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Status Report on the Impact
of Dodd-Frank 1502 in Congo

By Holly Dranginis

February 2016



Cover image: Rubaya, Democratic Republic of the Congo, 2013
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Executive Summary

Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank 1502) and the U.S. Securities and Exchange Commission's (SEC) Conflict Minerals Rule have improved global minerals supply chain transparency and begun to help break links between the minerals trade and violent conflict in the eastern Democratic Republic of Congo. For nearly two decades, illicit mining and minerals trafficking – primarily in tin, tantalum, tungsten, and gold (“3TG”) – have provided significant financing to a range of armed groups as well as corrupt and abusive elements of the Congolese army.

Minerals were not among the initial causes of Congo's armed conflict, but they have fueled many of the groups that have perpetrated serious crimes there. The ties between illicit mining and violence are also distinctly regional in nature. Smuggling, trafficking, and illegal minerals taxation in Congo and the region implicate authorities and criminal networks in neighboring countries including Rwanda, Uganda, and Burundi.

Based on 2015 and 2016 field research in eastern Congo with miners, traders, human rights activists, civil society leaders, foreign industry experts, and others, the Enough Project found a number of key developments pertaining to Dodd-Frank 1502 and mining reforms in eastern Congo. They include positive advances corresponding to the stated purpose of Section 1502 such as increased security for civilians in some mining areas, a significant reduction in armed group control in 3T mining areas,¹ improved safety and health standards for miners in some mining areas, organized local advocacy in support of reforms, in-region development initiatives, and the initial implementation of the region's first system to assess mines and certify minerals as conflict-free.

According to current Congolese mining ministry records, multi-stakeholder teams have now assessed 193 mines in eastern Congo on conflict and child labor issues, and 166 of the mines have passed the

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assessments.² Moreover, a record amount of certified conflict-free tantalum was exported from eastern Congo in 2015 – 948 tons, a 19 percent increase over the 2014 record, and a 387 percent increase over 2013³ – and 70 percent of tin, tantalum, and tungsten mines assessed by IPIS in 2014 were conflict-free.⁴ In addition, the International Conference on the Great Lakes Region (ICGLR) is conducting audits of six minerals exporters and hired its inspector general for minerals, the Independent Mineral Chain Auditor (IMCA), in January 2016.

Enough also found that a number of problems remain. Those include ongoing security threats in communities near mines, especially gold mines. Elsewhere in eastern Congo, research found corruption in the traceability system, limited access to formal markets or alternative livelihoods by artisanal miners, an insufficient number of legal artisanal mining zones, and continued minerals smuggling, especially from eastern Congo into Rwanda. To address these problems, reforms and new initiatives are needed, including more alternative livelihood programs for artisanal miners, additional and more transparent programs to trace and verify the conflict status and origin of minerals, the designation of more artisanal mining zones, more efficient and regular mine validations, security monitoring along trading routes in addition to mine sites, and accountability for minerals smuggling and corruption crimes that undermine current traceability mechanisms.

Dodd-Frank 1502 and related reforms are an important part of a much broader peacebuilding and good governance effort in Congo that must be further expanded. Reforms in support of better governance and security, justice for atrocity crimes, and free and fair elections in 2016 are also critical for the achievement of goals like local economic growth and security. The impact of mining reforms and conflict minerals disclosure reports cannot be accurately measured without those other factors in mind.

One of the core objectives of Section 1502 is to “address the linkages between human rights abuses, armed groups, mining of conflict minerals, and commercial products.”⁵ The law was never intended as a panacea for the causes of the war, but instead as one way to help reduce the resources available to armed groups in Congo and improve supply chain transparency. The law requires public U.S. companies with products containing tin, tantalum, tungsten, or gold that might originate from the DRC or surrounding countries to report on their supply chain due diligence measures. It also mandates the U.S. Department of State, in consultation with the U.S. Agency for International Development (USAID), to develop a strategy to “promote peace and security in the Democratic Republic of the Congo.”⁶ The original House of Representatives bill called for \$20 million to implement the law, including funding for improving the lives of artisanal miners. Despite the best efforts of some of the bill’s advocates, that allocation was not included in the final version.

Several efforts have attempted to address remaining needs, including by the following agencies: USAID through two wide-ranging responsible minerals trade projects,⁷ the Public-Private Alliance for Responsible Minerals Trade, Partnership Africa Canada, and Germany’s Federal Institute for Geosciences and Natural Resources (BGR). In addition, U.S. Special Envoy to the Great Lakes Region Tom Perriello has begun to focus³ more on conflict minerals and economics following a January 2016 mine visit to eastern Congo,⁸ and the U.S. State Department is in the process of helping establish a new initiative to support the prosecution of economic crimes in Congo’s military justice system.⁹ However, significant gaps remain related to livelihoods and the prosecution of high-level perpetrators of pillage, human rights, and corruption crimes.

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In order to preserve positive momentum and address problems, policymakers, companies, civil society, and justice officials should take specific actions outlined below. A conflict-free minerals trade that benefits the population is possible for the Great Lakes region, and more must be done to build on initial successes and meet urgent needs.

Recommendations

The Enough Project recommends the following to ensure that Dodd-Frank 1502 and related reforms are fully implemented to the benefit of Congolese citizens and the region's formal mining sector:

1. **Combating smuggling:** USAID, the European Union, the Netherlands, and Germany should provide significant additional support to the International Conference on the Great Lakes Region (ICGLR) Independent Mineral Chain Auditor (IMCA) for hiring inspectors to investigate minerals smuggling in the Great Lakes region. U.S. and U.N. Special Envoys Tom Perriello and Said Djinnit, and the E.U. Senior Coordinator for the Great Lakes Region Koen Vervaeke should follow up with the mining ministries of the region to ensure the IMCA is doing its job effectively. The envoys should also press the governments of Rwanda and Congo to make the minerals tag distribution process more transparent and to improve law enforcement related to smuggling.
2. **Improving Security:** The Congolese government should increase the number of mining police forces in mining areas and trade routes and carry out its commitment to demilitarize the 3TG mining sector in the Kivus, especially in gold mining areas. In doing so, they should comply with the Voluntary Principles on Security and Human Rights, and insist on compliance by mining companies operating in Congo. Along with local authorities, the U.S. Department of State and International Organization on Migration (IOM) should introduce anti-corruption measures into training initiatives with mining police, integrating the Voluntary Principles guidance on interactions with public security and Principle 10 of the Global Compact.¹⁰
3. **Enforcing Sanctions and Prosecuting Serious Crimes:** Congolese military courts and the International Criminal Court (ICC) should incorporate financial investigations into cases concerning war crimes and crimes against humanity in the DRC. The U.S. State Department's new initiative with U.S. Institute of Peace (USIP) to train justice officials in economic crimes should include training on international crimes and asset tracing. U.S. Special Envoy Tom Perriello and U.N. Special Envoy Said Djinnit have lent strong support to in-region reforms, prioritized accountability in high-level meetings, and visited mining communities to understand local needs. They should build on this by supporting and encouraging targeted sanctions and prosecutions for minerals pillage and high-level corruption crimes.
4. **Holding Regional Actors Accountable:** Congress and the U.S. Securities and Exchange Commission should strengthen — not diminish — the focus on regional enforcement of Dodd-Frank Section 1502. Smuggling continues particularly into Rwanda, which threatens the viability of the entire regional system, security in Congo, and traceability further down the global supply chain.

