tools that address human rights, business and environmental risks have been emerging since the mid-2000s including the Better Coal Initiative,[261] the Aluminum Stewardship Initiative,[262] Fairtrade Gold,[263] and Fairmined Gold.[264] This chapter briefly considers how the gold (and to a certain extent 3Ts) sectors are addressing risks in their supply chains and in particular how these sectors have adapted to institutionalize and operationalize the OECD Due Diligence Guidance.

257 (CIBJO, 2014)
258 (Bishop, 2014)
259 (RESP, 2013)
260 (RESP 2013)
261 (Better Coal 2014)
262 (ASI 2013)
263 (FairTrade Gold 2014)
264 (ARM 2015)

A PLURALITY OF INITIATIVES

Background

The broad endorsement of the UN Guiding Principles, the Global Compact and the OECD Guidelines for Multinational Corporations has clarified global expectations for businesses in all industries. The passage of the Dodd-Frank Act in 2010 and the current consideration of similar legislation in the EU (see Annex H for more on both) have created unprecedented pressure on the jewelry and electronics industries to conduct human rights due diligence on their supply chains. Some initiatives and tools to help them meet these requirements were already in the works, but urgency (and innovation) has followed the legislative impetus.[265]

From 2009 to 2011 a wide range of initiatives, frameworks, and tools to help companies from the 3TG sectors source responsibly emerged. These ranged from tracking and/or due diligence systems, like iTSCi, GeoTraceability, MetTrak, MineralCare, to certification mechanisms such as the RJC Chain of Custody Standard. Initially, there was some confusion amongst observers as to why there should be so many different initiatives to support implementation of the Due Diligence Guidance, given that all initiatives generally shared common goals: (1) prevent human rights atrocities,[266] (2) stymie the possibility of armed groups benefiting directly or indirectly from the extraction, transportation or trade of minerals in the Great Lakes Region, and (3) ensure good business practices. Consequently, efforts were undertaken to prevent duplication within the initiatives and support participating companies.[267]

By 2011, all initiatives began to refer to the Due Diligence Guidance as the core system to utilize in order to support harmonization. It simultaneously became clear that many of the initiatives were not redundant, but had different scopes and functions capable of supporting conflict-free 3TG supply chains.[268] Indeed, a core tenant of the Due Diligence Guidance is that they may be carried out jointly through industry or other multi-stakeholder initiatives to reduce costs and audit fatigue.[269]

Furthermore, the World Gold Council, London Bullion Market Association (LBMA), Conflict-Free Smelter Initiative, RJC and the DMCC[270] each played different roles in helping to operationalize the OECD Due Diligence Guidance. Some industry initiatives and tools provide support to companies throughout all five steps of the Due Diligence Guidance process (see Figure 5), while other initiatives cover just one or two steps:

- **Step 1: Management Systems:** *Mineral tracking, e.g. bagging & tagging and/or document trail*
  Examples: iTSCi, RCM, RJC CoC, and other pure traceability/data management systems like MetTrak and GeoTraceability.
- **Steps 2: Risk Assessment:** *Red flag identification, monitoring, whistleblowing mine site risk assessment*
  Examples: iTSCi, CFGS, CTC, RJC CoP
- **Step 3: Risk management:** *In-country transportation, route risk assessment*
  Examples: iTSCi, CFGS, CFSI, various activities of the DRC and Rwandese government and civil society (jointly or separately) also support risk assessment.

265 (Gillard, The OECD Due Diligence Guidance for Conflict-Free Mineral Supply Chains, 2012)

266 Particularly those that are more likely to take place in a context of conflict or deteriorating political environment as per Annex II of the Due Diligence Guidance

267 Four studies by ELL in 2010, 2011,2012 and 2013 were commissioned to support these initiatives figure out how they might align themselves, prevent duplication, and support participating companies be part of supply chains which could be assured as entirely conflict-free and risk-managed as per the OECD Due Diligence Guidance

268 (Villegas, Weinberg, et al. 2012)(Levin and Cook, Analysis Report for BGR & ICGLR: Mineral Supply Chain Due Diligence Audits and Risk Assessments in the Great Lakes Region: Analysis Report 2013)(Levin, Mineral Certification Schemes in the African Great Lakes Region: A Comparative Analysis. August 2010. Report for GTZ and the Executive Secretariat of the International Conference on the Great Lakes Region 2010)

269 (Gillard, Responsible Gold Supply Chains: The OECD Due Diligence Guidance, regulations and implementing initiatives 2009)

270 (for more on these, please see Annex H)

- **Step 4: Audit:** *Exporter audit* (not in scope of Due Diligence Guidance but included by some initiatives)
  Examples: iTSCi, RCM, RJC CoP
  Refiner audit (in scope of Due Diligence Guidance as the 'choke point' for control and assurance)
  Examples: CFSP[271]; LBMA, DMCC, RJC[272] Coc and CoP
  Mass balance of material flows assessment
  Examples: CFSP
- **Step 5: Conflict minerals reporting**: *Data transfer & management, and enabling accountability*
  Examples*: CFSI's Conflict Free Reporting Tool*; *RJC* CoP
  Provenance Claims provision
  Examples: various software management solutions have also emerged in the private sector.

