

Open Letter

Conflict Minerals: A Broader Push for Reform is Essential

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It is time for another broader push for reform on conflict minerals and natural resource governance in order to complement the Dodd-Frank legislation and deepen related minerals reforms. Dodd-Frank has been the primary driver of corporate and regional policy change on conflict minerals, creating a market incentive for reform of the exploitative patterns of mining in Congo. However, by itself it is incomplete, and it must be built upon with deeper reforms to speed up the development of a responsible minerals trade that improves the livelihoods of eastern Congo's population. The reform agenda should include more robust regional and corporate reforms, as well as alternative livelihood programs and full implementation of the Peace, Security, and Cooperation Framework in close consultation with Congolese and regional stakeholders. The September 9 [Open Letter](#) on conflict minerals is a thoughtful piece that offers many helpful recommendations that should be fully considered. However, the letter also lacks important context and supportive evidence for several of its core assertions.

Historical context: why reform was needed. The war and the illicit exploitation of natural resources in eastern Congo for the previous 15 years subjected Congolese citizens to a disastrous situation that desperately needed reform. Rwanda and Uganda invaded Congo and then engineered and backed major armed groups in collusion with Congolese elites, with one of their primary goals being to illicitly exploit Congo's minerals. Report after report from the United Nations experts panels and Congolese research bodies documented how armed groups and their backers in Kigali, Kampala, and Kinshasa made millions of dollars from illicitly exploiting natural resources, in particular minerals, which one called "[the engine of the conflict](#)," another cited as "[a major source of income and of conflict in North Kivu as in the whole of the DRC](#)," and a third said were "[the principal method used by FDLR to raise funds](#)." In 2008 alone, the estimate of armed groups' profits from the conflict minerals trade was \$185 million. In 2005, the [International Court of Justice](#) found that "the Republic of Uganda, by acts of looting, plundering and exploitation of Congolese natural resources committed by members of the Ugandan armed forces... violated... international law" and ordered Uganda to pay reparations of up to [\\$10 billion](#) for the damages. Likewise, Rwanda and Rwandan-backed rebel groups such as the CNDP led large-scale looting of minerals exploitation and smuggling. Moreover, multinational companies were purchasing the minerals and turning a blind eye to the abuses in their supply chains, providing the marketplace for these illicitly traded conflict materials.

Prior to the passage of Dodd-Frank, there were notable efforts to end the illicit exploitation of natural resources in Congo, but they proved inadequate. In 2006, the then-eleven member states of the International Conference on the Great Lakes Region (ICGLR) signed the Protocol on the Illegal Exploitation on Natural Resources. But the ICGLR took no action to follow this up until Dodd-Frank was passed, as there was no market incentive to change behavior.

The Reform Agenda. Broad reform of the mineral sector has been part of a comprehensive strategy to end violence in eastern Congo, and Dodd-Frank 1502 is one catalytic component of that reform effort.

Three main areas of reform were critically needed: 1) Livelihood programs for mining communities; 2) Increased transparency and due diligence in tin, tantalum, tungsten, and gold supply chains; and 3) Governance/mining reforms in Congo and the region.

Human rights and minerals reform advocates have argued vociferously for all three of these reform areas, for example in [op-eds](#) and [reports](#) published over a year before the Dodd-Frank Act was passed, calling on the U.S., the U.N., and other governments to begin a process of dialogue and reform in Congo that was broadly inclusive of Congolese civil society, business, and government. They also called on tech firms, metal trading companies, and the Obama administration to increase livelihood funds for miners who might become temporarily or otherwise unemployed as a result of the potential reforms. \$20 million in implementation funds for such efforts and for livelihoods support was built into the main piece of legislation that turned into Section 1502 of the Dodd-Frank Act, the [Conflict Minerals Trade Act](#). That bill stated that:

“...the United States Agency for International Development should expand and better coordinate programs to assist and empower communities in the eastern Democratic Republic of the Congo whose livelihoods depend on the mineral trade. ... specifically to... improve living conditions and livelihood prospects for artisanal miners and mine workers; and... alleviate poverty by reconstructing infrastructure and revitalizing agricultural production. ... [and] It is the policy of the United States... to develop stronger governance and economic institutions that can facilitate and improve transparency in the cross-border trade involving the natural resources of the Democratic Republic of the Congo in order to reduce exploitation by armed groups and promote local and regional development.”

