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Testimony before the United States House of Representatives
Committee on Financial Services, Monetary Policy and Trade Subcommittee
"The Unintended Consequences of Dodd-Frank's Conflict Minerals Provision"
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It is the sense of Congress that the exploitation and trade of conflict minerals originating in the Democratic Republic of the Congo is helping to finance conflict characterized by extreme levels of violence in the eastern Democratic Republic of the Congo, particularly sexual- and gender-based violence, and contributing to an emergency humanitarian situation therein, warranting the provisions of section 13(p) of the Securities Exchange Act of 1934, as added by subsection (b).

—Dodd-Frank Act Section 1502, Paragraph "A"

"Pour nous, sans nous, c'est contre nous."

—Traditional Congolese saying

Thank you, Chairman John Campbell, Ranking Member Wm. Lacy Clay, and Members of the Subcommittee, for holding this hearing on the unintended impacts of Dodd Frank's conflict minerals provision. My name is David Aronson. I am a freelance writer and editor who has lived and worked off and on in central Africa for 25 years. I have written about the Congo for *The New York Times*, the *Washington Post*, *The New Republic*, *Dissent*, the *Chicago Tribune*, the *Christian Science Monitor*, the *World Policy Journal*, and elsewhere. My blog, www.CongoResources.org, receives some 15,000 unique visitors a month.

Dodd Frank 1502, the "conflict minerals" provision of the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act (DF-1502), is a case study in how good intentions can go awry, particularly when a compelling activist-sponsored narrative substitutes for considered and timely analysis. As I will make clear:

- Advocates for the law disregarded the consensus opinion of Congolese experts who repeatedly warned them of the dangers the campaign posed to their people;
- The law imposed a de facto embargo on mineral production that impoverished the region's million or so artisanal miners; it also drove the trade into the hands of militia and predatory Congolese army units;
- The military situation on-the-ground has considerably worsened since passage of the law and the SEC's promulgation of the implementation guidelines;
- The case for DF-1502 rested on dubious and misleading assumptions;

- A dozen or so scholars and NGOs have independently studied this issue; they have all concluded that the law is imposing unacceptable costs on the Congolese while doing little to diminish the violence.

Background

Since the late 1990s, protracted civil conflicts in the Democratic Republic of Congo have led to an economic collapse, massive population displacements, deepening poverty, and a chronic state of food insecurity. It is hard to exaggerate the scale of the humanitarian catastrophe that has engulfed the country. Here are a few data points:

- The International Rescue Committee's detailed, geographically randomized population survey of 2007 estimated that 5.4 million people had died as a result of the wars and that the country was continuing to experience some 45,000 excess deaths per month. Even if the actual numbers are just half of what the IRC estimates, this would still make the conflict in eastern Congo the deadliest since World War II.
- In the latest UNDP report, the Congo placed187th out of 187 countries on its ranking of human development indicators, behind Afghanistan, Niger and Burundi. The country stands at the bottom of the International Food Policy Research Institute's Global Hunger Index. And earlier this month, Save the Children announced that Congo had displaced Niger as the world's worst place to be a mother. Niger is a desert; the Congo, properly managed, could be a breadbasket to the continent.
- Some 88 percent of Congolese live below the absolute poverty line of $1.25 per day; about 70 percent lack access to adequate food; and one in four children is severely malnourished. About 2.7 million Congolese are internally displaced, third most in the world.

Given the scale of this disaster, it is entirely creditable that activists in this country and abroad felt an obligation to respond. Their mission, to educate Western audiences about the suffering of distant people and enlist them in efforts to remedy that suffering, is part of an inspiring tradition that began with the 19th century abolition movement, continued through the international campaign against Red Rubber at the start of the 20th century, and persists in some of today's most distinguished human rights campaigns. It is a tradition I strongly identify with.

Unfortunately, in their quest to fashion a narrative that would resonate with and therefore galvanize their largely Western audience, activists ignored the complexities of the local context and brushed aside Congolese experts who repeatedly warned them of the dangers the conflict minerals campaign posed to their people. In doing so, they developed policy prescriptions that damaged an already tenuous economy, entrenched the position of the warlords, and accomplished little by way of resolving the conflicts.

Disregard of Local Experts

In a *New York Times* opinion editorial I wrote about DF-1502, I reported that knowledgeable Congolese felt excluded from the conflict minerals debate. It was, they told me, a dialog in which their voices went unheeded, dominated by Western advocacy groups confronting Western electronics companies. As a result, immensely important decisions about the lives of millions of Congolese were made without any input from them.

