



**Statement by Amnesty International USA for
The Subcommittee on Africa and Global Health Policy Hearing on
“Progress Report on Conflict Minerals”
April 5, 2017
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Thank you to the Committee for the opportunity to submit our statement. Amnesty International would like to take this opportunity to urge Congress and the Trump administration not to repeal Section 1502 of the Dodd Frank law. We believe that the country conditions and human rights concerns that spurred passage of the legislation remain present and are cause for grave concern. Amnesty International also believes that strengthening and improving transparency and accountability in the operations and activities of corporations contribute are critical positive contributions in the effort to protect human rights -- a perspective shared by the number of corporations that acted to comply with 1502 and that have spoken up on favor of retaining the law.

Amnesty International is a global movement of more than seven million people working to ensure the protection and realization of human rights worldwide. Our statement is based on extensive research and experience on human rights issues including those linked to the extraction and trade of minerals, at the national, regional and international level.

This research and advocacy has convinced us of the value of disclosure laws such as Section 1502 of the Dodd Frank law. Companies must do their part to avoid fuelling conflict or human rights abuses through their supply chain practices. Our conclusions are detailed below and are reinforced by our recent research on child labor and hazardous conditions in artisanal mining of cobalt in the Democratic Republic of the Congo (**DRC**).

Dodd-Frank has set an important example of why we need laws on supply chain due diligence. In January 2016 we released the report entitled *“This is what we die for: Human rights abuses in the Democratic Republic of the Congo power the global trade in cobalt”*, that traced the sale of cobalt, used in lithium-ion batteries, from mines where children (some as young as seven) and adults work in dangerous conditions. In the research leading to Amnesty’s 2016 report, businesses selling products that included cobalt told us that they were not investigating possible violations connected with cobalt mining because there was no legal requirement that they do so.

Amnesty International also has extensive experience working on international standards on conflict minerals. Amnesty is Co-Chair of the Multi-Stakeholder Steering Group (**MSG**) for the Organization of Economic Co-operation and Development's *OECD Due Diligence Guidance on Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (OECD Guidance)*. In April 2015 we published *Digging for Transparency*, a joint analysis with Global Witness of the first Conflict Minerals Reports filed with the Securities and Exchange Commission (SEC). Amnesty International is a leading member of the civil society coalition working on the recently adopted European Union Conflict Minerals Regulation.

The Global Consensus for Corporate Due Diligence in Mineral Supply Chains

In December 2009, the Security Council instructed the Group of Experts on the DRC to begin developing due diligence guidelines for actors sourcing minerals from the DRC.¹ At that time, the trade in tin, tantalum, tungsten and gold (3TG) had fuelled violent conflict in the eastern DRC for over a decade. Although minerals were not the root cause of the conflict, the UN Security Council had explicitly recognized that the illicit exploitation and trade of natural resources was “one of the major factors fuelling and exacerbating conflicts in the Great Lakes region of Africa.”² The UN Security Council had therefore expanded its Chapter VII sanctions regime on the DRC to cover actors supporting armed groups in the eastern DRC through the illicit trade of natural resources.³

The original purpose of the due diligence guidelines was to help actors in the supply chain (including companies) mitigate the risk that they were directly or indirectly supporting armed groups in the eastern DRC – and thereby to help them avoid violating UN sanctions or being put on the UN Sanctions List.

As part of that work, the Group of Experts identified the broader risk that actors in the minerals supply chain were “directly or indirectly supporting criminal networks and perpetrators of serious human rights abuses ... [and] directly or indirectly worsening the conflict in the east [of the DRC].”⁴ The Group of Experts therefore developed an expanded set of due diligence guidelines designed to help companies mitigate the risk of exacerbating the conflict through providing direct or indirect support to illegal armed groups or perpetrators of serious human rights abuses (among others).⁵

¹ UN Doc: S/RES/1896(2009), para. 7.

² UN Doc. S/RES/1857(2008).

³ UN Doc: S/RES/1857(2008), para 4(g).

⁴ UN Doc. S/2010/569, para. 313.

⁵ UN Doc. S/2010/569, para. 317.

