

A PROGRESS REPORT ON CONFLICT MINERALS

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BEFORE THE

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GLOBAL HEALTH POLICY

OF THE

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A PROGRESS REPORT ON CONFLICT MINERALS

WEDNESDAY, APRIL 5, 2017

U.S. SENATE,
SUBCOMMITTEE ON AFRICA AND GLOBAL HEALTH POLICY,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:00 p.m., in room SD-419, Dirksen Senate Office Building, Hon. Jeff Flake, chairman of the subcommittee, presiding.

Present: Senators Flake [presiding], Young, Barrasso, Isakson, Paul, Booker, Coons, Udall, and Merkley.

OPENING STATEMENT OF HON. JEFF FLAKE, U.S. SENATOR FROM ARIZONA

Senator FLAKE. This hearing of the Senate Foreign Relations Subcommittee on Africa and Global Health will come to order.

Today, we are going to look at Section 1502 of Dodd-Frank, the so-called conflict minerals provision, which was signed into law in 2010.

For too long, armed militias in Eastern DRC have perpetrated unspeakable crimes against civilians in the absence of the rule of law. In an effort to deny these militias the revenues they collect from the mines in the area under their control, Congress included Section 1502 in Dodd-Frank.

This provision required firms that file with the Securities and Exchange Commission to perform due diligence on their mineral supply chain. The thought behind Section 1502 is that the public disclosure of the source of minerals used in products would create an awareness of how these minerals can be exploited and facilitate human rights abuses in the DRC. This awareness would motivate shareholders and investors to ensure the minerals used in their products would be conflict-free.

Section 1502 uses the SEC to achieve the foreign policy goal of preventing human rights abuses in the DRC, an approach that we will take a look at today. No hearings were held in the House or the Senate on Section 1502 prior to its inclusion in the conference report to Dodd-Frank.

I think we can all agree that putting an end to the continued horrific abuses of human life in the DRC is a worthy goal of pursuit. After 7 years, however, it is past time for the Foreign Relations Committee to examine how the conflict minerals rule has affected events on the ground in the DRC and whether or not it is achieving its goal.

There have been some positive results. Experts believe armed groups have become scarcer at the mine sites, as compared to before the law was written. The law has also created awareness on the part of consumers and investors around the world seeking to avoid indirectly supporting human rights crimes.

There have also been some drawbacks. Section 1502's mandate on the private sector has been costly, and the Eastern DRC continues to see incidents of violence and human rights abuses.

So this hearing is timely today. In late January, the acting chairman of the SEC indicated that his staff would reconsider whether the guidance on the implementing rule is "still appropriate" and whether any additional relief for SEC-listed companies is appropriate.

Before action is taken on the SEC regulation that seeks primarily to solve a foreign policy problem, it is important for this committee to examine precisely what the regulation's impact has been on the region. Equally important is to understand how this law intersects with other factors at play in the rest of the DRC, which continues to be plagued by conflict and violence.

In fact, we learned last week of the death of American Michael Sharp, a United Nations employee who coordinated the Group of Experts in the Congo. Mr. Sharp was kidnapped along with his colleagues in central DRC last March, and their bodies were discovered last week.

Mr. Sharp's death serves as a stark reminder that keeping armed militias from having access to lucrative mines is just but one small slice of the larger problem the DRC faces.

I look forward to hearing what our witnesses have to say about the conflict minerals laws and its impact in the Eastern DRC. And I appreciated the meetings we had in my office yesterday, and I appreciated looking at your testimony.

With that, we will turn to the ranking member, Mr. Booker.

**STATEMENT OF HON. CORY BOOKER,
U.S. SENATOR FROM NEW JERSEY**

Senator BOOKER. Chairman Flake, I just want to thank you. This is the first subcommittee hearing of this Congress. It is my first opportunity to be your ranking member. As somebody who considers you a friend and somebody I respect, I am grateful for this opportunity. I think that this committee could have a very consequential effect for the better on the continent of Africa, so I am grateful and really feel privileged to be here today.

Senator Durbin, my much senior Senator in terms of experience, wanted to be here today. He has been a leader on this issue, and he has some testimony he would like to present, and I would like to be able to introduce that for the record, if possible.

Senator FLAKE. Without objection.

[The information referred to above can be found in the "Additional Materials for the Record" section of this Hearing.]

Senator BOOKER. I want to thank the witnesses. I really got a lot out of reading your testimony. I know some time was spent with my staff as well.

It is extraordinary how much commitment you all have given to this issue, how much time, energy, and focus on an issue that

frankly needs more time, energy, and focus. So thank you for your leadership.

I understand that I am in the company of not only experts but, frankly, people who have insights that can be really valuable because we have seen many of the positive aspects of increased international attention to conflict minerals over the past several years, and we have seen a lot of very valuable public-private partnership work.

I think, Mr. Goss, you mentioned a lot of that in your testimony, which I think was really important.

So we know today that, according to the Enough Project, 166 out of 193 assessed mines in eastern Congo are now conflict-free. That is something that we should be proud of. And 2016 showed a record high in legal mineral exports from the DRC. These are important benchmarks to recognize.

The North Kivu province, the most 3T mineral rich province in Congo, reported record high conflict-free numbers as well in minerals.

But only through a robust, consistent, multifaceted approach—I think more than one of the testimonies talked about having many tools in the toolbox—can we help, having lasting impact on the region.

We know that efforts to curtail illicit mining and mineral traffic must be paired with a package of aid, a package of reform efforts, focused not only on the mining industry but also at the government level. We know that we need high-level diplomatic engagement, especially on the part of the United States. The U.S. must lead.

So I know at a hearing before this committee back in 2009, witnesses emphasized that the root causes of the shockingly high levels of violence in the DRC and the Great Lakes Region was a deep-rooted conflict funded in part through this mineral extraction.

The U.N. Group of Experts documented that same year that FDLR exploitation of mineral mining in the Kivus continues to deliver millions of dollars to direct financing to FDLR coffers. And in 2010, a bipartisan group of Members in this chamber came together to discuss and debate and ultimately pass a provision that would require reporting on the source of conflict minerals.

Again, this is not a ban. It is reporting. It is about transparency.

At the same time, Senator Durbin in his remarks about transparency, this is what he said: You could say we were doing nothing, but at least then consumers would have some options on ensuring the electronics in their pockets were not contributing to violence.

We have made progress, but today we are facing a flashpoint in the DRC as it confronts its largest political and security challenge in years. It is something that should concern all of us. We have seen armed groups proliferate in central and Southeastern DRC, areas previously viewed as relatively stable, all while the threats to civilians in the east have not abated.

Recent history suggests that conflict in the DRC can and often does spill over its borders, drawing in other actors from the region and providing safe havens for foreign-origin militias.

Now is the time for more international attention to all the root causes of the conflict in DRC, not less. We need more action, more focus, more attention, more investment.

The conflict mineral provision was not intended in any way as a panacea for the threat to DRC stability. We can be doing more.

And I want to say that the urgencies are seen, as my chairman said, the urgency is when you see people like Michael Sharp dying—and, again, I do not want to single out his death because we know that there are thousands of innocent people who have died in this conflict over the years. We owe them a debt not only for their work, the kind of leadership that Mr. Sharp showed, but also to pick up the cause and ensure that heroic people like this do not die in vain. We cannot let their work stop. We have to carry on and move forward and ultimately vindicate them by bringing peace to a great country.

So I am again, Chairman, really excited about being here, grateful for your leadership for many years before I was even in the Senate, and I look forward to working with you as we go forward.

Senator FLAKE. Thank you. I can tell you I was very excited when I knew that you were joining the committee and, in particular, the Subcommittee on Africa. So I look forward to a long, productive relationship.

I am also glad to have Mr. Young, who just came to the Senate in January, join the subcommittee as well.

Do you want to say a couple things?

**STATEMENT OF HON. TODD YOUNG,
U.S. SENATOR FROM INDIANA**

Senator YOUNG. Thank you, Chairman, and thank you, Ranking Member, for convening this really important hearing. I have had an opportunity to review the opening remarks, and I will look forward to asking a question or two of our witnesses.

But thanks so much for being here. I mean, it is really important that we shine a bright light on some of the challenges you are facing in DRC, and we are here to try to be part of the solution.

I will be in and out over the course of this hearing, Mr. Chairman, but I look forward to engaging with your witnesses a bit later.

Senator FLAKE. Thank you.

Mr. Coons has joined us. Senator Coons, do you have anything to say?

**STATEMENT OF HON. CHRISTOPHER COONS,
U.S. SENATOR FROM DELAWARE**

Senator COONS. Simply that I am eager to hear from the witnesses about the impacts that conflict minerals continue to have in Eastern Congo and what the impact is on industry and how we can strike an appropriate balance, both to make sure that supply chains are also value chains and reflect the values of American consumers and American people, but that we also have rules of the road that allow for transparent and appropriate development opportunities.

And just my gratitude, Mr. Chairman and Ranking Member, for your long interest and leadership on all issues African.

Thank you.

Senator FLAKE. Thank you.

We will turn now to our witnesses.

Mr. Rick Goss joins us today from the Information Technology Industry Council, where he serves as senior vice president for environment and sustainability.

Mr. Mvemba Dizolele, a Congolese-American, is a foreign policy analyst whose work has been featured in numerous publications like the New York Times and Newsweek. He also lectures at Johns Hopkins University of Advanced International Studies.

Mr. Arvind Ganesan is the director of Human Rights Watch's Business and Human Rights Division, and his work has covered many countries, including Angola, Equatorial Guinea, Nigeria, and, of course, the DRC.

We ask that you keep your comments to around 5 minutes, and, obviously, your full comments will be submitted for the record.

With that, the committee recognizes Mr. Goss.

STATEMENT OF RICK GOSS, SENIOR VICE PRESIDENT, ENVIRONMENT AND SUSTAINABILITY, INFORMATION TECHNOLOGY INDUSTRY COUNCIL, WASHINGTON, DC

Mr. GOSS. Thank you, Chairman Flake, Ranking Member Booker, members of the subcommittee. Thank you for the opportunity to testify today regarding Central Africa and Section 1502 of the Dodd-Frank Act.

As the chairman said, my name is Rick Goss. I am the Senior Vice President of Environment and Sustainability at ITI, the global trade association representing the world's most innovative technology companies. ITI has been central to the conflict minerals dialogue for years, and I have led ITI's engagement on this priority since 2007.

The tech sector is committed to contributing to peace and stability in Central Africa, and we have proven this commitment by sourcing responsibly from the region. Our engagement has helped provide critical economic benefits to hundreds of thousands of people who depend upon mining activities for their livelihood.

As Congress considers replacing or modifying Section 1502, we urge you to ensure that the U.S. continues to drive diplomatic efforts in the region and to advance responsible sourcing initiatives. Should the U.S. fail to do so, Central Africa could experience additional volatility, and we could see the rise of inconsistent regulatory regimes.

Turning to the issues that the subcommittee asked us to address, Section 1502 has yielded mixed success in cutting off funding to armed groups and reducing violence in the region. While government, civil society, and the private sector have together realized some clear progress on responsible sourcing, this mixed outcome in the region is due in part to the continued smuggling of gold, ongoing interference by a spectrum of armed groups, and the ready availability of numerous other sources of illegal revenue.

While the DRC is increasing the responsible production of tin, tantalum, and tungsten, the 3Ts, this progress does not extend to gold. In a December 2016 report, the U.N. Group of Experts on the DRC stated that, "Gold exploitation and trade remain poorly regulated, and the mineral is by far the one most used to finance armed elements and criminal elements in the DRC."

In fact, criminal networks in the Congolese Army remain some of the chief offenders. These elements along with myriad non-state armed groups directly interfere in mining operations; set up illegal roadblocks; and levy unlawful taxes on local communities, miners, and minerals. They exploit products such as timber, charcoal, and cannabis; and engage in human trafficking, forced labor, slaughter of endangered species, and extortion.

Ultimately, even if Section 1502 has generated a measurable increase in transparency for 3T supply chains, armed actors have turned to gold and other lucrative and illicit methods.

The second issue, while Section 1502 has yielded some positive impacts, it has also generated unintended consequences. First, the provision contributed to the de facto embargo documented in the region beginning in 2010, causing significant hardships for countless vulnerable people living in what has been termed the survival economy. Second, Section 1502 has had an inordinate impact on small- and medium-sized enterprises here in the United States and elsewhere. And finally, by focusing almost exclusively on the role of the private sector, Section 1502 diverted critical attention away from the indispensable role of governments in addressing the crisis.

We have three recommendations to share today.

First, the U.S. should expand existing efforts to drive peace, security, and governance in Central Africa through increased support for political and diplomatic solutions and through development aid to help formalize the regional mining sector.

Second, the U.S. should maintain its leadership position to guard against unintended consequences. If our government stops driving responsible sourcing, the region may experience renewed or increased volatility. Moreover, other geographies will likely regulate U.S. companies, potentially disrupting existing private sector programs. The U.S. should further advance the uptake of the OECD due diligence guidance, the international model for responsible sourcing that already forms the backbone of Section 1502 compliance.

Our third recommendation is that the U.S. should consider removing ineffective requirements that result in burdensome and duplicative paperwork exercises, generate little benefit in Central Africa, or dissuade companies from investing in the region. Congress should seek to remedy the competitive disadvantages that Section 1502 creates between companies.

In conclusion, the geopolitical challenges facing Central Africa are so severe that only concerted actions by regional governments, coupled with ongoing support from the international community, can resolve them. The region continues to be beset by rampant conflict and corruption, and destabilized by chronic interference from neighboring countries. The underlying causes of this conflict are political, not economic, and are linked to entrenched ethnic hostilities and disputes over political power.

Tech will continue to actively engage and contribute to the solution, but governments must ultimately create the necessary conditions to allow private sector and civil society initiatives to thrive.

Thank you again for the invitation to testify today, and I would be pleased to answer any questions.

[The prepared statement of Mr. Goss follows:]

PREPARED STATEMENT OF RICK GOSS

INTRODUCTION

Chairman Flake, Ranking Member Booker, and members of the subcommittee—thank you for the opportunity to testify at today’s hearing regarding the Democratic Republic of the Congo, conflict minerals, and Section 1502 of the Wall Street Reform & Consumer Protection Act, commonly referred to as the “Dodd-Frank Act.”

My name is Rick Goss, and I am the Senior Vice President of Environment and Sustainability for the Information Technology Industry Council, or ITI. ITI is a global trade association representing nearly 60 of the world’s most innovative companies in the broad technology sector.

ITI has been centrally involved in the conflict minerals dialogue for years, and I have led ITI’s engagement on this priority since 2007. This includes representing the tech sector during congressional negotiations; meeting with Securities and Exchange Commission (SEC) commissioners and staff throughout the Section 1502 rulemaking process; testifying before the U.S. House of Representatives; and advising the European Union and other jurisdictions as they seek to develop their own conflict minerals regulations.

The tech sector is committed to contributing to peace and stability in the Congo, and our companies have made strong commitments to ethical sourcing throughout our supply chains. As Congress considers replacing or modifying section 1502, we urge you to ensure that the U.S. remains centrally engaged in driving diplomatic efforts in Central Africa and in supporting private sector initiatives to advance responsible sourcing. Should the U.S. fail to remain engaged, we could experience additional volatility on the ground in Central Africa, and inconsistent regulatory efforts arising in other jurisdictions.

Along with governments and civil society, ITI and our members share a commitment to the fundamental principles of peace and security for the Congo, and we are dedicated to being responsible actors within the context of comprehensive, government-led strategies for Central Africa. First, we are committed to ethical sourcing throughout our global supply chains. We do not want to conduct business, either directly or indirectly, with any supplier that supports, prolongs, or perpetuates armed conflict or human rights abuses. Second, we want to source responsibly from Central Africa to help provide critical economic benefits to the hundreds of thousands of people who depend on mining and mining-related activities as their sole source of livelihood. With these twin objectives in mind, our sector has made a conscious choice to remain engaged in the region.

With that depth of experience in mind, my testimony today will share our perspectives on three key points for lawmakers to consider:

- Expand existing diplomatic efforts to drive peace, security, and governance in Central Africa;
- Maintain U.S. leadership on sourcing transparency to support private sector progress in Central Africa and avoid unintended economic and political outcomes; and
- Consider removing the requirements of Section 1502 that have increased costs and burdens while failing to promote progress in the region.

In support of these outcomes, I would like to note three major themes:

First, ITI members recognize that the private sector has a defined role to play in helping drive transparency and responsible sourcing efforts throughout global supply chains, and we have embraced that responsibility through our public commitments and concrete actions. These include our role in developing the Conflict-Free Sourcing Initiative, our participation in the Public-Private Alliance for Responsible Minerals Trade, and our efforts in support of the Organization for Economic Co-operation and Development (OECD) Due Diligence Guidance.

Second, during congressional negotiations on this issue in 2009 and 2010, there was strong bipartisan support for the United States to take a more active role to confront the ongoing humanitarian crisis in Central Africa.

Third, the geo-political challenges in the Democratic Republic of the Congo (DRC) and throughout Central Africa are so severe, enduring and complex that only concerted actions by regional governments, coupled with ongoing support from the international community, will resolve them. Governments must take the lead to bring about peace, security, and governance reform and to create the necessary pre-conditions to allow private sector and civil society initiatives to thrive.

I will now turn to the three specific issues that the subcommittee has asked this panel of witnesses invited to testify to address:

Section 1502 of the Dodd-Frank Act has had mixed success in cutting off funding to armed groups in the DRC and reducing violence in the region. The eastern DRC is plagued with countless militias, local criminal groups, and corrupt military and government officials, all of whom prey on vulnerable civilian populations. While Section 1502 has clearly helped deprive armed groups in Central Africa from exploiting certain illicit sources of funding, its ultimate record of reducing overall illicit income flowing to these actors is notoriously difficult to determine. This challenge is in part due to continued smuggling of gold; the ongoing presence at mines of non-state militias, corrupt government officials, and criminal networks within the Congolese Army (the Armed Forces of the Democratic Republic of Congo—FARDC); and, the ready availability of numerous other sources of illegal revenue.

Following a rapid decline in 2010, artisanal mining jobs have been returning to the region, and the DRC is recording increased production and export of tin, tantalum and tungsten—the so-called “3Ts”—from validated mines.

Numerous governments and credible independent observers report recent positive trends on breaking the links between armed groups and mining for 3T minerals. These officials note a significant reduction in the presence of armed groups—including Congolese armed forces—at 3T mining sites, largely due to increased transparency, monitoring, and control measures. Importantly, the DRC government has increased its involvement by imposing greater controls, taxes, legal enforcement, and oversight. According to the OECD, non-traceable exports of 3T trade at a discount of almost 30% compared to traceable materials.

Increasing governance over 3T mines is partially attributable to the effects of Section 1502. To be clear, this progress is not tied to the paperwork and reporting requirements of the provision, but to the commitment of leading companies—in coordination with governments and civil society—to implement programs and systems that enable responsible sourcing from the impacted region. Altogether, more than 40 smelters now source from the region via validated programs. Responsible in-region sourcing programs still only generate modest global volumes of 3T, but overall conditions are improving.

Unfortunately, this progress on 3T minerals does not extend to gold. Given its high value concentrated in low volumes, gold remains subject to rampant smuggling and chronic interference from armed groups. In fact, dominion over gold mining and trading has become the preferred source of illicit income for armed groups across the spectrum. In a December 2016 report, the United Nations Group of Experts reported that, “gold exploitation and trade remain poorly regulated, and the mineral is by far the one most often used to finance armed elements and criminal networks in the Democratic Republic of the Congo.”¹

In conjunction with the OECD, and with support from the DRC government, the International Peace Information Service (IPIS) is conducting a multi-year study of security conditions at over 1,100 mining sites in the eastern DRC.² IPIS estimates that up to 80% of artisanal miners in the troubled eastern provinces work in the gold sector and adds that, while only 21% of artisanal miners of 3T minerals work under the influence of armed actors, that number jumps to 64% for gold. In 2016, the U.N. Group of Experts also reported that, “Foreign armed groups from Burundi, Rwanda and Uganda continued to operate in eastern Democratic Republic of the Congo.” The United Nations identified these same countries as being routes for non-certified gold smuggled out of the DRC and into global markets.³

Some of the worst and most chronic offenders include criminal networks within the FARDC. In fact, FARDC units and other non-state armed groups alike have become more sophisticated in raising revenue from miners and mine sites. In addition to interfering directly in mining operations, they often set up illegal road blocks and levy unlawful taxes on mineral shipments. They extract recurring payments from miners and mine owners, or impose monopolies over basic consumer goods in and around mine sites. Through these and other tactics, they nonetheless raise revenues from mines that are deemed “green” sites.

Meanwhile, control over mining and minerals distribution is only one of many sources of illicit income for militias, roving criminal groups and corrupt officials. These elements exploit other sources of income, through the sale of products such as timber, charcoal, cannabis and wildlife parts, and through practices such as human trafficking, forced labor and extortion. Illicit actors routinely raid villages, run black markets for goods, and operate protection schemes. Armed groups have also established operations in the national parks and wildlife preserves, where they profit from illegal charcoal production and the rampant slaughter of threatened and endangered animals.

Overall, Section 1502 has generated real progress in bringing increased transparency to 3T mines and supply chains in the region, and in raising global awareness across the public and private sectors. These advances are fragile and need to

be encouraged. However, as controls have increased on 3T minerals, militias, corrupt officials, and criminal networks have increasingly turned to gold and other lucrative methods to generate illicit income.

Section 1502 has generated unintended consequences that have detracted from the provision's effectiveness. While Section 1502 has yielded some positive impacts—many of which we noted in our 2013 House testimony⁴—it has also caused some negative unintended consequences. First, along with the 2010 mining ban instituted by the DRC government, the Dodd-Frank Act provision contributed to the de facto embargo that governments and independent observers documented in the region beginning in 2010. In brief, many companies abandoned the region to avoid the onerous and potentially severe legal, financial, and reputational risks associated with Section 1502. This caused significant hardship for hundreds of thousands of people who rely on artisanal mining for their sole subsistence in what has been termed the “survival economy”.

Second, Section 1502 has had an inordinate impact on small- and medium-sized enterprises here in the United States and elsewhere. While many of these businesses are not themselves obligated to report to the SEC, they are indirectly subject to the requirements if they are present in the supply chain of a regulated company or companies.

Finally, Section 1502, by focusing almost exclusively on the role of the private sector, has diverted critical attention away from the indispensable role of governments in addressing the endemic political, security, and humanitarian crises in the region. Private sector initiatives alone cannot succeed in a region beset by rampant conflict and corruption, and destabilized by chronic interference and intrusions from neighboring countries. The underlying causes of this regional conflict are political, not economic, and are linked to entrenched ethnic enmities and disputes over political power, land rights, and citizenship. While control over natural resources is in part responsible for fueling violence in eastern Congo, it is striking to note that adjacent areas that are equally rich in resources are not plagued by conflict.

Recommendations to maintain sourcing transparency, promote peace and security in Central Africa, and improve Section 1502 deficiencies. We have several specific recommendations to share, although not all of them are necessarily within the Security and Exchange Commission’s purview to implement absent statutory changes.

Overall, ITI and our members urge Congress to consider ways to overcome the deterrent effects of Section 1502 and provide incentives to companies that responsibly source from Central Africa. These efforts could include lowering the regulatory burden and providing public recognition to those companies that source through approved, in-region programs. The United States and other governments can also support in-region transparency and governance initiatives, place collective pressure on foreign smelters to participate in audit programs, and increase sanctions on those groups and individuals that continue to trade in illicit resources.

Our specific recommendations are as follows:

Expand existing diplomatic efforts to drive peace, security, and governance in Central Africa.

Intensify U.S. Diplomatic Efforts. The United States should increase its support for political and diplomatic solutions that advance regional security, including security sector reform for the Congolese military and police forces, and efforts to protect civilian populations. This could include targeted sanctions, as well as continued support for the United Nations Stabilization Mission in the DRC, for the Public-Private Alliance for Responsible Minerals Trade, and for related regional governance and transparency initiatives.

Provide Targeted Development Aid. The biggest advances in responsibly sourcing in the region have come from bringing the mining sector—including artisanal miners—into a more formalized process. The mining sector in the DRC desperately needs infrastructure development in the form of roads and electricity, and access to basic financial and banking resources for legitimate operators.

Maintain U.S. leadership on sourcing transparency to support continued progress in Central Africa and avoid unintended outcomes.

Maintain U.S. Leadership. By enacting Section 1502, the United States set the stage for global conflict minerals approaches. U.S. action sends a strong signal to global markets about the need to break the link between armed groups and natural resources, and the European Union and other jurisdictions have acted to complement the U.S. approach. Should the federal government cease its engagement altogether, we may collectively suffer two major unintended consequences:

First, we may lose the tenuous progress we have achieved in the region through collective industry pressure on global supply chains. While many tech companies

have publicly committed to continuing their due diligence efforts regardless of the fate of Section 1502, our influence will become significantly diluted should other sectors not remain at the table. This is especially true given that our sector is only a minor consumer of gold—the primary source of illicit mineral income in the region. Moreover, should the demand for conflict free minerals diminish, we could see detrimental impacts on the roughly 1,000 3T mines that are validated as responsible, potentially increasing regional volatility and armed group activity.

Late last month, here in Washington, I had the pleasure of meeting a government delegation from the Democratic Republic of the Congo, including the Congolese Ambassador to the United States and representatives from the Ministry of Mines. The DRC government reiterated its strong support for the proper application of the OECD Due Diligence Guidance in the region, and raised concerns that a contraction of U.S. engagement on natural resources could have several unwelcome consequences. The DRC delegation identified these potential consequences to include:

- Escalating in the activities of non-state armed groups;
- Weakening policies to promote good business practices around the responsible supply of minerals in the DRC and throughout the region; and,
- Discouraging regional governments from implementing the tools to combat the illegal exploitation of resources.

Second, other geographies will almost certainly impose regulations on U.S. companies, causing a potential disruption in programs and systems due to inconsistent or conflicting requirements. ITI represents global companies, and the importance of private sector due diligence related to conflict minerals will not recede if Section 1502 is stayed or repealed.

Advance the OECD Due Diligence Guidance. The OECD Due Diligence Guidance forms the backbone of Section 1502 compliance. It has also become the international norm as the European Union, the International Conference on the Great Lakes Region, and China now reference it. Where the U.S. approach is prescriptive, top-down and outcome-based, the OECD Guidance is process-based and risk-based, and assigns roles and responsibilities based on each actor's relative position within the supply chain.

Consider removing the requirements of Section 1502 that have increased costs and burdens while failing to promote progress in the region.

Remove the Provisions that Discourage Legitimate Businesses from Sourcing from the Region. Certain requirements of Section 1502 dissuade companies from remaining economically engaged in the region. While some of these obligations have been partially set aside by the recent federal court ruling, the most punitive provisions include the independent private sector audit, the preparation and formal submittal of the Conflict Minerals Report to the SEC, and the need to characterize products. These obligations result in costly paperwork and duplicative due diligence exercises that generate little or no benefit in the impacted region.

Move Any Requirements from Securities Law. Section 1502 creates competitive disadvantages between publicly-traded and privately-held companies, and between U.S. and foreign companies. Any federal efforts on conflict minerals should apply evenly to avoid these competitive disruptions.

CONCLUSION

While imperfect, Section 1502 has brought concerted industry pressure on global supply chains to responsibly source these minerals, and has helped bring desperately needed international attention to the ongoing conflict in Central Africa. Our member tech companies have established a strong record of dedication and achievement in driving transparency throughout our global supply chains to meet our public commitments even in the absence of legal requirements. Ultimately, though, our sector's commitment to sustainability and corporate social responsibility alone cannot bring peace and security to the Congo, and in the absence of concerted government and civil society engagement, the status quo will reign in Central Africa.

Thank you again for the invitation to testify today. I would be pleased to answer any questions.

Notes

¹ See "Letter dated 23 December 2016 from the Group of Experts on the Democratic Republic of the Congo addressed to the President of the Security Council," December 2016, available at <http://www.undocs.org/S/2016/1102>

²See OECD “Mineral Supply Chains and Conflict Links in Eastern Democratic Republic of Congo: Five Years of Implementing Supply Chain Due Diligence,” 2015, available at <http://mneguidelines.oecd.org/Mineral-Supply-Chains-DRC-Due-Diligence-Report.pdf>

³See “Letter dated 23 May 2016 from the Group of Experts on the Democratic Republic of the Congo addressed to the President of the Security Council,” May 2016, available at: <http://www.undocs.org/S/2016/466>

⁴<http://financialservices.house.gov/uploadedfiles/hhrg-113-ba19-wstate-rgoss-20130521.pdf>

Senator FLAKE. Thank you.
Mr. Dizolele.

**STATEMENT OF MVEMBA DIZOLELE, LECTURER, SCHOOL OF
ADVANCED INTERNATIONAL STUDIES, JOHNS HOPKINS UNI-
VERSITY, WASHINGTON, DC**

Mr. DIZOLELE. Chairman Flake, Ranking Member Booker, and Senator Coons, it is a pleasure to be here again. Thank you for the invitation to testify before you.

Mr. Chairman, the views that I express today are mine and mine alone, and I wish to submit them for the record.

The last time I testified before you 4 years ago, Congo was grappling with the M23 rebellion. The insurgents had seized parts of North Kivu, laid siege on the provincial capital city of Goma, and displaced thousands of civilians before withdrawing into neighboring Uganda and Rwanda.

Today, 7 years since the Dodd-Frank Act became law, we have a clear horizon now over which to analyze the impact of Section 1502. So here are the five things that I think worked, the merits of the law.

Number one is the level of awareness that Dodd-Frank 1502 brought to bear. Now we know that American consumers demand that suppliers mind the supply chain, and this is unprecedented and needs to be commended.

Number two, the law had immediate psychological effects on the Congolese authorities; business operators; regional, political, and economic actors; as well as businesses, international firms. Even President Kabila sought to preempt the effect of the law by suspending mining once that law was coming through the pipeline.

Number three, the law attempted to clean the mineral supply chain to curtail illicit and illegal mining exploitation and trade, and eradicate the scourge of conflict minerals.

Number four, and this is very important, the law contributed to Congo’s acceleration of the delimitation and re-situation of mining sites, inquiries, and the training of mining police, as well as capacity-building for mining agents and inspectors. And also, this spurred dialogue among the various parties concerned in this line of business.

Number five, armed groups found it difficult to export minerals and raise revenues from mines in areas that they control.

What did not work? Here are the seven things that I think did not work.

From its inception, 1502 cast a negative shadow on otherwise legal and legitimate businesses and immediately led to a de facto boycott of products from the region.

The boycott then led to closures of comptoirs, which are trading posts.

And the other problem, number three, is that the trade itself, the mineral trade, was analyzed as a standalone process, divorced from

everything else that was happening, be it local politics, national, and regional.

And also, in many ways, it was represented as a silver bullet to a much more complex problem.

The implementation of Section 1502 led to increased unemployment, loss of revenue for artisanal miners, and increased fraud.

Number five, increased unemployment has caused a recrudescence of banditry, including kidnappings for ransom.

And then, number six, the law did not account for other sources of revenue that militias have. They racketeer. They tax everything that is happening in the area that they control. And so it did not really cut their resources.

Number seven, which I think is actually equally troubling, is that Rwanda has taken advantage of 1502 to launder and certify Congolese resources and has emerged as the world's largest exporter of coltan, when, in fact, they do not have significant resources of this. This can be linked directly to 1502.

So what are the unintended consequences here? I think captains of high-technology industry and policymakers in the U.S. and Europe invested a disproportionate amount of energy and capital to solve the mineral trade problem at the expense of the larger governance crisis that is the source, actually, of instability and conflict in Congo.

So when we think about where Congo is today, we realize that Congo is much closer to a bigger—it is at the highest volatile level it has been at in 20 years, so we have sources of conflict all over the country, having migrated from the east to the south to the center and to central Congo. So we have groups like Bundu dia Mayala that are regularly massacred by the forces. You have violence in Butembo, in Erengeti, in Beni, where people get killed every night in their sleep by death squads that neither MONUSCO nor the FRDC have been able to preempt. Now we are facing a situation where President Kabila does not want to go and wants to stay.

So when the Congolese take up arms or take to the streets for civil disobedience, the reasons remain the same. It is bad governance.

So what should we do then? I think this legislation could have worked better if it was part of a larger, comprehensive process. As Dodd-Frank stands today, like I said, it allows to launder, legalize, and certify the looting of Congolese resources, which is a net loss for the Congolese, and that cannot continue.

The U.S. should pursue what Ambassador Nikki Haley has started at the U.N. Security Council and ask for greater transparency and accountability for MONUSCO in delivering what they said they would deliver to Congo and also asking them to present an exit plan over the next 5 years, so they actually can allow Congo to start building its own state and its own military.

So far, they are serving as an extension to the Kabila regime, and also as a broken crutch to the Kabila regime. As long as MONUSCO is there indefinitely, Congo will never get on its feet.

The last point I would like to recommend is that the U.S. continue to exert pressure on the Kabila regime to open up the political space to protect the citizens' rights and liberties, respect the

Constitution, and engage in a credible political process that will culminate in the election this year or early next year to bring a new President.

Thank you.

[The prepared statement of Mr. Dizolele follows:]

PREPARED STATEMENT OF MVEMBA PHEZO DIZOLELE

Chairman Flake, Ranking Member Booker and Distinguished Members of the Subcommittee on Africa and Global Health Policy:

Thank you for the invitation and honor to testify before your subcommittee. I appreciate your continued interest in developments in the Democratic Republic of Congo (DRC) and your support for the Congolese people.

Mr. Chairman, the views expressed in this statement are mine, and mine alone. With your permission, sir, I would like to submit my written statement into the record.

The last time I testified before your subcommittee 4 years ago, Congo had been grappling with the M23 rebellion. The insurgents had seized parts of North Kivu, laid siege on the provincial capital city of Goma, and displaced thousands of civilians before withdrawing into neighboring Uganda and Rwanda.

That crisis reflected yet another escalation of the protracted violence that has come to define Congo. The rebels exploited the Kabila regime's unwillingness to raise an adequate professional army to defend the country's territorial integrity and protect the Congolese. The M23 also exposed the limitations of the United Nations peacekeeping mission, which has been reticent to apply its Chapter VII mandate and use force to protect civilians. Troop contributing countries lack the required political will and adequate personnel level and equipment to carry out their mission.

The United Nations Security Council is notorious for its schizophrenic Congo policy, which consistently places the interests of the Kabila regime above the aspirations and rights of the Congolese people.

It is this regime of suffering, violence and unbridled looting of natural resources that inspired Section 1502 of the Dodd-Frank Act. Proponents of 1502 sought to bring peace to Congo's eastern provinces of North and South Kivu by regulating mineral trade through United States law, cleaning up the supply chain and reducing armed groups' access to financial means. The regulation would de facto curb the violence and human rights abuses, they claimed.

Today, nearly 7 years since the Act became law, there is a clear horizon over which we can analyze the impact of Section 1502.

WHAT ARE THE MERITS OF THIS LAW?

1. Section 1502 supporters mobilized media and social networks in an unprecedented manner to raise American consumers' awareness of the links between the conflict in Congo and their electronics. By and large, consumers now expect technology firms to mind the supply chain.

2. The law had an immediate psychological effect on Congolese authorities and business operators, regional political and economic actors, and international firms. For instance, Congo's President Joseph Kabila sought to pre-empt the impact of the law before it went into effect and temporarily suspended mineral exploitation in the Kivus.

3. The law attempted to clean the mineral supply chain to curtail the illicit and illegal mineral exploitation and trade, and eradicate the scourge of conflict minerals, so to speak.

4. The law also contributed to Congo's acceleration of the delimitation and registration of mining sites and quarries; the training of the mine police; increased capacity-building for mining agents and inspectors. These initiatives encouraged consultations between concerned parties.

5. Armed groups found it difficult to export minerals and raise revenue from mines in areas they controlled.

WHERE DID THE LAW FAIL?

1. From its inception, Section 1502 cast a negative shadow on otherwise legal and legitimate businesses and immediately led to a de facto boycott of mining products from Congo's eastern provinces.

2. The boycott caused closures of trading posts, known locally as comptoirs.

3. This law treated the mineral trade as a stand-alone process, divorced from local, national and regional politics, and its proponents presented the regulation as a silver bullet to a much more complex problem.

