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# Evaluating Conflict Mineral Legislation in the Democratic Republic of Congo

Cortney Linnecke

## INTRODUCTION

Conflict minerals are everywhere. Gold, tin, tantalum, and tungsten can be found in electronics, automobiles, and even jewelry, thus developing an immediate but invisible presence in the lives of consumers. They illustrate a direct relationship between Western consumers and mines in the Democratic Republic of Congo (DRC), and thus a connection between Westerners and miners in the DRC who may operate under conditions of abuse, corruption, and conflict. This presence is described as “invisible” because despite the irrefutable presence of conflict minerals in everyday goods, many consumers remain ignorant of their own connections to a crisis occurring halfway around the world.

In recent years, however, the visibility of conflict in the Congo increased, and along with it conflict minerals began garnering attention. Global leaders started to take notice of the humanitarian abuses occurring in the DRC: mass murder, rape, torture, and ethnic violence. They began drawing connections between the armed groups that committed these abuses, the mines they were fighting to control, and, by extension, connections with multinational companies that were supporting mines and armed groups through the trade of conflict minerals.

Knowledge of the conflict mineral trade elicited different responses from different nations. Some countries, particularly Eastern and Asian countries, decided to separate business interests from humanitarian concerns, and continued investing and trading in the DRC. Other countries, the United States in particular, decided to pass legislation that would prevent multinational corporations from purchasing minerals that had been sourced under conditions of conflict in the DRC.

Specifically, the United States passed the Dodd-Frank Wall Street Reform and Consumer Protection

Act (Dodd-Frank Act). Section 1502 of this Act, a small section accounting for only about five pages out of a document 848 pages long, seeks to regulate the relationship between international companies and conflict minerals. It necessitates due diligence, meaning that companies by law must account for the legitimacy and conflict-free nature of any minerals they purchase and use to produce goods. Though the methods to confirm mineral legitimacy may vary, the Dodd-Frank Act is firm in the stance that companies must take measures to source their minerals. They do this by undergoing a series of audits and submitting a series of reports to legitimize their sourcing measures. Similar due diligence laws have been passed by other countries, and the Organization for Economic Co-operation and Development has developed an international framework for the regulation and trade of conflict minerals.

These types of international response were born out of a belief that stopping the purchase of conflict minerals would stop the flow of profits to armed groups in the DRC; that eliminating their income would disband the groups, and that disbanding the armed groups would stop the conflict. While anti-conflict mineral legislation did, in fact, reduce revenues to armed groups in the DRC, it did not disband militaries or terminate the country's conflict. Instead, international companies—turned off by the new costs that accompanied due diligence—began halting investment and trade in the Congo. As a result, the DRC started experiencing newfound plights: local economies collapsed, healthcare declined, children began dropping out of school, and unemployment swelled.

The international response, therefore, produced a paradox. Global leaders had passed laws in an effort to help raise the Congo from its crisis, but in some ways these laws had only aggravated the problem. How could well-intentioned legislation go so horri-



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bly awry in execution? Why did no one foresee the negative fall-out of anti-conflict mineral legislation? And perhaps most importantly, what can the global community learn from the failure of anti-conflict mineral legislation and specifically from the failure of the Dodd-Frank Act?

This paper will seek to explore the weaknesses and failings of such legislation in order to propose improvements for the ways in which the global community interacts with and intervenes in the Congo. In order to do this, however, this paper must start at the beginning. The story of anti-conflict mineral legislation does not start in 2010 with the Dodd-Frank Act. Rather, this paper must take into account the history of the Congo, the actualities of mining, production and trade in the DRC, and the specifics of the legislation itself. All of these are necessary components in attaining a thorough understanding of how and why anti-conflict mineral legislation failed in the ways that it did. This, in turn, is important because it is only through understanding the failures of anti-conflict mineral legislation that the global community can begin to craft realistic solutions for peace.

## BACKGROUND

The DRC's relations with Europe began in 1482, when Diogo Cao—a Portuguese explorer—first visited the country (Democratic Republic of Congo Profile, 2015). Cao established ties with the monarchy of the Kongo empire, which had come to power roughly two centuries earlier in the 1200s (Democratic Republic of Congo Profile, 2015).

However, it wasn't until the 16th and 17th centuries that European interest in the Congo really gained momentum. During this time, slave traders from Portugal, France, Great Britain, and the Netherlands exported roughly one million Africans from the Loango Coast (Democratic Republic of Congo Profile, 2015). Other statistics are less modest in their estimation of slaves sold in this timeframe, placing the numbers closer to 3 million and 13 million (Haskin, 2005). No matter the exact number of lives trafficked, the slave trade, which flourished until the 1830s, had lasting impacts on the Congolese way of life. It disrupted existing social hierarchies, encouraged a view of humanity that devalued individuals as expendable commodities, and imported foreign

goods and ideas such as alcohol, guns, and the seeds of capitalism (Gondola, 2005).

Perhaps more than anything, however, the slave trade opened the door for European imperialism and the subsequent colonization of the Congo. With the advent of the Industrial Revolution in Europe, demand for the natural resources of Africa—such as rubber, ivory, palm oil, lumber, and peanuts—dramatically increased. Since the far-reaching effects of the slave trade had weakened Africa, the people of the Congo were therefore rendered essentially incapable of withstanding Europe's invasion (Gondola, 2005).

In 1885, King Leopold II of Belgium established the Congo Free State, which would become an official colony of Belgium in 1908 (Democratic Republic of Congo Profile, 2015). The realities of Leopold's rule were harsh and barbaric. He plundered the Congo's natural resources and committed many serious human rights violations through his extractive efforts (Arieff, 2014). These abuses included taking women and children hostage to ensure men's cooperation in forced labor, as well as imposing brutal punishments on any Congolese who failed to meet extraction quotas or pay the taxes that were levied to ludicrous rates under his rule (Haskin, 2005). Punishments were inflicted in varying shades of brutality along a spectrum of violence: chopping off hands and ears, floggings with a *chicotte* (a sharp, spiked hide), being shot, being hanged, and being beheaded (Haskin, 2005). The exact number of casualties incurred under Leopold's reign remains uncertain, but estimates range anywhere from 5 million to 22 million deaths (Haskin, 2005). With such methods, Leopold set an example of authority that derived its power from brute force and violence, initiating an unfortunate pattern of turbulence to come among Congolese leaders.

But Leopold's damage was not limited solely to the destruction of lives. He also reinforced ethnic divides by mandating that the Congolese list a tribal identity when completing governmental forms, which "tended unconsciously to breed ethnic awareness" (Young, 1965, p. 266). Such awareness would resurface as ethnic tension and conflict years later. Along with the Catholic Church, Leopold also laid a foundation of instability in the Congo by repressing the education of its citizens. Education in the Congo Free State ex-

tended only to secondary school, although most students did not make it to even that level. This limit on education was imposed in an effort to prevent uprisings and organized resistance to Belgian rule; the Catholic slogan of the time even quipped, “No elite, no problem” (Haskin, 2005, p. 3). While this initiative would not ultimately prevent revolution in the Congo Free State, it would sow ignorance and inexperience among the Congolese in terms of self-rule. Thus, even when the Congolese finally achieved independence, they struggled to re-order the country and achieve effective self-administration (Haskin, 2005).

In 1965, a military colonel named Mobutu Sese Seko seized power (Democratic Republic of Congo Profile, 2015). He would rule for three decades under what has now been described as a “kleptocratic...reign of terror” (Haskin, 2005, p. 6). Mobutu stripped citizens of their fundamental rights, committed atrocities as a means of generating fear, relied on fraudulent elections and corrupt political tactics, and allowed civil conflicts from neighboring countries to spill over the DRC’s borders (Haskin, 2005). In particular, Mobutu welcomed Hutu extremists—the perpetrators of the Rwandan genocide of the early 1990s—into Zaire’s refugee camps, which upset among Zairian Tutsis, Rwanda’s newly established Tutsi government, and Burundi (Arieff, 2014). The tumultuous presence of foreign refugees and military groups is a problem that the DRC still struggles with today.

In 1997, rebel forces assisted by Rwanda, Uganda, and Angola overthrew Mobutu and the more liberal Laurent Kabila came to power (Democratic Republic of Congo Profile, 2015). Under Kabila the DRC saw political upheaval, Africa’s first World War, and ultimately the assassination of Kabila himself (Democratic Republic of Congo Profile, 2015). Under Laurent Kabila’s rule, an additional 3 million Congolese succumbed to disease, violence, starvation, and other sufferings (Haskin, 2005).

Laurent Kabila was succeeded by his son, Joseph Kabila (Arieff, 2014). Under his reign, the DRC experienced a transitional government period in 2003, received a new constitution in 2005, and underwent their first “relatively free and fair” (Arieff, 2014, p. 120) multiparty elections in 2006. Despite these suc-

cesses, the DRC today remains a hotbed of conflict, violence, and economic suffering. Additionally, the country continues to maintain complex, strained, and even volatile relations with its neighboring nations of Uganda, Rwanda, and Angola (Arieff, 2014).

It is within these modern and delicate circumstances, and emerged from this history of turbulence, brutality, and strife, that the conversation surrounding the conflict mineral trade is rooted in and built upon today.

