



global witness

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March 17, 2017

Michael S. Piowar, Acting Chairman
United States Securities and Exchange Commission 100 F Street, NE
Washington DC 20549

CC: Lieutenant General H.R. McMaster, US National Security Advisor
Rex Tillerson, US Secretary of State

RE: Global Witness Comments on Reconsideration of Conflict Minerals Rule Implementation

Dear Acting Chairman Piowar,

Global Witness respectfully submits the following written comments in response to the Securities and Exchange Commission (the “SEC”)’s reconsideration of the conflict mineral rule (the “Rule”) to implement Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Conflict Minerals Provision” or “Section 1502”), which mandates supply chain due diligence disclosures concerning “conflict minerals”¹ that originate in the Democratic Republic of the Congo (“Congo” or “DRC”) or an adjoining country.

Global Witness is writing to express our support for the supply chain due diligence requirements mandated by Section 1502. Our comment seeks to underscore the important contributions Section 1502 has made towards tackling human rights abuses and conflict-financing in mineral supply chains by advancing greater transparency and increased corporate responsibility. We urge the SEC to protect these advances and concentrate its efforts on ensuring companies within scope are complying with the Rule’s supply chain due diligence requirements in full.

Conflict and instability in the Great Lakes region of Africa are complex problems that resist simple solutions. Creating conditions for security and stability in this part of the world requires, as anywhere, an integrated approach and sustained commitment. Building a transparent and responsible minerals trade that offer miners and communities in resource-rich areas a route to development, rather than funding corruption or providing predatory armed groups with the incentive and means to fight, is just one part of the solution.

Over the last six years, Section 1502 has been rigorously scrutinized, as any law should be. To properly evaluate the effectiveness of the Rule, the SEC must look beyond what has become an increasingly polarized debate and pursue a holistic assessment that looks to the past first and foremost as a means of furthering the Rule’s aims. This assessment should include the Rule’s status of implementation, its influence on company behavior, and impacts in the Great Lakes region.

Section 1502 attempts to ensure that US-listed companies manage their supply chains responsibly. Many of these companies are now market leaders in building new and more responsible business models. As a result, the companies under scope of the Rule, and their networks of suppliers, have triggered behavioral change across international mineral markets.

The benefits of Section 1502 have also been lauded by investors and companies. Investors representing over \$4.8 trillion dollars in assets under management recently wrote to the SEC that the due diligence disclosures required by Section 1502 are both “material to investors and ha[ve] informed and improved investors’ ability to assess social (i.e., human rights) and reputational risks in a company’s supply chain [and] assess a company’s long-term mitigation of risks related to the supply of minerals, liability, and other material risks.”²

In response to recent reports of potential executive action to suspend the conflict minerals rule,³ Intel and Apple both expressed a commitment to compliance with the Rule because they “believe in doing the right thing.” The jewelry company Richline added that “the cause is worthy of these efforts.”⁴ Tiffany & Co. emphasized that “while we intend to maintain the guiding principles of our Conflict Minerals Policy regardless of regulation, 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.”⁵

The implementation of the Rule has, however, not been without its challenges.

Questions about the Rule’s implementation and requirements created uncertainty, as did the scrutiny and attention to mineral markets and supply chains where companies had previously felt free to ignore risks.

Some companies appeared to have misinterpreted the aim of the law and reacted by withdrawing from the Great Lakes region, at least in the short-term. This was one of the factors that led to a sharp drop in international purchases of cassiterite, coltan and wolframite from Congo’s eastern Kivu provinces in 2011, and a rise in official exports from Rwanda during the same period.

This market response affected the livelihoods of the thousands of artisanal miners in eastern Congo, who have been exposed to the price and demand fluctuations of international metal markets since well before Section 1502. These consequences must not be overlooked, and speak to an urgent need to overhaul supply structures and market distortions that entrench the vulnerability of artisanal miners. Those digging at the bottom of supply chains should not be left exposed to manipulation by unfair market terms and the sudden impulses of companies, many of which were happy to profit from these mineral supply chains prior to the scrutiny introduced by Section 1502.

The Rule, and the due diligence framework it is based on, does not discourage sourcing from the Great Lakes region. Rather, it encourages companies to engage responsibly by providing an internationally recognized framework for managing transparent supply chains that are resilient to risks found in areas affected by conflict or instability. Supply chain due diligence should be about how companies do business, not where.

To argue that these consequences recommend that the law be repealed is misguided, especially when no viable alternative solutions have been put forward. Those who argue that this law will not *by itself* end conflict and regional instability are right. But these are complex problems for which there is no

single solution. Rather than doing away with the law, we must build on its hard-fought foundations and seek to improve implementation by supporting robust enforcement and the development of complementary development, governance, and accountability measures.

With momentum now building for responsible mineral trading internationally, and some showing a tangible willingness to address persistent challenges, any hesitancy about the future of this Rule will introduce yet more uncertainty to a trade that needs certainty to thrive and deliver on its potential.

Who we are

Global Witness is an international advocacy organization that investigates and seeks to break the links between natural resources, conflict and associated environmental and human rights abuses.⁶ Our mission is to expose and to end the brutality and injustice that result from the fight to access and control natural resource wealth. For over a decade, we have documented the militarization of artisanal mining in the east of Congo and the role the trade in minerals plays in financing conflict and human rights abuses. We have played an active role in advocating for more comprehensive responsible sourcing practices by the companies that use and trade these minerals. We support the internationally recognized supply chain due diligence requirements of Section 1502 and submitted written contributions to the SEC during the conflict minerals rulemaking period.⁷

Our work on the minerals trade in the Great Lakes region of Africa has been directly informed by regular, in-depth, field investigations in eastern Congo, Rwanda, and Burundi.⁸ These investigations have involved frequent visits to mine sites and trading hubs and interviews with all stakeholders involved in the trade, including artisanal miners and local traders, smugglers, mining sector authorities, representatives of the army and mining police, and members of local and regional civil society. We meet regularly with ministers and other senior officials in the regional governments.