4. The implementation of Section of 1502 led to increased unemployment, loss of revenue for artisanal miners, and increased fraud. Artisanal mining has sustained hundreds of thousands of families since the collapse of the agriculture sector in the Kivus in the early 1980's and the collapse of state-owned mining giant Gécamines in the former Katanga Province.

5. The increased unemployment has caused a recrudescence of banditry, including kidnappings for ransom.

6. The law did not account for other sources of revenue at the disposal of armed groups, i.e., taxation of commercial activities and racketeering in the areas they controlled.

7. With a better organized state administrative infrastructure, Rwanda has taken advantage of Section 1502 to launder and certify mineral resources from the illicit and illegal trade in Congo and export them as Rwandan products. Despite insignificant mineral deposits, Rwanda has become the world's largest exporter of coltan. In other words, Section 1502 legalized the looting of Congolese mineral resources.

UNINTENDED CONSEQUENCES

Focused on the so-called conflict minerals in the Kivus and their certification, Section 1502 provided a false sense of progress on the security front. Captains of the high technology industry and policymakers in the United States and Europe invested disproportionate amount of energy and political capital to solve the mineral trade problem at the expense of the larger governance crisis that fuels insecurity and instability in DRC.

In the 7 years that the Dodd-Frank Act has regulated this mineral trade, Congo is no closer to peace than it was in 2010. On the contrary, the situation is arguably at its most explosive level in two decades, as violence has spread both geographically from the east to the south and the west, and intensified in scale.

The heightened volatility stems from President Joseph Kabila's determination to subvert the Constitution and stay in office beyond his second and last 5-year term, which ended in December of 2016. Efforts by the international community and the Catholic Church to broker an interim power-sharing agreement have failed. President Kabila has remained silent throughout this process, sustaining the impasse.

The Congolese people now view Joseph Kabila and his government as extra-constitutional, illegal and illegitimate. Within this volatile context, they fear a resurgence of the wider conflict that engulfed DRC from 1996 to 2003 and caused an excess of 6 million deaths.

Beyond the mobilization of armed militias in the eastern Kivus, the years 2015 and 2016 were particularly violent as new centers of instability emerged in other parts of Congo, including western Kongo Central, southern Tanganyika and southern Kasai Central.

In Kongo Central, Bundu dia Mayala partisans have regularly met violent death by gunfire from security forces. In North Kivu, residents of Butembo, Beni, Erengeti and other localities, are massacred on a daily basis in their sleep by elusive death squads that the U.N. peacekeepers and the Congolese Army have failed to either apprehend or vanquish.

The populations of Kasai Central have witnessed never-before-seen violence reminiscent of ISIS. Beheading is now a common practice in a region that had not experienced armed conflict since the 1960's. It is uncertain at this point as to whom—the Congolese Army or the militia—is most to blame for this violence. The conflict resulted from the Government's mismanagement of a royal succession dispute in the Bajila-Kasanga's Kamwina Nsapu chieftaincy.

Michael Sharp, the American who coordinated the United Nations Group of Experts in Congo, was killed in this conflict along with colleagues.

Whether the Congolese embrace civil disobedience or armed struggle, their grievances are rooted in blatant violation of democratic principles by the Kabila regime, bad governance, mismanagement of resources, and incompetence. This popular discontent has nothing to do with minerals.

Over the past 2 years, pro-democracy protests brought thousands of young people and political opposition partisans to the streets in several cities to demand the respect of the Constitution and better governance. The ensuing police and military repression in the capital city of Kinshasa resulted in tens of youths being either killed by gunfire or arrested.

Political opposition leaders, civil society leaders, youth activists and other proponents of the respect of the Constitution remain the primary targets of this campaign of repression.

President Kabila and his supporters' intransigence to remain in power no matter the cost will continue to fuel tensions and exacerbate violence.

Due to its myopic approach, Section 1502 misdiagnosed the mineral trade as the root of the conflict, not as a symptom, and offered inadequate prescriptions and no reprieve from the aforementioned incidents.

Proponents of the law ignored the multidimensional nature of conflict and failed to adjust their narrative as it became clear to independent analysts that Section 1502 would not and could not bring peace.

WHAT SHOULD BE DONE?

1. This legislation might have worked better had it been part of a comprehensive political process. As it now stands, Dodd-Frank Section 1502 launders, legalizes and certifies the looting of Congolese resources—a net loss for DRC. This law should be folded and discontinued.

2. The United States should pursue what Ambassador Nikki Haley has started at the United Nations Security Council, demand greater accountability of the U.N. peacekeeping mission along with a credible exit plan to be implemented over the next 5 years. MONUSCO has long been part of the problem, serving as an extension of and a broken crutch to the Kabila regime, and stifling the emergence of a functional state and an adequate professional army in Congo.

3. The United States should continue to exert pressure on the Kabila regime to open the political space, protect citizens' rights and liberties, respect the Constitution, and engage in a credible political process that will culminate in the election of a new president.

I thank you.

Senator FLAKE. Thank you.

Mr. Ganesan.

STATEMENT OF ARVIND GANESAN, DIRECTOR, BUSINESS AND HUMAN RIGHTS, HUMAN RIGHTS WATCH, WASHINGTON, DC

Mr. GANESAN. Thank you, Mr. Chairman, Ranking Member Booker, and members of the subcommittee. Thank you again for the opportunity to testify today on Section 1502.

Since 2005, we at Human Rights Watch have documented the pernicious effect that the trade in gold has had on civilians in Eastern Congo. Armed groups, foreign-backed rebels, and, at times, the Congolese Army have killed, raped, pillaged, and forcefully conscripted child soldiers as they tried to control the lucrative gold trade. That was why Human Rights Watch supported 1502 as an important tool to help stop the flow of mineral funds to abusive armed groups.

This hearing comes at a critical time for the Congo. Over the past 2 years, government officials and security forces carried out a brutal campaign of repression against those opposed to President Kabila's efforts to stay in office after his two terms expired last year. New elections are supposed to be held at the end of this year, but the deal is stalled, and violence between militia groups and Congolese security forces have escalated, along with alarming increases in human rights abuses.

Just last month, as you noted earlier, two members of the U.N. Group of Experts, Michael Sharp, an American, and Zahida Catalán, a Swede, were killed while investigating large-scale human rights abuses. It remains unclear who was responsible, but it is important to note that the Group of Experts has been instrumental in exposing the links between natural resources and the conflict.

Without 1502, an already explosive situation in Congo could get worse. Abusive armed groups, factions of the security forces, and other opaque mafia-like networks allegedly linked to government officials, could return to the mines in Eastern Congo. This could further destabilize this volatile region, which is clearly not in the U.S. interests. That might also lead to efforts to look at alternatives like targeted sanctions, like what happened in Burma several years ago.

In mid-March, Bloomberg News reported that the Congolese Minister of Mines wrote the Securities and Exchange Commission warning that eliminating 1502 would lead to “escalation in the activities of non-state armed groups.”

And just last month, my colleagues were in Eastern Congo and met with miners and former child soldiers from the NDC-R, an abusive and violent group working there. They told us how NDC-R is taxing the gold trade at dozens of mining sites, making over \$20,000 a month and allegedly trading gold for weapons.

These problems could actually become more severe if the administration cuts support for U.N. peacekeeping in Congo and makes further cuts to foreign assistance. That would perversely make it easier for abusive armed groups to make money from conflict minerals while simultaneously reducing funds to entities meant to curtail them.

While imperfect, 1502 is having an impact. Since 2012, mining at the Kalimbi tin mine in South Kivu, for example, has had a traceability scheme so that production of tin benefits local workers and not abusive armed groups or corrupt officials.

Stopping 1502 would also hurt responsible U.S. companies such as Apple, Intel, and Tiffany, and it would create a race to the bottom. They and others would be placed at a competitive disadvantage against other companies that operate opaquely in a way that could fund armed groups. And these companies, along with Warren Buffett’s Richline Group, have publicly expressed support for the law.

Instead of abandoning the law, what the U.S. should do is do what it has successfully done over decades, which is be the first country to enact a law ensuring that companies act responsibly and then work diligently to make sure others do the same. That is what the U.S. did in 1977 with the Foreign Corrupt Practices Act. And this is starting to happen with 1502 since just last month the European Parliament passed its own rules on conflict minerals.

On the ground, there are currently more than 200 conflict-free smelters and key parts of Congolese civil society support it, including, recently, the president of the DRC Catholic Bishops Conference as well.

But we cannot deny the law has had problems. Between 2010 and before final rules were implemented in 2012, the uncertainty, misinformation, and other factors led to a de facto boycott by companies of the sector, and they avoided sourcing from Congo. There is also evidence that mineral-related violence during that time did not subside.

However, those problems are not solely due to 1502. For example, the Kabila government did order a 6-month halt to mining in the Kivus in 2010.

And today, companies are still slow to comply with the law, and the trade in gold, as others have mentioned, is harder to control.

We support constructive proposals to ensure 1502 is more efficient and effective. But in fairness, we have not heard those types of specific proposals from leading industry critics of the law.

There are also indications the costs of 1502 are decreasing. So, for example, ELM Sustainability Partners found the actual cost of implementation for industry are 15 percent to 26 percent of what the SEC originally estimated. And as others noted, there are record highs in Eastern Congo for the export of conflict-free tin and tantalum in 2016.

In general, we think at Human Rights Watch the cost of capital should be lower for responsible companies, and we would support proposals to advantage 1502-compliant companies in government procurement. And while we are not experts on tax, we think that Congress and others should examine using tax credits or other comparable incentives to help support 1502 implementation.

We would also like to see broader growth of the conflict-free economy in the Congo, perhaps through institutions like the World Bank or other institutions.

The situation in Congo is complex. But without 1502, instability in Congo would grow, responsible companies would suffer, and armed groups would be emboldened. That would be a very, very unfortunate outcome.

Thank you, and I look forward to your questions.

[The prepared statement of Mr. Ganesan follows:]

PREPARED STATEMENT OF ARVIND GANESAN

Chairman Flake, Ranking Member Booker and other members of the subcommittee, thank you very much for the opportunity to testify today on Dodd-Frank Section 1502 and its impact on addressing the trade in "Conflict Minerals." Human Rights Watch has documented abuses in the Democratic Republic of Congo since the fall of Mobutu Sese Seko and throughout the country's vicious civil war and the violence and abuses that continue.

Since 2005, we have documented the pernicious effect that the trade in gold has had on civilians in eastern Congo. Numerous armed groups, foreign-backed rebels, and at times the Congolese army have killed, raped, pillaged, and forcibly conscripted child soldiers as they sought to gain or maintain control of lucrative gold mines, which in turn helped finance their abusive movements. We've also documented how a major mining company paid a rebel group to explore for gold in its concession area in 2005.

It is for these reasons that Human Rights Watch supported and continues to support Dodd-Frank 1502. We never saw it as a panacea to stop the abuses or violence in Congo completely. Rather, we saw it as an important tool to help address a specific goal: stopping the flow of funds to abusive armed groups who were exploiting Congo's lucrative mining resources through increased transparency and accountability.

Today, we are here because Dodd-Frank 1502 may be suspended or even revoked. We know legislation can sometimes be a blunt tool and that it can have unintended consequences. With that in mind, we welcome a discussion on how Section 1502 can fulfill its objectives more efficiently; however, we strongly believe that its suspension or revocation would be damaging for security, human rights, and for responsible companies. To be crystal clear: if the president suspends the law or if Congress revokes it, we believe that the repercussions would be very serious.

This hearing comes at a critical time in Congo. Over the past 2 years, government officials and security forces have carried out a brutal campaign of repression against those opposed to President Joseph Kabila's efforts to stay in power beyond the December 19, 2016 end of his constitutionally mandated two-term limit. Scores of peaceful protesters have been killed, pro-democracy activists and opposition leaders have been imprisoned, and media outlets have been shuttered. After significant pressure from the international community—including targeted U.S. sanctions

against top officials and other strong measures backed by this Congress—President Kabila made some important concessions in an end-of-the year deal mediated by the Catholic Church.

This agreement calls for presidential elections to be held by the end of this year and says clearly that there will be no changes to the constitution or a referendum to allow Kabila to run for a third term. Yet implementation of the deal has stalled, as violence between militia groups and the Congolese security forces have escalated in many parts of the country, along with an alarming increase in human rights violations. Some of these situations are directly linked to Kabila staying in power beyond the end of his constitutional mandate. Kabila has agreed to hold elections and step down from power, and the prospects for stability likely hinge on whether he abides by that commitment. Continued U.S. engagement and strong pressure on Kabila to do so is critical.

Last month, two members of the U.N. Group of Experts on Congo, Michael Sharp, an American, and Zaida Catalán, from Sweden, were killed while investigating large-scale human rights abuses in Congo's central Kasai region. It remains unclear who was responsible for the murders. The Group of Experts has been instrumental over the years in exposing the links between the trade in natural resources, armed groups, sanctions-busting, and the violence in Congo.

In this context, suspending or eliminating Dodd-Frank 1502 would make an already explosive situation in Congo worse. Abusive armed groups, factions of the security forces, and other opaque mafia-like networks allegedly linked to government officials could then easily return to the lucrative mines in eastern Congo to finance their activities. This could lead to new security problems throughout the volatile region—where some of Congo's nine neighboring countries have illegally benefited from the country's vast mineral wealth. And it could also create direct security risks for the United States, which has a clear interest in promoting a more stable and peaceful central Africa region.

Suspending Dodd-Frank 1502 would also harm responsible American companies that have embraced the law and the principles that underpin it, including some of this country's most successful and well-known companies, such as Apple, Intel, and Tiffany. They and others would suddenly be placed at a competitive disadvantage against other companies that prefer to operate opaquely in a way that could fund armed groups. Eliminating the rule would punish responsible companies and reward irresponsible ones by creating a "race to the bottom," legalizing opaque sourcing of conflict minerals while disadvantaging companies that choose to keep their supply chains clean.

In the absence of 1502, it is possible that civil society groups could end up pressing for targeted sanctions on the Congolese minerals sector if it becomes clear that abusive armed groups are profiting from this trade. Such targeted sanctions are typically the approach the international community has taken in recent years to address similar problems. While understandable, this is a much more draconian approach than the transparency and auditing procedures 1502 require. These are serious consequences for Congo, for major U.S. companies, and for human rights.

SUSPENDING 1502 WILL MAKE IT EASIER TO FUND ARMED GROUPS SECRETLY

The fundamental purpose of Dodd-Frank 1502 is to keep money out of the hands of armed groups that trade in and profit from certain minerals. Human rights groups, responsible companies, and the U.S. government have shared this goal for many years. It is important not to lose this aspect of the law: it is a rare instance where key institutions in and out of government agree on what the problems is, want to stop it, and have managed to put a law in place to help do it. That is something Congress and the administration should support.

Without the law, it would be easier for abusive armed groups to fund themselves secretly, which could help to further destabilize parts of Congo. In mid-March, Bloomberg news reported that the Congolese Minister of Mines, Martin Kabwelulu, wrote the U.S. Securities and Exchange Commission, warning that eliminating 1502 would lead to an "escalation in the activities of non-state armed groups." The U.S. has sought for decades to help de-escalate these activities; removing a tool that can help do that undercuts longstanding U.S. foreign policy objectives.

This problem could be exacerbated by the administration's possible budget cuts for U.N. peacekeeping in Congo and by possible further cuts to other foreign assistance to Congo. The combination of suspending or eliminating 1502 while cutting support to peacekeeping and other foreign assistance could make it easier for abusive armed groups to make money from conflict minerals while simultaneously reducing funds to entities meant to curtail conflict and foster stability.

Considering Congress' longstanding interest in Congo, the fragile situation on the ground, and the billions of dollars the U.S. has spent on peacekeeping efforts in the country, this scenario would be extraordinarily counterproductive to U.S. geopolitical and security interests.

While imperfect, Dodd Frank has already had some tangible positive effects for the people of eastern Congo and those seeking greater transparency. Since 2012, mining at the Kalimbi tin mine in Nyabibwe, South Kivu, for example, has had a functional traceability scheme, which allows for the continuous production of tin that benefits the local workers, and not the abusive armed groups or corrupt army or government officials.

Global Witness reported that in 2012, the Congolese government suspended the operations of two Chinese companies because they failed to carry out proper due diligence and suspected they may be sourcing from armed groups. But it is troubling that the same year, Global Witness reported that two Congolese army officers were caught trying to smuggle more than 1,000 pounds of minerals, including coltan. The government refused to press charges, but the officer who stopped them and tried to stop the smuggling was suspended from his post. At present, however, we have some indications that Congolese government officials are starting to take actions to prevent mineral wealth from illegally profiting armed groups or army officers.

It is also important to remember the types of groups that could be emboldened and enriched without the transparency and systems Dodd-Frank requires. Human Rights Watch and others have documented the abuses by several armed groups that benefited from this trade and the harm they have caused. This includes the armed group known as the Nduma Defense of Congo-Renové (NDC-R), one of the most abusive groups operating in eastern Congo that benefits greatly from the uncontrolled and illicit exploitation of gold there. Traceability efforts so far have had a much greater impact on tin, tantalum, and tungsten than on gold. The NDC-R has committed serious human rights violations, including the killings of dozens of civilians and recruitment of children over the past 2 years.

Last month, my colleagues were in eastern Congo's Walikale territory in North Kivu and met with several former child soldiers from NDC-R and miners. They told us how the group led by Guidon Shimiray Mwissa is systemically taxing the lucrative gold trade in dozens of mining sites. By holding a monopoly on things like alcohol and cigarettes in the mining pits and illegally taxing those who work in or near the mines, Guidon is making over \$20,000 a month. According to some of his former cadres, he's also allegedly trading gold for weapons.

Suspending Dodd-Frank 1502 would make it easier for other abusive armed groups and corrupt officials to enrich themselves the way Guidon is by making the trade even more opaque and easier to do business with armed groups. This would make an already bad situation even worse.

SUSPENDING OR ELIMINATING DODD-FRANK 1502 WILL DISADVANTAGE RESPONSIBLE U.S. COMPANIES

Suspending or revoking Dodd-Frank 1502 would hurt some of the United States' leading companies, such as Tiffany, Intel, and Apple. These firms have taken meaningful steps to keep their supply chains free from links to abuses in Congo and would be placed at a competitive disadvantage against companies inclined to operate less responsibly.

Responsible companies have worked hard to comply with the requirements of 1502. In March 2016, Apple announced that 100 percent of its conflict mineral supply chain had been audited to ensure compliance with Dodd-Frank 1502. That move was widely praised by human rights groups. While its supplies were not fully conflict-free, it has achieved the kind of oversight needed to eliminate conflict minerals from its supply chain. It took the company about 6 years of steady work on the ground and with its suppliers to meet this goal. But Apple is not just focusing on its legal requirements; it is also trying to clean up its cobalt supply chain after facing scrutiny over problems in it.

Intel began to examine conflict minerals in 2008 and has reported that its microprocessors have been conflict free since 2013. The company has said that it was on track to make its entire product base conflict-free. It took several years for the company to get control over its supply chains and build the capacity to source from properly audited mines.

Also, Intel commissioned an important study on Millennials' attitudes towards conflict minerals. The survey provides useful insights into the minds of key consumers. 97 percent of those surveyed believed that companies should "act in a way that benefits society." Almost 70 percent would avoid companies that they think are not socially responsible. About 70 percent cared about conflict minerals once they

learned about them, and a similar percentage said that how a company dealt with conflict minerals would influence whether they bought its products. Dodd-Frank 1502 gives consumers the information they need to make decisions, helps companies meet those expectations, and isolates companies that do not.

Tiffany & Co., one of the world's most recognizable and prestigious jewelry companies, has also invested a considerable amount of time and resources to ensure that it monitors its supply chain to exclude conflict minerals. It conducts detailed reviews of its global supply chains. It works, like other companies, with programs to support conflict-free smelters and other initiatives. The company has made the investment to ensure its products are conflict-free.

Each of these companies is an American icon and a leader in their industries. And each of them does not want Dodd-Frank 1502 or comparable regulation to go away.

When it became apparent that 1502 might be suspended, Tiffany issued a statement noting "we firmly believe that the continued existence of Federal regulation that addresses the sourcing of conflict minerals provides an important framework for industry, laying the foundation for protection of human rights and responsible sourcing efforts in Congo and beyond. We urge Congress to support legislation that effectively promotes due diligence and transparency for the sourcing of all conflict metals and gemstones."

Richline Group, a jeweler owned by Warren Buffet's Berkshire Hathaway, has also come out in support of 1502 and noted that "Section 1502 has proven to be an important and effective first step in the effort to create a conflict-free mining industry in Congo that benefits legitimate business rather than extortion and violence" and said "we fully support the continued implementation of Section 1502."

From personal experience, I know that the CEO of one of these companies had strong reservations against Dodd-Frank 1502 when it first became law, but ultimately saw that it was something the company could and would implement it in part because it was far less costly and laborious than he originally expected and because it was the right thing for the company to do.

The support from major companies highlights a perverse consequence that suspending or repealing Dodd-Frank would cause: it would create an uneven playing field placing major U.S. companies at a competitive disadvantage relative to companies that did not want to disclose their supply chains, or worse still, do not care whether their activities led to the secret funding of armed groups in Congo. In this sense repealing 1502 would create a perverse incentive to behave less responsibly, and would harm the efforts of responsible companies. Tiffany, Apple, Intel, and Richline have said they believe keeping conflict minerals out of their supply chain is the right thing to do and that they will continue to do it. But without regulation, they will bear a steep cost for being responsible. Dodd-Frank levels the playing field and makes sure responsible companies are not penalized for doing the right thing while requiring others to meet minimum standards.

Additionally, 129 investors with assets worth approximately \$5 trillion under management have also urged the U.S. government to keep the law in place and to ensure its continued implementation and enforcement.

The U.S. should maintain the same path it has successfully pursued over decades: be the first country to enact a strong law ensuring that companies act responsibly and then work diligently to make sure others do the same. This is what the U.S. did with the Foreign Corrupt Practices Act. It passed the law in 1977, worked to get other countries to pass similar statutes, and now there is an important global anti-corruption regime that includes many countries with strong anti-corruption laws of their own. Multilateral institutions like the Organization for Economic Cooperation and Development (OECD) and the U.N. have also developed their own standards. The U.S. played a leading role in these efforts—in part because it led by example.

This approach has also been true with 1502. U.S. adoption of 1502 led the EU and OECD, for example, to start developing their own standards on conflict minerals that will, at least in the case of the EU, apply to a broad swath of companies beyond U.S. jurisdiction. Just this March, the European Parliament approved new conflict minerals regulations. That approach creates a race to the top where U.S. companies lead, versus suspending 1502 and creating a race to the bottom where U.S. companies are hurt.

Five years after the rules went into force, there is progress. There are more than 200 conflict-free smelters and major companies, as noted previously, are working towards full compliance and do not want the rule to end. And other jurisdictions are developing their own, similar, rules.

Internationally, the London Bullion Market Association and the Dubai Multi-Commodities Center are putting policies into place to deal with illicit funds derived from minerals. In Congo, the International Tin Supply Chain Initiative is also work-

ing to support company due diligence. These are relatively new initiatives and their efficacy is not yet known, but they are examples of the momentum 1502 is creating and what could be lost if it is eliminated.

On the ground, significant parts of Congolese civil society generally support the law. As Dr. Denis Mukwege wrote in the *New York Times* in 2015, “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.” Those views are echoed by a number of civil society groups.

CHALLENGES WITH DODD-FRANK 1502

There are very compelling reasons to keep 1502, but we do not want to downplay the fact that this law has had its challenges, claim that implementation of the law has been perfect, or suggest that it is the sole answer to conflict and abuse in eastern Congo.

During the period after Dodd Frank became law in 2010 and before its implementing rules were finalized in 2012, uncertainty, misinformation, and other factors led to adverse consequences on the ground. That uncertainty before the final rules were issued led to a de facto boycott as companies avoided sourcing from Congo. There is also evidence that mineral-related violence during that time did not subside.

However, those problems are not solely due to Dodd-Frank 1502. The Kabila government exacerbated the negative economic impacts when it ordered a 6-month halt to all mining in the Kivus in 2010. Between 2010 and 2012, the period between enactment of 1502 and implementation of its final rules, companies chose to boycott Congo since nothing in the law required that companies stop doing business with Congo. These measures, coupled with the uncertainty over Dodd-Frank’s final rules, created problems.

There are still reports of problems facing artisanal miners ranging from low prices affecting artisanal coltan miners.

Another key issue is that U.S. companies are still slow to comply with the law. In 2015, Global Witness and Amnesty International reported that as much as 80 percent of covered companies were not properly disclosing and auditing their conflict minerals supply chain. This is an important area for growth and development—as it could help strengthen the positive impact of the law and enable a more level playing field for all companies down the road.

THE WAY FORWARD

We support constructive proposals to ensure Dodd-Frank 1502 is more efficient and effective. Suspending or scrapping the law will not do this and will instead disadvantage responsible companies, while likely creating more instability in parts of Congo and making it easier for abusive armed groups to pay for their activities.

If industry groups or companies have specific ideas on how to make 1502 more efficient or effective, you should make sure they are sharing them. There are already indications that costs of implementing 1502 are decreasing significantly as new tools are developed to make it easier to comply. ELM Sustainability Partners did an assessment of the law and found that the total industry costs are about 15–26 percent of the original costs that the SEC reported. Meanwhile, eastern Congo reported record highs for conflict-free exports of tin and tantalum in 2016.

You should also request a study—perhaps from the GAO—on how to promote conflict-free minerals on the ground, and stronger incentives to promote and reward responsible companies.

Unfortunately, the main industry critics, namely the National Association of Manufacturers, have not put forward specific proposals that would tweak 1502 to make it more effective. Many organizations are regularly discussing implementation with key companies and have listened closely to their concerns and challenges.

As a general principal, we believe that responsible companies in any sector should be rewarded for safeguarding human rights in their operations and others should be incentivized to do the same. Broadly, the cost of capital should be lower for responsible compliant companies than noncompliant ones and the opportunities for responsible companies should be greater.

In that context, we would encourage you to support proposals that have been made by industry associations to advantage 1502 compliant companies in government procurement and efforts by responsible investors to favor and support those companies over others. And while we are not experts on tax policy, it is worth Congress and others examining how to use tax credits or comparable incentives to help

support 1502 implementation because it could help lower the costs of implementation for companies.

Finally, we suggest Congress encourage efforts to support and promote conflict-free smelters on the ground. The principal way to do this is to make sure more companies are complying and sourcing from responsible mining and smelting sources. Given that the U.S. is still the largest donor to the World Bank, it would be worth examining how that institution can help the Congolese government and industry grow a conflict-free market.

CONCLUSION

The situation in Congo is complex. But it is highly likely that suspending Dodd-Frank 1502 or eliminating it will contribute to greater instability, create a competitive disadvantage for responsible companies, and it could create a troubling paradox where, as U.S. aid to Congo and U.N. peacekeeping may decline, the opportunity for abusive armed groups to make money off from conflict minerals will increase. The U.S. would also fall behind its peers on an issue where it set the global example—this is not what Congress should seek to encourage or support.

Instead, we hope the administration and Congress will seek to refine 1502, support responsible companies, and look at holistic approaches to keeping conflict mineral revenues out of the hands of abusive armed groups, whether they be militias, rebels, mafias, or government.

Senator FLAKE. Thank you.

Thank you all for the testimony. I will start a round of questions.

Mr. Goss, you mentioned in your testimony that while Section 1502 has clearly helped deprive armed groups in Central Africa from exploiting certain illicit sources of funding, its ultimate record of reducing overall illicit income flowing to these actors is notoriously difficult to determine.

You mentioned a little in your testimony gold is not covered here and that is where a lot of the illicit activity comes. Can you talk a little more about this? Is this akin to squeezing a balloon and seeing the violence and illicit activity go elsewhere?

Mr. GOSS. Yes, Senator. In fact, that is the same analogy I typically use.

Because there are so many discrete sources of illicit income for militias, non-state armed actors, corrupt government and military officials, by bringing in additional controls on 3T, we have generated some positive benefits for communities.

But at the same time, these illicit state and non-state actors have gone to gold mines. They have gone to illegal roadblocks, wildlife trafficking, extortion. They control basic goods in and around mine sites. You even have validated mine sites where there are illegal roadblocks or illegal taxation schemes right outside. So what appears to be a validated mine site may actually be contributing to conflict.

So, yes, it is very much like the analogy that you used.

Senator FLAKE. Does that argue for a more comprehensive approach? Mr. Dizolele has talked about this is enforcement by the SEC. They are not going to enforce on wildlife trafficking or roadblocks or kidnappings. Do we need something more comprehensive?

Mr. GOSS. One of the basic tenets of our testimony and the tech sector's approach is that our role is to build our systems and, along with government and civil society, bring along the peace and security that is needed for our systems to achieve.

Right now, we have a situation, as my fellow witnesses have described here, where you have a largely lawless region in eastern DRC. You have almost a borderless region between DRC, Uganda, Rwanda, and Burundi, where armed groups pass back and forth

here. It is one of the most corrupt areas in the world, and it is very difficult, despite our best efforts, to create clean and legitimate sourcing in that region.

And what we are really calling for here is renewed activity from the U.S., from the European Union, and the international community to work with regional governments to increase peace and security for the people of the Congo and so our programs can thrive in that situation.

Senator FLAKE. Thank you.

Mr. Dizolele, Mr. Kabila is in charge now, will be in charge for a while, maybe for the foreseeable future, not knowing what is going to happen politically. Is that government capable of partnering with the United States on a more comprehensive approach to stop illicit activity beyond just the conflict minerals?

Mr. DIZOLELE. Senator, the government in Kinshasa is one that exhibits schizophrenia in the sense that I think, on one level, when cooperation suits them, they will take on the cooperation. And when it does not, they will fight it.

I will say, no. The current government is not capable of acting as a real partner. And I think this is the problem that we face with laws like Dodd-Frank, 1502, because it does not account as much for the weakness of the state. It puts a lot of faith into the consumer, into businesses. But pretty much absent in that proposition is the role of the state.

And this is the frustration from the Congolese perspective, is that we can bring all the cleanliness we want in the process.

One, it will not be as clean as we think. We have a lot of papers and certificates that are signed, but that is a different thing than to actually have it as a clean process.

So long as the state is not strong, transparent, accountable to the people, they cannot be a reliable partner to the international community, sir.

Senator FLAKE. All right. Thank you.

Mr. Ganesan, you obviously would not try to assert that there is no illicit activity elsewhere, but I assume you would argue that, at least in this space, with the 3Ts, with the conflict minerals, that 1502 has had a positive impact?

Mr. GANESAN. Yes, I think the most important thing to remember about rebel groups or mafias or others is, by definition, they are illicit, so they will engage in illicit economic activity.

What 1502 does is it tries to install some kind of transparency and auditing regime to make sure that those commodities that hit the international marketplace are disclosed and, by doing so, raise the transaction costs for illicit actors and, hopefully, get clean actors working on it. So, yes, it is having an impact, particularly on the 3Ts.

On gold, the problem is slightly different because of the value of gold and how it is smuggled. So, in 2005, we did a report looking at how gold was coming from the Congo through Uganda and making its way into Swiss refiners. And when we notified and worked with Swiss refiners to kind of change that trade, what we saw is gold started making its way to the United Arab Emirates through Dubai and elsewhere in the world.

So our feeling with gold is, one, it is always valuable and it is always going to be a target for rebel groups or others to smuggle. But more importantly, to really get a control on the gold trade the way people have done with electronics, you will have to work with countries like the UAE, companies there, companies in India and elsewhere, who are major consumers of it to make sure that they are cleaning up their supply chains too.

Now, Human Rights Watch is starting to do that with gold and some other commodities, and we are talking to Indian companies and others. But it has to do in part with the nature of the gold trade. However, that does not minimize the value of 1502 and analogous schemes that Europe and others are putting there, because it is clearly having an effect.

Senator FLAKE. Thank you.

Senator Booker.

Senator BOOKER. Thank you, Chairman Flake.

So there is one chorus, if I hear correctly, that all of you are saying, that 1502 is just one part to what should be a much larger agenda that we have.

Now, I just remind folks that we, as a part of this effort, 1502, a lot more has been done. In fact, in foreign assistance, you have seen U.S. bilateral aid allocations totaling an estimated \$295 million in fiscal year 2016 in addition to \$62.5 million in emergency food aid, \$100 million in other additional emergency humanitarian aid, and \$440 million in U.S.-assessed contributions to MONUSCO.

So I guess what I am concerned about is that folks are isolating this one element of what should be a larger plan and weakening it.

Mr. Goss, maybe I will start with you because on page 4 of your testimony, as Mr. Flake read, you say while Section 1502 has clearly helped deprive armed groups in Central Africa from exploiting certain illicit sources of funding, its ultimate record of reducing overall illicit income flowing to these actions is notoriously difficult to determine.

I love the tech industry because it is such a data-driven industry and having explicit measures is something that clearly is important for business. And I know this is very hard to measure, what was causation and what was correlation, but you admit on page 7 that, overall, Section 1502 has generated real progress in bringing increased transparency to the 3T mines and supply chains in the region, and in raising global awareness across the public and private sectors. That is just one element of you pointing out sort of the good elements of this.

So you are not in any way suggesting throwing out this one specific tool in the larger toolbox. In some ways, it sounds like from your testimony, you are calling for us to lean in even further with some of the other actions. In other words, you do not see this as a bad action. It is having some very positive effect, many of which you note here. Is that correct?

Mr. GOSS. Yes, thank you, Senator.

Certainly, we do see some positive effects from 1502. In 2013, ITI testified on the House side, and we included a link to our testimony here, but we made several comments about the benefits of 1502, including increasing public awareness and consumer awareness, cer-

tainly driving more concerted effort. Other sectors joined with tech and electronics. And as Professor Dizolele mentioned, driving more activity on the ground from governments in the region here.

So there are certainly positives that 1502 has generated here. There are also, and I think both of my fellow witnesses here have made a nod to this, there are some unintended consequences.

What we would like to see, certainly, is a strong, continued U.S. presence on this issue. Certainly, there is a better way, in our view, to approach transparency in terms of mineral sourcing. There are portions or provisions of 1502 that discourage companies from sourcing in the region that we think could be reconsidered, and, frankly looking more toward that OECD due diligence guidance, which is now about to be used in the European Union. It is being used by the International Conference of the Great Lakes Region. Even China has adopted a version of it here as well. And again, it is part of the SEC compliance approach. We think that is a much more effective and balanced way of driving transparency.

Senator BOOKER. Mr. Dizolele, am I pronouncing that right, Dizolele? Thank you very much.

Mr. DIZOLELE. Yes, sir.

Senator BOOKER. I just want to give respect to a fellow bald American.

[Laughter.]

Senator BOOKER. Mr. Dizolele pointed out very pointedly and correctly that the implementation of this in the short term, in a short period of time, had some immediate impacts that were ultimately corrected for over time.

But as a guy who roots for American companies, obviously, and who is very invested in technology and innovation, it is a clear thing that if we suspended this rule at any point, it would be a disadvantage to the American companies that have already adopted many of the practices that this rule was intended to manifest and actually might create a perverse incentive because you are now going to have to compete against people that do not utilize these practices. Is that correct?

Mr. GOSS. Yes, I would agree with that. Our primary concern is that if 1502 were to be suspended or repealed, it would lead to increased volatility in an already very volatile region.

Senator BOOKER. And stability and predictability are things that are good for American companies, yes?

Mr. GOSS. I would agree with that, yes.

Senator BOOKER. All right.

Mr. GOSS. May I?

Senator BOOKER. Please.

Mr. GOSS. I think as Mr. Ganesan said, we have several of our members who have already publicly come out and said that they are going to be continuing their commitments and their due diligence activities regardless because it is part of the tech sector DNA in terms of what we feel we owe to our supply chains, to our customers, and to our shareholders.

Senator BOOKER. Right. Those people who operate with those values would be at a disadvantage should the rules be changed for those who want to do a race to the bottom.

I want to stop here because I am trying to get on the good side of my chairman. This is our first hearing. I do not want to go over.

Senator FLAKE. Senator Young.

Senator YOUNG. I thank the chairman, and the ranking member for his concise comments there.

I thank all of you once again for being here.