It happens that an organization with impeccable credentials for supporting the rights of workers in Third World countries wrote a contemporaneous paper about this very topic. The organization describes itself this way: "MakeITFair is a European project focusing on the electronics industry, especially on consumer electronics like mobile phones, laptops and MP3 players. We want to let young people across Europe know about the labour abuses and environmental problems that are going on right now around the world – just to satisfy our demand for all the latest electronic gadgets." In an October 2010 report, they wrote the following:

> The makeITfair project, however, deplores the lack of communication with local stakeholders when formulating what should be done. … "When high level institutions and industry are busy drawing up standards, local views and priorities are in danger of remaining unheard…. Despite the fact that all such initiatives aim to end the mineral trade funding armed groups in Eastern DRC, there is growing concern that there is a boycott in practice on minerals from Eastern DRC, which may lead to worse consequences for the people on ground…. During interviews in Goma and Bukavu in May 2010, IPIS encountered very few representatives of civil society groups who were in favour of an embargo on minerals from Eastern DRC. By far most informants questioned the usefulness of an embargo.[1]

Negative Unintended Consequences

The Dodd-Frank Financial Reform Act was signed into law on July 22, 2010; on August 22, 2012, after several postponements to allow for further public debate and fact finding, the Securities and Exchange Commission (SEC) promulgated a detailed set of implementation regulations. What has happened in Congo as a result?

In early 2011, in response to negative publicity from activist groups and in anticipation of the eventual implementation of DF-1502, the Electronics Industry Citizenship Coalition (EICC)—which includes most large US electronics companies—advised the Malaysia Smelting Corporation, the last remaining smelter processing minerals from eastern Congo, to stop accepting minerals from central Africa that were not certifiably clean. The resulting *de facto* embargo of Congolese minerals went into effect on April 1, 2011 and had an immediate impact on the artisanal mining sector and on the broader economy of the region.

[1] Voices from the Inside: Local Views on Mining Reform in Eastern DR Congo, Finnwatch and Swedwatch, October 2010. http://makeitfair.org/en/the-facts/news/local-voices-must-be-heard

To understand the extent of that impact, consider this open letter from 50 South Kivu civil society organizations dated July 5, 2011, and addressed to President Obama and SEC chair Mary Schapiro:

> In this environment, artisanal mining has emerged as one of our only economic lifelines, and has directly and indirectly provided millions of jobs. The abrupt cessation of this trade has had devastating impacts on our people:
> 1. Millions of our artisanal miners have suddenly had their livelihood cut from under them. They find it increasingly difficult to pay school, health, or maternity fees; some even report having difficulty providing food for their families.
> 2. Mining enclaves have emerged over the past decade in places so remote that only planes can access them. The world's sudden refusal to buy these minerals means the planes no longer service these communities; with nothing to trade, they are unable to provide themselves with such basic necessities as salt, sugar, oil, cloths, soap and so on.
> 3. Because artisinal mining was one of our only engines of economic growth, secondary economic impacts are being felt throughout the province. Even in our large towns, economic activity has diminished; construction slowed; trade in everything fallen. People with very little to begin with are now doing with less.[2]

I would add one more reason for concern: near epidemic-levels of livestock and crop diseases are currently devastating agricultural production. Families who dispersed their risk by sending some members to mine while keeping others at home to farm are being hit on both counts; they have nothing else to fall back on.

Today, the de facto embargo on Congo's tin, tantalum and tungsten (the three Ts) is still in effect, and DF-1502 continues to depress the economy of eastern Congo. There has been some resumption in the trade, from three sources:

- Several "conflict-free" initiatives are underway, with mixed results. The Dutch are funding a project in Nyabibwe that has produced a few hundred tons of product; local CSOs hope to expand the project to five nearby mining sites. However, there are allegations that the site, widely viewed as a test case for responsible sourcing, is already being exploited by a military-led smuggling racket.
- Despite the central government's suspension of a couple of Chinese trading houses from the mineral trade in May 2012, Chinese firms continue to buy some modest amount of undocumented minerals at significantly discounted prices.
- Finally, there has been a significant expansion in illicit trade through Rwanda, with cassiterite in particular being smuggled across Lake Kivu and repackaged as domestic Rwandan product. The fact that Rwanda is one of the unintended beneficiaries of the

[2] Open Letter to President Barack Obama And SEC Chair Mary Schapiro From Religious, Civil Society and Business Leaders In South Kivu Province, Democratic Republic Of Congo, July 5, 2011. http://www.sec.gov/comments/s7-40-10/s74010-324.pdf

> legislation is a bitter pill for many Congolese, who point out that Rwanda has been plundering Congolese mineral wealth for years.