## MINING, PRODUCTION AND TRADE IN THE DRC

### The Context

Mining is the cornerstone of the DRC’s economy. Besides mining’s social and political implications, it also impacts the nation’s gross domestic product, foreign exchange generation, budgetary revenues, and employment statistics (Engineering and Mining Journal, 2000). The Natural Resource Governance Institute (n.d.) estimated that in 2010 the extractive sector accounted for twenty percent of the DRC’s gross domestic product. Despite mining’s crucial role in the economic life of the DRC, it has been implicated in conflict and has not contributed to sustainable and equitable economic development. The mining sector has suffered from corruption, instability, and a lack of transparency. Regardless, mining has remained a major source of employment and state revenue for the DRC (De Koning, 2011). The DRC—one of the world’s poorest countries—ironically holds some of the world’s greatest potential for wealth, with an estimated 24 trillion dollars’ worth of available minerals buried in Congo’s eastern hills (Wolfe, 2015).

### The Minerals

The most significant minerals implicated in the DRC’s conflict trade are gold, cassiterite, coltan, and wolframite, although they are more commonly known by the names of their extracted ores: gold, tin, tantalum, and tungsten (De Koning, 2011). These substances are in high demand, since they are the fundamental metals used often in modern-day technology like cameras, cellular phones, computers, and iPods. As expert John Prendergast explained, if

a good has a circuit board, then it probably utilizes minerals from the DRC (Raj, 2011). Additionally, gold is commonly sought after by traders in Middle and Eastern Asia, where it is used to craft jewelry. (De Koning, 2011).

**Gold.** In 2012, the DRC was estimated to have the 10th highest reserves of gold in the world; however, current reserve figures are not available (KPMG Global Mining Institute [KPMG], 2014, p. 20). The 2014 *Democratic Republic of Congo: Country Mining Guide* from the KPMG Global Mining Institute offers a bit more insight to gold production, and their most recent estimated statistics show a production of 3,500 kg of gold in 2011—a significant drop from peak production of 12,400 kg in 2002 and 10,300 kg in 2006 (p. 28).

These numbers must be taken with a grain of salt, however, considering the growing popularity of gold in the Congolese black market in recent years. A 2014 report from the United Nations found that as much as 98% of all gold produced in the DRC is smuggled out of the nation, meaning that there is significant mining, production, and trade unaccounted for in official reports (Arief, 2014). While other mineral outputs tend to be more easily accounted for, all official data regarding mineral production should still be viewed with the understanding that reports often do not represent complete statistics.

**Tin.** The DRC accounts for 3% of global tin production (KPMG, 2014, p. 20). While there are no current statistics on the nation's tin reserves, the DRC produced 3,000 t of tin in 2014 (U.S. Geological Survey [USGS], 2015). This places the DRC as the world's seventh greatest tin producer (KPMG, 2014, p. 2).

**Tantalum.** Reserve statistics on tantalum are also unavailable for the DRC; however, production statistics are available for the capital city of Kinshasa. In 2014, Kinshasa produced 180 t of tantalum, accounting for 28% of global tantalum production (USGS, 2015). These numbers qualify the DRC as the third largest producer of tantalum in the world (KPMG, 2014, p. 2).

**Tungsten.** No numbers are available regarding tungsten reserves in the DRC. However, the nation produced 800 t of tungsten in 2014 (USGS, 2015).

**Other minerals.** Gold, tin, tantalum, and tungsten are traditionally seen as the primary minerals implicated in conflict in the DRC but their mining and production in the DRC are actually marginal in comparison to the nation's most important minerals, which may also be associated with conflict: cobalt, copper, and diamonds (KPMG, 2014). The DRC accounts for 51% of the global cobalt production and is home to 41% of the world's cobalt reserves, with an estimated 3.4 million tonnes of cobalt in reserves at Kinshasa in 2014 (KPMG, 2014, p. 20).

Copper is another mineral that is of increasing importance in the Congolese mining sector. In 2014, it was estimated that the Kinshasa region had reserves of 20 million tonnes of copper (USGS, 2015). Despite enormous resources—the DRC has the world's largest undeveloped high-grade copper deposit—the DRC currently only accounts for 3% of global copper production, ranking it as the eighth highest copper producer in the world (KPMG, 2014, p. 2). However, the copper sector is expected to develop and largely drive growth in the next five years. Reserves at mines such as Kipoi and Kamoto are “estimated to contain [copper ore] grades above 3%, significantly higher than the world average of 0.6% - 0.8%” (KPMG, 2014, p. 2). This will be an important issue as some of the world's largest mines, including Antamina in Peru, Escondida in Chile, and Grasberg in Indonesia, have experienced falling ore grades and thus higher extraction costs (Business Monitor International [BMI], 2014).

The DRC also produces 25% of the world's diamonds (KPMG, 2014, p. 20), with industrial reserves at Kinshasa expected to hold 150 million carats (USGS, 2015). All of these minerals—gold, tin, tantalum, tungsten, cobalt, copper, and diamonds—have been implicated in the conflict mineral trade at some point or another, and they are probably not the only minerals that have been sourced under conditions of violence and illegal activity. However, literature surrounding the conflict mineral trade tends to only formally recognize the first four of these as “conflict minerals.” Additionally, the Dodd-Frank Act (2010) defines conflict minerals as gold, tin, tantalum, and tungsten, which will be further discussed later on. It is important to recognize that while gold, tin, tantalum, and tungsten may be the most commonly implicated in conflict, they are not the only

minerals subject to the conflict trade. In fact, all of the DRC's mineral resources have the potential to be involved in the conflict trade and therefore should be treated as such.

## The Actors

**Artisanal miners.** It is difficult to determine how many artisanal miners are active in the DRC. Artisanal miners are independent, small-scale miners who usually spend long days under harsh conditions, digging through the mud with their hands and rudimentary tools in search of minerals. Modest estimates figure that artisanal mining employs approximately 450,000 people (De Koning, 2011); others suggest that at least 1 million people are active in artisanal mining (KPMG, 2014, p. 18). Others still point out that small-scale mining supports a wider community than those actually involved in mining activities, with some claims stating that artisanal mining provides direct or indirect support to more than 10 million people in the Congo (International Peace Information Service, 2013).

Unlike industrial mining, which is overseen by businessmen in air-conditioned offices and benefits from the convenience of heavy equipment, artisanal miners work on small-scale or independent levels, laboring long days under the sun with only their bare hands and rudimentary tools for assistance. Artisanal miners—along with other actors in the mining sector, including workers at militarized and industrialized mines—are subject to harsh working conditions. They are exposed to landslides, heavy metal inhalation, water contamination, monsoons, mercury, and prevalent child labor (KPMG, 2014, p. 18). It has been reported that up to 40% of all workers in the mining sector are children (KPMG, 2014, p. 18). The 1967 Labor Code, in compliance with suggestions made by the International Labor Organization, regulates labor guidelines concerning women, children, working conditions, and anti-discrimination, but “with the collapse of the economy and corruption in government, the enforcement of the code has been negatively affected” (KPMG, 2014, p. 18).

Artisanal mining is largely informal despite the 2002 Democratic Republic of Congo Mining Code stipulating guidelines and conditions for small-scale mining (International Peace Information Service, 2013).

The Directorate of Mines, a body formed to regulate mining activities with an emphasis on health, safety, and social issues, also issued a series of requirements for legal small-scale mining. The lengthy list of requirements includes obtaining an exploration license, a small-scale exploitation license, and the artisanal miner's card, among other provisions (BMI, 2014). However, most of these guidelines are not effectively enforced and thus are ignored by artisanal miners, who usually are not properly registered and perform mining activities on illegal property (International Peace Information Service, 2013).

**Armed groups.** There are numerous armed groups vying for power in the DRC. For most of these groups, money is power. Money provides the income needed to finance armies, purchase weapons, and conduct business deals or bribes. And, considering the economic influence of mines in the DRC, control of mines and minerals means money. Thus, mines mean power.

In July 2003, a transitional Congolese government was born out of the 2002 Global and Inclusive Peace Agreement, which laid a formal foundation for peace and was hoped to be the beginning of the end of conflict in the DRC (De Koning, 2011). However, the new government failed to bring “all rebel and militia groups under effective central command” (De Koning, 2011, p. 15), and as a result, fighting continued. There were—and still are—several main armies involved in perpetuating the fight. First is the *Forces Armées de la République Démocratique du Congo*, or the Armed Forces of the Democratic Republic of Congo (FARDC), which is the official national military. Then there is the *Forces démocratiques de libération du Rwanda*, the Democratic Forces for the Liberation of Rwanda (FDLR). The FDLR formed out of exiled Rwandan rebel groups which spilled across Congolese borders, and includes the Interahamwe responsible for perpetuating the Rwandan genocide along with other ethnic Hutus generally opposed to Tutsi rule (De Koning, 2011). The presence of the genocidaires deeply upset Congolese Tutsis, and remains a cause of resentment and tension to this day (Haskin, 2005).

The FDLR was also significant in that it shaped the mission of the *Congrès national pour la défense du peuple*, or the National Congress for the Defense of

the People (CNDP). The CNDP was a political army formed by Laurent Nkunda in 2006 with the mission to protect Congolese Tutsis from the FDLR (Arieff, 2014). The CNDP has since been fractured and integrated into the FARDC, at least in the physical sense. In reality, however, the integration was not welcomed by all the soldiers and many retained their original military loyalties, thus making the integration effort a superficial one at best (De Koning, 2011). As a result, the FARDC remains today an army with deep internal divisions and very weak centralization.

