



April 5, 2017

A Progress Report on Conflict Minerals

Subcommittee on Africa and Global Health Policy, Committee on Foreign Affairs, United States Senate, One Hundred Fifteenth Congress, First Session

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Written Testimony of

Rick Goss

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Information Technology Industry Council (ITI)*

Before the

*United States Senate Committee on Foreign Relations
Subcommittee on Africa and Global Health Policy*

Hearing On

“A Progress Report on Conflict Minerals”

April 5, 2017



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 preconditions 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

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>



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

² See 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>

³ See “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>



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.

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



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.

A Progress Report on Conflict Minerals

The United States Senate

Committee on Foreign Relations

Subcommittee on Africa and Global Health Policy

Testimony by Mvemba Phezo Dizolele¹

Professorial Lecturer

Johns Hopkins School of Advanced International Studies

Wednesday, April 5, 2017

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 four 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.

¹ @MvembaDizolele

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 seven 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 seven 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 five-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 UN 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 two 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 UN peacekeeping mission along with a credible exit plan to be implemented over the next five 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.

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Human Rights Watch
April 5, 2017

Testimony to the Senate Foreign Affairs Committee, Subcommittee on African Affairs and Global Health Policy Regarding Dodd-Frank Section 1502

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 two 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 US 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 US engagement and strong pressure on Kabila to do so is critical.

Last month, two members of the UN 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 benefitted 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 US 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 US 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 US Securities and Exchange Commission, warning that eliminating 1502 would lead to an “escalation in the activities of non-state armed groups.” The US has sought for decades to help de-escalate these activities; removing a tool that can help do that undercuts longstanding US foreign policy objectives.

This problem could be exacerbated by the administration’s possible budget cuts for UN 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 US has spent on peacekeeping efforts in the country, this scenario would be extraordinarily counterproductive to US 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 two 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 Mwiswa 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 US 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 six 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 US 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 US government to keep the law in place and to ensure its continued implementation and enforcement.

The US 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 US 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 UN have also developed their own standards. The US played a leading role in these efforts—in part because it led by example.

This approach has also been true with 1502. US 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 US jurisdiction. Just this March, the European Parliament approved new conflict minerals regulations. That approach creates a race to the top where US companies lead, versus suspending 1502 and creating a race to the bottom where US 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 working 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 six-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 US 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 US 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 US aid to Congo and UN peacekeeping may decline, the opportunity for abusive armed groups to make money off from conflict minerals will increase. The US 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.