Overall, however, the trade has by no means reached its pre-embargo level, and miners receive significantly less than they used to for each kilogram of mineral that they produce. (Untagged cassiterite sells for $3-4 per kilo, in contrast to $9-10 per kilo for the tagged product. Miners were receiving $13-15 per kilo prior to the embargo.)

In contrast to the three Ts, the trade in gold continues unabated, with virtually no procedures in place to formalize let alone control it. As my fellow panelist, Sophia Pickles from Global Witness recently documented, up to 10 tonnes of gold from South Kivu are being laundered each year through Burundi and exported to Dubai--with an "almost complete absence of checks." In North Kivu, a significant portion of the gold trade is controlled by the Congolese army commanders, including ex-General Gabriel Amisi, who was fired as chief of staff last year after it was revealed he had been selling weapons to militia groups. Last month, the *Wall Street Journal* reported that "opportunities for illicit gains only increased after the U.S. in 2010 passed a Wall Street overhaul, known as Dodd-Frank." While a number of efforts are underway to establish "conflict-free" gold supply chains for boutique jewelers, gold is so valuable, so easy to smuggle, and so fungible that it is hard to imagine how the trade could be brought under control. I would respectfully submit that preventing Congolese warlords from selling gold to Middle East or South Asian traders in one of the most ungoverned areas of the world is not a feasible policy goal.

<u>A Plethora of Initiatives</u>

As the Pole Institute has documented, the number of different international initiatives to deal with Congolese minerals is astounding—and increasingly problematic: "It has become increasingly clear that the parallel development of a range of different international standards, which in the end all have to be applied by the same actors, is a problem... The multiplication of uncoordinated visits for many different purposes are generally regarded by economic operators on the ground as auditing activities with related increase of audit fatigue. Participants warned against the increase in 'conflict minerals tourism' that fails to deliver concrete results."[3]

<u>The Violence in Congo Has only Gotten Worse</u>

The economic harm caused by DF-1502 might be worthwhile if the embargo were having its intended effect, of reducing the overall level of violence in the region. Advocates used to argue that the legislation was not having its intended effects because the SEC had yet to issue the implementing regulations. Now that it has, it is important to ask whether we are seeing an improvement on the ground.

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[3] Dominic Johnson, Senior Analyst, NO KIVU, NO CONFLICT? The misguided struggle against "conflict minerals" in the DRC. The Pole Institute, April 2013.

Roger Meece, the UN special representative in Congo and Monusco chief, drew a dire picture in a briefing before the Security Council. Appealing for an additional military brigade, he told the Council that an "ever-growing number of violent, destructive rebel groups is battling for territory while terrorizing local populations." Other groups have echoed Meese's assessment. Just last week, the International Red Cross reported that violence in eastern Congo had reached "unprecedented levels." This is not the result we were led to expect.

The Case for Conflict Minerals Rested on Dubious Assumptions

To be fair, it is difficult to disaggregate the impact of the conflict mineral law from other developments in the region. It could be that the situation would be even worse if the legislation hadn't passed. We have to examine whether the advocates' reasons for expecting the law to reduce violence stand up to sustained analysis. Here is how the Enough Project made the case for conflict minerals legislation in April 2009:

> The time has come to expose a sinister reality: Our insatiable demand for electronics products such as cell phones and laptops is helping fuel waves of sexual violence in a place that most of us will never go, affecting people most of us will never meet. The Democratic Republic of the Congo is the scene of the deadliest conflict globally since World War II. There are few other conflicts in the world where the link between our consumer appetites and mass human suffering is so direct.[4]

As several scholars have noted, this analysis fails on several counts:

1) It misdiagnoses the nature of the conflicts in eastern Congo. For example, the rebel movement that is of greatest concern at the moment, the M23, does not control any mines, has not attempted to do so, and does not seek to control mineral transport in the regions it does govern.
2) It diverts attention from other much-needed policy actions in the field, such as resolving land conflict, promoting inter-community reconciliation, jump-starting economic development, and fighting corruption.
3) It does not take into account the enabling context. Even if minerals were as central to the conflict as advocates claimed, attempts to impose a regulatory regime are unlikely to succeed given the institutional weakness of Congo's central government.
4) It ignores the fact that there are numerous other opportunities for violence entrepreneurs to make money, from taxing transport routes to robbing banks.
5) It increases the likelihood of conflict by depriving young men of nonviolent livelihood alternatives and by exacerbating competition between local stakeholders over ever-scarcer resources.