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5. **Improving Artisanal Mining:** The United States, European Union, The Netherlands, and Germany should urge the Congolese government to significantly increase the number of artisanal mining zones, known as ZEAs in Congo. The Congolese government is in the process of canceling dormant mining titles, having canceled half of Congo's concessions over the past three years (from 4,000 to 2,000, according to a local official).¹¹ But it should convert many such titles to ZEAs so that artisanal miners can legally mine.¹² Donor governments should also provide additional funding to mine inspection missions currently led by the IOM to improve and increase the assessment and validation statuses. Mine assessments should be made public by Congo's Ministry of Mines, and assessment teams should comply with mandates to re-validate mines every six months.
6. **Requiring Quality Due Diligence:** The E.U. should pass mandatory reporting requirements for all companies bringing 3TG minerals into the E.U., including importers of raw materials or minerals included in finished products. The E.U. legislation should also include provisions for development and investment in conflict-affected, minerals-rich areas. The U.S. Securities and Exchange Commission should issue clarifying guidance on both the status of the Conflict Minerals Rule's (CMR) audit requirement and its enforcement strategy for CMR reporting compliance.
7. **Increasing In-Region Sourcing:** End-user companies of tin, tantalum, tungsten, and gold should inform their suppliers they do not want them to avoid sourcing from Congo or the Great Lakes region. They should also urge the main current traceability and due diligence program, iTSCi, to publish incident reports, become more financially transparent, and lower costs. End-users should invest in in-region reforms, including conflict-free sourcing initiatives. Mining companies operating in Congo should strictly comply with the DRC mining code, the U.N. Guiding Principles on Business and Human Rights, and the Voluntary Principles on Security and Human Rights, especially provisions related to consultations and agreements with local communities.
8. **Improving Livelihoods:** End-user companies should also invest in artisanal mining formalization programs and alternative livelihoods through multi-stakeholder groups or other vetted channels with collaboration from local implementing organizations. The U.S. State Department should revisit its strategy associated with Dodd-Frank 1502 to assess where improvements can be made to comprehensively support alternative livelihoods. USAID Development Credit Authority (DCA) together with the United Kingdom's Department of International Development (DFID) and the Dutch Foreign Ministry should conduct assessments in eastern Congo to determine the viability of implementing village savings and loans and microcredit initiatives in mining communities.
9. **Increasing Protection for Activists:** Special Envoys Tom Perriello and Said Djinnit should increase pressure on the Congolese government to end the ongoing crackdown on civil society in Congo. MONUSCO's UN Joint Human Rights Office (UNJHRO), the International Union for Conservation of Nature (IUCN), Amnesty International, Protection Internationale, and Human Rights Watch have done critical work monitoring and reporting on recent abuses targeting defenders of democracy and human rights. Given their ongoing and valuable efforts, they should coordinate to improve direct protection programs for corruption whistleblowers, transparency activists, and conservationists to address escalating threats ahead of the 2016 elections.

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Introduction

Over the past 15 years, a severe lack of regulation and accountability in the Africa's Great Lakes regional mining sector has helped lead to a dynamic in which armed actors systematically gain territorial control and wealth through the use of violence with impunity. Until recently, most of the minerals in this illegal system entered the global supply chain unchecked, often ending up in retail products like electronics, jewelry, appliances, and motor vehicles.

Eastern Congo has suffered decades-long armed conflict funded in large part by the illicit mining, trading, and sales of valuable minerals. Decades of violence, weak rule of law, and the hijacking of state structures by powerful elites prevented the emergence of transparent, legal mining sectors in the Great Lakes region. The resulting links between violence and consumer products have inspired consumer, investor, and advocacy pressure for reforms, which helped lead to Dodd-Frank 1502, E.U. draft legislation related to responsible minerals sourcing, and in-region reforms including a regional minerals certification system. For the first time, regulation of the region's 3TG mining sector and global minerals supply chain is developing, spurred in part by enforcement of Dodd-Frank Section 1502 and the SEC's Conflict Minerals Rule. The provisions have also spurred considerable debate related to the law's feasibility and impact.

This report is the latest in a series of Enough Project publications analyzing the impacts of policy changes in Congo's 3TG minerals sector and the global supply chain and recommending opportunities for progress. It is based primarily on field research undertaken in 2015 with more recent follow-up interviews in eastern Congo in 2016, and complemented by expert research conducted by groups like the United Nations Group of Experts (GOE) and the International Peace Information Service (IPIS).

Security

The impetus for Dodd-Frank Section 1502 and the Conflict Minerals Rule was the “sense of the Congress that the exploitation and trade of conflict minerals originating in the [DRC] is helping to finance conflict characterized by extreme levels of violence.”¹³ At its core, it sought to help improve the severe



On the road to Rubaya, signs alert drivers to mine sites and humanitarian projects ahead. The tantalum concession in Rubaya is owned by the Congolese mining company, *Société Minière de Bisunzu*, or SMB. Photo: Holly Dranginis / Enough Project

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insecurity and violence that beset mining areas in eastern Congo. In fact, human rights groups and the U.N. Group of Experts (GOE) have documented significant illicit mining and related violence by dozens of armed groups and Congolese army commanders. Even as recently as 2010, the GOE found that “nearly all mines” in the Kivu provinces were controlled by armed actors – groups committing such brutality as sex slavery, child soldier recruitment, and murder.¹⁴ Over the past 15 years, eastern Congo’s closest neighbors, Rwanda and Uganda, have intervened in Congo either directly or through proxy armed groups and have colluded with Congolese elites in part to gain control over eastern Congolese minerals and keep their spheres of influence in eastern Congo.¹⁵ Minerals have been called “a major source of income and of conflict in North Kivu as in the whole of the DRC,”¹⁶ by the Pole Institute, and a GOE report stated they

“The link between minerals and violence was something that became obvious, in a sense. The [sexual violence] victims were all coming in for treatment from areas with very active mining.”

Lubula Igomokelo, Panzi Foundation

were “the principle method used by [Democratic Forces for the Liberation of Rwanda (FDLR)] to raise funds.”¹⁷

Testimony from eastern Congolese civil society groups echoes these findings. In July 2015, Goma-based Congolese activist and head of the organization Women’s Synergy for Sexual Violence Victims (SFVS), Justine Masika Bihamba, told Enough, “Ten years ago, we were under de facto control of armed groups...We hardly slept, death could come at any time. The country was ungoverned.”¹⁸ Masika’s organization provides medical and legal services to survivors of sexual violence. That work has led her to also lead grassroots initiatives against the conflict minerals trade. In South Kivu, Lubula Igomokelo, an assistant director at Panzi Foundation, also works with survivors of sexual violence. He has seen scores of patients come to Panzi Hospital in Bukavu seeking help for life-threatening, war-related injuries, including brutal rape. He told Enough, “The link between minerals and violence was something that became obvious, in a sense. The [sexual violence] victims were all coming in for treatment from areas with very active mining.”¹⁹

In the tantalum-rich town of Rubaya in North Kivu, where Enough conducted field interviews in July, residents still remember a revolving door of armed groups and the fear and violence

associated with their control. A food trader named Ayuby Andrea told Enough in July about the violence he and his family faced in the mid-2000s. “The armed groups would pillage, they’d grab our belongings and flee into the forest. We fled to the camps from Masisi. Back in 2007, I stayed in the camps for three years,”²⁰ he recounted. “It was pretty bad – we slept like beasts, we hardly ate. Fear was permanent. And killings became normal.”²¹ Miners, traders, and civil society leaders Enough spoke to in Rubaya all recalled violence between five and 10 years ago including fighting and abuses by armed groups like CNDP, M23, Mai Mai, FDLR and the Congolese army.