Ultimately, the plurality of initiatives achieves greater cost-effectiveness for their members by delivering services to meet their specific needs. As discussed below, some of these initiatives are adaptable to precious stones supply chain due diligence, whereas others can only serve as case studies or instructive models.

Joint Initiatives

One way that industry is operationalizing the Due Diligence Guidance is through the emergence of 'joint initiatives',[273] which enable economies of scale by spreading the costs of performing due diligence along the supply chain. Many of the joint initiatives that have emerged for 3TG have been driven by the work of industry associations—ITRI and the T.I.C. have designed and operated iTSCi; EICC and GeSI designed and enabled the CFSI; LBMA, DMCC, and the WGC have all developed 'responsible gold' or 'conflict-free' gold sourcing tools too. Governments have also taken leadership roles in developing appropriate systems, such as the German government's 'Certified Trading Chains' scheme, which also provided the basis for the ICGLR's 'Regional Certification Mechanism', which is being domesticated into law in the 12 member states.

Joint initiatives, and particularly those with an assurance component, provide a second level of control over supply chains, over and above what governments are responsible for legislating on (and enforcing). The last benefit of a joint initiative is that each generally creates a community of users or members, and a third party – the initiative – to help with capacity building, communications, incident management and more.[274]

The lesson is that for the Due Diligence Guidance to be workable in the supply chains of either diamonds or colored gems, there is a big role for governments of producer, manufacturing, and consumer nations, and for industry associations like IDMA, CIBJO, and WFDB, as well as others.

FACTORS FOR SUCCESSFUL OPERATIONALIZATION

The experience of 3TG industries demonstrated that several factors were critical to the successful operationalization of the Due Diligence Guidance.[275]

Strong Imperatives

In order for industry to willingly assume the costs and inconvenience of operationalizing the OECD Due Diligence Guidance, there needs to be strong legal and market imperatives. As one interviewee stated, "*The fact that the Dodd-Frank Act was a piece of law that actually targeted enough of a sufficiently*

271 OECD Due Diligence Guidance conformance check at the refiner

272 OECD Due Diligence Guidance conformance assessment for the refiner

273 (OECD, Annual Report on the OECD Guidelines for Multinational Enterprises 2013) p. 19, 35

274 This is adapted from (Levin, E. and Cook R. 2015 *forthcoming)*

275 These findings are based on interviews with varius respondents for this study.

valuable segment of the market that was willing to play by the rules because they were still interested in that material was a game changer."

Without the legal imperative only industry actors who already see a business case for due diligence will implement it. In lieu of a legal imperative, the market can drive change: in the DRC, producers of untagged 3T material now receive a sizably discounted price at points of trade.[276] While this is providing the necessary financial incentive for producers to seek to operate legally and as part of a due diligence initiative, this financial incentive took time to evolve. To this end, buyers must be willing to disengage if suppliers won't cooperate. An important question for the PS-MSWG is, 'how big is the market of buyers that will insist on risk-managed supply (at the threat of disengagement) and is it big enough to drive change?' Will the market care, and will it adapt its behavior if the source is important?

Prioritization

It is impossible to carry out due diligence on everything all at once; risks have to be prioritized and sequenced, either by industry-at-large or by individual companies. The Due Diligence Guidance has already pinned certain issues to its mast, captured in the Annex II Model Supply Chain Policy. It is up to companies what else they add, if anything, and when.

Diversity of Sourcing Options

Branded closed pipeline supply chains (e.g. Fairtrade, Fairmined, De Beers Forevermark, Canadamark) can have aspirational value to many and real value to the few involved in their mining, manufacture and sale (the importance of which must not be underestimated). However, without proper support to achieve scalability, these closed pipeline supply chains have minimal impact at the systemic level. Introducing mass balance at the choke point (refiner / smelter in the case of metals) enables commoditization, which is more realistic for many downstream businesses.

Managed Expectations Across Stakeholder Groups

'Cleaning up' supply chains will not necessarily stop conflicts immediately or prevent human rights abuses occurring in mineral sectors and communities. In the case of the DRC, for example, there are reports that armed groups move into other natural resources and economic sectors when the mineral sector becomes unviable for illicit activities.[277]

Companies applying the Due Diligence Guidance must not lose sight of the fundamental motivating factor for these efforts, which is the conviction, captured in the OECD Guidelines for Multinational Enterprises (see section above), that due diligence by a company on its supply chains can help limit human rights abuses at the operations of its suppliers, and potentially also in the suppliers' wider operating environment.[278]

