



DLA Piper LLP (US)  
500 Eighth Street, NW  
Washington, DC 20004  
www.dlapiper.com

Deborah R. Meshulam  
deborah.meshulam@dlapiper.com  
T 202.799.4511  
F 202.799.5511

September 24, 2010

OUR FILE NO. 000125-009697

*HAND DELIVERY*

Paula Dubberly, Esq.  
Deputy Director of Policy and Capital Markets  
Division of Corporation Finance

Felicia Kung, Esq.  
Chief  
Office of Rulemaking  
Division of Corporation Finance

John Fieldsend, Esq.  
Special Counsel  
Office of Rulemaking  
Division of Corporation Finance

**Re: Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act  
("Dodd-Frank Act")**

Dear Ms. Dubberly, Ms. Kung and Mr. Fieldsend:

Enclosed with this letter, please find comments of The Enough Project to Section 1502 of the Dodd-Frank Act.

Please do not hesitate to contact me should you have any questions or wish to discuss these comments.

Sincerely yours,

A handwritten signature in black ink that reads 'Deborah R. Meshulam'.

**DLA Piper LLP (US)**  
Deborah R. Meshulam

# COMMENTS OF THE ENOUGH PROJECT RELATED TO SECTION 1502 OF THE DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT

## Executive Summary

These comments on Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Act”) are submitted on behalf of the Enough Project (“Enough”) in response to the request of the Securities and Exchange Commission (“Commission”) for comments on the regulatory initiatives in the Act. Enough is a project of the Center for American Progress (CAP) aimed at helping end genocide and crimes against humanity in Africa (see Background below). Our submission is based on two years of research on the ground in Congo’s conflict mines and in the international supply chain for the conflict minerals as they travel through the six main supply chain steps from Congo through smelters to end users. Our aim in this research has been to help businesses and consumers understand how to cut off the purchases of conflict minerals that are funding armed groups in Congo, the world’s deadliest war since World War II, leaving over 5 million people dead.

If the regulations for Section 1502 of the Act focus on transparency through key disclosure requirements, they will greatly aid in closing loopholes for the smuggling of conflict minerals into the United States. Supply chain transparency has worked in the past to help eliminate crimes funded by the sale of blood diamonds; it can also work with conflict minerals. It is possible to achieve transparency while also balancing the need for commercial confidentiality and this submission details Enough’s proposals for reaching this goal. In summary, we urge the Commission to issue rules that achieve the following:

- (i) Provide easily accessible disclosure in a regulated person’s Annual Report on Form 10-K as well as on its website;
- (ii) Define key terms for the purposes of Section 1502, including definitions of:
  - (a) necessary, *see pp. 5-6 infra*;
  - (b) functionality, *see p. 6 infra*;
  - (c) production, *see p. 6 infra*; and
  - (d) manufactured, *see p. 7 infra*.
- (iii) Require that regulated persons have a reasonable basis for reporting that necessary conflict minerals do not originate in the Democratic Republic of the Congo or an adjoining country, and require that they disclose the basis of that determination;



**enough**

The project to end genocide and crimes against humanity

1225 Eye Street, NW, Suite 307, Washington, DC 20005

TEL 202.682.1611 FAX 202.682.6140 [www.enoughproject.org](http://www.enoughproject.org)

- (iv) Require the Section 1502 report to contain a copy of the independent private sector audit report;
- (v) Require regulated persons to undertake and report on results of at least the following due diligence measures:
  - (a) a supply chain risk assessment including information on volumes and mines of origin of minerals shipments;
  - (b) efforts to obtain certifiably DRC conflict free minerals verified through site reports, reports from industry associations or regional government certification authorities;
  - (c) smelter/supplier validation which would include on-the-ground assessments of the smelter and its supply sources; and
  - (d) measures undertaken to ensure that the identified processing facilities are a conflict free processing facilities.
- (vi) Establish minimum requirements for the independent private sector audit, including industry audits upon which regulated persons rely, for example, rules relating to:
  - (a) independence, *see p. 14 infra*;
  - (b) professional qualifications and capacity, *see p. 14 infra*; and
  - (c) required audit steps, *see pp. 14-15 infra*.
- (vii) Provide initial guidance on what the Commission will deem unreliable due diligence measures and independent private sector audits.



**enough**

The project to end genocide and crimes against humanity

## Background

The Enough Project (“Enough”) is a project of the Center for American Progress (CAP). Our mission is to help end genocide and crimes against humanity in Africa. The ongoing conflict in the Democratic Republic of the Congo (“DRC”) is the deadliest war since World War II. It has already claimed more than 5.5 million lives and is currently responsible for an estimated 1,100 reported rapes per month. Since 2007, Enough has been working to build a permanent constituency to prevent genocide and crimes against humanity. Too often, the international community, including the United States, has seemed helpless in the face of such crimes occurring in the DRC and surrounding countries.

Enough was founded by John Prendergast and Gayle Smith. John Prendergast is an author and human rights activist who has worked for peace in Africa for over 25 years. Mr. Prendergast formerly served as Director of African Affairs at the National Security Council during the administration of President Clinton. He also served as Special Advisor to Susan Rice at the Department of State. Mr. Prendergast has also worked for two members of Congress, UNICEF, Human Rights Watch, the International Crisis Group, and the U.S. Institute of Peace. He has also been a youth counselor, a basketball coach and a Big Brother for over 25 years.

Gayle Smith was a Senior Fellow at the Center for American Progress and Director of the International Rights and Responsibilities Program until February 2009, when she began a new post with the administration of President Obama as the President’s Special Assistant and Senior Director for Development and Democracy. Previously, Ms. Smith served as Special Assistant to the President and Senior Director for African Affairs at the National Security Council from 1998-2001, and as Senior Advisor to the Administrator and Chief of Staff of the U.S. Agency for International Development from 1994-1998. She was based in Africa for over 20 years.

Genocide and war crimes are not inevitable, and Enough aims to foster action to stop ongoing atrocities and to prevent their recurrence. Enough’s goal is to help people from every walk of life understand that the practical actions they take can make a difference. Enough’s strategy is to energize diverse communities – including business leaders, religious groups, public figures, activists, students and Diaspora networks – to ensure that their voices are heard on some of the most pressing foreign policy and moral challenges facing the world today. Enough conducts intensive field research on the conflicts in the Democratic Republic of Congo, Sudan, as well as regions affected by the Lord’s Resistance Army.

Enough has spent the past two years researching on the ground in Congo’s conflict mines and in the international supply chain for the conflict minerals, as they travel through the six main supply chain steps from Congo through smelters to end users. Our aim in this research has been to help businesses and consumers understand how to cut off the purchases of conflict minerals that are funding armed groups in Congo, the world’s deadliest war since World War II, leaving over 5 million people dead. We have published several reports on this issue, including “From Mine to Mobile: the Six Steps of the Conflict Minerals Supply Chain”, as well as “A Comprehensive Approach to Congo’s Conflict Minerals”.

Each of these reports was based on field research and consultations with companies, civil society, and governments, and offers concrete policy recommendations to provide practical steps in working towards a solution to this complex problem.

The instability in the eastern region of the DRC continues to cause countless deaths and has given rise to widespread sexual violence and rape, often used as tools of warfare to terrorize and humiliate communities. The exploitation of natural resources is an underlying driver of this war. United Nations investigators have reported how parties to the conflict in eastern Congo continue to benefit and finance themselves by controlling mines or taxing trading routes for cassiterite (tin), columbite-tantalite (tantalum), wolframite (tungsten), often called the “3Ts”, and gold. Similar to what occurred with conflict diamonds in Sierra Leone, the war today in eastern Congo is being fueled by a trade in these minerals that is worth more than \$180 million per year. Derivatives of the 3Ts and gold are critical to industrial and technology products worldwide, including mobile telephones, laptop computers and digital video recorders.

In December 2008, the UN Security Council adopted Resolution 1857, encouraging Member States “to ensure that companies handling minerals from the DRC exercise due diligence on their suppliers.” Section 1502 of the Act helps implement that resolution.