Mr. Dizolele, in your prepared statement, you touch on the performance of the United Nations peacekeeping mission in the Democratic Republic of the Congo. As you know, the U.N. Security Council extended last week the mission of MONUSCO, the U.N. stabilization mission in DRC. The Security Council reiterated that a strategic priority of that mission is the protection of civilians.

Did I understand correctly in your earlier testimony you actually indicated that MONUSCO is doing more harm than good?

Mr. DIZOLELE. Yes, Senator.

Senator YOUNG. Incredibly troubling, as the United Nations hears from the U.S. Mission to the United Nations about the importance of revisiting each of these peacekeeping missions and ensuring that they are doing good and that they are fulfilling their mission in advancing core U.S. interests.

In your prepared statement, Mr. Dizolele, you discussed the massacre of civilians on a daily basis by death squads that the U.N. peacekeepers have "failed to either apprehend or vanquish."

Does that not represent a failure of the U.N. peacekeepers to fulfill their mission in the DRC and to uphold Chapter 7 of the U.N. Charter?

Mr. DIZOLELE. Yes, Senator Young. I have been embedded with U.N. peacekeepers as a reporter, so I have actually gone on patrol with them over periods of time. I have been with the Moroccans in Eritrea. I have been with the Uruguayans trying to intercept weapons.

The question is, what is the problem we are trying to solve? That is what we typically forget when we analyze all these things, Dodd-Frank 1502 or the U.N.

The U.N. came to help Congo transition from the chaos of the war to a functional state, and that has not happened. So the mandate that might have started as one page is about 20 pages today. So when you read the mandate of MONUSCO, you are thinking you are reading the attribution of the Congolese State. That is not the role.

So it is stifling the emergence of the Congolese State.

Senator YOUNG. So in peacekeeping, as with life generally, if everything is a priority, nothing is a priority.

Mr. DIZOLELE. Correct, sir. And I think the priority in the case of the DRC has to get the functional state so that MONUSCO will exit and the Congolese will take full responsibility for their security. They are very capable people. It has been 20 years, and every 6 months, we are clamoring for an extension of U.N. mandates and nobody is asking the tough questions about the Congolese Army, about the Congolese State, and why they are failing to protect their own citizens.

The Congolese will appreciate U.S. contributions to the U.N. to go to them directly so they can use that money to rebuild their state.

Thank you, sir.

Senator YOUNG. Continuing, Mr. Dizolele, would we in Congress be making a mistake if we conflated the broader peacekeeping mission with the intervention brigade, which, as you know, was established to neutralize armed groups and reduce their threat to civilians?

Would you separate out the intervention brigade and assess their performance differently in the Congo than you would the broader peacekeeping mission? Or are they both doing more harm than good, to your mind?

Mr. DIZOLELE. I would want to separate them, because if we remember the story or the history of the intervention brigade, it was supposed to act independently of the U.N. They had a mandate from the country. They were trying to solve specific problems. They were not to be there forever to support countries, except for South Africa, but they were very effective.

The moment they got folded into the U.N., we forgot about their presence, in fact. We do not know they exist anymore unless somebody like you mention them because now they go by the SOPs of the U.N., and they are part of the units that are around the area that I described where civilians are being killed every night while the U.N. is standing there, and every night there are dead bodies.

Senator YOUNG. Well, hopefully, it provides a measure of reassurance that the United States Ambassador to the United Nations, Nikki Haley, has made improving these peacekeeping missions, going through each of the peacekeeping missions that the U.N. has commissioned and ensuring that they are actually out there doing more good than harm, to adopt your language.

The U.S. assumes the presidency, as you know, of the U.N. Security Council this month. What do you believe should be the key priorities or areas, Mr. Dizolele, of focus when it comes to U.N. peacekeeping more broadly?

Mr. DIZOLELE. I think, Senator, it is to make the mission limited in scope and time, because that is really where the devil lies.

There used to be a mission in the Congo in the 1960s. It was only for 4 years, the grandmother of MONUSCO. It was called ONUC. They were there for 4 years. They delivered what they were to do, and they left. And the Congolese were able to emerge and do their own bidding.

So the moment we leave them open-ended, that is where the problem starts because then the mission creep. That is when countries become very comfortable.

And in the Congo, we have an example of this. Over the last 17 years, the U.N. and MONUSCO have had to be bailed out of tough situations.

In early 2000, the French intervened with Operation Artemis in Ituri. That mission was very small. The French came in for 3 months, I think. They cleaned the place and left. They had no interest in staying longer. So they were effective. In 2006, the Germans came and helped MONUSCO. Recently, we see with the Force Intervention Brigade.

Those are signs of failure, not of success. If a peacekeeping force has to be bailed out, that is troubling, just to illustrate my point, sir.

Senator YOUNG. Thanks so much for the benefit of your experience and perspective.

Senator FLAKE. Thank you much.

I should note, on the peacekeeping issue, I was in Namibia for a year while the U.N. was there under Resolution 435, UNTAG forces. That was a good example of one defined in scope, mission, and time. They were there for a year, kept the peace, had the process for elections, and drafted the Constitution. It worked. But too often, we have seen failures.

Continuing on, Mr. Ganesan, can you describe the process that the European Union has put forward? How does that differ from Section 1502?

Mr. GANESAN. It relies more on the OECD guidance, and there is about a 4-year implementation leeway for it, so it will not go into force until 2021. In our view, that is probably a little bit too long. Two or 3 years is probably more reasonable and more along the lines of what the SEC did. It gives some flexibility to companies but it is largely analogous to what 1502 does.

It is important because it shows that, in the European Parliament and in the European Union, companies will have to start following similar standards. And we know with large multinationals, they will gravitate towards one standard and support it.

What I think it also shows is that, in looking at 1502, there is space outside of opening up the rule or anything else, to think about how one can provide, in a way, safe harbor for companies that are complying with other good rules and make sure that they are seen as complying here in the U.S. and taking steps like that. Because we know that there will be more scrutiny on what is going on with European companies as well as other companies around the world, and finding ways to do that.

I would just want to add to something that Mr. Goss said and just clarify something.

The boycott took place because the law passed in 2010 and the rules went into force in 2012. In that period in between, nobody knew what the rules would look like, and that created uncertainty. Some institutions interpreted that far more aggressively than others and did not operate in the Congo.

One of our fears in thinking about how to tweak 1502 is that, if you open up the rule or the rulemaking process, you may just be setting up another boycott because there will be so much uncertainty for a year or two. That is why, in thinking about how to address 1502, while also addressing the fact that what we really do not want us to inject new instability in the Congo as a whole, is to look at ways to modify it or tweak it outside of opening up the rule.

So if one can provide safe harbor because of what Europe is doing, or if one can provide better incentives for companies to implement it better, it would be better to do it outside the rule than thinking about modifying or opening up the rule as well.

Senator FLAKE. Mr. Goss, do you have any thoughts or not, in terms of modification, what can be done to ensure that we do not create the same kind of uncertainty that we had at the beginning?

Mr. GOSS. We would certainly be open to a safe harbor type approach. I will agree with my colleague here that, especially as ITI

represents multinational corporations, having that certainty, having that alignment, is paramount for us. It is one of the reasons why we pointed to the OECD due diligence guidance, because it has emerged as the international norm here.

I will note that the underlying language of 1502 is very particular, and so the SEC I think is somewhat delimited in terms of how they might be able to open up or change the rule. But we would certainly be open to a safe harbor or other similar type approaches that would avoid any uncertainty or volatility but make it a little more streamlined and a little more consistent with the emerging global practices.

Senator FLAKE. Thank you.

Mr. Dizolele, you talked a lot about having a more comprehensive policy that looks at governance. Is part of the problem, as you see it, that the SEC, by definition, can only enforce the law but without looking at the broader context, like legislation that might be passed by this committee or Congress as a whole? Is that one of the limitations, problems, that it is just so narrow in terms of what the SEC can and cannot do?

Mr. DIZOLELE. Yes, Mr. Chairman. I think, for one, the SEC I do not think is really equipped for this kind of challenge. It is a political issue in nature. That is how I see it, primarily.

And then, two, it is really an issue of foreign relations. So a commission like yours, USAID, the State Department, have a lot more to do with this. So far, they are doing a lot of things already, the public-private alliance, and many other issues that are taking place or projects that are taking place now. So I think we should focus on those.

I just do not believe a regulation from the U.S. is going to solve this issue in that way. There are many more campaigns in the world that are successful, and they are not always regulated from Congress. In this case, as I said, there are added troubling issues.

So if we establish that Congolese resources have been siphoned off to Rwanda, how does 1502 account for that? There is a clear net loss to the Congolese year in, year out. I am talking about hundreds of millions of dollars.

So how can we allow a law to continue knowing very well this is a clear effect, and then telling the Congolese we are helping you increase your own welfare?

I think just to conclude on that point, there is a wealth of platforms. I think groups like Human Rights Watch, groups like ITI and others can come together to continue enforcing. I think the greatest value of Dodd-Frank 1502 is bringing that heightened awareness they have brought to bear. I think we cannot underestimate that.

I do not think there is a serious company out there that is saying, gee, how can we go and mess up Congolese more and get more out? It is costly. It is costly to do business in a place like the DRC. I have tried to do business in the DRC.

Senator FLAKE. Thank you.

Senator Booker.

Senator BOOKER. Mr. Dizolele, I really appreciate your insights and value the way you are looking at this.

You and I probably both have the same perspective, that there are some times, when it comes to African peoples, a sort of pernicious paternalism in trying to dictate to other countries about how to deal with their own issues and their problems. Would you agree with that?

Mr. DIZOLELE. Yes, Senator Booker.

Senator BOOKER. And I have seen it in the American context. I still remember Frederick Douglass, in a very famous meeting with Abraham Lincoln, where Lincoln in a very paternalistic way said, okay, we are going to solve your problems and send you all out of the country. And Frederick Douglass was like, do not tell me what is best for blacks. We want to stay in this country and be a part of it.

So this is something that is problematic with the continent as a whole. And I am grateful for you talking about, even in terms of how we do aid and funding, to think about empowering local communities and listening to the government as well. That is where I really appreciate that sentiment.

And that is why, in all the things that I read in preparation for this hearing on this critical issue, when I looked at what the Congolese people are saying about this rule, 111 different Congolese civil society organizations based in Congo wrote to the SEC over the past 2 months asking that the U.S. conflict minerals law not be repealed, suspended, or even weakened. In multiple separate letters, these organizations all stated that a suspension or repeal would increase violent conflict, and that while the law had a rough initial implementation stage, which I have already talked about, it is now leading to what they are saying—these are Congolese voices—it is now leading to increased rule of law and decreased incentives for armed groups.

I want to read also from the Congolese Government itself. They wrote advocating for it. They submitted and stated in their letter, and I quote, “The DRC Government through the Ministry of Mines recognizes that Section 1502 of the Dodd-Frank Act provides a major opportunity to break the link between recurring conflicts, the production and trade of minerals in the DRC.”

I am an American United States Senator, and I want to do what is in the interests of my country, but I do believe that when it comes to—and I am new on this committee and new on this subcommittee—but I value the voices of Africans. I value the voices of indigenous people about determining their own destiny. And here is a chorus of folks from government to civil society organizations, multiple letters, all saying not only do not repeal this rule but do not suspend it or modify it.

Could you just give me some insight in response?

Mr. DIZOLELE. Thank you, Senator. A very important point you are making.

I read those letters. I know some of the people who signed those letters. I have been to the mines. I was writing about the mines and filming the mines before they became a fad. I had on guard and drove like I am going to die to go to the mine, film, and come out. This was 13 years ago. I will give you a couple examples.

Senator BOOKER. Please.

Mr. DIZOLELE. If the Congolese Government is calling for this, then that is actually a call for help. If the Congolese Government is saying do not repeal your law, and they are not doing anything on their own side to solve this problem, that is not a positive sign.

I saw the minister, the representative of the government when he was here last week, and I asked him this question. He had no answer. He could not even realize that Rwanda had certified Congolese mineral.

So I asked two points, then we can continue. I asked a fellow who is one of the foremost experts in this area just as I was preparing for this presentation. I said, look, I have seen what you sent. You sent me press releases. They do not send analysis. "This is why we believe this." It always goes to, "If we do not do this, there will be a war."

There is no evidence of that. It is all like this or that.

So I said, look, I do not agree with you. I recommend that this law be folded and discontinued.

If, in fact, the U.S. folded this law and discontinued, what will happen? And he said, "Well, nothing. It is, after all, an American law. We are trying to do things."

They have already set things in motion that are now continuing, some of the things that I have mentioned positively.

Senator BOOKER. Mr. Dizolele—

Mr. DIZOLELE. He did not think it was the end of the world.

Senator BOOKER. Thank you for that candid response.

In the larger activities of the Senate, there have been a lot of accusations of hypocrisy, probably little of them are true. But in this case, I am about to be a hypocrite and go over my time for a minute, if I can have the minute?

Thank you very much.

Mr. Ganesan, I would like to ask you the same thing, from your perspective. This is incredible insight from somebody who has been on the ground, been to the mines, talked to the various leaders.

I have these letters, and if you will allow me to submit them for the record?

Senator FLAKE. Without objection.

[The information referred to above can be found in the "Additional Materials for the Record" section of this Hearing.]

Senator BOOKER. I would like for you to comment on that, and then let me just pile on a question, and then I am done, on top of that one, comment on that.

But I also want you, because the biggest concern I have right now, which I am grateful—in fact, the two men to my right have been very loud on this concern as well, that the budget that we have just seen from President Donald Trump, at a time when everybody on this panel is asking for more engagement, it cut back a lot of critical programs even beyond what we are talking about today.

You are out there working on these issues. I would just love for you to answer the question I asked, but then also comment on the so-called skinny budget in terms of what it does to the State Department and diplomacy, and how that threatens, that lack of leadership, essential American leadership, what that might do to regions like DRC.

Mr. GANESAN. I think I would start by saying that I have been working on the flow of revenue from oil and other natural resources around the world since about 1998 or 1999. And the one thing that is always important to remember with 1502 or elsewhere is that a 1502 is not meant to solve every problem. It is meant to solve a specific problem, which is to raise the transaction costs of illicit actors getting control of those funds, and making the trade more transparent and accountable for major companies and the like.

So it can only address that specific narrow problem of the overall situation in the Congo. The overall situation in the Congo is there are many factors that would not be affected by the law, but the part that is important. And in that context, it is quite illustrative because it is rare to see industry organizations, major companies in the world like Apple and Intel and Tiffany, and very large parts, including the Catholic bishops of Congo, saying this law is a good idea.

I know working on businesses, it is rare that you will hear all of us agree on anything, and we all seem to agree on the same thing in this case.

So I think it is important to note that it does help in a certain way, but it is not a panacea for all the problems in the Congo. And my view would be that that is a good thing, that more companies are trying to implement it. More jurisdictions like the European Union are putting in their own laws. And we assume that in the next 5 to 10 years, this will be a global norm.

And on civil society, they are seeing it is helping in some way.

Now a good analogy is what I saw with UNITA at the end of the Angolan civil war, who made a lot of money and fueled their conflict in its last few years off of diamonds.

When that war ended, we interviewed the leadership of UNITA and we asked what did the whole issue of blood diamonds, in that case the Kimberley Process, how did it affect you? And they said very clearly to us: "It made it extraordinarily expensive to procure weapons. We had to retreat further in the bush. And it was harder to do things."

So I would accept that when you are dealing with mafia networks, rebel groups, or corrupt officials, they will always find ways to steal or siphon off money. But to the extent that you can control a part of that trade, make it more transparent, and make it more legitimate so that responsible actors are the ones benefiting from it, that is a good thing, as long as you recognize that it will not solve every problem.

Senator BOOKER. Thank you, sir. And maybe you can submit for the record that second part of my question about your perspective, especially when it comes to conflict in Africa specifically with the DRC, what your concerns might be about the budget that was submitted.

I would prefer, just out of respect to my colleagues, maybe you submit that in writing.

Senator FLAKE. It is all right, if you want to answer.

Mr. GANESAN. So I think, in this particular context, it is three-fold.

Number one is how it impacts specific programs for the Congo itself. And right now, there seems to be a pause in cutting funding to the Congo, as we have seen from Ambassador Haley and others, but that may not be true in multiple years.

The second part is how it impedes the State Department's ability to conduct the diplomacy or undertake initiatives globally to try to address these types of issues, whether it is the issue of conflict minerals or others, and work with companies and other governments to lay out standards.

And the third, and it is not with the State Department, is the proposal to cut \$600 million from the World Bank. The World Bank, through the IFC, which lends to the private sector as well—it is development assistance—is one of those institutions that is perfectly poised to help build a conflict-free economy in countries like the Congo, and the U.S. is the largest donor to it. But if you cut \$600 million out of their budget, it is going to be less likely that that can happen.

So I think it is the panoply of, if the goal is to build a stable and accountable country through accountable, transparent governments and industries that benefit people, you need all of those institutions funded in a way that they can actually put their resources into these kind of activities.

Senator BOOKER. Thank you, sir.

Thank you, Chairman, for the indulgence.

Senator FLAKE. Thank you.

Senator Young.

Senator YOUNG. Mr. Dizolele, in your prepared statement, you say of the United Nations Security Council, quite damningly, they are notorious for their schizophrenic Congo policy, which consistently places the interests of the Kabila regime above the aspirations and rights of the Congolese people.

Can you elaborate on that assertion, sir?

Mr. DIZOLELE. Yes, Senator Young.

As I said earlier, there was a specific mandate for the mission when it came, and that mandate was to help with the departure of foreign troops. That mandate has mutated over time, including helping organize the elections and many other things.

So if I were to take a couple examples of the organization of the elections, the U.N. will not be involved in organizing the election. But when the Congolese people, whether it be the opposition or civil society, calls for changes or denounces certain things, they do not act. So for the people, they do not see them anymore as the force that they were supposed to be. This is the part of the problem that I alluded earlier on to.

And then they also undermine the emerging of an adequate military for the Congolese. So the area where MONUSCO is very present, they do everything, including buying gas for the Congolese Army. So without MONUSCO, the Congolese Army cannot do anything. And then in the areas where they are there with the FRDC, they do not act, just like the FRDC.

So it creates this confusion of what exactly they are doing.

And the last point is, Michael Sharp was killed several days ago. You know, the Group of Experts, if you read their reports over time, it is amazing how much knowledge they have collected over

time. When they go brief the Security Council, most of the time, the Security Council does not act on the very recommendations of the people they send to risk their lives. And that is something very important.

Senator YOUNG. So you have offered a couple of very powerful examples. Thank you.

One of the things that I hope to get to, in consultation with yourself and others, is the source of such schizophrenic policies at the U.N. Security Council. What do you believe is the source at the Security Council of this schizophrenic Congo policy?

Mr. DIZOLELE. National interests of each country, sir.

So the French may vote for one thing on the Security Council, but in the field, in Congo, the engagement with the Congolese Government dictates something else.

Senator YOUNG. So this is structural. This is formidable, if one wants to try to address the structural challenges of the U.N. Security Council. I do not anticipate the membership or the prerogatives changing anytime soon.

And this is a difficult question, but I ask if you have any recommendations to at least mitigate some of these challenges which lead to schizophrenic policies?

Mr. DIZOLELE. Senator, I think, as I said earlier, at least from the U.S. perspective, it will be important for the U.S. to just demand greater accountability. This is why I think the approach that Ambassador Nikki Haley is taking is so refreshing. So that the role of the U.S. on the Security Council is not to rubberstamp MONUSCO, because that is really what has been happening, but to push and push further.

Senator YOUNG. Well, I am going to interject and just tell the chairman I could not agree more with our witness. I think using what leverage we have as a country to try to effect some change within the Security Council is very important, so I commend our Ambassador and her efforts on that front.

Mr. DIZOLELE. Thank you, Senator.

Senator FLAKE. I want to thank you all on behalf of the committee, and my colleagues here, for your expertise and your testimony and your willingness to share it. This will be invaluable to us as we consider these policies moving ahead, and also to the SEC as it considers its policy and decides what to do going forward.

For the benefit of the members, the hearing record will remain open through Friday.

Senator FLAKE. And with the thanks of the committee, this committee stands adjourned.

[Whereupon, at 3:09 p.m., the hearing was adjourned.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF SENATOR RICHARD DURBIN

Chairman Flake and Ranking Member Booker, thank you for the opportunity to say a few words today on this issue. The law we are discussing today was originally led by Senators Sam Brownback, Russ Feingold and myself—as well as Congressman McDermott in the House.

CONGO CONFLICT/RAPE CAPITAL OF THE WORLD

It isn't very often that Congress can make a policy change that has life-or-death consequences for millions of people, but in 2010 a law was enacted that is changing the money supply for warlords in the Democratic Republic of Congo.

Many here may not realize that more than five million people have been killed during the long-running conflicts in the Democratic Republic of Congo, which have been the most deadly since World War II.

Tragically, women and children have suffered the most, as we too often see in conflict. Millions have been displaced from their homes, and the prevalence of rape and sexual violence as a weapon of war is almost beyond belief ... earning eastern Congo the grim distinction of being the "Rape Capital of the World."

Sam Brownback first took me there in 2005 and I returned again in 2010.

At the time we were working on this law, the U.N. reported that about 1,000 women were assaulted every day in Congo ... roughly equivalent to 12% of all Congolese women.

One of the drivers and funders of this conflict was paradoxically that which fills the DRC with such potential ... its natural resources.

Instead of paying for the nation's peace, education, roads and public health programs, the DRC's mineral wealth was being siphoned off to fund the armed groups that vie for local and regional control of vast areas far from Congo's capital, Kinshasa.

CONFLICT MINERALS LAW

Tin, tantalum, tungsten and gold are found in everyday electronics, jewelry, airplanes and manufacturing equipment. But these minerals also have provided weapons and salaries to fighters, including conscripted child soldiers, who then visit unspeakable horrors on innocent civilians in return.

That is why in 2009, I joined Brownback, Feingold, and McDermott in drafting a simple reporting requirement for U.S.-registered corporations that source these four minerals from the DRC or its neighbors.

It wasn't a ban.

It was simply a transparency measure that said if you used any of these key minerals from the eastern Congo region you had to say what, if anything, you were doing to not source from those fueling the region's violence.

You could say you were doing nothing, but at least then consumers would have some options on ensuring the electronics in their pockets weren't contributing to the violence.

And on a broader scale, it aimed to use collective industry action to clean up the supply chain of these mineral ... which I am proud to say has worked.

You see, before these rules, not a single smelter of tin, tungsten, tantalum, or gold had submitted to and passed an audit to prove they weren't dealing in conflict minerals. Today, 76 percent of the world's smelters of the 3Ts or gold have passed such an audit.

This is remarkable and due to many industry leaders on the issue, including Intel, Apple, Kemet and a number from Illinois including Motorola and AAR Corp.

And it is due to a cleaning up of the mining industry in eastern Congo.

For example, in 2014 the Enough Project noted that 112 out of 155 surveyed mines passed as conflict free.

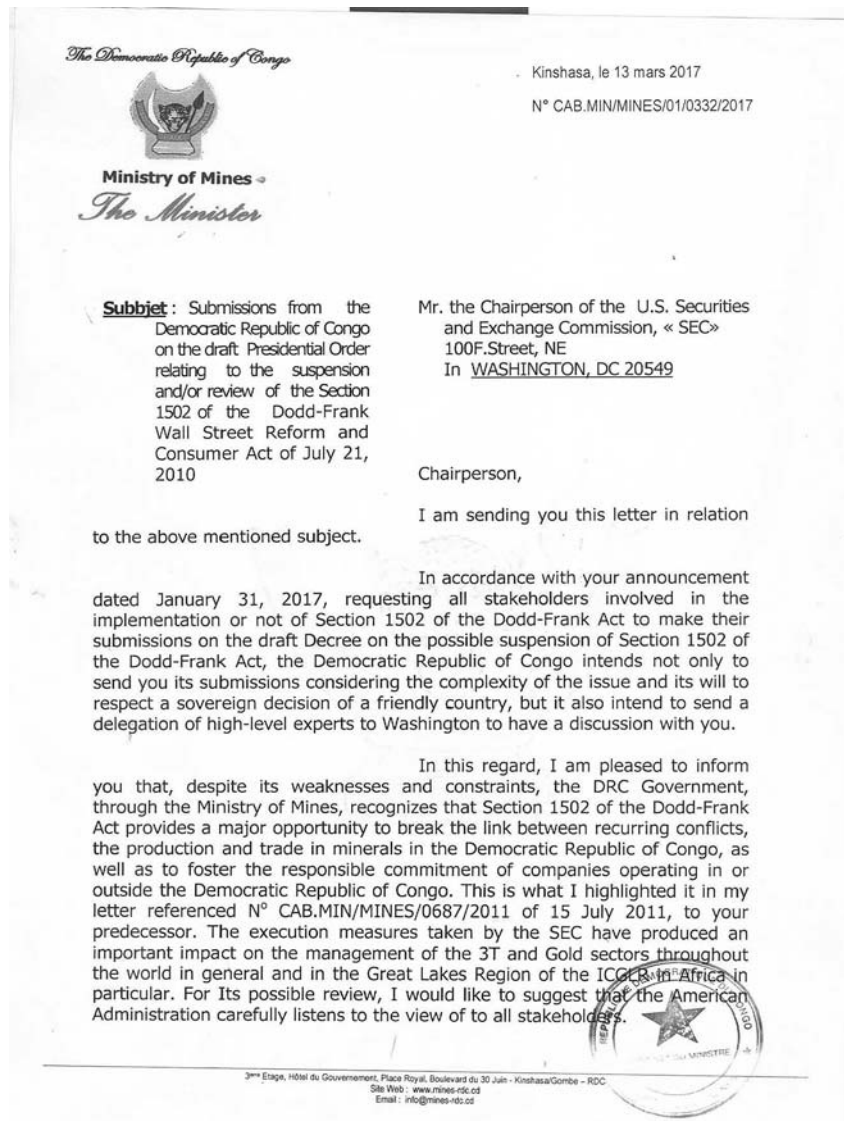
Obviously, this process is far from complete or perfect ... but it is one that has helped ease the grip Congolese warlords had on the mining sector.

I also realize there is chance today to explore important lessons learned from this law and its consequence ... but I hope we do not undermine the larger effort.

That the Administration is considering weakening this law is senseless and immoral, and I fear would lead to more bloodshed.

I think as Americans become increasingly conscious about the origins of the products they buy, reducing transparency and eliminating incentives for responsible sourcing in this industry would be a grave mistake.

SERIES OF LETTERS RELATING TO SECTION 1502 OF THE DODD-FRANK ACT SUBMITTED FOR THE RECORD BY SENATOR CORY BOOKER



Ministry of Mines
The Minister

Therefore, I hope that after analyzing the submissions from the Democratic Republic of Congo and following the discussions with its delegation, the SEC will propose the best option for both the security of the US and the DRC, a friendly country to the USA. The DRC aspires to live in peace and contribute to the promotion of the supply chains of minerals not only within its borders but also throughout the world.

Yours Faithfully

Martin KABWELULU

Copy to :

- His Excellency The President of the Republic, The Head of State (With my full respect) C/° Palais de la Nation à KINSHASA/GOMBE
- His Excellency the Prime Minister, Head of the Government (*with the assurance of my highest consideration*) C/° Hôte du Gouvernement
- His Excellency the Deputy Prime Minister , Minister of Foreign Affairs and Regional Integration
- His Excellency the Deputy Prime Minister, Minister of Transports and Communication ways
- His Excellency the State Minister, Minister of the National Economy
- The Minister of Finances
- The Permanent Secretary of Mines
- The Director General of CEEC
- The Director General of the Mining Cadaster
- The General Coordinator of SAESSCAM
- The President of the Mining Chamber
- The Deputy President of the Mining chamber in charge of the Tin sector
- The Heads of Tin processing entities and their companions (ALL) in the DRC
- The DRC Ambassador to the USA
In WASHINGTON
- The ICGLR Executive Secretary
in BUJUMBURA/BURUNDI
- Mr. Tyler Gillard, Head of Sector Projects Responsible Business Conduct (RBC)
Unit Investment Division, Directorate For Financial and Enterprise Affairs
C/° Secrétariat de l'OCDE
2, Rue André Pascal -75775
à PARIS/FRANCE
- Mrs. KAY NIMMO, Manager of Sustainability and Regulatory Affairs/ITRI St. Albanes,
Londres, V.K.



The Democratic Republic of Congo



Ministry of Mines

The Minister

EXECUTIVE SUMMARY

The Democratic Republic of Congo presents its submissions and proposals following the Securities and Exchange Commission (SEC) invitation to all stakeholders to submit, within 45 days, from 31 January 2017, their submissions on the US Administration's plan to suspend or review Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of July 21, 2010.

Without denying to the US President, the right to amend a legislation under the sovereignty of his country, the DRC Government considers that the suspension or review of the above-mentioned Act will increase the following real risks which, in the long run, will jeopardize the stability and security of the DRC and, in turn, the security of the United States of America:

- 1) the escalation in the activities of non-State armed groups;
- 2) weakening policies to promote good business practices of responsible supply of minerals in the Great Lakes Region of Africa in general and in the DRC in particular;
- 3) encouraging other ICGLR countries not to implement the six tools to combat the illegal exploitation of natural resources, particularly the Regional Certification Mechanism (RCM).

In view of the above-mentioned observations and the challenges that the Democratic Republic of Congo intends to fight illegal exploitation and illicit trafficking in mineral substances, it presents its proposals, which are grouped in two assumptions: the first is based on the maintenance of Section 1502 of the Dodd-Frank Act, and the second assumes that the US administration would decide to suspend or revise Section 1502 of the Dodd-Frank Act.



a) In event of the maintenance of Section 1502 of the "Dodd-Frank Act"

The DRC Government, which would opt to maintain this section of the Act, would like to see reinforcement measures be taken, in the light of the relevant criticisms, against the effects induced in its implementation.

In this regard, The DRC Government proposes what follows:

- 1) The support by the American Administration to bring all the Regional countries which are part to the International Conference on the Great Lakes Region "ICGLR", to effectively integrate into their legal systems the six tools of combating the illegal exploitation of natural resources, by prioritizing the one on the ICGLR Regional Certification Mechanism based on four pillars.
To this end, the US Administration could undertake to sanction the defaulting ICGLR Member States by prohibiting American companies from carrying out commercial transactions of minerals with these countries.
- 2) Support for putting in place a collaborative program between the US Administration and the DRC in the following areas:
 - ✓ Combating non-State armed groups through the strengthening of the UN quick response brigade;
 - ✓ Border monitoring in the eastern part of the DRC, in particular by providing the DRC with drones;
 - ✓ the fight against mining fraud and smuggling in all its forms;
 - ✓ Joint and regular publication of the lists of non-State armed groups to be blacklisted as terrorist groups with a view to proposing targeted sanctions for both individuals who direct them and entities that finance and / or carry out criminal activities.
 - ✓ Strengthening of direct relations between the Ministry of Mines of the DRC and the Public-Private Alliance (PPA) of the United States of America (the Public-Private Alliance for Responsible Minerals Trade) by the signing of a Memorandum of Understanding between the two Stakeholders to work together to achieve responsible trade in minerals in the DRC.
- 3) The implementation of Section 1502 of the « Dodd-Frank Act », which has increased the burden on US industrial firms and reduced their competitiveness vis-à-vis their Chinese and Russian competitors, it



may be appropriate to consider a direct cooperation between the US firms and the DRC ones in the following areas:

- ✓ Support for the establishment of direct purchasing structures for mineral substances in the DRC;
- ✓ Direct support to the specialized bodies of the Ministry of Mines for transfer of skills in view of the sustainability of the Traceability Mechanisms initiated by private partners (ITSCI, Geotracability, ...);

b) In the event of the suspension of Section 1502 of the « Dodd-Frank Act »

If the US Administration is committed to the suspension or review of Section 1502 of the "Dodd - Frank Act", the DRC Government cannot object it because it is a sovereign power of a partner Country. Nevertheless, it proposes to be involved in the development and implementation of the new plan that the US Administration is seeking to put in place to combat human rights violations and the financing of non-State armed groups in the DRC.

In this regard, the said plan should take into account all aspects contributing to combating the illegal exploitation and illicit trafficking of minerals in the DRC, namely:

- ✓ the security of areas where the activities of non-State armed groups may re-emerge;
- ✓ the collaboration between American and Congolese services to combat mining fraud and smuggling in all its forms;
- ✓ the encouragement of the DRC and the ICGLR countries to pursue the implementation of traceability and certification mechanisms, as well as the fight against mining fraud and smuggling;
- ✓ the direct collaboration with end-consumers under the Dodd-Frank Act, in order to create innovative mechanisms together for the absorption of domestic production (partnership agreement, establishment of stock exchange, establishment of smelters and refineries, etc.);
- ✓ the strengthening of direct relations between DRC Ministry of Mines of the DRC and the Public-Private Alliance (PPA) of the United States of America (the Public-Private Alliance for Responsible Minerals Trade) by the signing of a Memorandum of Understanding between the two Stakeholders to work together to achieve responsible trade in minerals in the DRC.

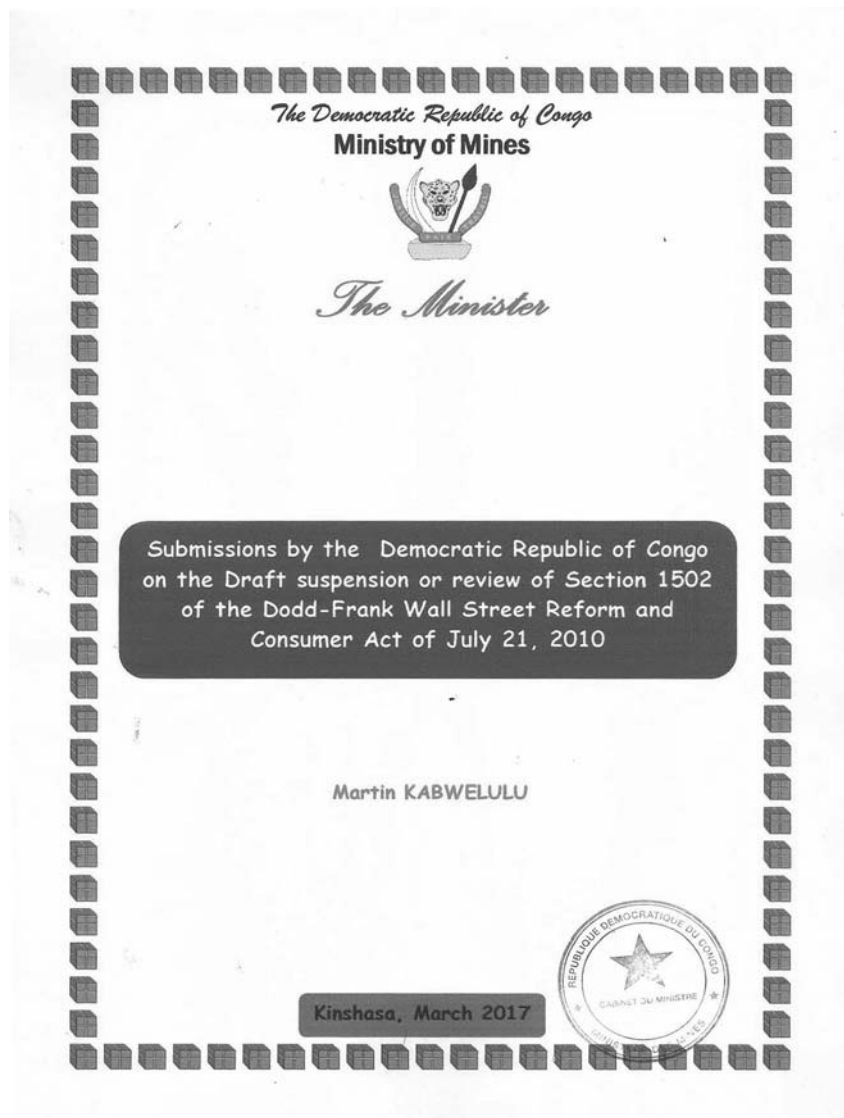


In summary, the DRC Government is convinced that the United States, through its President, will take the best decision in the best interests of both their own security and that of their partners, particularly that of the DRC, which is prepared to strengthen the fight against the illegal exploitation and illicit trafficking in minerals through the establishment of responsible mineral supply chains. It is an irreversible dynamic with or without the Dodd-Frank Act.