Impacts of Implementation

A full-scale impact assessment of the guidance on industry has not been done but partial efforts are underway. For example, baseline assessments of economic operators in gold trading hubs in the Great Lakes Region, Colombia and the Middle East were due to begin in 2014. The OECD anticipated building case studies of implementation of due diligence in 2014 and 2015. Also in 2014, the OECD intended to start a baseline and impact assessment of implementing Appendix 1 of the Guidance's Gold Supplement, "*Suggested measures to create economic and development opportunities for artisanal and small-scale miners," which "aims to minimize the risk of marginalization of the artisanal and small-scale mining sector … while promoting conflict-free gold supply chains*." [279]

276 (Enough Project 2014)

277 (Enough Project 2012)(Beyers, et al. 2011)(Oxfam 2012)(Gettleman 2012)(Vogel 2014)(UNSC 2014)

278 (OECD, OECD Guidelines for Multinational Enterprises 2011)

279 (OECD 2013)

CONSIDERING ADDITIONAL MEASURES OR INITIATIVES

NECESSITY OF ADDITIONAL MEASURES

Some precious stone manufacturers and traders are reportedly using the OECD Due Diligence Guidance to manage risks in their gem supply chains.[280] However, interviews conducted for this work indicate that a large number of jewelry and precious stones companies are not doing any due diligence on the potential impacts of their sourcing practices and their suppliers' operations on third parties, including risks of human rights violations and conflict financing.

The section above discussed the wide range of opportunities and benefits due diligence offers to companies who undertake it. These ranged from direct benefits such as risk awareness and brand protection to secondary benefits relating from increased knowledge of one's supply chains and customers. The lack of systematic due diligence by the precious stones industry on certain risks has additional costs to less visible stakeholders. This can be understood as part of wider movement to incorporate the real costs of business (internalization of externalities) into the prices of materials. Sustainability advocates and proponents of material stewardship are likely to welcome this in a context of depletion of the world's natural resources and ecological resilience. When business does not internalize these costs, others bear them, for example, through environmental pollution and degradation.

It must be asked, 'Who should bear these costs?' 'Business, society, the environment?' 'Business in which parts of the world?' 'Societies in which parts of the world?' 'Environments where?' These may be ideological questions, but they are ones the industry must confront and answer if it is confidently going to assert that there is no need for further due diligence or risk management, and the status quo is the best possible situation for both the industry and wider society.

Both the diamond and the colored gemstone industries lack the tools necessary to responsibly source precious stones. While the diamond industry at least has mechanisms in place to minimize the trade of conflict diamonds, the colored gemstone industry as a whole has no comparable 'conflict free' assurances. With the aforementioned UNICRI system in such an early stage of development, there is not yet a global, mandatory system that provides assurance to buyers that supply chains of colored gems are either absent of risk or that these risks are being proactively identified and managed. Nor are there any regional certification initiatives (like the ICGLR's RCM) where colored gemstones are currently in scope. Furthermore, there is no tracking/traceability or certification system for either industry comparable to what iTSCi or the ICGLR's RCM have developed for tin, tantalum and tungsten, for example. There are, however, a number of initiatives by individual companies to address what they perceive as risks in their own supply chains, as well as tracking/traceability tools that could be adapted to colored gems (e.g. MineralCare, GeoTraceability, MetTrak, as well as Analytical Fingerprinting of BGR) and three emergent initiatives for developing sustainability and/or responsible sourcing frameworks for coloured gem supply chains as of March 2015.[281]

CHALLENGES TO ADDITIONAL MEASURES

There are many challenges to considering additional measures to conduct due diligence for responsible sourcing of precious stones. The key challenges discussed here are definitional issues of 'conflict'; the marginalization of artisanal, small- and medium- scale companies; and tracking/traceability requirements.

280 Interviews by the authors

281 This includes work by ELL to support the creation of OECD-Due Diligence Guidance conformant supply chains of tourmaline from Eastern DRC.

Definition: What is 'conflict'?:

There is a lack of consensus on what defines 'conflict' from different systems. The absence of a standard definition of 'conflict' at times has added confusion to the discussion within the industry.

Strategic Approaches

The OECD Due Diligence Guidance definition of conflict is more flexible than that of other schemes. For example, the existence of conflict in a particular state is not a basis for its automatic exclusion from supply chains (as it would be in the Kimberley Process). Through the application of due diligence processes on strong company polices, companies are able to build opportunities in complex, dynamic situations and *continue to source*, enabling constructive engagement and business to be part of a transition to stability.

Part of being a responsible business is making choices about sourcing. There are existing tools available to assist businesses to identify countries or regions affected by or at risk of conflict (e.g. the Heidelberg Barometer).[282] For the Due Diligence Guidance, conflict is a 'red flag'—a warning of a potential for issues—which should trigger further due diligence against abusive behavior associated with production and marketing in the supply chains of precious stones. That keeps with today's global norm for responsible business.

The necessity and extent of Trackability and Traceability to support Due Diligence

When considering how much Trackability/Traceability is required to enable businesses in the precious stones value chain to fulfill due diligence guidance with respect to human rights in conflict-affected or high-risk territories, two things should be considered: first, is universal traceability necessary? Second, for which supply chains would full traceability be necessary?