Enough recognizes that Section 1502 is not a cure for the Congo’s ills. Still, Congress has taken an all important step by requiring regulated persons to publicly report on whether they are using DRC conflict minerals, and if so, to report additional information regarding, among other things, efforts to exercise due diligence to determine the source of such minerals. To effectively implement Congress’ mandate, the Commission’s implementing regulations should ensure that those subject to the statute fully and fairly inform the public of whether they are buying minerals from mines controlled by armed militias. To that end, Enough asks the SEC to incorporate the recommendations below into the final rules related to Section 13(p) of the Securities Exchange Act of 1934, 15 U.S.C. 78m(p) on Sec. 1502.<sup>1</sup>

### **Accessibility of Information**

In order to assist in the dissemination of the material information that is necessary to help investors make decisions about in which companies to invest, Enough as an initial matter urges the Commission to direct that the disclosures mandated by Section 1502 of the Act be contained in a separate, easily accessed item of an issuer’s Annual Report on Form 10-K as well as posted on the issuer’s website. Conflict minerals disclosures should be contained as a separate, easily identifiable item in Part I and the report required by Section 1502 should be filed as an exhibit to an issuer’s Annual Report on Form 10-K. Item 1 describes an issuer’s business operations, its products and organizational

---

<sup>1</sup> Section 1502 contemplates the addition of Section 13(p) to the Securities Exchange Act of 1934 (“Exchange Act”). For ease of reference, however, Enough will refer to Section 1502 throughout its proposal.



**enough**

The project to end genocide and crimes against humanity

structure. Section 1502's disclosure requirements relate to an issuer's products and its risk factors. Requiring an issuer to file its Section 1502 report as an exhibit to its Form 10-K will ensure maximum accessibility to this material information.

Without easily accessible information, investors will have much more difficulty making an informed decision about whether they wish to invest in an issuer using DRC conflict minerals or an issuer not taking steps to determine effectively whether it is using such minerals. Investors will want to know whether the issuer is at risk of losing revenues because consumers may choose to direct purchases to companies that avoid use of DRC conflict minerals or that at least try to verify the source of the minerals they use. Congress has determined that such information is material to investors; the Commission should enact regulations that enable the public to access that information easily.

### Proposed Definitions

Section 1502 is limited in its application to persons who (A) are required to file reports with the SEC, and where (B) "conflict minerals are necessary to the functionality or production of a product manufactured by such person." Enacting regulations should define the key terms of the quoted language as indicated below, in order to effectuate Congress' mandate. Each of these proposed definitions is supported by either statutory or case law precedent.

#### I. Text of Definitions

##### A. Necessary

**Necessary** - Any ingredient, product, or process that is indispensable, closely related to, or directly essential to the production of the product; or any ingredient, product, or process that is required for the financial success or marketability of the product.<sup>2</sup>

Under this definition, a conflict mineral is necessary to the functionality or production of a product manufactured if any of the following are true:

---

<sup>2</sup> In support of this definition, see *Kirschbaum v. Walling*, 316 U.S. 517, 525-26 (1942) ("the work of the employees in these cases had such a close and immediate tie with the process of production for commerce, and was therefore so much an essential part of it, that the employees are to be regarded as engaged in an occupation necessary to the production of goods for commerce"); *Warren-Bradshaw Drilling Co. v. Hall*, 317 U.S. 88, 89 (1942) (describing the "necessary to production of goods for commerce" standard as broad and holding that employees of a drilling crew, hired by an independent oil well drilling contractor, were employees under the "necessary to production" standard). See also U.S. Department of Agriculture Guidelines for Loan Guarantees for Alcohol Production Facilities, 7 C.F.R. Pt. 1980, Subpt. E, Appendix C(2) (2010) ("alcohol production facility includes all facilities necessary for the production and storage of alcohol and the processing of the by-products of alcohol production. The intent is to limit the alcohol and by-products processing facilities to those facilities which are necessary to yield marketable products and necessary for the financial success of Enough.") (emphasis added).



**enough**

The project to end genocide and crimes against humanity

- (1) The conflict mineral is intentionally added to the product or the production process;
- (2) The conflict mineral is closely related or directly essential to the production of the product, or any processing that is required to yield the finished product;
- (3) The conflict mineral is essential to the product's use or purpose; or
- (4) The conflict mineral is required for the financial success or marketability of the product.

A conflict mineral is not necessary to the functionality or production of a product manufactured by such person if its existence in the product is only due to one of the following:

- (1) the conflict mineral is a naturally-occurring trace constituent or contaminant of other substances in the product; or
- (2) the conflict mineral is a naturally-occurring byproduct of the manufacturing process.

#### **B. Functionality**

**Functionality** – Those qualities that are essential to the product's use or purpose.<sup>3</sup>

#### **C. Production**

**Production** – All steps and associated processes required in order to create the final product.<sup>4</sup>

---

<sup>3</sup> In support of this definition, see *Mana Products, Inc. v. Columbia Cosmetics Mfg., Inc.*, 65 F.3d 1063, 1068 (2nd Cir. 1995) (defining “functionality” in the trademark context as “the quality essential to the product’s purpose,” citing, *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 775 (1992)). See also *Inwood Laboratories, Inc. v. Ives Laboratories, Inc.*, 456 U.S. 844, 850 n. 10 (1982) (reasoning that a feature is “functional if it is essential to the use or purpose of the article or if it affects the cost or quality of the article.”); *Price Food Co. v. Good Foods, Inc.*, 400 F.2d 662, 665 (6th Cir. 1968) (defining the “functional features” of a product as “those necessary to manufacture the product, those which as a matter of convenience, the consumer has accepted and the buyer desires, and inter alia, those which are utilitarian in every detail, and which do not contain any ornamental features.”) (citations omitted).

<sup>4</sup> In support of this proposed definition, see United States Fair Labor Standards Act, 29 U.S.C.A. 203(j) (2010) (defining “produced” as “produced, manufactured, mined, handled, or in any other manner worked on”); Chemical Weapons Convention Regulations, 71 Fed. Register 24918, 24919 (Dept. of Commerce Final Rule, Apr. 27, 2006) (to be codified at 15 C.F.R. 710, *et. seq.*) (defining “production” for the purposes of enacting the Convention on the Prohibition of Chemical Weapons as “all steps in the production of a chemical in any units within the same plant through chemical reaction, including any associated processes (e.g. purification, separation, extraction, distillation, or refining) in which the chemical is not converted into another chemical).



**enough**

The project to end genocide and crimes against humanity

## D. Manufactured

**Manufactured** – The production, preparation, assembling, combination, compounding, or processing of ingredients, materials, and/or processes such that the final product has a name, character, and use, distinct from the original ingredients, materials, and/or processes.<sup>5</sup>

### II. Rationale in Support of Proposed Definitions

The proposed definitions are consistent with the policy of Section 1502 to require transparency of the use and sourcing of conflict minerals. Similarly, the proposed definitions are consistent with case law, federal statutes, and other federal regulations that address analogous standards. They clarify Section 1502's application to manufactured products and carefully exclude those products that contain naturally-occurring trace elements of conflict minerals. Thus, the proposed definitions enact the legislation's intent without imposing unnecessary requirements on companies that are not intentionally using conflict minerals in their products.

Of particular relevance are regulations developed by the Department of Labor which define when an employee is engaged in the production of goods that are sold in interstate commerce. Under the Fair Labor Standards Act, an employee is engaged in the production of goods if that employee is either "engaged in the production" of the goods or works "in any closely related process or occupation directly essential" to the production of the good. *See* 29 U.S.C.A. 203(j) (2010).

Prior to 1949, the protections of the Fair Labor Standards Act applied to any employee who was "necessary to the production" of goods for commerce. Dep't of Labor Interpretative Bulletin, 29 C.F.R. § 776.17(a) (2010). In several decisions, the Supreme Court interpreted the "necessary to the production" standard broadly as applying to everything from independent contractors hired to drill initial holes that ultimately lead to oil wells, to maintenance and janitorial staff that clean a company's corporate offices. *See Borden Co. v. Borella*, 325 U.S. 679, 682 (1945) (interpreting "necessary to production of goods for

---

<sup>5</sup> In support of this proposed definition, *see* Consumer Product Safety Act, 15 U.S.C.A. § 2052(a)(10) (2010) ("[t]he term 'manufacture' means to manufacture, produce, or assemble"); United States Controlled Substances Act, 21 U.S.C.A. § 802(15) ("The term 'manufacture' means the production, preparation, propagation, compounding, or processing of a drug or other substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of a chemical synthesis or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of such substance or labeling or relabeling of its container..."); *United States v. Gibson-Thompson Co. Inc.*, 27 C.C.P.A. 267, 272-73 (1940) (interpreting U.S. trade laws exempting goods manufactured in the United States from country of origin labeling requirements to mean that articles that "are so processed in the United States that each loses its identity in a tariff sense and becomes an integral part of a new article having a new name, character, and use" are manufactured in the United States for country of origin purposes).



**enough**

The project to end genocide and crimes against humanity

commerce” as used in the Fair Labor Standards Act and holding that maintenance employees in a company’s office building were employees under the “necessary to production” standard); *Warren-Bradshaw Drilling Co. v. Hall*, 317 U.S. 88, 89 (1942) (interpreting “necessary to production of goods for commerce” as used in the Fair Labor Standards Act). In 1949, Congress replaced the “necessary” standard with the “closely related” or “directly essential” standards. The Department of Labor has interpreted these standards to be slightly narrower in scope than the original “necessary to production” standard. Dep’t of Labor Interpretative Bulletin, 29 C.F.R. § 776.17(a) (2010) (“[s]ome employees whose work might meet the “necessary” test are now outside the coverage of the Act because their work is not “closely related” and “directly essential” to such production).

