

AN OPEN LETTER

Dear governments, companies, non-governmental organisations, and other stakeholders implicated in efforts of various kinds related to the issue of 'conflict minerals',

In early 2014, two international industry giants – Intel and Apple – issued refined corporate social responsibility policies for minerals sourced in the eastern Democratic Republic of the Congo (DRC). The announcements followed an unprecedented wave of guidelines, law-making, and initiatives over the past few years to 'clean up' the eastern DRC's mining sector, and were met with widespread praise.

Perhaps the most widely publicised of these efforts is US legislation known as Section 1502 of the Dodd-Frank Act, which asks all companies registered on the US stock market to reveal their supply chains to the Securities and Exchange Commission (SEC) when sourcing minerals from the eastern DRC or neighbouring countries. Canada is in the advanced stages of developing similar legislation, and many other countries are looking closely at the issue. The European Union has introduced a voluntary conflict minerals regulation scheme for all member states, and the United Nations (UN) and Organisation for Economic Cooperation and Development (OECD) have developed guidelines on sourcing natural resources in high-risk areas such as the eastern DRC.

These efforts primarily target artisanal (or 'informal') mining in the eastern DRC, due to widespread international recognition that so-called conflict minerals (most notably tin, tantalum, tungsten, and gold) produced by artisanal mining in this part of the world have helped conflict actors generate revenue to finance their operations in the DRC over the past two decades.

The Situation

Despite successes of activists in shaping policy, the conflict minerals campaign fundamentally misunderstands the relationship between minerals and conflict in the eastern DRC. First, while the minerals help perpetuate the conflict, they are not its cause. National and regional political struggles over power and influence as well as issues such as access to land and questions of citizenship and identity are just some of the more structural drivers of conflict. The ability to exploit and profit from minerals is often a means to finance military operations to address these issues, rather than an end in itself. Internal UN assessments, for instance, show that only 8% of the DRC's conflicts are linked to minerals, and specific motivations vary greatly across the vast array of different armed groups.

Second, armed groups are not dependent on mineral revenue for their existence. The eastern DRC is a fully militarised economy, in which minerals are just one resource among many that armed groups – and the national army FARDC – can levy financing from. The M23, until recently the most powerful non-state armed group in DRC, never sought physical control over mining activity.

Moreover, 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. Setting up the required systems and procedures to regularly access and audit thousands of artisanal mining sites in isolated and hard-to-reach locations spread across an area almost twice the size of France would be a challenge for any government. In the eastern DRC, where road infrastructure is poor to non-existent and state capacity desperately low, the enormity of the task is hard to overstate. But in demanding that companies prove the origin of minerals sourced in the eastern DRC or neighbouring countries before systems able to provide such proof have been put in place, conflict minerals activists and resultant legislation – in particular Section 1502 of the Dodd-Frank Act – inadvertently incentivize buyers on the international market to pull out of the region altogether and source their minerals elsewhere.

The Result

As a result, the conflict minerals movement has yet to lead to meaningful improvement on the ground, and has had a number of unintended and damaging consequences. Nearly four years after the passing of the Dodd-Frank Act, only a small fraction of the hundreds of mining sites in the eastern DRC have been reached by traceability or certification efforts. The rest remain beyond the pale, forced into either illegality or collapse as certain international buyers have responded to the legislation by going 'Congo-free'.

This in turn has driven many miners into the margins of legality (for instance, feeding into smuggling rackets), where armed actors return through the loopholes of transnational regulation. Others have simply lost their jobs, and in areas where mining has ceased, local economies have suffered. To put this in context, an estimated eight to ten million people across the country are dependent on artisanal mining for their livelihood. Some former miners have returned to subsistence agriculture, but persisting insecurity levels leave them in abject poverty facing dire living conditions, in fear of missing harvests due to displacement. Others have been prompted to join militias as a means to quick cash in the absence of other opportunities; a particularly perverse impact, when one considers the intentions of the movement.

Alongside the impact on mining communities and local economies, several armed groups have responded by turning to different businesses such as trading in charcoal, marijuana, palm oil, soap, or consumer goods. Those remaining in the mining sector have largely traded mineral exploitation on site for mineral taxation a few steps down the supply chain, operating numerous roadblocks that can bring in millions of dollars a year. Others are reported to have sent in family members or civilian allies to run business for them on site, while they remain safely at a distance.

For the few mining sites fortunate enough to be reached by Joint Assessment Teams responsible for determining their 'conflict-free' status, these teams have been unable to provide the regular, three-month validation visits envisaged in legislation. There is an additional delay of several months following these visits before the Congolese Ministry of Mines reviews and approves the assessment at the national level. Given the speed at which situations can change in volatile environments, infrequent assessments and lengthy delays raise concerns over the accuracy of certification and the credibility of the system.