Considering Trackability & Traceability with Diamonds

The comparison of the OECD Due Diligence Guidance against the various systems for diamonds is instructive:

The KP requires assurance of physical control over the material (KP) at the international trading point for all rough diamonds that are within the system, such that a claim about the product can be made, i.e. 'this diamond is conflict-free' because it is KP-certified'. The System of Warranties is a paper-based form of traceability that does not provide origin, but simply assures that a diamond has a KP certificate. The DSWP provides dealers with an option of making auditable claims about the origin of their diamonds, should they put this in their contracts; it provides assurance on the material in a paper-based fashion.

The Due Diligence Guidance requires assurance of actions take (did you perform the steps and do due diligence as you said you would in your due diligence management systems?) and reporting (disclosure and claims made) whereas the KP provides assurance of performance or 'conflict-free' status. In other words, to satisfy the KP one can make the claim that this diamond is conflict free; to satisfy the OECD Due Diligence Guidance, the diamond may not be conflict-free, but what matters is what you did as a company when you discovered this, how you disclosed this to buyers and that accountability mechanisms exist.

Strategic Approaches

This means that it is not necessary to have 100% physical traceability (i.e. trackability of diamonds) of all supply chains for conformance with the OECD Due Diligence Guidance since it is *the claim of due diligence practices that is assured*.

This leads to two significant differences between the systems. First, in the case of the KP, the majority of rough diamonds must be subject to trackability, whereas with the OECD Due Diligence Guidance, only the

282 (HIIK 2013)

mineral originating in conflict-affected or high-risk areas (i.e. the minority of globally traded stones) must be subject to trackability.

Second, the Kimberley Process exerts control by excluding material from conflict-affected places from supply chains; the OECD Due Diligence Guidance exerts control by allowing material from conflict-affected or high-risk places (including plausible smuggling routes) to enter supply chains provided that due diligence is done on the existence of risks outlined in Annex II (Model Supply Chain Policy) at a minimum.[283] This potential for material from conflict-affected places to enter legitimate trading chains means that mineral sectors, especially ones founded on ASM which is a preferred livelihood for people impacted by conflict,[284] can help people affected by conflict cope better with their situation and contribute to economic stabilization and a transition to peace.

In the case of diamonds, application of the OECD Due Diligence Guidance could be used to allow diamonds from Venezuela, Central African Republic, and countries which are not members of the Kimberley Process to enter legitimate supply chains on the basis that due diligence of specified risks is done accompanied by 100% physical tracking and thus traceability. Under the OECD Due Diligence Guidance definition the scope of application would be wider than those countries excluded by the KP, as it is the possibility of mineral originating in or passing through conflict-affected or high-risk areas that triggers due diligence beyond step 2 (risk assessment).

Considering Trackability & Traceability with Colored Gems

For colored gems, 100% traceability would be desirable for gems from a particular region of a country like Myanmar, Afghanistan, or Pakistan for example, and for centers where those gems are principally laundered and/or traded.

A significant portion of colored gems are traded from stocks,[285] which will actually make due diligence much easier for the majority of the trade. But there are two aspects of this that are risks of due diligence:

First, It does mean that fingerprinting/spectrometric analysis is not such a helpful tool for identifying problematic material origin since one might treat Burmese jade mined 200 years ago as equivalent to Burmese jade mined under the junta, for example. Thus without a reliable technology for ascertaining the age of gem out of the ground[286], would be less useful in these circumstances save for new deposits of gems with unique mineralogical properties.

Second, it means that buyers may choose to buy only from stocks rather than mined sources in order to avoid issues with mitigating risks at mine sites (where issues of OSH, environmental damage, etc. prevail). An intentional boycott of mined colored stones and disengagement from existing mined sources as an act of ‘responsible sourcing’ would be a violation of the OECD Guidelines for Multinational Enterprises, which advocates for buyers to remain engaged and seek to improve the human rights and sustainability performance of its sources with disengagement being the last resort for the worst issues.

Strategic Approaches

To conclude, then, the volume/value of production/trade that would in fact need to have 100% traceability would be minor for colored stones, thus making the burden on industry also minor.

283 Risks covered in Annex II include “serious human rights abuses associated with the extraction, transport or trade of minerals”, support to non-state armed groups and public or private security forces, bribery and fraudulent provenance claims, money laundering and tax avoidance

284 (Levin, From Poverty and War to Prosperity and Peace: Sustainable Livelihoods and Innovation in Governance of Artisanal Diamond Mining in Kono District, Sierra Leone 2005)

285 At least one seasoned gemologist, interviewed for this study, claimed that mined production account for just a small fraction of all colored gems traded each year and the vast majority of colored stones traded originate from stocks. The authors understand this comment as applying to some production for some stones from some parts of the world. Based on further industry input, the authors believe the comment should be understood to mean that these stocks are typically comprised of poor grade/small stones, and that large grade stones usually move directly into the supply chain to meet market demand.