Done in Kinshasa, on

Martin KABWELULU



The Democratic Republic of Congo



Ministry of Mines

The Minister

The current contexte

- 1) On January 31, 2017, the President Donald TRUMP signed an Order starting the process to amend the Dodd-Frank Wall Street Reform and Consumer Protection Act of July 21, 2010 ;
- 2) On February 8, 2017, the international press largely echoed the draft Presidential Order which explicitly states that the President of the United States of America is willing to suspend the implementation of Section 1502 of the above-mentioned Act ¹ ;
- 3) The ICGLR², the local and international Civil Society³, acting through Non-Governmental Organizations (NGOs), US companies have expressed an opposing view⁴. They disagreed with the aforementioned US Administration project;
- 4) The Securities Exchange Commission (SEC) on its Website invites all stakeholders to make submissions on this issue within 45 days from 31 January 2017 ⁵ ;
- 5) The suspension and / or review of section 1502 of the above Act will have a significant impact on the stability of the political, social and economic life of our country as well as that of the Great Lakes Region countries.

Therefore, the Democratic Republic of the Congo intends, in this document, to make its submissions and suggestions to the Securities Exchange Commission as requested by this Commission.

Given that comments to be made should take account of the issues involved, this document will outline the following items:



¹ Appendix : Publication by Radio France Internationale of February 9, 2019

² Appendix : Communiqué of The Executive Secretariat of The International Conference on the Great Lakes Region.

³ Appendix : Position of NGO from the South-Kivu Province . The Working Group on Mines et Ressources , February 18, 2017.

⁴ Appendix : Position of INTEL and APPLE published by Washington Post in February 2017

⁵ Appendix : Webpage from the Securities Exchange Commission website.

- ✓ A brief outline of the scope of Section 1502 of the Dodd-Frank Act and its objectives,
- ✓ The DRC's submissions on the motivation of the draft Presidential Memorandum;
- ✓ Solution proposals from the DRC

I. Brief Outline

a) The « Dodd-Frank Act » Content

The Section 1502 of this Act entitled "**Conflict Minerals**" requires the **Securities Exchange Commission (SEC)** to establish a mechanism that requires, inter alia, US companies to:

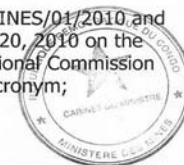
- ✓ Declare whether the ores required for *the functionality or production of a product that it manufactures*⁶ are from the Democratic Republic of the Congo or a neighboring country;
- ✓ Submit to the SEC, accordingly, a report stating with a clear description that they have introduced *measures implementing a due diligence procedure for their supply chains*;
- ✓ To have independent audits certify that the ores channeled into their supply chains are free from any link with the conflict in the Democratic Republic of Congo.

b) "Dodd-Frank Act", one of the pillars of the normative framework for combating the illegal exploitation and trafficking of mineral substances in the DRC

For nearly a decade, the normative framework to fight against the illegal exploitation and trafficking of mineral substances in the DRC has been constituted of four pillars, three of which are the result of its international partners and the fourth constituted by national regulations:

- ✓ **In terms of the DRC's internal law**, there are regulations for monitoring the traceability and the fight against fraud issued by the Government, including the following texts:
 - The Interministerial Order No. 0719 /CAB.MIN/MINES/01/2010 and No. 140 / CAB.MIN / INT.SEC / 2010 of October 20, 2010 on the creation, organization and functioning of the National Commission for the Fight Against Mining fraud, "CNLFM" in acronym;

⁶ Point (2), (B) of Dodd-Frank Act Section 1502 .



- The Ministerial Order N° 057/CAB.MIN/MINES/01/2012 of February 29, 2012 implementing the regional certification mechanism for the International Conference on the Great Lakes Region "ICGLR" in the Democratic Republic of Congo;
- The Ministerial Order N° 2503/CAB.MIN/MINES/01/07 of February 5, 2007 on the procedure for the evaluation, expertise and certification of mineral substances;
- The Interministerial Order N° 0149/CAB/MIN/MINES/01/2014 and N° 116/CAB/MIN/FINANCES/2014 of July 5, 2014 on the procedures Manual for the traceability of mining products, from the extraction to the exportation which repealed the Interministerial Order N° 711/CAB.MIN/MINES/01/2010 and N° 206/CAB/MIN/Finances/2010 of October 15, 2010 on the Procedures Manual for the traceability of mining products, from the extraction to the exportation, taken after the promulgation of the Dodd Frank Act.
- The Circular Note N° 002/CAB.MIN/Mines/01/2011 of September 6, 2011 relating to the Mandatory Implementation of the Guidelines and Recommendations of the OECD Due Diligence Guide and the Resolution 1952 (2010) of the UN Security Council in the Congolese mining sector.

✓ **At the international level, the DRC's actions are based on:**

- The Resolution 1952 (2010) of the UN Security Council.
- The OECD Guide on Due Diligence for responsible supply of Minerals from Conflict, High Conflict or High-Risk Areas;
- The Dodd-Frank Wall Street Reform and Consumer Protection Act of July 10, 2010 ;
- The Lusaka Declaration of December 15, 2010 signed by the Heads of State and Government of the ICGLR Member Countries, which approved the six tools to combat the illegal exploitation of natural resources and endorsed the OECD Guide on due diligence as a cross-cutting tool at the ICGLR Regional Initiative on Combating the Illegal Exploitation of Natural Resources "IRRN".

The Section 1502 of the Dodd-Frank Act should not be analyzed in isolation since it is part of the coherent and interdependent normative framework designed to "promote transparency in the mineral supply chains and the sustainable commitment of companies in the mineral sector to enable countries and their populations to benefit from their



natural mineral resources and to prevent the extraction and trade of minerals from being a source of conflict and insecurity. " Therefore, the suspension or review of Section 1502 will have an impact on the domestic, regional and international normative system as well as on the security, social and economic stability of the Democratic Republic of Congo.

Hence the Democratic Republic of Congo is making the following submissions before presenting its solution proposals.

II. Submissions from the Democratic Republic of Congo

It is undeniable that the draft Presidential Order referred to in this document is an internal regulatory Act of a partner country which makes use of its sovereign administration power. The DRC should, as a partner, refrain from expressing any views on this matter.

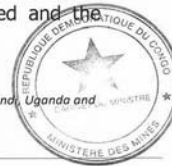
However, since the signing of the said Act would have an impact on the political, security, social and economical situation of an important part of our country and even of the Great Lakes Region of Africa, the DRC would like to provide The US administration with these few observations on the risks involved in the suspension or review of Section 1502 of the «Dodd-Frank Act».

2.1. Risks to be incurred in the event of suspension or review of Section 1502 of the "Dodd-Frank Act"

The DRC Government is of the opinion that the suspension of Section 1502 of the Dodd-Frank Act entails certain risks in view of the socio-political progress of the last two decades in the Region it belongs to.

In order to illustrate the above, it is appropriate to refer to the situation experienced by the DRC and the Great Lakes Region in general from the second half of the 1990s to date. Indeed, our country has experienced a recurring conflict situation that has destabilized the entire Great Lakes Region⁷ to the extent that informed observers spoke of the first African World War because of the number of protagonists involved and the number deceased assessed to 6,000,000.

⁷ We can mention Angola, The Republic of Congo, The Central African Republic, Rwanda, Burundi, Uganda and The Democratic Republic of Congo.



The DRC Government is convinced that as a partner, the United States would not want to see the conflict situation described above to re-emerge. Many Civil Society organizations from the Southern Kivu province said that, this situation has caused a series of misfortunes to its detriment, namely, the displacement of populations, massive violations of human rights, disarticulation of the government administrative apparatus and socio-economic activities⁸.

Consequently, the DRC Government is concerned about any action that might plunge the country back into this gloomy situation which it is coming out with great difficulty with the support of many partners, among them the US, in the front line. The DRC cannot once again become an area where the warlords reign and the source of actions that threaten peace and stability of a part of the planet.

Practically, the suspension or review of Section 1502 of "Dodd-Frank" entails a high probability of re-emerging risks that will jeopardize the DRC stability and, in turn, the US security interests.

2.1.1. The risk of an upsurge in the activities of non-State armed groups

The suspension and / or review, insofar as it will remove the penalty for non-compliance with the measures contained in the Act, will, inter alia, have the effect of restoring "the umbilical cord between the large smelter, even American mining companies which process our mineral and warlords "who had sadly illustrated themselves during the above well described period.

2.1.2. The risk of weakening policies that promote good business practices of responsible supply of minerals

The suspension and / or review could also seriously undermine the efforts made by the ICGLR, the Congolese Government, the DRC economic operators and the local civil society, supported by international organizations, USA and NGOs to gradually establish "good business practices" in the provision and responsible supply of what it is called conflict minerals.

⁸ Report



The suspension of Section 1502 will dampen any momentum towards the establishment of responsible supply chains for minerals in the Great Lakes Region in general and in the DRC in particular.

2.1.3. The risk of encouraging other ICGLR countries not to implement the six tools to combat the illegal exploitation of natural resources.

To break the link between recurrent armed conflicts and the illegal exploitation of mineral resources in general and illicit trafficking in mining products, particularly in the Great Lakes Region, six tools have been established by the Declaration of Heads of State and Government of the ICGLR on December 15, 2010, namely:

- ✓ The regional Certification Mechanism;
- ✓ The harmonization of national legislation;
- ✓ The regional database on minerals flow;
- ✓ The formalization of the artisanal mining sector;
- ✓ The promotion of the Extractive Industry Transparency Initiative (EITI);
- ✓ The Early Warning Mechanism (MAR) in acronym.

More than six years following the Declaration of the Heads of State of Lusaka, we unfortunately notice that only two countries have incorporated the Regional Certification Mechanism, one of six tools to combat the illegal exploitation of Natural resources into their national legislation. The road ahead is still long. Any attempt to stop it would be a suicidal action for the ICGLR countries. The Director in charge of Program and Democracy of the ICGLR Executive Secretariat emphasized on this issue in the ICGLR Declaration issued on February 14, 2017.

III. Proposals from the DRC Government

Before presenting the DRC's proposals it is necessary to report on the challenges faced by our Government in combating illegal exploitation and illicit trafficking of mineral substances. This is to contextualize the proposals below.

The DRC's General Report on the implementation of six ICGLR tools on the illegal exploitation of natural resources published in December 2016 presents various challenges.⁹

⁹ Letter No. CAB.MIN/MINES/01/1829/2016 of December 30, 2016 transmitting the « DRC General Report on the implementation of the ICGLR six tools on combating the illegal exploitation of natural resources »



The above-mentioned report mention, on the one hand, the challenges faced by the DRC, which it must therefore continue to take consequent corrective and remedial measures, and on the other hand, those concerning its ICGLR partners. The abovementioned general report is attached hereto.

a) Challenges faced by the DRC

1) Challenges for the DRC:

- ✓ The continued presence of non-State armed groups and some uncontrolled and undisciplined elements of the FARDC (DRC armed forces) and the PNC (DRC Nationale Police);
- ✓ The slow process of qualification and validation of mining sites;
- ✓ Inadequate staffing levels at the Mines Administration and SAESCAM;
- ✓ Child labor in mines;
- ✓ Conflicts and / or tensions between the holder of the mining rights and the artisanal operators on the one hand and between the holders of customary right and land owners and the mining operators, be they artisanal or industrial on the other hand.

2) Challenges for partner countries in the ICGLR

- ✓ The absence of sanctions against ICGLR member states that have not implemented the six ICGLR tools;
- ✓ The continued cross-border mining fraud and smuggling;
- ✓ The lack of specific ICGLR guidelines on the implementation of some ICGLR tools;
- ✓ Partial domestication or inadequacy of the ICGLR Protocol on combating the illegal exploitation of natural resources by Member States.

Given the extent of the challenges, the DRC Government intends to make some proposals that it believes will reinforce the effects of Section 1502 and other pillars of combating illegal exploitation and illicit trafficking of mineral resources of our country.

The proposals are based on two assumptions: the first is based on the maintenance of Section 1502 of the "Dodd-Frank Act" and, the second, is on the assumption that the US administration would use its legal power to Suspend Section 1502 of the «Dodd-Frank Act».



a) In the event of the maintenance of Section 1502 of the "Dodd-Frank Act"

The DRC Government would like to maintain this section of the above-mentioned Act, it considers that reinforcement measures should be taken, in the light of the relevant criticisms against the effects of its implementation.

To this end, the DRC Government proposes the following:

- 1) The support by the American Administration to bring all the Regional countries which are Part to the International Conference on the Great Lakes Region "ICGLR" in acronym, to effectively integrate into their legal systems the six tools of combating the illegal exploitation of natural resources, by prioritizing the one on the ICGLR Regional Certification Mechanism based on four pillars.
To this end, the US Administration could undertake to sanction the defaulting ICGLR Member States by prohibiting American companies from carrying out commercial transactions of minerals with these countries.
- 2) Support for the establishment of a collaborative program between the US Administration and the DRC in the following areas:
 - ✓ Combating non-State armed groups through the strengthening of the UN quick response brigade;
 - ✓ Border monitoring in the eastern part of the DRC, in particular by providing the DRC with drones;
 - ✓ the fight against mining fraud and smuggling in all its forms;
 - ✓ Joint and regular publication of the lists of non-State armed groups to be blacklisted as terrorist groups with a view to proposing targeted sanctions for both individuals who direct them and entities that finance and / or carry out criminal activities.
- 3) The implementation of Section 1502 of the « Dodd-Frank Act », which has increased the burden on US industrial firms and reduced their competitiveness vis-à-vis their Chinese and Russian competitors, it may be appropriate to consider a direct cooperation between the US firms and the DRC ones in the following areas:
 - ✓ Support for the establishment of direct purchasing structures for mineral substances in the DRC;
 - ✓ Direct support to the specialized bodies of the Ministry of Mines for transfer of skills in view of the sustainability of the Traceability



Mechanisms initiated by private partners (ITSCI, Geotracability, ...);

- ✓ Strengthening the collaborative relations between the Public-Private Alliance (PPA) advocated by the US Government and the DRC Government, through the Ministry of Mines. In this regard, a Memorandum of Understanding could be concluded between the two parties (PPA and The Ministry of Mines);
- ✓ Targeted sanctions against individuals and entities that pilot and / or finance non-State armed groups in the DRC and around the world.

From the foregoing, the DRC is entirely in line with the ICGLR position, published on February 14, 2017.

b) In the event of the suspension of Section 1502 of the « Dodd-Frank Act »

If the US Administration is committed to the suspension or review of Section 1502 of the "Dodd - Frank Act", the DRC Government cannot object it because it is a sovereign power of a partner Country. Nevertheless, it proposes to be involved in the development and implementation of the new plan that the **US Administration is seeking to put in place to combat human rights violations and the financing of armed groups in the DRC .**

In this regard, the said plan should take into account all aspects contributing to combating the illegal exploitation and illicit trafficking of minerals in the DRC, namely:

- ✓ the security of areas where the activities of non-State armed groups may re-emerge;
- ✓ the collaboration between American and Congolese services to combat mining fraud and smuggling in all its forms;
- ✓ the encouragement the DRC and the ICGLR countries to pursue the implementation of traceability and certification mechanisms, as well as the fight against mining fraud;
- ✓ the direct collaboration with end-consumers under the Dodd-Frank Act, in order to create innovative mechanisms together for the absorption of domestic production (partnership agreement, establishment of stock exchange, establishment of smelters and refineries, etc.);



- ✓ the publication of non-State armed groups, the blacklist of terrorist groups, with a view to imposing targeted sanctions. This list should be developed jointly with the DRC Government and MONUSCO;
- ✓ the consideration the traceability systems put in place by the DRC, through its technical services by American companies that are members of EICC & GESI.

These are the submissions objectivity proposed by the DRC Government to the American Government, in a partnership spirit and in the respect for US sovereignty.

Done in Kinshasa, on

Martin KABWELULU



République Démocratique du Congo

Kinshasa, le 13 MARS 2017

N° CAB.MINMINES/01/ 0332 /2017



MINISTRE DES MINES

Le Ministre

Transmis copie pour information à :

- Son Excellence Monsieur le Président de la République, Chef de l'Etat
(Avec l'expression de mes sentiments les plus dévoués)
C/° Palais de la Nation
à KINSHASA/GOMBE
- Son Excellence Monsieur le Premier Ministre, Chef du Gouvernement
(Avec l'assurance de ma haute considération)
C/° Hôte du Gouvernement
- Son Excellence Monsieur le Vice-Premier Ministre, Ministre des Affaires Etrangères et Intégration Régionale
- Son Excellence Monsieur le Vice-Premier Ministre, Ministre des Transports et Voies de Communication
- Son Excellence Monsieur le Ministre d'Etat, Ministre de l'Economie Nationale
- Monsieur le Ministre des Finances
- Monsieur le Secrétaire Général des Mines
- Monsieur le Directeur Général du CEEC
- Monsieur le Directeur Général du Cadastre Minier
- Monsieur le Coordonnateur Général du SAESSCAM
- Monsieur le Président de la Chambre des Mines
- Monsieur le Vice-Président de la Chambre des Mines chargé de la filière stannifère
- Messieurs les Responsables des Entités de traitement de la filière stannifère et leurs accompagnateurs (TOUS) en RDC
- Monsieur l'Ambassadeur de la RDC près les USA
à WASHINGTON
- Monsieur le Secrétaire Exécutif de la CIRGL
à BUJUMBURA/BURUNDI
- Monsieur Tyler Gillard, Head of Sector Projects Responsable Business Conduct (RBC) Unit Investment Division, Directorate For Financial and Enterprise Affairs
C/° Secrétariat de l'OCDE
2, Rue André Pascal -75775
à PARIS/FRANCE

3^{ème} étage, Immeuble du Gouvernement, Place « Royal », Boulevard du 30 Juin, Kinshasa/Gombe - RDC
Site Web : www.mines-rdc.cd
Email : info@mines-rdc.cd



- Mme KAY NIMMO, Manager of Sustainability and Regulatory Affairs/ITRI St Albanes, Londres, V.K.

Objet : Transmission/Observations de la République Démocratique du Congo relatives au projet de Décret Présidentiel portant suspension et/ou révision de la Section 1502 de la Loi Dodd-Frank du 21 juillet 2010 (de réforme de Wall Street et de protection du consommateur).

A Monsieur le Président de U.S. Securities and Exchange Commission, « SEC »
100F.Street, NE
à WASHINGTON, DC 20549

Monsieur le Président,

Je vous adresse la présente relativement à l'objet mis en exergue.

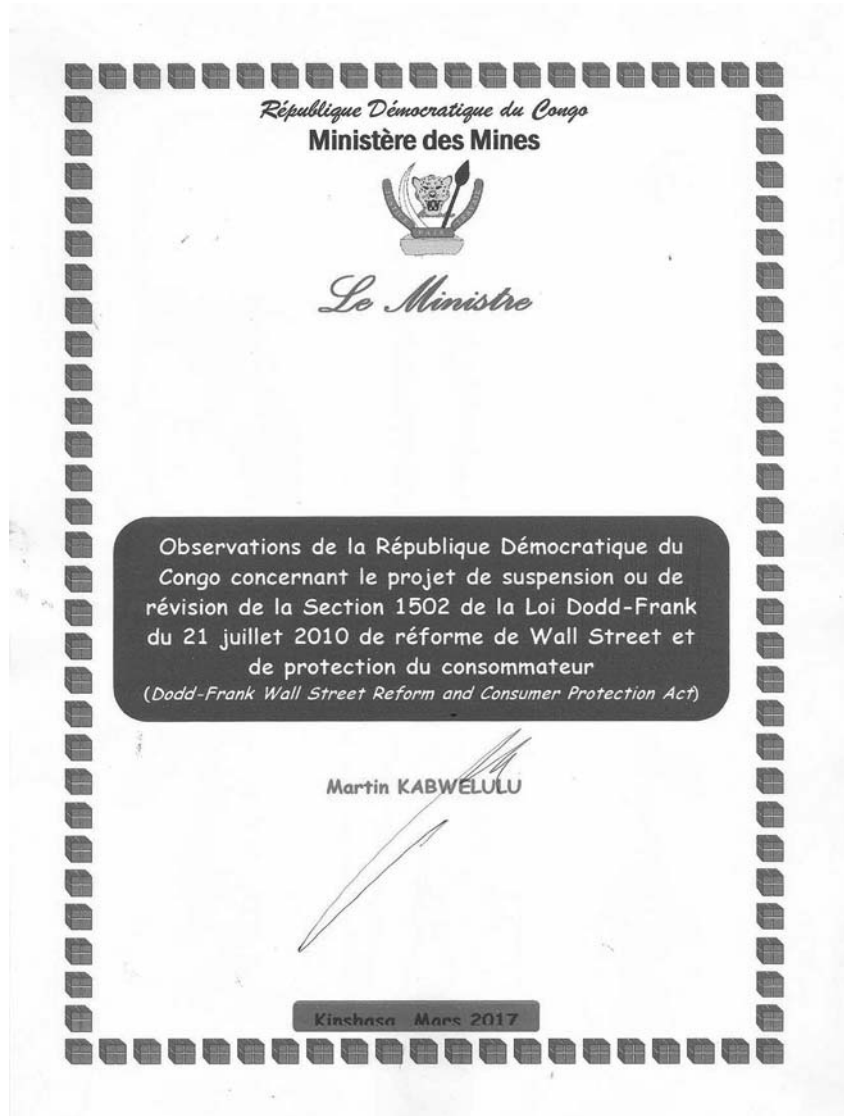
En effet, conformément à votre annonce du 31 janvier 2017 demandant à toutes les parties prenantes concernées par l'application ou non de la Section 1502 de la Loi Dodd-Frank à transmettre leurs observations sur le projet de Décret relatif à la suspension éventuelle de la section 1502 de la Loi Dodd-Frank, la République Démocratique du Congo attend non seulement vous transmettre ses observations mais aussi, elle a estimé, compte tenu de la complexité de la question et de sa volonté de respecter une décision souveraine d'un pays ami, d'envoyer à Washington une délégation d'experts de haut niveau pour échanger avec vous.

Dans ce cadre, il me revient de vous dire qu'en dépit de ses faiblesses et certaines contraintes, le Gouvernement de la République Démocratique du Congo, par le biais du Ministère des Mines, reconnaît que la Section 1502 de la Loi Dodd-Frank fournit une opportunité majeure pour rompre le lien entre les conflits récurrents, la production et le commerce des minerais en République Démocratique du Congo, ainsi que de cultiver l'engagement responsable des entreprises œuvrant dans ou en dehors de la République Démocratique du Congo, ainsi que je l'avais souligné dans ma lettre référencée n° CAB.MIN/MINES/0687/2011 du 15 juillet 2011, adressée à votre prédécesseur. Les mesures d'exécution prises par la SEC ont eu une incidence certaine dans la gestion de la filière des 3T et de l'Or à travers le monde entier en général et dans la Région des Grands Lacs de la CIRGL en Afrique, en particulier. Sa révision éventuelle mérite que l'Administration Américaine puisse être à l'écoute de toutes les parties prenantes.

Aussi, j'ose espérer qu'après analyse des observations de la République Démocratique du Congo, et à l'issue des discussions que vous aurez avec sa délégation, la SEC proposera la meilleure option tant pour la sécurité des USA que pour celle de la RDC, pays ami des USA, qui aspire à vivre dans la paix et à contribuer à la promotion des chaînes d'approvisionnement responsable des minerais non seulement à l'intérieur de ses frontières mais aussi dans le monde entier.

Veillez agréer, Monsieur le Président, l'expression de mes sentiments distingués.

Martin KABWELULU



République Démocratique du Congo



MINISTRE DES MINES

Le Ministre

Contexte actuel

- 1) Le Président Donald TRUMP a signé le 31 janvier 2017 le Décret amorçant le processus de modification de Loi Dodd-Frank du 21 juillet 2010 de réforme de Wall Street et de protection du consommateur (*Dodd-Frank Wall Street Reform and Consumer Protection Act*) ;
- 2) Le 08 février 2017 la presse internationale a fait largement échos du projet de Décret Présidentiel dont les termes sont explicites sur la volonté du Président des Etats-Unis d'Amérique de suspendre la mise en œuvre de la Section 1502 de la loi précitée¹ ;
- 3) La CIRGL², la Société Civile locale³ et internationales, agissant par le biais des Organisations Non Gouvernementales (ONG), les Entreprises américaines⁴ ont exprimé un point de vue contraire. Ils désapprouvent le projet de l'Administration américaine susmentionné ;
- 4) La Securities Exchange Commission (SEC) dans son site Web invite toutes les parties prenantes à formuler, dans les 45 jours, à partir du 31 janvier 2017, leurs observations quant à ce⁵ ;
- 5) La suspension et/ou la révision de la section 1502 de la loi précitée va impacter significativement sur la stabilité de la vie politique, sociale et économique de notre pays ainsi que sur celle des pays de la Région des Grands Lacs.

Aussi, la République Démocratique du Congo, entend-t-elle, dans le présent document, formuler ses observations et suggestions à l'endroit de la Securities Exchange Commission telles que celle-ci l'a requis.

Etant donné que les observations à formuler devraient tenir compte des enjeux en présence, la présentation de ce document comportera les points ci-après :

¹ Annexe : Publication de la Radio France Internationale du 09 février 2017

² Annexe : Communiqué du Secrétariat Exécutif de la Conférence Internationale de la Région des Grands Lacs.

³ Annexe : Position des ONG de la Province du Sud-Kivu du Groupe de Travail Thématique Mines et Ressources du 18 février 2017.

⁴ Annexe : Position INTEL et APPLE publié par Washington Post du février 2017

⁵ Annexe : Page Web tiré du Site de la Securities Exchange Commission.

Ministère des ~~Mine~~^{Mines} 2 des Observations de la RDC concernant le projet de suspension ou de révision de la Section 1502 de la Loi Dodd-Frank du 21 juillet 2010 de réforme de Wall Street et de protection du consommateur.

- ✓ Bref rappel circonscrivant le cadre de la Section 1502 de la loi Dodd-Frank ainsi que ses objectifs,
- ✓ Les observations de la RDC quant à la motivation du projet de mémorandum présidentiel ;
- ✓ Les propositions de solution de la RDC.

I. Bref rappel

a) Contenu de « Dodd-Frank Act »

La Section 1502 de cette loi intitulée « **minerais de conflit** » prescrit à la **Securities Exchange Commission (SEC)** de mettre en place un dispositif prescrivant entre autres aux entreprises américaines de :

- ✓ Déclarer si les minerais qui sont nécessaires *à la fonctionnalité ou à la production d'un produit qu'elle fabrique*⁶ proviennent de la République démocratique du Congo ou d'un pays limitrophe ;
- ✓ Transmettre à la SEC, en conséquence, un rapport indiquant avec une description claire qu'elles ont instituée *des mesures mettant en œuvre une procédure de diligence raisonnable de leurs chaînes d'approvisionnement* ;
- ✓ *Faire certifier par des audits indépendants que les minerais canalisés dans leurs chaînes d'approvisionnement sont exempts de tout lien avec le conflit en République Démocratique du Congo.*

b) « Dodd-Frank Act », un des piliers du dispositif normatif de lutte contre l'exploitation et le trafic illicite des substances minérales de la RDC

Depuis presque une décennie, le dispositif normatif de lutte contre l'exploitation et le trafic illicite des substances minérales de la RDC est constitué de quatre piliers dont trois résultent de ses partenaires internationaux et le quatrième constitué par la réglementation nationale :

- ✓ **Au plan du droit interne de la RDC**, il s'agit de la réglementation pour le suivi de la traçabilité et de lutte contre la fraude édictée par le Gouvernement constituée entre autres des textes ci-après :
 - l'Arrêté Interministériel n° 0719 /CAB.MIN/MINES/01/2010 et n° 140/CAB.MIN/ INT.SEC/2010 du 20 octobre 2010 portant création, organisation et fonctionnement de la Commission Nationale de lutte contre la fraude minière, « CNLFM » en sigle ;

⁶ Point (2), (8) de la Section 1502 de la loi Dodd-Frank.

- l'Arrêté Ministériel n°057/CAB.MIN/MINES/01/2012 du 29 février 2012 portant mise en œuvre du mécanisme régional de certification de la Conférence Internationale de la Région des Grands Lacs « CIRGL » en République Démocratique du Congo;
- l'Arrêté Ministériel n°2503 CAB.MIN/MINES/01/07 du 05 février 2007 portant procédure d'évaluation, d'expertise et de certification des substances minérales ;
- l'Arrêté interministériel n° 0149/CAB/MIN/MINES/01/2014 et n° 116/CAB/MIN/FINANCES/2014 du 05 juillet 2014 portant Manuel des procédures de traçabilité des produits miniers, de l'extraction à l'exportation lequel a abrogé l'Arrêté Interministériel n° 711/CAB.MIN/MINES/01/2010 et n° 206/CAB/MIN/Finances/2010 du 15 octobre 2010 sur le Manuel des procédures de traçabilité des produits miniers, de l'extraction à l'exportation, pris aux lendemains de la promulgation de la Loi Dodd Frank.
- La Note-Circulaire n° 002/CAB.MIN/Mines/01/2011 du 06 septembre 2011 relative à l'Application obligatoire des directives et recommandations du Guide de Devoir de diligence de l'OCDE et de la résolution 1952 (2010) du Conseil de Sécurité de l'ONU dans le secteur minier Congolais.

✓ **Sur le plan international, la RDC fonde ses actions sur :**

- La résolution 1952 (2010) du Conseil de Sécurité de l'ONU.
- Le Guide de l'OCDE sur le devoir de diligence pour un approvisionnement responsable en minerais provenant de zones de conflit ou à haut de conflit ou à haut risque ;
- Loi Dodd-Frank du 21 juillet 2010 de réforme de Wall Street et de protection du consommateur (*Dodd-Frank Wall Street Reform and Consumer Protection Act*) ;
- La Déclaration de Lusaka du 15 décembre 2010 signée par les Chefs d'Etat et de Gouvernement des pays Membres de la CIRGL qui ont approuvé les six outils de lutte contre l'exploitation illégale des ressources naturelles et endossé le Guide de l'OCDE sur le devoir de comme un outil transversal à l'Initiative Régionale sur la lutte contre l'exploitation illégale des Ressources Naturelles « IRRN » de la CIRGL.

Ainsi, la section 1502 de « Dodd-Frank Act » ne devrait pas être analysée de façon isolée étant donné qu'elle s'inscrit dans le cadre normatif cohérent et interdépendant tendant à « favoriser la transparence des chaînes d'approvisionnement en minerais et

l'engagement durable des entreprises dans le secteur des minerais en vue de permettre aux pays et à leurs populations de bénéficier de leurs ressources minérales naturelles et d'empêcher que l'extraction et le commerce des minerais soient une source de conflit et d'insécurité. »

Il en découle que la suspension ou la révision de la Section 1502 impactera sur le dispositif normatif tant interne des USA que régional et international, ainsi que sur la stabilité sécuritaire, sociale et économique de la République Démocratique du Congo.

D'où les observations que la République Démocratique du Congo entend formuler, avant de présenter ses propositions de solutions.

II. Des observations de la République Démocratique du Congo

Il est indéniable que le projet de Décret Présidentiel dont question dans le présent document est un acte réglementaire interne d'un pays partenaire qui fait usage de son pouvoir souverain d'administration. La RDC devrait, en tant que partenaire, s'interdire d'émettre un quelconque point de vue à ce sujet.

Cependant, étant donné que la signature dudit acte réglementaire impacterait sur la vie politique, sécuritaire, sociale et économique d'une partie considérable de notre pays et voire même de la Région des Grands Lacs d'Afrique, la RDC voudrait, en toute objectivité, faire part à l'Administration américaine de ses quelques observations tirées des risques à encourir en cas de suspension ou de révision de la Section 1502 de « Dodd-Frank Act ».

2.1. Les risques à encourir en cas de suspension ou de révision de la Section 1502 de « Dodd-Frank Act »

Le Gouvernement de la RDC est d'avis que la suspension de la Section 1502 de « Dodd-Frank Act » comporte des risques certains eu égard à l'évolution socio-politique de deux dernières décennies dans la Région qu'elle appartient.

En effet, pour illustrer ce qui précède, il sied de faire référence à la situation vécue en RDC et dans la Région des Grands Lacs en général à partir de la deuxième moitié des années 1990 jusqu'à ce jour. En effet, notre pays a vécu une situation conflictuelle récurrente qui a déstabilisé

Ministère des Mines des Observations de la RDC concernant le projet de suspension ou de révision de la Section 1502 de la Loi Dodd-Frank du 21 juillet 2010 de réforme de Wall Street et de protection du consommateur.

toute la Région des Grands Lacs⁷ au point que les observateurs avertis ont parlé de la première guerre mondiale africaine et ce, en raison du nombre des Etats protagonistes impliqués et des personnes décédées évaluées à 6.000.000.

Le Gouvernement de la RDC est convaincu qu'en tant que partenaire, les Etats-Unis ne voudraient pas voir de nouveau resurgir la situation conflictuelle décrite supra qui, comme l'ont si bien mentionné les organisations de la Société Civile du Sud –Kivu, a charrié un cortège des malheurs à son préjudice à savoir, les déplacements des populations, les violations massives des droits humains, la désarticulation de l'appareil administratif étatique ainsi que des activités socio-économiques⁸.

Par conséquent, le Gouvernement de la RDC est préoccupé par toute démarche qui risquerait de replonger le pays dans cette sombre situation dont il est en train de sortir avec grande peine avec le soutien de nombreux partenaires, parmi eux, les USA, en premier ligne. La RDC ne peut redevenir une zone où règne des Seigneurs de guerres et d'où partiraient les actions qui menaceraient la paix et la stabilité d'une partie de la planète.

Concrètement, la suspension ou la révision de la Section 1502 de « Dodd-Frank » comporte la forte probabilité de faire resurgir des risques qui mettront en péril la stabilité de la RDC et, par ricochet, les intérêts de la sécurité des Etats –Unis d'Amérique.

2.1.1. Le risque de la recrudescence des activités des groupes armés non étatiques

La suspension et/ou la révision, en ce qu'elle va supprimer la sanction assortie au non-respect des mesures contenues dans la loi, aura entre autres comme effet de restaurer « le cordon ombilical entre les grandes fonderies, voire même avec les grandes entreprises américaines de transformation de nos minerais et les seigneurs de guerre » qui s'étaient tristement illustrés durant la période bien décrite supra.

⁷ L'on peut citer l'Angola, la République du Congo, la République Centre africaine, le Rwanda, le Burundi, l'Ouganda et la République Démocratique du Congo.

⁸ Rapport de

Ministère des Mines
La Mine Page 6 des Observations de la RDC concernant le projet de suspension ou de révision de la Section 1502 de la Loi Dodd-Frank du 21 juillet 2010 de réforme de Wall Street et de protection du consommateur.

2.1.2. Le risque d'affaiblissement des politiques favorisant les bonnes pratiques commerciales d'approvisionnement responsables en minerais

La suspension et/ou la révision risquerait également d'entamer sérieusement les efforts consentis aussi bien par la CIRGL, l'Etat congolais, les opérateurs économiques de la RDC ainsi que la société civile locale, appuyés par les organisations internationales, les Etats dont les USA et les ONG, à faire installer progressivement « des bonnes pratiques commerciales » en matière de fourniture et d'approvisionnement responsable en minerais dits de conflit.

La suspension de la Section 1502 aura pour effet d'émousser tout élan tendant à la mise en place des chaînes d'approvisionnement responsables en minerais et dans la Région des Grands Lacs en général et en RDC en particulier.

2.1.3. Le risque d'encourager les autres pays de la CIRGL à ne pas mettre en œuvre les six outils pour lutter contre l'exploitation illégale des ressources naturelles.

Pour rompre le lien entre les conflits armés récurrents et l'exploitation illégale des ressources minérales en général et le trafic illicite des produits miniers en particulier dans la Région des Grands Lacs, six outils ont été institués par la Déclaration des Chefs d'Etat et de Gouvernement de la CIRGL le 15 décembre 2010, à savoir :

- ✓ Le Mécanisme de Certification Régionale ;
- ✓ L'Harmonisation des législations nationales ;
- ✓ La base des données régionales sur les flux des minerais ;
- ✓ La formalisation du secteur minier artisanal ;
- ✓ La promotion de l'Initiative de Transparence dans l'Industrie Extractive (ITIE) ;
- ✓ Le Mécanisme d'Alerte Rapide (ou précocité), MAR en sigle.

