

Laura E. Seay
May 10, 2012

United States House of Representatives Committee on Financial Services
Subcommittee on International Monetary Policy & Trade

Hearing on “The Costs and Consequences of Dodd-Frank Section 1502: Impacts on America and the Congo.”

Chairman Miller, Ranking Member McCarthy, and members of the subcommittee, thank-you for the opportunity to appear before you today. My name is Laura Seay, of Atlanta, Georgia. I am an assistant professor of political science at Morehouse College, where I research community and international responses to state fragility and conflict in central and eastern Africa. My testimony does not reflect any official views or policies of Morehouse College; they are my personal opinions as a scholar who studies the Democratic Republic of Congo. I appreciate this opportunity and will focus my remarks on the effects of Dodd-Frank Section 1502 in the eastern Democratic Republic of Congo.

Background

The 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act contained a provision intended to help mitigate the effects of armed conflict in the eastern Democratic Republic of Congo (DRC). Section 1502 of the Dodd-Frank Act requires corporations registered with the U.S. Securities and Exchange Commission (SEC) to disclose whether any materials in their products contain “conflict minerals” from the DRC. Conflict minerals are defined as mineral resources that are mined by, sold by, or otherwise associated with armed groups operating in the DRC. The DRC is mineral-rich; in the conflict-affected areas, gold, tin, tungsten, and tantalum are particularly abundant, and approximately 80% of the DRC’s overall exports are in the mineral sector. Not all minerals sourced in the DRC’s conflict-affected provinces are conflict minerals, and not all Congolese conflicts involve the mineral trade.

There are well-documented links between some Congolese armed groups (including rebel militias and some members of the DRC national army, the FARDC) and the mineral trade in the region; some mines are or have been controlled by armed groups, who use the profits they earn from mining for a wide variety of purposes, including paying soldiers’ salaries, purchasing weapons and ammunition, and general expenses. Many of these groups have also engaged in serious human rights abuses, ranging from rape and torture to enslavement and conscription of child soldiers. However, it is important to note that not all armed groups in the DRC are involved in the mineral trade, nor are most of the region’s conflicts related to fights for control of mining sites. The causes of the DRC’s conflicts range widely, but most involve longstanding disputes over property and citizenship rights.

Section 1502 was included in the Dodd-Frank Act after a concerted effort by a coalition of advocacy organizations to push for greater transparency in the conflict minerals section. These advocates conceived of the conflict minerals trade as a root cause of conflict in the DRC, and view a demand-side approach to stemming the conflict mineral trade as the most realistic means

of reducing armed groups' ability to profit from the DRC mineral trade. Implicit in this understanding was the idea that Congolese armed groups would be less likely to engage in violence if they no longer had access to revenue earned from the conflict minerals trade.

Consequences

Dodd-Frank Section 1502 requires the SEC to promulgate a series of rules for implementation of the act's requirements. The legislation required that these rules be released no later than 270 days following the act's passage in July 2010. However, as of May 2012, the regulations have yet to be released, meaning that Section 1502 has yet to be implemented in any meaningful way. Regardless, the Act has had significant and serious unintended consequences in the Democratic Republic of Congo. The first of these was a six-month ban on all mining and mineral exports in the North Kivu, South Kivu, and Maniema provinces implemented by the Congolese government from September 2010 to March 2011. Ostensibly enacted for the purpose of disarming militias and removing them from control of the mines, the ban instead provided an opportunity for the FARDC to take control of some previously non-militarized mines, such as the one at Kamituga, South Kivu. There is also evidence that human rights abuses increased as a result of the ban.

There is little question that this ban would not have been enacted were it not for Dodd-Frank Section 1502; there was little to no incentive for the Congolese government to act on the issue prior to mid-2010. Likewise, industry began responding to the perceived impact that Section 1502 would have shortly thereafter. In April 2011, a *de facto* boycott of minerals from the Congo's conflict-affected provinces developed as smelters and other buyers began refusing to buy any Congolese minerals because proving whether those minerals are conflict-free or not is virtually impossible in most cases. Most significantly, the Malaysia Smelting Corporation (MSC), which had previously purchased up to 80% of eastern Congolese tin, stopped buying from the Congo. Mineral exports from the eastern Congo have plummeted; tin exports, for example, are down by 90%.

