

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

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Committee on Financial Services

Subcommittee on International Monetary Policy and Trade

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Chairman Miller, Ranking Member McCarthy and Members of the
Subcommittee on International Monetary Policy and Trade:

Thank you for the invitation and honor to testify before your committee
today. This hearing is the most important and pertinent discussion yet on
Section 1502 of the Dodd-Frank Act and its consequences for the people of
the Democratic Republic of Congo.

My name is Mvemba Phezo Dizolele, a writer, foreign policy analyst and
visiting fellow at Stanford University's Hoover Institution on War,
Revolution and Peace. I am currently an adjunct professor at Johns
Hopkins University's School of Advanced International Studies where I
teach a course aptly named Conflict and the African Great Lakes. Still, the
views expressed in this statement are mine, and mine alone.

Today, I speak before you as a Congolese, and a concerned US citizen and
consumer. I own two laptops, a smart phone and several other electronics,
which may or may not contain minerals from Congo.

I would like to thank our friends in the many organizations that promoted Section 1502. I know that they galvanized thousands of people in a campaign to raise awareness on the continued conflict in Congo. Thanks to their work, many more people know about Congo today.

The best way to assess the cost and consequences of Section 1502 is to look at its premise, claims and impact on institution-building and the lives of Congolese.

In essence, Section 1502 seeks to bring peace to eastern Congo by regulating mineral trade through US law, cleaning up the supply chain and reducing militias' access to financial means. Such a regulation would *de facto* curb the violence and human rights abuses. This approach to conflict resolution, however, is not grounded in the sound fundamentals of political economy and public policy. Section 1502 may work in the short-run, but it is not sustainable.

Mineral trade in eastern Congo is part of a wider war economy, which can only be regulated either by the most powerful armed groups working in collusion, the biggest armed group imposing its way on the smaller ones or by their backers seeking to maximize profits and preserve their own interests. As such, Section 1502 builds on a weak foundation and requires the buy-in of the very negative actors it seeks to tame. This approach perverts basic peacemaking models and rewards criminals and would-be spoilers.

Proponents of Section 1502 build their case on the most widely accepted narrative of U.S. Congo policy, which defines the predicament as a humanitarian crisis through the binary prism of sexual violence and the so-called conflict minerals. This narrative has now become the standard perspective through which Americans view Congo, and many NGOs, activists, academics and policymakers shape their work around this prism.

Not only is this narrative wrong, it has led to several ineffective initiatives, which have effectively turned U.S. Congo policy into a Kivu policy. The Kivus represent no more than one fifteenth of Congo. Their problems stem from the failure of the state to discharge its duties and should be treated only as a part of a comprehensive national policymaking.

This binary prism also reflects the bleakest image of Congo and disenfranchises the Congolese people before the world, casting them as incompetent and incapable to solve their own problems. It then becomes imperative that they be rescued from their hopeless situation by the good peoples of the world.

As a result, the Congolese have been excluded from the policy discussion around Section 1502. Their exclusion is such an accepted norm that no Congolese was invited to speak at the Securities Exchange Commission Public Roundtable on Dodd-Frank 1502 on October 18, 2011 here in Washington, DC. The Congolese experts who had traveled for the event were confined to their seats in the auditorium, listening to Western activists and corporations debate the fate of Congo's resources. As it was at the Berlin Conference in 1885 when Western powers divided Africa, the primary stakeholders were simply excluded.

This exclusion, however, has a cost. No one understands mining in Congo better than the Congolese. They have managed their country's mining sector for four decades. By failing to engage the Congolese in an honest dialogue on the relationship between conflict and mining, proponents of Section 1502 failed to spur a national ownership of the initiative through a true partnership with the Congolese.

Congo may be a dysfunctional state, but the Congolese are among the world's most resourceful peoples. Over the past several years, they have quietly and effectively undertaken landmark initiatives that are positively changing the mining landscape in their country. These initiatives include the Lutundula Report, which exposed the opaque exploitation of mineral

resources and led to a comprehensive revision of mining contracts. As a result, several companies, including Canada's First Quantum, lost their exploitation titles.

Pressured by local civil society groups, the Parliament pushed for the restructuring of the Chinese barter investment deal, revisiting its terms and downgrading its value from \$9 billion to \$6 billion. The Senate published a report by the Mutamba Commission, which audited the mining sector and documented millions of dollars of financial loss that the Congolese State incurs due to mismanagement and bad governance.

Today, as we discuss Section 1502, the Parliament, the Fédération des Entreprises Congolaise, which is the equivalent of the US Chamber of Commerce, and civil society organizations supported by international groups, such as the Open Society Foundations, are engaged in discussions setting the guidelines for the new mining code that would be enacted in the near future.

The current mining code, which was written over a decade ago as part of a World Bank project, disproportionately favors foreign investors at the expense of the Congolese State and the Congolese people. So far, proponents of Section 1502 have marched to their own beat, antagonizing corporations, inculcating consumers and ignoring Congolese initiatives.