Plus de six ans après la Déclaration des Chefs d'Etat de Lusaka, Force est de constater malheureusement que deux pays seulement ont intégré dans leur droit interne le Mécanisme de Certification Régionale, l'un de six outils de lutte contre l'exploitation illégale des Ressources Naturelles. Le chemin à parcourir est encore long. Vouloir l'arrêter serait une action suicidaire pour les pays de la CIRGL. Le Directeur de Programme et Démocratie du Secrétariat Exécutif de la CIRGL l'a souligné dans la Déclaration de la CIRGL diffusée le 14 février 2017.

III. Propositions du Gouvernement de la RDC

Il sied préalablement à la présentation des propositions de la RDC de faire l'état des défis à relever par notre Gouvernement quant à la lutte contre l'exploitation illégale et le trafic illicite des substances minérales. Cela pour contextualiser les propositions dont question infra.

Le Rapport général de la RDC sur la mise en œuvre de six outils de lutte de la CIRGL contre l'exploitation illégale des ressources naturelles publié en décembre 2016, présente les différents défis.⁹

Le rapport précité cite d'une part, les défis concernant la RDC qui, doit de ce fait, doit continuer à prendre des mesures correctives et curatives conséquentes et d'autre part, ceux qui concernent ses partenaires de la CIRGL. Il est joint, à la présente, le rapport général susvisé.

a) Défis à relever par la RDC

1) Défis concernant la RDC :

- ✓ La persistance de la présence des groupes armés non étatiques et quelques éléments incontrôlés et indisciplinés des FARDC et de la PNC ;
- ✓ La lenteur du processus de qualification et de validation des sites miniers ;
- ✓ L'insuffisance des effectifs au niveau de l'Administration des Mines et du SAESCAM ;
- ✓ Le travail des enfants dans les mines ;
- ✓ Les conflits et/ou tensions entre le titulaire des droits miniers et les exploitants artisanaux d'une part et entre les ayants droits coutumiers fonciers et les exploitants miniers qu'ils soient artisanaux ou industriels.

2) Défis concernant les pays partenaires au sein de la CIRGL

- ✓ L'absence des sanctions à l'encontre des Etats membres de la CIRGL n'ayant pas mis œuvre les six outils de lutte de la CIRGL ;
- ✓ La persistance des cas de fraude et la contrebande minières transfrontalières ;
- ✓ L'absence des directives précises de la CIRGL sur la mise en œuvre de certains outils de la CIRGL ;

⁹ Lettre n°CAB.MIN/MINES/01/1829/2016 du 30 décembre 2016 transmettant le « Rapport général de la RDC sur la mise en œuvre de six outils de lutte de la CIRGL contre l'exploitation illégale des ressources naturelles. »

- ✓ La domestication partielle ou insuffisance du Protocole de la CIRGL sur la lutte contre l'exploitation illégale des ressources naturelles par les Etats membres.

Au regard de l'ampleur des défis à relever, le Gouvernement de la RDC entend formuler quelques propositions qui, à son avis, renforceront les effets induits de la Section 1502 et des autres piliers de la lutte contre l'exploitation illégale et le trafic illicite des ressources minérales de notre pays.

Les propositions formulées tiennent compte de deux hypothèses : la première se fonde sur le maintien de la Section 1502 de « Dodd-Frank Act » et, la seconde, se place dans l'hypothèse où l'administration américaine ferait usage de son pouvoir légal de suspendre la Section 1502 de « Dodd-Frank Act ».

a) En cas de maintien de la Section 1502 de « Dodd-Frank Act »

Le Gouvernement de la RDC qui souhaite le maintien de cette Section de la Loi susvisée, estime que des mesures de renforcement soient prises, et ce, au regard des critiques, du reste pertinentes, formulées contre les effets induits dans sa mise en œuvre.

A cet effet, le Gouvernement de la RDC propose ce qui suit :

- 1) L'appui de l'Administration américaine pour amener tous les pays de la Région partie à la Conférence Internationale sur la Région des Grands Lacs « CIRGL » en sigle, à intégrer effectivement dans leur système juridique les six outils de lutte contre l'exploitation illicite des ressources naturelles, en priorité celui relatif au Mécanisme Régional de Certification de la CIRGL reposant sur quatre piliers.
A cet effet, l'Administration américaine pourrait s'engager à sanctionner les Etats Membres défaillants de la CIRGL en interdisant les Sociétés américaines d'effectuer des transactions commerciales des minerais avec ces pays.
- 2) L'appui à La mise en place d'un programme de collaboration entre l'Administration américaine et la RDC dans les domaines de :
 - ✓ La lutte contre les groupes armés non étatiques par le renforcement de la brigade d'intervention rapide instituée par l'ONU ;

Ministère des Mines
Page 9 des Observations de la RDC concernant le projet de suspension ou de révision de la Section 1502 de la Loi Dodd-Frank du 21 juillet 2010 de réforme de Wall Street et de protection du consommateur.

- ✓ la surveillance de la frontière de la partie Est de la RDC, notamment par la mise à la disposition des drones à la RDC ;
- ✓ la lutte contre la fraude et la contrebande minières sous toutes ses formes ;
- ✓ La publication commune et régulière des listes des groupes armés non étatiques devant figurer sur la liste noire des groupes terroristes en vue de proposer des sanctions ciblées tant pour les personnes physiques qui les dirigent que comme entités financent et/ou exécutent des activités criminelles.

3) La mise en œuvre de la Section 1502 de « Dodd-Frank Act » ayant occasionné l'alourdissement des charges des entreprises industrielles américaines et réduit leur compétitivité par rapport à leurs concurrents chinois et russes, il serait indiqué d'envisager une collaboration directe entre celles-ci et la RDC dans les domaines ci-après :

- ✓ L'appui à la mise en place des structures d'achats directs des substances minérales en RDC ;
- ✓ L'appui direct aux organes spécialisés du Ministère des Mines au transfert de compétences dans la perspective de la pérennisation des Mécanismes de Traçabilité initiés par des partenaires privés (ITSCI, Geotracability,) ;
- ✓ Le renforcement des relations de collaboration entre l'Alliance Public-Privé (PPA) prônée par le Gouvernement des USA et le Gouvernement de la RDC, à travers le Ministère des Mines. A ce sujet, un protocole d'accord pourrait être conclu entre les deux parties (PPA et Ministère des Mines) ;
- ✓ Les sanctions ciblées à l'endroit des personnes physiques et entités qui pilotent et/ou financent les groupes armés non étatiques, en RDC et à travers le monde.

De ce qui précède, la RDC s'inscrit dans la ligne droite de la position de la CIRGL publiée en date du 14 février 2017.

b) En cas de suspension de la Section 1502 de « Dodd-Frank Act »

Si l'Administration américaine tient à la suspension ou à la révision de la Section 1502 de « Dodd – Frank Act », le Gouvernement de la RDC ne saurait s'y opposer étant donné qu'il s'agit là d'un pouvoir souverain d'un Etat partenaire. Néanmoins, il propose à ce qu'il soit associé à l'élaboration et à la mise en place du nouveau plan **que**

l'Administration américaine tend à mettre en place pour lutter contre les violations des droits humains et le financement des groupes armés en RDC.

A ce sujet, ledit plan devrait prendre en compte tous les aspects concourant à la lutte contre l'exploitation illégale et le trafic illicite des minerais de la RDC à savoir :

- ✓ la sécurisation des contrées où les activités des groupes armés non étatiques peuvent ressurgir ;
- ✓ la collaboration entre les services américains et congolais pour lutter contre la fraude et la contrebande minières sous toutes ses formes ;
- ✓ l'encouragement de la poursuite par la RDC et les pays de la CIRGL de la mise en œuvre des mécanismes de traçabilité et de Certification, ainsi que de lutte contre la fraude minière ;
- ✓ la collaboration directe avec les consommateurs finaux visés par la loi Dodd-Frank afin qu'ensemble des mécanismes innovants d'absorption de la production nationale soient institués (accord de partenariat, création de bourses, installation des fonderies et raffineries, etc.) ;
- ✓ la publication, en les faisant figurer sur la liste noire des groupes terroristes, les groupes armés non étatiques, en vue de leur infliger des sanctions ciblées. Cette liste devra être élaborée conjointement avec le Gouvernement de la RDC et la MONUSCO ;
- ✓ la prise en compte des systèmes de traçabilité mis en place par la RDC, à travers ses services techniques par les entreprises américaines membres ou non de EICC&GESI.

Telles sont les observations que le Gouvernement de la RDC propose au Gouvernement américain, en tout objectivité et dans un esprit de partenariat et dans le respect de la souveraineté des USA.

Fait à Kinshasa, le 13 MARS 2017

Martin KABWELULU



République Démocratique du Congo



MINISTRE DES MINES

Le Ministre

RESUME EXECUTIF

La République Démocratique du Congo fait état de ses observations et propositions à la suite de l'appel de la Securities & Exchange Commission (SEC) demandant à toutes les parties prenantes à formuler, dans les 45 jours, à partir du 31 janvier 2017, leurs observations quant au projet de l'Administration américaine portant sur la suspension ou la révision de la section 1502 de la Loi Dodd-Frank du 21 juillet 2010 relative à la réforme de Wall Street et à la protection du consommateur (*Dodd-Frank Wall Street Reform and Consumer Protection Act*).

Sans dénier au Président des USA le droit de modifier une norme réglementaire relevant de la souveraineté de son pays, le Gouvernement de la RDC est d'avis néanmoins que la suspension ou la révision de la loi précitée accroîtra les risques réels ci-après qui, à la longue, mettront en péril la stabilité et la sécurité de la RDC et, par ricochet, la sécurité des Etats – Unis d'Amérique :

- 1) la recrudescence des activités des groupes armés non étatiques;
- 2) l'affaiblissement des politiques favorisant les bonnes pratiques commerciales d'approvisionnement responsables en minerais dans la Région des Grands Lacs d'Afrique en général et en RDC en particulier;
- 3) l'encouragement des autres pays de la CIRGL à ne pas mettre en œuvre les six outils pour lutter contre l'exploitation illégale des ressources naturelles, particulièrement celui lié au Mécanisme de certification Régionale (MRC).

Eu égard aux observations susmentionnées et aux défis que la République Démocratique du Congo entend relever pour lutter contre l'exploitation illégale et le trafic illicite des substances minérales, elle présente ses propositions qui sont regroupées en deux hypothèses : la première se fonde sur le maintien de la Section 1502 de « Dodd-Frank Act » et, la seconde, se place dans l'hypothèse où l'administration américaine déciderait de suspendre ou de réviser la Section 1502 de « Dodd-Frank Act ».

a) En cas de maintien de la Section 1502 de « Dodd-Frank Act »

Le Gouvernement de la RDC qui opterait pour le maintien de cette Section de la Loi souhaite que des mesures de renforcement soient prises et ce, au regard des critiques, du reste pertinentes, formulées contre les effets induits dans sa mise en œuvre.

A cet effet, le Gouvernement propose ce qui suit :

- 1) L'appui de l'Administration américaine pour amener tous les pays de la Région partie à la Conférence Internationale sur la Région des Grands Lacs à intégrer effectivement dans leur système juridique les six outils de lutte contre l'exploitation illicite des ressources naturelles, en priorité celui relatif au Mécanisme Régional de Certification de la CIRGL reposant sur quatre piliers. A cet effet, l'Administration américaine pourrait s'engager à sanctionner les Etats Membres défaillants de la CIRGL en interdisant les Sociétés Américaines d'effectuer des transactions commerciales des minerais avec ces pays.
- 2) L'appui et la mise en place d'un programme de collaboration entre l'Administration américaine et la RDC dans les domaines de :
 - ✓ la lutte contre les groupes armés non étatique par le renforcement de Brigade d'Intervention Rapide instituée par l'ONU;
 - ✓ la surveillance de la frontière de la partie Est de la RDC, notamment par la mise à la disposition des drones à la RDC ;
 - ✓ la lutte contre la fraude et la contrebande minières sous toutes ses formes ;
 - ✓ La publication commune de la liste des groupes armés non-étatiques devant figurer sur la liste noire des groupes terroristes en vue de proposer des sanctions ciblées tant pour les personnes physiques qui les dirigent que pour des entités qui financent et/ou exécutent des activités criminelles ;
 - ✓ le renforcement des relations directes entre le Ministère des Mines de la RDC et l'Alliance Public-Privé des USA « PPA » (the Public-Private Alliance for Responsible Minerals Trade) par la signature d'un Protocole d'Accord entre les deux parties prenantes pour travailler ensemble en vue d'instaurer un commerce responsable des minerais en RDC.
- 3) La mise en œuvre de la Section 1502 de « Dodd-Frank Act » ayant occasionné l'alourdissement des charges des entreprises industrielles américaines et réduit leur compétitivité par rapport à leurs concurrents chinois et russes, il serait indiqué d'envisager une collaboration directe entre celles-ci et la RDC dans les domaines ci-après :
 - ✓ l'appui à la mise en place des structures d'achats directs des substances minérales en RDC ;
 - ✓ l'appui direct aux organes spécialisés du Ministère des mines au transfert de compétences dans la perspective de la pérennisation des mécanismes de traçabilité initiés par des partenaires privés (ITSCI, Geotrability,).

b) En cas de suspension de la Section 1502 de « Dodd-Frank Act »

Si l'Administration américaine tient à la suspension ou à la révision de la Section 1502 de « Dodd – Frank Act », le Gouvernement de la RDC ne saurait s'y opposer étant donné qu'il s'agit là d'un pouvoir souverain d'un Etat partenaire. Néanmoins, il propose à ce qu'il soit associé à l'élaboration et à la mise en place du nouveau plan pour lutter contre les violations des droits humains et le financement des groupes armés non étatiques en RDC que l'Administration américaine tend à mettre en place.

A ce sujet, ledit plan devrait prendre en compte tous les aspects concourant à la lutte contre l'exploitation illégale et le trafic illicite des minerais de la RDC à savoir :

- ✓ la sécurisation des contrées où les activités des groupes armés non étatiques peuvent ressurgir ;
- ✓ la collaboration entre les services américains et congolais pour lutter contre la fraude et la contrebande minières sous toutes ses formes;
- ✓ l'encouragement de la poursuite par la RDC et les pays de la CIRGL de la mise en œuvre des mécanismes de traçabilité et de lutte contre la fraude et la contrebande minière;
- ✓ la collaboration directe avec les consommateurs finaux visés par la loi Dodd-Frank afin qu'ensemble, des mécanismes innovants d'absorption de la production nationale soient institués (accord de partenariat, création de bourses, installation des fonderies et raffineries sur place, etc.....) ;
- ✓ le renforcement des relations directes entre le Ministère des Mines de la RDC et l'Alliance Public-Privé des USA « PPA » (the Public-Private Alliance for Responsible Minerals Trade) par la signature d'un Protocole d'Accord entre les deux parties prenantes pour travailler ensemble en vue d'instaurer un commerce responsable des minerais en RDC.

En résumé, le Gouvernement de la RDC est convaincu que les USA, par son Président, prendront la meilleure décision dans l'intérêt supérieur tant pour leur sécurité que pour celle de ses partenaires, particulièrement pour celle de la RDC disposée à renforcer la lutte contre l'exploitation illégale et le trafic illicite des minerais en instaurant des chaînes d'approvisionnement responsables en minerais. C'est une dynamique irréversible avec ou sans Loi Dodd-Frank.

Fait à Kinshasa, le 3 MARS 2017

Martin KABWELULU



COALITION OF ANTI-SLAVERY CIVIL SOCIETY ORGANIZATIONS

COSCAE asbl



DECLARATION OF COSCAE ON REPEAL OF THE DODD-FRANK ACT BY THE TRUMP ADMINISTRATION

The Coalition of Anti-Slavery Civil Society Organizations is a network of eleven Congolese civil society organizations committed to fight against all forms of modern slavery which is headquartered in Goma, the North Kivu Province, DRC. Since its inception, COSCAE has welcomed the U.S. Government's leadership for having passed the Dodd-Frank Act. This tool has been an effective support for the network's advocacy and monitoring. This law involved the establishment of responsible sourcing of minerals in the DRC. All the Congolese communities and specifically those of the mining areas of the Kivus already enjoyed certain advantages offered by this law including:

- Reduction in mining-related crimes. The activism of the armed groups in the mining sites decreased significantly, so did their ability to do harm;
- Consequently the children used by armed groups have left in mass mining sites;
- Only qualified and approved sites have official authorization to operate;
- The responsible sourcing of minerals from the DRC (trace minerals) prohibiting the exploitation and marketing of minerals by the DRC Armed Forces of the armed groups;
- Minerals produced in the eastern DRC are declared peace minerals or conflict-free minerals;
- The Congolese State already has the ability to control the financial flows from taxes and regular taxes on minerals;
- Opportunities that mining companies should be accountable to local communities by contributing to their development plans.

Great is our surprise today to learn that the same American Government decided to repeal this law for reasons that remain unknown by the Congolese people.

Unfortunately it is a fact that the repeal of this law is an implicit support to areas of conflict in the world, Africa and more specifically in the African Great Lakes with all the corollary misery of the Congolese people.

Considering the issues mentioned above, the COSCAE recommends the U.S. Government the following:

- Reverse its decision by considering the main interest of the Congolese people and security in the African Great Lakes region;
- The U.S. Government should rather strengthen the enforcement mechanisms of this law;
- Put pressure on mining companies to be effectively accountable to local communities by contributing to their development plans.

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March 7, 2017

Mr. Michael S. Piwowar
Acting Chairman
United States Securities and Exchange Commission
100 F Street, NE Washington, DC 20549

Re: Comments on Reconsideration of Conflict Minerals Rule Implementation - Supplemental Submission to February 17, 2017

Dear Mr. Piwowar,

As 127 investors and investor groups with over \$4.8 trillion in assets under management, we are writing to express our continued support for Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the U.S. Securities and Exchange Commission's Conflict Minerals Rule. No single law can solve all the underlying problems that are causing conflict in the Democratic Republic of Congo (DRC) region, but since 2010, Section 1502 has demonstrated success in diminishing revenue flows to militia groups. The law has also been a catalyst for positive change in the region's mining sector, a vital step toward a more effective response by U.S. companies to address material risk in their supply chains, and has contributed to responsible economic development in the DRC.

As fiduciaries, with a long-term view of capital appreciation, assessing and integrating environmental, social, and governance (ESG) data into our investment decision-making process is necessary and prudent. Sustainable investors value companies' responsible management of global supply chain risks and have been particularly concerned in recent years by the use of four minerals, referred to as "conflict minerals" to fund the continuing violence in the DRC.

Conflict minerals disclosure is material to investors and has informed and improved investors' ability to:

- Assess social (i.e., human rights) and reputational risks in a company's supply chain.
- Assess a company's long-term mitigation of risks related to the supply of minerals, liability, and other material risks.

The current Conflict Minerals Rule's disclosures are consistent and accessible to all investors, thereby improving efficiency in U.S. markets in allocating capital to issuers with the best overall prospects for long-term shareholder value. We understand that the transformation to a peaceful and prosperous mining industry in the DRC region has been slow and challenging. Company disclosures on sourcing practices, combined with analysis provided by groups like Responsible Sourcing Network on the quality of such disclosures, has provided investors with important transparency into relevant and material human rights risks. We consider that in order to ensure that implementation with this rule achieves maximum impact, it is critical for the SEC to pursue robust enforcement of the requirements.

We believe that continued engagement and reporting on corporate activities related to conflict minerals under Section 1502 are vital for improvement on the ground. In fact the most recent study conducted by the International Peace Information Service (IPIS) found that 79% of tin, tantalum, and tungsten miners surveyed now work in conflict-free mines; 204 mines have been officially certified as conflict-free; and 75% of smelters/refiners worldwide, for the four conflict minerals, have passed audits by the Conflict-Free Sourcing Initiative or associated programs.

We support that the SEC appropriately considered the costs and benefits involved and charted a workable path forward for companies to report on the source of and due diligence processes associated with conflict minerals. During the SEC rulemaking process, estimated costs for implementation ranged from \$390 million to \$8 billion. There has only been one report by Dr. Chris Bayer, at Tulane University, on the actual cost of implementation. The report, which relied on data from 112 companies, calculated the total cost to be \$709 million, far below the estimated \$3 to 4 billion highlighted in the proposed Executive Order. Consulting firm Claigan Environmental now estimates that the average cost of compliance per company is around \$20,000 per year. Another consulting firm, Elm Sustainability, recently reported that actual compliance costs have "dropped significantly, in large part due to innovations and efficient tools available to issuers and suppliers at no cost."

Companies worldwide are under increasing scrutiny and regulation on conflict minerals from the DRC with the EU's Conflict Minerals Due Diligence which is mandatory for importers of conflict minerals and even some signals from China on possible regulation. Spurred by American leadership on this issue, which goes back to disclosure amendment 3997 championed by Senator Brownback (R-KS) and a bipartisan coalition of nine senators, supply chain due diligence is becoming a global norm for responsible sourcing.

As sustainable and responsible investors, we look to the U.S. Administration and the SEC to continue their essential role in promoting responsible management and sourcing of raw materials. Through regulated disclosures, not only do companies and investors benefit, but we all indirectly contribute to a peaceful, prosperous, and stable conflict-free minerals trade in the DRC region, thereby further advancing respect for human rights in the global supply chains of U.S. companies.

For any questions on the comment submission, please contact Lauren Compere, Boston Common Asset Management at lcompere@bostoncommonasset.com on behalf of this investor group.

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cc:

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Sr. Carole Anne Griswold, HM
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SUBMISSION FOR THE RECORD

Date: April 3, 2017

From: Enough Project

RE: U.S. Senate Foreign Relations Subcommittee on Africa and Global Health Policy Congressional Hearing on Dodd-Frank Section 1502, April 5 2017

The Enough Project would like to submit for the record the below comment sent to Acting Chairman Mr. Michael Piwowar in response to his January 31, 2017 request for comment on the US Securities and Exchange Commission's Conflict Minerals Rule.

Mr. Michael S. Piwowar
 Acting Chairman
 United States Securities and Exchange Commission
 100 F Street NE
 Washington, DC 20549

Re: Comments on Reconsideration of Conflict Minerals Rule Implementation

The Enough Project submits this comment in response to Commissioner Piwowar's January 31, 2017 Statement on the US Securities and Exchange Commission's ("the Commission") Conflict Minerals Rule ("the Rule"). Significant evidence has shown that the Rule has had an overall positive impact in eastern Democratic Republic of Congo ("Congo") and on minimizing supply chain risks to U.S. corporations and investors, increasingly so over time as implementation of the Rule has improved. We thus urge the Commission to leave the current Rule intact and to take additional measures to ensure compliance with the Rule before pursuing changes. The Rule is consistent with other standards on corporate supply chain due diligence, such that change to or repeal of the Rule will not reduce costs for U.S. businesses.

Suspending or significantly weakening the Rule would undermine peace and security and would not reduce costs for U.S. businesses. The Rule has led to improvements in the rule of law in the mining sectors of Congo, Rwanda, and other Great Lakes countries, contributed to improvements in humanitarian conditions in Congo and a weakening of key insurgent groups, and resulted in tangible benefits for U.S. corporations and their supply chains. If the Rule is suspended or weakened, it would incentivize armed groups in eastern Congo to return to hundreds of mines, causing an increased humanitarian crisis. This would also lead to increased corruption in the minerals certification process in Congo and the region, thus creating major risks for U.S. companies sourcing minerals, and it would likely lead to a new *de facto* embargo on minerals from Congo, Rwanda, and the Great Lakes region. Furthermore, the cost for U.S. businesses to comply with the rule has been 74 to 85 percent less than the original SEC estimate, according to new information from Elm Sustainability Partners.

The Enough Project seeks to build leverage for peace and justice in Africa by helping to create real consequences for the perpetrators and facilitators of genocide and other mass atrocities. We aim to counter rights-abusing armed groups and violent kleptocratic regimes that are fueled by grand corruption,



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transnational crime and terror, and the pillaging and trafficking of ivory, diamonds, and other minerals and natural resources. We conduct field research in conflict zones, develop and advocate for policy recommendations, support social movements in affected countries, and mobilize public campaigns.

The Enough Project has been involved in work on conflict minerals since 2008, including several extensive research projects in mines and mining communities in eastern Congo. We remain an active participant in the process to build up a conflict-free minerals trade and end the conflict minerals trade, from our participation in the Public-Private Alliance for Responsible Minerals Trade to the Responsible Artisanal Gold Solutions Forum to the OECD Multi-Stakeholder Group on the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas to conducting further field-based research on the issue. As a result, we have compiled substantial evidence that supports the Rule remaining intact, both for the goal of supporting peace in Congo and of creating transparent supply chains that benefit companies, investors, and consumers.

Some of the Rule's concrete impacts include:

- **Taking away profits from armed insurgents and military units.** Minerals have been a major fuel for conflict in eastern Congo, but the Rule has helped make three out of the four conflict minerals largely peaceful. 79 percent of miners at tin, tantalum, and tungsten mines surveyed in Congo now work at conflict-free mines, according to a study by the International Peace Information Service in October 2016. This is a major change, as the U.N. stated in 2010, the year that Dodd-Frank passed, that nearly every mine was controlled by a military group. Some armed groups and military units continue to profit from gold, as it is much easier to smuggle, and so additional measures such as targeted sanctions on conflict gold traffickers are needed to stem the conflict gold trade. But the overall amount of mineral wealth available to armed actors has decreased since the passage of the Rule.
- **Improving the transparency of corporate supply chains.** The Rule caused electronics companies in the U.S. and internationally to set up auditing programs for minerals smelters worldwide, the key choke point in minerals supply chains. These audits are an important step, as they are independent and third-party and they close many loopholes for smuggled conflict minerals in supply chains. Before the law passed, no smelters had been audited. Today, 75% of the world's smelters for the four minerals have now passed independent audits on conflict minerals (246 out of 325 smelters).
- **Helping reduce the power of major armed groups.** The Rule took away one key incentive for Rwanda's destabilizing interventions in Congo's conflict: their ability to profit from 3T minerals (tin, tantalum, and tungsten). This was not the only incentive for Rwandan meddling but it was an important one. Because of the Rule and improved implementation and certification of conflict-free mines in Congo, it has become less and less profitable for Rwanda to smuggle conflict minerals. An increasing number of 3T mines have become certifiably conflict-free in Congo, thus decreasing the smuggled trade to Rwanda. Before the law passed, there were a series of Rwandan-backed rebel groups, but today there is no longer a major Rwanda-backed armed group in Congo. Also, the FDLR insurgency, a designated terrorist organization with strong links to the Rwandan genocide, has dwindled from 6,000 troops in 2007 to fewer than 1,000 in 2016, according to the United Nations.



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- **Reduced costs for U.S. companies.** The cost of complying with the Rule cost U.S. businesses 74-85% less than the initial SEC estimate (\$600-800 million for all companies in total vs. \$3-4 billion estimated by the SEC), according to a [new independent study](#). U.S. companies also benefited tangibly from the rule through the formation of traceability systems and conflict minerals risk mitigation approaches. The study also notes that if the Rule is eliminated, cost savings for U.S. businesses will be "far less than 100% of the current implementation costs."
- **Helping decrease human displacement.** The number of internally displaced people in Congo has decreased from 3.4 million in 2008 to 1.9 million at the end of 2016. There have been several factors contributing to this, but the Rule has been one of them, as decreased violence in several (though not yet all) mining areas has allowed people in those areas to return to their homes.
- **Improving the rule of law and increasing the conflict-free minerals trade from Congo.** While initial implementation of the Rule contributed to a temporary *de facto* embargo in 2011, this has changed significantly since then, and the Rule has now spurred record-breaking exports of clean, conflict-free minerals. Congo's North Kivu province exported a record [1,121 tons of conflict-free tantalum, as well as 1,550 tons of conflict-free tin in 2016](#). The Rule also spurred the first-ever minerals certification process, that of the International Conference on the Great Lakes Region, and [204 mines have been certified as of 2016](#).

Many U.S. businesses, particularly electronics companies, have benefited from the Rule. They have seen decreased supply chain risks especially for tin and tungsten, increased transparency in the minerals trade and their supply chains, and new investment opportunities in Congo and the surrounding region. Several companies, from Tiffany & Co. to Richline to Apple, have publicly and privately expressed support for the Rule. Two U.S. companies, KEMET Electronics - a leading global supplier of electronics components - and Alphamin Resources Corp. - a tin mining company - have in fact cited Dodd-Frank 1502 and the Rule as reasons they decided to invest proactively in Congo and the surrounding region. In his November 2015 testimony before the House Subcommittee on Monetary Policy and Trade, KEMET CEO Per Olof-Loof stated, "The Dodd-Frank Act has certainly helped companies like KEMET to again, after decades of absence, be able embrace the DRC allowing us to develop a competitive and secure supply chain, improving both our competitiveness and the life of the people in the village [in the DRC]." [Alphamin COO Trevor Faber](#) said "If it wasn't for Dodd Frank, we wouldn't be on the hill" where the large Bisie tin mine is situated in North Kivu province. Other companies and associations have also looked for ways to invest more directly in Congo because of the investment in their supply chains prompted by the Rule, decisions that would have been quite unlikely without the Rule.

It is also premature to suggest the need for the Rule to be reconsidered when the SEC has taken no known enforcement action to date with regard to the Rule. Without records of enforcement from the agency with jurisdiction over the Rule's implementation, it is impossible to determine whether "any additional relief is needed," as Commissioner Piwowar suggests. Additionally, while he notes the D.C. Circuit Court's decision to strike the conflict minerals descriptor requirement from the Rule, he neglects to highlight the Court's clear holding that the vast majority of the Rule is in line with the intent of Congress, and therefore an eminently appropriate measure for addressing the concern with conflict minerals entering issuers' supply chains.



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Below we describe in greater detail the reasons why suspending or weakening the Rule would be counterproductive to national security and humanitarian interests, and detrimental to U.S. business interests. We highlight in particular the words of Bishop Nicolas Djomo, Diocese of Tshumbe, the Democratic Republic of Congo, who, in his May 2012 [testimony](#) before the House Subcommittee on Monetary Policy and Trade, stated:

“We urge the U.S. business community to account for the gruesome social costs of the illicit mining as they calculate their costs for compliance with Section 1502. These calculations are not just cost estimates on a spreadsheet. There is a social balance sheet that places value on the lives that can be saved.”

Progress in Congo and the Region

Consistent with its objective, Dodd-Frank 1502 has spurred reforms that have led to a major reduction in the number of conflict mines in eastern Congo. Before Dodd-Frank 1502, there was no operational 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. For example, [the Enough Project found](#) that in surveyed locations in 2014, minerals that did not go through conflict-free certification sold for 30 to 60 percent less than minerals verified as conflict-free. This price difference has made the trade in 3T minerals significantly less lucrative for armed groups.

As of 2016, the [International Peace Information Service](#) 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. 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.” There is now also 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. As of April 2016, [204 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. [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, thus reducing profits for armed group trying to sell conflict minerals.

The Rule also took away one key incentive for Rwandan intervention in Congo’s conflict, the 3T minerals. This was not the only incentive for Rwandan meddling but was an important one. Because of the Rule and improved implementation and certification of conflict-free mines in Congo, it has become less and less profitable for Rwanda to smuggle conflict minerals. An increasing number of 3T mines have become certifiably conflict-free in Congo (204 at last count), thus decreasing the smuggled trade to Rwanda. Before the law passed, there were a series of Rwandan-backed rebels, but today there is no longer a major Rwanda-backed armed group in Congo. Also, the FDLR insurgency, a designated terrorist organization that includes perpetrators of the Rwandan genocide, has dwindled from 6,000 troops in 2007 to fewer than 1,000 in 2016.



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Conflict gold and 3T mineral smuggling to neighboring countries such as Uganda and Rwanda are issues that the UN Group of Experts and others have documented thoroughly. Minerals smuggling has decreased overall, as a greater number of mines have become certifiably conflict-free. However, gold smuggling remains a critical issue in particular to address, and the United States and United Nations should place targeted sanctions on conflict gold smugglers and diplomats in the region should convene Congo and the Great Lakes governments to reduce the incentives to smuggle, for example uneven gold tax rates. While these challenges remain, scaling back the implementation of the Rule would only exacerbate them while simultaneously undermining the myriad examples of progress.

Congolese Support for the Rule

Many Congolese communities and leaders—including Nobel Peace Prize nominee and Sakharov Prize winner Dr. Denis Mukwege, community activist Justine Masika Bihamba, and Bishop Nicolas Djomo—support Dodd-Frank 1502 and the corresponding Rule. Leaders and activists support the Rule because they have seen direct positive impacts, because they believe in transparency and the rule of law, or both. Below is a sample of this support:

- Dr. Denis Mukwege, renowned Congolese surgeon for victims of sexual- and gender-based violence, founder of the Panzi Hospital: "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."
- Justine Masika Bihamba, Coordinator of the organization Synergy of Women for Victims of Sexual Violence: "10 years ago, we were under de facto control of armed groups...today, let's admit we are a long way from that. And if we're honest, that's in part because of Dodd-Frank – it came to shine the light on those illicit actors. Today, despite the problems with governance, you can feel more government control."
- 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."
- Georges Nzabanita Iyamuremye, Congolese civil society leader and NGO founder (Submitted for Congressional Record, November 17, 2015): "The conflicts in eastern Congo have been mostly fueled by natural resources which rebel groups smuggle through neighboring countries such as Rwanda and Uganda. Rebels in eastern Congo have no plan to change the regime of Kinshasa which is characterized by corruption in private and public sectors, but rather they are more interested in plundering the Congo's natural resources for their own gain."
- International Conference on the Great Lakes Region (ICGLR) Declaration on Section 1502: "the ICGLR Secretariat believes that the repeal of Section 1502 of the Dodd Frank Act will weaken



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the ICGLR [Regional Certification Mechanism for conflict minerals]. Therefore, the ICGLR is highly concerned that this might contribute to the resurgence of armed groups controlling and exploiting minerals. This might ultimately lead to a generalized proliferation of terrorist groups, trans-boundary money laundry and illicit financial flows in the region.”

Benefits for U.S. Business

Transparency has an important role in lowering business risk and stabilizing supply chains, and the Rule has contributed to these elements. ELM Sustainability Partners, a leading independent advisory firm, notes in their own comments in response to Commissioner Piwowar’s statement several tangible benefits to U.S. companies including:

- Spurring development of leading supply chain expertise and traceability systems that have formed the basis of new international supply chain due diligence frameworks
- Identifying supply chain risk mitigation opportunities unrelated to conflict minerals, Improving significantly the visibility into U.S Treasury Office of Foreign Assets Control (OFAC) compliance, and
- Establishing new permanent jobs for U.S. small businesses.

Projected compliance costs have long been a focus of critics of the Rule, claiming it places ‘undue burden’ on companies. However, ELM found that compliance costs are in fact 74-85% less than the initial SEC estimate. While the SEC projected \$3-4 billion for total company costs, ELM estimates costs at \$600-800 million for all companies. Additionally, these costs have dropped significantly as new tools and processes have been developed that help to streamline compliance and as supply chain due diligence requirements become elements of, or are recognized by, other certification standards.

In addition to benefits to individual companies, the Rule has also spurred positive reforms across entire industries that have resulted in improvements across supply chains. For example, the Rule generated significant momentum for a tech industry auditing system set up by U.S. tech companies for mineral smelters and refiners worldwide, the key choke point in minerals supply chains. Before the Rule was implemented, no smelters had been audited; today, 75% of the world’s smelters for the four minerals have now passed independent audits on conflict minerals (246 out of 325 smelters).

The Rule is beneficial to both investors and consumers. According to a group of over 100 investors with assets under management in excess of \$3.75 trillion:

Conflict minerals disclosure is material to investors and has informed and improved investors’ ability to:

- Assess social (i.e., human rights) and reputational risks in a company’s supply chain.
- Assess a company’s long-term mitigation of risks related to the supply of minerals, liability, and other material risks.