Advances in 3T mining areas

In recent years, armed group control over tin, tantalum, and tungsten mines has decreased in many parts of eastern Congo, and calm has been restored to some communities that once lived under repressive, violent, and unpredictable rebel regimes. Since the 2013 defeat of the infamous M23, a group that controlled minerals-rich territories and drew funding from minerals smuggling rings,²² there has been no major Rwandan-backed rebel group active in eastern Congo. The FDLR, which has drawn significant resources from illegal mining in the eastern provinces, has diminished significantly in troop strength over the past six years.²³ According to a U.N. official in Goma, defections by armed group combatants in North Kivu doubled between 2014 and 2015, with FDLR soldiers among the highest.²⁴

Several people Enough spoke to in Goma, Bukavu, and Rubaya have observed a significant shift. Gerver Hakizimana, a civil society leader in Rubaya, told Enough, “There have been a lot of armed groups who have taken this town – people would go into hiding or live in the mountains. The groups would force people to work, and recruit children. Now, no more armed groups. Now the mining police control and secure the mines. People are working in an organized way.”²⁵ Bihamba, the Goma-based activist told Enough, “Before, mining was almost fully controlled by armed groups...Today, let’s admit they shy away from doing that. And if we’re honest, part of that is because of Dodd-Frank. It came to shine a light on those illicit actors...”²⁶ Andrea, the food trader in Rubaya, agreed. “Around 2010, the government came to say peace was reestablished,”²⁷ he told Enough. “Things are coming back slowly with security in Rubaya. Mining is going on today. It has been very peaceful here now.”²⁸

A May 2014 International Peace Information Service study found that 74% of 3T miners in surveyed provinces were working without armed groups present²⁹ and 70% of 3T mines were free of armed groups.³⁰ In Enough’s interviews with civil society activists who monitor the minerals trade in North and South Kivu, they agreed that armed groups are not nearly as prevalent at 3T mines as they were five and 10 years ago.³¹

Rubaya

In July, several Rubaya residents agreed with Hakizimana’s report that no armed groups were present in Rubaya, including the Congolese army, and that even smaller-scale civilian violence has decreased.³² A government representative in Rubaya told Enough in July, “Areas under rebel control were shifted to the



Rubaya town. Photo: Holly Dranginis / Enough Project

Congolese government, and now the government is abiding by international conventions.”³³ He said bans on children and pregnant women [from working in mines] were starting to be enforced, armed groups

and the Congolese army were kept out of mines, and rule of law was improving through the establishment of the mining police.³⁴ “That has allowed the mines to be validated conflict-free,” he noted.³⁵

Daphrose, a miner and farmer in Rubaya, told Enough she came to Rubaya from Rutshuru because of armed conflict in 2004. She spent years in an internally displaced persons (IDP) camp there, fleeing regularly because of fighting between the CNDP rebel group and the Congolese army. She told Enough

Recent events in Rubaya illustrate the potential for conflict-free mining areas to backslide into armed violence if oversight and enforcement mechanisms are weak in unstable parts of eastern Congo.

that now, she no longer has to flee, and she no longer lives in the camp.³⁶ Several other Rubaya residents said civilian mining police have been dispatched to enforce the law and protect civilians. Moises Buchiki, a police commissioner in Rubaya told Enough, “Given the traceability program, there’s a decrease in crime rates now.”³⁷ Enough was unable to independently verify a decrease in crime, but several interviewees noted not only that armed groups no longer entered the area, but that there was also a decrease in smaller-scale crime, especially gun violence and public disturbance.³⁸ “Whenever there is chaos at the mines, the mining police step in,” Hakizimana told Enough.

While the town of Rubaya and the surrounding tantalum mines are under civilian control, it is important to note that Congolese army units are deployed in areas near Rubaya and throughout Masisi territory. The region remains vulnerable to violence by armed groups including APCLS, Nyatura, and Raia Mutomboki, prompting periodic military operations and encroachment by military troops into civilian-held areas. Recent events in Rubaya illustrate the potential for conflict-free mining areas to backslide

into armed violence if oversight and enforcement mechanisms are weak in unstable parts of eastern Congo. According to local reporting and an Enough Project interview with Benoit Kikwaya, project manager at ASSODIP, a local transparency advocacy group, a violent incident involving the Congolese army occurred just last month in Rubaya.³⁹ On January 13, 2016, roughly a dozen Congolese army troops entered a minerals storehouse in town, then fired on civilian miners who intervened believing the army units were staging a raid. Nine people were reported injured in the incident.⁴⁰

Validation as a tool for improved security

The new regional mine assessment process that started in 2011 as part of the International Conference on the Great Lakes Region (ICGLR) minerals certification process, known in Congo as “validation,” is discussed in more detail in the next section of this report. However, it is worth noting here that while validation is primarily a transparency tool used to identify mines and minerals as conflict-affected or conflict-free, it has also prompted the improvement of security in otherwise conflict-affected places. In 2014, as part of its initiative to support validation missions, a USAID-funded project implemented by the International Organization on Migration (IOM) helped demilitarize two mine sites in South Kivu,⁴¹ and 166 mines have now been independently assessed and validated as conflict-free in North and South Kivu.⁴²

According to a 2015 assessment by the U.S. Government Accountability Office (GAO), the project is now “helping to lessen the involvement of the military and increasing the role of legitimate DRC government stakeholders in mining areas.”⁴³ IOM is also leading an independent data-gathering initiative on human rights violations in remote mining areas that did not exist before a few years ago.⁴⁴ Another USAID-funded program, the Capacity Building for Responsible Minerals Trade (CBRMT) implemented by Tetra Tech, is helping build sustainable traceability programs in eastern Congo and piloting conflict-free gold mining. It is also helping build capacity within the ICGLR, the intergovernmental body established to oversee and implement regional minerals reforms, among other regional development and peacebuilding initiatives.

More progress needed

Despite significant security gains in 3T mining areas, armed group activity and some factions of the Congolese army continue to pose threats in several mining areas of eastern Congo, especially at gold mines. Illicit gold mining and illegal taxation continue to provide financing to Congolese army commanders, armed groups, and criminal networks in the region.⁴⁵ For example, armed group activity is especially serious at the dredges in Shabunda territory in South Kivu,⁴⁶ and Congolese army officers are extorting gold from miners in Misisi and Fizi in South Kivu.⁴⁷ The GOE recently reported that income from taxation on cassiterite coming from mines near Tchonka, 186 miles from Bukavu, still “represents...a serious disincentive for disarmament by the armed group [Raia Mutumboki].”⁴⁸

Violence perpetrated by armed groups and the army has consistently included sexual and gender-based violence, especially rape. Efforts to improve security in mining areas must include measures to protect and provide legal and health services to women and girls, even where armed groups are not present. Reports of sexual assault or micro-economic systems reliant on transactional sex that make women extremely vulnerable are common in eastern Congo’s mining areas, even in civilian-controlled areas.⁴⁹ More research, support and prevention measures, and accountability where appropriate is needed for sexual and gender-based crimes committed both by armed groups and civilians.

In order to address ongoing security threats overall, many diverse measures are needed, including improving demobilization of combatants, military operations, and accountability for human rights violations committed by the Congolese army. In the mining sector particularly, the government of Congo should expedite its demilitarization of mining areas, and increase the mining police forces. This should be done using the Voluntary Principles on Security and Human Rights as a cornerstone. Already being implemented in some pilot initiatives in Congo,⁵⁰ the Voluntary Principles provide guidance to businesses and governments for ensuring stability and security while maintaining respect for and enforcement of internationally recognized human rights standards.⁵¹ The government, together with international support, including funding and expertise from the U.S. State Department and MONUSCO, should also prioritize the investigation and prosecution of economic and violent crimes that occur in tandem, including both domestic and international crimes.

Validation and Certification

The exploitation of Congo's minerals and violence funded in part by the illicit minerals trade are regional crises that require a transparent, regional certification system. Congo's conflict minerals are only as valuable as their access to the international marketplace. For decades, neighboring countries have provided a market for those minerals and impunity for perpetrators of related fraud, forced labor, and other crimes. The role of Congo's neighbors in these illicit systems remains pivotal. The Institute for Security Studies (ISS), which is currently conducting an investigation into illicit smuggling networks in eastern DRC, has found that "smuggling networks are well coordinated between and within states, driven by the demands of international markets,"⁵² and the GOE reported last January, "Some armed groups remain involved in the minerals trade, potentially introducing conflict minerals into supply chains in [Congo] and neighboring States."⁵³ It went on to report, "There was virtually no progress in addressing gold smuggling in 2014 in the Democratic Republic of the Congo and Uganda, and scant evidence of interest in traceability and due diligence by those Governments."⁵⁴

