

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

June 2017

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 the 3Ts – tin, tantalum, and tungsten) are not the only sources of income to armed groups, but they are some of the most lucrative. The illegal exploitation of natural resources today is a manifestation of grand corruption linked to violence that has plagued Congo for the past 130 years.

- The U.N. Group of Experts on Congo found in 2016 that gold “provides the most significant financial benefit to armed groups”ⁱ and “is the most lucrative and easily smuggled of the natural resources in the eastern Democratic Republic of the Congo.”ⁱⁱ A study from the Enough Project found that armed groups made an estimated \$185 million from conflict minerals in 2008.ⁱⁱⁱ 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.”^{iv}
- A mortality study by the International Rescue Committee (IRC) 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.^v Violence and disenfranchisement as a result of armed conflict has continued, but no definitive study has produced updated mortality statistics since the IRC’s study.

THE LAW: Section 1502 on conflict minerals of the Dodd-Frank Wall Street Reform and Consumer Protection Act is a transparency measure, and 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. Dodd-Frank 1502 creates a lever to support transparency, security, and the rule of law in the region’s mining sectors. Companies must now publicly disclose annually whether any of the gold or 3Ts in their supply chains originated in Congo or one of its nine neighboring countries 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. Elm Sustainability Partners estimates the cost for U.S. businesses to comply with the Rule has been 74 to 85 percent less^{vi} than the original SEC estimate of \$3-4 billion for the first year.^{vii}

IMPACT: Consistent with its objective, Dodd-Frank 1502 along with related reforms have led to significant improvements in the transparency of corporate supply chains and to a major reduction in the number of conflict mines for the 3T minerals in eastern Congo. More than 70 percent of the world’s smelters and refiners 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.

- As of 2016, the International Peace Information Service (IPIS) found that over three-quarters (79 percent) of 3T miners surveyed in eastern Congo were working in mines where no armed group involvement has been reported.^{viii} This is a significant change given that the U.N. Group of Experts stated in 2010 that “in the Kivu provinces, almost every mining deposit is controlled by a military group.”^{ix} IPIS is currently updating this study.
- As of June 12, 2017, 77 percent of smelters/refiners worldwide (249 out of 323 total) for the four conflict minerals have passed independent, third-party audits by the Conflict-Free Smelter Program, and an additional 19 smelters/refiners are participating in the program (i.e. are in the process of being audited) for a total of 268 participants (over 80 percent).^x
- 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.^{xi} As of April 2017, 420 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.^{xii}

- In surveyed locations as of June 2014, “minerals that do not go through conflict-free programs sell for 30 to 60 percent less” than minerals verified as conflict-free,^{xiii} 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. As often occurs in places where black markets are disrupted by reform, Congo’s 3T mining sector is being affected by the transition to a conflict-free economy, and many miners have experienced 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 livelihood programs and artisanal mining support. Project planning should involve community consultations and decision-making, and projects should encompass microfinance, programs to increase women’s accessibility to mining and other livelihoods, and transition projects for child miners. Projects should also include aid for the formalization of artisanal mining— including the creation of artisanal mining zones, validation of more conflict-free mines, capacity building for mining cooperatives, and support for improved health and safety implementation for miners.^{xiv}
- Section 5 of the original “Conflict Minerals Trade Act” (introduced on Nov. 11, 2009) included provisions for livelihood support.^{xv} 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.^{xvi}

STRONG CONGOLESE SUPPORT: Many Congolese communities and leaders—including Nobel Peace Prize nominee and Sakharov Prize winner Dr. Denis Mukwege, and over 100 other Congolese civil society groups and the Congolese Ministry of Mines—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.