The effects of the government ban and the subsequent *de facto* boycott on eastern Congolese minerals have been devastating in mining communities and for the regional economy. A large, but unknown, number of miners are out of work; some estimates place that number as high as 1-2 million, while others count tens of thousands, which is probably more realistic. Not counted in those numbers are the traders, market sellers, and transporters whose ability to earn money depends on miners' ability to spend money. Many miners have moved to gold mines in Ituri and other areas, from which it is easy to smuggle the product for which global demand is currently very high. The 2011 Report of the United Nations Group of Experts on the Democratic Republic of Congo noted that smuggling increased in 2011.

Meanwhile, the Congolese people have experienced very few of the promised benefits of a reduction in the conflict minerals trade. While the Congolese army did withdraw from the Bisie cassiterite mine in Walikale, North Kivu, most of the mines that were previously under control of armed groups are still under the control of one armed group or another. Violence in the region is getting worse, not better; over the course of the last three weeks, the United Nations High Commissioner for Refugees fighting between dissident FARDC mutineers and the army has displaced at least 500,000 people in North Kivu alone. While dissident Congolese army officer Bosco Ntaganda has clearly benefitted from the conflict mineral trade to the tune of millions of

dollars, there is little evidence that the *de facto* boycott on export of those minerals has negatively impacted his ability to fight.

Quality of life for many Congolese mining communities, however, has significantly declined. To be clear, to be a Congolese miner or living in a Congolese mining community in conflict-affected areas is to live a terrible and dangerous life. The United States government should absolutely support efforts to address real issues in the mines such as enslavement, rape, dangerous conditions, and other abuses of miners and their families. But for many Congolese citizens, mining represents the least worst of very limited and terrible opportunities for economic gain. In most mining communities, mining is the only paid employment available. The alternatives are to engage in subsistence-level agriculture or to join a militia. The latter option is obviously problematic; the former leaves parents with no way to pay their children's school fees, doctor bills, or to provide other necessities. Tens of thousands of Congolese thus choose mining despite its many risks and horrors. Without being able to sell minerals under the *de facto* ban, mining families who were once able to scrape by on next-to-nothing are now unable to pay for even the most basic goods. Their children are out of school and they are suffering terribly with little assistance.

What Went Wrong

The unintended consequences of Dodd-Frank Section 1502 are real and significant. Where did lawmakers – and the advocates who pushed for the provision – go wrong?

The first mistake was in the understanding of the militarization of the mineral trade as a root cause of conflict in the Congo. Virtually no academic experts on the DRC identify the mineral trade as a cause of any of the country's recent wars. Rather, we understand the militarized mineral trade as a symptom of the country's more basic problem: a lack of governance. There is no rule of law in most of DRC; justice in most courts is for sale to the highest bidder, criminals go unpunished or can bribe their way out of jail, and the central state in Kinshasa is not capable of maintaining the DRC's territorial integrity. Given this context, there is no question that anyone who can engage in human rights abuses, illicit mineral exploitation, and other bad behavior will almost certainly do so – including armed groups. The militarized mineral trade is one of many manifestations and consequences of a lack of governance, rule of law, and the DRC government's ability to impose basic law and order throughout its territory.

We know that minerals themselves are not a cause of violence in the Congo; by such logic, the diamond-rich areas of Kasai in central Congo and the southeastern Katanga province should be at all-out war. Yet they are not. Minerals play a role in fueling Congolese conflicts, but they did not cause them. Other dynamics – namely fights over land and citizenship rights – are the causes of eastern Congo's violence. Just as attacking the symptoms of a disease will not lead to a cure, going after the conflict mineral trade in the DRC is unlikely to work so long as the underlying problem persists.