286 For example, a technology akin to the ‘Analytical Fingerprint Technology’ that the German Government’s Bundesanstalt für Geowissenschaften und Rohstoffe has developed for tin and tantalum,

Consequently, the minimum requirements for tracking/traceability that would support due diligence of human rights and conflict financing risks could include a voluntary system of auditable warranties to be applied based on an assessment of risk to include:

- A system of export controls from producing countries providing the foundation upon which all subsequent claims as to conflict-free provenance would be based;
- An assessment by the business of the risk associated with particular gemstone material and source territories (where source means any geography that the material has physically moved through);
- A due diligence questionnaire, in line with that above;
- A statement of warranty issued by the seller to the buyer attesting to the fact that a.) the material specified was or was not sourced in an area they would deem to be conflict-affected or high-risk and on what basis they made that determination and that b.) due diligence had been conducted in accordance with the OECD Due Diligence Guidance;
- An independent audit of the steps undertaken by the business partner to substantiate the information previously provided in the response to the questionnaire and the statement of warranty;
- This scheme would require government export controls to validate the claims made as to the materials' provenance and the due diligence measures taken; government import controls to validate that material had only been imported with these credentials; and a system of warranties as described immediately above. It would also incentivize governments to take action on the risks[287] upon which downstream buyers are doing due diligence.

Plausibility of Due Diligence in a Sector Dominated by Artisanal and Small-scale Mining

ASM is dominant (80%) in the colored gemstone supply chain and also accounts for a defined share (est. 15%) of the diamond supply chain. These ASM sectors present significant challenges, including: [288]

- ASM may be conducted legally in many places but is commonly informal and under-regulated for a wide range of reasons.
- In both diamond and colored gemstone supply chains, local traders in local markets play a very prominent role, both providing liquidity and serving as essential intermediaries between miners and exporters.[289]Local traders are rarely registered or licensed and, where they are, in some cases launder informally or illegally mined stones into legal supply chains.
- Prevailing local cultures are traditionally biased toward retaining the informal character of supply chain relationships. Trust is established and maintained on the basis of custom. Confidentiality of business relationships and information is paramount.
- Local miner and trader associations in mining territories where ASM is prevalent are rare. Where they exist they are under-resourced and unable to undertake critical functions, including education and market access facilitation.
- Businesses in the colored gemstone and ASM diamond mining communities and downstream as well are very small. This is true both of those who would conduct due diligence as well as those who would be subjected to it.

Strategic Approach

There are significant challenges, yet organizations like Fairtrade International (the Fairtrade Gold Standard), the Alliance for Responsible Mining (the Fairmined Gold Standard), the Diamond Development Initiative ('Development Diamonds'), and the Property Rights and Artisanal Diamond Development initiative of USAID (run by Tetratech ARD) are making progress demonstrating that small-scale miners can

287 These would, of course, likely include the following risks per Annex II of the OECD Due Diligence Guidance: serious human rights abuses associated with the extraction, transport or trade of minerals; support to non-state armed groups and public or private security forces; bribery and fraudulent provenance claims; money laundering; and tax avoidance.

288 (Van Bockstael and Vlassenroot, Diamonds, Rice and a "Maggi" cube – Artisanal diamond mining and livelihoods in Liberia. 2011)(Barreto 2011)

289 (Van Bockstael, Levin, et al. 2011)

be incentivized to register, formalize, professionalize, and manage risks in their operations, including in some cases the risk of 'contamination' of their production by minerals from other entities or geographies.

iTSCi is enabling 'responsible sourcing' from ASM organizations in the Democratic Republic of Congo and Rwanda for tin, tantalum, and tungsten. Lessons from these efforts could be applied to ASM in the colored gemstone and diamond supply chains, possibly on a country-by-country basis.

All these organizations are also demonstrating that education programs for small scale miners, including 'conflict minerals' and human rights education, can be successfully organized. For example, in 2015 Fairtrade gold ASM organizations in East Africa participated in a training on conflict minerals so they could understand how they are in scope for supply chain due diligence per the OECD Due Diligence Guidance, and what the new 'conflict minerals' requirements in the Fairtrade Standard mean for them.

Marginalization of Small-scale Enterprises

In spite of best efforts to ensure the guidance is feasible for smaller organizations, companies' and industry schemes' frameworks for operationalizing the guidance is leading to the marginalization of smaller enterprises from 'responsible' supply chains, both at the mining and sourcing tiers. This is a problem since small enterprises are essential for competition and sector resilience, but also from the perspectives of justice (why should an entity be pushed out of business because its capacity to comply is the issue, versus its willingness?) and intent (the ultimate intention of the guidance is to remove incentives and enabling conditions for conflict financing and human rights abuses through mineral-based activities.) For example, ASM is so often the livelihood of choice for ex-combatants, displaced persons, and returning refugees seeking to restore stability and prosperity in a post-conflict setting; removing this option impoverishes people further, extends destitution, and perpetuates conditions that make grievance-based conflict more likely.[290]

'Responsible sourcers' in the 3TG sectors have followed a trend of general disengagement from ASM entities. Only those ASM in conflict-affected and high-risk areas that are part of a larger industry system, such as iTSCi, which assesses and helps manage risks at the level of the mine are continuing to get a market. With gold, the perseverant informality and outright illegality of supply chains emanating from ASM in DRC and other countries in the Great Lakes Region continues to perplex industry and policy-makers alike. Work recently completed by ELL for the World Bank funded PROMINES project in DRC and by Tetratech ARD for USAID's Capacity Building for a Responsible Minerals Trade has investigated what supply chain solutions might be able to achieve the traceability and broader due diligence requirements of the market – as the basis for formalizing gold and 3T sectors - whilst being realistic for an operating environment such as the DRC.