Because Section 1502 of the Dodd-Frank Act uses the language “necessary to the production,” it is appropriate and consistent with Supreme Court precedent to interpret this standard broadly. At a minimum, however, the definition of necessary should include conflict minerals closely related to or directly essential to the manufacturing of a product. In addition, the definition of “necessary” should include conflict minerals required for the financial success or marketability of the product. Precedent supporting this aspect of the proposed definition is found in Department of Agriculture regulations. Specifically, in implementing certain financial benefits Congress has given to alcohol production facilities, the Department of Agriculture defines “alcohol production facility” as “all facilities necessary for the production and storage of alcohol.” U.S. Department of Agriculture Guidelines for Loan Guarantees for Alcohol Production Facilities, 7 C.F.R. Pt. 1980, Subpt. E, Appendix C(2) (2010). The Department of Agriculture further clarifies this definition by explaining that the “intent is to limit alcohol and by-products processing facilities to those facilities which are necessary to yield marketable products and necessary for the financial success of the project.” *Id.*

The “necessary” standard should also include conflict minerals that are intentionally added to a product. This approach is consistent with a similar approach taken in EPA regulations which address glass manufacturing. EPA, for the purposes of defining “raw material” that is used in glass manufacturing, includes all “substances that are intentionally added to a glass manufacturing batch.” National Emission Standards for Hazardous Air Pollutants for Glass Manufacturing Area Sources, 40 C.F.R. § 63.11459 (2010). Likewise, the definition of “necessary” for the purposes of implementing Section 1502 should include all conflict minerals intentionally added to a product.

The proposed definition of “necessary” exempts from Section 1502 those products that contain naturally occurring trace amounts of conflict minerals. This is consistent with FDA and EPA regulations that contain similar exemptions. For example, in defining what constitutes “formulated grain-fruit products” the FDA has created regulations that create minimum and maximum nutritional limits. 7 C.F.R. Pt. 200, Appendix A at I(3)(C) (2010). These rules exempt products that contain naturally occurring amounts of vitamins or minerals that exceed the requirements. *Id.* (“An exception will be made for vitamins or minerals which occur naturally in an ingredient at such concentration that the level specific will be substantially exceeded in the final product”).



**enough**

The project to end genocide and crimes against humanity

Likewise, the EPA glass manufacturing regulations discussed above, exempt from the definition of raw materials metals that are “naturally-occurring trace constituents or contaminants.” 40 C.F.R. § 63.11459 (2010) (“Raw material means minerals, such as silica sand, limestone, and dolomite; inorganic chemical compounds, such as soda ash (sodium carbonate), salt cake (sodium sulfate), and potash (potassium carbonate); metal oxides and other metal-based compounds, such as lead oxide, chromium oxide, and sodium antimonite; metal ores, such as chromite and pyrolusite; and other *substances that are intentionally added* to a glass manufacturing batch and melted in a glass melting furnace to produce glass. *Metals that are naturally-occurring trace constituents or contaminants of other substances are not considered to be raw materials.* Cullet and material that is recovered from a furnace control device for recycling into the glass formulation are not considered to be raw materials for the purposes of this subpart.”). *Id.* (emphasis added). The proposed definitions, like EPA’s regulations, draw a distinction between intentionally added metals and metals that are naturally occurring trace constituents or contaminants.

### **Whether “Necessary” Conflict Minerals Originate in the DRC or an Adjoining Country**

The scope of a regulated person’s disclosure obligation is determined by whether conflict minerals that are necessary originate in the DRC or an adjoining country. The Commission’s rules effectuating Section 1502 should require that regulated persons conduct a sufficient inquiry to enable them to have a reasonable basis to state whether necessary conflict minerals do or do not originate in the DRC or an adjoining country. The Commission should require that the regulated person also disclose the basis for any determination that necessary conflict minerals did not originate in the DRC or an adjoining country. Such disclosures are required in many different contexts under the federal securities laws and are necessary here in order to effectuate fully the purposes of Section 1502.

In addition, the Commission should issue rules that provide guidance on what inquiry will enable a regulated person to have a reasonable basis for its disclosure. A reasonable inquiry should include at least a determination of whether the regulated person’s supplier of conflict minerals obtains such minerals from the DRC or an adjoining country. The Commission’s rules should specify that regulated persons make such a determination by making appropriate inquiries of their suppliers concerning the source of conflict minerals. Such inquiries should include requests for the identities of those who provide raw minerals for processing, identification of the mines from which the raw minerals are obtained, copies of certifications, mine reports and similar information.

Finally, the Commission should issue rules requiring regulated persons to maintain the records documenting their inquiry for a period of not less than five years. Retention of such information should not impose an undue burden and will also enable the Commission to assess issues in carrying out the requirements of Section 1502 so that it can provide the Comptroller General of the United States with the information necessary for the Comptroller’s report on the effectiveness of Section 1502 and the issues encountered by the Commission in effectuating the statute.



**enough**

The project to end genocide and crimes against humanity

## Content of the Section 1502 Report

Congress' intent in enacting Section 1502 is to make the conflict mineral supply chain transparent. The statute does not tell companies they should not source from the DRC or its adjoining countries nor does it penalize a company for doing so; rather, Section 1502's greatest weapon is transparency. A transparent mineral supply chain process sheds light on forces funding, however indirectly, the violence in the DRC and adjoining countries. Transparency allows investors, consumers and other interested stakeholders to impact the trade in conflict minerals from the DRC and its adjoining countries by giving them the knowledge to make choices between investing in or purchasing from companies involved with conflict minerals and those not so involved. Section 1502 will arm investors with information necessary to take other actions to ensure companies are not funding armed groups in the DRC.

A key aspect of this new transparency is the report that Section 1502 requires persons who report that necessary conflict minerals originated in the DRC or an adjoining country must submit to the Commission and, at a minimum, publish on their website. The statute requires a report that "includes:"

(i) a description of the due diligence measures taken by the person to determine the source and chain of custody of the necessary conflict minerals (such measures to include an independent private sector audit);

(ii) a description of the non DRC conflict free products that are "manufactured" or "contracted to be manufactured;"

(iii) the identity of the auditor;

(iv) the facilities used to process the conflict minerals;

(v) the country of origin of the conflict minerals; and

(vi) the efforts to determine the mine/location of origin of the conflict minerals.

The report is to provide this information "with the greatest possible specificity."

These disclosures are, however, the minimum information the required report should contain. By using the word "includes" in outlining the content of the report, Congress was expansive, allowing for regulation that expands the required content of the report. *See Argosy Ltd. v. Hennigan*, 404 F.2d 14, 20 (5th Cir.1968) ("the word 'includes' is usually a term of enlargement and not of limitation . . . . It, therefore, conveys the conclusion that there are other items includable, though not specifically enumerated . . . ."); *United States v. Mass. Bay Transportation Authority*, 614 F.2d 27, 28 (1st Cir.1980) ("Includes is not a finite word of limitation...."); *Helvering v. Morgan's, Inc.*, 293 U.S. 121, 126 n. 1 (1934) ("the verb 'includes' imports a general class, some of whose particular instances are those specified in



**enough**

The project to end genocide and crimes against humanity

the definition.”). *See also, In re Mark Anthony Const., Inc.*, 886 F.2d 1101, 1106 (9th Cir. 1989) (in a bankruptcy context “[i]n construing a statute, the use of a form of the word ‘include’ is significant, and generally thought to imply that terms listed immediately afterwards are an inexhaustive list of examples, rather than a bounded set of applicable items.”).

As a result, the Commission should not view the list contained in Section 1502 as limiting the content of a report. Rather, the Commission should treat the identified disclosures as a starting point. In order to effectuate Congress’ intent that regulated persons provide transparency into the supply chain for conflict minerals, the Commission should require the report to contain certain additional information.

First, Enough urges the Commission to require that the report contain a copy of the independent private sector audit that is to be submitted through the Commission. The Commission should require regulated persons to disclose the independent private sector audit report to the public (allowing limited redaction to the extent that the report contains confidential business information.) Making a copy of the audit report available to the public is consistent with the goal of transparency. The requirement that issuers make audit reports available to the public is well established in the securities laws where issuers must append a copy of their independent auditor’s report on their financial statements to their Annual Reports on Form 10-K.

Second, the Commission should require that the description of the due diligence measures undertaken by the regulated person also contain disclosure concerning the results of the due diligence undertaken. In other words, regulated persons should disclose what information their due diligence revealed.