Another mistake underlying the rationale for passing Dodd-Frank Section 1502 is the idea that attacking the mineral trade is a means of mitigating violence in the DRC. As previously noted, advocates and policy makers involved in Section 1502's passage believe that Congolese armed

groups will be less likely to engage violence if they lack access to revenue earned from the conflict minerals trade.

This sounds like a reasonable claim, but there is little evidence to show that it is true. There has never been a time when a targeted effort to reduce access to revenue from one sector for a group engaged in human rights violations slowed or ended violence. The divestment movement towards apartheid-era South Africa was largely successful, but that targeted an entire economy, not just one sector. Congolese armed groups are not entirely dependent on the conflict mineral trade; some rely quite heavily on it while others have diverse revenue streams. These armed groups have access to – and use – a wide range of other, lucrative income-generating strategies, including extorting the populations in territories under their command, taxing road traffic, the timber and charcoal trade, the banana trade, and, increasingly, trade in cannabis. While there are anecdotal accounts to the contrary here and there, most fighters are highly unlikely to stop fighting simply because they lose access to one revenue stream, a fact that is evidence in the continuing violence in North Kivu today. Thugs do not stop fighting simply because they lose access to one revenue stream. Indeed, many analysts fear that if Dodd-Frank Section 1502 does make it more difficult to trade in conflict minerals, some armed groups will prey on local populations even more than they already do.

Some advocates point to the efforts to end the blood diamond trade in Sierra Leone, Liberia, and Angola as examples that focusing on a particular commodity can end conflict. This is misleading; the Kimberley Process did not go into effect until after peace was restored in Sierra Leone, and the conflict ended after a UN-managed security restoration process. In Liberia, civil war ended because the LURD rebels attained battlefield victories over the national army, and international diplomatic pressure forced President Charles Taylor to leave the country. In Angola, war also ended after a battlefield victory in which rebel leader Jonas Savimbi was killed. The Kimberley Process was far less important in consolidating peace in any of these cases than were efforts at grassroots peace building, infrastructure reconstruction, and re-establishing state authority.

A third mistake leading to the passage of Dodd-Frank Section 1502 was the assumption that traceability schemes can be successfully or partially successfully implemented in a state that lacks effective governance mechanisms. This is a naïve claim that does not reflect the reality of the situation on the ground in the eastern Congo. While developing traceability schemes to clean up the Congolese mineral trade are important – and while there are several simultaneous efforts to do so are underway using the OECD due diligence guidance, the World Bank's PROMINES project, and the ITRI Tin Supply Chain Initiative (iTSCI) and Conflict Free Smelter programs – it will still be exceptionally difficult to verify that all Congolese minerals labeled as “conflict-free” actually are free from association with armed groups. This is due to the DRC's governance issue. It is not an exaggeration to say that almost every public official in the Congo can be bribed. While accurate tagging at mineral extraction sites by non-corrupt watchdogs or community representatives may be possible – and should be encouraged – the length and complexity of the Congo's mineral supply chains mean that there are ample opportunities to falsely label minerals as conflict-free, to pay off officials charged with ensuring clean supply chains, and to otherwise interfere with the traceability process. The idea that a corporation can completely verify that its DRC-sourced minerals are entirely conflict-free is, for the moment, a

pipe dream. This is, not coincidentally, the reason MSC and other buyers stopped purchasing from Congo.

Recommendations

Since the passage of the Dodd-Frank Act, several pieces of peer-reviewed academic research have concluded that Section 1502 is highly problematic for a number of reasons. Writing in *African Affairs*, Barnard College professor Séverine Autesserre argues that the overwhelming Western focus on conflict minerals actually allowed more human rights abuses to occur by drawing attention away from the real causes of Congolese conflict. In *Resources Policy*, Sara Geenen agrees, finding that the 2010 DRC government ban on mining “compound[ed] but does not address different problems associated with ASM [artisanal and small-scale mining]: conflict, informality, poverty, illegality, [and] state control.”

