VOICE

How Dodd-Frank Is Failing Congo

The campaign to stop conflict minerals is supposed to be protecting people's lives in one of the most fragile parts of Africa. In fact, it seems to be doing the opposite.

BY LAUREN WOLFE | FEBRUARY 2, 2015, 9:26 AM

Minerals are ruining lives. For several years now, in conversations about conflict and crisis in the Democratic Republic of Congo, this has been a common refrain.

About $24 trillion worth of gold, tantalum, tin, and tungsten are estimated to be in Congo's eastern hills. They are dug from the fertile, brown mud there through exploitation: Kilos upon kilos of rocks and water are lifted and filtered each day for a few dollars per laborer. Minerals are smuggled, too, and help to line the pockets of the security guards, militias, and Congolese soldiers who lord over mining sites, wielding weapons and perpetrating sexualized violence against women. By extension, the advocacy message goes, the "conflict minerals" from Congo that wind up in devices like iPhones cause rape. U.S. electronics and other expensive, shiny things fuel war. Individuals and companies must not buy dirty minerals, because exposing and cleaning up supply chains will reduce the stranglehold armed groups have on Congo's mines.

These ideas helped shape a tiny section of the Dodd-Frank financial reform law, passed by the U.S. Congress in 2010, called Section 1502. This section requires companies registered with the U.S. Securities and Exchange Commission to disclose whether they are receiving tantalum, tungsten, tin, and gold from Congo, and whether those minerals are connected to sites of conflict, which is determined through an expensive certification process on a mine-by-mine basis by something known as the Regional Certification Mechanism of the intergovernmental International Conference on the Great Lakes Region. Companies had to file their first disclosures in May 2014.

But declaring products "conflict-free," as the label is known, is not so simple, many critics say, and the message that Congo's minerals cause rape and other horrors is not exactly true.

At the beginning of September, 70 academics, researchers, journalists, and advocates published a blistering open letter criticizing Dodd-Frank and its backers, asserting that the groups and activists pushing to stop the trade of conflict minerals risk "contributing to, rather than alleviating, the very conflicts they set out to address." Their campaign "fundamentally misunderstands the relationship between minerals and conflict" in Congo, the signatories said. (Some critics have gone further still, charging that the advocates who sculpted and pushed Dodd-Frank have even misrepresented, in the name of what they see as a greater good, the situation on the ground in Congo.) Two months later, on Nov. 30, the *Washington Post* published a long investigative feature describing how Dodd-Frank "set off a chain of events that has propelled millions of miners and their families deeper into poverty."

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Ben Radley, a signatory of the September letter and an independent researcher who is making a documentary about Dodd-Frank's impact in Congo, summed his concerns up in an interview: While the concept of conflict minerals is convenient for people far from Africa, it is inducing incredible hardship for the miners and their families. "Congolese miners," he said, "are paying to ease the consciences of Western consumers."

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At the root of this dilemma is a series of loudly propagated myths about what is going on in Congo's mines, how conflict is affecting the country, and how exactly the supply chain that feeds minerals into the global market is regulated.

It is high time these myths were dispelled.

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Myth: Armed groups control and rely on most of Congo's mines, and Dodd-Frank has helped to counteract them.

Mireille Mbale has used a jagged rock for a stool as she works since she was three years old. Squatting in a long red skirt, she sifts the coppery dirt of eastern Congo through a piece of mesh as fine as she can find — the tinier the holes, the more bits of gold distinguish themselves in her smashed-up stones, and the more money she is paid. With the $1 to $5 she earns each day, Mbale supports her herself and her daughter. “I pay my rent and the food ration for my household,” she said in an interview in 2014. Although she suffers dust in her lungs and pains in her back, she said she hopes her work in the mine will help her realize her dreams: “getting my daughter an education up to the university level, and buying a small piece of land to take care of my household.”