Finally, there is the military presence of the Mai-Mai, or community-based militias. The Mai-Mai militias rose chiefly out of the need for locals to defend their communities against the influx of other armies, both national and foreign. While there have also been efforts to integrate the Mai-Mai into the FARDC, these efforts have been met with similarly limited success (De Koning, 2011).

All armed groups partake in the violent power struggle surrounding Congolese mines. Despite efforts to neutralize, demobilize, and stabilize armies in the DRC, there has been an upsurge of military violence in mineral rich areas, with many rebel armies staging retaliatory attacks on mines they've lost control over (De Koning, 2011). And the FARDC, which is meant to provide stability and security to the Congo, is not exempt from this behavior: it has poor governance and abusive tendencies. Its failure to consolidate security across the country has helped breed an environment where "state actors often appear more focused on controlling resources and augmenting their personal power than on establishing security, creating effective state institutions, and fostering socioeconomic development for the DRC's 75 million inhabitants" (Arieff, 2014).

As a whole, the military presence in the Congolese mining sector is a dangerous one. Militaries prey on civilian populations and are often implicated in mass lootings, killings, rapes, and illicit business operations (Arieff, 2014). The corruption of militaries and the ways in which they perpetuate conflict through the mining and trade of minerals will be addressed in further detail later on.

**Industrial presence.** Even though artisanal and alluvial miners account for most of the operations in

the Congolese mining sector, there are still a number of state-owned, domestic and foreign companies at play. The industrial presence in mining remains relatively small, however, because of the high-risk business environment in the DRC. In 2013, the World Bank's *Doing Business* report ranked the DRC as 181 out of 185 countries, placing it as one of the worst nations in the world with which to engage in business (Arieff, 2014). Private sector development faces a large range of obstacles in the Congo, "including underdeveloped infrastructure, inadequate contract enforcement, limited access to credit, continued insecurity in the east, inadequate property rights protection, high levels of bureaucratic red tape and corruption, and a lack of reliable electricity" (Arieff, 2014, p. 128). The DRC poses so many concerns and risks when it comes to business operations that many multinational corporations are subsequently discouraged from investment, and, in recent years, due diligence laws have further decreased international incentive to get involved in the Congolese mining sector. This phenomenon will be further expanded upon in later sections of this paper.

Nevertheless, there is still a large-scale industrial presence in the DRC. The mining of gold is dominated principally by two corporations: Randgold Resources and AngloGold Ashanti, which own and operate the Kibali mine (BMI, 2014). While not as dominant as Randgold and AngloGold, the Banro Corporation also accounts for a portion of the gold sector, and the rest of the sector is mostly composed of artisanal miners (BMI, 2014). Copper mines in the DRC are also highly diversified, with major international and domestic players being Tenke Fungurume Mining, Katanga Mining, Freeport, Glencore Xstrata, Anvil Mining, and Chemaf (BMI, 2014). The diamond sector is similarly diversified, with one-third of its production overseen by the state and the other two-thirds left to alluvial mining (BMI, 2014). The industrial presence is also felt in the silver and iron ore sectors of mining. As for other sectors, however, such as tin, it seems that large corporations are more hesitant to get their hands dirty. As a result, most mining in the remaining sectors is either carried out in militarized mines or by artisanal miners (BMI, 2014).

While there seems to be hesitancy to engage in private sector development in the DRC—not only because of business risks, but also out of fear of being

implicated in human rights abuses—there are still areas of the world willing to establish trade relations with the Congo. One such area is China, which has an investment track record that has been more forgiving of human rights violations and unjust business practices than other countries. This stance, combined with a mining landscape relatively free of international competition, has led to the supposition that China will become a major actor in the field of Congolese mineral extraction in coming years (BMI, 2014). And in fact, increased Chinese investment in the DRC is already occurring. China has been drawn to the Congo for its large quantities of untapped resources, low mining costs, and the fact that the West's relative abandonment of Congo in the mineral trade has left doors wide open for Chinese businessmen (Lee, 2010).

### The Process and Its Problems

It is important to know the actors involved in the DRC's mining sector. However, it is also important to know the trade process and understand the steps involved in getting the minerals from the actors into the hands of global manufacturers. After extraction, minerals and ores usually first come into contact with *petits négociants*, or small-scale intermediaries.

These intermediaries have either pre-financed extraction operations—by trading equipment in exchange for minerals—or simply buy the minerals outright, in order to then sell them to trading chains (De Koning, 2011). The traders who purchase the minerals from the small-scale intermediaries are known as *négociants*. They, in turn, sell the minerals to buying houses called *comptoirs*, which arrange exports to manufacturers (De Koning, 2011). Minerals are transported along trade routes either by road or by air (De Koning, 2011).

This process sounds very neat and orderly when laid out so simply on paper. However, in truth the official mineral trade is anything but organized and efficient. It is rampant with difficulties, corruption, and conflict, and is severely undermined by demand from black markets and home refineries. The most popular mineral in underground trade is gold, which has a high value by volume, meaning that valuable, exportable quantities can be concealed easily (De Koning, 2011). It is estimated that \$1.24 billion worth of

gold is smuggled out of the DRC each year (De Koning, 2011). It is hard to regulate such illegal exports of minerals, since many traders and buying houses own private airlines and road transport companies, which are often used to transport minerals and allegedly facilitate smuggling (De Koning, 2011). Likewise, public efforts to improve Congolese infrastructure and develop road systems have ironically made it more and more difficult to trace and control illegal exports of conflict minerals.

Militaries also engage in and directly benefit from this illicit trade. Low pay combined with a corrupt and unfair military payroll generates incentive for militiamen to seek other means of income—namely, by smuggling and trading minerals illegally (De Koning, 2011). On a larger scale, mineral profits are used to fund entire armed groups. Unlawful profits from tin, tantalum, tungsten, and gold collectively funded armies an approximated \$185 million in 2008, and gold alone is estimated to bring in an annual \$44 million to \$88 million to militaries (Raj, 2011). These profits are used to buy more weapons in order to impose a “brutal form of order” (Raj, 2011, p. 989) upon a population already ravaged by disease, poverty, and civil war.

Aside from the black market, state and non-state actors alike are involved in underhanded business deals, such as underpricing assets and refusing to pay taxes, duties, and fines (Arieff, 2014). One such example can be found by observing the complex deals involving offshore companies and two multinational companies, Glencore and Eurasian Natural Resources Corporation. Investigations have shown that the companies have ties to President Kabila, although specifics on the exact nature of these ties remain vague. Nevertheless, this relationship suggests a conflict of interest, perhaps even that the Congolese President is benefiting from the sale of conflict minerals and, as a result, may also have a decreased incentive to end the conflict mineral trade (Arieff, 2014).

Actors in the conflict mineral trade also frequently partake in tax fraud. Mining authorities, such as commanding militaries, often levy unofficial taxes and traders in order to reap personal profit. These taxes can vary greatly, ranging from as little as the equivalent of \$5 a week to the equivalent of \$3,000 a week (De Koning, 2011). Such levies can be applied

at any point in the production and trade chain. This exploitation is also more regularly found in mines that experience frequent shifts in ownership (De Koning, 2011).

Many miners, militias, small-scale intermediaries, and traders also organize lootings of mining sites and villages. These raids not only provide immediate profit gain, but also breed insecurity to discourage the return of refugees, disrupt the FARDC deployments, and eliminate commercial competitors from the commodity chain (De Koning, 2011). Lootings occur most frequently in the Walikale territory and are most often perpetuated by the Mai-Mai Sheka (De Koning, 2011). While the FARDC does not participate in lootings as frequently—since they are supposed to protect the Congolese people, not attack them—they are not guilt-free. It is difficult to distinguish the number of lootings perpetuated by the FARDC, because when national soldiers attack villages they often disguise their identity to escape punishment by the national army (De Koning, 2011). Whoever the perpetrator, these raids leave the civilian population scattered, terrorized, and impoverished.

Desire for mine control and mineral profits has also been shown to fuel a culture of rape and sexual violence in the DRC. Sexual violence is “used as a systematic weapon of war in the Democratic Republic of Congo to subjugate and humiliate civilians in regions under militia control” (Raj, 2011, p. 990). Human Rights Watch has estimated that since 1998, tens of thousands of women—if not hundreds of thousands—have fallen victim to sadistic rapes (Raj, 2011). Although no militia is truly exempt from the violence, many of the rapes have been inflicted by Rwandan genocidaires, the majority of whom are never brought to justice and instead continue to “roam with impunity and continue in positions of power through mineral profits” (Raj, 2011, p. 990). Thus, the Congo has been labeled “the most dangerous place on earth to be a woman” (Raj, 2011, p. 989). Relatedly, the country also came in dead last on the 2013 U.N. Human Development Index (Arieff, 2014).