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The current Conflict Minerals Rule's disclosures are consistent and accessible to all investors, thereby improving efficiency in U.S. markets in allocating capital to issuers with the best overall prospects for long-term shareholder value. We understand that the transformation to a peaceful and prosperous mining industry in the DRC region has been slow and challenging. Company disclosures on sourcing practices, combined with analysis provided by groups like Responsible Sourcing Network on the quality of such disclosures, has provided investors with important transparency into relevant and material human rights risks. We consider that in order to ensure that implementation with this rule achieves maximum impact, it is critical for the SEC to pursue robust enforcement of the requirements.

Individual consumers have also expressed demand for conflict-free products. Thanks to sustained student activism, more than two dozen schools and universities across the nation and internationally, and various cities and states in the U.S. have passed campus-level procurement resolutions that favor companies that are working to source conflict-free minerals from Congo for their products.

The Future of Supply Chain Due Diligence

The Rule requires companies to know and report on a baseline level of information about their supply chains. Major global markets such as the EU and China are already taking steps towards increased transparency and supply chain due diligence, both with respect to conflict minerals and also on broader “non-financial reporting,” and the United States should not fall behind by eliminating the Rule. It is important to note, however, that the EU regulation will not be implemented until 2021 and is significantly weaker than the U.S. Rule, so suspension of the U.S. Rule would leave a major gap in global corporate due diligence. Additionally, other jurisdictions within the United States are already implementing their own measures to encourage and enforce conflict-free sourcing: Massachusetts, California, and Maryland have all passed state-level conflict-free legislation, and five U.S. cities, including Pittsburgh, PA and Portland, OR have passed similar city-level legislation. Maintaining robust federal standards is crucial to ensuring these smaller jurisdictions can remain coordinated and not place disparate procurement requirements on companies, essentially increasing the number of standards they are held to.

In addition to other jurisdictions requiring conflict minerals due diligence, company compliance efforts to implement the Rule are increasingly being subsumed within, or complemented by, larger compliance regimes. For example, as companies begin focused implementation of the UN Guiding Principles on Business and Human Rights, minerals-related supply chain issues may represent “salient human rights risks” that require due diligence and mitigation. The Rule provides a framework for companies to take such actions, which they will still need to do even if the Rule were to disappear. As a result, the Rule can be seen to do as much to help focus company efforts and costs as it does to increase it. The U.S. government included the Rule as one of its “ongoing commitments” within the National Action Plan on Responsible Business Conduct, and this work should continue. Further, the OECD Guidelines on Multinational Enterprises and other frameworks used by business to organize compliance incorporate supply chain due diligence as a basic principle. As implementation of the Guidelines also expands through the efforts of the National Action Plan, the Rule provides a useful framework for companies for efforts that they will need to undertake.



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Moreover, company efforts to develop baseline supply chain information are also steps that assist compliance with U.S. and UN economic sanctions regimes. Both the U.S. and UN Security Council maintain sanctions regimes that focus on the illicit trade in natural resources in Congo, and other sanctions programs include minerals-focused restrictions. The Financial Action Task Force has also focused on the potential for gold to serve as a vehicle for money laundering, and given the risks that jurisdictions like Congo pose in this regard, the Rule provides a structure for companies to assess potential risks. These are not obligations that companies can choose to ignore, and compliance with the Rule, as referenced by Elm Sustainability above, can greatly assist and advance compliance with programs that protect national security and preserve the integrity of the U.S. financial system.

In sum, although much can and needs to be improved beyond the scope of the Rule in order to achieve the entirety of the Rule's intended objectives, revising or eliminating the Rule will have detrimental effects on human security and business. Addressing the gaps in curbing the funding of violent armed groups will be achieved through the implementation of additional complementary measures, not through re-litigating or jettisoning a long and deliberative process that has already been set in motion across the globe and is beginning to demonstrate concrete results in Congo and the surrounding region and, over time, a range of benefits to companies.



United States Government Accountability Office

Statement for the Record for the
Subcommittee on Africa and Global
Health Policy, Committee on Foreign
Relations

For Release on Delivery
Expected at 2 p.m. EST
Wednesday, April 5, 2017

CONFLICT MINERALS

Insights from Company Disclosures and Agency Actions

Statement of Kimberly Gianopoulos, Director,
International Affairs and Trade

GAO Highlights

Highlights of GAO-17-544T, a report to the Subcommittee on Africa and Global Health Policy, Committee on Foreign Relations

Why GAO Did This Study

Armed groups in eastern DRC continue to profit from the exploitation of minerals, according to the United Nations. Provisions in the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act require that U.S. agencies take certain actions. For example, the act requires, among other things, SEC to promulgate regulations regarding the use of conflict minerals from the DRC and adjoining countries. The act also requires Commerce to submit a report that includes an assessment of IPSAs filed in conjunction with SEC disclosures. As we reported in 2015, U.S. agencies have supported a range of initiatives; for example, strengthening traceability mechanisms that minimize the risk that minerals that have been exploited by illegal armed groups will enter the supply chain.

Based on an August 2016 report (GAO-16-805), this statement examines (1) company disclosures filed in 2015 in response to the SEC conflict minerals regulations and (2) Commerce's actions regarding its conflict minerals-related requirements under the Dodd-Frank Act. GAO analyzed a generalizable random sample of Specialized Disclosures (Form SDs) filed with SEC and interviewed relevant officials for that report.

What GAO Recommends

In its August 2016 report, GAO recommended that Commerce establish a plan outlining steps and time frames for assessing the accuracy of due diligence processes such as IPSAs, and developing the necessary expertise to fulfill these requirements. Commerce concurred with GAO's recommendation.

View GAO-17-544T For more information, contact Kimberly Gianopoulos, (202) 512-8612 or gianopoulosk@gao.gov.

April 2017

CONFLICT MINERALS

Insights from Company Disclosures and Agency Actions

What GAO Found

Our analysis of a generalizable sample of conflict minerals disclosures filed with SEC in 2015 found that an estimated 49 percent of companies in 2015 reported having determined whether the conflict minerals in their products came from covered countries, compared with 30 percent in 2014—an increase of 19 percentage points. As a result of due diligence, a majority of companies reported in 2015 that they were unable to determine the country of origin of the conflict minerals in their products and whether such minerals benefited or financed armed groups in the covered countries. However, companies reported a range of actions they had taken, or planned to take, to build on or improve their due diligence efforts, such as shifting operations or encouraging those in their supply chain to shift from current suppliers to suppliers who are certified as conflict free.

As of July 2016, the Department of Commerce (Commerce) had not submitted to Congress a report that includes an assessment of the accuracy of Independent Private Sector Audits (IPSA) and other due diligence efforts as well as recommendations for IPSA processes, as the Dodd-Frank Act requires, and had not developed a plan for doing so. Commerce officials told us in July 2016 that they had not yet assessed the accuracy of the four IPSAs filed in 2014 or the six IPSAs filed in 2015. Commerce officials said they established a team to manage Commerce's responsibilities related to IPSAs in March 2016, but the officials noted that they did not have the internal knowledge or skills to review IPSAs or establish best practices.

Chairman Flake, Ranking Member Booker, and Members of the Subcommittee,

I am pleased to submit this statement about our recent work related to conflict minerals. Over the past decade, the United States and the international community have sought to improve security in the Democratic Republic of the Congo (DRC)—the site of one of the world's worst humanitarian crises. The 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) contains a sense of Congress expressing that the exploitation and trade of conflict minerals originating in the DRC was contributing to the humanitarian emergency in that country and directs several U.S. agencies to take actions.¹ Notably, Section 1502 of the Dodd-Frank Act includes several provisions pertaining to the trade in these minerals. For example, section 1502 requires the U.S. Securities and Exchange Commission (SEC), in consultation with the Department of State (State), to promulgate disclosure and reporting regulations regarding the use of conflict minerals from the DRC and adjoining countries,² known as "covered countries."³ Section 1502 also requires the Department of Commerce (Commerce) to annually submit a report to appropriate congressional committees that includes, among other things, a list of all known conflict minerals processing facilities worldwide and an assessment of the accuracy of independent private sector audits (IPSA) and certain other due diligence

¹Pub. L. No. 111-203, § 1502, 124 stat. 1376, 2213-2218. The Dodd-Frank Act defines conflict minerals as columbite-tantalite (coltan), cassiterite, gold, wolframite, or their derivatives, or any other mineral or its derivatives that are determined by the Secretary of State to be financing conflict in the DRC or an adjoining country. See § 1502(e)(4). Columbite-tantalite, cassiterite, and wolframite are the ores from which tantalum, tin, and tungsten, respectively, are processed.

²Section 1502(b) of the Dodd-Frank Act added section 13(p) to the Securities Exchange Act of 1934, 15 U.S.C. § 78m(p).

³Section 1502(e)(1) of the Dodd-Frank Act defines "adjoining country" as a country that shares an internationally recognized border with the DRC. When SEC issued its conflict minerals rule, such countries comprised Angola, Burundi, Central African Republic, the Republic of the Congo, Rwanda, South Sudan, Tanzania, Uganda, and Zambia. Pub. L. No. 111-203, § 1502. For the purposes of the conflict minerals rule, SEC refers to these countries as "covered countries".

processes.⁴ In addition, section 1502 contains a provision for GAO to, among other things, report annually through 2020, in 2022, and in 2024 to appropriate congressional committees, beginning in July 2012, on the effectiveness of the SEC rule in promoting peace and security in the DRC and adjoining countries.⁵ SEC adopted its conflict minerals disclosure rule in August 2012,⁶ and companies began to file disclosures in 2014.⁷

As we reported in 2015, U.S. agencies have supported a range of initiatives, including, for example, validating conflict-free mine sites and strengthening traceability mechanisms that minimize the risk that minerals that have been exploited by illegal armed groups will enter the supply chain.⁸ We have also reported that U.S. diplomacy has increased awareness and improved coordination about the supply chain of conflict minerals in the region, according to officials from the United Nations, the International Conference on the Great Lakes Region, and the governments of the DRC and adjoining countries.⁹

⁴In addition, section 1502(c) of the Dodd-Frank Act directed State, in consultation with the U.S. Agency for International Development, to submit to appropriate congressional committees a conflict minerals strategy to address the linkages between human rights abuses, armed groups, mining of conflict minerals, and commercial products. Section 1502(e) of the act defines "appropriate congressional committees" to mean the House of Representatives' Committee on Appropriations, Committee on Foreign Affairs, Committee on Ways and Means, and Committee on Financial Services, and the Senate's Committee on Appropriations, Committee on Foreign Relations, Committee on Finance, and Committee on Banking, Housing, and Urban Affairs. Pub. L. No. 111-203, § 1502.

⁵See Pub. L. No. 111-203, § 1502(d) (as amended by GAO Mandates Revision Act of 2016, Pub. L. No. 114-301, § 3, 130 Stat. 1514).

⁶Conflict Minerals, 77 *Fed. Reg.* 56,274 (Sept. 12, 2012) (codified at 17 C.F.R. § 240.13p-1).

⁷Conflict minerals disclosures filed with SEC in a given calendar year contain information about conflict minerals used in the previous calendar year.

⁸GAO, *SEC Conflict Minerals Rule: Initial Disclosures Indicate Most Companies Were Unable to Determine the Source of Their Conflict Minerals*, GAO-15-561 (Washington, D.C.: Aug. 18, 2015).

⁹The International Conference on the Great Lakes Region (ICGLR) comprises 12 member states: Angola, Burundi, Central African Republic, the Republic of the Congo, the DRC, Kenya, Uganda, Rwanda, South Sudan, Sudan, Tanzania, and Zambia. In 2010, ICGLR began working to develop a regional certification mechanism to ensure that conflict minerals are fully traceable. ICGLR's regional certification mechanism enables member countries and their mining companies to demonstrate where and under what conditions minerals were produced, allowing member governments to issue ICGLR regional certificates for those mineral shipments that are in compliance with the standards of the mechanism. ICGLR issued its first certificate in November 2013 to a mine in Rwanda.

Based on key findings from a report we issued in August 2016, this statement examines (1) company disclosures filed with SEC in 2015 in response to the SEC conflict minerals rule and (2) Commerce's actions regarding its conflict minerals-related requirements under the Dodd-Frank Act.¹⁰ To conduct the work on which this statement is based, we analyzed documents and data and interviewed officials from SEC, Commerce, State, the U.S. Agency for International Development, the U.S. Geological Survey, nongovernmental organizations, industry, and international organizations. We analyzed a random sample of 100 reports from a population of 1,281 to create estimates generalizable to the population of all companies that filed specialized disclosure reports and conflict minerals reports with SEC. We spoke with company representatives to obtain additional perspectives. We traveled to China, Malaysia, and Singapore for field work and visited conflict minerals processing facilities to observe conflict minerals processing and due diligence processes. We met with a range of stakeholders, including representatives of nongovernmental organizations, international organizations, and the private sector. Our August 2016 report includes a detailed explanation of the methods used to conduct our work.

We conducted the work on which this statement is based in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

The DRC is a vast, mineral-rich nation in Africa with an estimated population of about 75 million people and an area that is roughly one-quarter the size of the United States. Since gaining independence from Belgium in 1960, the DRC has undergone political upheaval, including a civil war, according to State. In particular, eastern DRC has been plagued by violence, often perpetrated against civilians by illegal armed groups and some members of the Congolese national military. In 2007, the International Rescue Committee estimated that since 1998, more than 5.4 million people had died in the DRC as a result of such violence, which

¹⁰See GAO, *SEC Conflict Minerals Rule: Companies Face Continuing Challenges in Determining Whether Their Conflict Minerals Benefit Armed Groups*, GAO-16-805 (Washington, D.C.: Aug. 25, 2016).

has also destabilized the minerals-rich eastern DRC, created insecurity, displaced thousands of people, and perpetuated a cycle of poverty.¹¹ In November 2012, M-23, an illegal armed group, occupied the city of Goma and other cities in eastern DRC and clashed with the Congolese national army. During this time, the United Nations (UN) reported numerous cases of sexual violence against civilians, including women and children, which were perpetrated by armed groups and some members of the Congolese national military. The UN High Commissioner for Refugees (UNHCR) estimated that as of mid-2013, almost 50,000 refugees from the Central African Republic, more than 120,000 refugees from other countries, and about 2.6 million internally displaced persons were living in camps or with host families in the DRC.

The SEC conflict minerals disclosure rule addresses the four conflict minerals named in the Dodd-Frank Act—tin, tungsten, tantalum, and gold—from the DRC and adjoining countries. The rule outlines a process for companies to follow, as applicable, to comply with the rule. Broadly, the process comprises three steps, requiring a company to (1) determine whether it manufactures, or contracts to have manufactured, products with “necessary” conflict minerals; (2) conduct a reasonable country-of-origin inquiry (RCOI) concerning the origin of conflict minerals used; and (3) exercise due diligence, if appropriate, to determine the source and chain of custody of conflict minerals used.¹² (App. I depicts the SEC’s flowchart summary of the rule.)

¹¹International Rescue Committee, “Mortality in the Democratic Republic of the Congo: An Ongoing Crisis” (New York, New York, May 1, 2007), accessed March 31, 2017, <https://www.rescue.org/report/mortality-democratic-republic-congo-ongoing-crisis>.

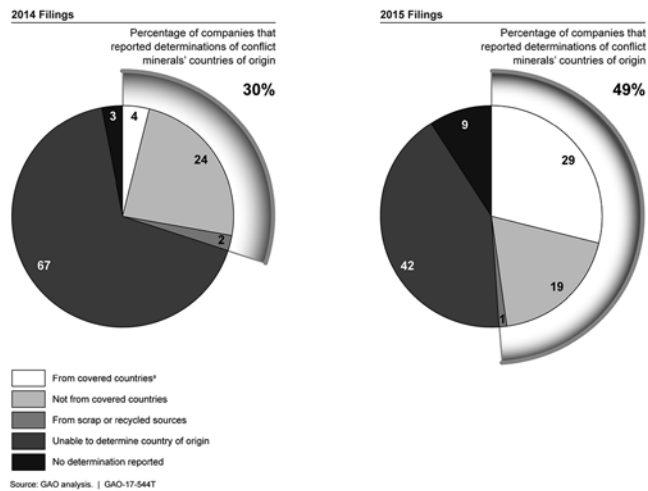
¹²The four conflict minerals are used in a wide variety of products. For example, tin is used to solder metal pieces and is also found in food packaging, steel coatings on automobile parts, and some plastics. Most tantalum is used to manufacture tantalum capacitors, which enable energy storage in electronic products such as cell phones and computers, or to produce alloy additives, used in turbines in jet engines. Tungsten is used in automobile manufacturing, drill bits and cutting tools, and other industrial manufacturing tools and is the primary component of filaments in light bulbs. Gold is used as reserves and in jewelry and is also used by the electronics industry, including, for example, in cell phones and laptops.

**SEC Filings in 2015
Show Companies
Were More Informed
about Supply Chains
but Continued to
Face Challenges in
Determining Conflict
Mineral Origins**

Our analysis of a generalizable sample of conflict minerals disclosures filed with SEC in 2015 found that, while similar estimated percentages of companies in 2014 and 2015 reported performing RCOIs, a higher estimated percentage of companies in 2015 indicated having more knowledge about their supply chains as a result of the RCOIs.¹³ An estimated 49 percent of companies in 2015 reported having determined whether the conflict minerals in their products came from covered countries, compared with 30 percent in 2014—an increase of 19 percent. Figure 1 shows the 2014 and 2015 percentages of companies that reported determinations of their conflict minerals' origins on the basis of the RCOI results.

¹³Companies began reporting to SEC under the rule for the first time in 2014 on conflict minerals used in 2013.

Figure 1: Percentages of Companies That Reported Determinations of Conflict Minerals' Origins, 2014 and 2015



Notes: Companies reported country-of-origin determinations to the U.S. Securities and Exchange Commission (SEC), based on the results of "reasonable country-of-origin inquiries" conducted in response to the SEC conflict minerals disclosures rule. Percentages shown represent estimates with a margin of error of plus or minus 10 percentage points or less at the 95-percent confidence interval.

*The companies determined that they knew, or had reason to believe, that the conflict minerals in their products came from "covered countries." Covered countries comprise the Democratic Republic of the Congo and adjoining countries as defined by section 1502 of the Dodd-Frank Act. Pub. L. No. 111-203, § 1502, 124 Stat. 1376, 2213-18.

While companies' disclosures indicated that they had conducted RCOs regarding their conflict minerals, companies reported difficulties in obtaining this information from suppliers, similar to difficulties we have previously described.¹⁴ As we have previously reported, a company's supply chain can involve multiple tiers of suppliers, potentially delaying a company's request for information about "upstream" suppliers. For example, companies required to report under the rule could submit the inquiries to their first-tier suppliers; those suppliers could either provide the reporting company with sufficient information or initiate the inquiry process up the supply chain, such as by distributing the inquiries to suppliers at the next tier (tier 2). The tier 2 suppliers could then distribute the inquiries to their suppliers (tier 3), and this process could continue until inquiries reached the processing facility level. Collecting information about each tier could add time to the process.

As in 2014, a majority of companies reported in 2015 that they were unable to determine the country of origin of the conflict minerals in their products and whether such minerals benefited or financed armed groups in the covered countries. However, companies reported a range of actions they had taken, or planned to take, to build on or improve their due diligence efforts, such as shifting operations or encouraging those in their supply chain to shift from current suppliers to suppliers who are certified as conflict free.¹⁵

¹⁴See GAO-16-805; GAO-15-561; and GAO, *SEC Conflict Minerals Rule: Information on Responsible Sourcing and Companies Affected*, GAO-13-689 (Washington, D.C.: July 18, 2013).

¹⁵According to SEC, conflict-free minerals may originate from covered countries but did not finance or benefit armed groups.

Commerce Has Produced Lists of Conflict Minerals Processing Facilities but Lacks a Plan to Assess Audits of Conflict Minerals Filings

Although Commerce provided lists of known conflict minerals processing facilities to Congress in 2014 and 2015 to fulfill the Dodd-Frank Act requirement, Commerce has not made plans to assess the accuracy of companies' IPSAs and other due diligence efforts as the act also requires. The Dodd-Frank Act requires that Commerce annually submit a report, starting in January 2013, containing a listing of all known conflict mineral processing facilities worldwide; an assessment of the accuracy of companies' IPSAs and other due diligence efforts described by the Dodd-Frank Act conflict minerals provisions; and recommendations for IPSA processes, including recommendations to improve IPSAs' accuracy and establish standards of best practices.¹⁶ To comply with its responsibilities under the Dodd-Frank Act, and in response to a recommendation we made in 2014, Commerce produced annual reports in 2014 and 2015 listing known conflict minerals processing facilities.¹⁷ However, as of July 2016, Commerce had not submitted to Congress a report that includes an assessment of the accuracy of IPSAs and other due diligence efforts as well as recommendations for IPSA processes, as the Dodd-Frank Act requires, and had not developed a plan for doing so.¹⁸

Commerce officials told us in July 2016 that they had not yet assessed the accuracy of the four IPSAs filed in 2014 or the six IPSAs filed in 2015.¹⁹ In March 2016, Commerce officials had stated that they had

¹⁶Pub. L. No. 111-203, § 1502(d)(3).

¹⁷In June 2014, we reported that Commerce had not yet compiled a list of all conflict minerals processing facilities (i.e., smelters and refiners) known worldwide by January 2013, as required by the Dodd-Frank Act, and we recommended that Commerce develop a plan to do so. See GAO, *Conflict Minerals: Stakeholder Options for Responsible Sourcing Are Expanding, but More Information on Smelters Is Needed*, GAO-14-575 (Washington, D.C.: June 26, 2014). In August 2016, we reported that Commerce concurred with our 2014 recommendation and had published lists of conflict minerals processing facilities in 2014 and 2015; see GAO-16-805. In August 2016, Commerce posted an updated list of processing facilities, which we have not reviewed.

¹⁸Pub. L. No. 111-203, § 1502(d)(3). Specifically, Commerce is to assess the accuracy of the IPSA and other due diligence processes described under section 13(p) of the Securities Exchange Act of 1934 and develop recommendations for the processes used to carry out such audits, including ways to improve the accuracy of such audits, and establish standards of best practices for such audits.

¹⁹Commerce officials said that an additional 19 companies filed IPSAs in 2016. IPSAs are required for SEC-filing companies that choose to describe their products as "DRC Conflict Free" in their disclosure. Our analysis of a sample of 100 disclosures submitted by companies in 2015 found that two of the companies were required to complete an IPSA and one of these companies did so.

established a team to manage Commerce's responsibilities related to IPSAs earlier that month and further stated that Commerce did not yet have the internal knowledge or skills to review IPSAs or establish best practices. Therefore, we recommended in our August 2016 report that Commerce establish a plan outlining steps and time frames for assessing the accuracy of due diligence processes such as IPSAs, for developing recommendations for the process used to carry out IPSAs and for developing the necessary expertise to fulfill these requirements.²⁰ Commerce concurred with our recommendation and stated that it was working to complete such a plan.

Chairman Flake, Ranking Member Booker, and Members of the Subcommittee, this concludes my statement for the record.

GAO Contact and Staff Acknowledgments

For questions about this statement, please contact Kimberly Gianopoulos, Director, International Affairs and Trade, at (202) 512-8612 or GianopoulosK@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Individuals making key contributions to this statement include Godwin Agbara (Assistant Director), Farahnaaz Khakoo-Mausel (Analyst-in-Charge), Elisa Yoshiara, Reid Lowe, Jeffrey Baldwin-Bott, Jasmine Senior, Andrew Kurtzman, Julia Jebo-Grant, David Hancock, Neil Doherty, Justin Fisher and Grace Lui.

²⁰See GAO-16-805.

Appendix I: Securities and Exchange Commission (SEC) Summary of the Conflict Minerals Disclosure Rule

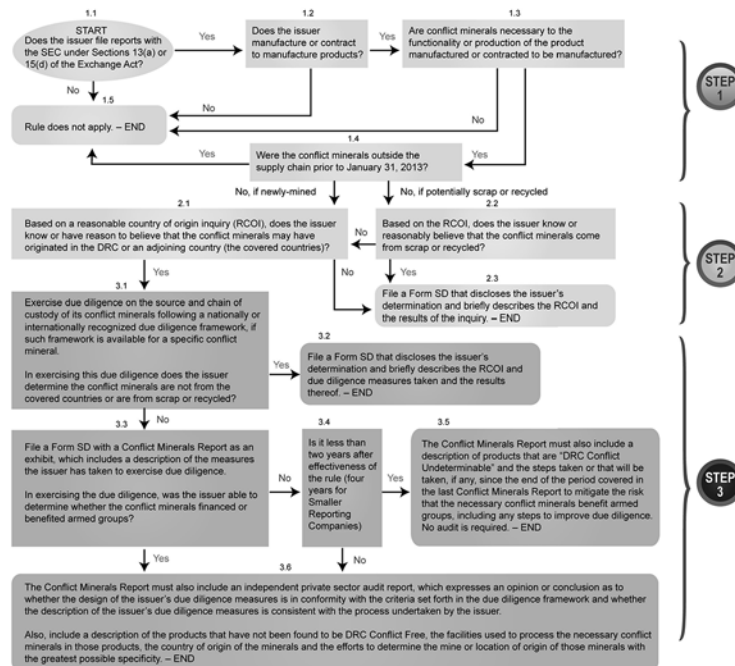
The SEC rule requires companies to file a Specialized Disclosure report, known as Form SD, if they manufacture, or contract to have manufactured, products containing conflict minerals necessary to the functionality or production of those products.¹ The rule also requires companies, as applicable, to document the source and chain of custody of any conflict minerals as well as steps taken to determine the mine or location of origin with the greatest possible specificity. Form SD provides general instructions for filing the conflict minerals disclosure and specifies the information that companies must provide. Companies were required to file under the rule for the first time by June 2, 2014, and annually thereafter on May 31. Figure 2 shows SEC's flowchart summary of the conflict minerals disclosure rule.²

¹The SEC rule applies to companies that file reports with SEC under sections 13(a) or 15(d) of the Securities Exchange Act of 1934.

²SEC notes that the flowchart is intended merely as a guide and that companies should refer to the rule text and the preamble's narrative description for the requirements of the rule. While our discussion in this section is guided by the SEC flowchart, for the purposes of this report, we do not elaborate on every element in the flowchart.

Appendix I: Securities and Exchange
Commission (SEC) Summary of the Conflict
Minerals Disclosure Rule

Figure 2: Securities and Exchange Commission (SEC) Flowchart Summary of the Conflict Minerals Disclosure Rule



Source: Securities and Exchange Commission (SEC). | GAO-17-544T

Related GAO Products

SEC Conflict Minerals Rule: Companies Face Continuing Challenges in Determining Whether Their Conflict Minerals Benefit Armed Groups. GAO-16-805. Washington, D.C.: August 25, 2016.

SEC Conflict Minerals Rule: Insights from Companies' Initial Disclosures and State and USAID Actions in the Democratic Republic of the Congo Region. GAO-16-200T. Washington, D.C.: November 17, 2015.

SEC Conflict Minerals Rule: Initial Disclosures Indicate Most Companies Were Unable to Determine the Source of Their Conflict Minerals. GAO-15-561. Washington, D.C.: August 18, 2015.

Conflict Minerals: Stakeholder Options for Responsible Sourcing Are Expanding, but More Information on Smelters Is Needed. GAO-14-575. Washington, D.C.: June 26, 2014.

SEC Conflict Minerals Rule: Information on Responsible Sourcing and Companies Affected. GAO-13-689. Washington D.C.: July 18, 2013.

Conflict Minerals Disclosure Rule: SEC's Actions and Stakeholder-Developed Initiatives. GAO-12-763. Washington, D.C.: July 16, 2012.

The Democratic Republic of Congo: Information on the Rate of Sexual Violence in War-Torn Eastern DRC and Adjoining Countries. GAO-11-702. Washington, D.C.: July 13, 2011.

The Democratic Republic of the Congo: U.S. Agencies Should Take Further Actions to Contribute to the Effective Regulation and Control of the Minerals Trade in Eastern Democratic Republic of the Congo. GAO-10-1030. Washington, D.C.: September 30, 2010.

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March 31, 2017

Senator Bob Corker
Chairman, U.S. Senate Committee on Foreign Relations
423 Dirksen Senate Office Building
Washington, DC 20510-6225

Re: Dodd Frank Conflict Mineral Rule

Dear Senator Bob Corker,

Please find a copy of Ms. Julia Ormond's Security and Exchange Commission comments regarding the Dodd Frank Conflict Mineral Rule. We ask kindly that it be made part of the official record for the hearing, reschedule for April 5th.

Thank you and look forward to a confirmation.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Gina Reiss".

Gina Reiss
Interim Executive Director
ASSET Campaign

Cc: Michael V. Phelan, Committee on Foreign Relations, Bob Corker (R-TN), Chairman

March 17, 2017

The Honorable Michael S. Piwowar
Acting Chairman Securities and Exchange Commission
100 F Street, NE Washington, D.C. 20549-0213

RE: Reconsideration of Conflict Minerals Rule Implementation

Dear Chairman Piwowar,

As Founder and President of the Alliance to Stop Slavery and End Trafficking (ASSET), an advocacy NGO 501(c)3 dedicated to reducing and stopping enslavement and trafficking before it starts, I am writing to express my personal support as well as support on behalf of ASSET for the continued implementation of Dodd Frank and 1502, otherwise known as the Conflict Minerals Rule. At ASSET we believe that while enslavement remains hidden in the shadows it is easy for governments, corporations and the public to stay in denial ignore or be unaware of it despite its global scope. It is for this reason that we work to illuminate the issue through advocacy, understand every stakeholder challenge, and strive to give everyone a role in changing our practices for good, where possible.

In 2007 I asked photographer Sebastiao Salgado, if I could have permission to use his photographs of mining in Brazil to illustrate forced labor. Sebastiao responded that while he wanted to be supportive of our work, I couldn't use this photograph because this was of consensual work.



We often talk of enslavement as being hidden in plain sight. Sebastiao's work is a powerful documentation as to how easily that can be done. The pictures of conflict-free mines that emerged after the passage of Dodd Frank and the inclusion of the Conflict Minerals Legislation, (1502), show remarkable progress. They show that this can be done.



ASSET does not just work on ending slavery and the human rights agenda as a moral imperative; it does so as an economic challenge with economic solutions, and from the imperative and perspective of global security.

Supporting transparency legislation is a foundational tenet of ASSET's approach. We were the source, co-sponsor and organizer of the game-changing and now global legislation, the Transparency in Supply Chains Act (TISC) which passed in 2010 and became law in January 2012 in CA. ASSET also collaborated with UNSEEN UK around the inclusion of TISC in the UK Modern Slavery Act of 2015. CA TISC requires that retailers and manufacturers doing business in California, with annual worldwide gross receipts of \$100 million or more, must explicitly disclose their efforts to protect human rights and eradicate slavery and human trafficking, along their entire global supply chain. Prior to this legislation, the only things companies were required to disclose were their policies on gender and policies on race.

It should come as no surprise then that we have also supported the Conflict Minerals Rule, given the clear links between mineral exploitation and human exploitation in the Democratic Republic of Congo. As documented extensively by [Free the Slaves](#), conflict minerals and slavery go hand in hand. The supply chain transparency generated by the implementation of the Conflict Minerals

Rule is an essential initial step towards ensuring the products we purchase are not funding human suffering, or contributing to conflict in DRC, which has taken 5.4 million lives.

As you are aware around compliance reporting, in the early stages of the case, the lead petitioner, National Association of Manufacturers (NAM) estimated that 22,000 companies would be required to report, with a total cost of \$16 billion to "perform their due diligence." The SEC estimated that it would cost companies \$3-4 billion in the first year. By contrast, in its analysis of compliance costs, the consulting group Claigan estimated that the total cost would be \$390 million, and actually found that the first year would cost only \$180 million or less – a fraction of any of the initial estimates. While different companies will bear different costs, Claigan estimated that averaged costs were only \$130k per company.

The implementation on the ground in DRC, as a direct result of illuminating the problem and connecting to the c-suite and the consumer through 1502, reduces forced labor and slavery simultaneously. There are now more than 200 conflict free mines in the DRC as a result of Dodd Frank. Transparency legislation is a critical step that illuminates progress, and creates upward momentum around next steps.

Intel's CEO Brian Krzanich on the issue of implementation costs in DRC has said "As a shareholder you should care about this, you should want us to address it... It did cost us a lot to set up this program, but now [that] it's running the cost of the actual materials is no more. So this doesn't cost you more from a material standpoint, the cost of your product will not go up."

Resources should urgently be allocated to move the agenda forward; to scale the ability to monitor, evaluate, analyze, rinse and repeat. Resources are needed to facilitate the processing of insights around new profit angles, reap the rewards and gains of best practices across industry sectors and scale impact to an ever-larger population.

The Conflict Minerals Legislation is not just a necessary solution to cutting off funding to DRC conflict, and bringing peace and security to DRC. It cuts off potential funding to terrorists globally that could be opportunistically linked.

On 19th July 2007, as the United Nations Office on Drugs and Crime Goodwill Ambassador against Trafficking and Slavery, ASSET with UNODC convened a UN Arria, (a potential precursor to a UN Security Council Session) on the "Implications of Human Trafficking for International Peace and Security".

Part of this testimony, available at assetcampaign.org, articulated how terrorists and criminals opportunistically work together, as an understood evolution of transnational organized crime. It is documented that terrorist groups use trafficking and forced labor both functionally and as a source of funding, including mining in Africa.

From an economic and security perspective, any opportunistic and criminal funding sources can clearly be neutralized by engagement and oversight afforded by the creation of conflict-free mines in Africa, and ensuring that information and progress is an expectation for global consumers, investors, as well as and in support of governments.

Ensuring the access to and quality of raw materials can only be enabled through engagement across global supply chains. These minerals are needed for the functionality of micro-chips and enable the use of our cell-phones, computers, cars, microwaves, airplanes, and military hardware. It could be an abdication of national security and economic interests to reverse their responsible, sustainable sourcing, when the real need is to bolster and support the progress that has been made and can continue.

The Conflict Minerals Rule has a demonstrable impact on the calculus of investors and individual consumers. Organizations such as the [Enough Project](#) have shown how the Rule is achieving its intended goals of supporting peace and transparency at home and abroad. I urge the SEC to leave the Rule fully intact and pursue thorough enforcement. Human lives and freedom depend on it.

ASSET is committed to pursuing policy and other changes to end slavery, and we need institutions like the SEC to process how vital and positive a role they can play, and contribute with a similar level of commitment when they are charged by the United States Congress to oversee supply chain transparency issues.

We need to have global oversight, but the burden of responsibility of how to deliver that effectively, cannot just rest on Government alone. There is a role that only business can play, and the information that comes from compliance is needed to inform and participate in that global response. We need global research and analysis. We need a transnational, organized response to transnational, organized crime. We need to neutralize the efficacy of terrorists, and one avenue is surely to cut off their revenue.

Without it our global security is surely threatened.

Sincerely,
 Julia Ormond
 Founder and President
 ASSET
Assetcampaign.org





**EXECUTIVE ACTION TO SUSPEND THE CONFLICT
MINERALS RULE IN THE DODD-FRANK ACT WILL
PLUNGE THE GREAT LAKES INTO A NEW CYCLE OF
VIOLENT CONFLICT**

The Southern Africa Resource Watch (SARW)¹ and its civil society partners in the Democratic Republic of Congo (DRC) are very concerned that the suspension of the conflict minerals rule promulgated by the Securities Exchange Commission (SEC) pursuant to Section 1502 of the Dodd-Frank Act will negatively impact peace, stability and development in the DRC, and the Great Lakes region. We urge the Trump Administration not to suspend this critical section of the law.

The illegal exploitation of natural resources by American, European and Asian companies was at the root of the conflicts that raged in the DRC between 1996 and 2003. Armed groups operating in eastern DRC benefitted financially from the procurement of cheap minerals by these companies, which contributed to the persistence of violence. **The conflicts in the DRC have killed more people than the two World Wars combined.** This was the context in which the U.S. Congress found that the exploitation of and trade in minerals were helping to finance conflict characterized by extreme violence in eastern part of the DRC—including sexual and gender-based violence—creating a humanitarian emergency in the area. In an effort to counter this illicit financing of conflict in the DRC, Congress passed section 1502 of the Dodd-Frank Act.