Third, the Commission should require that persons subject to regulation undertake and report on the results of following due diligence measures:<sup>6</sup>

(i) a supply chain risk assessment which would include information about (a) the volume of minerals shipments received from the DRC and its adjoining countries; (b) the mine of origin associated with the shipment; and (c) the dates of the shipments;<sup>7</sup>

---

<sup>6</sup> In specifying that due diligence measures must include an independent private sector audit, Congress again used the word “include.” As discussed above use of that expansive term allows for additional regulation specifying appropriate due diligence steps.

<sup>7</sup> Enough recognizes that information on price and concentration of minerals is validly commercially confidential information, but the disclosure of the other information is necessary for public transparency for minerals sourced from the region.

(ii) efforts to obtain certified DRC conflict free minerals verified through site reports, reports from industry associations or regional government certification authorities;

(iii) smelter/supplier validation which would include an assessment of whether minerals processed by smelters from whom the reporting person purchases are conflict free; and

(iv) measures undertaken to ensure that the identified processing facilities are a conflict free processing facilities.

It is important to understand that smelters are a key component of the supply chain for conflict minerals. For that reason, it is vital for reporting persons who purchase from smelters to have in place due diligence measures that assess whether the minerals obtained from a particular smelter are conflict free. Effective due diligence measures in this area would include diligence on the smelter's processes in this area; for example through purchase or supply agreements that enable the reporting person to review the smelter's purchase records to determine the source of the minerals processed by the smelter. In addition, effective due diligence measures include a requirement that the reporting person or his/her/its agent have the right to conduct on-the-ground assessments of the smelter and its supply sources. Such diligence measures are not unprecedented.

**Industry audits:** Such additional due diligence steps will not unduly burden regulated persons because there are industry organizations that can provide information and conduct due diligence on behalf of members. Enough recognizes that industry-organized audits can be effective, provided that they meet certain key standards:

- Providing information on volumes of shipments, mines of origin with verification of the capacity of the mines, and dates of shipments for minerals originating in Congo and adjacent countries.
- The audit be conducted by independent auditors, as defined above.
- The audit report be publicly disclosed.

The Electronic Industry Citizenship Coalition (EICC) is one such organization that initiated an audit process for tantalum smelters, a chokepoint in the supply chain for tantalum. This process is still incomplete and needs refinement, but is an example that shows how end-user companies (persons affected by the legislation) are able to conduct due diligence through proactive action, and at times through industry associations.

Further, there is precedent for the imposition of such due diligence measures on regulated persons in the context of the Foreign Corrupt Practices Act (FCPA) (15 U.S.C. §§ 78dd-1, et seq.). Companies seeking to comply with that statute and its related rules, perform similar due diligence

inquiries relating to their overseas operations and overseas third parties with whom they do (or seek to do) business.<sup>8</sup>

Finally, in order to satisfy Section 1502's requirement for a reliable report, the Commission should issue rules that require the report to contain the information specified in the "Determining Unreliability" section of this submission. See pp. 15-16 *infra*.

### Standards for the Independent Private Sector Audit

Section 1502 requires an "independent private sector audit" of the report that regulated persons must submit to the Commission.<sup>9</sup> The audit of the report submitted to the SEC should be distinguished from audit-like steps undertaken as part of a regulated persons' due diligence obligations.

The statute also gives the Commission authority to issue rules (in consultation with the Secretary of State) related to the independent private sector audit. These rules will inform the Comptroller General of the United States in the establishment of standards for the audit. Finally, Section 1502 recognizes that an audit may be "unreliable" [proposed Exchange Act 13(p)(1)(C)] and provides the Commission with authority to determine when an audit is "unreliable." Enough proposes that the Commission's rules related to the independent private sector audit contain at least the following requirements:

---

<sup>8</sup> FCPA due diligence policies provide useful guidance since the FCPA is analogous to Section 1502 in its goal to proactively prevent wrongdoing. The United States Department of Justice has recognized the following as examples of appropriate due diligence practices: (1) adoption of a clearly articulated corporate policy against violations including the establishment of compliance standards and procedures that are "reasonably capable" of reducing non-compliance and are to be followed by all directors, officers, employees and business partners; (2) designation of senior corporate officials responsible for the implementation and oversight of compliance with adopted policies, standards and procedures; (3) a "reporting system," including a helpline for directors, officers, employees and business partners to report suspected violations of the compliance standards; (4) clearly articulated corporate procedures designed to ensure prudent precautions are taken when a corporation forms business relationships with reputable and qualified business partners; (5) clearly articulated corporate procedures designed to ensure that a corporation assures that substantial discretionary authority is not delegated to individuals who the corporation knows have a propensity to engage in illegal or improper activities; (6) inclusion of compliance standards in all agreements and contracts with customers, clients, business partners and agents; and (7) independent audits to ensure adherence to adopted compliance practices and procedures. See, e.g. Department of Justice, Opinion Procedure Release 2004-02 (July 12, 2004), available at <http://www.justice.gov/criminal/fraud/fcpa/opinion/>

<sup>9</sup> Section 1502 also states that the independent private sector audit is a required due diligence measure.



**enough**

The project to end genocide and crimes against humanity

**1. Independence:** The auditor must be entirely independent of the company and its suppliers. In other words, it should not be connected with them in any way, via financial relationships or other business relations.

The Commission has well-established precedent for determining what constitutes independence for the purposes of the federal securities laws. *See e.g.*, Regulation S-X, Rule 2-01 (auditor independence relating to financial statement audits); Exchange Act Releases Nos. 34-5835 and 34-58367 (approving NASDAQ and NYSE director independence requirements). Given the nature and purpose of the audit called for by Section 1502, the Commission should issue rules providing for strict auditor independence as is required for auditors of public company financial statements.

**2. Professional qualifications and capacity:** The auditor should have the expertise necessary to conduct an audit of due diligence processes of those who use conflict minerals.

Again, the Commission has long experience with assessing the qualifications of those who audit public company financial statements and internal controls over financial reporting. Section 1502 seems, however, to contemplate an audit of processes within a company that are distinct from financial reporting. In promulgating rules relating to the Section 1502 audit, the Commission should consider audit standards for evaluating corporate processes. One example is the International Organization for Standardization (“IOS”) Guidelines for quality and/or environmental management systems auditing; IOS 19011. Part 7 of IOS 19011 outlines competencies for auditors conducting systems auditing of a company’s environmental policies.

**3. Required Audit Steps:** Enough recognizes that financial statement auditors typically develop their own audit plan within the requirements of Generally Accepted Auditing Standards; the Commission should nonetheless issue rules that require an audit of conflict mineral due diligence processes to contain certain fundamental steps, including:

- (a) assessment of whether the regulated person’s due diligence measures enable it to
  - i. obtain information regarding the activities, processes and systems used by its smelter/suppliers to determine whether the smelter/supplier is acquiring conflict minerals from the DRC or adjoining countries;
  - ii. obtain information about the volumes of minerals shipments from the DRC and its adjoining counties, the mine of origin associated with the shipment, dates of mineral shipments, and site visits reports.
- (b) review of documentation for purchases of conflict minerals;

(c) assessment of whether the regulated person's due diligence measures have enabled it to determine whether its smelter or other processing facility is conflict free, including an assessment of whether the regulated person has:

- i. obtained information about the smelter/processor's suppliers;
- ii. conducted on-site investigations of smelters/processors that supply the regulated person with minerals<sup>10</sup>; and
- iii. conducted diligence on the sources of those who supply the regulated person.

Enough recognizes that regulated persons may obtain minerals from the same sources and The SEC should promulgate rules that will allow regulated persons to utilize information obtained from an independent audit conducted by an industry group or trade association.

### **Determining Unreliability**

As noted above, Section 1502 grants the Commission authority to determine whether the independent private sector audit is unreliable. In addition, the Commission has authority to determine whether due diligence processes conducted by reporting persons are "unreliable." As with the audit, Enough requests the Commission to issue rules that will inform reporting persons as to when the Commission will deem a report to be "unreliable." Taking this step will help reporting persons comply with the requirements of Section 1502 and will help insure that Congress' goals are met sooner rather than later.

In particular, Enough urges the Commission to issue rules concerning the reliability (or unreliability) of due diligence measures undertaken by reporting persons to determine (i) the origin and chain of custody of conflict minerals used in their product, and (ii) whether their suppliers are providing conflict-free minerals. Reliable due diligence on the mineral supply chain is the most crucial aspect of determining whether minerals used in products are conflict free. If a report submitted to the Commission as required by Section 1502 does not provide transparency into the mineral supply chain, that report cannot be viewed as reliable. Additionally, no report submitted to the Commission by a reporting person should be deemed reliable if it does not, as the law requires, identify the processing facility, country of origin of the minerals and mine of origin. The Commission should promulgate rules that do not allow reporting persons to file a report that does not provide that level of detail.