In November 2010, the UN Security Council voted to take forward the Group of Experts' expanded due diligence guidelines.⁶ Those guidelines relied upon the framework recently elaborated by the Organization for Economic Co-operation and Development (OECD) *Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*. The Guidance, a five-step, risk-based due diligence framework, was developed through a multi-stakeholder process that included the OECD and eleven countries of the International Conference on the Great Lakes Region (Angola, Burundi, Central African Republic, Republic of Congo, Democratic Republic of Congo, Kenya, Rwanda, Sudan, Tanzania, Uganda and Zambia), industry, civil society, as well as the United Nations Group of Experts on the DRC.⁷ The OECD Guidance reflects a clear international consensus that companies have a responsibility to conduct due diligence when sourcing minerals from conflict-affected and high-risk areas. The Guidance provides specific advice to companies on how to meet that responsibility, including how to identify and mitigate potential and actual risks and abuses in their supply chains. U.S. and global industry actively supported the Guidance ten years ago, and still actively engage in the Multi-Stakeholder Steering Group for the OECD Guidance including as Co-Chairs.

In July 2010, the United States Congress enacted legislation as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act requiring companies to begin reporting their sourcing practices to the U.S. Securities and Exchange Commission (SEC). The SEC's conflict minerals rule effectively brought into U.S. law a globally-endorsed corporate due diligence standard.

In 2012, as required under s1502, the Securities and Exchange Commission published its rule requiring listed companies to publicly disclose their use of conflict minerals that originated in the Democratic Republic of the Congo (DRC) or an adjoining country.

The OECD Guidance now forms the basis of due diligence laws and standards on the responsible sourcing of minerals across the world. Since Dodd-Frank was passed in July 2010, due diligence laws and other measures based on the OECD Guidance have been endorsed by the European Union, China and the 12 African countries that constitute the ICGLR. For example, the European Union recently adopted a new law on conflict minerals to apply to all European Union member states aimed at tackling the financing of armed groups in conflict-affected and high-risk areas through the exploitation and trade of tin, tantalum, tungsten and gold. The regulations are an important step forward towards a legal framework ensuring that the vast majority of these minerals and metals imported into the EU are sourced responsibly.

⁶ UN Doc. S/RES/1952(2010).

⁷ <https://www.oecd.org/corporate/mne/GuidanceEdition2.pdf>

The OECD Guidance also aligns with the United Nations Guiding Principles on Business and Human Rights, unanimously endorsed by the UN Human Rights Council in 2011, which make clear that companies have a responsibility to respect human rights throughout their global operations and supply chains.⁸

The Benefits of and Ongoing Need for the Conflict Minerals Rule

The SEC's Conflict Minerals Rule (as amended in April 2014) is a vital piece of legislation, which is working and is still needed.

According to Janvier Murairi Bakihanaye, a Congolese civil society leader working in the North Kivu mining areas and winner of the Human Rights First 2016 Medal of Liberty, 1502 has decreased conflict mineral revenues for armed groups and the level of conflict in some communities such as in the mining town of Rubaya.⁹ He also reported an improvement in the tin mines in and around Walikale, which had been regularly targeted by militias; Bisei, the largest tin mine now produces conflict-free tin.¹⁰ Bakihaye's organization, the Association for the Development of Peasant Initiatives (ASSODIP), has worked to help child survivors from the Rubaya mines reintegrate into society; he reports that "thousands of children have been freed from the mines and have returned to school."¹¹

In February 2016, the Enough Project field research in eastern Congo with miners, traders, civil society leaders and industry experts found advances such as "increased security for civilians in some mining areas, a significant reduction in armed group control in 3T mining areas, improved safety and health standards in some areas and organized local advocacy."¹²

In a study of twenty global companies, corporate executives said that compliance with Section 1502 brought a number of benefits: greater transparency was seen to bring lower risk, and more effective management of supply chains.¹³ Corporate officials reported that the law could also meet rising expectations for responsible corporate behavior from customers, investors and employees.¹⁴

On February 9, 2017, Tiffany & Co issued an important statement in support of Section 1502, noting that "when managed responsibly mining can be a source of social and economic

⁸ United Nations Guiding Principles on Business and Human Rights, U.N. doc A/HRC/8/5.

⁹ Janvier Murairi Bakihanaye, *A Congolese view on why we need the U.S. conflict minerals law*, The Hill, Feb 23, 2017.

¹⁰ Id.

¹¹ Id.

¹² Enough, *Point of Origin: Status Report on the Impact of Dodd-Frank 1502 in Congo* (Feb 2016).

¹³ Digging for Transparency, at 30.