Section 1502 of Dodd-Frank requires companies under the jurisdiction of the Security and Exchange Commission (SEC) to report annually on whether they are using minerals from the DRC. All companies have to report on the due diligence they have undertaken to verify their supply chain and avoid conflict-promoting metals. **This initiative made the United States a leader in promoting peace in an area that has been plagued by wars, political instability, and poverty.** The European Parliament followed America's lead when it passed the regulation on responsible trade in minerals originating in the Congo in May 2015. China is also finalizing its own initiative—Chinese Guidelines for Mineral Supply Chain. The USA is in danger of losing its leadership role.

The Dodd-Frank Act has had enormous positive effects. Dodd-Frank has contributed significantly to reducing the influence of the armed groups in eastern DRC, which have been

¹ SARW is a project of the Open Society Initiative for Southern Africa. It operates in 12 Countries including the DRC.

using the illegal exploitation of mineral resources to fund their violent activities for years. The initiative has also minimized the supply chain risks of conflict minerals to Western companies. It has prevented rebel movements and other negative forces in eastern DRC from using the sale of tin, tantalum, and tungsten to fuel conflict in the region. Dodd-Frank has been hailed as a major milestone in the global transparency regime around conflict minerals. Our work in the DRC has revealed that beyond transparency, Dodd-Frank has had a significant impact by convincing national and international mining stakeholders of the importance of better regulating the mining activities in eastern DRC. Dodd-Frank has also helped increase awareness amongst all stakeholders with respect to mining fraud and contraband; it has speed up the implementation of the traceability and certification procedures and the demilitarization of mining sites.

There is no doubt suspending the conflict minerals rule of the Dodd-Frank Act will reverse the progress that has been achieved thus far and facilitate the supply of conflict minerals to international markets. This approach will undermine peace by reviving dying militia and rebel groups that are operating in the Great Lakes region.

Natural resources in conflict-prone or high-risk areas—irrespective of the great potential they hold for development—can fuel violence while undermining economic development, good governance and the rule of law. In such areas, it is crucial that the link between conflict and the illegal exploitation of minerals be broken in order to achieve peace and stability.

We therefore call upon President Donald Trump, his Administration, and the U.S. Congress to desist from any effort to undermine, suspend, or repeal the conflict minerals rule in Section 1502 of Dodd-Frank.

Signatories:

1. Actions Contre l'Impunité et pour les Droits de l'Homme (ACIDH)
2. Association Africaine des Droits de l'Homme (ASHADHO)
3. Commission Episcopale pour les Ressources Naturelles (CERN/CENCO)
4. Commission Justice, Paix et Sauvegarde de la Création / Eglise du Christ au Congo (CJP-SC/ECC)
5. Centre National d'Appui au Développement et à la participation politique (CENADEP)
6. Centre d'Etudes Pour l'Action Sociale (CEPAS)
7. Ligue Congolaise Contre la Corruption (LICOCO)
8. Organisation Concertée des Ecologistes et Amis de la Nature (OCEAN)
9. Réseau Ressources Naturelles (RRN)
10. Plateforme pour la Promotion et la Défense des Droits Economiques, Sociaux et Culturels (DESC)
11. African Resources Watch (AFREWATCH)
12. Southern Africa Resource Watch



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TESTIMONY TO THE
SENATE SUBCOMMITTEE ON AFRICA AND GLOBAL HEALTH POLICY
BY MOSTREVERENT MARCEL UTEMBI
PRESIDENT OF THE CATHOLIC BISHOPS' CONFERENCE OF THE CONGO
MARCH 22, 2017

I am Archbishop Marcel Utembi Tapa, Archbishop of the Archdiocese of Kisangani in the Democratic Republic of the Congo (DRC) and President of the Catholic Bishops' Conference of the Congo (CENCO in French). I would like to thank the Honorable Senator Jeff Flake, Chairman of the Subcommittee, and the Honorable Senator Cory A. Booker, Ranking Member, for the opportunity to offer written testimony for the record today.

Today's hearing on Section 1502, the Congo Conflict Minerals Provision of the Dodd-Frank Act passed into law in 2010 comes shortly after the Securities and Exchange Commission (SEC) opened a period for comments on regulations of this same Act. I am greatly troubled by the SEC action because I fear it may be a precursor to an effort to weaken the regulations that guide implementation of 1502, or possibly the first step in a repeal of the Act itself.

In my testimony I urge the Subcommittee to:

1. Resist attempts to weaken or repeal Section 1502, the Congo Conflict Minerals Provisions of the Dodd-Frank Consumer Protection and Wall Street Reform Act.
2. Protect the current rules and regulations that govern the implementation of 1502.
3. Urge international companies to continue their efforts to conform to these regulations.
4. Recognize the efforts that corporations have undertaken to trace their supply chains and conduct due diligence on the minerals they use to produce their many products.
5. Protect the significant positive impact that the implementation of 1502 has had on the working conditions in the mines of the two Kivu Provinces and on the population at large living in this troubled part of the DRC.
6. Recognize and celebrate the enormous leadership that your country has shown as proven by the fact that many European countries have followed your lead in enacting similar rules and that even China has followed the U.S. lead.

1502 broke new ground and opened a new chapter in the DRC's history. Our nation has struggled through and survived over 500 years of exploitation of our minerals, natural wildlife and enslavement and oppression of our people. For the Congolese people, the enactment of 1502 was an altruistic "Good Samaritan" moment that turned the page on a painful past.

This testimony represents the third time that CENCO has offered its analysis, ideas and recommendations to Congress. In 2011 and again in 2013, my predecessor, Bishop Nicolas Djomo, presented testimony to the Finance Subcommittee on Monetary Policy and Trade. Like Bishop Djomo, I do not come to you as a businessman, a financial authority or a foreign policy expert. I am a religious leader, a pastor, who is deeply disturbed by the terrible violence, misery

and suffering that has dominated life in Eastern DRC since 1996. I am sincerely grateful for the leadership that your country has shown my people in enacting Section 1502.

The Catholic Church is one of the largest and most trusted institutions in the Congo. Our institutions reach the remotest and the most dangerous regions of the country. This network is second only to that of the national government, and frequently works where the government cannot. The Church operates a nationwide network of health clinics and schools that serve our people, some of the poorest in the world, despite our abundant natural resources. Many of our dioceses operate development and peace commissions that promote the integral human development of our people. Other structures provide humanitarian assistance for those who have been impacted by the fighting in eastern DRC.

CENCO established the Episcopal Commission on Natural Resources (CERN) that set up 20 observation posts in the Kivu Provinces to collect data and testimony from people in the area. They represent the Church's effort to record the effects of the illicit mining activities that have caused so much suffering over the past two decades. The CERN also collects data and interviews to capture the positive impacts of Section 1502.

Our national Peace and Justice office in Kinshasa operates a nation-wide civic education program funded by international donors that is preparing our people for the national elections that we hope will take place this year. In addition, CENCO is offering its good offices to mediate crucial talks between the ruling party and the larger opposition parties to resolve a serious constitutional and political crisis in order to hold elections. CENCO assumed this role in response to a strong recommendation from the countries in the region and a formal request from President Kabila himself to sponsor negotiations. Sadly, the Church is the only institution that stands between a country at peace and a slide into civil unrest or even civil war.

In this situation of instability, it would be tragic if the United States strengthened the hands of corrupt militia leaders by weakening, suspending or repealing Section 1502, which would undoubtedly create more insecurity, inadvertently leading to a return of fighting and destruction that could increase the chances of our country slipping back into civil war.

From Costs of Doing Business to the Benefits of Doing Good

It is important to point out that the Church is not opposed to economic enterprises nor to mining operations *per se*. But mining activity in the Congo must do more than produce minerals at the cost of fueling violent destruction of lives and communities. Mining must also be conducted in ways that protect human dignity, and the health and environment of affected communities.

The Church believes that business calculations are not just simple cost and benefit estimates on a spreadsheet. Pope Francis warned of the "cult of money and the dictatorship of an economy which is faceless and lacking any truly humane goal." Since Saint John XXIII, Catholic Social Teaching has consistently called for equitable and sustainable economic development. The economy exists to serve the human person. Simply stated, we cannot allow the isolated, cold calculus of corporate profits to prevail when peoples' lives are at stake.

In 2011, the Pontifical Council for Justice and Peace published *The Vocation of the Business Leader*, a manual that laid out two practical principles for businesses. The document guides business leaders' efforts to produce goods and services that also promote human dignity and the common good. The first principle was *meeting the needs of the world* with goods which are *truly good* and which *truly serve* without forgetting, in a spirit of solidarity, the needs of the poor and the vulnerable. The second principle relevant to this issue is the *sustainable creation of wealth* and its *just distribution* among the various stakeholders.

Judged against these standards, how does the impact of the implementation of Section 1502 stand up? My staff and our Church partners provide the following for your consideration.

- The International Peace Information Service visited 1,615 of 2,026 mining sites in Eastern Congo and found that 79% of miners of tin, tantalum and tungsten (3Ts) mines work in conflict-free mines. This is down significantly from 2010 when the UN estimated that all mines were controlled by armed groups.
- Through the Conflict Free Sourcing Initiative, 82% of 3T smelters and gold refiners have passed independent audits on conflict minerals.
- The Enough Project also reports that in surveyed locations in 2014, minerals that did not go through conflict-free certification sold for 30 to 60 percent less than minerals verified as conflict-free. This price difference has made the trade in 3T minerals significantly less lucrative for armed groups.
- A review of North Kivu Provincial records shows that a record amount of tin and tantalum was exported.¹ Thus, the regulations and the adjustments that come from them have not hindered production of the 3Ts.
- There are fewer armed groups operating in the areas of the Kivus due in part to better UN peacekeeping efforts, but also to the cut off of lucrative, illicit mining activities. As a result, the number of internally displaced people dropped from 3.4 million in 2008 to 1.9 million at the end of 2016.
- RCS Global, one of the world's leading responsible raw materials supply chain audit and advisory groups, in their submission to the SEC said, "While we were initially skeptical of the potential impact of DF1502 on conflict dynamics in the region, which are subject to broader geopolitical events, looking back its clear that the rule has dramatically increased transparency in mineral supply chains and in doing so provided much needed insight into the structures which enable extreme poverty, child- and forced labor and human rights abuse, including conflict."

The above examples make clear that businesses are taking into account a social balance sheet that places appropriate priority on the value of the lives that can be saved by the simple act of conducting due diligence to determine whether legitimate business transactions are fueling violence and suffering. Another positive sign is that investment firms that often supply the capital for large scale projects such as mining and other extractive industries applaud the efforts to promote safe and legal exploitation of minerals in the Congo. A collection of investors and investor groups who manage over \$4.8 trillion in funds wrote to the SEC to support the efforts of 1502. These firms do not want to invest their funds, nor their reputations, in projects that fuel conflict, violate human rights or cause other harm.

¹<http://enoughproject.org/blogs/de-facto-embargo-over-record-high-conflict-free-minerals-exports-eastern-congo>

Catalyzed by Section 1502, new supply chain due diligence frameworks have been developed in Rwanda, Congo, the European Union and also in China, recognizing the role that companies should be playing to ensure their business operations do not contribute to conflict or human rights abuses. Section 1502 has created an international standard for responsible sourcing that helps companies understand who they are doing business with and how to respond to any supply chain problems they might discover.

I wish to point out that Section 1502 is not the only effort to promote the global common good and world solidarity. Section 1504 of the Dodd-Frank act has attempted to support Publish What You Pay (PWYP). The PWYP initiative aims to fight official corruption by compelling companies on the U.S. stock exchange to publish what they pay to governments so the people in those countries know how much money their governments are receiving and can hold their officials accountable. Other examples of global solidarity abound:

- The Kimberly process brought to the world of diamonds what Sections 1502 and 1504 attempt to do for the oil and mineral markets. It ended the problem of blood diamonds.
- The horrible image of the collapsed clothing factory and the hundreds of lives lost in Bangladesh a few years back seared into our consciences the results of irresponsible business practices in the production of clothing and other consumer items.
- The growing international efforts to end the illegal trade in elephant ivory, tigers and rhino tusks recently gained increased exposure when China signed in a more formal way.
- Consumers are willing to pay more for ethically sourced products.
- The global demand for sustainable wood products, seafood, and organic foods is rising.
- Fair trade coffee, tea and handicrafts has expanded enormously in the last few years.

Seen in this light, 1502 is an important part of a worldwide effort to produce and buy goods that do good. In a world where the news cycle shows us unending incidents of violence, civil war, terrorist strikes and suffering, it is easy to lose sight of all the efforts to do good. Companies sourcing minerals from the Congo or extracting oil and natural gas from poor countries need to keep the big picture in their business strategies. People want goods that do good.

As far back as 1963, Blessed Pope John XXIII in his encyclical *Pacem in Terris*, observed that the world was heading towards ever greater unification or globalization. A global economy demands a global system of oversight for the universal common good of humanity. 1502 has become one plank in that platform.

The Costs of Doing Good

Some companies have justifiably raised concern about the additional costs engendered in procuring conflict free minerals. One company that submitted comments to the SEC reported spending \$170,000/year as a result of the 1502 rule. In 2014 that company reported revenue of \$8 billion. The rule costs equal 0.0021% of revenue. Put into perspective, this firm earned \$8 billion in 2014 while the GDP of the entire country DRC (population of 70 million) in 2014 was \$32.78 billion. Neighboring Burundi had a national GDP of just \$3 billion.

Another firm that submitted a comment to the SEC reported spending \$87,500 to comply with the 1502 rules. Its annual report showed net sales of \$1.26 billion and net income of \$25.555 million. The 1502 related costs come to 0.0069% of annual sales and 0.34% of net income.

"Implementation costs in the Rule's Final Release were grossly overestimated and are not valid for use by the Commission in evaluating the Rule's current actual compliance costs. [...] Actual compliance costs have dropped significantly, in large part due to innovations and efficient tools available to issuers and suppliers at no cost."² Total initial compliance cost is between \$2.4b and \$3.2b lower than the original SEC estimate.

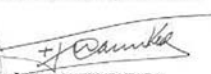
Addressing the Vatican diplomatic corps, Pope Francis noted: "Fighting poverty, both material and spiritual, building peace and constructing bridges: these, as it were, are the reference points for a journey that I want to invite each of the countries here represented to take up. ..."

The conflict in Eastern Congo is an extensive humanitarian tragedy, but it is only the latest chapter in a long history of armed pillage of our nation. Our people fell prey to what is now called the "resource curse" long before the term was coined. For over 500 years, since the arrival of the first colonial powers, our land was devastated for its wood, ivory and precious metals, and its people as slaves to be shipped to foreign lands.

Section 1502 of the Dodd-Frank Act opened a new chapter in the effort to delink conflict, from the international trade in minerals. It was a bold move that showed U.S. global leadership at its best. The Organization of Economic Cooperation and Development (OECD) set company reporting standards for international businesses to comply with 1502. 1502 displayed the willingness of the U.S. government to place American moral values above a blind search for profit, no matter what the social costs in foreign countries. The people of the Congo saw this legislation as a true expression of solidarity with the women, families and villages who have suffered at the hands of those who destroy our communities to mine our resources.

The Church in the Congo is grateful to the international business community for joining us in protecting the life and human dignity of the Congolese people by implementing the 1502 rule. We are confident that they do not want to be part of the violence and suffering that has plagued Eastern Congo over the last twenty years. We have full confidence in the good will of the Congress, the SEC and business sector to realize that this is not the time to dilute legislative standards or SEC rules to save a relative pittance at the cost of precious lives.




 Marcel UTEMBI TAPA
 Archbishop of Kisangani
 President of CENCO

²<https://www.sec.gov/comments/statement-013117/c02-1565701-131655.pdf>


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March 16, 2017

Dr. Michael S. Piwowar
Acting Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Statement on the Commission's Conflict Minerals Rule

Dear Acting Chairman Piwowar:

This letter is in response to your January 31, 2017 Statement on the Commission's Conflict Minerals Rule and request for comments.¹ The U.S. Securities and Exchange Commission's (SEC) 2012 Conflict Minerals Rule plays an important role in efforts to increase stability and rule of law in the Democratic Republic of Congo (DRC) and the surrounding region by supporting transparency in the supply chain around conflict minerals. The Wildlife Conservation Society (WCS) urges the SEC to continue to implement the Conflict Minerals Rule and to reject efforts to weaken it.

WCS saves wildlife and wild places worldwide through science, conservation action, education, and inspiring people to value nature. Founded in 1895 with the help of Teddy Roosevelt as the New York Zoological Society, today the Wildlife Conservation Society continues to be headquartered at the Bronx Zoo. To achieve our mission, WCS harnesses the power of its Global Conservation Program—in nearly 60 nations and in all the world's oceans—and its five wildlife parks in New York City, visited by 4 million people annually. WCS operates the largest and longest standing field conservation program in Africa, including over twenty five years of work in DRC, and programs in Uganda, DRC, Rwanda, Tanzania, Republic of Congo, Gabon, South Sudan, Cameroon, and Nigeria. The Wildlife Conservation Society currently sits on the U.S. Advisory Council on Wildlife Trafficking and is a conservation implementing partner of the U.S. State Department and the U.S. Agency for International Development in Africa, Afghanistan, Burma, Asia, Latin America, and global marine ecosystems.

WCS supports the SEC's 2012 Conflict Minerals Rule and the role that it plays in promoting the rule of law, increasing stability in the region, and reducing pressure on endangered wildlife. The situation on the ground in DRC and the surrounding region (i.e. the upstream supply chain) has

¹ Acting Chairman Michael S. Piwowar, *Statement on the Commission's Conflict Minerals Rule*, Jan. 31, 2017, <https://www.sec.gov/corpfin/statement-on-sec-commission-conflict-minerals-rule.html>.

improved since the issuance of the Rule and WCS strongly supports its continued implementation. WCS's comments below focus on the following topics:

- Conservation Threats Posed by Conflict Minerals and Unregulated Mining
- Improved Conditions after Dodd Frank Section 1502 and the Conflict Minerals Rule
- Need for Continued Implementation of the Conflict Minerals Rule

Conservation Threats Posed by Conflict Minerals and Unregulated Mining

The DRC contains high biodiversity and significant populations of globally threatened species, including the Grauer's gorilla, eastern chimpanzee, okapi, and forest elephant. Three areas of particular biodiversity and conservation interest within DRC are the Maiko-Tayna-Kahuzi-Biega (MTKB) landscape, the Ituri Landscape, and the Kabobo Landscape, all located in eastern DRC. These landscapes and the important natural resources and wildlife within them are threatened by unregulated mining.

The MTKB landscape is one of the most biodiverse regions in Africa. It contains more than 35 species listed as threatened on the IUCN Red List, the world's most comprehensive inventory of the global conservation status of biological species, and high numbers of species found only in that area. These include some of the last remaining populations of the endemic Grauer's gorilla (*Gorilla beringei graueri*), the eastern chimpanzee (*Pan troglodytes schweinfurthii*) and the endemic okapi (*Okapia johnstoni*). The landscape has global significance as it contains some of the largest remaining blocks of intact forest in the DRC.

The Ituri landscape, with an area of approximately 40,000 square kilometers, has one of the largest intact sections of lowland rainforest in the Congo Basin and the most intact faunal assemblage of any landscape in DRC. Within this landscape is a diverse assembly of wildlife, including 17 species of primates (the highest diversity of primates of any landscape in Africa), two species of forest pigs, ten species of forest antelope, forest buffalo, over 300 species of birds, and 500 species of butterflies. It supports about 1,200 forest elephants, the largest population in DRC, at a time when forest elephants face the threat of extinction within a decade if current poaching rates continue. Additionally, it supports 1,000 okapi and 5,000 eastern chimpanzees, which are also the largest remaining populations of those species. In addition to its rich diversity of wildlife and its importance to threatened species, this landscape is rich in plant diversity, including many valuable timber tree species and includes some of Africa's densest carbon stocks. This landscape is also noted for its high level of cultural diversity and has been home to the Mbuti and Efe communities for at least 40,000 years. Mbuti and Efe people share the landscape with a diverse mix of bantu shifting cultivators and small-scale farmer-foragers.

The Kabobo landscape on the shores of Lake Tanganyika includes the newly-created Kabobo Natural Reserve, which contains significant biodiversity, including at least 1,404 plant species, 62 mammals (including eastern chimpanzees), and 327 birds. This includes six new species of bats and frogs that have been discovered in the last decade, with new species likely still to be uncovered.

These landscapes demonstrate the high level of wildlife diversity and the important natural resources present in DRC, including for species that are threatened with extinction and only exist in the country. Unregulated mining is a significant threat to these and other landscapes in DRC

and to the people and wildlife that depend on them. Wildlife rangers trying to protect these natural resources face extreme danger as armed militias and insurgent groups inside national parks occupy vast swaths of wildlife habitat in order to illegally control and exploit access to minerals. Furthermore, as miners move into forests for potential mining sites, wildlife species face extreme pressure due to bushmeat hunting and wildlife trafficking to feed burgeoning miner's settlements.² Gorillas, in particular, are targeted for bushmeat as a protein source; the control of mining sites by armed militias facilitates the hunting of great apes in and near conflict mineral sites.³ Other related threats to great apes are habitat degradation and disease transmission from poor conditions at mining sites.⁴

Recently, WCS and partners completed a study assessing the historic and current distribution of Grauer's gorilla and eastern chimpanzee in eastern DRC.⁵ Prior to this study, the status of Grauer's gorilla had been uncertain since surveys completed by WCS between 1992 and 1995, before the start of the Congolese civil war in 1996.⁶ The results of the 2015 study showed drastic declines in Grauer's gorillas and chimpanzees over the past 20 years, with 77%-93% reductions in Grauer's gorilla populations and 22%-45% reductions in eastern chimpanzee populations. Based on this study, there are estimated to be only 3,800 Grauer's gorillas remaining in the wild.⁷ This substantial decline was attributed to illegal hunting of the Grauer's gorilla for food, especially connected to mining.⁸ In light of these findings, the species was reclassified under the IUCN Red List, moving from "Endangered" to "Critically Endangered," reflecting that it is at an "extremely high risk of extinction in the wild."⁹

Improved Conditions after Dodd Frank Section 1502 and the Conflict Minerals Rule

The Conflict Mineral Rule of 2012 requires companies to disclose annually their use of conflict minerals including tungsten, tantalum, tin (3Ts) or gold originating in the Democratic Republic of the Congo or an adjoining country if those minerals are "necessary to the functionality or production of a product." Due diligence efforts pursued in sourcing and chain of custody as well as product descriptions that are not DRC conflict free, processing facilities used, country of origin, and efforts to determine mine or location origin are then made publically available on websites for consumers to make well-informed buying decisions.¹⁰

WCS has seen an improvement in the regulation of mining in DRC since the enactment of Dodd

² Plumptre, A.J., Nixon, S., Critchlow, R., Vieilledent, G., Nishuli, R., Kirkby, A., Williamson, E.A., Hall, J.S. & Kujirakwinja, D. (2015). Status of Grauer's gorilla and chimpanzees in eastern Democratic Republic of Congo: Historical and current distribution and abundance. Unpublished report to Arcus Foundation, USAID and US Fish and Wildlife Service.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Plumptre, A., Nixon, S., Caillaud, D., Hall, J.S., Hart, J.A., Nishuli, R. & Williamson, E.A. 2016. *Gorilla beringei ssp. graueri*. (errata version published in 2016) The IUCN Red List of Threatened Species 2016: e.T39995A102328430. Downloaded on 13 March 2017; IUCN, 2001 *Categories & Criteria* (version 3.1), http://www.iucnredlist.org/static/categories_criteria_3_1/categories.

¹⁰ Conflict Minerals, 77 Fed. Reg. 56,274 (Sept. 12, 2012)

Frank Section 1502 and the Conflict Minerals Rule. Data collected by the International Peace Information Service (IPIS), an independent research institute, indicates that 585 3T mining sites out of 736 visited by IPIS and German Federal Institute for Geosciences and Natural Resources (BGR) are free of any armed presence.¹¹ Although there was an initial chilling effect on purchases of minerals from DRC and the adjoining region, over time WCS has witnessed more and more mines certified as conflict free. With the certification of minerals being sourced from conflict free mines, buyers are willing to pay higher premiums for the products that are certified and buyers are engaging in the region again. Civil society in DRC has expressed support for Dodd Frank and the Conflict Minerals Rule¹² and there is also strong bipartisan Congressional support in the United States. Furthermore, Dodd Frank has helped facilitate and leverage a number of parallel local efforts to improve and certify artisanal mines as conflict-free.¹³

Need for Continued Implementation of the Conflict Minerals Rule

The Conflict Minerals Rule plays an important role in a larger global effort to improve transparency in the supply chain surrounding conflict minerals, while also promoting the rule of law, stability, and security in the region. WCS strongly supports the Rule's role in encouraging certification of artisanal mining sites and preventing illegal mining operations in DRC's national parks. WCS has seen a wholesale improvement in the process for certifying mining in DRC since the enactment of Dodd Frank Section 1502 and the Conflict Minerals Rule, allowing U.S. companies to purchase with confidence and reducing the negative impacts of unregulated mining operations on wildlife. If this process continues, WCS believes that it will have a positive effect on national parks and the endangered species that live in them.

WCS observations also indicate that if the Conflict Mineral Rule is revoked and mining in DRC is deregulated, the region risks becoming too unstable for U.S. businesses to invest, reversing improved conditions since the enactment of the law. Additionally, there are early reports that American companies, including Apple, Intel, and Tiffany & Co., support continued implementation of the rule and will be unwilling to use conflict minerals in their products due to consumer expectations as well as their own corporate standards.¹⁴ It is important that U.S. consumers are provided publicly available information about technology purchases and that their power in the marketplace not be diminished due to less transparent corporate reporting requirements. Investors have also demonstrated support for the Conflict Minerals Rule and the role of disclosures and transparency in mineral supply chains in corporate responsibility.¹⁵

¹¹ WCS Correspondence with IPIS, March 15, 2017.

¹² See, e.g., Sasha Lezhnev & Rachel Finn, *Eight Letters from Local Civil Society Groups in Support of the U.S. Conflict Minerals Law*, Feb. 24, 2017, <http://enoughproject.org/blogs/seven-letters-congolesse-groups-support-us-conflict-minerals-law>.

¹³ See, e.g., *Mineral Certification at the BGR*, BGR, http://www.bgr.bund.de/EN/Themen/Min_rohstoffe/CTC/Home/CTC_node_en.html (last visited Mar. 15, 2017) (referring to the role of Dodd Frank in institutionalizing mineral certifications).

¹⁴ Todd C. Frankel, *Why Apple and Intel don't want to see the conflict minerals rule rolled back*, Washington Post, Feb. 23, 2017, https://www.washingtonpost.com/business/economy/why-apple-and-intel-dont-want-to-see-the-conflict-minerals-rule-rolled-back/2017/02/23/b027671e-f565-11e6-8d72-263470bf0401_story.html?utm_term=.d77ecf642f3a.

¹⁵ Letter signed by 127 investors and investor groups to Acting Chairman Piwowar (Mar. 7, 2017), <https://www.sec.gov/comments/statement-013117/cil2-1618221-137060.pdf>.

Further, a repeal of the rule will have negative impacts on wildlife and rural communities in DRC. Increased arms in and around mines will likely result in a return to illegal activities that were commonly occurring pre-Conflict Mineral Rule implementation, including poaching of endangered species and other violent crimes. Efforts to prevent armed militias and criminal syndicates from operating in remote areas within national parks will prove to be more challenging under a regulatory structure that no longer calls for basic transparency and disclosure of mineral sourcing from DRC and neighboring countries.

Conclusion

WCS urges the SEC to reject any efforts to weaken the Conflict Minerals Rule. In light of humanitarian and conservation concerns outlined above, increasing consumer pressure for accountability in the downstream supply chain, and evidence that this rule and other efforts are improving conditions in DRC, the U.S. must not weaken measures that provide much-needed transparency in this supply chain. Rather, it should continue to work with U.S. businesses, DRC and adjoining countries, and other nations to improve implementation of these and other policies to ensure that conflict minerals are kept out of the supply chain.

Sincerely,



Kelly Keenan Aylward
Washington Office Director
Wildlife Conservation Society



Richard Tshombe
Country Director and Representative
WCS Democratic Republic of Congo Program



Wildlife Conservation Society

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Submitted Testimony of the Wildlife Conservation Society
Senate Foreign Relations Subcommittee on Africa and Global Health Policy
April 5, 2017

Contact: Kelly Keenan Ayward, WCS Washington Office Director kayward@wcs.org (202) 347-0672 x23

Chairman Flake, Ranking Member Booker, Members of the Subcommittee, thank you for the opportunity to submit testimony on the state of conflict mineral mining, especially in the Democratic Republic of the Congo (DRC), and its economic, national security and environmental effects. The U.S. Securities and Exchange Commission's (SEC) 2012 Conflict Minerals Rule plays an important role in efforts to increase stability and rule of law in the DRC and the surrounding region by supporting transparency in the supply chain around conflict minerals. The Wildlife Conservation Society (WCS) has urged the SEC to continue to implement the Conflict Minerals Rule and to reject efforts to weaken it.

WCS saves wildlife and wild places worldwide through science, conservation action, education, and inspiring people to value nature. Founded in 1895 with the help of Teddy Roosevelt as the New York Zoological Society, today the Wildlife Conservation Society continues to be headquartered at the Bronx Zoo. To achieve our mission, WCS harnesses the power of its Global Conservation Program—in nearly 60 nations and in all the world's oceans—and its five wildlife parks in New York City, visited by 4 million people annually. WCS operates the largest and longest standing field conservation program in Africa, including over twenty five years of work in DRC, and programs in Uganda, Rwanda, Tanzania, Republic of Congo, Gabon, South Sudan, Cameroon, and Nigeria. The Wildlife Conservation Society currently sits on the U.S. Advisory Council on Wildlife Trafficking and is a conservation implementing partner of the U.S. State Department and the U.S. Agency for International Development in Africa, Afghanistan, Burma, Asia, Latin America, and global marine ecosystems.

WCS supports the SEC's 2012 Conflict Minerals Rule and the role that it plays in promoting the rule of law, increasing stability in the region, and reducing pressure on endangered wildlife. The situation on the ground in DRC and the surrounding region (i.e. the upstream supply chain) has improved since the issuance of the Rule and WCS strongly supports its continued implementation. WCS's testimony focuses on the following topics:

- Conservation Threats Posed by Conflict Minerals and Unregulated Mining
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including the Grauer's gorilla, eastern chimpanzee, okapi, and forest elephant. Three areas of particular biodiversity and conservation interest within DRC are the Maiko-Tayna-Kahuzi-Biega (MTKB) landscape, the Ituri Landscape, and the Kabobo Landscape, all located in eastern DRC. These landscapes and the important natural resources and wildlife within them are threatened by unregulated mining.

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The Ituri landscape, with an area of approximately 40,000 square kilometers, has one of the largest intact sections of lowland rainforest in the Congo Basin and the most intact faunal assemblage of any landscape in DRC. Within this landscape is a diverse assembly of wildlife, including 17 species of primates (the highest diversity of primates of any landscape in Africa), two species of forest pigs, ten species of forest antelope, forest buffalo, over 300 species of birds, and 500 species of butterflies. It supports about 1,200 forest elephants, the largest population in DRC, at a time when forest elephants face the threat of extinction within a decade if current poaching rates continue. Additionally, it supports 1,000 okapi and 5,000 eastern chimpanzees, which are also the largest remaining populations of those species. In addition to its rich diversity of wildlife and its importance to threatened species, this landscape is rich in plant diversity, including many valuable timber tree species and includes some of Africa's densest carbon stocks. This landscape is also noted for its high level of cultural diversity and has been home to the Mbuti and Efe communities for at least 40,000 years. Mbuti and Efe people share the landscape with a diverse mix of bantu shifting cultivators and small-scale farmer-foragers.

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These landscapes demonstrate the high level of wildlife diversity and the important natural resources present in DRC, including for species that are threatened with extinction and only exist in the country. Unregulated mining is a significant threat to these and other landscapes in DRC and to the people and wildlife that depend on them. Wildlife rangers trying to protect these natural resources face extreme danger as armed militias and insurgent groups inside national parks occupy vast swaths of wildlife habitat in order to illegally control and exploit access to minerals. Furthermore, as miners move into forests for potential mining sites, wildlife species face extreme pressure due to bushmeat hunting and wildlife trafficking to feed burgeoning miner's settlements.¹ Gorillas, in particular, are targeted for bushmeat as a protein source; the

¹ Plumtre, A.J., Nixon, S., Critchlow, R., Vieilledent, G., Nishuli, R., Kirkby, A., Williamson, E.A., Hall, J.S. & Kujirakwinja, D. (2015). Status of Grauer's gorilla and chimpanzees in eastern Democratic Republic of Congo: Historical and current distribution and abundance, Unpublished report to Arcus Foundation, USAID and US Fish

control of mining sites by armed militias facilitates the hunting of great apes in and near conflict mineral sites.² Other related threats to great apes are habitat degradation and disease transmission from poor conditions at mining sites.³

Recently, WCS and partners completed a study assessing the historic and current distribution of Grauer's gorilla and eastern chimpanzee in eastern DRC.⁴ Prior to this study, the status of Grauer's gorilla had been uncertain since surveys completed by WCS between 1992 and 1995, before the start of the Congolese civil war in 1996.⁵ The results of the 2015 study showed drastic declines in Grauer's gorillas and chimpanzees over the past 20 years, with 77%-93% reductions in Grauer's gorilla populations and 22%-45% reductions in eastern chimpanzee populations. Based on this study, there are estimated to be only 3,800 Grauer's gorillas remaining in the wild.⁶ This substantial decline was attributed to illegal hunting of the Grauer's gorilla for food, especially connected to mining.⁷ In light of these findings, the species was reclassified under the IUCN Red List, moving from "Endangered" to "Critically Endangered," reflecting that it is at an "extremely high risk of extinction in the wild."⁸

Improved Conditions after Dodd Frank Section 1502 and the Conflict Minerals Rule

The Conflict Mineral Rule of 2012 requires companies to disclose annually their use of conflict minerals including tungsten, tantalum, tin (3Ts) or gold originating in the Democratic Republic of the Congo or an adjoining country if those minerals are "necessary to the functionality or production of a product." Due diligence efforts pursued in sourcing and chain of custody as well as product descriptions that are not DRC conflict free, processing facilities used, country of origin, and efforts to determine mine or location origin are then made publically available on websites for consumers to make well-informed buying decisions.⁹

WCS has seen an improvement in the regulation of mining in DRC since the enactment of Dodd Frank Section 1502 and the Conflict Minerals Rule. Data collected by the International Peace Information Service (IPIS), an independent research institute, indicates that 585 3T mining sites out of 736 visited by IPIS and German Federal Institute for Geosciences and Natural Resources (BGR) are free of any armed presence.¹⁰ Although there was an initial chilling effect on purchases of minerals from DRC and the adjoining region, over time WCS has witnessed more and more mines certified as conflict free. With the certification of minerals being sourced from conflict free mines, buyers are willing to pay higher premiums for the products that are certified

and Wildlife Service.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Plumptre, A., Nixon, S., Caillaud, D., Hall, J.S., Hart, J.A., Nishuli, R. & Williamson, E.A. 2016. *Gorilla beringei* ssp. *graueri*. (errata version published in 2016) The IUCN Red List of Threatened Species 2016: e.T39995A102328430. Downloaded on 13 March 2017; IUCN, 2001 *Categories & Criteria (version 3.1)*, http://www.iucnredlist.org/static/categories_criteria_3_1/categories.

⁹ Conflict Minerals, 77 Fed. Reg. 56,274 (Sept. 12, 2012).

¹⁰ WCS Correspondence with IPIS, March 15, 2017.

and buyers are engaging in the region again. Civil society in DRC has expressed support for Dodd Frank and the Conflict Minerals Rule¹¹ and there is also strong bipartisan Congressional support in the United States. Furthermore, Dodd Frank has helped facilitate and leverage a number of parallel local efforts to improve and certify artisanal mines as conflict-free.¹²

Need for Continued Implementation of the Conflict Minerals Rule

The Conflict Minerals Rule plays an important role in a larger global effort to improve transparency in the supply chain surrounding conflict minerals, while also promoting the rule of law, stability, and security in the region. WCS strongly supports the Rule's role in encouraging certification of artisanal mining sites and preventing illegal mining operations in DRC's national parks. WCS has seen a wholesale improvement in the process for certifying mining in DRC since the enactment of Dodd Frank Section 1502 and the Conflict Minerals Rule, allowing U.S. companies to purchase with confidence and reducing the negative impacts of unregulated mining operations on wildlife. If this process continues, WCS believes that it will have a positive effect on national parks and the endangered species that live in them.