While in no way does all this conflict stem from mining, it is not a coincidence that violence is concentrated in North and South Kivu, as well as the Orientale, the Congolese provinces containing the greatest

mineral wealth (Raj, 2011). In 2011, it was estimated that 45,000 Congolese die every month as a result of ongoing conflict, which amounts to about 1,500 preventable deaths a day (Raj, 2011). Additionally, there are over 2.6 million Congolese displaced internally, with an additional 500,000 Congolese refugees seeking shelter in border countries (Arieff, 2014). Raj (2011) adds:

the dimensions of conflict in eastern DR Congo range from internal to regional power struggles to tensions over identity, ethnicity, and resources...it is equally undeniable that the multimillion dollar global minerals trade is one of the central issues fueling the conflict and the corresponding humanitarian crisis. Though mineral wealth did not cause the original war in DR Congo, the mineral trade sustains armed combatants and fuels ongoing atrocities. (p. 985)

## ANTI-CONFLICT MINERAL LEGISLATION

### International Response

A growing international awareness of the conflict in the Congo in recent years has sparked outrage and a call for action. Many countries, such as the United States, have decided to organize legislation, frameworks, and sanctions against the trade of conflict minerals, with an aim for peace, transparency, and accountability.

Perhaps one of the earliest anti-conflict mineral initiatives was birthed in 2003, with the creation of the Kimberley Process. The Kimberley Process Certification Scheme was adopted by forty countries involved in the diamond industry, as well as the World Diamond Council and two NGOs, Global Witness and Partnership Africa Canada (Lecomte, 2014). This public-private partnership aims to eradicate conflict minerals via export bans. Its framework outlines the Kimberley Process’s governing authoritative bodies, organization and decision-making structures, responsibilities for monitoring performance, and guidelines for public disclosure (Lecomte, 2014). While the Kimberley Process remains in place today, it has achieved mixed results and received harsh criticism

because of its voluntary nature, self-policing, inadequate monitoring, administrative structure, consensus system of decision-making, and lack of independent supervision (Nanda, 2014). And similar to other anti-conflict mineral legislation, the Kimberley Process has had difficulty maintaining legitimacy due to corruption and smuggling (Rhode, 2014).

Since then, there have been other international movements to stop the conflict mineral trade. In 2013, the European Trade Commissioner, Karel De Gucht, claimed that the European Union had developed a successful initiative on responsible mineral sourcing, and he pledged that the European Union would “help keep money out of the hands of rebel groups” (Nanda, 2014, p. 287), and “help ensure that revenues from natural resources instead go to the government, strengthening the rule of law and improving the provision of vital services like health and education” (Nanda, 2014, p. 287). Canada is also responding to the Congolese conflict. In 2013, they issued a “private member’s bill” (Nanda, 2014, p. 300) that addressed issues of mineral extraction, processing, purchase, trade, and use.

There have also been efforts within the DRC itself to remedy conflict mineral violence. For instance, the International Conference on the Great Lakes Region (ICGLR)—an intergovernmental organization including both the DRC and Rwanda—created a mineral certification process titled the ICGLR Regional Initiative Against the Exploitation of Natural Resources (Nanda, 2014). Its Regional Certification Mechanism (RCM) has four components: mine inspection and traceability, the creation of a regional mineral tracking database, audits, and independent monitoring, although the implementation of the latter two requirements has not been finalized (Nanda, 2014). Despite this legislation, however, governments in the Great Lakes Region of Africa have failed to uphold the mineral certification process (Nanda, 2014).

The Organisation for Economic Cooperation and Development (OECD) has also been instrumental in creating an international framework for the regulation and trade of conflict minerals. In 2011, the member nations of the OECD revised existing international guidelines regarding corporate behavior to promote more stringent principles in defense of

human rights. One of the new guidelines introduced during revisions was Due Diligence Guidance, which builds off of the general principle of due diligence and supply chain provisions already existing in the OECD Guidelines for Multinational Enterprises (Nanda, 2014). The Due Diligence Guidance implicated not only the OECD, but also the United Nations, the governments of the Great Lakes Region of Africa, the business community, and several civil society groups (Nanda, 2014). The OECD (2013) guidelines state that its mission is to:

help companies respect human rights and avoid contributing to conflict through sourcing decisions...[to] help companies contribute to sustainable development and source responsibly from conflict-affected and high-risk areas, while creating the enabling conditions for constructive engagement with suppliers. (p. 12)

OECD guidelines of due diligence apply to every company that uses conflict minerals, regardless of their placement on the supply chain. However, the framework does specify that due diligence should be tailored to the individual company depending on matters such as the size of the enterprise, its location, situation, and the nature of the products produced (Nanda, 2014). While the customization of due diligence requirements is important, it can also be problematic: on an economic note, it is more expensive to evaluate each company and personalize a due diligence plan for it. Customization could also be problematic, however, because it may create the opportunity for loopholes. Without some universal standard requirement concerning mineral sourcing, companies may begin slipping through the cracks.

There are four main sections of the *OECD Due Diligence Guidance*: a detailing of the overarching due diligence structure, an example of a mineral supply chain policy, suggestions for risk mitigation and indicators for measuring improvement, and two supplements on conflict minerals, specifically designed to address the challenges associated with the supply chain structures of tin, tantalum, tungsten, and gold (OECD, 2013). In terms of the actual due diligence process itself, the OECD outlines a five step process. First, strong company management systems must be established. In order to do so, the OECD suggests

improved communication with suppliers as well as the public, increased transparency, and a company- or industry-wide grievance system (OECD, 2013). Second, risk in conflict mineral supply chains must be identified and assessed (OECD, 2013). Third, companies must design and implement a strategy to respond to the formerly identified risks. Such a strategy should include reporting risk assessment findings, devising and implementing a risk management plan, and completing supplementary risk assessments for those requiring mitigation (OECD, 2013). Fourth, companies should complete third-party audits of supply chain due diligence at specified points along the supply chain (OECD, 2013). Finally, companies should submit a report on their supply chain due diligence policies (OECD, 2013).

Additionally, several international industries have also responded to the crisis in the Congo. For instance, in 2012 the World Gold Council implemented the Conflict-Free Gold Standard to assess gold extraction, with a focus on financial transparency, human rights protection, and creating a justice system of reporting and revolving infringements (Nanda, 2014). Another industry group that has taken a stand against the conflict mineral trade is the Responsible Jewelry Council (RJC). The RJC places an emphasis on jewelers upholding “responsible standards” (Nanda, 2014, p. 301) for mining and buying gold and diamonds.

## U.S. Response

The United States is arguably one of the world’s most influential countries in terms of advocating for peace in the DRC, in terms of both its aid programs and its legislation. U.S. annual bilateral aid to the Congo totaled between \$200 million and \$300 million in recent years, not including an additional \$50 million to \$150 million of annual emergency aid and another \$400 million to \$600 million in annual contributions to the U.N. Organization Stabilization Operation in the Democratic Republic of Congo (Arieff, 2014).

Apart from the Office of Detainee Affairs, the U.S. wields its influence via legislation and foreign policy, most notably Section 1502 of the Dodd-Frank Act. Before delving into the Dodd-Frank Act, however, it is important to note some lesser examples of

Congressional action regarding the Congo. The U.S. Congress has taken several routes to deter corruption and conflict in the DRC: restricting bilateral aid to the Congo when militaristic state-backed forces misbehave, such as by employing child soldiers or failing to appropriately respond to human trafficking; restricting government-to-government assistance when the DRC fails to uphold budgetary transparency; authorizing targeted sanctions against dangerous rebel persons; and restricting military aid to Rwanda if the government is caught supporting rebel groups (Arieff, 2014). In past years, the U.S. has also been involved in facilitating peace accords in the Great Lakes Region of Africa (Arieff, 2014).

These actions aside, the most important—and globally influential—piece of U.S. legislation regarding the Congo in recent years is Section 1502 of the Dodd-Frank Act. Not only has this act impacted life in the Congo significantly—the impacts of which will be examined in the next section—it has also served as legislative inspiration for other nations, such as the European Union, who have strived to imitate it (Nanda, 2014). The regulations set forth in the Dodd-Frank Act were issued by the Securities and Exchange Commission and were made official when the act was signed into federal law in July 2010 (Nanda, 2014). In the most simplified sense, the Dodd-Frank Act simply requires that companies disclose whether or not the minerals used—or contracted to be used—to create their goods and services have been implicated in conflict in the DRC (Nanda, 2014). The Dodd-Frank Act (2010) begins by putting Congressional concerns front and center:

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. (p. 838)

These concerns are the foundation of the Act’s due diligence framework. According to the Dodd-Frank Act, companies must determine if minerals originated in the DRC or an adjoining country, and if so,

they must then submit a report to the SEC (Dodd-Frank Act, 2010). In turn, this report must contain several key pieces of information. First, there must be a description of the due diligence measures undertaken by the company that includes a certified private sector audit, which simply means that an impartial third party must come in to evaluate how well the company executed their mineral sourcing. The report must also include a description of the products manufactured or expected to be manufactured with minerals that are not conflict free, including the minerals' country of origin, the processing facilities used to mine them, and the efforts taken to source them (Dodd-Frank Act, 2010).

The second part of Section 1502 requires the Secretary of State to devise a strategy "to address the linkages between human rights abuses, armed groups, mining of conflict minerals, and commercial products" (Dodd-Frank Act, 2010, p. 840). The plan must focus on supporting the Congolese government in its pursuit of peace and security, with special emphasis on monitoring and ceasing commercial activity that contributes to violence and human rights abuses, as well as a devotion to creating stronger institutions and governance to improve trade facilitation and transparency (Dodd-Frank Act, 2010). Additionally, the plan should guide companies seeking to exercise due diligence and describe punitive measures that will be inflicted upon groups failing to comply with the Act's mission of peace and human rights (Dodd-Frank Act, 2010).