Celia Taylor argues in the *Harvard Business Law Review* that, while disclosure regulations can be useful for improving responsible supply chain sourcing, Section 1502’s requirements “go far beyond disclosure and may impede issuers’ ability to conduct business in the DRC region.” Carol Jean Gallo argues in *St. Antony’s International Review* that poor specification of what constitutes legal and illicit in the Congolese context makes the implementation of Section 1502 difficult when considering “elements of the militias who...now have access to official channels of exploitation.” In a working paper for the Center on Global Development, I have argued that Section 1502 was based on a poor understanding of the complexities of the Congolese situation on the part of some advocates heavily involved in its passage.

Thus far, there is a strong consensus in the scholarly community that Dodd-Frank Section 1502 is a misguided policy that has had negative unintended consequences for the people of the eastern Democratic Republic of Congo. While there is certainly need for more study and the systematic collection of data, it is important to note that there is not a single peer-reviewed article of which I am aware arguing the opposite. Instead, scholars who work on the DRC emphasize the need to take a more comprehensive, community-based approach to peace building, economic development, and infrastructure reconstruction in order to mitigate the effects of the conflict mineral trade.

What should Congress and the Executive Branch do in order to support those who suffer from violence in the eastern Democratic Republic of Congo? Using diplomatic leverage to push the Congolese government to reform its security sector, prosecute and punish those who commit rape and other heinous crimes, and to provide real security that protects civilian populations is an essential step to eliminating the conditions under which the conflict mineral trade thrives. The Department of Defense should continue and expand its efforts to train and professionalize FARDC soldiers through AFRICOM. The US should also work in conjunction with our donor partners to more closely tie requirements for respect for human rights and democracy to the budgetary assistance we provide to the Congolese government each year.

Second, the US should support efforts to build respect for the rule of law and to re-establish the Congolese criminal justice and legal systems into reliable, legitimate institutions that act in the interest of the Congolese people and under the country’s laws. Expanding initiatives such as the Mobile Courts program, which currently serves victims of sexual and gender-based violence,

would help considerably in this regard. The Congolese people need legitimate, peaceful institutions through which they can resolve disputes and grievances over property, contract enforcement, and criminal activities.

Finally, the US government should engage more deeply in support for assisting mining communities and other Congolese with developing viable economic livelihoods. Cleaning up and professionalizing the mineral trade is a necessary task that will produce positive benefits, but it will also put tens of thousands of Congolese miners out of work as mechanization requires fewer laborers. Miners and other Congolese workers need to have opportunities for meaningful work beyond subsistence-level agriculture – or joining a militia – that enable parents to provide for and raise children in healthy and safe environments. Providing training and educational opportunities and access to small business loans are two ways that USAID and other US government agencies could help to improve the Congolese economy in a sustainable way that rewards work and supports those who want nothing more than an opportunity to improve their lives. Economic development is intimately tied to improved security in the eastern Congo; as Koen Vlassenroot and Hans Romkema noted a decade ago, peace deals in the Congo will not be sustainable if they do not involve provisions for economic security.

There are no easy answers to solving the DRC crisis, and doing so will take a sustained effort working in partnership with local leaders over the course of several decades and working simultaneously in multiple sectors. While Dodd-Frank Section 1502 was designed to be a partial effort to bring about peace, its consequences for the people of the Congo have instead been largely devastating thus far, and its full implementation is unlikely to significantly improve their lives so long as they do not have the privilege of living under basic, effective governance and the rule of law. The Congolese mineral trade needs to be professionalized and demilitarized, but the method proposed by Section 1502 is unlikely to have such results so long as smuggling is easy and global demand for Congolese minerals is high. For the reasons outlined above, Section 1502 is unlikely to significantly reduce violence in the region or to improve quality of life for most Congolese. Instead, our time and efforts would be better spent working in conjunction with Congolese partners from a wide variety of perspectives to improve security, build the rule of law, and provide viable employment alternatives to mining and armed violence.