Breaking the link between natural resources and conflict: the need for corporate accountability

For almost two decades armed groups and members of the Congolese national army have used profits from the trade in tin, tantalum, tungsten,⁹ —commonly referred to as the 3Ts—and gold, to finance themselves and their operations in eastern Congo. This militarized trade, and its harmful impacts on the local populations of the North and South Kivu provinces, have been well-documented by Global Witness, the United Nations and local and international civil society and the media.¹⁰ Although not a root cause of fighting, the minerals trade has perpetuated and facilitated fighting and abuses since the Congo wars began in the mid-1990s.

The UN Guiding Principles on Business and Human Rights make clear that companies have a responsibility to ensure that their business operations do not contribute to conflict or human rights abuses. In instances where risks are likely to occur, companies must find responsible means of responding and addressing these harms.¹¹

Congo's minerals need international markets. Section 1502, and the due diligence framework it is based on, seeks to engage these markets—markets to which unscrupulous traders must inevitably turn—and enlist the commercial leverage of companies in the task of identifying risks and steering revenues towards legitimate actors and away from predatory armed groups.

Section 1502 requires US publicly-listed companies that manufacture or contract to manufacture products containing minerals that are believed to originate from Congo or neighboring countries to conduct due diligence on their supply chains that conforms to a “nationally- or internationally-

recognized due diligence framework.”¹² At present, the only such framework is the Due Diligence Guidance developed by the Organization for Economic Development and Cooperation (OECD).¹³ Through this requirement, the Conflict Minerals Rule ensures that companies under scope conduct risk-based supply chain due diligence that encourages and facilitates responsible sourcing from high-risk or conflict-affected areas, but with the care and attention that such sourcing demands.

Global problem, global supply chains, global response

Global Witness research on minerals, gemstones and other natural resources, shows that links between minerals, conflict and human rights abuses are not unique to central Africa. In Afghanistan, our investigations revealed that the Taliban and other armed groups earned upwards of \$20 million dollars from the trade in the semi-precious stone lapis lazuli.¹⁴ In Myanmar, tin has reportedly benefitted an armed group, the United Wa State Army, which the US has sanctioned on the grounds of major narcotics trafficking.¹⁵ In Colombia and Peru, the value of illicit gold exports has reportedly surpassed that of cocaine, providing millions to the FARC and other armed groups.¹⁶

Disrupting these financial flows requires the active participation of the companies that make up the supply chains that carry these resources to international markets.

These checks are vital to responsible business practices. Financial institutions in the US recognize their legal obligation to combat money laundering and counter terrorist finance through conducting thorough due diligence on their clients. Turning a blind eye to these risks jeopardizes their legal compliance with important rules, which can mean steep fines and serious reputational damage. Companies that use minerals from conflict-affected or high-risk supply chains should assess their physical supply chains in the same way, using well-established due diligence principles and practices with one eye on their reputations and the other addressing abuses that may be linked to their business.

Responsible sourcing through supply chain due diligence is an emerging global norm. New supply chain due diligence laws in Congo and Rwanda; a forthcoming law in the European Union;¹⁷ and voluntary due diligence guidance in China,¹⁸ are all broadly aligned to the OECD Due Diligence Guidance. This helps join the dots across jurisdictions to create more transparent global supply chains in which companies can easily work in concert to share information, leverage suppliers and establish best practices. A consistent set of laws also means compliance in one jurisdiction is likely to satisfy requirements in another, facilitating responsible trading across increasingly global supply chains. These laws have also created market demand for responsibly sourced minerals.

Spurred by Section 1502, there are now widely held public expectations around responsible sourcing. These are expectations US companies will continue to face from investors, consumers, and companies right along mineral supply chains. Efforts to weaken or repeal Section 1502 will only make it more difficult for US-listed companies to meet these increasingly entrenched global expectations; the demands of their investors, shareholders, and customers; and the commitments they themselves have made to sourcing their minerals more responsibly.

A patchwork of private sector schemes has also been developed to facilitate compliance with Section 1502. The Conflict Free Smelter Program (CFSP) reviews tin, tantalum, tungsten and gold metal processors' responsible sourcing practices and certifies those that are compliant with its audit standard as 'conflict free.'¹⁹ Industry associations, like the London Bullion Market Association (LBMA) and the Dubai Multi Commodities Center (DMCC), have created their own responsible sourcing guidelines for members which also include anti-money laundering provisions and recommendations to combat

terrorism finance.²⁰ In the Great Lakes region, the International Tin Supply Chain Initiative (iTSCi)²¹ and Better Sourcing Program (BSP)²² aim to support in-region company due diligence efforts. Each of these schemes aim to be based on the principles of the OECD Due Diligence Guidance, though few are fully aligned at present.

Although each of these initiatives has their own set of challenges, which in some cases are significant, schemes like these are useful supplementary tools to help companies with their individual due diligence efforts.

Implementation of the Conflict Minerals Rule

Under the Rule, around 1,200 companies are now annually reporting on their efforts to survey suppliers and identify metal processors. In 2014, Global Witness and Amnesty International conducted an analysis of 100 of the first Conflict Mineral Reports filed with the SEC. Our analysis found that while 79 percent of the companies in our sample failed to meet the minimum requirements of the law, nearly one in five companies did comply with the rule, showing that compliance is possible.²³

Spurred, apparently, by their US competitors, companies that are not under the scope of the Rule, including Panasonic²⁴ and Samsung,²⁵ now also disclose information on their websites about the supply chain due diligence they've undertaken. Acer, a computer manufacturer based in Taiwan, has published its own version of a Conflict Minerals Report on its website annually since 2014, despite not being subject to Section 1502.²⁶ These examples suggest that many companies recognize the benefits of supply chain checks and do not consider supply chain due diligence to be too costly or prohibitively burdensome.