Under Section 1502, the Secretary of State is also responsible for creating a map—the Conflict Minerals Map—that details "mineral-rich zones, trade routes, and areas under the control of armed groups in the Democratic Republic of the Congo and adjoining countries based on data from multiple sources" (Dodd-Frank Act, 2010, p. 841). The map must be regularly updated, released to the public, and used by Congress (Dodd-Frank Act, 2010).

The next sub-section of the Dodd-Frank Act details a multitude of reports to be made by Comptroller General of the United States in order to determine both the effectiveness of Section 1502 and to maintain accountability of its due diligence process. The necessary reports include a baseline report that assesses the rate of sexual- and gender-based violence

in the Congo and adjoining nations, a "regular report on effectiveness" (Dodd-Frank Act, 2010, p. 841)—which includes information such as any problems encountered when implementing the Act—and a report on private sector auditing, which both assesses the current audits and makes recommendations for improvements in future audits (Dodd-Frank Act, 2010).

The final section of the Dodd-Frank Act deals with technicalities and definitions. Perhaps the most important definition presented in this section is that of "conflict mineral," which includes the expected gold, tin, tantalum, and tungsten, but also leaves some leeway to include other potentially problematic minerals:

The term "conflict mineral" means (a) columbite-tantalite (coltan), cassiterite, gold, wolframite, or their derivatives; or (b) any other mineral or its derivatives determined by the Secretary of State to be financing conflict in the Democratic Republic of the Congo or an adjoining country. (Dodd-Frank Act, 2010, p. 843)

## EVALUATION OF ANTI- CONFLICT MINERAL LEGISLATION

Anti-conflict mineral legislation was passed with the intention to terminate the trade of conflict minerals, stem the flow of income to armed actors in the Congo, and thus help end the violence and conflict in the DRC. While peace may have been the motivation behind much of this legislation, the question now stands: has peace been the outcome of such legislation? Using the Dodd-Frank Act as a case study, this section will seek to understand the real-life implications of anti-conflict mineral legislation in the DRC. In particular, this section will explore claims that the Dodd-Frank Act has hurt, not helped, the Congo.

First and foremost, it is important to note that the Dodd-Frank Act is a piece of legislation that operates in accordance with the notion that greed serves as a cause of civil war. This is a notion that was championed by scholars Paul Collier and Anke Hoeffler, whose work will be discussed later on. In short, how-

ever, the argument claims that rebellions and armed conflicts occur out of a desire on the part of combatants to profit, and that combatants will seize any opportunities for self-enrichment (Collier & Hoeffler, 2004). The Dodd-Frank Act tries to counteract the greed motivation by limiting profit opportunities for armed groups, namely by discouraging the purchase of conflict minerals through due diligence and mineral sourcing.

Legislators saw such due diligence reports as a step that could simply be inserted into the trade chains of tin, tantalum, tungsten and gold. What they did not foresee, however, was how implanting due diligence reports into the middle of trade chains would change other steps and processes along the chain. The U.S. Securities and Exchange Commission estimated that it could cost companies an annual \$71 million to implement due diligence measures such as database tracking, on-site mine monitoring and multiple audits; the National Association of Manufacturers put forth even greater expense estimates, ranging between \$9 billion and \$16 billion dollars per company per year (Drajem, Hamilton & Kavanagh, 2011). Instead of these expenditures simply being an added measure in the trade chain, they actually worked to alter trade altogether. These expenses incentivized many multinational companies to completely pull out of the DRC due to the belief that the costs of participating in Congolese trade outweighed any benefits (Drajem et al., 2004). For instance, even without the added expense of due diligence reports, the DRC does not offer a very hospitable business environment to foreign corporations: it suffers from lack of transparency, risks of violence and corruption, and the threat of companies being implicated in human rights violations and suffering consequently tarnished reputations. One example is the case of Malaysia Smelting, one of the largest global tin producers, which had previously purchased 80% of the DRC's tin (Wolfe, 2015). After the passing of anti-conflict mineral legislation, Malaysia Smelting entirely stopped purchasing Congolese ore out of the fear of "being labeled a user of conflict minerals" (Wolfe, 2015).

Yet even for companies that maintained business relations in the Congo despite new compliance costs, due diligence reports were still not necessarily a booming success. Some companies simply did not make conflict-free mineral sourcing a serious pri-

ority—most notably, car and plane manufacturers "stood back and refused to use their buying power to bring change" (Propper & Knight, 2013). But even companies that were sincerely concerned with the crisis in the Congo had difficulty determining the legitimacy of their minerals, oftentimes through no fault of their own. There have been many criticisms regarding the difficulty of proving mineral legitimacy in the DRC: lack of regulation on federal and local levels, a cumbersome certification process, poor infrastructure, and turbulent conditions on-site (Propper & Knight, 2013). For instance, according to Adalbert Murhi Mubalama—the minister of mines in the South Kivu province—companies cannot even audit mines in Shabunda territory, where most mines are located, because the land is controlled by a ruthless militia (Raghavan, 2014). So ruthless is this militia that, according to Mubalama, the Congolese government cannot even enter the territory (Raghavan, 2014).

Besides a chaotic environment and inefficient bureaucracy, there have also been issues on the scientific and technical levels with regards to the fingerprinting conflict minerals. Immediately after mining, mineral ores are processed to become ore concentrates—that is, small, granular bits of powder. During this process, ores from different mines are often mixed together, meaning that ores from conflict-free mines may very well be mixed with ores from conflict mines (Arnaud, 2012). The mixed ores are then smelted together—a process that extracts metal from the ores via heating and melting—and "after the metal has been extracted from the ore, there may be no way to determine provenance" (Arnaud, 2012, p. 37). This means that if multinational companies trace their minerals back to smelters—such as in the cases of Apple and Intel—they have no real way to prove that their minerals are conflict-free, because all the ores have been melted together (*An Open Letter*, 2014). This means that companies may very well have purchased a metal mixture containing both conflict and conflict-free minerals. There are movements in the science community to develop technology to geochemically fingerprint minerals, which would mean being able to determine mineral origins even after smelting, such as laser-induced breakdown spectroscopy (Arnaud, 2012). However, even this burgeoning technology is viewed skeptically by many scholars, who remain

unconvinced that such techniques will be affordable, realistic, or even capable of providing suitable mineral fingerprints for due diligence purposes (Arnaud, 2012).

There are further issues with fingerprinting conflict minerals. There is a serious lack of transparency in the overall trade of minerals, which makes it exceedingly difficult if not impossible to track minerals to their true origin. For example, many of the Congo's minerals are sent across national borders to Rwanda, where they are then processed and sold to multinational companies (De Koning, 2011). However, Rwanda registers any minerals processed in the country under their own country of origin (De Koning, 2011). As a result, companies may be buying processed minerals from Rwanda believing they were sourced there in conflict-free conditions, when in reality the minerals were mined under conditions of violence in the Congo and simply washed clean by some manipulative paperwork that alters their country of origin.

Because of all these difficulties surrounding mineral legitimacy, with the passing of the Dodd-Frank Act in 2010, many corporations pulled out of business investments in the Congo (Drajem et al., 2011). At the very least, most traders delayed mineral purchases until they could vouch for their origins (Drajem et al., 2011). What resulted was a *de facto* embargo on mining in the DRC (Gallo, 2011). At the same time, in September 2010, the Congolese government issued "a six-month ban on all mining and trading activities in the East" (Gettleman, 2013). Only two months after the Dodd-Frank Act had been signed into law, mineral production had ceased even at mining facilities not operated by armed groups (Raghavan, 2014). The combination of the *de facto* embargo and the *de jure* mining ban had resulted in the Congolese mining and trade sector shuddering to a halt and the obliteration of local economies (Drajem et al., 2011).

The official ban was lifted six months later in March 2011, but by then the damage was already done and its aftershocks were clearly visible in the DRC economically and socially. Official mining businesses did not recuperate well. Many artisanal mines simply never re-opened and legal mineral exports did not bounce back to the same levels as before the ban. For instance, by April 2011, legal tantalum exports from the DRC had dropped by more than 90%, bring-

ing legitimate tantalum production to a near standstill (Drajem et al., 2011). Another example can be seen in the region of Luntukulu, which used to be a hotspot for international mineral trade, with scores of businessmen flocking there each year to purchase minerals for smelting. In 2014, however, only 12 buyers made an appearance, according to community leaders (Raghavan, 2014). Many of these buyers were from India and China, where the Dodd-Frank Act has no jurisdiction (Raghavan, 2014). The sudden loss of Western clients reverberated throughout the Luntukulu community: shops closed, families went hungry, and miners bitterly blamed what they call "Loi Obama"—Obama's Law (Raghavan, 2014).