Mbale is one of an estimated 8 million to 10 million people who rely on mining to earn a living in eastern Congo. Where Mbale works, at a gold mine in Kamituga in South Kivu province, armed warlords are not a problem. Her mine is controlled instead by civilian men who insult and neglect her, she said.

Many Congolese mines, in fact, are not controlled or affected by armed groups. Radley and Christoph Vogel, an independent analyst on Africa, wrote in September in the *Washington Post* that their own fieldwork, backed up by other academic research in eastern Congo, shows that mines controlled by armed actors actually constitute “a small number.” It is hard to determine exactly how many, because the number is always shifting in the murk of conflict; it is “very dynamic and very unstable,” said Sophia Pickles, the lead campaigner on conflict minerals at the U.K.-based advocacy organization Global Witness, which focuses on resources and corruption around the world. But Radley and Vogel’s work at least provides a snapshot of the situation on the ground.

Barnard College political science professor Séverine Autesserre has offered a broader critique in a similar vein: In 2012, she estimated that only 8 percent of the country’s ongoing conflict has anything to do with natural resources. Moreover, in the September 2014 letter, the signatories noted that “armed groups are not dependent on mineral revenue for their existence.” Many groups can easily turn from minerals to palm oil, charcoal, timber, or cannabis to make money — not to mention extortion, illegal taxes, and other means. What’s more, some civilians who work in artisanal mining began doing so as a way to support themselves when militias pushed them out of their agricultural fields, academics and activists in eastern Congo said in interviews.

In other words, the relationship between mining and conflict is not nearly as clear-cut as many Dodd-Frank backers say. Nonetheless, the anti-conflict-minerals campaign has focused intensely on this link.

Recently, the claim has been pushed even further: Advocacy groups — especially the Enough Project, a U.S.-based anti-genocide group and a key supporter of Dodd-Frank — have asserted that the 2010 law has decreased the presence of armed groups at Congo's mines. The Enough Project said this past summer that such groups have lost power of over two-thirds of mines they previously controlled because of Dodd-Frank. According to *the Guardian*, Enough said it had carried out "five months of field research in eastern Congo, interviewing 220 people in 14 mines and towns, in addition to 32 interviews in the U.S. and Europe." What did it find? "Armed groups and the Congolese army are no longer present at two-thirds (67 percent) of tin, tantalum, and tungsten mines surveyed in eastern Congo's North Kivu, South Kivu, and Maniema provinces," the group told the newspaper.

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The assertion that any decrease was due to Dodd-Frank, however, is simply impossible to prove. That two things — armed groups' loss of control and the law's implementation — happened over the same four years (2010 to 2014) does not mean that the latter caused the former, Laura Seay, an assistant professor of government at Colby College and one of the September letter's signatories, said in an interview. "They are making a classic correlation/causation error here," Seay explained. Plenty of other developments could have led to armed groups losing their grip on whatever mines they did control: During the same period, for instance, there was an increased number of U.N. and Congolese army missions fighting rebel groups.

In March 2014, Seay wrote in the *Washington Post* that Enough's founder, John Prendergast, had wrongly attributed the fall of M23, a militia group considered "defeated" by the U.N., in part to the campaign to stop conflict minerals. According to Seay, "M23 never controlled mining areas" in the first place. Similarly, a 2012 report by the International Peace Information Service, an independent Belgian research group on sub-Saharan Africa, found that though M23 had profited from smuggling and taxation of minerals, "establishing full military control over mining areas to maximize profits is not M23's priority for now. As a consequence it has to rely on other means to sustain its war effort." Seay also noted that research actually shows that violence seems to have increased in eastern Congo *after* Dodd-Frank went into effect. She cited research by the AidData Center for Development Policy (ACDP) at the College of William and Mary, which found that "a narrative of increasing violence and diminishing productivity in the DRC's natural resource sector" hints at "a possible correlation between the two."