WCS observations also indicate that if the Conflict Mineral Rule is revoked and mining in DRC is deregulated, the region risks becoming too unstable for U.S. businesses to invest, reversing improved conditions since the enactment of the law. Additionally, there are early reports that American companies, including Apple, Intel, and Tiffany & Co., support continued implementation of the rule and will be unwilling to use conflict minerals in their products due to consumer expectations as well as their own corporate standards.¹³ It is important that U.S. consumers are provided publicly available information about technology purchases and that their power in the marketplace not be diminished due to less transparent corporate reporting requirements. Investors have also demonstrated support for the Conflict Minerals Rule and the role of disclosures and transparency in mineral supply chains in corporate responsibility.¹⁴ Further, a repeal of the rule will have negative impacts on wildlife and rural communities in DRC. Increased arms in and around mines will likely result in a return to illegal activities that were commonly occurring pre-Conflict Mineral Rule implementation, including poaching of endangered species and other violent crimes. Efforts to prevent armed militias and criminal syndicates from operating in remote areas within national parks will prove to be more challenging under a regulatory structure that no longer calls for basic transparency and disclosure of mineral sourcing from DRC and neighboring countries.

¹¹ See, e.g., Sasha Lezhnev & Rachel Finn, *Eight Letters from Local Civil Society Groups in Support of the U.S. Conflict Minerals Law*, Feb. 24, 2017, <http://enoughproject.org/blogs/seven-letters-congoese-groups-support-us-conflict-minerals-law>.

¹² See, e.g., *Mineral Certification at the BGR*, BGR, http://www.bgr.bund.de/EN/Themen/Min_rohstoffe/CTC/Home/CTC_node_en.html (last visited Mar. 15, 2017) (referring to the role of Dodd Frank in institutionalizing mineral certifications).

¹³ Todd C. Frankel, *Why Apple and Intel don't want to see the conflict minerals rule rolled back*, Washington Post, Feb. 23, 2017, https://www.washingtonpost.com/business/economy/why-apple-and-intel-dont-want-to-see-the-conflict-minerals-rule-rolled-back/2017/02/23/b027671e-f565-11e6-8d72-263470bf0401_story.html?utm_term=.d77ecf642f3a.

¹⁴ Letter signed by 127 investors and investor groups to Acting Chairman Piwowar (Mar. 7, 2017), <https://www.sec.gov/comments/statement-013117/clf2-1618221-137060.pdf>.

Conclusion

WCS urges all interested parties to reject any efforts to weaken the Conflict Minerals Rule. In light of humanitarian and conservation concerns outlined above, increasing consumer pressure for accountability in the downstream supply chain, and evidence that this rule and other efforts are improving conditions in DRC, the U.S. must not weaken measures that provide much-needed transparency in this supply chain. Rather, it should continue to work with U.S. businesses, DRC and adjoining countries, and other nations to improve implementation of these and other policies to ensure that conflict minerals are kept out of the supply chain.



Statement by Amnesty International USA for
The Subcommittee on Africa and Global Health Policy Hearing on
"Progress Report on Conflict Minerals"
April 5, 2017
Prepared by Lucy Graham and Jennifer Green

Thank you to the Committee for the opportunity to submit our statement. Amnesty International would like to take this opportunity to urge Congress and the Trump administration not to repeal Section 1502 of the Dodd Frank law. We believe that the country conditions and human rights concerns that spurred passage of the legislation remain present and are cause for grave concern. Amnesty International also believes that strengthening and improving transparency and accountability in the operations and activities of corporations contribute are critical positive contributions in the effort to protect human rights -- a perspective shared by the number of corporations that acted to comply with 1502 and that have spoken up on favor of retaining the law.

Amnesty International is a global movement of more than seven million people working to ensure the protection and realization of human rights worldwide. Our statement is based on extensive research and experience on human rights issues including those linked to the extraction and trade of minerals, at the national, regional and international level.

This research and advocacy has convinced us of the value of disclosure laws such as Section 1502 of the Dodd Frank law. Companies must do their part to avoid fuelling conflict or human rights abuses through their supply chain practices. Our conclusions are detailed below and are reinforced by our recent research on child labor and hazardous conditions in artisanal mining of cobalt in the Democratic Republic of the Congo (DRC).

Dodd-Frank has set an important example of why we need laws on supply chain due diligence. In January 2016 we released the report entitled *"This is what we die for: Human rights abuses in the Democratic Republic of the Congo power the global trade in cobalt"*, that traced the sale of cobalt, used in lithium-ion batteries, from mines where children (some as young as seven) and adults work in dangerous conditions. In the research leading to Amnesty's 2016 report, businesses selling products that included cobalt told us that they were not investigating possible violations connected with cobalt mining because there was no legal requirement that they do so.

Amnesty International also has extensive experience working on international standards on conflict minerals. Amnesty is Co-Chair of the Multi-Stakeholder Steering Group (MSG) for the Organization of Economic Co-operation and Development's *OECD Due Diligence Guidance on Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (OECD Guidance)*. In April 2015 we published *Digging for Transparency*, a joint analysis with Global Witness of the first Conflict Minerals Reports filed with the Securities and Exchange Commission (SEC). Amnesty International is a leading member of the civil society coalition working on the recently adopted European Union Conflict Minerals Regulation.

The Global Consensus for Corporate Due Diligence in Mineral Supply Chains

In December 2009, the Security Council instructed the Group of Experts on the DRC to begin developing due diligence guidelines for actors sourcing minerals from the DRC.¹ At that time, the trade in tin, tantalum, tungsten and gold (3TG) had fuelled violent conflict in the eastern DRC for over a decade. Although minerals were not the root cause of the conflict, the UN Security Council had explicitly recognized that the illicit exploitation and trade of natural resources was "one of the major factors fuelling and exacerbating conflicts in the Great Lakes region of Africa."² The UN Security Council had therefore expanded its Chapter VII sanctions regime on the DRC to cover actors supporting armed groups in the eastern DRC through the illicit trade of natural resources.³

The original purpose of the due diligence guidelines was to help actors in the supply chain (including companies) mitigate the risk that they were directly or indirectly supporting armed groups in the eastern DRC – and thereby to help them avoid violating UN sanctions or being put on the UN Sanctions List.

As part of that work, the Group of Experts identified the broader risk that actors in the minerals supply chain were "directly or indirectly supporting criminal networks and perpetrators of serious human rights abuses ... [and] directly or indirectly worsening the conflict in the east [of the DRC]."⁴ The Group of Experts therefore developed an expanded set of due diligence guidelines designed to help companies mitigate the risk of exacerbating the conflict through providing direct or indirect support to illegal armed groups or perpetrators of serious human rights abuses (among others).⁵

¹ UN Doc. S/RES/1896(2009), para. 7.

² UN Doc. S/RES/1857(2008).

³ UN Doc. S/RES/1857(2008), para 4(g).

⁴ UN Doc. S/2010/569, para. 313.

⁵ UN Doc. S/2010/569, para. 317.

In November 2010, the UN Security Council voted to take forward the Group of Experts' expanded due diligence guidelines.⁶ Those guidelines relied upon the framework recently elaborated by the Organization for Economic Co-operation and Development (OECD) *Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*. The Guidance, a five-step, risk-based due diligence framework, was developed through a multi-stakeholder process that included the OECD and eleven countries of the International Conference on the Great Lakes Region (Angola, Burundi, Central African Republic, Republic of Congo, Democratic Republic of Congo, Kenya, Rwanda, Sudan, Tanzania, Uganda and Zambia), industry, civil society, as well as the United Nations Group of Experts on the DRC.⁷ The OECD Guidance reflects a clear international consensus that companies have a responsibility to conduct due diligence when sourcing minerals from conflict-affected and high-risk areas. The Guidance provides specific advice to companies on how to meet that responsibility, including how to identify and mitigate potential and actual risks and abuses in their supply chains. U.S. and global industry actively supported the Guidance ten years ago, and still actively engage in the Multi-Stakeholder Steering Group for the OECD Guidance including as Co-Chairs.

In July 2010, the United States Congress enacted legislation as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act requiring companies to begin reporting their sourcing practices to the U.S. Securities and Exchange Commission (SEC). The SEC's conflict minerals rule effectively brought into U.S. law a globally-endorsed corporate due diligence standard.

In 2012, as required under §1502, the Securities and Exchange Commission published its rule requiring listed companies to publicly disclose their use of conflict minerals that originated in the Democratic Republic of the Congo (DRC) or an adjoining country.

The OECD Guidance now forms the basis of due diligence laws and standards on the responsible sourcing of minerals across the world. Since Dodd-Frank was passed in July 2010, due diligence laws and other measures based on the OECD Guidance have been endorsed by the European Union, China and the 12 African countries that constitute the ICGLR. For example, the European Union recently adopted a new law on conflict minerals to apply to all European Union member states aimed at tackling the financing of armed groups in conflict-affected and high-risk areas through the exploitation and trade of tin, tantalum, tungsten and gold. The regulations are an important step forward towards a legal framework ensuring that the vast majority of these minerals and metals imported into the EU are sourced responsibly.

⁶ UN Doc. S/RES/1952(2010).

⁷ <https://www.oecd.org/corporate/mne/GuidanceEdition2.pdf>

The OECD Guidance also aligns with the United Nations Guiding Principles on Business and Human Rights, unanimously endorsed by the UN Human Rights Council in 2011, which make clear that companies have a responsibility to respect human rights throughout their global operations and supply chains.⁸

The Benefits of and Ongoing Need for the Conflict Minerals Rule

The SEC's Conflict Minerals Rule (as amended in April 2014) is a vital piece of legislation, which is working and is still needed.

According to Janvier Murairi Bakihanaye, a Congolese civil society leader working in the North Kivu mining areas and winner of the Human Rights First 2016 Medal of Liberty, 1502 has decreased conflict mineral revenues for armed groups and the level of conflict in some communities such as in the mining town of Rubaya.⁹ He also reported an improvement in the tin mines in and around Walikale, which had been regularly targeted by militias; Bisei, the largest tin mine now produces conflict-free tin.¹⁰ Bakihaye's organization, the Association for the Development of Peasant Initiatives (ASSODIP), has worked to help child survivors from the Rubaya mines reintegrate into society; he reports that "thousands of children have been freed from the mines and have returned to school."¹¹

In February 2016, the Enough Project field research in eastern Congo with miners, traders, civil society leaders and industry experts found advances such as "increased security for civilians in some mining areas, a significant reduction in armed group control in 3T mining areas, improved safety and health standards in some areas and organized local advocacy."¹² In a study of twenty global companies, corporate executives said that compliance with Section 1502 brought a number of benefits: greater transparency was seen to bring lower risk, and more effective management of supply chains.¹³ Corporate officials reported that the law could also meet rising expectations for responsible corporate behavior from customers, investors and employees.¹⁴

On February 9, 2017, Tiffany & Co issued an important statement in support of Section 1502, noting that "when managed responsibly mining can be a source of social and economic

⁸ United Nations Guiding Principles on Business and Human Rights, U.N. doc A/HRC/8/5.

⁹ Janvier Murairi Bakihanaye, *A Congolese view on why we need the U.S. conflict minerals law*, The Hill, Feb 23, 2017.

¹⁰ *Id.*

¹¹ *Id.*

¹² Enough, *Point of Origin: Status Report on the Impact of Dodd-Frank 1502 in Congo* (Feb 2016).

¹³ Digging for Transparency, at 30.

¹⁴ Digging for Transparency at 30-31.

development. In addressing the ‘challenge and promise of mining,’ Tiffany underscored the importance of “supporting rigorous, standards-setting efforts and by advocating for more effective oversight, we can help improve global mining conditions over the long-term.”¹⁵ The statement continued that “the continued existence of Federal regulation that addresses the sourcing of conflict minerals provides an important framework for industry, laying the foundation for the protection of human rights and responsible sourcing efforts in the DRC and beyond.”¹⁶

The Conflict Minerals Rule has led to an unprecedented number of companies doing their part to avoid fuelling conflict or human rights abuses through their supply chain practices. There has been a significant increase in the number of companies investigating their supply chains and a huge change in company sourcing practices – in 2016, over 1,200 companies submitted Conflict Minerals Reports. The Rule has led to the emergence of a number of industry tools and specialised consultancies to help companies undertake due diligence more effectively. Companies know far more about their supply chains and potential links to conflict and human rights abuses than before.

In April 2015, Amnesty International and Global Witness published *Digging for Transparency*, an analysis of the first Conflict Minerals Reports filed by companies under the Conflict Minerals Rule. The report found that 21% of the companies surveyed met the minimum requirements of the law based on 12 criteria. The fact that this proportion of companies were able to conduct due diligence in accordance with the law in the first year of reporting, and after the ruling of the Court of Appeals following the industry challenge, demonstrates that companies can comply with the Conflict Minerals Rule. *Digging for Transparency* also discussed steps identified by companies themselves to improve their reporting: companies’ plans included increasing their response rate from direct suppliers, enhancing educational and training opportunities, identifying a greater percentage of smelters and refiners, improving the quality of engagement with suppliers and smelters/refiners; and working with relevant trade associations to improve best practices.¹⁷

The disclosure requirements of the Conflict Minerals Rule have also led to companies being far more transparent about what they are doing to avoid contributing to conflict and human rights abuses. Transparency is an integral element of any supply chain due diligence framework. The fifth-step of the OECD Guidance requires companies to publicly disclose their due diligence efforts and findings. The UNGPs require companies to “know and show” that they respect human rights. Transparency is also vital to ensuring that companies are held to account if they contribute to conflict or human rights abuses through their supply chain practices.

¹⁵ Tiffany & Co. Statement Supporting Diligence and Transparency in Addressing Conflict Minerals, New York, NY (Feb. 9, 2017).

¹⁶ *Id.*

¹⁷ *Digging for Transparency*, at 29.

Furthermore, supply chain due diligence enables companies to identify and take corrective steps to address risks and abuses in their supply chains. This in turn reduces their exposure to potential legal liability as well as sanctions. As noted above, the UN Group of Experts on the DRC originally developed due diligence guidelines to help companies mitigate the risk that they were directly or indirectly supporting armed groups in the eastern DRC – and thereby to help them avoid violating UN sanctions or being put on the UN Sanctions List. The UN Security Council's Chapter VII sanctions regime still applies to individuals and entities that support armed groups or criminal networks involved in the illicit exploitation or trade of minerals in the DRC.¹⁸ The UN Security Council continues to highlight the link between the illegal exploitation and trade of minerals and the conflicts in the Great Lakes region. And it continues to make clear that companies in the minerals supply chain must do their part to avoid financing armed groups or criminal networks by undertaking supply chain due diligence – as one element of a multi-pronged approach to ending the conflict in the eastern DRC that includes other measures such as government action to cut-off financing to those groups, targeted sanctions, arms control, improvements in governance and security sector reform.

Conclusion

2016 and the first quarter of 2017 have seen continued instability and violence in the DRC complicated by the ongoing political crisis of the failure to hold elections scheduled for last year. Amnesty International and other international and domestic human rights groups in the DRC are extremely alarmed over outbreaks of violence in the Kasai province. Coupled with the decision of the United Nations to renew the mandate of the MONUSCO peacekeeping force in the DRC, the UN Security Council also continues to recognize the link between conflict and the minerals trade and to call for companies to exercise due diligence as part of a multi-pronged response to the conflict.

Members of the Subcommittee, the positive actions taken by some of the corporations involved in the minerals covered by the Dodd Frank rule are based in part on demands from US consumers who did not want products they purchase and use to contribute to conflict and human rights violations be they in the DRC or in any other part of the world as well as growing support among the private sector for improved transparency and accountability. It is critical that the Senate and Congress uphold the wishes of US citizens and support the effort that has involved civil society, the private sector and governments and ensures that companies do their part to avoid fuelling conflict and human rights abuses.

The people of the DRC deserve no less.

Thank you.

¹⁸ UN Doc. S/RES/2293(2016), para. 7(g).



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March 29, 2017

Hon. Jeff Flake
Chairman, Senate Foreign Relations Subcommittee on African Affairs
Senate Russell Office Building 413
Washington, D.C. 20510

Hon. Johnny Isakson
Member, Senate Foreign Relations Subcommittee on African Affairs
Senate Russell Office Building 131
Washington, D.C. 20510

RE: Comments on *A Progress Report on Conflict Minerals*

Senator Flake and Senator Isakson:

ELM SUSTAINABILITY PARTNERS LLC (ELM) is pleased to provide insights and comments concerning corporate implementation of the US Securities and Exchange (SEC) conflict minerals rule under Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank). Much of this information is included in our comments to SEC Acting Chairman Piwowar in response to the January 31, 2017 request for comments in his statement on the reconsideration of the conflict minerals rule (the Rule) implementation.¹ Our comments to the Subcommittee do not focus on technical aspects of the Rule but on broader successes and challenges providing context surrounding the Rule.

As a recognized leader in conflict minerals, ELM is uniquely positioned to provide current information to the Subcommittee. In addition, some points that follow may not have been previously considered, as they were only identifiable by a retrospective analysis. ELM is an independent sustainability advisory firm that has been deeply involved in conflict minerals aspects of the Dodd-Frank Act since it was signed into law in July 2010. Since 2010, we have provided advisory and audit related services for Fortune 10, 50, 250 and 500 companies, as well as numerous privately-held suppliers and contract manufacturers. Additional information regarding ELM's conflict minerals expertise is presented at the end of this letter.

The implementing regulation and the current state of associated efforts undertaken by US corporations in mining and transportation of metal ores covered by Section 1502 (tantalum, tin, tungsten and gold, or "3TG") are not perfect. Continuing implementation challenges remain, some of which are substantial and require further development. With this context, we recognize that important progress has been made in every aspect of supply chain traceability, reporting and actions taken as a result of the Rule.

¹ <https://www.sec.gov/comments/statement-013117/cil2-1565701-131655.pdf>

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US Corporate Response to the Rule

The SEC conflict minerals rule promulgated under Section 1502 required U.S. companies to quickly develop frameworks, tools, information technology and expertise for gaining unprecedented visibility into supply chains that, in some cases, were ten or more layers deep. Initially considered impossible or far too costly to implement, U.S. companies drove major innovations, savings and efficiencies, which also serve as the foundation for supply chain traceability mandates globally. As an extension of individual companies, trade and industry associations were key in leading and supporting these developments. Some of the solutions created by these collectives (most of which are US-lead) include:

- Development of the Conflict Free Sourcing Initiative (CFSI) Conflict Minerals Reporting Template (CMRT) as the standard information collection tool and is available at no cost. The CMRT formed the data protocol on which commercial information technology (IT) systems are now based, further enhancing the value and efficiency of the CMRT.
- Development of IPC's standardized data exchange protocol IPC-1755 Conflict Minerals Data Exchange Standard that enables and simplifies conflict minerals data use across various IT platforms.
- Evolution of CFSI audits as the standard for evaluations of smelters and refiners, with lists of audited facilities available at no cost. These audits have emerged as the standard tool on which other countries have relied in developing their conflict minerals requirements.
- Execution of mutual recognition agreements between CFSI and pre-existing gold refiner verification and auditing initiatives of the London Bullion Marketers Association (LBMA) and Responsible Jewelry Council (RJC).² These agreements eliminated the need for and costs of duplicative audits.
- Advancement of the tin industry's Tin Supply Chain Initiative (iTSCI) as the most widely used method for assessing tin and tantalum mines in the Covered Countries in which they operate. iTSCI incident reports are publicly available at no cost. This information is also reviewed as part of a CFSI smelter/refiner audit.
- Development of commercial third-party IT solutions at materially lower costs than predicted.

Increased OFAC Compliance

Revelations from conflict minerals due diligence initiatives shed light on the potential presence of countries and entities sanctioned under the US Department of the Treasury Office of Foreign Assets Control (OFAC) that may have inadvertently existed layers deep in US corporate supply chains.³ Although this benefit is a direct result of the Rule, the issue is unrelated to conflict minerals and most likely would not have occurred in the absence of the Rule.

² OECD launched a third-party review and assessment of all relevant conflict minerals audit programs in 2016. The final report has not yet been issued, but the results of the assessment will be critical in determining the credibility of the audit programs.

³ Dr. Chris Bayer, PhD/Development International, *Conflict Mineral Benchmarking Study RY2015*, Page 47. <http://www.assentcompliance.com/conflict-mineral-benchmarking-study-ry2015/>

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Cost

The original SEC estimates of \$3 - \$4 billion for implementation costs have proven to be grossly higher than actual costs incurred. Any dialog concerning the Rule's current cost to implement must be based on updated information. Attempts have been made at surveying companies to obtain accurate cost information but the surveys saw low response rates and results were extrapolated from a small and self-selected sampling of companies. While those results are mathematically and statistically valid, in ELM's experience they are not broadly representative. Other costs were presented in comments to Acting Chairman Piowar from industry associations and individual companies; however, some costs cited appear outdated and potentially misleading as being extreme.⁴

ELM has encountered situations where companies intentionally choose to pay higher fees than necessary. This may be due to a company decision to make conflict minerals matters a key business initiative and move beyond basic compliance. In other cases, companies do not appear fully informed on how to cost-effectively achieve compliance. Finally, some companies have selected advisors and vendors that are more costly than other qualified providers in the market.

Table 1 presents original SEC cost estimates proportionally scaled to the actual number of companies filing disclosures for 2015. It is likely these reduced cost estimates are, in reality, too high. Based on the range of figures presented in the recent comments to SEC, a conservative (i.e., significantly overestimated) general range would be \$100,000 - \$600,000 per issuer. With 1220 companies filing conflict minerals disclosures, a conservative range of total costs is \$122,000,000 - \$732,000,000; an average of \$350,000 for each of the 1220 filers. A more likely (yet still overestimated) average cost is \$35,000 - \$70,000 for each of the 1220 filers, totaling \$42,700,000 - \$85,400,000.

Table 1

	Original SEC Estimate	Corrected Figures Based on RY15 Data*	Change from Estimate
Number of Filing Companies	5,994	1,220 (20%)	-80%
PRA Burden Hours (internal only)	2,225,273	445,054	-1,780,219 hours
Independent Private Sector Audit (IPSA) Cost	\$450,000,000 (75% of 5,994 filers at \$100,000 each)	\$1,370,000** (19 IPSAs)	-99.7%
Total Initial Compliance Cost	\$3B to \$4B	\$600,000,000 to \$800,000,000	-\$2.4B to -\$3.2B

* Unless otherwise specified, the corrected figures were calculated by applying the percentage of actual filers (20%) to the original SEC Estimate.

** Estimated at \$25,000 for each of the seven Performance Audits and \$100,000 for each of the twelve Attestation Engagements conducted for Reporting Year 2015.

⁴ <https://www.sec.gov/comments/statement-013117/statement013117.htm> For example, at least three industry associations cited an IPSA cost estimate of \$250,000 - \$350,000 taking six months to complete. This estimate appears to reflect the proposed rule rather than the audit objectives/scope of the final rule and subsequent guidance. During the proposal phase, little guidance on the IPSA was available and the auditing community anticipated that full supply chain audits would be required, or audits that confirmed product determination status. The final rule made it abundantly clear that the actual IPSA objectives/scope are far narrower and less costly than originally estimated. Table 1 includes actual audit costs incurred to the extent known.

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Jobs Lost and Jobs Created

There has been much debate surrounding the impact of the law in the Democratic Republic of Congo (DRC). One central criticism is that the law caused catastrophic job loss in artisanal and small miner (ASM) communities across DRC. Called the “de facto embargo,” it refers to a global demand shift away from DRC-origin ore after enactment of Dodd-Frank. But there was an almost simultaneous mining ban initiated by the DRC government from September 2010 to March 2011, during which mining activities halted. This led to flooding of DRC’s largest tin and tantalum mines and subsequent recovery was slow.⁵

Evaluating the impact of the Rule on artisanal mining communities requires understanding that the DRC has a significant and robust informal economy that is difficult to measure.⁶ The impact of the informal economy ranges from 20% of the GDP⁷ to 88.6% of the country’s “total economic activity.”⁸ Even estimating the number of artisanal miners in the DRC is, as one study put it, “notoriously difficult.”⁹

The lack of credible data availability, consistency and alignment makes exploration of the matter challenging. ELM is concluding an analysis of available evidence showing other dynamics played a significant role in artisanal job losses.¹⁰ Those dynamics include the residual impacts of low demand stemming from the 2008 global recession, depressed commodities prices worldwide, the DRC government’s own prohibition on mining and ore exports and extensive lingering flooding of major mines. ELM undertook this analysis to highlight a broader context of the Rule’s timing that has not been previously explored in depth. We do not refute that a reduction in artisanal mining jobs occurred as a result of Section 1502; however, economic data indicates that a macroeconomic “perfect storm” was already impacting jobs even in the law’s absence.

The Rule also created hundreds of skilled and permanent jobs for small businesses and in-region. As with any new governmental mandate – whether related to taxes, aircraft safety or environmental protection – expertise is developed in external advisory firms and information technology providers who support a range of clients. Moreover, the Rule provided increased job stability for corporate staff through a period of overall instability and layoffs, including in the ailing oil and gas and retail industries. Finally, initiatives by iTSCI, the International Conference on the Great Lakes Region (ICGLR), the Better Sourcing Program (BSP) and others employ local staff in the DRC. At the ICGLR’s March 9-10, 2017 Regional Conference of Mineral Exporting Companies in the Great Lakes Region, the group formally recognized that ICGLR program implementation requires more local resources and expertise.¹¹

⁵ ITSCI comments to SEC, March 17, 2017, page 3. <https://www.sec.gov/comments/statement-013117/cl12-1646104-148416.pdf>; Michael Lech comments to SEC, March 17, 2017, <https://www.sec.gov/comments/statement-013117/cl12-1646560-148452.pdf>. Some academic studies claim that the mining ban was a direct response to Dodd-Frank and would not have occurred without Dodd-Frank. However, these claims are conjecture as no evidence is provided to support them.

⁶ Walikale, *Artisanal Cassiterite Mining and Trade in North Kivu Implications for Poverty Reduction and Security*, June 1, 2008, Nicolas Garrett, PhD, Page 15. http://www.rcsglobal.com/documents/CASM_WalikaleBooklet2.pdf

⁷ *Trade Policy Review, Democratic Republic of the Congo, WT/TPRS/240*, World Trade Organization, Section 4 https://www.wto.org/english/stratop_e/tpr_e/s240_sam_e.pdf

⁸ https://www.export.gov/article?series=a0pt0000000GnEdAAK&type=Country_Commercial_kav

⁹ *PROMINES Study: Artisanal Mining in the Democratic Republic of Congo*, Pact, June 2010. This study discussed at length that even defining what activities define “artisanal miner” is complex because there are any number of corollary activities, such as ore transportation and processing. <http://www.congomines.org/system/attachments/assets/000/000/349/original/PACT-2010-ProminesStudyArtisanalMiningDRC.pdf?1430928581>

¹⁰ Sources evaluated include the International Monetary Fund, Banque Centrale du Congo, the World Bank, the World Trade Organization (WTO), US Geological Survey, DRC National Statistics Institute, the UN Group of Experts for DRC, the International Peace Information Service (IPIIS), ITSCI, US Department of Labor and a number of published academic papers.

¹¹ https://www.icglr.org/images/Report_Regional_Exporters_Conference_FWP.pdf

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DRC Sourcing Stigma

Sourcing from the DRC or an adjoining country (Covered Countries) no longer inherently implies complicity with human rights abuses and armed groups. Because of initiatives such as Solutions for Hope, iTSCI, BSP and the Conflict Free Smelter audit program, it is common to obtain tin, tantalum, tungsten and gold (3TG) from Covered Countries that are verified conflict-free sources. Some companies consider this to be a competitive advantage. Conflict minerals is only one part of a far larger problem within the DRC and progress made from eliminating stigma must be maintained. While this is an important step, without continued vigilance and support from a range of stakeholders, there is a strong possibility of the situation returning to its previous state.

In-Region Progress

The Tin Supply Chain Initiative (iTSCI) is functioning in a large number of mines in Rwanda and the DRC. The Better Sourcing Program (BSP) is expanding their operations. The International Conference on the Great Lakes Region (ICGLR) is operational to a limited extent and is making progress, albeit slowly. As expressed by representatives from the DRC at OECD's *10th Forum on responsible mineral supply chains* (Paris, May 2016), a significant challenge not yet adequately resolved is how to provide effective incentives to manufacturers (downstream companies) to help fund due diligence/traceability initiatives that mines, transporters and exporters (upstream companies) must implement on behalf of downstream companies. Yet ultimately, countries in the region have a responsibility to find African solutions to an African challenge, even where that involves external donors.

Beyond Africa and 3TG

The relative success of conflict minerals solutions/programs that evolved formed the foundation on which other supply chain traceability initiatives are being built. These include:

- Identification and prevention of child labor and environmental damage from artisanal mining of cobalt in the DRC;
- Identification and prevention of slave/forced labor and environmental damage from industrial mining of tin in Indonesia;
- Identification and prevention of child labor from mining of mica in India;
- Identification and prevention of slave/forced labor from mining of jade in Myanmar;
- Identification and prevention of armed group funding from artisanal mining in Colombia;
- The EU regulation on conflict minerals (adopted formally on March 16, 2017);
- The China Chamber of Commerce of Metals, Minerals and Chemicals (CCC MC) due diligence guidelines on conflict minerals;
- Various human trafficking and slavery identification and prevention mandates; and
- Others listed in an OECD report published in April 2016.¹²

¹² REPORT ON THE IMPLEMENTATION OF THE RECOMMENDATION ON DUE DILIGENCE GUIDANCE FOR RESPONSIBLE SUPPLY CHAINS OF MINERALS FROM CONFLICT-AFFECTED AND HIGH-RISK AREAS [C/MIN(2011)12/FINAL], April 28, 2016.
[http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=COM/DAF/INV/DCD/DAC\(2015\)3/FINAL&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=COM/DAF/INV/DCD/DAC(2015)3/FINAL&docLanguage=En)

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These programs may have developed without the catalyst of Section 1502, but they likely would have followed divergent paths, creating additional complexity and barriers to implementation. However, each leveraged the conflict minerals program established under Dodd-Frank to provide a foundation of consistency.

Recommendations

ELM respectfully recommends that the Subcommittee's further deliberations on Section 1502 consider:

- Updated information on implementation costs that are significantly lower than estimated;
- Economic circumstances – globally and in the DRC – at the time Section 1502 was enacted already set the stage for significant changes in commodities markets important to DRC;
- The pre-existing DRC government initiated mining ban between September 2010 and March 2011, which also created a lingering slump in ore production in the DRC;
- Widely-recognized difficulty in estimating the gross number of artisanal miners in the DRC makes for highly unreliable estimates of job losses;
- Positive job impacts in the US and in the DRC have resulted from the law; and
- US companies established a position as the global leader in developing unprecedented supply chain due diligence approaches that have been modeled by other countries and this strategic leadership should not be abdicated.

ELM SUSTAINABILITY PARTNERS appreciates the opportunity to offer comments for the record. In addition, I will be attending the hearing and plan to meet with Senator Isakson's Staff who are involved in this matter.

Please do not hesitate to contact me at 678-200-5220 with any questions or comments you may have.

Sincerely,
ELM SUSTAINABILITY PARTNERS LLC



Lawrence M. Heim
Managing Director

ELM SUSTAINABILITY PARTNERS LLC

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Conflict Minerals Expertise

ELM SUSTAINABILITY PARTNERS is a subsidiary of THE ELM CONSULTING GROUP INTERNATIONAL LLC, founded in 2001 as an independent environmental, health and safety (EHS) auditing firm. Our Principals each have more than 25 years EHS auditing experience and hold third party certifications from an independent certification body (the Board of Environmental Auditor Certification, or BEAC) that is now part of the Institute of Internal Auditors (IIA). ELM Principals have for the past 10 years held, and currently hold, Board positions in The Auditing Roundtable (now also part of IIA) and BEAC.

ELM has been deeply involved in conflict minerals since the Dodd-Frank Act was signed into law in July 2010. We are one of only a handful of audit/advisory firms with direct experience in conflict minerals since then. We provide related advisory and audit services for Fortune 10, 50, 250 and 500 companies, as well as numerous privately-held suppliers and contract manufacturers.

Other highlights of our practice include:

- Being selected by the Electronics Industry Citizenship Coalition (EICC) as one of the original three audit firms in 2010 and conducting the first tantalum smelter audit under the program.
- Participating as an expert panelist at the Commission's October 2011 Conflict Minerals Roundtable.
- Leading the development of Performance Audit implementation guidance for IPSAs on behalf of The Auditing Roundtable, issued in March 2014.
- Meeting with key SEC Staff on multiple occasions.
- Providing technical support to former Ambassador Barry Walkley, the Office and Central African Affairs and additional State Department staff on multiple occasions.
- Meeting with GAO on IPSA standards, guidance and implementation.
- Supporting the Department of Commerce to assist them with developing the study they are required to provide to Congress on the accuracy of the IPSAs.
- Speaking at conferences, seminars and webinars sponsored by the OECD, CFSI, the American Bar Association, The Society of Corporate Secretaries and Governance Professionals, Bloomberg BNA, ThomsonReuters and TheCorporateCounsel.net.
- Conducting IPSAs for CY2014 and CY2015 filings.
- Serving on the Advisory Committees of multiple studies and the Better Sourcing Program.

Written Testimony by Lauren Compere, Managing Director, Boston Common Asset Management and
Patricia Jurewicz, Director, Responsible Sourcing Network

"A Progress Report on Conflict Minerals"
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Subcommittee on Africa and Global Health Policy Hearing
April 5, 2017

On March 7, a group of 129 investors and investor groups managing total assets close to \$5 trillion, called upon the SEC and Congress to continue widespread and comprehensive implementation of Section 1502. Lead investors included Boston Common Asset Management, Interfaith Center on Corporate Responsibility (ICCR), Mercy Investment Services, Inc., Responsible Sourcing Network (RSN), Trillium Asset Management, and US SIF: The Forum for Sustainable and Responsible Investment. Engaged with the implementation of the law since it was first passed in 2010, investors expressed their support in a statement (attached) to the SEC specifically calling on the agency to pursue robust enforcement of the requirements to achieve maximum impact.

Spurred by American leadership on conflict minerals which goes back to disclosure amendment 3997 championed by Senator Brownback (R-KS), and a bipartisan coalition of nine senators, supply chain due diligence is becoming a global norm for responsible sourcing. This is demonstrated by increasing scrutiny and regulation on conflict minerals from the DRC including the EU's Conflict Minerals Law. Lead U.S. investors were therefore joined by asset managers from around the world including APG Investment Management, Hermes EOS, Legal & General Investment Management, MN, NEI Investments, Robeco, Triodos Investment Management, and pension funds such as New York City Comptroller Scott M. Stringer, PGGM, and Sweden's AP1, AP2, AP3 and AP4.

The 1502 rule has been the driving force for the momentum and action by corporations to research their supply chains, be transparent about their actions, and be responsible to the communities that deserve to prosper from the electronics craze sweeping across the world. As a result, U.S. companies are being more effective in addressing material risk in their supply chains while contributing to responsible economic development in the DRC.

No single law can solve all the underlying problems that are causing conflict in the DRC region, but since 2010, this law has demonstrated success in diminishing revenue flows to militia groups. Section 1502 also exemplifies the need for and benefit of transparency within investment decisions. Not only does it support companies and investors by creating a level playing field to compare companies' actions, such as in RSN's Mining the Disclosures reports, but it also helps minimize violence and despair.

We need the coordination and cooperation of all to further progress and change on the ground in the DRC. We urge Congress and the U.S. State Department to support comprehensive implementation of 1502 while simultaneously supporting the Congolese government in making needed changes to promote security on the ground.

Now is not the time to repeal and replace but to enforce and replicate 1502 to drive responsible manufacturing and empower local communities in conjunction with necessary government diplomacy and economic development activities. We all have a role to play in bringing peace and prosperity to the Congo.