---

<sup>10</sup> To Enough's knowledge, smelters and processors of conflict minerals are not located in the conflict zones.



**enough**

The project to end genocide and crimes against humanity

To that end, the Commission should issue rules that state that it will deem as “unreliable” any report (or audit) submitted pursuant to Section 1502 that fails to provide, in addition to the information required by Section 1502, at least the following information:

(a) a map of the reporting person’s supply chain (again allowing for confidentiality if proprietary information requires protection);

(b) a table detailing:

(i) the source of minerals obtained from the DRC and adjoining countries; and

(ii) the volume of minerals received from each identified source.

(c) a detailed description of steps taken by the reporting person to determine that any suppliers providing minerals from the DRC and adjoining countries are providing conflict-free minerals; including specific disclosure concerning:

(i) whether the reporting person has conducted any on-site diligence of its suppliers, a description of the diligence measures and the results of that diligence; and

(ii) whether the reporting person has performed diligence (including site visits) of any mines of origin, trading locations, transportation routes, points of export and other places related to the supply of such minerals, and if so, the results of that diligence;

(d) a detailed description of steps taken by the reporting person’s supplier/s of such minerals to determine whether such minerals are conflict-free; and

(e) disclosure of the results of the independent private sector audit.

### **Conclusion**

Section 1502 will only achieve its intended purpose, if the Commission issues rules that insure that regulated persons make fulsome disclosure concerning their use of conflict minerals and their efforts to avoid using such minerals that are not DRC conflict free. Adopting rules as outlined in the foregoing submission will achieve this goal in a practical and effective way.



**enough**

The project to end genocide and crimes against humanity



**enough**

The project to end genocide and crimes against humanity

# From Mine to Mobile Phone

## The Conflict Minerals Supply Chain

John Prendergast and Sasha Lezhnev

Increasing pressure on electronics companies to ensure that their products do not contain illicit minerals from the killing fields in eastern Congo is beginning to have a significant impact. With bills on conflict minerals moving through Congress, the electronics industry has spent about \$2 million per month lobbying Senate offices to relax the legislation, which would increase transparency in the supply chains for tin, tantalum, and tungsten, or the 3Ts.<sup>1</sup> These mineral ores, as well as gold, are key elements of electronics products including cell phones and personal computers, and also are the principal source of revenue for armed groups and military units that prey on civilians in eastern Congo. Congo's mineral wealth did not spark the conflict in eastern Congo, but war profiteering has become the fuel that keeps the region aflame and lies beneath the surface of major regional tensions.<sup>2</sup>

Secretary of State Hillary Clinton highlighted the link between armed conflict, sexual violence, and minerals when she visited eastern Congo in August 2009, arguing that the world needs to do more "to prevent the mineral wealth from the DRC ending up in the hands of those who fund the violence."<sup>3</sup> The most effective way to achieve this goal is to ensure transparency in the consumer electronics supply chain to certify products as conflict-free. But many electronics companies maintain that their supply chains are too complex for this, because of the sheer number of actors involved in moving minerals from mines in Congo all the way to the gadgets in our pockets.

We traveled to eastern Congo shortly before the Secretary's trip to better understand how the 3Ts and gold make their way from conflict-ravaged areas in North and South Kivu all the way to cell phones, laptops, MP3 players, and video game systems. From this ground level view, the conflict minerals supply chain is far less intimidating than the industry would have consumers believe. In fact, the journey from mine to mobile phone can be broken down into six major steps that make the supply chain relatively easy to understand.

### The supply chain in six steps

#### 1 The mines

A gold rush with guns

#### 2 Trading houses

looking the other way

#### 3 Exporters

Minerals enter international markets

#### 4 Transit countries

Origins obscured

#### 5 Refiners

Minerals to metals

#### 6 Electronics companies

Conflict minerals in your phone

### Step 1: The mines: A gold rush with guns

*"This region [eastern Congo] has so much of this coltan, you just dig on any hill and you find it."*

*- Denis, miner, Bukavu, South Kivu*

*"When the FDLR come to a mine, the first thing they do is get the girls and abuse them. Then they force many people to work and kill those who don't want to work."*

*- Jacques, former militia commander, Nyangezi, South Kivu*

The journey of a conflict mineral begins at one of eastern Congo's many mines.<sup>4</sup> A recent mapping exercise by the International Peace Information Service, or IPIS, identified 13 major mines and approximately 200 total mines in the region.<sup>5</sup> Many geologists and companies believe that there may be a much greater abundance of minerals below the surface in eastern Congo, but decades of war have precluded large-scale geological exploration.

Of the 13 major mines identified by IPIS in eastern Congo, 12 are currently controlled by armed groups. Some of the mines are controlled the Democratic Forces for the Liberation of Rwanda, or FDLR—a Rwandan militia led by organizers of the 1994 genocide in Rwanda. Other mines are managed by the Congolese army as a means of personal enrichment—a flagrant violation of Congo's mining laws, which prohibit the presence of the army in the mines. The soldiers, many of whom were militia fighters who only just recently integrated into the army, illegally "tax" miners, abuse the population—particularly the women and girls—and pay workers very poor wages. Both the United Nations and IPIS estimate that armed groups and military units control over 50 percent of the 200 total mines in eastern Congo.

Armed groups control the mines in different ways. For example, at some mines the FDLR forces people to work, while at others their relationship to the local population is more strictly commercial.<sup>6</sup> Working conditions at the mines are abysmal. As a leading minerals expert from the region described, "In the FDLR mines in Burinyi, the local population is there, but they are like slaves."<sup>7</sup> There are no health and safety standards for miners in the area from which the 3Ts and gold originate. The average wage for a miner is between \$1 and \$5 a day, and as the World Bank has documented, the mines are also filled with child laborers between the ages of 10 and 16, now missing out on precious years of school. Ben, 15, told us that he had worked in a mine since he was 10 and narrowly avoided a mine shaft collapse last year, a common occurrence. The conditions are slightly better in some of the mines, but as Robert, a local youth leader and civil society activist told us, "Overall, mine workers get very little from mining; in the armed areas it is only worse." Meanwhile, the armed groups rack up the profits at the mines, earning up to 90 percent of the profits in some areas.<sup>8</sup> Every dollar captured by the armed groups is a dollar that does not go into improving Congolese lives through better schools, health care, or jobs.



Kaniola gold mine, South Kivu.

Source: Grassroots Reconciliation Group / Sasha Lezhnev



Child miner Patrice, 15, started working at the mine when he was eight years old.

Source: Grassroots Reconciliation Group / Sasha Lezhnev

---

## Step 2: Trading houses: Looking the other way

**Minerals dealer:** "Look, this cassiterite [tin ore] is from one mine, and this on the right is from another mine."

**Government inspector:** "Yes, and this one is from Shabunda, in the area where the FDLR is."

- Dialogue at a minerals trading house, Bukavu

From the mines, the minerals get transported to trading towns and then on to the two major cities in the region, Bukavu and Goma. For the gold trade, Butembo and Uvira are also key trading hubs.

The 3Ts are brought by individuals—called *negociants* in French, or buyer-transporters—on their backs, by large trucks, and/or by planes in sacks the size of small garbage bags. The minerals are then sorted by trading houses called "*maisons d'achat*," or trading houses, which process the minerals. The majority of these traders are paid in advance by the exporters to whom they sell the minerals (see Step 3).

Gold is much more valuable by weight compared with the 3Ts. Illustratively, the going price of processed tin is just under \$7 per pound, whereas gold is currently valued at more than \$15,000 per pound. So while the 3Ts are hauled around in heavy sacks, gold can easily be concealed in a backpack or pocket. As a result, it is very easy to smuggle gold.

