

Progress and Challenges on Conflict Minerals: Facts on Dodd-Frank 1502

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MINERALS AND CONFLICT: Conflict minerals have fueled and continue to help sustain armed violence in eastern Democratic Republic of Congo (Congo), linking them to the deadliest conflict globally since World War II. The four conflict minerals (gold, along with tin, tantalum, and tungsten, the “3Ts”) are not the only source of income to armed groups, but they are some of the most lucrative. The illegal exploitation of natural resources today is a manifestation of the grand corruption linked to violence that has marked successive governments in Kinshasa and the broader region since colonial times.

- The U.N. Group of Experts on Congo found in 2015 that gold continued to be a source of funding for armed groups and Congo’s army.¹ A study from the Enough Project found that armed groups made an estimated \$185 million from conflict minerals in 2008.² In 2007 the Pole Institute noted “minerals are a major source of income and of conflict in North Kivu as in the whole of the DRC,”³ and in 2001 the UN experts found that “minerals [were] the engine of the conflict.”⁴
- A mortality study by the International Rescue Committee looking at conflict-related deaths between August 1998 and April 2007 estimated that more than 5.4 million people died as a result of armed conflict in Congo.⁵ There has been continuing violence since that study, but no definitive follow up has been conducted on the mortality toll.

THE LAW: Section 1502 on conflict minerals of the Dodd-Frank Wall Street Reform and Consumer Protection Act is a transparency measure, one part of a comprehensive approach to Congo’s challenges. Passed in 2010 and implemented by the U.S. Securities and Exchange Commission in 2012, it creates a reporting requirement for all companies publicly traded in the United States with products containing any of the four conflict minerals. This creates a lever to support transparency, security, and the rule of law in the mining sector. Companies must now publicly disclose annually whether any of the gold or 3Ts in their supply chains originated in Congo or a neighboring country and, if so, describe the due diligence measures taken to determine the source of the minerals. Dodd-Frank 1502 does not require companies to divest from Congo or source from conflict-free mines. The law only requires companies to report on their mineral sourcing and due diligence practices.

- The cost of compliance has been significantly overestimated by industry lobbyists. Claihan, an independent environmental consulting firm with expertise in supply chain management, estimates the total cost of Dodd-Frank 1502 compliance was approximately \$140 million for 2014.⁶ This is a fraction of the U.S. Securities and Exchange Commission’s estimate of \$3-4 billion for the first year.⁷

IMPACT: Consistent with its objective, Dodd-Frank 1502 along with related reforms has led to significant improvements in the transparency of corporate supply chains and to a major reduction in the number of 3T conflict mines in eastern Congo. More than 60 percent of the world’s smelters for the four minerals have now passed conflict-free audits. Before Dodd-Frank 1502, there was no certification mechanism for distinguishing conflict mines (i.e. mines controlled by armed groups or the Congolese army) from conflict-free mines, and there were no federal transparency requirements for companies on conflict minerals. The law and related reforms have changed these circumstances and created a two-tier market whereby the price for untraceable 3T conflict minerals is significantly lower than the price for verified conflict-free minerals. This price difference has made the trade in 3T minerals significantly less lucrative for armed groups.

- 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.⁸ This is a significant change given that the U.N. Group of Experts stated as recently as 2010 that “in the Kivu provinces, almost every mining deposit [was] controlled by a military group.”⁹ As of May 2014, nearly three-quarters (74 percent) of 3T miners were working in mines where no armed group involvement has been reported.¹⁰
- Today, 192 out of approximately 300 smelters/refiners worldwide (over 60 percent) for the four conflict minerals have passed audits by the Conflict-Free Sourcing Initiative or associated programs, and an



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additional 41 smelters/refiners are participating in the program (i.e. are in the process of being audited) for a total of 233 participants (over 75 percent).¹¹

- There is now an emerging certification mechanism run by the International Conference on the Great Lakes Region (ICGLR), and mines have begun to be validated as conflict-free.¹² As of June 25, 2015, 141 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.¹³
- In surveyed locations, “minerals that do not go through conflict-free programs sell for 30 to 60 percent less” than minerals verified as conflict-free,¹⁴ thus reducing profits for armed groups trying to sell conflict minerals.