Because of Section 1502, companies are also better able to understand who they are doing business with. For example, in the first round of filings, 68 companies disclosed that at least one of their suppliers used gold refined by the Central Bank of the Democratic People's Republic of Korea, the official name for North Korea.²⁷ This exposes those companies to the risk of gold smelted in that country entering their supply chain—a possible violation of US sanctions, which prohibits companies from directly or indirectly importing goods from North Korea.²⁸

Building on the requirements of the Rule, companies are also better prepared to responsibly address supply chain risks outside the mineral and geographical scope of the law. Last year Amnesty International reported that cobalt was being mined by children in southeastern Congo.²⁹ While there is much more progress to be made in addressing child labor in cobalt supply chains, companies that have invested in their due diligence processes because of Section 1502 are in a better position to identify effective strategies to respond to this risk.

Companies under scope have since continued to improve the breadth and depth of their supply chain due diligence. In their disclosures, companies are reporting higher numbers of identified smelters and refiners than in the first reporting year. Some companies are beginning to provide more information on their process to assess risks in their supply chains. Despite these signs of progress, however, we remain concerned that many companies are still not fully taking ownership of their individual responsibility to carry out meaningful supply chain due diligence, as intended by the law.

SEC enforcement needed to address limited compliance

To ensure that the Rule is implemented properly and in full, robust SEC enforcement is critical. The US Department of Commerce must release its overdue report assessing the accuracy of the Independent

Private Sector Audits (IPSA) and other due diligence practices, as well as a list of best practices. Without these, the law is not being effectively implemented, which limits its ability to change supply chain behavior. Weak implementation by US companies also means that it is more difficult to assess causal impacts of the law in the Great Lakes region.

Limited implementation of the Rule is also linked to the fact that several of the central principles that guide risk-based supply chain due diligence are often misunderstood by many US companies. These include, in particular:

- Reporting on risk remains limited, with few companies acknowledging specific gaps or explaining how these are being addressed over time. In some parts of the apparel sector, this is already done beyond tier one suppliers.³⁰ Without detailed public reporting, a company's improvement over time cannot be meaningfully assessed.
- Many companies still consider supply chain due diligence an annual compliance exercise rather than the on-going, reactive and proactive process that it is meant to be. Supply chain due diligence is not about achieving a 100% conflict free supply chain. Rather, it is about being able to confidently manage supply chain risks.
- Many companies continue to effectively outsource their obligations to third-party industry schemes.

Section 1502 catalyzed changes in the mineral sector in the Great Lakes region

Section 1502 has generated unprecedented scrutiny of mineral supply chains in eastern Congo. The law has created opportunities for reform in a mineral sector with a long shadow of militarized control hanging over it. Many within Congolese civil society, and even a few members of the Congolese army, now actively advocate for responsible mineral trading.³¹

The Conflict Minerals Rule has opened space for local and provincial monitoring committees to independently evaluate supply chains. When functioning freely and properly, these committees provide important supply chain information that is also useful to US-listed companies further down the supply chain. The work of local organizations in eastern Congo means that some miners, though by no means all, are now also more aware of their rights.

Once murky and unscrutinized, at least some of the region's mineral supply chains are now monitored by local or international civil society, or are covered by industry-led due diligence schemes. Some international smelters and mineral buyers have begun making in-region visits to assess their supply chains for themselves. In Ituri Province, a gold exporter recently took steps to implement international due diligence standards as part of Partnership Africa Canada's "Just Gold" responsible trading project, that aims "legal, conflict-free and traceable gold from artisanal mine sites in the Democratic Republic of Congo to international markets."³²

In a handful of cases, supply chain risks identified by civil society observers, or generated by the iTSCI scheme at tin, tantalum, and tungsten mining sites and along trading routes, has led to collective, multi-sector attempts to address problems in the supply chain, although results are limited.

iTSCI has established an independent database of publicly available information about supply chain risks that is generated by its own team members.³³ Other schemes, such as the Better Sourcing Program (BSP), are taking similar steps. While these schemes have significant operational weaknesses that are still to be addressed, when properly used, these may be useful to downstream companies seeking to better understand their supply chains and resolve problems along them.

Global Witness research for a forthcoming study has also identified 29 publicly available due diligence reports written by mineral exporting companies operating in Rwanda and Congo in compliance with domestic law.³⁴ Although these vary significantly in quality and breadth of reporting, these public documents can be used by US companies to better understand risks right at the top of their own supply chains. Reporting of this kind was not available before the wave of reforms catalyzed by Section 1502.

If regional governments fully enforced their own supply chain due diligence laws, company reporting and the quality of supply chain due diligence undertaken in-region, could be further improved. The Congolese and Rwandan governments have taken inadequate action thus far to ensure that companies comply with their own laws. Continued pressure and scrutiny from downstream companies are crucial to maintaining progress and improving their results.

Uncertainty created a crisis of confidence in the region's mineral sector

Between the passage of the law in July 2010, and the finalization of the SEC's Rule in August 2012, regulatory uncertainty was one of the factors that created a crisis of confidence in certain mineral markets. This influenced mineral exports from North and South Kivu provinces from 2011 onwards. During the nearly two-year rule-making period before the Rule's requirements were published, several companies explicitly encouraged their suppliers to withdraw from the nine countries covered by the law, including Congo,³⁵ rather than remaining engaged in a responsible manner.³⁶ Some companies continue to discourage their suppliers from sourcing from the region. This was one development that translated into a drop in demand for the region's minerals, which affected the livelihoods of the thousands of artisanal miners in eastern Congo.

Such an approach fundamentally misinterprets the requirements of Section 1502 and the due diligence framework it implements by overlooking the impact sourcing decisions of this magnitude can have on the livelihoods of miners and mining communities. Where the companies in question have previously profited from these supply chains, it betrays an indifferent and extractive business model that companies appear to have feared could not stand up to added scrutiny.

While this continues to be a concern, year on year, company disclosures are slowly beginning to demonstrate greater alignment with the responsible engagement principles of the OECD Guidance. The Guidance empowers companies with the tools to source minerals from high-risk areas responsibly.