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[4] The Enough Project: "Can You Hear Congo Now? Cell Phones, Conflict Minerals, and the Worst Sexual Violence in the World," April 1, 2009. http://www.enoughproject.org/news/strategy-paper-can-you-hear-congo-now-cell-phones-conflict-minerals-and-worst-sexual-violence-w

Experts all but Unanimously View the Campaign as a Failure

Over the past eighteen months, a dozen independent scholars and NGOs have published reports on the impact of the conflict minerals campaign. Strikingly, they have all reached similar conclusions: DF-1502 is harming ordinary people, helping militia and warlords, and in no way significantly reducing conflict. Here is some of what these scholars and activists have had to say:

Laura Seay, assistant professor at Morehouse College, for the Center for Global Development: "Nicknamed "Obama's Law" by the Congolese, section 1502 has created a de facto ban on Congolese mineral exports, put anywhere from tens of thousands up to 2 million Congolese miners out of work in the eastern Congo, and, despite ending most of the trade in Congolese conflict minerals, done little to improve the security situation or the daily lives of most Congolese."[5]

Raymond Gilpin, director of the US Institute of Peace Center for Sustainable Economies (CSE): "Though well-intentioned, [DF-1502] fails to address the root causes of conflict and grossly underestimates the resilience and adaptability of the warring factions. In recent months the armed groups have proven that they can quickly adapt, shifting from conflict mining to smuggling, racketeering (including 'taxes' imposed on coal and cattle) and bank robbery."[6]

Severinne Autesserre, assistant professor at Colombia University, for the peer-reviewed Journal of African Studies:

"The well-meaning international efforts have also had unintended ramifications that have prevented the intervention from achieving its stated goals, and that have even, at times, contributed to the deterioration of the situation in eastern Congo. … Because of these exclusive focuses, the international efforts have exacerbated the problems that they aimed to combat."[7]

Enrico Carisch and Dr Claude Kabemba, of the Open Society's South Africa Initiative:

"But the reality on the ground could not be more different from the concept that every conflict in eastern Congo is - at its heart - a fight for control over the country's vast natural resources. This certainly does not appear to be the case with the current conflict.

In fact… the hundreds of thousands of artisanal gold miners in four provinces (North Kivu, South Kivu, Oriental and Maniema) are no longer afraid of warlords or militias. Instead, they fear the hordes of corrupt civil servants, bureaucrats and members of the government's security forces, who are far more interested in exploiting the miners rather than supporting and protecting them…

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[5] Laura Seay, What's Wrong with Dodd-Frank 1502? Conflict Minerals, Civilian Livelihoods, and the Unintended Consequences of Western Advocacy. Center for Global Development, Working Paper 284, January 2012

[6] Raymond Gilpin and Brett Boor, *On the Issues: Instability in the DR Congo*. US Institute of Peace, August 2012

[7] Severinne Autesserre, Dangerous Tales: Dominant Narratives and their Unintended Consequences. *African Affairs*, Oxford University Press, February 2012

The current conflict is not about minerals. It is about Congo's dreadful governance - and the bloody role of neighbouring governments."[8]

Dominic Johnson, a senior analyst for the Goma-based Pole Institute:
"A pattern is emerging in which Kivu's mining sector is being asphyxiated in the name of reform. Before 2010, Kivu's mineral traders had willingly participated in moves to strengthen formal and legal channels and to safeguard Kivu livelihoods by creating "conflict-free" production and trading chains within Eastern Congo. The mining ban killed this off…"[9]

To my knowledge, not a single independent analysis has concluded that Dodd-Frank 1502 has had a positive impact on developments in eastern Congo.