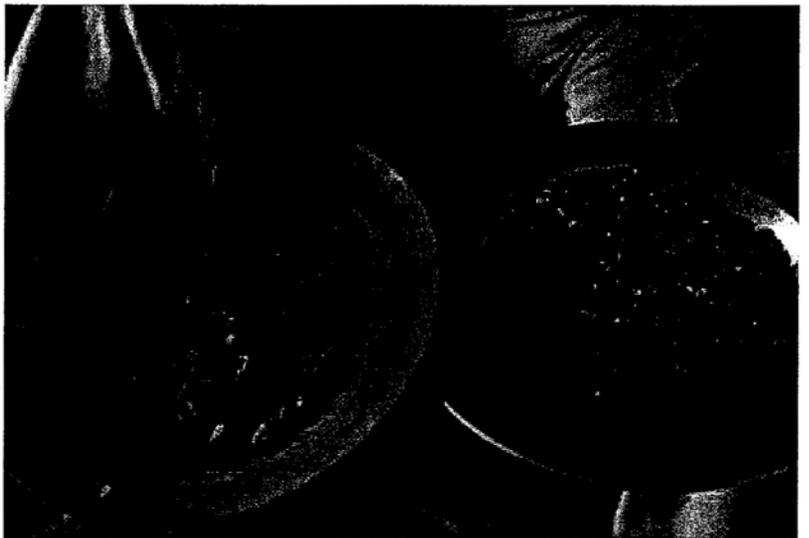
In the case of the 3Ts, because they trade in much larger volumes and have to be transported out of Congo by trucks or planes, the 3Ts are harder to conceal, making them potentially easier to register, document, and regulate. But on the whole, the majority of the transporters and trading houses currently operate in violation of Congo's mining laws without proper licenses and registration. Part of the problem is that the government charges \$500 for licenses, which the association of traders told us was a prohibitively high price to pay. We were informed that only one in ten transporters in Bukavu were officially registered with the government, meaning that 90 percent operate illegally. However, people who know the business, such as government inspectors, told us that such dealerships and transporters are widely known: there are approximately 100 trading houses each in Bukavu and Goma.

Contrary to what some companies allege, we found that it is fairly straightforward to tell from where the minerals originate, as both dealers at the buying houses and government mining inspectors demonstrated to us. Each sack of minerals had different coloration and texture, depending on which mine it came from.



Mineral trading house in Bukavu, South Kivu.

Source: Grassroots Reconciliation Group / Sasha Lezhnev



A minerals dealer compares tin ore from a rebel-held mine and a government-controlled mine.

Source: Grassroots Reconciliation Group / Sasha Lezhnev

But it is a dangerous business to provide transparency to this trade. One leading merchant told us that he would be killed if he went on camera to talk about how the trade works.

Armed groups control much of the transport from the mine to the buying house. They either take a large percentage of the profit from transporters—up to \$40 per sack—or they transport the minerals themselves. According to our estimates, the armed groups generated approximately \$75 million from mineral transport last year, out of the total of \$180 million earned by armed groups from the mineral trade.

---

### Step 3: Exporters: Minerals enter international markets

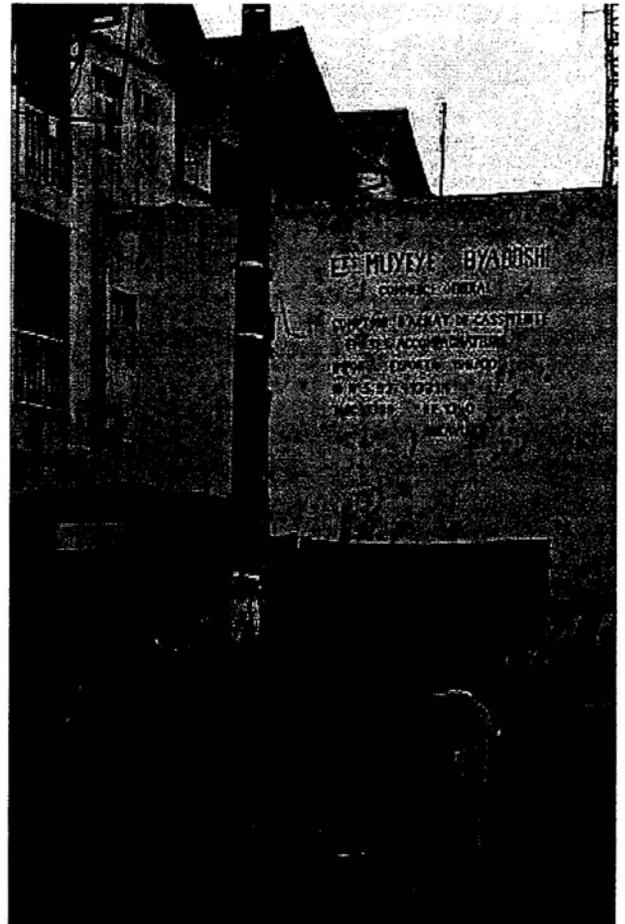
*“The comptoirs [exporters] ask us if we buy minerals from the FDLR, but it’s easy to lie and get around that. They don’t check” - Thomas, trader, Bukavu*

Export companies then buy minerals from the trading houses and transporters, process the minerals using machinery, and then sell them to foreign buyers. These companies, known locally as *comptoirs*, are required to register with the government, and there are currently 17 exporters based in Bukavu and 24 based in Goma. Just as the exporters provide financing to their suppliers, the majority of them are paid in advance for their minerals by international traders from Belgium, Malaysia, and other foreign countries.

In 2008, the U.N.-appointed experts tasked with monitoring the links between natural resources and conflict in eastern Congo identified several major exporters as actively purchasing minerals from mines controlled by the FDLR and other armed groups. Although the associations of exporters in both North and South Kivu have denied these accusations and insist that they only purchase minerals through legal channels, there are many loopholes that still allow conflict minerals to enter into the supply chain at this state.

At present, the only system that the exporters use to avoid buying conflict minerals is verbal assurance: they simply ask, “Did you get this from a conflict area?” If the seller says no, without providing any proof of where the minerals came from, then the exporter goes ahead with the purchase. According to our interviews, there has not been a single case where an exporter refused a batch of minerals because they believed it originated in a conflict mine. Also, the laws prohibiting exporters from buying minerals from unregistered traders are weakly enforced, making it all too easy for minerals of dubious origin to enter the market. So smugglers, even armed fighters themselves, can easily walk into an exporting company and sell the minerals without difficulty.

There are also massive concerns with the gold trade. According to Congolese government sources, in 2008 Congo legally exported only 270 pounds of gold, compared with an estimated 11 thousand pounds of production.<sup>9</sup> This means that the lion’s share of the profits for the gold trade accrues to the armed groups, further fueling the cycle of violence in Congo.



An exporter cited by UN experts as purchasing minerals from the FDLR.

Source: Grassroots Reconciliation Group / Sasha Lezhnev

---

#### Step 4: Transit countries: Origins obscured

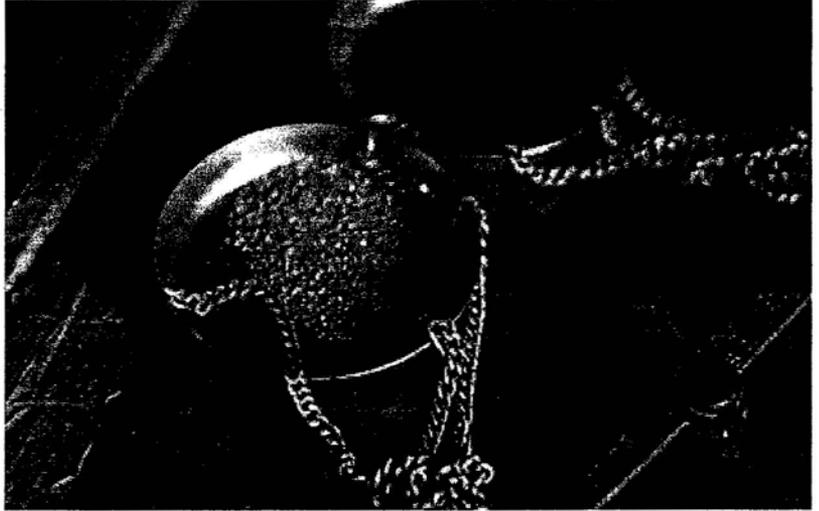
*"The border patrols don't check when you come across from Congo. Then you sell at one of two houses here [in Uganda]. They never ask for papers about where the gold comes from. Then they sell to Dubai. This business is very big, millions of dollars." — Frank, former minerals smuggler, Kampala, Uganda*

From the exporter the minerals are sent mainly by road, boat, or plane to the neighboring countries of Rwanda, Uganda, and Burundi.<sup>10</sup> Some minerals are legally exported, with taxes paid to the Congolese government, while others are smuggled across Congo's porous borders. Either way, conflict minerals form a major portion of the trade.