First Certification Mechanism

In November 2011, the ICGLR adopted the Regional Certification Mechanism (RCM) on minerals to provide the resources and oversight to put a transparent, formal system in place. The RCM aimed to distinguish conflict-affected mines from conflict-free mines and improve civilian security. Two years later, Congo and Rwanda issued their first conflict-free certificates.⁵⁵ In a recent report, the Responsible Sourcing Network explained, "The only way that Section 1502 can meet its goal of reducing the links between armed groups and 3TG is by eliminating illicit trade through transparent, traceable, and accountable systems, from the mine to the finished product."⁵⁶

Created in 2009, before Dodd-Frank's passage, the RCM was the region's response to early demand by retailers for certified materials. It is the first system introduced to enforce transparency in the Great Lakes' minerals sector, and is already resulting in measurable progress. As of January 2016, 166 mines in eastern Congo had been validated as conflict-free by multi-stakeholder teams made up of U.N. officials and Congolese civil society, business, and government representatives, according to Congolese mining ministry records.⁵⁷

Recent Enough interviews in eastern Congo revealed a positive outlook among local stakeholders. "Because of joint pressure—international and local—the government is now obliged to discuss



The office of the *Comité Provincial de Suivi des Activités Minières* (Provincial Mining Steering Committee) in Rubaya. Photo: Holly Dranginis / Enough Project

traceability,” Justine Masika, the Goma-based activist told Enough in July. “There’s a link between traceability and the well-being of communities – we’ll know how many minerals are going out, how much value, volume, and how much, theoretically, should trickle down to communities.”⁵⁸ And at one conflict-free mine in Rubaya, a local government official told Enough, “When bagging and tagging started, the miners were so happy to see [their minerals] going into that system.”⁵⁹ Part of the validation system includes civil society monitoring, and USAID is working with local partners to help build capacity and protection for whistleblowers to report security violations, human rights abuses, and corruption in the system.⁶⁰

“There’s a link between traceability and the well-being of communities – we’ll know how many minerals are going out, how much value, volume, and how much, theoretically, should trickle down to communities.”

*Justine Masika Bihamba,
Women’s Synergy for Sexual
Violence Victims, Goma*

resources and goals, including improving coordination related to traceability and security in mining areas.⁶⁵

Conflict-free mines

The new traceability scheme has resulted in a growing number of mine assessments, as well as measurable benefits to miners and communities. Along with the 166 conflict-free mine assessments to date,⁶¹ reforms have led to the establishment of conflict-free supply chains originating in Congo, including the Solutions for Hope conflict-free initiatives and KEMET Electronics Corp.’s vertically closed-pipe sustainable sourcing model.⁶² On a recent field mission, local human rights groups told U.S. Government Accountability Office investigators that the traceability scheme’s implementation has led to better wages for miners.⁶³ In 2014, in part to help advance the full implementation of Dodd-Frank, USAID initiated a Capacity Building for Responsible Minerals Trade program, implemented by Tetra Tech. The project dedicated an initial \$5.8 million to support conflict-free minerals supply chains and restore the mining sector to civilian control,⁶⁴ and the initiative was recently extended into 2016. The program includes a range of

Smuggling and Corruption

Unfortunately, weak local and regional governance and gaps in the iTSCi traceability and due diligence scheme have allowed corruption and minerals smuggling to continue. In 2015, a U.N. GOE member told the GAO that smuggling in eastern DRC “remains prolific and instances of fraud call into question the integrity of traceability programs.”⁶⁶ Forms of fraud include forged or smuggled tags, and the tagging of minerals from non-validated sites. In its October 2015 report, the GOE found that “3T minerals continue to be smuggled from [eastern Congo] across the border to Rwanda...consistent with the Group’s findings in previous reports over the past few years.”⁶⁷ Domestic and cross-border minerals and tag smuggling,

illicit taxation, and commodities laundering all continue to occur between eastern DRC and neighboring Rwanda, Burundi, Uganda.⁶⁸

Rwanda

In Rwanda in particular, according to interviews, the tag distribution system lacks transparency and accountability mechanisms to counter smuggling.⁶⁹ The Group of Experts has also found that Congolese officials are complicit in minerals smuggling from Congo into Rwanda⁷⁰ and both Congo and Rwanda have incentives to develop smuggling networks because minerals tagged in Rwanda can sell for more than untagged minerals sold from Congo.⁷¹ As recently as October 2015, the GOE reported, “Mineral tracing tags conceived to ensure the traceability of minerals continue to be sold on the black market in Rwanda, which can allow minerals sourced in conflict areas in the eastern Democratic Republic of the Congo to enter the international market.”⁷²

Despite ongoing evidence of smuggling and the prevalence of cross-border trade in the Great Lakes, some Rwandan officials have recently questioned Dodd-Frank Section 1502’s role in Rwanda. At a November 2015 subcommittee hearing on Section 1502,⁷³ Rwanda’s natural resources ministry mining minister, Evode Imena, argued that Rwanda should be considered “conflict-free.”⁷⁴ In his remarks, Imena testified, “Rwanda has the capacity for robust enforcement against smuggling and trafficking of minerals, and takes enforcement very seriously,”⁷⁵ in contrast to recent GOE reports. He also claimed Rwanda’s efforts to improve the mining sector “are hampered by the fact that Rwanda was lumped together with nine other countries in Section 1502 of Dodd-Frank.”⁷⁶

Each of the 10 countries covered by Dodd-Frank 1502 has its own unique political and security dynamics, and it is true that there is no active armed conflict currently occurring in Rwanda. However, 3TG minerals trading, traceability, and armed conflict dynamics must be addressed with a regional perspective for sustainable progress to occur. In his testimony, Imena also said, “I must note that a number of positive developments were triggered by the introduction of Dodd-Frank, including: better record-keeping and reporting from mining companies, improvements in mine site inspections, increased monitoring of mining activities by government agents, capacity building of small-scale and artisanal miners, and alignment of national regulations to regional and global best practices.”⁷⁷

To build on these positive steps and maintain momentum, and considering the regional dynamics that encourage violence and smuggling, Congress and the SEC should avoid any exemptions for Rwanda related to Dodd-Frank 1502 and the SEC’s Conflict Minerals Rule. Rwanda’s continued participation in the process of improving transparency in the mining sector is critical for Dodd-Frank to achieve its goals. End-user companies sourcing from the region, particularly from Rwanda, should also pay particular attention to the problem of smuggling and develop strategies to ensure that they are not sourcing smuggled minerals from conflict-free mines in Rwanda.

Corruption and impunity

Corrupt practices and a lack of credible accountability mechanisms exacerbate ongoing smuggling in the region. A Congolese transparency activist recently told Enough, “There were all these efforts to qualify mines as conflict-free, including for example, Nyabibwe [tin mine] – so that was positive. The problem

was, the efforts were concentrated in one mine or another, so outside Nyabibwe, traders were trading minerals claiming they came from Nyabibwe to avoid a red [“conflict”] label.”⁷⁸ He went on to explain that local monitors are unpaid and turn to corrupt practices as a result. “The traceability system entrusts SAESCAM [government monitoring agency] with the [conflict-free] tags, but without pay – so of course SAESCAM is helping that smuggling happen.” Involvement of army soldiers in smuggling,⁷⁹ coupled with scarce resources for monitoring and law enforcement, has encouraged impunity for smuggling minerals from non-validated sites into legitimate pipelines.

A local stakeholder called by the pseudonym “Peter” for security purposes, told Enough that non-certified minerals are being “leaked” to validated mines and tagged illegally, and that “because mining officials are corrupt, they let the materials go through.”⁸⁰ He explained perverse incentives structures in some places:

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“For example, the Chef de Mines in certain mining towns might get roughly \$150 per month. If someone is smuggling, they can pay him \$1000.” Civil servants charged with monitoring the system are notoriously underpaid, and many say that has encouraged corruption.⁸¹ The GOE reported that since February 2014 Congolese army officers “had regularly extorted gold from [miners] through intimidation.”⁸² There are also few consequences from law enforcement or justice sectors for corruption. “Some corrupt actors are arrested,” Peter told Enough, “But they’re back in business the next day.”⁸³

“Monitors are implementing a clean system,” Peter acknowledged, saying in practice it is difficult to carry out duties in a complex, dangerous climate of corruption. “This is a fragile system built on trust. You can do 50 percent, that’s still better than nothing.”