- 111 Congolese civil society groups and the Congolese Ministry of Mines wrote to the SEC in 2017 saying that Dodd-Frank 1502 should not be suspended, repealed, or weakened because that would lead to increased violence and conflict minerals smuggling.^{xvii} For example, a coalition of 31 civil society groups from South Kivu wrote, “Dodd-Frank... led to a positive change: cut off from the illegal extraction of minerals, which was a major source of funding, armed groups are significantly less active. In the east of the DRC, around 8,500 children left armed groups between 2009 and 2015. ... The suspension of some high-level military officers in South Kivu due to their likely involvement in the illegal extraction of minerals. ... Any step to suspend Section 1502 would undoubtedly lead to conflict minerals infiltrating the supply chain with devastating effects. Namely, the reactivation of armed groups and the feeding of terrorist and mafia networks.”^{xviii}
- Dr. Denis Mukwege, in a New York Times opinion piece: “A conflict-free minerals industry would greatly benefit the people of Congo and contribute to ending the unspeakable violence they have endured for years. The legislative tools to help make this a reality are available to international policy makers, but they must be enacted and enforced. 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. If they are unwilling to do so, governments must compel them to action.”^{xix}(2015)
- Open letter from 41 civil society groups in North Kivu: “Thanks to the Dodd-Frank Act, Eastern DRC has to date more than 220 certified green mining sites, more than 300 mining police officers trained and deployed to secure mining sites, an independent audit mechanism, and a regional certification system. These advances undoubtedly contribute to reducing the rate of crime and human rights violations, including rape of women and exploitation of children in mining areas.”^{xx} (2017)

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- ⁱ U.N. Security Council, “Final report of the Group of Experts (2016),” S/2016/166, pg 2, May 23, 2016, available at http://www.un.org/ga/search/view_doc.asp?symbol=S/2016/466.
- ⁱⁱ U.N. Security Council, “Final report of the Group of Experts (2016),” S/2016/166, para. 115, May 23, 2016, available at http://www.un.org/ga/search/view_doc.asp?symbol=S/2016/466.
- ⁱⁱⁱ 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>.
- ^{iv} 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.
- ^v 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.
- ^{vi} Lawrence Heim, Elm Sustainability Partners, “RE: Comments on Reconsideration of Conflict Minerals Rule Implementation,” February 6, 2017 available at <https://www.sec.gov/comments/statement-013117/cll2-1565701-131655.pdf>.
- ^{vii} 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>.
- ^{viii} IPIS surveyed 2,026 mines. However, 64% of gold miners still work at conflict mines. “Analysis of the Interactive Map of artisanal mining areas in eastern DR Congo,” October 2016, available at <http://ipisresearch.be/publication/analysis-interactive-map-artisanal-mining-areas-eastern-dr-congo-2/>.
- ^{ix} 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.
- ^x Conflict-Free Sourcing Initiative, “Conflict-Free Smelter Program Indicators,” available at <http://www.conflictreesourcing.org/members/active-and-compliant-smelter-count/> (last accessed June 12, 2017).
- ^{xi} 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).
- ^{xii} 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 2017, available at http://enoughproject.org/wp-content/uploads/2017/06/Bulletin-ECQ-Mai_2017-FR.pdf.
- ^{xiii} 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>.
- ^{xiv} 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>.
- ^{xv} *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>.
- ^{xvi} 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>.
- ^{xvii} Enough Project, “11 Letters from Congolese Civil Society Groups in Support of the U.S. Conflict Minerals Law,” April 4, 2017, available at <https://enoughproject.org/blog/seven-letters-congolese-groups-support-us-conflict-minerals-law>
- ^{xviii} Letter by South Kivu Thematic Group working on Minerals and Natural Resources to the SEC, February 24, 2017, available at <https://www.sec.gov/comments/statement-013117/cll2-1597728-132417.pdf>
- ^{xix} “Tracing the Source of ‘Conflict Minerals,’” *New York Times*, April 22, 2015, available at: <https://www.nytimes.com/2015/04/23/opinion/tracing-the-source-of-conflict-minerals.html>.
- ^{xx} “Statement of Congolese Civil Society Organizations leading Natural Resources Cluster the American Administration’s initiative to suspend the Dodd Frank Act,” available at <https://www.sec.gov/comments/statement-013117/cll2-1587925-132140.pdf>.