The final version of the law that passed has created the impetus to move from diplomacy to action by companies and in-region stakeholders alike. Spurred in part by the legislation and the increasing international attention on conflict minerals, the ICGLR designed a series of tools, including a Regional Certification Mechanism for tin, tungsten, tantalum, and gold. Largely due to the pressure of Dodd-Frank, DRC, Rwanda, and Burundi have adopted the certification mechanism into law, a development which should be followed in a number of other countries.

Dodd-Frank prohibits corporations from not knowing where their minerals come from, thus interrupting long-standing industry practices of opacity in supply chains and human impact and replacing them with mandatory corporate transparency, due diligence, and public reckoning. The law has provided a strong market incentive for change, which has had a major impact on conflict mines. A 2013 independent study by the International Peace Information Service, followed up by 5 months of Enough Project field investigations, found that two-thirds of tin, tantalum, and tungsten mines surveyed in eastern Congo’s provinces of North and South Kivu and Maniema were free of armed groups, although gold remains a challenge. This is a significant change, given that the [UN Group of Experts](#) stated in 2010 that “In the Kivu provinces, almost every mining deposit [was] controlled by a military group.” Furthermore, in order to comply with Dodd-Frank, Intel and Motorola Solutions set up an industry supply chain auditing program. Today, half of the world’s smelters – 100 in total -- are conflict-free, a major achievement. Dodd-Frank is only one part of the solution, but if it is undermined or dispensed with, retailers will return to a climate of impunity for profiting from violence conflict, there will be no market incentive for other reforms, and lucrative minerals will again enrich warlords in Congo.

However, governments, donors, and companies have yet to deliver or finalize many of the other critical reforms in governance, gold and 3T mining, and the security sector, and have been very late in providing livelihood programs for Congolese mining communities. Four years went by with almost no support for Congolese miners, while the Congolese government placed a very unhelpful ban on the minerals trade. Some donors have recently set up programs, such as USAID's [\\$20 million community recovery project](#), its \$5.8 million [Capacity Building for a Responsible Minerals Trade project](#), and the recently launched World Bank's \$79 million ["Eastern Recovery Project."](#) These are helpful starts, but they have yet to be felt by mining communities, and they must be complemented with the other needed reforms. Reform advocates [have pushed](#) for more livelihood programs but in hindsight, implementation of existing commitments lags far behind the passing and impacts of Dodd-Frank.

Going forward. Important progress has been made, but there is much more still to do. On the issue of transparency, governments and civil society are rightly concerned by the slow pace of progress of the ICGLR minerals certification process. However, certification is the means, not the end. The broader goal of this mechanism is transparency, compliance, and alignment with regional and international certification standards as well as good governance. Amid the tremendous pressure and rush to issue certificates, it is civil society's responsibility to insist upon a process that is integral and fully complies with the standards that have become law within the Great Lakes member states. International and local civil society pressure should be focused on insistence of the publication of the complete results of mine site inspections, third party audits, traceability data as well as the evaluation of traceability systems. Civil society actors should also be questioning the claims of private sector actors who maintain they are fully implementing the voluntary OECD Due Diligence Guidance but fail to publish annual reports on supply chain due diligence as is required by the Guidance. The publication of this information and data is integral to the ICGLR system, and fundamental to bringing about the transparency that will guarantee compliance at both the country and the regional levels.