MINING COMMUNITIES: Dodd-Frank 1502 must be fully implemented, not abandoned, and strengthened with livelihood projects and other support to mining communities. Similar to other places where black markets are being disrupted, many Congolese miners who have relied on 3T mining have been affected by the transition to a conflict-free economy and are experiencing livelihood challenges. The original conflict minerals draft legislation included resources for livelihood programs for mining communities, but unfortunately those provisions were omitted from the final law and thus resources were not forthcoming in a timely way, causing hardship for some communities. Some aid has been disbursed to support conflict-free mining, but more support for livelihoods projects is needed. The solution to uncovering and eliminating these harmful illicit markets is not to reduce transparency measures but rather to strengthen and expand them.

- Livelihood projects should include alternative livelihoods programs and artisanal mining support. Project planning should involve concerted community consultations and decision-making, and projects should encompass microfinance programs, programs to increase women’s accessibility to mining and other livelihoods, and transition programs for child miners. Projects should also include aid for the formalization of artisanal mining—including the demarcation of artisanal mining zones, validation of more conflict-free mines, capacity building for mining cooperatives, provision of equipment, and development of safety standards for miners.¹⁵
- Section 5 of the original “Conflict Minerals Trade Act” (introduced on Nov. 11, 2009) included provisions for livelihood support.¹⁶ Since that time, the Enough Project has repeatedly called on the United Nations, the United States, and other governments to engage in a process of dialogue and reform in Congo that is broadly inclusive of Congolese civil society, business, and government representatives.¹⁷

CONGOLESE SUPPORT: Many Congolese communities and leaders—including Nobel Peace Prize nominee and Sakharov Prize winner Dr. Denis Mukwege, community activist Neema Namadamu, and Archbishop François-Xavier Maroy Rusengo of Bukavu, South Kivu—support Dodd-Frank 1502. Leaders and activists support the law because they have seen direct positive impacts, because they believe in transparency and the rule of law, or both.

- Dr. Denis Mukwege: “A conflict-free minerals industry would contribute to ending the unspeakable violence the people of Congo have endured for years. Government must not only enact strong legislation, they must be willing to enforce the law. Companies bear the responsibility of compliance and public disclosure, and acting transparently as consumers are increasingly aware of conflict-free components on the market. Tens of thousands of legitimate miners would benefit from a clean, transparent minerals industry...The mineral trade is one of the components that drive suffering in Congo.”¹⁸
- Open letter signed by 31 Congolese civil society leaders, experts, and former ambassadors: “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.”¹⁹

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¹ U.N. Security Council, “Final report of the Group of Experts submitted in accordance with paragraph 5 of Security Council resolution 2136 (2014),” S/2015/19, paras. 79, 80, 116, 124, 125, 193-198, 200, 201; Annex 36, January 12, 2015, available at http://www.un.org/ga/search/view_doc.asp?symbol=S/2015/19.

² The Enough Project Team and the Grassroots Reconciliation Group, “A Comprehensive Approach to Congo’s Conflict Minerals,” Appendix 2, p. 17 (Washington: April 2009), available at <http://www.enoughproject.org/publications/comprehensive-approach-conflict-minerals-strategy-paper>.

³ Aloys Tegera and Dominic Johnson, “Rules for Sale: Formal and informal cross-border trade in Eastern DRC,” p. 40 (Goma: Pole Institute, May 2007), available at http://www.pole-institute.org/sites/default/files/regard19_anglais.pdf.

⁴ U.N. Security Council, “Final report of the Group of Experts submitted in accordance with paragraph 5 of Security Council resolution 2136 (2014),” S/2015/19, paras. 79, 80, 116, 124, 125, 193-198, 200, 201; Annex 36, January 12, 2015, available at http://www.un.org/ga/search/view_doc.asp?symbol=S/2015/19.