For artisanal miners, slow validation also incentivizes smuggling of minerals and tags. With many civilian-controlled mines (including mines with dormant titles) still awaiting conflict-free validation, artisanal miners have begun selling some minerals they produce from non-validated mines. Interviews in Goma and Bukavu revealed a common practice of moving minerals from non-validated mines to validated “green” mines for tagging, and a black market for tags, which are smuggled and attached to non-certified minerals.⁸⁴

Smuggling and corruption in the tracing system require comprehensive legal, diplomatic, and policy responses. To address some of these problems, the Congolese government approved a new traceability and due diligence scheme, the Better Sourcing Program, and is now seeking to pilot its work in eastern Congo.⁸⁵ In addition, an ICGLR Independent Mineral Chain Auditor (IMCA) was recently appointed to better monitor the integrity of traceability systems. However, the

current IMCA funding from the Public-Private Alliance for Responsible Minerals Trade and USAID only covers the cost of one person. Unless several staff inspectors are hired to support the IMCA, it will be very difficult for the institution to perform its mandate of investigating smuggling and fraud. Thus, donor governments and agencies like USAID, the Netherlands, the E.U., and Germany should provide additional resources to the ICGLR for additional staff to help carry out those investigations. The U.S., U.N., and E.U. special envoys and senior coordinator for the region should push the Congolese and Rwandan governments and the ICGLR to ensure the IMCA is carrying out its duties effectively and independently, and that it is adequately funded with a proper team of investigators. The U.S. and U.N. special envoys should also pressure Congolese government officials to prioritize the investigation and prosecution of high-level corruption crimes and minerals pillage.

Finally, it is important to note that corruption, trafficking, and human rights violations associated with mining are crimes under domestic and international law. Justice officials in the region, including military prosecutors in Congo, Uganda, Burundi, and Rwanda, should develop comprehensive strategies for prosecuting high-level offenders. By tracing both the funding sources coming to armed groups there, as well as the ill-gotten gains obtained through the use of violence, courts can achieve accountability for illicit natural resource trafficking and potentially disrupt the illicit financial systems that underlie atrocity crimes. Prosecutors in the military justice system must be equipped to investigate high-level perpetrators of smuggling and trafficking, and civil society should be able to safely report incidents of smuggling, false tagging, and the sale of tags, regardless of the association of the perpetrator. A new initiative supported by the U.S. State Department and implemented by the U.S. Institute of Peace will aim to close this expertise gap by training lawyers and investigators to more effectively prosecute economic crimes in the military justice system. That program should include training on both domestic and international economic crimes and regular consultations with civil society groups. It should also incorporate instruction on investigating the intersections between atrocity crimes and economic crimes in order to help lawyers better prosecute both.

Artisanal mining

Hundreds of thousands of people in Congo rely on artisanal mining for survival.⁸⁶ Dodd-Frank 1502 has led to positive developments in some aspects of the artisanal mining sector. However, artisanal miners and their families are also facing challenges related to recent reforms as well as falling commodities prices. Thus, efforts to expedite the formalization of artisanal mining and support the communities that depend on it are crucial.

Economic impacts

A combination of factors, including President Kabila's decision to ban the sale of 3TG from eastern Congo in 2010-2011,⁸⁷ as well as a delay in regulations to implement Dodd-Frank 1502, led to a de facto embargo by some smelters and companies with respect to minerals from the region.⁸⁸ This affected thousands of

artisanal miners who relied on an illicit market, and faced the challenge of finding buyers for their non-certified minerals. Support to these miners and their families is coming late and should increase to adequately address economic disparities. Very recently, commitment to the notion that progress in the region requires investment, not abandonment, has increased. Some companies and foreign governments have stepped up investment in conflict-free sourcing initiatives to ensure Congo’s miners have buyers⁸⁹ and alternative livelihood programs. USAID is supporting projects through implementing partners like Tetra Tech and IOM to enhance artisanal miners’ economic opportunities⁹⁰ and claims that those efforts have led to improvements, including higher wages for miners. “In some cases...local miners earn double the price for certified conflict-free minerals compared to non-certified illegal minerals” and in some cases more than for smuggled minerals, USAID reported in October.⁹¹

Enough’s interviews with artisanal miners in Rubaya also highlighted economic difficulties.⁹² “I can see there’s no currency circulation,” Buchiki, the Rubaya police commissioner told Enough. He went on, “OK life was worse before, that’s the nuance, now it’s reasonable – there are businesses, children are happy. But it’s not the case that everyone is [successful] at the mine. It’s been a month that people are staying in town.”⁹³ Hakizimana, the civil society leader, explained that production was low and there has been disagreement between the mining cooperative and the concession owner.⁹⁴ He agreed, though, that the economic situation was far better than it was 10 years ago.⁹⁵ Of that time, he told Enough, “People here knew nothing about dollars. We hardly found dollars, but today, everyone has dollars. And that money is somehow driven by minerals.”⁹⁶ Several Rubaya residents said a down market, delayed payments from SMB, and falling commodities prices were all posing challenges for miners.⁹⁷

Improvements and challenges in the mines

Artisanal mining in eastern Congo is conducted with widely varying degrees of safety standards and equipment. Several Rubaya residents said equipment and safety at the mines has improved over the past five years. Rubaya miners and traders reported safer working conditions, including access to better equipment, and the enforcement of basic safety measures. Hazikimana told Enough, “Five years back, there was no equipment at all. Today, we have all the tools. Everybody’s equipped...The government decided to regulate better, equip people and put police in the mines...I think there are new laws being reviewed, and that’s changing the situation.”⁹⁸



Hilltop artisanal mine, Rubaya. Photo: Holly Dranginis / Enough Project

Deo, a government official stationed in Rubaya, told Enough in July, “In 2010, [the artisanal miners] would go deeper into tunnels. Sometimes the mines would collapse in great numbers. Today, all that is being kept out – now it’s better. Today we aren’t knowing as many deaths.”⁹⁹ Along with others, Deo’s view was that there has been an overall improvement. However, mine collapses still occur in Rubaya. Just a month before Enough visited Rubaya, a collapse occurred in the artisanal mining zone on the SMB tantalum concession there.¹⁰⁰ According to a mining ministry press release, the June 17, 2015, collapse took the lives of at least seven and injured nine in Rubaya, with the mining cooperative, COOPERAMA, covering medical costs.¹⁰¹ Conflicting reports estimate higher but unknown numbers of casualties.¹⁰² Independent investigations in the immediate aftermath of serious accidents like this are critical in order to understand exactly what happened and prevent recurrence.

Finally, several Rubaya residents reported that in addition to the police system, community- and peer-enforcement systems related to mining safety and child labor have emerged.¹⁰³ One trader told Enough that even at mines that are not yet validated, a formalized market mindset is taking hold, spurred by the aspiration for validation.¹⁰⁴ A civil society leader involved in implementing mining reforms in South Kivu told Enough in July, “Even if a mine isn’t certified [conflict-free], the rules are building in people’s minds. There’s a mindset taking hold: ‘We need to comply with the rules, or we’ll be out of business.’”¹⁰⁵ Those rules include a ban on mine shafts extending more than 30 meters to prevent deadly mining collapses, and bans on children and pregnant women working in mines. That has led to fewer children in mines, profit-sharing arrangements, and fewer arms in mining communities, some Rubaya residents reported.¹⁰⁶ This trend may be limited to Rubaya and other select mining areas benefiting from direct investment in social development programs, but it shows how traceability could improve community welfare beyond security.