Vast inconsistencies in the statistics recorded by neighboring countries attest to the scale of the smuggling, as minerals from Congo are labeled as having originated in Uganda, Rwanda, or Burundi. For example, Uganda officially produced less than \$600 worth of gold in 2007, yet exported over \$74 million worth of gold.<sup>11</sup> Similarly, Rwanda produced \$8 million worth of tin ore but officially exported at least \$30 million of tin.<sup>12</sup>

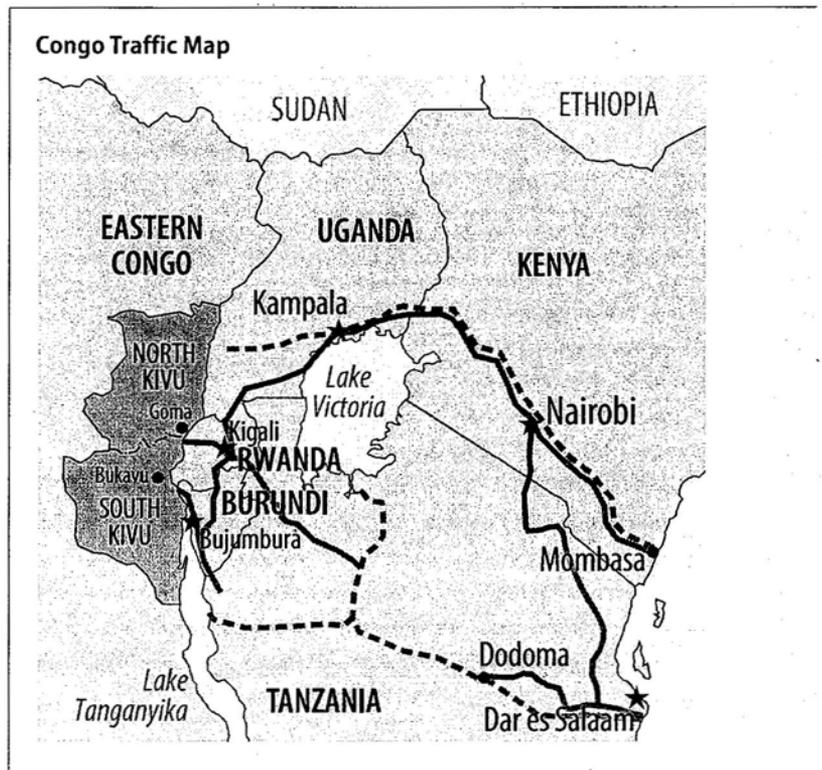
Congolese sellers either working independently or sent by the exporting companies work with buying houses and companies in Rwanda, Uganda, and Burundi. In Uganda and Burundi, these shops are unmarked houses. In Rwanda, buying companies mix Congolese minerals with those produced by Rwandan mines. In all three countries, the companies' proprietors rarely ask questions about where the minerals come from.

In Uganda and Burundi, buying shops also work closely with officers in the security services—the army and police of the country—so that their investments are "protected." Military officers receive cuts from this trade, and use their security connections to keep business flowing smoothly. This climate of repression and the real threat of violence is enough to dissuade most whistleblowers. Some of these traders have been put on United Nations sanctions lists for trading in conflict minerals, so they maintain underground profiles to avoid the spotlight and further sanctions.



Gold powder is tested and weighed within dealerships.

Source: Grassroots Reconciliation Group / Sasha Lezhnev



There is nothing inherently wrong with neighboring countries importing and exporting Congolese minerals, but given the history of regional governments direct involvement in the illicit minerals trade, linkages between these governments and business and military elites who dominate the trade, and the continuing lack of transparency and due diligence on the part of these governments, much greater scrutiny of this step in the trade is necessary. These countries should insist that verifiable documentation accompanies the minerals, documenting the chain of custody to ensure that they are conflict free, and that they have been legally taxed by the Congolese authorities. Moreover, they need to start holding smugglers to account. The government of Rwanda has recently started a program to certify the origin of much of Rwanda's domestic mineral production. This is a step in the right direction and full implementation of this policy by all minerals companies in the country, as well as in Uganda and Burundi, should be encouraged.

---

### Step 5: Refiners: Minerals to metals

*"Minerals used to create the metals in electronics products are often mixed from various sources and exchanged in ways that prevent tracing."*

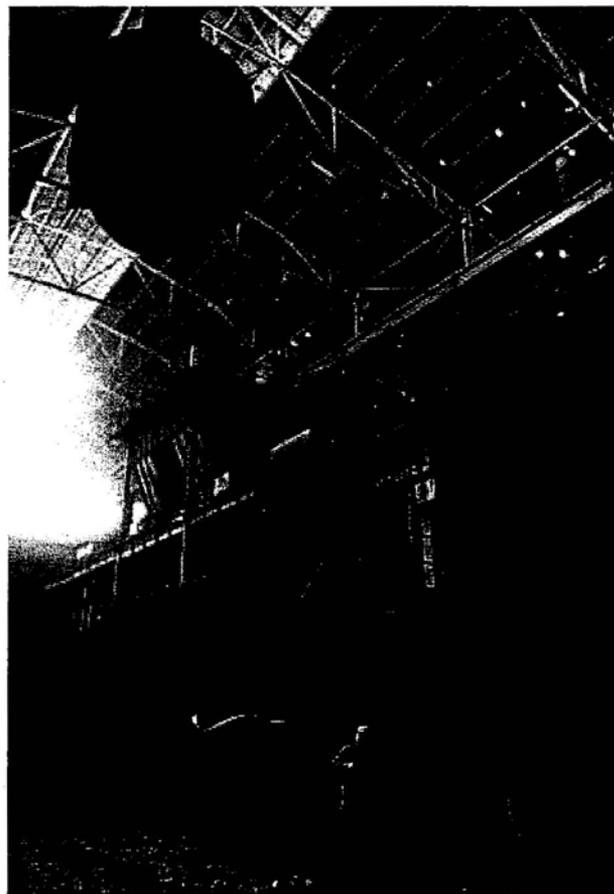
*– Electronic Industry Citizenship Coalition statement on minerals used in electronics products.*

In order for the minerals to be sold on the world market, they have to be refined into metals by metal processing companies.<sup>13</sup> These companies, based mainly in East Asia, take the Congolese minerals and smelt or chemically process them together with metals from other countries in large furnaces.<sup>14</sup>

For tin, the most lucrative conflict mineral in eastern Congo last year, 10 main smelting companies process over 80 percent of the world's tin, almost all of which are based in East Asia.<sup>15</sup> For tantalum, four companies make up the overwhelming majority of the chemical processing market, based in Germany, the U.S., China, and Kazakhstan. For tungsten, there are several processing companies in China, Austria, and Russia. The main destination for Congolese gold is Dubai in the Middle East, though recent records indicate that Switzerland, Italy, and Belgium may also be processing gold from eastern Congo.

When it comes to tracing supply chains back to their sources, refiners are the critical link. After the mineral ore is refined into metal, it becomes impossible to distinguish tin or tantalum that originated in Congo from other sources, and supplies from all over the globe are mixed together at this step in the chain. This is why it is essential that these companies take pains to document where they are sourcing from and make their records subject to independent audits.

The International Tin Research Institute, or ITRI, a membership association consisting of major tin smelters, has developed an initiative to improve due diligence for tin from eastern Congo. Together with certain metal traders and Congolese exporters, they have developed a three-step approach to developing a more traceable supply chain. So far, the measures taken remain insufficient, but with a more robust system of independent audits that would ensure that companies are not responsible for policing themselves, this initiative could positively impact the trade.<sup>16</sup>



Inside a tin smelter.

Source: AP Photo / Dado Galdieri

The U.S. Congress, led by Senators Sam Brownback, Russ Feingold, and Dick Durbin, has also proposed legislation that would require companies to trace the 3T minerals sourced from Central Africa back to their original mines. The House of Representatives, led by Rep. Jim McDermott, is working on a similar bill, which would put in place audits of refining facilities to help ensure they are conflict free. These are all welcome steps in the right direction, although their success will depend on the results they deliver on the ground.

---

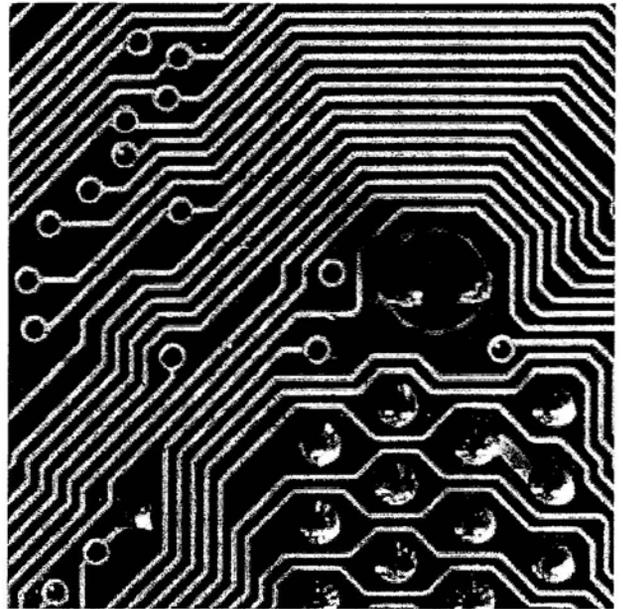
## Step 6: Electronics companies: Conflict minerals in your phone

*"I hear these minerals are used in mobile phones, but I don't know how. Why don't the big companies make sure they are not buying from the FDLR? They have that power and money, surely."*

– Robert, youth civil society activist, Bukavu,

Finally, the refiners sell Congo's minerals onto the electronics companies. The electronics industry is the single largest consumer of the minerals from eastern Congo. The now-processed metals usually go through a few sub-stages here—first to circuit board and computer chip manufacturers, then to cell phone and other electronics manufacturers, and finally to the mainstream electronics companies such as Intel, Apple, Nokia, Hewlett Packard, Nintendo, etc. These companies then make the products that we all know and buy—cell phones, portable music players, video games, and laptop computers. Because companies do not currently have a system to trace, audit, and certify where their materials come from, all cell phones and laptops may contain conflict minerals from Congo.