Critics of Dodd-Frank are very direct: "Despite successes of activists in shaping policy, the conflict minerals campaign fundamentally misunderstands the relationship between minerals and conflict in the eastern DRC," the authors of the September letter wrote. They went on to write, "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."

Myth: Dodd-Frank will make life better for Congolese civilians.

Holly Dranginis, a Congo policy analyst at Enough, is confident her group's work is paying off, slowly. Certification required by Dodd-Frank and other related efforts, she said in an interview, will eventually make life "just a lot better for the lowest-level miners."

But for now at least, the law seems to be doing the opposite. When Dodd-Frank passed, Congolese President Joseph Kabila put a ban on all mining and mineral exports in North and South Kivu and Maniema provinces. Though the ban was officially lifted in 2011 after the government supposedly had a chance to put programs into place that could trace where minerals came from, its ripple effects have persisted: Many artisanal mines have remained closed, and countless livelihoods have been destroyed, according to academics and activists. Seay estimated in 2012 that between five and 12 million Congolese had been "inadvertently and directly negatively affected" by the loss of employment created by the ban and its aftershocks. (Mbale lost her job for a period, but was able to find work at a new mine after the ban was lifted.)

As just one example of an aftershock, Malaysia Smelting, one of the world's largest producers of tin, stopped buying ore from Congo altogether. Like many companies, it feared being labeled a user of conflict minerals and felt it could not determine which were conflict free. (Due diligence under section 1502 is expensive: A 2011 Tulane University study commissioned by U.S. Senator Dick Durban estimated the implementation cost of 1502 at $7.93 billion to private companies.) Previously, Malaysia Smelting had purchased more than 80 percent of Congo's tin, Reuters reported, so the economic loss was dramatic. In May 2011, Bloomberg News reported that sales of tin from North Kivu "fell more than 90 percent" the previous month as a result of companies like Malaysia Smelting pulling out. And indeed, Malaysia Smelting wasn't alone: According to a March 2014 article in *TechRepublic*, other smelters have also joined in a "de facto boycott" of Congo minerals.

According to the *Washington Post*'s November 2014 investigative report, back before Dodd-Frank passed, miners sold a kilogram of tin for $7. Today, that number has dropped to just $4, even though the global market price for the ore has risen. "[T]he loss of American and other Western clients has been keenly felt" in Congo, the newspaper noted.

Donatien Nakalonge of Volunteers for Rural Development, a non-governmental group that works in South Kivu and is known by its French acronym (VODER), has witnessed the impacts of this economic crisis up close. "This law [Dodd-Frank] has taken food out of the mouths of the artisanal miner's family," he said in an interview.

In early December, Sasha Lezhnev, a senior policy analyst at Enough, wrote in an email that the legislation's immediate impact on miners' livelihoods "is a real and serious problem that must be addressed through more robust initiatives to aid and empower Congolese miners." He pointed out that Enough has been pushing the U.S. government, as well as metal and tech companies, to contribute to "livelihood funds" for miners, and he said progress is being made through a number of programs: In 2014, the U.S. Agency for International Development began a $5.8 million Capacity Building for Responsible Minerals Trade project and a $20 million community recovery project. Unfortunately, Lezhnev also said, $20 million was allotted for such programs in the Conflict Minerals Trade Act (which was floating around Congress before being nixed in favor of 1502) but "got taken out at the last minute when it was folded into the Dodd-Frank Act." However, this account is disputed by Didier de Failly, director of a Congolese science and technology research institute, who claims Prendergast told him in 2010 that Enough actually *chose* to support only the regulatory language that became Section 1502. Lezhnev countered by saying Failly "must have misunderstood John" and noting that "Enough had lobbied heavily for the inclusion of livelihoods provisions into the bill."