Global Witness undertook an analysis of official mineral export data from Rwanda, and North and South Kivu provinces in eastern Congo between 2009 and 2015.³⁷ Although export and available production statistics for mineral exports from all three locations are often not aligned, and in some cases differs from export data from other sources, publicly available government data reveals some important trends. Global Witness analyzed data for North and South Kivu and Rwanda, due to heightened international attention at these locations, including to conflict financing, cross-border smuggling, mineral re-exports, and the presence of industry schemes. Section 1502 covers the whole of DRC including, for example, Katanga province, where mineral exports have remained relatively healthy,³⁸ as well as neighboring countries. Global Witness has not included other regions or countries in this analysis.

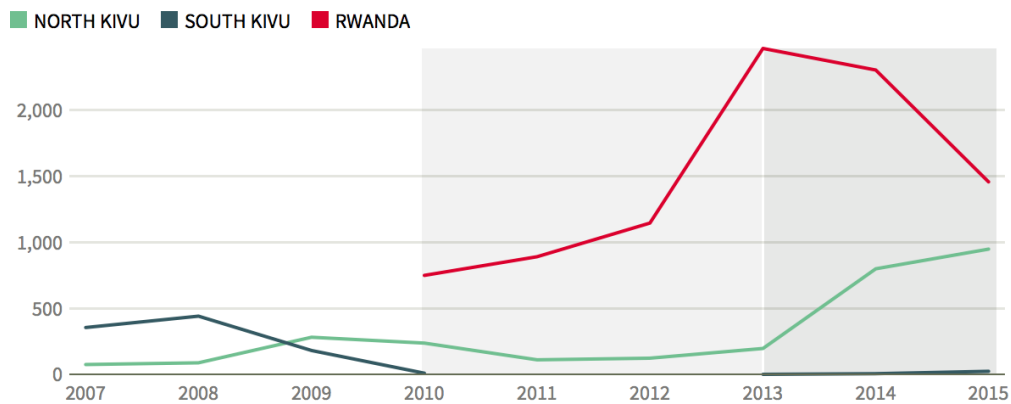
Our analysis shows a substantial decline in official cassiterite (tin ore) and wolframite (tungsten ore) exports from North and South Kivu between 2009 and 2015. In addition to a six-month Presidential mining ban, in place between September 2010 and March 2011, there were several periods of

consecutive months during which there were no official exports from either North or South Kivu. For example, in South Kivu, there were no official cassiterite exports between January and March 2013.³⁹ This analysis suggests the law was one of the factors that led to a decline in exports from the region, which in turn had an impact on the livelihoods of artisanal miners in particular. This despite the fact that the law did not require, or seek to encourage, companies to stop sourcing from the region.

The same analysis also reveals, however, that coltan (tantalum ore) exports from North Kivu have increased by 237 per cent between 2009 and 2015. This increase demonstrates that strong mineral exports and Section 1502 can coexist. Where the right conditions are in place, robust mineral exports are compatible with more transparent and responsible supply chains designed to ensure that profits end up in the right hands.

A similar proof of concept can be observed in Rwanda. In Rwanda, which is also covered by Section 1502, mineral exports for coltan and wolframite in 2015 were 53 per cent and 80 per cent higher than 2009 levels respectively.⁴⁰ In December 2014, Rwandan-based KT Press reported, “Rwanda is now the world’s single largest exporter of tantalum mineral known as coltan and the government says that is only a small portion of the country’s production capacity.”⁴¹ Rwanda’s tin (cassiterite) exports varied slightly over the period but 2009 and 2015 figures were broadly the same.

COLTAN EXPORTS 2007-2015 (METRIC TONS)



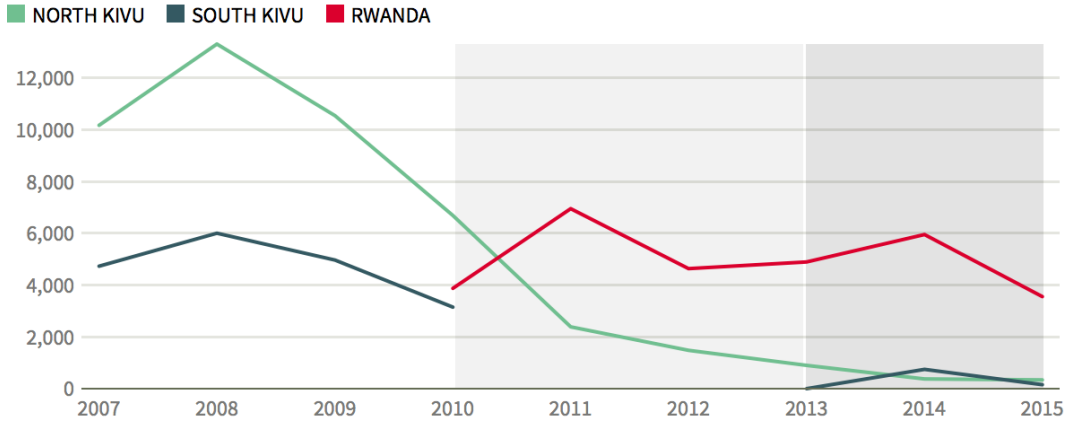
* Gaps in the lines represent where Global Witness does not hold the data for that period. ** Light gray area represents the time after which Dodd Frank 1502 was passed. *** Darker gray represents the time in which the law is in force.