The boycott of Congolese minerals did not just have a microeconomic impact on regions such as Luntukulu, however; it also made an impression in a macroeconomic sense, negatively affecting Congolese exports in the global arena. When foreign companies began to avoid buying minerals from the DRC, the international prices of Congolese minerals were driven down. For example, before the passing of the Dodd-Frank Act, Congolese miners could receive \$7 per kg of tin (Raghavan, 2014). This number was still dramatically underpriced compared to the rest of the world market for tin, in which most countries could receive \$18 per kg (Raghavan, 2014). After the Dodd-Frank Act came into play, this price gap only grew. In 2014, Congolese miners could expect to receive the equivalent of \$4 per kg of tin, even though the world market price for tin was now worth \$22 per kg (Raghavan, 2014).

The good news is that while the DRC's economy suffered, the income and authority of armed groups in the Congo suffered too. Some reports estimate that nearly 10% of mines in Eastern Congo have been declared "clean," meaning that they are now demilitarized (Gettleman, 2013). However, these same reports are careful to note that even though these mines may be officially demilitarized, it does not necessarily mean they are free of conflict, as many of these clean mines still reside in territories controlled by armed groups or rebels (Gettleman, 2013).

Another study put forth by the Enough Project offers even more optimistic findings, claiming that the Dodd-Frank Act actually achieved its goal of decreasing the presence of armed groups in the Congo's

mines. According to this study, which was produced from five months of field research, armed groups have lost control of nearly two-thirds of the mining sites they previously presided over (Wolfe, 2015). However, some critics have argued that “the assertion that any decrease was due to Dodd-Frank...is impossible to prove” (Wolfe, 2015), and suggest that the Enough Project’s study may make the error of mistaking correlation for causation, although they do not provide any insight into what other causes may be. Other research similarly confirms a de-militarization of mines, although progress admittedly seems to be slow and unstable. As of June 2014, it was reported that twenty five mining sites in South and North Kivu were declared “green”—meaning no armed groups, children, or pregnant laborers were employed—but this is still a minor fraction out of hundreds of mines in the region (Raghavan, 2014). And as of October 2014, 11 mines in South Kivu had been declared completely conflict free (Raghavan, 2014). This is an honorable feat, though with an approximated 900 mines present in South Kivu, there is clearly still a great deal of work to be done (Raghavan, 2014).

Still, it is significant to note that armed groups saw their profits from conflict minerals drop after the passing of the Dodd-Frank Act. One report claims that “armed groups that were trading in tin, tantalum, and tungsten saw their profits drop by sixty five percent” (Gettleman, 2013). However, it is equally important to note that these profit decreases were not massive enough to significantly deter conflict in the Congo. This is for a variety of reasons. The first reason is that armed groups were never solely dependent on mineral revenue for their existence; therefore, they are able to continue existing even without monetary aid from minerals (Wolfe, 2015). Many militias simply turned to other trades to make up the difference in lack of income, trades of such items as charcoal, marijuana, palm oil, soap, and various consumer goods (*An Open Letter*, 2014). Many non-state militias also simply resorted to kidnapping and extortion as major sources of income (Gallo, 2011).

Furthermore, many illegal exports were able to continue even after the mining ban, thanks to a thriving black market, as well as a stockpile of mineral resources in the possession of armed groups (De Koning, 2011). Although it is difficult to track the

financial specifics of the black market, there are many ways to surmise evidence of illegal activity across African borders. Take for instance recent export statistics from Uganda and Burundi. In the last decade, as the DRC’s exports decreased, Uganda and Burundi’s exports have dramatically increased. In their peak year of 2006, Burundi and Uganda exported over 4.5 t and 7 t of gold respectively, even though both countries had “negligible domestic production capacities” (De Koning, 2011, p. 11). Based on the difference between the countries’ domestic production capacities and their actual export quotas, it is estimated that “over ten tonnes of gold must have arrived in Burundi and Uganda from elsewhere in 2006. The DRC is the most likely source” (De Koning, 2011, p. 11). Thus, while it is commendable that the profits of armed groups have decreased, this loss of income has not led to a disbandment of armed groups and decrease of conflict, as legislators hoped. Furthermore, what little strides have been made in decreasing the profits of armed groups seem to be offset by the massive costs of the Dodd-Frank Act, namely the economic and humanitarian damage incurred by the Congo.

Such humanitarian damage is also an important consequence to take into account when considering the relative failure of the Dodd-Frank Act. Negative ripple effects from the Dodd-Frank Act can clearly be seen in the global and Congolese economies, but its effects are not limited strictly to fiscal matters—its damage has also extended to Congolese society to create a humanitarian crisis. When the mining and trade sector collapsed, so did the livelihoods of the Congolese. It is estimated that between 5 million to 12 million Congolese were either directly or indirectly impacted by the unemployment created by the mining ban and the aftershocks it produced (Wolfe, 2015). The sudden lack of income meant deficiency in medical care, children dropping out of school, and widespread starvation and malnutrition (Gallo, 2011).

But perhaps the most disconcerting social impact of the Dodd-Frank Act was the way it almost served to help, not hurt, armed groups in the DRC. Widespread unemployment stemmed from the complicated reality that resources that may have funded armed conflict simultaneously “provide[d] livelihoods to many people who work in and around artisanal mines” (De Koning, 2011, p. 3). Thus, by cutting

off income for armed groups, more often than not income is also prevented from reaching legitimate, peaceful, independent miners. Many miners are being forced to find other ways to survive and have resorted to joining armed groups or smuggling rackets for quick income and a greater sense of protection (*An Open Letter*, 2014). This is, in the most literal sense, a complete backfire of the Dodd-Frank Act's intentions—a piece of legislation that was meant to disband Congolese armed groups is, in some instances, actually reinforcing their numbers. Furthermore, it is not only the former miners that join, but also sometimes children, and this creates an even greater problem: the children in question fail to receive an education and ultimately reinforce a historic cycle of knowledge poverty and militarized violence (Raghavan, 2014).

## RELEVANT LITERATURE

In light of the failure of the Dodd-Frank Act, the work of three scholars—Paul Collier, Anke Hoeffler, and William Reno—emerges as especially relevant and insightful in understanding the crisis in the DRC. First is Collier's work, which discusses the political and economic consequences of natural resources. Collier (2010) presents what he calls the "resource curse" (pp. 1106-1107), a term that he uses to describe nations possessing vast quantities of valuable natural resources, such as the Congo. According to Collier (2010), the resource curse can undermine both security and accountability within a nation. Furthermore, the more valuable the resources are, the less likely it is that a civil war occurring in that nation will be settled, as there is greater opportunity for profit-seeking and greed (Collier, 2010).

According to Collier (2010), there are three ways that the resource curse contributes to civil wars. First, profits from commodity exports "provide opportunities for rebel predation during conflict and so can finance the escalation and sustainability of rebellion" (p. 1111). Second, not only will such profit-earning opportunities simply be made feasible, but rebels may actually be motivated to seize income (Collier, 2010). Finally, governments of countries with vast resource wealth tend to be less accountable to their citizens, and thus less capable of preventing conflict (Collier, 2010). All three consequences of the resource curse can clearly be seen in the current state of the Congo.

Important work is also put forth by Reno, particularly a study which looks at the behavior of armed groups and patronage politics. Reno (2007) describes armed groups as "agents of disorder" (p. 324) that are often vulnerable to collaboration with "predatory politicians, international criminals and local gangsters who occupy positions of power in failing states" (p. 324). He explains that armed groups can play one of two roles in a civil war: predator or protectorate (Collier, 2010). Reno may make this binary a bit too clearly defined, however. As is evident in the Congo, sometimes the roles of armed groups are not so black-and-white. The FARDC, for instance, is supposed to protect Congolese citizens, but often ends up exploiting them as much as any rebel army.

Nevertheless, Reno (2007) points out that predatory armed groups make wars longer and more violent as they vie for control of local communities and exploit natural resources. People who join these groups often do so to "increase their status and gain a measure of greater personal security" (Reno, 2007, p. 324), a motive that was clearly at play when unemployed artisanal miners in the Congo decided to begin joining armed groups after the mining ban and embargo. Reno (2007) also makes note of the fact that "the most predatory and socially destabilizing violence should develop in areas where the political establishment was most closely linked to the patronage networks of the capital" (p. 337), pointing towards a type of corruption that has corroded modern Congolese politics.

Finally, work by Collier and Hoeffler presents the debate over the motivation of civil wars: greed or grievance? While it could be argued that both play significant roles in breeding dissent, Collier and Hoeffler make a strong case for greed over grievance. They cite three opportunities for conflict that are created by greed. First is the availability of finance: the idea that "primary commodity exports substantially increase conflict risk" (Collier & Hoeffler, 2010, p. 588), because the greater quantity and quality of exports a nation has, the more potential for profit it offers to armed groups, and thus the incentive to defect is greater. Second is the cost of rebellion; in nations where the costs of rebellion are higher, such as greater rates of secondary male education, per capita income, and growth, the less likely civil war becomes (Collier & Hoeffler, 2010). In nations like the DRC,

however, where there is lower quality of life, combatants have less to lose and more to gain by rebellion. Finally, there is military advantage: the idea that in countries with dispersed populations, militaries will better be able to seize control of local communities, and thus conflict will increase (Collier & Hoeffler, 2010). This, too, is evident in the Congo—a vast territory with a weak centralized government is the perfect recipe for rebellious armed groups to seize and conquer.

