

The Unintended Consequences of Dodd-Frank's Conflict Minerals Provision

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Committee on Financial Services

Subcommittee on Monetary Policy and Trade

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Chairman Campbell, Ranking Member Clay and Distinguished Members of the Subcommittee on Monetary Policy and Trade:

Thank you for the invitation and honor to testify before your subcommittee today. A little over a year ago, I had the privilege, along with other colleagues, to share with members of this subcommittee my perspective and insight about Section 1502 of the Dodd-Frank Act and its consequences for the people of the Democratic Republic of Congo.

I would like to note, however, that the views expressed in this statement are mine, and mine alone.

A year is enough time for emotions to cool off and reason and honesty to prevail as we monitor and evaluate Dodd-Frank Section 1502. It is then quite appropriate for us to look at the unintended consequences of this legislation with the informed vantage point of time.

A week ago I returned from a working trip to the Democratic Republic of Congo where I participated in a conference about the Peace, Security and Cooperation Framework for the Democratic Republic of the Congo and the

so-called Conflict Minerals. The Conference brought together Congolese academics, political leaders and representatives of civil society organizations in a memorable moment of reflection about ways and means to usher lasting peace in Congo and end the illicit and illegal trade and looting of natural resources.

Throughout the conference and my stay in Kinshasa, I could not help but marvel, as I have done many times before, at the determination and commitment of our friends who promoted Section 1502. I know that they mobilized thousands of people in a campaign that raised awareness on the continued conflict in eastern Congo. This high level zeal is the campaign's main strength.

Section 1502 seeks to bring peace to eastern Congo by regulating mineral trade through U.S. law, cleaning up the supply chain and reducing militias' access to financial means. The spirit of this law supposes that such a regulation would *de facto* curb the violence and human rights abuses.

This campaign, however, has a serious weakness. Proponents of 1502 built their case on an erroneous premise that claimed that minerals were either the source or at the center of the conflict. Cutting militias' access to mines will lead to peace, the argument goes.

Let me suggest then that the best way to evaluate the consequences of Section 1502 would be to look at its premise, claims and impact on institution-building and on the Congolese people.

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.

This premise led to a law with the following results:

1. The U.S. Congress passed a legislation that ignores the will and agency of the Congolese people and imposes an outside solution to a problem that is best understood by the Congolese. This approach to peacemaking undermines DRC's strong civil society, which has been working hard over the years to end the looting of natural resources, including the audit of mining contracts, the revision of the mining code, the call for security sector reform and the respect of a transparent and credible electoral process.
2. The U.S. Securities and Exchange Commission, which is entrusted with the implementation of this law, is not qualified to carry out such a task. The SEC has neither the expertise nor the money to conduct a cost and benefit analysis of the impact of Section 1502 on the Congolese and U.S. business. Thus, the SEC had to decide on such a complicated matter affecting the livelihood of millions of people without adequate assessment of the situation on the ground in Congo. It was inappropriate to ask the SEC to serve as the primary agency to enforce this law. This work is simply outside this agency's scope and mandate.
3. Section 1502 perpetrates the dominant, but wrong narrative that casts the Congolese people as incapable of solving their problems and in constant need for outside guidance. The truth is that no one understands mining in Congo better than the Congolese. 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.

4. Section 1502 creates what is known as “Congo fatigue”. Staffers in both chambers of Congress work hard to help steer U.S. Congo policy in the direction that best benefits the Congolese people. House members and senators invest their political capital to do the same. It is therefore disappointing to hear that the legislation they passed did not yield the anticipated result because they were misled. Such realization makes it difficult to engage members of Congress the next time around.
5. There is no evidence that Section 1502 has reduced violence in the targeted region. In fact, the emergence of the M23 militia last spring, which escalated tensions in the Great Lakes, is proof that this law has little bearing on war entrepreneurs.

In Congo, businesses are not the enemies; armed groups and their international and local backers are. If we are serious about ending the conflict, we should go after the negative forces 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.

Congo may be a dysfunctional state, or perhaps even a weak state, but this does not mean the Congolese society is weak. The Congolese are among the world’s most resourceful peoples. We should work with them and support them as they strive for solutions that suit their predicament. Above all, we

have to resist the urge to impose Western activists' vision of the world on the Congolese.

I thank you.