More worrying still, multinational corporations such as Apple and Intel are auditing smelters to determine the conflict-free status of the minerals they source, and not the mines themselves. As smelters are located outside of the DRC and audits are not always conducted by third parties, these processes raise further concerns over whether conflict-free certifications reflect production realities.

By far the most advanced site in terms of producing 'conflict-free' minerals for sale to the international market is Kalimbi, a tin mining area home to externally-financed initiatives running an industry-led bagging-and-tagging scheme called iTSCi. Yet even here, despite the establishment of a 'closed pipeline' from mine to exportation, the mine still suffers from the sporadic influence of armed actors, and miners are made to bear the additional costs of 'conflict-free' schemes. This raises further concerns over the credibility of the system in place, and its suitability for the scale-up and expansion to other, more remote mine sites currently underway. Coupled with slow progress in implementation, the trend towards the monopolisation of 'conflict-free' supply chain initiatives, in particular traceability by iTSCi, is economically damaging to local populations since it currently excludes and isolates the overwhelming majority of mining communities from legal access to international markets.

The Alternative

There is broad consensus for the need to clean up the eastern Congo's minerals sector, yet much disagreement about the international community's current model for achieving this goal. As such, efforts to improve transparency in the eastern DRC's mineral supply chains should continue. Yet a more nuanced

and holistic approach that takes into account the realities of the eastern DRC's mining sector and the complexity of the conflict is needed. To this end, we make the following five recommendations:

- **Improve consultation with government and communities:** Congolese government and civil society were poorly consulted on Section 1502 of the Dodd-Frank Act prior to its passing, and as a result many were unaware of its implications. The few who were consulted were unanimously pro-Dodd-Frank, creating additional conflicts on local levels where endorsement and dissent compete. More Congolese voices must be listened to, and the local context and power structures taken into account. This would ensure greater understanding of the local context and better harmonisation with existing national and regional initiatives, such as the International Conference of the Great Lakes Region's (ICGLR) Regional Initiative against the Illegal Exploitation of Natural Resources.
- **Work towards meaningful reform:** The audit process should be designed to improve policies and practices rather than to just provide window-dressing. The dominant belief that static oversight and validation processes ensure 'conflict-free' mineral trade is misplaced given the volatile security situation in most of the eastern DRC. Both mines and smelters should be regularly inspected and the time period between inspection and certification minimized. Where this is not feasible, additional waivers or similar measures should not be ruled out.
- **Create incentives towards better practice:** Legal frameworks must be supported by real projects on the ground that can meet their requirements. If this is not possible – which is clearly still the case today, nearly four years after the passing of Dodd-Frank – then transition periods must be extended and the lowering of excessively high standards for 'conflict-free' minerals should be considered. Similarly, former conflict actors should be incentivised where appropriate to join new 'conflict-free' schemes. This may help avoid the eventual subversion or infiltration of the 'clean' system put in place, as has been seen to date.
- **Promote fair competition:** Regulation must be based on competition that allows not only international businesses but also Congolese producers to influence (i.e. increase) local price schemes. This in turn would encourage a regime that ensures minimum wages which mining cooperatives can guarantee to their members based on their increased leverage on the price fluctuation.
- **Widen the lens:** Root causes of conflict such as land, identity, and political contest in the context of a militarized economy, rather than a single focus on minerals, must be considered by advocates seeking to reduce conflict violence. Furthermore, efforts to eradicate conflict minerals should not overlook the fact that artisanal mining is a key livelihood in the eastern DRC that holds as much potential to help steer the region away from conflict as it does to contribute towards it. More supportive measures are needed – such as those found in the earlier 2009 draft of the US Conflict Minerals Act – that can help capture the economic potential of artisanal mining. Finally, other critical challenges such as access to credit, technical knowledge, hazardous working conditions, and environmental degradation should not be ignored by multinational corporations if they seek to improve business practices and increase transparency in their supply chains.

So far, progress has been made in producing more ethical products for consumers, but stakeholders have not yet proceeded to improve the lives of Congolese people, nor address the negative impact current 'conflict-free' initiatives are having. If the conflict minerals agenda is to lead to positive change on the ground, legislation passed by national governments and steps such as those outlined by Apple or Intel need to be grounded in a more holistic approach that is better tailored to local realities. Failure to do so will continue to seriously limit the ability of conflict minerals initiatives to improve the daily lives of the eastern Congolese and their neighbours. Worse, these initiatives will risk contributing to, rather than alleviating, the very conflicts they set out to address.

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All the signatories listed express their support to the open letter in its above form but not necessarily approve of accompanying opinion pieces and/or explanatory notes, which remain their respective authors' views.