<u>Listen to Congolese</u>
Finally, I would ask the subcommittee to listen to the voices of Congolese who have been affected most directly by the law:

Serge Mulumba, president of the mining cooperative CDMC, in a letter to the SEC:
"We cannot give you exactly the number of lives that are lost each day following the cessation of artisanal mining in the DRC and yet even if a child died or who is hungry or do not go to school because his father digger lacked money, this is a tragedy, it is a sad news that should challenge our humanity."[10]

Pastor Raymond Muhombo Shemihiyo, in an open letter posted on Fair Jewelry Auction:
"Please listen attentively to our cries of weeping and anguish. Our families and us will be doomed to death if you do not hear these cries of alarm. Do not wait to rescue us when we will be already in the grave. Act in time to avoid the humanitarian catastrophe that would arise from the consequences of your suspension to purchase our minerals."[11]

The heads of three South Kivu mining associations, in a letter to Intel, begged the EICC to reconsider DF-1502:
"What is the refuge of all the Congolese jobless, around 85 % of the population. Is it to make peace or to trouble the peace, when the life is stopped for a population? No job, no life. Please imagine the consequences…"[12]

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[8] Enrico Carisch and Dr Claude Kabemba, *Congo-Kinshasa:Conflict Minerals Not Fueling M23 Rebellion* Open Society Initiative for Southern Africa (Johannesburg), 27 November 2012

[9] Dominic Johnson, Senior Analyst, NO KIVU, NO CONFLICT? The misguided struggle against "conflict minerals" in the DRC. The Pole Institute, April 2013

[10] Mulumba K. Serge, President of CDMC Mining Cooperative in DRC/KATANGA, October 17, 2011

[11] SOS From The Small Scale Miners of the Congo Regarding The Dodd Frank Act, A Letter from Pastor Raymond Muhombo Shemihiyo, General Mining Cooperatives of North Kivu, Democratic Republic of the Congo.

[12] Letter to Dr Jerry Meyers, Chair of Extractives work group Intel, from Mukulumanya W. Josue President of the Gecomiski, and Raymond Muhombo Shemihiyo President

Father Didier de Failly s.j., in a letter to the SEC:
"Now if the Dodd-Frank regulations are applied from April this year it will ruin all these efforts and condemn hundreds of thousands of people in Eastern DRC to keep under the terror of these maffiosi barons, instead of improving the whole situation. Even in Rwanda, Uganda and Burundi, thousands of people will be badly affected."[13]

"For us, without us, is against us"

Chairman John Campbell, Ranking Member Wm. Lacy Clay, and Members of the Subcommittee, I began my testimony by lauding the tradition of international citizen activism represented by groups like Enough and Global Witness, who at their best continue a centuries' old tradition of global conscience. One of that tradition's signal achievements was the peaceful overthrow of South Africa's *apartheid* regime. Defenders of the conflict minerals campaign sometimes suggest that it resembles the divestment campaign of the 1980s. Just as divestment imposed real, tangible costs on the South African economy but ultimately proved worth the price, so, they say, the conflict minerals campaign will eventually prove to have been worth the temporary economic dislocations it has caused.

I agree that the comparison to the divestment campaign is instructive. But it is not the similarities of the campaigns that strike me so much their differences. For one, the anti-apartheid activists were acting in solidarity with South Africa's moral and political leaders. Nelson Mandela and Archbishop Desmond Tutu urged Western countries to divest from South Africa. In calling for their universities and companies to divest, Western activists were following the lead of South Africans rather than fashioning a solution of their own. In the case of conflict minerals, by contrast, the activists consistently brushed aside the concerns of informed local leaders. Second, the divestment campaign targeted the right people with the right incentives: The leaders of *apartheid* South Africa saw themselves as representatives of European civilization. They could therefore be shamed by a Western-led campaign aimed at stigmatizing them. By contrast, the horizons of Mai Mai Sheka or Mutomboki are entirely local. It is safe to say that they do not care what Western starlets think of them. Finally, the divestment campaign was based on a clear theory of change: It pitted ageing pro-apartheid politicians against South Africa's business elite, who wanted an end to international isolation so they could go back to making money. With conflict minerals, just the opposite is true: By sidelining legitimate business interests, DF-1502 inadvertently—but predictably—put money and power into the hands of the worst elements on the ground, with the negative consequences we continue to see.

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[13] Father Didier de Failly, Note on The Need To Let Some Time To Implement A Thorough Control System On Artisanal Mining In Eastern DRC, 3/10/2011. http://www.sec.gov/comments/s7-40-10/s74010-190.pdf