Source: North & South Kivu Provincial Mining Divisions & National Bank of Rwanda



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CASSITERITE EXPORTS 2007-2015 (METRIC TONS)



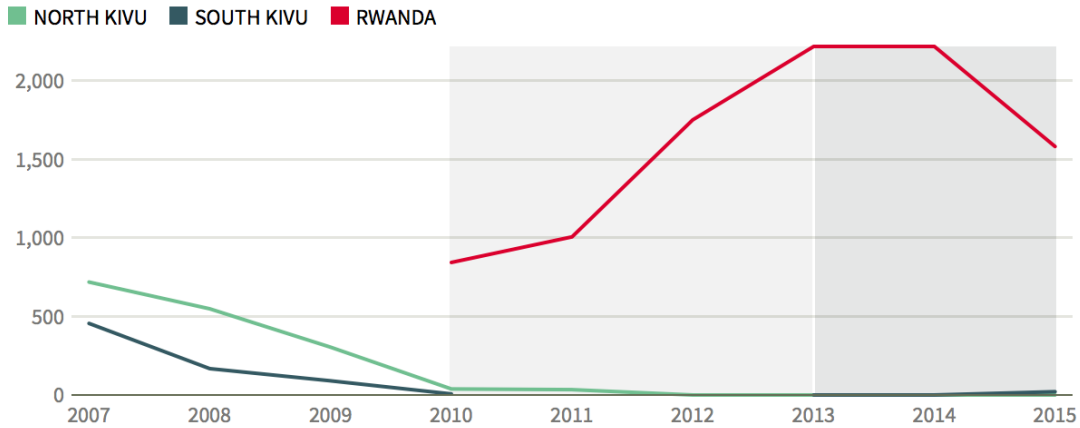
* Gaps in the lines represent where Global Witness does not hold the data for that period. ** Light gray area represents the time after which Dodd Frank 1502 was passed. *** Darker gray represents the time in which the law is in force.

Source: North & South Kivu Provincial Mining Divisions & National Bank of Rwanda



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WOLFRAMITE EXPORTS 2007-2015 (METRIC TONS)



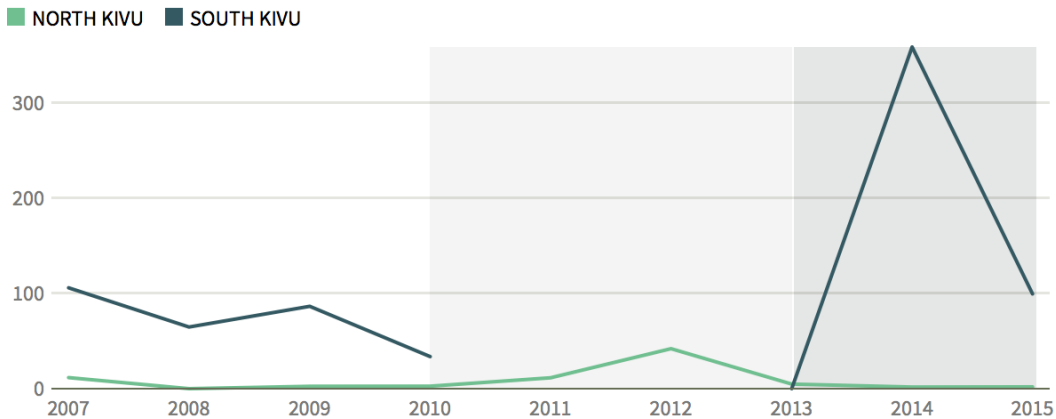
* Gaps in the lines represent where Global Witness does not hold the data for that period. ** Light gray area represents the time after which Dodd Frank 1502 was passed. *** Darker gray represents the time in which the law is in force.

Source: North & South Kivu Provincial Mining Divisions & National Bank of Rwanda



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GOLD EXPORTS 2007-2015 (KILOGRAMS)



* Gaps in the lines represent where Global Witness does not hold the data for that period. ** Light gray highlighted area represents the time after which Dodd Frank 1502 was passed. *** Darker gray represents the time in which the law is in force.

Source: North & South Kivu Provincial Mining Divisions & National Bank of Rwanda



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A decline in international commodities prices from 2012 to 2015 has also had negative economic repercussions for Congo and Rwanda,⁴² and has translated into an additional per kilo price drop for those digging for coltan, wolframite and cassiterite. Artisanal miners at the very bottom of the supply chain are the most vulnerable to price changes in these mineral markets.

These impacts deserve serious attention and study. Rather than introducing further uncertainty, the SEC and companies should focus on building on the experiences of the past five years to promote the responsible engagement the Rule aims to facilitate.

Remaining challenges demand that we do better

Domestic and regional reforms are also still needed to uphold rule of law, address poor governance, and increase often-poor border security with neighboring states. Ensuring existing initiatives benefit the entire supply chain also remains a challenge. In some cases, for example, new industry initiatives and traceability schemes have reportedly created market distortions, including monopolies, that can disadvantage artisanal miners.

Challenges in Congo's gold sector

Eastern Congo's gold sector has had less scrutiny, relative to the tin, tungsten and tantalum sector, and has proved more resistant to reform. This is due, in part, to the development of industry initiatives that prioritized establishing traceability and due diligence schemes for companies that trade and process these minerals. These schemes are no substitute for genuine risk-based supply chain due diligence. In addition, large volumes of gold from eastern Congo are exported to markets in Dubai or India, where supply chain controls are very weak and often not subject to robust due diligence requirements.

In 2014 and 2015 alone South Kivu officially exported millions of dollars' worth of artisanal gold⁴³ – a figure that would be higher still if the province's entire artisanal gold production left Congo through

official channels. Using the best publicly available data, Global Witness estimates that in 2014 up to 94% of Congo's artisanal gold continued to leave the country illegally.⁴⁴

Cross-border mineral smuggling

Global Witness research has also revealed that cross-border mineral smuggling, particularly between Rwanda and Congo, remains a problem.⁴⁵ This appears to be motivated by a number of issues that include, but are not limited to, poorly executed Congolese laws on mine site validation, a higher price per kilo for 3T minerals in Rwanda, and a market perception that Rwandan minerals are less risky than Congolese minerals.