Governance reform in the region's mining sector must be deepened, and we must not lose the momentum for meaningful, lasting change. Great Lakes governments, particularly the DR Congo, Rwanda and Uganda, must be at the forefront of these efforts, but the World Bank, ITRI, Belgium Technical Cooperation, the Obama administration, Canada, the European Union, private investors, mining companies, and other international actors all have critical roles to play. They should work closely with Congolese mining communities and regional stakeholders to improve mine inspections in Congo and the ICGLR minerals certification process, increase meaningful support to Congolese miners, invest in conflict-free mines, particularly gold, and make a strong push for democratically held elections in Congo and throughout the region.

On a few specific points from the Open Letter:

- Mine inspections and validation missions need to be fully regularized and institutionalized to ICGLR standards, and a sustainable approach must be identified. DRC's Mines Ministry should fast-track the approval of inspection reports and then immediately publish them in full. The ICGLR mineral certification standards require such immediate publication.
- The letter states that "internal UN assessments show that only 8% of the DRC's conflicts are linked to minerals." However, no such report is publicly available, so there is no basis on which to evaluate this research – the scope, time period, methodology, geography, etc. The UN Group of Experts reports

cited above and the 'conflict mapping' studies published by [International Peace Information Service](#) seem to contradict this figure and analysis.

- It is true that armed groups are not 100% dependent on minerals. But minerals are worth far more than other commodities such as agricultural products or locally sold charcoal, meaning that lessening that source of income would have an impact on the economies of violence. Consider too, how much easier it is to smuggle gold given its high value per volume.
- Congolese and regional stakeholder input into reforms is critical. Local stakeholders are regular participants in the OECD Forum on implementing due diligence for responsible mineral supply chains and members of the Public Private Alliance for Responsible Minerals Trade, but all reform initiatives must include local stakeholders, from Congolese and regional civil society to local businesses to national and local governments. Companies and international financial institutions operating in the regional minerals sector should establish community grievance mechanisms to facilitate and make best use of such inclusion. Communication tools and practices must be adapted to ensure that local stakeholder inputs are regularized and meaningful. In keeping with UN Security Council Resolution 1325 that recommends women's full involvement in peacebuilding initiatives, women's participation and leadership must be particularly emphasized. These areas of communications practices and women's leadership support are area worthy of dedicated investment and support.
- The operationalization of traceability and due diligence is a prerequisite for ICGLR certification. The ICGLR Certification Mechanism as well as the OECD and the Conflict Free Sourcing Initiative are neutral as to which system is used to implement due diligence and traceability. The mineral market should work like the cellphone and telecommunications market: the government's role is to set the regulatory framework, just as they do for the cellphone market. This is then to be verified by an independent body called the Independent Mineral Chain Auditor in the context of the minerals market in the Great Lakes. Minerals producers should be able to choose whichever due diligence/traceability provider they prefer, engendering competition that will work to improve quality of service and bring down prices.
- The current de facto monopoly on traceability and due diligence systems is unhealthy and must be replaced by an open market for such systems, provided they are credible and meet international standards. ITRI, an organization dedicated to promoting the tin industry, deserves credit for being a pioneer in setting up a traceability and due diligence system in a very difficult environment. However, its iTSCi system cannot be the only system – the high costs of its prices are crippling local producers, miners and governments. iTSCi has also resisted transparency requirements and while iTSCi collects critical data on the entire mineral chain from mine to point of export, the digital form of this data remains the legal property of iTSCi. These practices hinder efforts to meaningful reform the mining sector in-region. Imagine if the United States, Canada or EU countries were not allowed to own, keep, or store the information collected on their own national mineral chains.
- Overall, the Letter makes a few blanket and contradictory statements on the failures of systems that do not reflect the larger picture or the trends. For the first time in eastern Congo, there is a system in development to verify whether mines and transportation routes are conflict-free or not. There are laws in place to prevent multinational companies from having opaque supply chains, and an increasing

number of mines are being validated as conflict-free although inspections to ICGLR-standards are preferred. It is important to build upon the considerable progress that has been made, and ensure that we can continue to leverage the legal tools at our disposal. These tools are essential for the continued efforts to bring public scrutiny onto resource flows and conflict financing within the Great Lakes region.

Signed,

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