In reviewing the works of these three authors, the complexities at play in the Congo become a bit more clearly defined in the light of modern political theories. In fact, in many ways the Congo stands as a perfect case study in support of these claims—their resources have bred conflict, armed groups have increased citizen insecurity, and greed has contributed to civil war. However, the failure of the Dodd-Frank Act may also suggest that in some ways, the Congo isn't actually a perfect fit with these theories. After all, the Dodd-Frank Act targeted two main sources of civil war as according to these scholars: the resource curse and greed. Despite this, the Dodd-Frank Act failed to end conflict in the Congo. Perhaps this failure suggests that greed is not the greatest driving factor behind civil war. Maybe in the Congo or elsewhere, grievances—such as issues of citizenship, politics, and ethnicity—can sometimes trump greed, or at least play equally significant roles in driving conflict, and should be similarly addressed in legislation.

## SOLUTIONS FOR PEACE

Anti-conflict mineral legislation, the Dodd-Frank Act in particular, was passed with intentions to create stability and peace in the DRC. Yet much of this same legislation did little to encourage either and, in some instances, actually actively worked against a mission of peace.

So where does this paradox leave us? Global leaders tried to cure the problem but instead aggravated it. So is there any real solution to the crisis in the Congo? While there may not be one miraculous panacea, there are some improvements that could be made in the way in which foreign policy understands and handles the Congolese crisis, which may ultimately lead to more successful means of achieving peace.

First and foremost, there needs to be reform in the way global leaders understand the crisis in the DRC. As is, legislators seem to have a very limited, shallow—and therefore, seriously flawed—understanding of what exactly is happening in the Congo. *An Open Letter*, published in 2014 and signed by seventy scholars, politicians, and civil society authorities, claimed that “the conflict minerals campaign fundamentally misunderstands the relationship between minerals and conflict in the eastern DRC” (p. 1). Legislators have been criticized for having a grievously one-dimensional understanding of the conflict for thinking of conflict minerals as being directly and solely responsible for humanitarian abuses. They oversimplify the conflict by believing that “iPhones cause rape” and “shiny things fuel war” (Wolfe, 2015). This sort of belief is problematic because it presents an understanding of the relationship between Congolese minerals and Congolese conflict that is too narrow, and this incomplete understanding in turn leads to limited or ineffective conflict resolutions.

This is not to say that conflict minerals and the consumer goods that utilize them do not play a role in the conflict. They undeniably do. However, to reduce conflict in the Congo merely to tin, tantalum, tungsten, and gold is to disregard the multitude of nuances and complexities that comprise the crisis. Passing legislation that solely addresses conflict minerals is an action that only treats a symptom of the problem. Even if the trade of conflict minerals was stopped, it is highly unlikely that all violence in the Congo would accordingly cease (Wolfe, 2015). The bottom line is that even if armed groups aren't fighting over minerals, there will always be something else to fight over. This is because conflict minerals were never the only source of conflict. The issues at play are political, ethnic, national, historical, and regional; they are issues of citizenship, of identity, of access to land (Raghavan, 2014). These are the significant drivers of conflict. These are the sorts of issues that should be considered and targeted in sanctions and legislation. The global understanding of the crisis in the Congo needs to be deepened and complicated because the problem is much greater and encompassing than the trade of conflict minerals, and understanding its intricacies is a vital component in being able to craft effective peace solutions. After all, how can legisla-

tors create a solution for a problem they do not fully understand?

Another aspect of foreign policy relating to the DRC that should be reconsidered is the practicality of any measures passed—that is, whether or not the laws can actually be carried out and enforced—particularly in regards to the conflict mineral trade (*An Open Letter*, 2014). Laws need to be realistic and feasible. Due diligence laws, while good enough in theory, are neither of these in practice. Such laws placed the brunt of the mineral certification process on the DRC itself, when the reality of the situation is that the DRC simply was not capable of bearing these responsibilities (Anderson, 2014). Advocates of laws like the Dodd-Frank Act expected the Congolese government to provide an environment for businesses in which they could produce due diligence reports and legitimately purchase minerals, but the mechanisms to do so did not and do not exist in the Congo, where there is still too much instability and corruption. Reports have claimed that as of 2010, there were not any traceability or certification systems in the DRC that met the full requirements of due diligence laws (Anderson, 2014).

The question that follows is somewhat obvious. What is the point of passing legislation if it exists in an environment that is unable to enforce it? Was Section 1502 of the Dodd-Frank Act instated merely for appearances, so companies could pat themselves on the back for their good-doing while washing their hands free of the conflict? Due diligence laws may be effective if there were a means of implementation. But implementing such certification procedures and institutions would be a struggle for any country, let alone one with such vast territory and such a decentralized, weak federal government as the DRC (Anderson, 2014). Therefore, when legislators are creating processes for peace, they need to work with what they've got. Solutions can only be effective if they can be carried out. Legislators need to search for helpful actions that are possible given the current means of the Congo and reality of its economic, political, and social situations.

This idea goes hand-in-hand with the suggestion that legislators need to make an effort toward improved consultation with the Congolese government and improved communication with Congolese commu-

nities. Neither group was taken much into account in the passing of the Dodd-Frank Act and due diligence laws: “few local stakeholders have been included in on-going international policy-making, and as a result realities on the ground have not always been taken into account” (*An Open Letter*, 2014, p. 1). Congolese insight about local context and power structures, however, could have been an invaluable resource in terms of crafting feasible, appropriate peace solutions (*An Open Letter*, 2014).

Furthermore, communication with the Congolese would have better helped legislators predict how well the Dodd-Frank Act would or would not have been received and implemented, as well as what the act's fall-out would be. For instance, had legislators better understood the needs of local civilians, they might have realized that most miners had little incentive to help carry out mineral certification schemes, even if the measures to do so were in place. Christoph Vogel, co-author of the aforementioned open letter about anti-conflict mineral legislation, explains that, “a Congolese miner has a lot of difficulty understanding the usefulness of these kinds of systems because for him or her the main thing is to earn a few bucks a day just to nourish their families” (Anderson, 2014). Had legislators grasped this mentality, they might have been better able to craft incentives for Congolese to cooperate with due diligence laws. Vogel, for instance, suggests incentives via improved business practices: “the more you can help them improve labor security in the mines and create better infrastructure, the more you will motivate them to become interested in these clean mineral frameworks” (Anderson, 2014).

This relates to other suggestions to use better business practices as incentives for legal mining activity. One suggestion, put forth in the open letter, is the imposition of a minimum wage to help curb corruption. Many Congolese default to black markets, tax fraud, and other illegal activities out of the need to provide and survive, since most are underpaid (*An Open Letter*, 2014). However, even this suggestion is not without its faults: if the Congolese government could not help enforce due diligence laws, will they really be able to enforce a minimum wage? The open letter also suggests the promotion of fair competition by giving miners increased leverage on price in the global arena and not underselling minerals, which

may help standardize, equalize, and legalize the mineral trade (*An Open Letter*, 2014).

Another change that should be made at the legislative level is the push toward meaningful reform. This means that legislators need to critically and consciously be aware of who they are creating laws for and what their motives are. Take the Dodd-Frank Act, for example. It is, essentially, a piece of legislation that was created via Western framework and was then slapped on a very non-Western country that was frankly incompatible with the ideas and actions proposed in the Act. Considering this, one may ask: who was the Dodd-Frank Act for? Was it truly for the Congolese, as it claimed, or was it for the American people themselves? Consider this: the Dodd-Frank Act helped produce ethical goods for American consumers so that they could have clear consciences and peace of mind without having to sacrifice their iPhones, computers, televisions, and cars. At the same time, the Dodd-Frank Act did very little to improve the daily lives of the Congolese people, and in some instances, further damaged life in the Congo. Ultimately, it was a piece of legislation that benefited the consumers more than it benefited the producers (Gallo, 2011).

So, who was the Dodd-Frank Act for? Considering the above fall-out of the law, it seems as though it was very much oriented toward the satisfaction of the Americans and not the Congolese. It may even hint towards a bit of “white man’s burden,” echoing the Congo’s past of manipulative imperialism—such as when Leopold plundered the DRC’s resources, intervened in Congolese affairs, and ultimately hurt the country under the guise of helping the Africans. If legislators want to truly help in the Congo, then they need to set goals for meaningful reform for the day-to-day lives of the Congolese, not the appeasement of Western consumers. They need to make sure that the measures they are implementing are measures that are actually going to help the people that need help.

## CONCLUSION

The Dodd-Frank Act and other anti-conflict mineral legislation were created with good intentions. Nevertheless, most legislation still failed to bring about conflict resolution in the DRC, and some even encouraged greater economic failure and thus increased

conflict. The problem, then, is not necessarily with getting global legislators on board with the idea of helping the Congo find peace. Rather, the issue at hand is getting legislators to find the *right* ways to go about conflict resolution via trade and foreign policy.

Due diligence laws failed the DRC for a variety of reasons. They encouraged multinational businesses to pull out of Congolese investment, they were inefficient and ineffective as a result of turbulence in the DRC, and perhaps most importantly, they failed to address the roots of conflict in the Congo. If legislators want to truly help solve the crisis in the DRC, they need to achieve an understanding of why these measures failed and learn from their mistakes. They need to pass legislation with a full understanding of the complex causes of conflict, they need to customize conflict resolution measures so that they are compatible with the reality of the Congo’s capabilities, and they need to use critical foresight to ensure that they are truly helping, not hurting, the people most in need of aid.