A comparison of Rwandan official export and production statistics reveals some concerning discrepancies. For example, in 2013 the National Bank of Rwanda published information about coltan exports totalling just over 2,466 tons.⁴⁶ Global Witness obtained production statistics from the Government of Rwanda for the same year that showed annual coltan production at just over 1,029.5 tons—a difference of some 1,436 tons.⁴⁷ While we are not alleging that all of this excess mineral was smuggled from Congo into Rwanda, it raises serious questions. The UN Group of Experts reported that Congolese authorities seized just under 3 tons of minerals at the border between North Kivu and Rwanda over the span of six months in 2014.⁴⁸ In 2015, the Congolese radio station Radio Okapi reported that the Congolese government seized almost 200 tons of tin and tantalum that were attempted smuggled into Congo's neighboring countries.⁴⁹

While Rwanda and the Congo have taken some positive steps to address smuggling, continued political will and regional engagement is crucial to ensuring minerals that may have funding conflict or human rights abuses in the Congo do not enter global supply chains. These efforts must be complemented by robust due diligence by the companies who buy, sell, and process minerals originating from Rwanda. Traders and mineral exporters must do their part to discern where the minerals they purchase originate and whether the minerals may have been smuggled from the Congo. Metal processors and companies further downstream that manufacture products containing tin, tantalum, tungsten and/or gold must also make inquiries about the source of the minerals and the quality of due diligence being conducted by their suppliers. These supply chain checks are an important means of ensuring all available leverage and information is enlisted in efforts to facilitate a responsible trade while keeping ill-gotten minerals out of global supply chains.

Complex conflicts demand complex solutions

In the last twenty years, eastern Congo has had two civil wars and has experienced periods of intermittent violence. The conflict is multifaceted and stems from many grievances that have not adequately been addressed: long-standing ethnic tensions, conflicts over land rights, and a power vacuum that has invited numerous armed groups to operate, often with impunity.

While minerals are not at the root of these conflicts, they have provided the funds to exacerbate fighting. Complex conflicts demand complex solutions: one part of this solution is a more responsible minerals trade that provides jobs and development, not guns or an incentive to fight. Supply chain due diligence alone will never be a sufficient means to end intractable conflicts, like those of eastern Congo, but it is a critical component of the solution.

Abandoning Section 1502 on the grounds that it alone has not solved this complex problem implies a search for a single miracle cure. It is our belief that no such cure exists, and that any such search will therefore be in vain. In the meantime; poverty and conflict will continue to claim lives and livelihoods;

while unscrutinised supply chains will continue to deny miners and communities their fair share of profits and the resources to which they are entitled. All of our efforts should focus on building on what has been achieved to date in the search for a comprehensive solution comprised of numerous coordinated and sustained components and initiatives. What we have learned from the implementation of the Conflict Minerals Rule to date offers an opportunity to build on its achievements while addressing the problems it has uncovered. Complexity is no excuse for inaction or indifference.

Conclusion and Recommendations

Eastern Congo's mineral wealth has the potential to generate much-needed revenues for the state and Congo's eastern provinces. A responsibly managed artisanal mining sector could benefit local communities for generations to come. We want to see supply chains that are responsibly managed to benefit of miners, their communities, and the country as a whole; rather than benefiting armed groups. We want to see companies remain engaged in high-risk areas like Congo, but carefully and responsibly so. Responsible sourcing is about much more than checking boxes and filing forms. It is about showing appropriate care and concern for the communities your operations impact and for those who make up the supply chains without which businesses cannot function. This law is about changing how companies do business.

It is already catalyzing important change, but more must be done by the US government and American companies:

- All companies that use minerals from eastern Congo and other high-risk areas, including those under scope of the conflict minerals rule, must carry out supply chain due diligence in alignment with the OECD framework, continually seek to improve the depth and scope of their due diligence, and publish meaningful and detailed reports that demonstrate their efforts to address supply chain risks.
- The SEC must uphold its obligation to enforce the rule, with particular emphasis on the supply chain due diligence requirements, by holding companies accountable for incomplete reporting and not meeting basic requirements.
- The US government should use its influence to advocate for the Congolese government to reform its mining sector at a local level, including strengthening and enforcing domestic laws banning the involvement of the military in mining activities, stamping out impunity among high-ranking members of the Congolese army and other criminal and corrupt actors benefitting illegally from eastern Congo's mineral wealth.

¹ Securities and Exchange Commission, "Conflict Minerals; Disclosure of Payments by Resource Extraction Issuers; Final Rules," 17 CFR Parts 240 and 249b (hereafter, "SEC Final Rule"), September 12, 2012, <https://www.sec.gov/rules/final/2012/34-67716.pdf>. The Final Rule defines the term 'conflict minerals' as "columbite-tantalite, cassiterite, gold, wolframite, and their derivatives, and any other mineral or its derivatives determined by the Secretary of State to be financing conflict in the Covered Countries whether or not they actually financed or benefited armed groups." We are concerned that this definition attaches a negative connotation to all coltan, cassiterite, gold and wolframite from Congo and its neighboring countries, even in cases where these minerals are responsibly mined and traded, and not linked to conflict and armed groups. The definition also excludes minerals linked to conflict in other parts of the world which may in some cases nevertheless also be properly termed 'conflict minerals.'

² SEC, "Comments on Reconsideration of Conflict Mineral Rule Implementation," March 7, 2017, <https://www.sec.gov/comments/statement-013117/cll2-1618221-137060.pdf>

³ Lynch, Sarah and Emily Stephenson, "White House plans directive targeting 'conflict minerals' rule: sources," February 8, 2017, Reuters, <http://www.reuters.com/article/us-usa-trump-conflictminerals-idUSKBN15N06N>

⁴ Frankel, Todd, "Why Apple and Intel don't want to see the conflict minerals rule rolled back," February 23, 2017, The Washington Post, http://wapo.st/2lJUiVn?tid=ss_tw

⁵ Tiffany & Co., "Tiffany & Co. Statement Supporting Diligence And Transparency In Addressing Conflict Minerals," 9 February, 2017, <http://press.tiffany.com/News/NewsItem.aspx?id=302>

⁶ More information about Global Witness is available from our website: www.globalwitness.org

⁷ Securities and Exchange Commission, "Global Witness, Conflict Mineral Update," February 27, 2012, <https://www.sec.gov/comments/s7-40-10/s74010-508.pdf>

⁸ We have not been able to travel to Congo in almost a full year due to security concerns and an apparent government crackdown on international non-governmental organizations operating in the country.