If they really want to affect positive change in Congo's mining sector, here is an opportunity for them to join the debate and policymaking in Kinshasa to ensure that the new mining code addresses their concerns. This is the best way to empower the Congolese, strengthen local institutions and induce national ownership of the transparency they seek.

The current 1502 narrative oversimplifies the problem and makes American taxpayers believe that if only the challenges of sexual violence and conflict minerals were solved, then Congo will get back on track and peace will follow.

Supporters of 1502 claim that minerals, such as gold, wolframite, coltan and tin, which are extracted from areas under the control of armed groups, drive the conflict, and therefore, curbing the trade would bring peace to the region.

Nothing, however, is farther from the truth. The Congo crisis is first and foremost political and requires political solutions. Sexual violence and the looting of natural resources are ramifications and symptoms, not the causes of the political crisis. The current violence flare-up in North Kivu, which has displaced thousands of civilians, underscores the political nature of the crisis.

Thus, the activists have reversed the cause-to-effect sequence of developments. In the Kivus, the local economy rested primarily on agriculture and commodity trading, which suffered severe setbacks at the onset of the war in the late 90's as the conflict ushered a rapid destruction of farms, fields and road infrastructure. The ensuing proliferation of militias, which exacted (and still do) a heavy toll on the peasants and commodity traders, drove the populations off the fields into the emerging artisanal mining.

In eastern Congo, from Butembo in North Kivu to Nzibira in the hills of South Kivu, thousands of families now live off this informal mineral trade, which generates between \$300 million and \$1.4 billion a year. The long supply chain ensures that people who would otherwise be unemployed and starve have a minimal income. These people, however, are likely to pay a high price for the legislation and lose their livelihood.

Back in September 2010, they experienced the effects of a mining moratorium for the first time. In an attempt to pre-empt the US legislation and its proponents, Congolese President Joseph Kabila suspended artisanal mining operations in the region. Expectedly, the outcome was devastating for the population, as the thousands of Congolese who depend on this trade could not find work in a country with 8.9 percent and 81.7 percent unemployment and underemployment rates, respectively. Army units

deployed to protect the mining areas turned their assignment into a business opportunity and joined the black market trade. Six months later, unable to enforce his decision, Kabila lifted the ban.

Currently, it is nearly impossible to separate clean ore from bloody minerals imported from the region. Today, while the concerned industries figure out a credible certification process, anticipated compliance with the legislation increases transaction cost in one of the world's most corrupt countries. In order to protect their reputation, the electronics and high technology industries contemplate boycotting minerals from the region. The decision by US companies to either scale back or stop sourcing ore from eastern Congo means that the people of the Kivus are likely to experience the same devastating blow that hurt the local economy when President Kabila imposed the mining moratorium in September 2010.

My first experience with the so-called conflict minerals dates from July 2006. I spent several weeks in Congo as a journalist, covering the conflict in the east and the historic presidential and legislative elections.

In Ituri, I was embedded with Moroccan Blue Helmets keeping the peace between Hemas and Lendus in and around Bunia. On Lake Mobutu, on the border with Uganda, I spent days with Uruguayan naval forces struggling to intercept weapon transfers from Uganda to armed groups. In South Kivu, I went on patrols with Pakistani soldiers seeking out the elusive, but deadly Rwandan FDLR and Interahamwe militiamen.

I visited coltan mine pits in Nzibira in South Kivu, where I witnessed first-hand the substandard work conditions of underage miners. At the Panzi Hospital in Bukavu, I came face-to-face with the ugliness of sexual violence by armed groups.

During that trip it became clear to me that the Kinshasa government's inability to assert state authority is the real cause of the insecurity that set off the emergence of militias and sustains the plunder of natural resources.

With the collapse of the state, old, latent community grievances stemming from land disputes, demographic pressures, ethnic tensions, and control of resources and trading routes has turned eastern Congo into a tinderbox. Ambitious demagogues only need to embrace a cause and find a sponsor — a community, business or political elite or a state — to start a militia. The three main militias, FDLR, CNDP and PARECO, have exploited these dormant grievances and benefitted from either community or state support. The pattern remains the same for the three dozen smaller militias that operate in the area.

Mineral exploitation, however, is but one source of revenue for these armed groups. They literally rule over the territories they control, taxing every economic activity and terrorizing the civilians into submission. Losing access to the mines will marginally affect their capacity to generate funds, considering that weapons and ammunitions are relatively inexpensive. In other words, if there were no minerals, the conflict would still rage on as armed groups would find other sources of revenue. As long as the government is incapable to impose its authority and address the various grievances, the region will not know peace.

The government has failed to build a professional army, perhaps the single most important element in ensuring Congo's territorial integrity and the security of its citizens and coveted natural resources.

Without such a competent professional military, the DRC is unable to stop the proliferation of militias. Instead, the government of DRC has chosen to compromise with militiamen and co-opt them into the national army with no disruption of their ranks and files. The lack of an adequate national integration program has resulted in the establishment of parallel commands and structures within the national army. This means that the militias who join the national army remain in their areas of control and keep their command nearly intact. This arrangement allows the "former" militiamen to perpetrate abuses on the civilian populations and keep their

access to local resources all under the protection of a Congolese military uniform.