Responsive initiatives

Since Dodd-Frank 1502 was passed, large mining and end-user companies have piloted new models for supporting artisanal miners. Downstream companies including KEMET and jeweler Tiffany & Co. have supported locally-led initiatives aiming to increase business opportunities for artisanal miners and help eliminate child labor.¹⁰⁷ USAID’s RMT program includes village savings and loans associations to help support miners,¹⁰⁸ and miners in Rubaya told Enough that “basket funds,” generated by local miners have held promise for their communities. “The basket funds became incentives for communities to get involved in mining and rule of law reforms,” a local activist told Enough in Bukavu last July. The basket fund initiative was meant to be jointly managed by local government, mining traders, and civil society, but according to local civil society groups, it has been undermined by opaque financial management by the governments of North and South Kivu.¹⁰⁹ In fact, according to a local government official, while some of the money was used to build a bridge and a hospital, the North Kivu government used a significant portion of the basket funds to build a new government mining office in Goma instead of delivering all the money back to communities as was intended.¹¹⁰

In order to be effective and truly benefit communities, the basket fund process needs more transparency and more equitable, inclusive civil society involvement. Companies establishing such agreements and initiatives with miners and civil society are urged to liaise with local and international advocacy groups

with expertise in mediation and international law,¹¹¹ and to consult the U.N. Guiding Principles on Business and Human Rights¹¹² and related U.N. conventions and treaties.¹¹³

Some companies have invested in larger-scale industrial mining projects and made it a priority to hire at least some artisanal miners to work on their industrial projects in Congo. As mentioned above, at least one – SMB in Rubaya — has an agreement with mining cooperatives to allow miners to mine part of the company’s concession and sell materials to the company, though challenges remain related to the fulfillment of the agreement by both sides.¹¹⁴ Electronics company KEMET sources from the artisanal miners involved in KEMET’s own program set up in Kisengo. In KEMET’s case, according to testimony by CEO Per-Olof Loof, Dodd-Frank 1502 was the trigger for KEMET to invest in Congo, not pull out. “When the Dodd-Frank Act passed, I sensed a business opportunity. Dodd-Frank could be the impetus for developing, in the DRC, an innovative and socially sustainable source of conflict-free tantalum,” he testified before Congress in October 2015.¹¹⁵

Gold Sector

Traceability and due diligence projects have gained significant ground in the 3T mining sector over the past five years, but there is a deficit of development, security, and opportunity in the artisanal gold sector. The gold industry, both at the upstream level with respect to mining and smuggling, as well as the downstream level with respect to corporate regulation, is materially distinct from the 3T sector. However, momentum and improvements in the 3T sector related to traceability system models, increased security, and responsible private sector investment¹¹⁶ should be harnessed and used as models for improving the gold sector. This is critical since armed group activity is ongoing in several eastern Congolese gold mining areas.¹¹⁷

Although progress in the gold sector has lagged in comparison to the 3T sectors, some recent steps forward illustrate potential for improvement. The largest jewelry retailer in North America, Signet Jewelers, is currently helping lead the establishment of the “Responsible Artisanal Gold Solutions Forum,” which is part of the Solutions for Hope Network. The initiative includes a large range of gold sector, governmental, and NGO stakeholders¹¹⁸ and has three main objectives: design a pilot conflict-free artisanal gold supply chain originating in eastern Congo, support policy and technical coordination in Congo’s artisanal gold sector, and help educate the gold industry more broadly on responsible practices and how to invest in improvements. In addition, several organizations and agencies are helping establish new conflict-free gold projects in eastern Congo, including: USAID with Tetra Tech (at Matete mine in Maniema Province), Partnership Africa Canada (in Orientale and at Kaziba, South Kivu), and Germany’s Federal Institute for Geosciences and Natural Resources (BGR).

“When the Dodd-Frank Act passed, I sensed a business opportunity. Dodd-Frank could be the impetus for developing, in the DRC, an innovative and socially sustainable source of conflict-free tantalum.”

*Congressional testimony of
Per-Olof Loof, CEO of KEMET*

Upstream corporate responsibility

As encouragement increases for investors and mining companies to invest in eastern Congo's mining sector, so too must the fulfillment of responsible business practices by those corporate actors. Companies establishing mining projects in Congo and investing in social development initiatives should reach beyond their own internal teams and coordinate with civil society and local authorities to develop responsible business protocols and right-based approaches. They should implement standards like the U.N. Guiding Principles on Business and Human Rights and the Voluntary Principles on Security and Human Rights, and ensure that agreements between companies building large-scale, conflict-free mining projects in Congo are fair, inclusive, and fulfilled. Substandard community displacement practices, unfulfilled memoranda of understanding, delayed payments from companies to miners, and excessive use of force by private security staff have all occurred in eastern Congo where companies have projects. More attention is needed to specific provisions in the U.N. Guiding Principles, especially inclusive community consultations, free and prior informed consent, community benefits that go beyond infrastructure, and human rights standards in security protocols. Without these improvements, the fulfillment of Dodd-Frank 1502's original goal to help restore security and rule of law for communities in Congo will be limited at best.

Prostitution

Enough's interviews in Rubaya and Goma reflected a prevalence of prostitution in the artisanal mining sector. Several sources told Enough that like other businesses, prostitution has a direct relationship with the rise and fall of mining profits.¹¹⁹ Residents in Rubaya also reported health and safety concerns associated with prostitution in the area, including higher levels of HIV/AIDS.¹²⁰ "It's a big problem in this town," Hazikimana told Enough. "We can't tell who's been infected, it's a huge health issue. People think they can buy sex without knowledge of the disease. People die without knowing they're infected," he said. "We would welcome assistance with that." More research and collaboration with local communities is needed to 1) assess the nature and scale of both prostitution and transactional sex in Congo's mining communities as well as the needs of women and girls who are affected, and 2) develop solutions that are rights-based, with priority placed on safe access to healthcare, legal services, and alternative livelihoods for affected women and girls.

Alternative Livelihoods

Efforts to support prosperous and safe artisanal mining must be complemented by alternative livelihoods programs in mining areas. As Daphrose, a miner and farmer in Rubaya told Enough in July, "I think people here who go into mining do it for lack of other opportunities. That's not what I want for my children." She grew up in a farming community in Rutshuru, but ever since she was forced to flee to Rubaya due to armed conflict, she has felt compelled to work at the mines some days because it is the only way she can make enough to support her family. In mining areas, the success of other business, including farming, also depends on mine production. "The success of farming fluctuates with the success of mining. The miners

buy our crops, so when mining is down, so is our livelihood,” she said. USAID along with Tetra Tech and implementing partners are carrying out alternative livelihood programs – including skills training, financial literacy training, and village savings and loans programs – to ensure that individuals in mining communities have an economic safety net.¹²¹

More programs are needed to improve economic diversity and opportunity in mining areas, especially while the traceability systems improve. According to interviews with local stakeholders about alternative livelihoods, agencies introducing new initiatives to support livelihoods should work with implementing partners that are trusted by local communities, give miners meaningful choice over which alternative they will pursue, and provide support for infrastructure development to ensure that alternative industry development like agriculture can be successful.¹²²

Support for alternative livelihoods in mining communities is slowly starting to grow. The U.S. State Department has reported that it is providing funding to an implementing partner for alternative livelihoods and to improve workers’ rights in the artisanal mining sector,¹²³ and the Public-Private Alliance for Responsible Minerals Trade issued a call for proposals on alternative livelihoods initiatives in late 2015.

However, much more is needed to assess needs and support to alternative livelihoods. USAID’s Development Credit Authority (DCA), along with other relevant donors and coordinating authorities should conduct an assessment to find out if savings and loans programs are appropriate for mining communities in eastern Congo. This kind of program has the potential to benefit mining communities by increasing financial literacy, providing access to micro-loans for small business development, and providing communities the power to generate savings while 3TG mining reforms and formalization advance. DCA should consult with local organizations, local banks, and operational humanitarian organizations to find out how such programs might best be implemented, sustainably and equitably and to identify appropriate partner microfinance institutions. The assessments should also build on lessons learned from existing programs in other mining communities, including in Ghana and Sierra Leone,¹²⁴ and involve gender specialists and women’s groups to help ensure that women have safe, independent access to credit and loans.