For smaller companies downstream of miners, where a red flag has been raised through step 2 (risk assessment) the guidance stipulates that the company should investigate the issue and take appropriate management steps depending on findings. However, the decision to do due diligence at all versus simply disengaging from a red-flagged supplier will largely be a commercial one based on the importance (read substitutability) of that supplier. It may be expensive to do proper risk assessment of a source directly and a company must see a good case to do this alone. Thus, direct risk assessment of a source is more possible for a large company to do, and even more possible if an industry initiative (e.g. association) takes this responsibility on behalf of constituents (e.g. members).

Said another way, it is not inconceivable for a large downstream user to conduct its own risk assessment in key source countries (something ELL has done for different downstream colored gem supply chain operators, in fact), but the cost of doing so makes such risk assessment extremely challenging for small companies, and particularly if they wish to source from artisanal miners where risk assessment can be more costly and time-consuming than of a single corporate mining entity, for example.

290 (European Commission 2014)

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Experience with the 3TG supply chains has demonstrated that inclusion of these important producers (remember that ASM supply 15% of gem diamonds and 80% of colored stones) is therefore only cost-effective and indeed even feasible if there is government support or an industry initiative that can take on the risk assessment part of the guidance on behalf of others, and potentially the data acquisition and reporting piece in the case of downstream entities.

The dilemma of how to enable SMEs to continue to sell to buyers (or in countries) requiring due diligence has led to the German Federal Institute for Geosciences and Natural Resources (BGR) with the support of the OECD initiating a study titled: "Assessing & Enhancing the Contribution of Small and Medium-scale Enterprises to Due Diligence for Responsible Mineral Supply Chains".[291] Amongst other things, the study will determine the common challenges and successes experienced by SMEs in performing due diligence and draft recommendations for SMEs on implementing due diligence, to encourage governments, international organizations and industry partners to initiate supportive action for SMEs in their conflict minerals due diligence, and inform the ultimate content of this support. [292]

In the electronics sector, downstream companies requiring their suppliers to do due diligence and at least identify the refiners at the 'choke point' of the supply chain have occasionally taken on the burden of doing this due diligence on behalf of their smallest suppliers (e.g. <10 employees) who may provide a specialized and important function in the supply chain but not have the capacity or wherewithal to carry out due diligence to the standards required by their customer.[293]

Some software solutions providers for data management along supply chains are seeking to corner this market by charging the end-users who are demanding due diligence for the cost of information acquisition and management along their supply chains, as opposed to others that charge each entity a license fee for using the software package their customer is requiring.[294]

Residual Questions

- Does an entity exist that is likely to lead on the creation of such an industry initiative for small-scale operations in the diamonds and/or colored stones sectors?
- Are diamond producer governments likely to adopt into law systems to support conformance with the due diligence guidance, as DRC and Rwanda have done for the 3TG?
- Is formalization the answer? What capacity does the Washington Declaration Diagnostic Framework have to provide a starting point? Could the ASM dialogues of IIED be extended to coloured gem or diamond countries to broach this issue (noting that these dialogues will be focusing on formalization and government capacity for gold ASM till 2016).

FEASIBILITY OF ADDITIONAL MEASURES

Experience with the 3Ts and gold has shown than adaptation of the guidance to sector-specific realities produces a range of benefits. This section considers the feasibility of two options for adaptation, as well as an approach that engages more directly with the Kimberley Process.

Feasibility of an OECD Supplement on Precious Stones to the OECD Due Diligence Guidance

While the OECD Due Diligence Guidance is presently applicable to companies operating in precious stones supply chains, its operability for precious stones supply chains would be improved were there additional guidance for diamonds and/or colored gems. There are two options for this.

291 (Kyngdon-McKay, Yolande, 2015)
292 (Kyngdon-McKay, Yolande, 2015)
293 (Original Equipment Manufacturer, 2014)
294 (Levin, 2014)

First, the additional guidance could take the form of either a companion or appendix to the existing Due Diligence Guidance. The companion or appendix would provide factors to consider if using the guidance in the precious stones sector such as how to use it in conjunction with the KP and/or relevant due diligence systems designed for the precious stones sector. Another useful factor would be the identification of possible 'choke points' along the supply chain. These choke points would identify supply chain tiers where audits should take place for optimal control over upstream supply chains. An annex would improve clarity on the Due Diligence Guidance applicability to the sector, and would likely be quicker and less expensive to produce, however it may be insufficient. If areas remain where different interpretations lead to misalignment and disagreement between operators in the supply chain, standardization of the approach will be less likely. Misalignments or lack of standardization could result in significant frustration and ultimately higher costs borne by individual companies.