The predatory designs of neighboring Rwanda and Uganda also fuel the volatile situation. Both Rwanda and Uganda have invaded Congo twice, with continued incursions into eastern Congo where they still support militias. Several UN reports have linked both countries to Congolese militias and the looting of resources.

Furthermore, Uganda, Rwanda, Burundi and Tanzania benefit from the illicit mineral trade in eastern Congo as they serve as primary export routes. And while Uganda, Rwanda and Burundi have no gold, diamond or tantalum deposits of significance, they have become important exporters of these minerals. In the past, high level government officials and senior army officers were implicated in this trade.

Whether this is still the case today is unclear. Nevertheless, it seems highly unlikely that these countries could export such large amounts of minerals without the collusion of government officials. Whether these leaders are actively sourcing these goods or simply turning a blind eye to the trade matters little to the bottom line: the result is still the same.

Oversimplification of issues often produces inadequate, counterproductive policies. Section 1502 and its proponents who seek to curb US companies penalize the people of eastern Congo, but do little to curtail the militias and their backers. We know the primary supporters of militias, whether in Congo, in neighboring countries or overseas. We also know the primary export routes and which neighbors profit from this trade. It is troubling that the legislation uses a shotgun approach to the illicit mineral trade quandary and inculpates all of Congo's nine neighbors.

For instance, the legislation treats Zambia, a mineral rich country that is not involved with militias in eastern Congo, but borders DRC to the south, with the same suspicion as Rwanda, Uganda, Burundi and Tanzania, which are the primary export routes.

This conflict, which has indirectly caused the death of over 6 million Congolese, has gone on for too long, and is now a scourge on the face of the planet. As we struggle to solve this calamity we would be better served by looking into Congo's early history.

Between 1885 and 1924, Congo, then known as Congo Free State or the private estate of Belgium's King Leopold II, was the theater of yet another holocaust driven not by mineral exploitation, but by the world's hunger for a commodity. The industrial revolution demanded rubber and more of it. Business' insatiable need for rubber and King Leopold's immeasurable greed pushed the Belgians to design one of the world's most repressive forced-labor structures.

The King's agents established a quota system, which required that each village produce a specific amount of rubber over a time period. Force Publique troops were then used to enforce the quota and demand taxes of the population. Failure to meet the quota or tax requirements led soldiers to chop off limbs of the unlucky Congolese who fell below the mark. Villages were torched, women raped and the people left to starve to death or die of diseases. By 1924, nearly 10 million Congolese had perished under the yoke of the Leopoldian regime.

The similarity to the current situation is eerie. Like the conflict minerals, which are primarily exploited in the east, rubber was only exploited in some areas of the Congo Free State. Both problems were symptoms of larger systemic and regime perversions that subjugated an entire country.

But there is a big difference between the approach the activists took to expose and denounce King Leopold's crimes and the way we choose to deal with the calamity today.

At a time when there was no computer, no internet, no fax and the telephone was still a curious invention, a shipping clerk in Liverpool decided to expose the mighty king and launched a campaign that would

not end until Leopold relinquished possession of the colony and the regime and the system changed.

Working under great stress, those activists could have easily chosen the easy route to fundraising on behalf of the victims, and send them medicine and physicians to mend their wounds. They could have also elected to set up a blood-free certification scheme to ensure that the rubber that reached Europe and America was clean.

No. they knew that such a timid campaign would make them Leopold's tacit accomplices and enablers, and prolong the suffering of the Congolese. Instead, they set out to destroy and change the repressive system and took the necessary time to accomplish their goal.

Today, at a time of instant satellite imagery, internet, instant messaging and other technological advances, our activism is lackluster, and devoid of moral courage in the face of the unnecessary suffering of the Congolese. We hedge our action and refuse to see the reality before us by covering our faces like little children, hoping it would go away. Instead, we search for enemies where they do not exist.

Last month, over 300 Congolese civil society organizations and their international counterparts showed great courage and published a report on security sector reform in Congo. This report calls for an end to the conflict through a comprehensive reform of security institutions, which include the military, law enforcement institutions such as the police and the courts, as well as customs and revenue agencies.

Mr. Chairman, with your permission, I would like to submit a copy of that report for the record.

In Congo, businesses are not the enemies; armed groups and their international and local backers are. If we are serious we should go after them and help restore state authority so that the Congolese government

can finally meet its obligations toward the people. This means that together we need to work on ending impunity at all levels of the polity. Only then can the Congolese know real peace.

The Congolese people want and deserve peace. We should empower them to that end. The Congolese government's inability to protect its people or control its territory undermines progress on everything else. A competent, professional military - organized, resourced, trained and vetted - is essential to solving problems from displacement, recruitment of child soldiers and gender-based violence, to economic growth or the trade in conflict minerals.

In the absence of a strong Congolese state to protect its interests, Section 1502 will effectively certify the looting of Congo's minerals.

Thank you.