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Activism and Freedom of Expression

For decades, the links between minerals, armed conflict, and human rights in eastern Congo have prompted local and international advocacy efforts. Long before Dodd-Frank 1502 was implemented, Congolese civil society had begun calling for a more secure and transparent minerals sector.¹²⁵ That movement has continued through the implementation of the law and related reforms. Today, several leading Congolese advocates support Dodd-Frank 1502 and related mining reforms. In July, Enough's interviews revealed support for Dodd-Frank among several prominent activists in Goma and Bukavu as well as miners, traders, and other residents in mining areas.

For many activists in eastern Congo, the story of the movement begins with armed violence. Archbishop of Bukavu Francois-Xavier Rusengo, a prominent community leader and human rights defender in South Kivu, eastern Congo, told Enough in an interview there in July, "We're living on this territory that's rife with conflict. Armed men have been free to exploit minerals." He continued, "Think of the mining industry in the U.S. — processing and export creates jobs there. My country is exceedingly rich with natural resources. We, too, should have processing, trading, export and taxation."¹²⁶ Rusengo has pushed for national and international supply chain regulations, writing in an October 2014 address to the European Parliament, "We hope that the draft 'conflict minerals' regulation [in the E.U.] will be at least as strict as our own supply chain due diligence legislation."¹²⁷

Congolese stakeholders have contributed prominent thought pieces on conflict minerals in public media, especially as coverage has increased over the past two years. Congolese citizens, residents, and diaspora have had substantial and essential roles in establishment of the SEC's Conflict Minerals Rule,¹²⁸ the Congressional hearings on Dodd-Frank 1502 in 2012, 2013 and 2015, respectively,¹²⁹ and the



"My country is exceedingly rich with natural resources," says Archbishop Rusengo of Bukavu. "We, too, should have processing, trading, export and taxation." Photo: Holly Dranginis / Enough Project

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implementation of in-region minerals reform measures.¹³⁰ In 2014, civil society coalitions with participation by numerous Congolese organizations and individuals published two open letters on the importance of security and prosperity in the minerals sector with explicit support for Dodd-Frank 1502.¹³¹ Also that year, the *New York Times* published an op-ed by renowned surgeon and activist Dr. Denis Mukwege in which he called Dodd-Frank 1502 a “positive step.” He wrote, “Companies must conduct honest, rigorous investigations of their supply chains, publicly report their findings, and act on the results to ensure that their money — and ours — no longer ends up in the hands of violent rebels.”¹³²

In order for local activists to carry their rightful weight in policy decisions and reforms, they must be supported and protected. In eastern Congo, the Enough Project has found that activists calling for transparency and full implementation of Dodd-Frank and related reforms are increasingly threatened. Bikaba told Enough in July that the Congolese government “really has eyes” in eastern Congo, where he said support for the political opposition is concentrated.¹³³ “It’s trying to quiet any voice that’s saying ‘We want change,’” he said.¹³⁴ Crackdowns on activists in the mining sector are part of a broader trend of repression against civil society during this 2015-2016 election season.¹³⁵ Now more than ever, international diplomats, civil society groups, observers, human rights groups, and civilian protection units should help protect space for civil society and promote accountability for the perpetrators of civil and human rights abuses.

U.S. and U.N. Special Envoys Tom Perriello and Said Djinnit have met with civil society leaders on a range of topics, including Dodd-Frank and broader minerals reforms. In January 2016, Special Envoy Perriello visited Nyamurhale gold mine in South Kivu and spoke to miners, traders, civil society, and the government in the Kivus and Kinshasa.¹³⁶ The envoys should continue to prioritize these consultations with civil society in order to stay abreast of their views and send a message of support for their protection and freedom of expression. They should increase their pressure on state authorities to stop crackdowns on human rights defenders and transparency activists, and support targeted sanctions and prosecutions for individuals who are actively suppressing fundamental freedoms and cracking down on known activists.¹³⁷ Finally, Congo is a listed beneficiary of the World Bank’s Global Partnership for Social Accountability, which is one way for the Bank to give directly to civil society groups. The World Bank should prioritize this opportunity to directly support civil society groups in its next grant-making cycle with measures in place to prevent state reprisal against those groups.

Conclusion

Dodd-Frank Section 1502 and the formalization of 3TG mining in Africa’s Great Lakes region are still in their infancy. Overall, the emergence of conflict-free validation, an increasing number of in-region initiatives to support conflict-free sourcing and artisanal mining, and better security in some mining communities demonstrate significant progress.

The regional and international efforts taking shape now signal the potential for a well-managed 3TG mining sector in the region. They have also triggered cooperative international initiatives and regulations

aimed at a transparent global minerals supply chain. Of course, challenges remain. More must be done to support artisanal miners' access to markets, alternative livelihoods, access to education for child miners, and rule of law in eastern Congo's mining areas. Implementing these improvements will be especially important and challenging against an increasingly heated political backdrop, in which President Kabila and his inner circle are holding tight to power ahead of presidential elections and using violence to repress activism.

New reforms, if implemented with the cooperation of regional governments and in consultation with local communities, hold the promise of helping break Congo's resource curse. That curse stems from states and non-state actors allowed to exploit minerals and people under the cover of secrecy and impunity. Many of the people and groups calling for an end to those trends in Congo remain resolute that transparency and demilitarization in the Great Lakes' mining sectors can improve lives. In his interview with Enough, the Bukavu-based activist Dominique Bikaba stressed, "I have this hope, that my grandchildren, and my neighbors' children, can all live in a Congo that is beautiful, and that works."¹³⁸

Endnotes

¹ Enough Project interviews with Rubaya traders, residents, government and police officials, Rubaya, North Kivu, DRC, July 18-19, 2015, regarding Masisi territory; and by 2014, the International Peace Information Service found that 70 percent of 3T mines it surveyed across several provinces in eastern Congo were not controlled by armed actors, a significant change given that the U.N. Group of Experts stated in its 2010 report that "in the Kivu provinces, almost every mining deposit [was] controlled by a military group." See International Peace Information Service, "Infographic - Mapping Mining Areas in Eastern DRC," January 28, 2015, available at <http://ipisresearch.be/2015/01/infographic-mapping-security-human-rights-mining-areas-eastern-drc/> and U.N. Security Council, "Interim Report of the Group of Experts on the DRC," S/2010/252, para. 77, p.17, May 24, 2010, available at: http://www.un.org/ga/search/view_doc.asp?symbol=S/2010/252.

² Congolese mining ministry document viewed by the Enough Project, Kinshasa, January 27, 2016.

³ North Kivu mining ministry export statistics viewed by the Enough Project, Goma, January 21, 2016.

⁴ Between March 2013 and March 2014, International Peace Information Service (IPIS) researchers conducted research to map artisanal mining sites in eastern Congo. IPIS researchers found 116 of 167 cassiterite mines (70 percent), 26 of 31 coltan mines (84 percent), and 11 of 21 wolframite mines (52 percent) to be free of armed groups, making a total of 153 of 219 mines surveyed (70 percent) free of armed groups in eastern Congo. By contrast, IPIS survey results showed inverted proportions for eastern Congo's gold mines, with only 330 of 943 gold mines (35 percent) surveyed free of armed actors. International Peace Information Service, "Infographic - Mapping Mining Areas in Eastern DRC," January 28, 2015, available at <http://ipisresearch.be/2015/01/infographic-mapping-security-human-rights-mining-areas-eastern-drc/>.

⁵ *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Section 1502 known as “Dodd-Frank 1502”), Public Law 203, 111th Cong., 2d sess. (July 21, 2010), available at: <https://www.gpo.gov/fdsys/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf>

⁶ *Ibid.*

⁷ These include the Capacity Building for Responsible Minerals Trade project implemented by Tetra Tech (roughly \$5.8 million for 2014-2015) available at: <http://www.usaidlandtenure.net/project/capacity-building-responsible-minerals-trade-democratic-republic-congo>, and the Responsible Minerals Trade (RMT) Program whose “Start-up Conflict-Free Supply Chain Infrastructure and Regulatory Reform” project is implemented by the International Organization on Migration (initially \$3.5 million) available at http://www.resolv.org/site-ppa/files/2012/06/RMT_DRC_FactSheet_Nov-15-2012-2.pdf. USAID recently approved extensions to both of these projects through 2017.