Alternatively, a full Due Diligence Guidance supplement could be created, akin to what exists already for the 3Ts and gold. This approach offers two primary benefits. First, it enables the establishment of clear expectations for operators along the supply chain that everyone agrees to and can be held to. Exploration and negotiation of the supplement would necessarily be an inclusive process, which would allow potential issues to be worked through and solutions found, tested, agreed to, and included. The development process would create greater clarity of intent and expectations as sector-specific situations, relationships, and issues were debated and pinned down. Second, the clarity of a comprehensive Due Diligence Guidance supplement would make it easier for operators to use the guidance, and less likely to be criticized by observers for making what they perceive as the wrong decisions. The creation of a supplement would be more costly than the creation of a companion or appendix, but cost would be borne at the sectorial level (by governments and potentially industry associations) more than at the company level.

There must be will amongst key stakeholders from industry, government and civil society for either of these options to get traction.

Due diligence guidance through adaptation of The Kimberley Process & World Diamond Council's System of Warranties

The KP could incorporate broad due diligence measures, though this would require certain amendments to the core document and to national law or regulations of participating countries. Requiring such change would likely be viewed by representatives of the KP as both risky and unnecessary in terms of the original goals and purposes of the scheme. As it is unlikely that the KP will broaden its mandate to include additional due diligence measures on a broader set of risks (including human rights violations), there are gaps for any company which relies wholly upon the KPCS to fulfill its supply chain due diligence obligations.

It is therefore possible for companies to adopt additional due diligence practices without undermining or duplicating the measures they must take to satisfy their KP obligations. For example, the KP could act as the chain of custody assurance for those parts of the supply chain where a rough diamond parcel is internationally traded. Companies seeking to do due diligence on their diamond supply chains in conformance with the OECD Due Diligence Guidance could only rely upon the KP Certificate and System of Warranties to provide a guarantee as to the legality of the international trading point of rough diamonds. They would need to develop additional measures to fill gaps such as traceability for intra-national trade of rough diamonds and polished diamond supply chains and consideration of transportation routes.

Due diligence measures would also supplement the KP's certification on the issues outside the scope of the KPCS as per Annex II of the OECD Due Diligence Guidance, namely, the worst human rights abuses associated with the extraction, transport or trade of diamonds. As discussed previously in this report, this can include direct or indirect support to non-state armed groups,[295] public or private security forces, bribery, fraudulent misrepresentation of origin, money laundering, and avoiding payment of taxes, fees and royalties due to governments.

One might imagine that if an OECD Due Diligence Guidance supplement were to be developed for diamonds, for example, it could build upon the Kimberley Process's inclusion or exclusion of countries or regions as a basis for determining if a place is conflict-affected, though further factors may need to be considered to ensure alignment between the KP's definition of conflict and that of the Due Diligence Guidance. [296]

Additional Feasibility Considerations

Due Diligence based on country of origin

Due diligence may be less challenging in countries which are sources of a large range of gems. For example, Brazil is a source of 109 precious gems, including diamond.[297] If Brazil chose to support the implementation of a due diligence system to enable responsible sourcing of gems from its territory, then this could offer companies a preferred source for a wide range of gems, and introduce competition between countries to start to address risks associated with their gemstone sectors.

Due Diligence led by value

Values of particular types of gemstones differ markedly and fluctuate according to the market demand for that particular gem over time. In those circumstances where provenance has bearing on value (namely in the case of more costly gems, e.g. Burmese ruby, Paparadascha or Kashmir sapphire, Colombian emerald, etc.) science has been developed to enable identification of origin through spectrometric analysis, for example. Such methods have not been developed and/or are not commercially viable for smaller or less valuable stones.

Sharing the cost of due diligence

Finally, feasibility is directly tied to costs. The expansion of due diligence will create costs for business, but not doing it perpetuates costs for others and will create future costs for business. In other sectors, such as 3T and G, civil society, industry associations and governments have taken on a role to support due diligence activities in order to make it more affordable for individual businesses. Examples of this support include: monitoring issues in conflict-affected areas; developing guidance for specific geographies or supply chain segments to support operationalization of due diligence; arranging and carrying out audits of members' due diligence practices; or embodying requirements in national legislation that support due diligence by entities in foreign markets. Opportunities for similar support exist in the precious stones sector. For example, diamond bourses and gem trade associations could expand their membership criteria to include responsible sourcing requirements and help create economies of scale for members, as the London Bullion Market Association and Dubai Multi Commodities Centre have done for gold.

RECOMMENDATIONS OF NEXT STEPS

- **Evaluating Will**: In lieu of a strong legislative driver like Dodd-Frank, an important question for the PS-MSWG is, how big is the market of buyers that will insist on risk-managed supply (at the threat of disengagement) and is it big enough to drive change? Will the market care, and will it adapt its behavior if the source is important?