⁹ The metals tin, tungsten and tantalum are derived from the minerals cassiterite, wolframite and the mineral composite coltan, respectively.

¹⁰ See UN Group of Experts reports on DRC, pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo and Final Reports of the UN Panel of Experts 2001 – 2004, both available at <https://www.un.org/sc/suborg/en/sanctions/1533/work-and-mandate/expert-reports>. See also UN, "Security Council Condemns Illegal Exploitation of Democratic Republic of Congo's Natural Resources," May 3, 2001, <http://www.un.org/press/en/2001/sc7057.doc.htm>. See also Human Rights Watch, "The Curse of Gold," June 2005, <https://www.hrw.org/report/2005/06/01/curse-gold>. See also CREDDHO, Communiqué de Presse N°001/CREDDHO/DPRN/011, "Tra c illicite des minerais au Nord-Kivu : La justice congolaise devra rapidement statuer en toute indépendance sur le cas agrant des présumés auteurs de tra c illicite de minerais à Goma." See also International Peace Information Service, "Mapping Conflict Motives: Katanga Update, May – September 2008," January 5, 2009. See also Global Witness reports: Under-Mining Peace, 2005; Faced with a Gun, What Can You Do? War and Militarization of Mining in Eastern Congo, 2009; The Hill Belongs to Them, The need for international action on Congo's conflict minerals trade, 2010; all available at www.globalwitness.org

¹¹ United Nations Human Rights, Office of the High Commissioner, "Guiding Principles of Business and Human Rights; Implementing the United Nations 'Protect, respect and Remedy' Framework," 2011, http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

¹² Securities and Exchange Commission, "Conflict Minerals; Disclosure of Payments by Resource Extraction Issuers; Final Rules," 17 CFR Parts 240 and 249b, September 12, 2012 <https://www.sec.gov/rules/final/2012/34-67716.pdf>, p. 56274, 56281

¹³ OECD, Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, <http://www.oecd.org/corporate/mne/mining.htm>

Although the SEC left open the possibility that "other evaluation standards may develop that satisfy the intent" of Section 1502, id. at 5,326, it recognized when adopting the national rule that "it appear[ed] that the only nationally or internationally recognized due diligence framework available [was] the due diligence guidance approved by the Organization for Economic Cooperation and Development," id. at 56281.

¹⁴ Global Witness, "War in the Treasury of the People: Afghanistan, Lapis Lazuli and the Battle for Mineral Wealth," June 2016, <https://www.globalwitness.org/en/reports/war-treasury-people-afghanistan-lapis-lazuli-and-battle-mineral-wealth/>

¹⁴ Lee, Yimou, and Joel Schectman, Reuters, How a rebel Myanmar tin mine may up-end a global supply chain, 3 December 2016, <http://reut.rs/2gz2OEI>

¹⁶ The Global Initiative Against Transnational Organized Crimes, "Organized Crime and Illegally Mined Gold in Latin America," April 2016, <http://globalinitiative.net/wp-content/uploads/2016/03/TGIATOC-OC-and-Illegally-Mined-Gold-in-Latin-America-Report-1718-digital.pdf>

¹⁷ For further information about the EU Regulation, see our website: <https://www.globalwitness.org/en/campaigns/conflict-minerals/conflict-minerals-europe-brief/>

¹⁸ The China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters (CCCME) has developed due diligence for its two thousand strong membership, also based on the OECD framework. For more information see China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters (CCCME), "Chinese Due Diligence Guidelines for Responsible Mineral Supply Chain," May 2015, <https://www.oecd.org/daf/inv/mne/CCCME-Guidelines-Project%20Brief%20-%20EN.pdf>

¹⁹ Conflict Free Sourcing Initiative, "About the Conflict-Free Sourcing Initiative", <http://www.conflictreesourcing.org/about/>

²⁰ The LBMA's Responsible Gold Guidance can be accessed at: The London Bullion Market Association, "Responsible Gold," <http://www.lbma.org.uk/responsible-gold>. The DMCC's Practical Guidance can be accessed at: Dubai Multi Commodities Center Authority, "Responsible Sourcing of Gold and Precious Metals," <http://www.dmcc.ae/gold-responsible-sourcing-precious-metals>

²¹ International Tin Research Institute, "iTSCI Project Overview," <https://www.itri.co.uk/itsci/itsci-project-overview/itsci-project-overview>. See also ITRI, "iTSCI Programme starts activities in third country, Burundi," May 20, 2014, <https://www.itri.co.uk/itsci/news/itsci-programme-starts-activities-in-a-third-country-burundi>. See also ITRI, "iTSCI extends into conflict-free areas of North Kivu, DRC," February 3, 2014, <https://www.itri.co.uk/itsci/news/itsci-extends-into-conflict-free-areas-of-north-kivu-drc>. See also ITRI, "Status Report iTSCI Rwanda Field Operations, July-December 2013," 2013, <https://www.itri.co.uk/itsci/news/itsci-status-report-rwanda-field-operations>

itri.co.uk/index.php?option=com_mtree&task=att_downloadpercent20&link_id=55084&cf_id=24

²² Better Sourcing Program, <http://bsp-assurance.com>

²³ Global Witness and Amnesty International, "Digging for Transparency," April 2015, <https://www.globalwitness.org/en/campaigns/conflict-minerals/digging-transparency/>

²⁴ Panasonic Corporation, "Responsible Supply Chain: Response Regarding Conflict Minerals," http://www.panasonic.com/global/corporate/sustainability/supply_chain/minerals.html

²⁵ Samsung Group, "Mineral Sourcing," <http://www.samsung.com/us/aboutsamsung/sustainability/suppliers/conflictminerals/>

²⁶ See Acer's 2013 Conflict Mineral Report at: Acer Incorporated, "Conflict Minerals Report," 2013, http://www.acer-group.com/public/Sustainability/pdf/ConflictMineralsReport_E.pdf. See Acer's 2014 Conflict Mineral Report at: Acer Incorporated, "Conflict Mineral Report," 2014, http://www.acer-group.com/public/Sustainability/pdf/Conflict-Minerals-Report_2014F.pdf. See Acer's 2015 Conflict Mineral report at: Acer Incorporated, "Conflict Mineral Report," 2015, http://www.acer-group.com/public/Sustainability/chinese/pdf/Conflict-Minerals-Report_2015F.pdf

²⁷ Global Witness search, using search term "Central Bank of the DPR of Korea" for all Section 1502 filings on SEC EDGAR filing search.