⁸ Enough Project staff traveled to Congo and visited the gold mine with Special Envoy Perriello as part of a trip organized by the Office of the Special Envoy to the Great Lakes in January 2016.

⁹ Meetings with Enough staff and U.S. Institute of Peace and U.S. State Department representatives, Washington, DC, January 2016.

¹⁰ “The Voluntary Principles on Security and Human Rights,” 3-5, available at:

http://www.voluntaryprinciples.org/wp-content/uploads/2013/03/voluntary_principles_english.pdf and “U.N. Global Compact Guidance Document Implementation of the 10th principle against Corruption,” available at:

https://www.unglobalcompact.org/docs/issues_doc/7.7/guid_a-corr_081204.pdf. For more on the State Department and IOM’s initiatives involving improving law enforcement in mining areas, see “Democratic Republic of Congo IOM Fact Sheet: Reform of the Congolese National Police,” May, 2015, available at:

http://drcongo.iom.int/sites/default/files/PDF/fact_sheet/Fact%20Sheet%20INL%20activities.pdf and “Democratic Republic of Congo,” U.S. Department of State, available at:

<http://www.state.gov/j/inl/regions/africamiddleeast/218981.htm>.

¹¹ Enough interview with DRC mining ministry officials, Kinshasha, January 2016.

¹² For a fuller explanation of this concept, see USAID, “Capacity Building for a Responsible Minerals Trade (CBRMT),” pgs. 19-20, (May 2015) available at http://www.resolv.org/site-ppa/files/2015/06/CBRMT-Gold-Assessment_REVISED-FINAL-WITH-COPY-EDIT.pdf.

¹³ Dodd-Frank Section 1502(a) 838.

¹⁴ U.N. Security Council “Interim report of the Group of Experts on the DRC,” S/2010/252, para. 77, p. 17, May 24, 2010, available at: http://www.un.org/ga/search/view_doc.asp?symbol=S/2010/252

¹⁵ These countries have a range of economic, political, and social interests in Congo. For more detail on Rwanda’s relationship to Congo, see Sasha Lezhnev and John Prendergast, “Rwanda’s Stake in Congo: Understanding Interests to Achieve Peace,” (Washington: The Enough Project, October 2013), available at <http://www.enoughproject.org/reports/rwanda%E2%80%99s-stake-congo-understanding-interests-achieve-peace>.

¹⁶ Aloys Tegera and Dominic Johnson, “Rules for Sale: Formal and informal cross-border trade in eastern DRC,” (Goma: Pole Institute, May 2007), available at: http://www.pole-institute.org/sites/default/files/regard19_anglais.pdf.

¹⁷ U.N. Security Council, “Final report of the Group of Experts on the Democratic Republic of the Congo,” S/2008/773, para. 72, December 12, 2008, available at: http://www.un.org/ga/search/view_doc.asp?symbol=S/2008/773.

¹⁸ Author interview with Justine Masika Bihamba, Goma, DRC July 7, 2015.

¹⁹ Author interview with Lubula Igomokelo, Bukavu, DRC, July 24, 2015.

²⁰ Author interview with Ayuby Andrea, Rubaya, DRC, July 17, 2015.

²¹ *Ibid.*

²² See Global Witness, “FAQ: current situation in the eastern Democratic Republic of Congo,” August 2012, available at: https://www.globalwitness.org/sites/default/files/120821_eastern%20drc%20faq.pdf; and U.N. Security Council, “Final Report of the UN Group of Experts on the Democratic Republic of the Congo,” S/2012/843, available at: http://www.un.org/ga/search/view_doc.asp?symbol=S/2012/843.

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- ²³ Exact numbers of FDLR fighters are unknown, but according to Human Rights Watch, FDLR fighters were roughly 30-40,000 in 2001. Based on U.N. Group of Experts and Enough Project field interviews in 2014, they reduced to 6,500 in 2009 and to approximately 2,000 today. A 2014 News of Rwanda article put the estimate at more than 3,600. See Human Rights Watch, “Rwanda: Observing the Rules of War?” (December 2001), available at <https://www.hrw.org/reports/2001/rwanda2/Rwanda1201.pdf>; and News of Rwanda, “Rwanda: Inside FDLR Policy to Remain Exclusively ‘Nordists’ Only,” October 1, 2014, available at <http://www.newsorwanda.com/featured1/25001/rwanda-inside-fdlr-policy-to-remain-exclusively-nordists-only/>
- ²⁴ Enough Project interview with U.N. official, Goma, January 2016.
- ²⁵ Author interview with Gerver Hakizimana, Rubaya, DRC, July 18, 2015.
- ²⁶ Masika.
- ²⁷ Author interview with Ayuby Andrea, Rubaya, July 18, 2015.
- ²⁸ Ibid.
- ²⁹ Steven Spittaels, et al., “Analysis of the interactive map of artisanal mining areas in eastern DR Congo: May 2014 update” (Antwerp: IPIS, May 2014), available at: http://ipisresearch.be/wp-content/uploads/2014/04/20141031-Promines_analysis.pdf
- ³⁰ Between March 2013 and March 2014, International Peace Information Service (IPIS) researchers conducted research to map artisanal mining sites in eastern Congo. IPIS researchers found 116 of 167 cassiterite mines (70 percent), 26 of 31 coltan mines (84 percent), and 11 of 21 wolframite mines (52 percent) to be free of armed groups, making a total of 153 of 219 mines surveyed (70 percent) free of armed groups in eastern Congo. By contrast, IPIS survey results showed inverted proportions for eastern Congo’s gold mines, with only 330 of 943 gold mines (35 percent) surveyed free of armed actors. International Peace Information Service, “Infographic-Mapping Mining Areas in Eastern DRC,” January 28, 2015, available at <http://ipisresearch.be/2015/01/infographic-mapping-security-human-rights-mining-areas-eastern-drc/>. It should be noted that the May 2014 IPIS report notes “The number of 3T miners has declined, as many of them have turned to gold mining. Consequently, less than 20% of artisanal miners are working in the Eastern Congolese 3T sector,” http://ipisresearch.be/wp-content/uploads/2014/04/20141031-Promines_analysis.pdf
- ³¹ Author interviews with Justine Masika Bihamba, Dominique Bikaba, Gerver Hakizimana, Goma and Rubaya, DRC, July 2015.
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- ³⁴ Ibid.
- ³⁵ Ibid.
- ³⁶ Author interview with Daphrose, Rubaya, July 19, 2015.
- ³⁷ Author interview with Moises Buchiki, Rubaya, July 18, 2015.
- ³⁸ Buchiki, Hakizimana, and Andrea, Rubaya, July 18-19, 2015.
- ³⁹ Radio Okapi “North Kivu: 9 injured in shooting in Masisi,” January 14, 2016, available at <http://www.radiookapi.net/2016/01/14/actualite/societe/nord-kivu-9-blesses-dans-une-fusillade-masisi> and Enough staff interview with Benoit Kikwaya, January 2016.
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- ⁴¹ U.S. Government Accountability Office. “SEC Conflict Minerals Rule: Initial Disclosures Indicate Most Companies Were Unable to Determine the Source of Their Conflict Minerals,” 15-561, (Washington: August 2015) pg. 24, available at: <http://www.gao.gov/assets/680/672051.pdf>.
- ⁴² Congolese mining ministry document viewed by the Enough Project, Kinshasa, January 27, 2016.
- ⁴³ GAO 15-561, 24.
- ⁴⁴ Author interview with “Peter,” who used a pseudonym due to security concerns, Goma, DRC, July 7, 2015, and Statement of Kimberly Gianopoulos, Director, International Affairs and Trade, U.S. Government Accountability Office, “SEC Conflict Minerals Rule: Insights from Companies’ Initial Disclosures and State and USAID Actions in the Democratic Republic of the Congo Region,” 16-200T, (Washington: November 2015), pg. 9, available at: <http://www.gao.gov/assets/680/673681.pdf>.

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