295 This risk is the one with greatest overlap with the Kimberley Process. The DDG defines direct or indirect support to non-state armed groups as being "procuring minerals from, making payments to or otherwise providing logistical assistance or equipment to, non-state armed groups or their affiliates who: i.) illegally control mine sites or otherwise control transportation routes, points where minerals are traded and upstream actors in the supply chain; and/or ii.) illegally tax or extort money or minerals at points of access to mine sites, along transportation routes or at points where minerals are traded; and/or iii.) illegally tax or extort intermediaries, export companies or international traders." (OECD, 2013), p. 21.

296 (KP, 2013)

297 (CPRM 2011)

- **Evaluate Support**: What support exists – in time, resources, leadership, expertise, and authority – to help develop implement and support additional tools? What role could government, NGOs, industry, trade group, civil society, academics, etc. play?
- **Organize needs by priority**: Any sustainable initiative would need to address a clear need in the precious stones sector. Weigh which needs are most pressing, with which initiatives are the most feasible, or could have the most significant impact, etc.
- **Establish common definitions or at least clarify the distinctions and educate the industry on these**: This lack of a common definition is one of the prime drivers for confusion, and therefore obfuscation, of what is really being asserted in various claims and assertions as to responsible sourcing or provenance. It is also important, as the definition of responsible sourcing is developed for the precious stones supply chain to include issues that are particularly pertinent to precious stones on a global basis, such as the contentious issue of natural resource ownership, as well as the application of AML laws and regulations to members of the supply chain.
- **Expand discussion of 'cost'**: Ideological questions of cost must be confronted and answered by industry if it is going to confidently assess that there is no need for further due diligence or risk management, and that the status quo is the best possible situation for both industry and wider society. These questions begin by considering the real cost of business and then asking 'Who should bear these costs?' 'Business, society, the environment?' 'Business in which parts of the world?' 'Societies in which parts of the world?' 'Environments where?'
- **Prioritize harmonization with other Initiatives, including the Kimberley Process**: Due diligence of precious stones supply chains could be done in a way that would strengthen the Kimberley Process Certification Scheme for the governments involved. If governments were to incentivize businesses to do supply chain due diligence, it could also absorb pressure away from KP governments to address these outstanding issues, and so neutralize criticism. This situation would be helped in particular if non-governmental institutions, like industry associations, were to take the initiative to build tools to support the private sector satisfy their enhanced due diligence responsibilities in line with the UNGPs and OECD Due Diligence Guidance and HR duties.
- **Considerations for ASM**: Does an entity exist that is likely to lead on the creation of such an industry initiative for small-scale operations in the diamonds and/or colored stones sectors? Are diamond producer governments likely to adopt into law systems to support conformance with the due diligence guidance, as DRC and Rwanda have done for the 3TG? Is formalization the answer? What capacity does the Washington Declaration Diagnostic Framework have to provide a starting point?

CONCLUSION

Few precious stone supply chain actors are conducting due diligence on the potential impacts of their sourcing practices and their suppliers' operations on third parties, including risks of human rights violations and conflict financing. This should not be surprising as the diamond and the colored gemstone industries lack the necessary tools to do so.

For the diamond industry, it is highly unlikely that the KP will broaden its mandate to include additional due diligence measures on a broader set of risks. It is therefore possible for companies to adopt additional due diligence practices without undermining or duplicating the measures they must take to satisfy their KP obligations.

The colored gemstone industry has no industry wide 'conflict-free' assurances or standards to risk undermining or duplicating.

The OECD Due Diligence Guidance is theoretically already applicable to companies operating in precious stones supply chains. However, its operability would be improved with additional guidance for diamonds and/or colored gems. There are two options for this: a companion or appendix to the existing Due Diligence Guidance or a full Due Diligence Guidance supplement. The latter approach offers two primary benefits. First, it enables the establishment of clear expectations for operators along the supply chain that everyone agrees to and can be held to. Second, the clarity of a comprehensive Due Diligence Guidance supplement would make it easier for operators to use the guidance, and less likely to be criticized by observers for making what they perceive as the wrong decisions.

There are challenges to considering additional measures to conduct due diligence including definitional issues, the marginalization of artisanal, small and medium scale companies; and track/traceability requirements. While these are important factors requiring thoughtfulness, they do not preclude exploration of further guidance. Insights into how to approach these issues can be gained from the rich expertise and insights across the precious stones industry as well as from the experiences of industries such as the 3Ts and gold.

Finally, feasibility is tied to costs. The creation of an OECD Due Diligence Guidance supplement would be more costly than the creation of a companion or an appendix. In either case, creation cost could be shared at the sectorial level (by governments and potentially industry associations) as well as at the company level. The creation of these or alternative tools, and the uptake of due diligence measures may create implementation costs, but not doing so perpetuates costs for others and will create future costs and lost markets for the precious stones industry.

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