⁵ Benjamin Coghlan, Pascal Ngoy, Flavien Mulumba, Colleen Hardy, Valerie Nkamgang Bemo, Tony Stewart, Jennifer Lewis, and Richard Brennan, “Mortality in the Democratic Republic of Congo: An ongoing crisis,” pp. ii, 16 (New York: International Rescue Committee, January 2008), available at http://www.rescue.org/sites/default/files/resource-file/2006-7_congoMortalitySurvey.pdf.

⁶ Email correspondence with Claigan, August 2015.

⁷ U.S. Securities and Exchange Commission, Release No. 34-67716, p. 302, August 22, 2012, available at <http://www.sec.gov/rules/final/2012/34-67716.pdf>.

⁸ 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/>.

⁹ 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.

¹⁰ Steven Spittaels, Ken Matthyssen, Yannick Weyns, Filip Hilgert and Anna Bulzomi, “Analysis of the interactive map of artisanal mining areas in Eastern DR Congo: May 2014 update” (Antwerp: International Peace Information Service, May 2014), available at http://ipisresearch.be/wp-content/uploads/2014/04/20141031-Promines_analysis.pdf.

¹¹ Electronics Industry Citizenship Coalition and Global eSustainability Initiative, “Conflict-Free Smelter Program Indicators,” available at <http://www.conflictreesourcing.org/program-indicators/> (last updated September 16, 2015).

¹² International Conference on the Great Lakes Region Mineral Certification Scheme, “ICGLR Regional Certification Mechanism (RCM) Certification Manual,” available at <http://www.oecd.org/investment/mne/49111368.pdf> (last accessed August 2015).

¹³ Uwe Naeher and Yasmine Nzuma, “Summary of Joint Missions and CTC Mine Site Audits in Eastern DRC,” Federal Bureau of Geosciences and Natural Resources (BGR), Kinshasa, June 2015.

¹⁴ Fidel Bafilemba, Timo Mueller, and Sasha Lezhnev, “The Impact of Dodd-Frank and Conflict Minerals Reforms on Eastern Congo’s Conflict,” endnote 5, p. 20 (Washington: The Enough Project, June 2014), available at <http://www.enoughproject.org/reports/impact-dodd-frank-and-conflict-minerals-reforms-eastern-congo-s-war>.

¹⁵ Fidel Bafilemba and Sasha Lezhnev, “Congo’s Conflict Gold Rush: Bringing gold into the legal trade in the Democratic Republic of Congo,” pp 15-17 (Washington: The Enough Project, April 2015), available at

<http://www.enoughproject.org/reports/congo%E2%80%99s-conflict-gold-rush>; Holly Dranginis, “Doing Good, while Doing Well: Is There a Win-Win Formula for Investing Responsibly in Congo’s Minerals Sector?” pp. 5, 7 (Washington: The Enough Project, July 2014), available at <http://www.enoughproject.org/reports/doing-good-while-doing-well>.

¹⁶ *Conflict Minerals Trade Act*, H.R.4128 111th Congress (2009-2010), section 5, “Sense of Congress on Assistance for Affected Communities and Sustainable Livelihoods,” available at <https://www.congress.gov/bill/111th-congress/house-bill/4128/text?q=%7B%22search%22%3A%5B%22conflict+minerals+trade+act%22%5D%7D>.

¹⁷ The Enough Project Team and the Grassroots Reconciliation Group, “A Comprehensive Approach to Congo’s Conflict Minerals”; John Prendergast and Sasha Lezhnev, “Opinion: Electronics companies and consumers can help stop Congolese bloodshed,” *San Jose Mercury News*, July 28, 2009, available at http://www.mercurynews.com/opinion/ci_12931613; Enough Project, “Conflict Minerals: A Broader Push for Reform is Essential,” available at <http://www.enoughproject.org/special-topics/conflict-minerals-broader-push-reform-essential>.

¹⁸ Panzi Foundation, “Statement from Dr. Denis Mukwege: EU Vote is a Victory for Human Rights,” May 20, 2015, available at <http://www.panzifoundation.org/news/dr-mukwege-statement-eu-conflict-minerals-vote>.

¹⁹ “Open Letter: Conflict Minerals: A Broader Push for Reform is Essential,” October 30, 2014, available at http://www.enoughproject.org/files/OpenLetterConflictMinerals_October_2014.pdf.