The electronics industry is not the only one that uses the 3Ts and gold, but it is the largest. Other industries with a significant stake include tin can manufacturers, industrial tool and light bulb companies for tungsten, and aerospace and defense contractors, as well as the banking and jewelry industries in the case of gold.



Tin solder is used to affix components to circuit boards.

Source: flickr.com / quapan

---

## Steps toward a solution

These six steps connect our cell phones and computers to the conflict in eastern Congo. This connection presents an opportunity for consumers to make a difference by demanding that companies sell us verifiably conflict-free products.

A recent Enough Project strategy paper provided an overview of a comprehensive policy to end the trade in conflict minerals, incorporating corporate responsibility, security measures, governance reforms, and livelihoods initiatives.<sup>17</sup> Consumers and companies have a critical role to play, by demanding three steps to enable Congo's minerals to benefit its people rather than the armed groups that prey upon them:

- **Trace:** Companies must determine the precise sources of their minerals. We should support efforts to develop rigorous means of ensuring that the origin and production volume of minerals are transparent.

- **Audit:** Companies should conduct detailed examinations of their mineral supply chains to ensure that taxes are legally and transparently paid to the Congolese government and guard against bribery and fraudulent payments. Credible third parties should conduct or verify these audits.
- **Certify:** For consumers to be able to purchase conflict-free electronics made with Congolese minerals, a certification scheme that builds upon the lessons of the Kimberley Process will be required. Donor governments and industry should provide financial and technical assistance to galvanize this process.

---

## What you can do

Your cell phone doesn't have to fuel the deadliest war in the world. Use it to change the equation for Congo. It's your call to make.

Call, email, or meet with your Senators and urge them to both cosponsor *and* help strengthen the Congo Conflict Minerals Act of 2009 (S.891). Talking points can be found at [www.raisehopeforcongo.org](http://www.raisehopeforcongo.org) or you can dial the U.S. Capitol switchboard at (202) 224-3121.

Help us increase demand for conflict-free electronics. Visit [www.raisehopeforcongo.org](http://www.raisehopeforcongo.org) to email the biggest buyers of Congo's conflict minerals—major electronics companies—and let them know that you want to buy conflict-free products. The message is clear: "If you take conflict out of your cell phone, I will buy it."

Stay in touch! Text the word "Congo" to 228488 (ACTIV8) to get updates and actions from RAISE Hope for Congo.

---

## Endnotes

- 1 There is also currently a House bill being drafted by Rep. McDermott, which would require audits of minerals refining facilities, and which some electronics companies have reportedly supported. Jonathan Broder, "In the Business of Change," *Congressional Quarterly*, September 14, 2009.
- 2 For a background on the crisis, see John Prendergast and Noel Atama, "Eastern Congo: An Action Plan to End the World's Deadliest War," (Washington: Enough Project, 2009).
- 3 Janine Zacharia, "Clinton Calls on Congo to Stop Mineral Wealth Funding Conflict," *Bloomberg News*, August 11, 2009.
- 4 The 3Ts are produced from mineral ores: tin from cassiterite, tungsten from wolframite, and tantalum from columbite-tantalite, known throughout Congo as coltan. To the untrained eye, these minerals look like ordinary rocks, and are often found together in the same ore. For gold, there are three types of mines – underground, in which miners carve out a section of a mountain and dig tunnels beneath the earth; pit, in which miners dig in open ditches; and alluvial, which is panning for gold in rivers, similar to the methods used during the California gold rush over a century ago. See also Dan Fahey, "Le Fleuve D'Or: The Production and Trade of Gold from Mongbwalu, DRC," (*L'Afrique des Grands Lacs Annuaire 2007-2008*).
- 5 This includes North and South Kivu, and the major mines are identified as Minembwe, Misisi, Mpofi, Bisie, Gakombe, Bwina, Benzia, Wamiti, Lugushwa, Kinyinya Millimani, Ihana group, Bibatama – Rive Gauche, and Mugerero, each of which have over 500 workers at the mine site. See, "Interactive map of militarised mining areas in the Kivus (August 2009)" available at <http://www.ipisresearch.be/maps/MiMIKI/Areas/web/index.html>.
- 6 At the mines that are not controlled by armed groups, civilians work together with local chiefs to exploit the minerals. In addition, there are sizeable mines located outside of the conflict zone in the neighboring provinces of Katanga and Maniema, whose trading routes pass through the Kivus. See also, Steven Spittaels and Filip Hilgert, "Accompanying note on the interactive map of militarised mines in the Kivus", available at [http://www.ipisresearch.be/fck/file/20090810\\_mining\\_kivus.pdf](http://www.ipisresearch.be/fck/file/20090810_mining_kivus.pdf).
- 7 Interview with civil society mining expert, Bukavu, June 10, 2009
- 8 Interviews with mining inspectors and civil society representatives, June 10, 2009
- 9 Cadet Abedi, "La RDC perd 70 millions \$US à cause de la fraude du métal jaune," *AllAfrica.com*, July 15, 2009, available at <http://fr.allafrica.com/stories/200907150336.html>
- 10 Sometimes this stage is skipped, and the minerals are flown directly to refiners in Step 5. In other cases, metals trading companies based mainly in Europe buy the minerals from Congo and Rwanda and sell them onto refiners.
- 11 "Uganda Ministry of Energy and Minerals, Annual Report for 2007".
- 12 The official price reported in Rwanda in 2007 was US\$7.09 per kg of tin ore, but the world price for tin in 2007 was US\$14.10. While allowing for lowered prices of tin ore before it is smelted, there is still potentially a price discrepancy here, meaning that the real value of exported tin ore from Rwanda could be higher. There is a vast discrepancy between what H.C. Starck paid for tin ore from Rwanda (an average of \$12,410 per ton in 2007) and what other companies paid (an average of \$7,603 per ton). The overwhelming majority of these minerals came from eastern Congo. See Nicholas Garrett and Harrison Mitchell, "Trading Conflict for Development: Utilising the Trade in Minerals from Eastern DR Congo for Development," (Resources Consulting Service LLC, 2009).
- 13 The refiners sometimes also have related companies which process the metals into alloys and solder, in order for them to be usable in electronics and related products.
- 14 Some of the minerals, such as tantalum, are chemically processed using a heated salt mixture rather than smelted into metals. There are currently no smelting or chemical processing facilities in Central Africa, although there is a tin smelting plant in Gisenyi, Rwanda that may soon reopen.
- 15 The top 10 companies produced 259,711 combined tons of tin in 2007, and the United States Geological Survey estimates that world tin production in 2007 equaled 320,000 tons. ITRI, "Review of Tin Use and Recycling for 2007"; United States Geological Survey, "Report for Tin," 2009.
- 16 ITRI Fact Sheet, "Tin Supply from the Democratic Republic of Congo," available at [http://www.itri.co.uk/POOLED/ARTICLES/BF\\_PARTART/VIEWASP?Q=BF\\_PARTART\\_31025Q](http://www.itri.co.uk/POOLED/ARTICLES/BF_PARTART/VIEWASP?Q=BF_PARTART_31025Q)
- 17 The Enough Project with Grassroots Reconciliation Group, "A Comprehensive Approach to Congo's Conflict Minerals," (2009), available at <http://www.enoughproject.org/publications/comprehensive-approach-conflict-minerals-strategy-paper>

---

---

Enough is a project of the Center for American Progress to end genocide and crimes against humanity. Founded in 2007, Enough focuses on the crises in Sudan, Chad, eastern Congo, northern Uganda, Somalia, and Zimbabwe. Enough's strategy papers and briefings provide sharp field analysis and targeted policy recommendations based on a "3P" crisis response strategy: promoting durable peace, providing civilian protection, and punishing perpetrators of atrocities. Enough works with concerned citizens, advocates, and policy makers to prevent, mitigate, and resolve these crises. To learn more about Enough and what you can do to help, go to [www.enoughproject.org](http://www.enoughproject.org).

---

---



**enough**

The project to end genocide and crimes against humanity