¹⁴ Digging for Transparency at 30-31.

development. In addressing the ‘challenge and promise of mining,’ Tiffany underscored the importance of “supporting rigorous, standards-setting efforts and by advocating for more effective oversight, we can help improve global mining conditions over the long-term.”¹⁵ The statement continued that “the continued existence of Federal regulation that addresses the sourcing of conflict minerals provides an important framework for industry, laying the foundation for the protection of human rights and responsible sourcing efforts in the DRC and beyond.”¹⁶

The Conflict Minerals Rule has led to an unprecedented number of companies doing their part to avoid fuelling conflict or human rights abuses through their supply chain practices. There has been a significant increase in the number of companies investigating their supply chains and a huge change in company sourcing practices – in 2016, over 1,200 companies submitted Conflict Minerals Reports. The Rule has led to the emergence of a number of industry tools and specialised consultancies to help companies undertake due diligence more effectively. Companies know far more about their supply chains and potential links to conflict and human rights abuses than before.

In April 2015, Amnesty International and Global Witness published *Digging for Transparency*, an analysis of the first Conflict Minerals Reports filed by companies under the Conflict Minerals Rule. The report found that 21% of the companies surveyed met the minimum requirements of the law based on 12 criteria. The fact that this proportion of companies were able to conduct due diligence in accordance with the law in the first year of reporting, and after the ruling of the Court of Appeals following the industry challenge, demonstrates that companies can comply with the Conflict Minerals Rule. *Digging for Transparency* also discussed steps identified by companies themselves to improve their reporting: companies’ plans included increasing their response rate from direct suppliers, enhancing educational and training opportunities, identifying a greater percentage of smelters and refiners, improving the quality of engagement with suppliers and smelters/refiners; and working with relevant trade associations to improve best practices.¹⁷

The disclosure requirements of the Conflict Minerals Rule have also led to companies being far more transparent about what they are doing to avoid contributing to conflict and human rights abuses. Transparency is an integral element of any supply chain due diligence framework. The fifth-step of the OECD Guidance requires companies to publicly disclose their due diligence efforts and findings. The UNGPs require companies to “know and show” that they respect human rights. Transparency is also vital to ensuring that companies are held to account if they contribute to conflict or human rights abuses through their supply chain practices.

¹⁵ Tiffany & Co. Statement Supporting Diligence and Transparency in Addressing Conflict Minerals, New York, NY (Feb. 9, 2017).

¹⁶ *Id.*

¹⁷ *Digging for Transparency*, at 29.

Furthermore, supply chain due diligence enables companies to identify and take corrective steps to address risks and abuses in their supply chains. This in turn reduces their exposure to potential legal liability as well as sanctions. As noted above, the UN Group of Experts on the DRC originally developed due diligence guidelines to help companies mitigate the risk that they were directly or indirectly supporting armed groups in the eastern DRC – and thereby to help them avoid violating UN sanctions or being put on the UN Sanctions List. The UN Security Council’s Chapter VII sanctions regime still applies to individuals and entities that support armed groups or criminal networks involved in the illicit exploitation or trade of minerals in the DRC.¹⁸ The UN Security Council continues to highlight the link between the illegal exploitation and trade of minerals and the conflicts in the Great Lakes region. And it continues to make clear that companies in the minerals supply chain must do their part to avoid financing armed groups or criminal networks by undertaking supply chain due diligence – as one element of a multi-pronged approach to ending the conflict in the eastern DRC that includes other measures such as government action to cut-off financing to those groups, targeted sanctions, arms control, improvements in governance and security sector reform.

Conclusion

2016 and the first quarter of 2017 have seen continued instability and violence in the DRC complicated by the ongoing political crisis of the failure to hold elections scheduled for last year. Amnesty International and other international and domestic human rights groups in the DRC are extremely alarmed over outbreaks of violence in the Kasai province. Coupled with the decision of the United Nations to renew the mandate of the MONUSCO peacekeeping force in the DRC, the UN Security Council also continues to recognize the link between conflict and the minerals trade and to call for companies to exercise due diligence as part of a multi-pronged response to the conflict.

Members of the Subcommittee, the positive actions taken by some of the corporations involved in the minerals covered by the Dodd Frank rule are based in part on demands from US consumers who did not want products they purchase and use to contribute to conflict and human rights violations be they in the DRC or in any other part of the world as well as growing support among the private sector for improved transparency and accountability. It is critical that the Senate and Congress uphold the wishes of US citizens and support the effort that has involved civil society, the private sector and governments and ensures that companies do their part to avoid fuelling conflict and human rights abuses.

The people of the DRC deserve no less.

Thank you.

¹⁸ UN Doc. S/RES/2293(2016), para. 7(g).