That being said, it is not solely the responsibility of international consumers and legislators to help the Congo find peace. Foreign policy and global sanctions can only do so much. If the DRC wants to have any true chance of attaining peace and stability, it needs to learn to help itself. Governmental reform is essential. The DRC needs a strong, centralized federal government that will be able to assert its authority over the various armed groups and feuding ethnicities in order to bring peace and unity to the region. Additionally, the government needs to crack down on corruption and increase transparency, or else the historical pattern of chaos and turmoil in Congolese politics will continue.

It is easy to call for the DRC to seek change, but whether or not the nation will actually be able to self-reform is another matter. If history does indeed repeat itself, then it seems that the Congo has a long road ahead of political, ethnic, and social disputes, of violence and corruption, and of international relations that usually do more harm than good. And there are plenty of people that do in fact think the Congo has passed the tipping point of salvation. One *National Geographic* article quoted a UN specialist who had been working on-site in the Congo for years: “There’s

no easy solution. I'm not even sure there is any solution" (Gettleman, 2013).

While it may be a bit too pessimistic and irrevocable to claim that there is no solution for the Congo, this UN specialist is right: there's no easy fix, there's no panacea for problems in the DRC. This is because there's nothing easy about the problems themselves. Conflict in the Congo stems from a complicated snarl of political tensions, corrupt transactions, severe poverty, ethnic divisions, problematic historical precedents, a culture of violence, and so much more. With so many issues to address, the Congo is going to need more than one solution. In fact, the DRC is going to need a groundswell of solutions—enough to assert a formidable presence in the Congo that sets a precedent for peace—because a few resolutions here and there are not going to amount to change on a national level, and “none of them has a realistic chance of success in isolation” (De Koning, 2011, p. 1).

With the massive nature of conflict in the Congo, it is going to take an accumulation of all of these things—foreign policy, Congolese self-reform, customized solutions in bulk—in order to see true change. Although the Dodd-Frank Act and anti-conflict mineral legislation did not bring about desired change, this does not mean the global community should give up on the Congo. After all, it was the international demand for resources in the DRC that created a pattern of extraction, violence, conflict, and instability, and it was the complex interconnections of globalization that helped create the conflict mineral trade and sustain the violence (De Koning, 2011). Global consumers are therefore implicated in conflict in the Congo, and as such it could be argued that it is a matter of global responsibility—perhaps even one of responsibility to protect—that makes the international community accountable for helping the Congo find peace.

While anti-conflict mineral legislation may not have resulted in its intended outcomes, the intentions behind the legislation were a good start. Conflict minerals may not be the root cause of problems in the Congo, but they are still a problem, and the global community was not wrong in trying to stop their trade. Hopefully, the failure of anti-conflict mineral legislation will not discourage foreign actors from

pursuing peace efforts in the DRC. The shortcomings and negative fall-out of the Dodd-Frank Act and other anti-conflict mineral legislation should not be in vain. Instead, legislators should try to learn from their faults in order to produce stronger, more effective conflict resolutions, and should use the lessons learned from this failure as motivation to keep chasing peace in the DRC despite all the many obstacles that will come their way.

## REFERENCES

- Anderson, M. (2014, September 10). DR Congo's miners bear brunt of attempts to make minerals conflict-free. *The Guardian*. Retrieved from <http://gu.com/p/4xdng/stw>
- Arief, A. (2014). Democratic Republic of Congo: Background and U.S. policy. *Current Politics and Economics of Africa*, 7(2), 113-142.
- Arnaud, C. H. (2012). Fingerprinting conflict minerals. *Chemical and Engineering News*, 90(18), 36-37.
- BBC. (2015, August 4). Democratic Republic of Congo profile: Timeline. (2015, August 4). *BBC News*. Retrieved from <http://www.bbc.com/news/world-africa-13286306>
- Business Monitor International. (2014). *Congo, Dem. Rep. mining report Q1 2015*. London, England: Business Monitor International.
- Collier, P. (2010). The political economy of natural resources. *Social Research: An International Quarterly*, 77(4), 1105-1132.
- Collier, P. & Hoeffler, A. (2004). Greed and grievance in civil war. *Oxford Economic Papers*, 56(4), 563-595. doi:10.1093/oep/gpf064
- De Koning, R. (2011). *Conflict minerals in the Democratic Republic of Congo: Aligning trade and security interventions*. Solna, Sweden: Stockholm International Peace Research Institute. Retrieved from <http://books.sipri.org/files/PP/SIPRI27.pdf>
- Dodd-Frank Wall Street Reform and Consumer Protection Act, 111 U.S.C. § 1502 et seq. (2010).

- Drajem, M., Hamilton, J. & Kavanagh, M. J. (2011, August 4). A rule aimed at warlords upends African mines. *Bloomberg Business*. Retrieved from <http://www.bloomberg.com/bw/magazine/a-rule-aimed-at-warlords-upends-african-mines-08042011.html>
- Engineering and Mining Journal. (2000). Current status of mining in the Democratic Republic of Congo. *Engineering and Mining Journal*, 201(5), 20-26.
- Gallo, C. J. (2011, August 9). Digging deeper into the Dodd-Frank Congo 'blood minerals' controversy. *UN Dispatch*. Retrieved from <http://go.shr.lc/1MTxWKl>
- Gettleman, J. (2013, October). The price of precious. *National Geographic*. Retrieved from <http://ngm.nationalgeographic.com/2013/10/conflict-minerals/gettleman-text>
- Gondola, C. D. (2002). *The history of Congo*. Westport, CT: Greenwood Publishing Group.
- Haskin, J. M. (2005). *The tragic state of the Congo: From decolonization to dictatorship*. New York, NY: Algora Publishing.
- International Peace Information Service. (2013). *The formalisation of artisanal mining in the Democratic Republic of the Congo and Rwanda*. Retrieved from <http://www.cifor.org/fileadmin/subsites/proformal/PDF/RIPIS1212.pdf>
- KPMG Global Mining Institute. (2014). *Democratic Republic of Congo: Country mining guide*. Amsterdam, Netherlands: KPMG International Cooperative. Retrieved from <https://assets.kpmg.com/content/dam/kpmg/pdf/2014/09/democratic-republic-congo-mining-guide.pdf>
- Lecomte, V. (2015). The Kimberley Process: A new actor on the conflict resolution scene? [Undergraduate research]. Lund, Sweden: Lund University, Department of Political Science. Retrieved from <https://lup.lub.lu.se/student-papers/search/publication/4925566>
- Lee, P. (2010, March 11). China has a Congo copper headache. *Asia Times*. Retrieved from [http://www.atimes.com/atimes/China\\_Business/LC11Cb02.html](http://www.atimes.com/atimes/China_Business/LC11Cb02.html)
- Nanda, V. P. (2014). Conflict minerals and international business: United States and international responses. *ILSA Journal of International & Comparative Law*, 20(2), 285-304.
- Natural Resource Governance Institute. (n.d.). *Dem. Rep. of Congo*. Retrieved from <http://www.resourcegovernance.org/countries/africa/democratic-republic-congo/overview>
- An open letter*. (2014). Retrieved from <https://ethuin.files.wordpress.com/2014/09/09092014-open-letter-final-and-list.pdf>
- Organisation for Economic Cooperation and Development. (2013). *OECD due diligence guidance for responsible supply chains of minerals from conflict-affected and high-risk areas* (2nd ed.). Paris, France: OECD Publishing. doi:10.1787/9789264185050-en
- Propper, S. & Knight, P. (2013, December 4). 'Conflict free' minerals from the DRC will only be possible if companies stay. *The Guardian*. Retrieved from <http://gu.com/p/3yvc4/stw>
- Raghavan, S. (2014, November 30). How a well-intentioned U.S. law left Congolese miners jobless. *Washington Post*. Retrieved from <http://wapo.st/1ya3bbt?>
- Raj, S. (2011). Blood electronics: Congo's conflict minerals and the legislation that could cleanse the trade. *Southern California Law Review* 84(4), 981-1034.
- Reno, W. (2007). Patronage politics and behavior of armed groups. *Civil Wars*, 9(4), 324-342. doi:10.1080/13698240701699409
- Rhode, D. (2014, March 24). The Kimberley Process is a perfect 'cover story' for blood diamonds. *The Guardian*. Retrieved from <http://gu.com/p/3nyaq/stw>

- U.S. Geological Survey. (2015). *Mineral commodity summaries*. Washington, DC: U.S. Government Printing Office. doi:10.3133/70140094
- Weissman, S. R. (1974). *American foreign policy in the Congo, 1960-1964*. Ithaca, NY: Cornell University Press.
- Wigny, P. (1961). Belgium and the Congo. *International Affairs (Royal Institute of International Affairs 1944-)*, 37(3), 273-284. doi:10.2307/2610922
- Wolfe, L. (2015, February 2). How Dodd-Frank is failing Congo. *Foreign Policy*. Retrieved from <http://foreignpolicy.com/2015/02/02/how-dodd-frank-is-failing-congo-mining-conflict-minerals/>
- Young, C. (1965). *Politics in the Congo: Decolonization and independence*. Princeton, NJ: Princeton University Press.