²⁸ US Department of the Treasury, Office of Foreign Assets Control, "North Korea: An Overview of the US Sanctions with respect to North Korea," Updated November 2, 2016, <https://www.treasury.gov/resource-center/sanctions/Programs/Documents/nkorea.pdf>

²⁹ Amnesty International, "This is what we die for: Human Rights Abuses in the Democratic Republic of the Congo Power the Global Trade in Cobalt," January 18, 2016, <http://www.amnestyusa.org/research/reports/this-is-what-we-die-for-human-rights-abuses-in-the-democratic-republic-of-the-congo-power-the-global>

³⁰ Patagonia Inc., "Protecting Migrant Workers," <http://www.patagonia.com/protecting-migrant-workers.html>

³¹ See February 18, 2017 SEC comment made by civil society groups in South Kivu working in the mining sector, <https://www.sec.gov/comments/statement-013117/cll2-1597728-132417.pdf>. See also February 16, 2017 SEC comment by the Congolese Civil Society leading the Natural Resources Cluster, <https://www.sec.gov/comments/statement-013117/cll2-1587925-132140.pdf>

³² Partnership Africa Canada (PAC), Just Gold, <http://www.pacweb.org/en/just-gold>

³³ International Tin Research Institute, "iTSCI Incident Report Summaries," <https://www.itri.co.uk/information/itsci/itsci-incident-summaries>

³⁴ Company due diligence reports obtained and held by Global Witness

³⁵ Responsible Sourcing Network, "Mining the Disclosures 2015: an Investor's Guide to Conflict Minerals Reporting in Year Two," January 20, 2017, p.9 and p.21, <http://www.sourcingnetwork.org/mining-the-disclosures>

³⁶ Responsible Sourcing Network, 2015, "Mining the Disclosures 2015: an Investor's Guide to Conflict Minerals Reporting in Year Two," <http://www.sourcingnetwork.org/mining-the-disclosures-2015/>, p.21

³⁷ All data for North and South Kivu used in this analysis is from official publicly available statistics issued by the provincial mining division in each province and held by Global Witness. Export data from the mining divisions in both provinces is publicly available, but most often must be collected in person, as neither provincial mining division has a website. Data for Rwandan mineral exports is from official publicly available statistics issued by the National Bank of Rwanda held by Global Witness and available on the Bank's website for 2013 onwards, available here: <http://www.bnr.rw/index.php?id=123>

³⁸ UN Group of Experts report, S/2014/42, January 2014, Annex 80, http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2014_42.pdf

³⁹ Our data is not aggregated by month in 2013 for South Kivu Cassiterite data, so it is possible the gap was longer than just three months.

⁴⁰ For the purposes of this analysis, the official export data that we have refers to Cassiterite, Coltan and wolframite, from which tin, tantalum and tungsten are derived, respectively.

⁴¹ PR Newswire, "Rwanda has Become World's Largest Coltan Exporter, Reports KT Press," December 16, 2014, <http://www.prnewswire.com/news-releases/rwanda-has-become-worlds-largest-coltan-exporter-reports-kt-press-300010371.html>

⁴² National Bank of Rwanda publish price information per kilo per mineral exported per year, available at <http://www.bnr.rw/index.php?id=123> Publicly available pricing information, for example that provided by www.infomine.com also show some price decline for global tin, tantalum and tungsten prices since 2012.

⁴³ South Kivu officially exported \$12,575,979 (2014) and \$2,881,664 (2015) worth of artisanal gold, according to annual export reports compiled by the provincial Mining Division.

⁴⁴ Using data collected during 2013 and 2014, IPIS estimated that Congo's annual artisanal gold production is 8,000kg-10,000kg (IPIS, "Mineral supply chains and conflict links in eastern DRC: 5 years of implementing supply chain due diligence", published by OECD, 2015, p.24). The Congolese Ministry of Mines' official artisanal gold export statistic for 2014 is 632.51 kg. A comparison of these figures suggests that in 2014 only around 6-8% of artisanal gold was exported legally.

⁴⁵ Global Witness anonymous interviews with diggers, traders, smugglers and mining sector officials 2012, 2013, 2014, 2015 in North and South Kivu and Rwanda.

⁴⁶ National Bank of Rwanda statistics available at <http://www.bnr.rw/index.php?id=123> See also media coverage of Rwandan coltan exports for 2013. Global Witness has seen an independent data set for exports for the same year, which is comparable. <http://www.prnewswire.com/news-releases/rwanda-has-become-worlds-largest-coltan-exporter-reports-kt-press-300010371.html>

⁴⁷ Production statistics obtained by Global Witness from Rwandan mining sector officials April 2014. Available upon request.

⁴⁸ UN Group of Experts report, S/2015/19, January 2015, http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2015_19.pdf, Annex 46, p.121.

⁴⁹ Radio Okapi, Nord-Kivu: plusieurs tonnes de minerais exportées frauduleusement, November 10, 2015, <http://www.radiookapi.net/2015/11/10/actualite/societe/nord-kivu-plusieurs-tonnes-de-minerais-exportees-frauduleusement>