Conceivably, corporations buying conflict-free minerals could bring job training to local communities while slowly implementing tracing schemes and other ways by which to extract clean minerals. But there's only so much any one company can do, and no one I spoke to in eastern Congo said they've seen evidence of such programs yet. Meanwhile, Mike Loch, who leads a supply chain corporate responsibility program for Motorola, which sources minerals in Congo, said in an interview, "We're not looking to subsidize the mining industry; that would not be a sustainable business model. Our role is to lend our brand and reputation to say we're willing to accept legitimate, verified, conflict-free minerals from the region into our products."

Myth: Dodd-Frank is being successfully enforced.

If you ask the Enough Project, Dodd-Frank is working. But even the advocacy group admits that companies are struggling with regulating at least one of the minerals named in the law. "Market changes spurred by the 2010 Dodd-Frank law on conflict minerals have helped significantly reduce the involvement of armed groups in eastern Democratic Republic of Congo ("Congo") in the mines of three out of the four conflict minerals," Lezhnev and other staffers at the project wrote last June. The fourth, more difficult, mineral they are referring to is gold.

Smuggling remains a huge problem — for gold especially, but also for other minerals. A lot of criticism is aimed at what is known as the "tag and bag" system, which involves tying a small plastic tag around a bag of minerals to certify it as "clean." According to Radley, "The closer you get to the ground, the more farcical it looks." In March 2013, for instance, Global Witness discovered that the Congolese military had been running a racket at the Kalimbi cassiterite mine in South Kivu: It was siphoning off ore before it could be bagged and tagged, and selling it through a parallel supply chain for the local colonel's profit. As a result, two tons of uncertified ore had slipped quietly out of Kalimbi and ended up north, in Goma, the previous December. There have also been cases of mine officials selling tags at $20, which are then used to label "dirty" tin as "conflict-free," a local NGO worker named Eric Kajemba told Deutsche Welle in October. "Mine officials only earn $60 a month, so they are still easy to bribe."

"Congo is a place where almost every public official is bribable," Seay said in an interview. "I think there's a huge level of naiveté about how enforceable this is."

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Smuggling also allows illegal traders to offer a better price by at least 2 percent, according the U.N. Group of Experts on the Democratic Republic of the Congo, which reports regularly on the situation in Congo, because they don't have to pay export taxes. The group says that in addition to illegal traders' fudging weights of smuggled minerals, "the lack of regulation of the trade facilitates fraud at the local, intermediate and regional levels."

There are other problems with enforceability, too: Minerals can be laundered through places like China or Brazil, making their actual origin unidentifiable — but also allowing them to be deemed clean. Global Witness's Pickles calls this a "kind of a cop-out."

On-the-ground certification is also cumbersome and slow-moving: In South Kivu alone, out of more than 900 mines, only 11 are tagging minerals at this point as "conflict-free," Adalbert Murhi Mubalama, the province's minister of mines, told the *Washington Post*. And, at the beginning of September, the U.S. government announced that it "does not have the ability to distinguish" which refiners and smelters outside of Congo are financing sites within the country that are in fact run by militias.

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Some critics are starting to see a revision or repeal of Dodd-Frank as inevitable. Rosa Whitaker, a former negotiator at the World Trade Organization (WTO) and assistant U.S. trade representative for Africa, says that countries that are economically impacted by Dodd-Frank are considering bringing a suit against the United States through the WTO on the grounds that Section 1502 is against its rules of trade. Whitaker added that meddling with such a massive source of income for the decrepit Congolese economy is more than an economic gamble — it is an ethical lapse. "I think a lot of the NGOs really have to examine their own humanity," she said.

Congolese miners, in the meantime, are caught in a number of liminal states: between no job and a grueling one, and among NGOs trying to help but actually hurting them, companies seeking to make a profit from their labor while navigating international regulations, and a government that largely ignores them.

Radley, echoing other 1502 watchers, said, "I think at the moment [Dodd-Frank has] done more harm than good." He has hope that it could "do good — 10, 20, 30 years down the line."

But, he added, "It's going to be a long, painful process."

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