

SUBMITTED ONLINE

1 November 2011



Ms. Elizabeth M. Murphy

Secretary

U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

cc: *Save the Congo Trustees*

Dear Ms Murphy

RE: Comments Regarding File No. S7-40-10 on Conflict Minerals Disclosure

We are writing response to your request for comments related to the implementation of Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, relating to Conflict Minerals from the Democratic Republic of the Congo and adjoining countries.

We applaud the humanitarian objectives underpinning the proposed law. Depriving death squads, whether local, national or regional, the financial backing that enables them to continue to wreck devastation on the Congolese people is central to paving the way for the restoration of peace, security and stability in the Congo and across the African Great Lakes region. Although we hold significant reservations as to both the practicalities of the proposed regulations and the extent to which it could help end of the wars, the looting, the raping and mass exodus that continue to be written as part of Congo's history, we feel that if well balanced and implemented, Section 1502 of the Dodd-Frank Act could help the Congo in the long run; and for this reason we would like to offer our suggestions:

- 1. Lack of penalties weakens the proposed law:** It seems to us that the proposed law is not intended so much to have the U.S. government regulate the illicit trade of minerals which have been funding and sustaining the killing fields of Congo, but rather to provide concerned citizens, NGOs and the press the information required to pressure companies implicated to clean up their act. This will at best unduly burden local and international rights agencies working with limited resources; and at worse it will simply be a complete waste of our time. You will be aware of ground breaking UN reports on the role played by Congo's easily appropriable and highly valuable natural resources in funding killing spree in that country. Companies, countries as well as individuals have named and shamed yet there has been almost no change in their behaviours. Unless you levy legal punishments on those trading conflict minerals, nothing will [probably] change. The court of public opinion is not enough to deter behaviours of members of what can only be described as 'mafia network'. If public opinion had any influence, the UN reports by both Panel and Group of Experts would have solved this issue. In our view, Section 1502 of the Dodd-Frank Act should, therefore, be accompanied by specific civil and criminal penalties for those corporations that continue to trade in conflict minerals.
- 2. Terminology:** We understand that Section 1502 of the Dodd-Frank Act [will] define "armed group" in line with the U.S. State Department's human rights reports. This alone creates major loophole which can easily be exploited by those implicated in the trade of conflict minerals. A year before Dodd-Frank was passed; the CNDP was fighting the Kinshasa government. Today, the CNDP is part of the "Congolese National Army", however it still maintains its parallel hierarchy and now controls more mines than it has ever controlled

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since its emergence in 2004. There are dozens of such cases across the Congo; and there will be dozens more in months and years to come. If SEC gets this wrong, there is a chance the whole process will crumble. Our suggestion is when Section 1502 of the Dodd-Frank Act is implemented, the Security and Exchange Commission should establish a working group tasked to working closely with MONUSCO as well as with both local and international rights agencies to keep Section 1502 of the Dodd-Frank in harmony with realities of [criminal] network implicated in the illicit trading.

3. **The Target Scope of the law:** Section 1502 of the Dodd-Frank Act seems to place emphasis solely on the illicit extraction or trade of tin, tungsten, tantalum and gold. We fear that armed group could switch to illicitly exploiting and trading minerals [or other lootable resources such as Coffee and timber] which does not [explicitly] fall within the remit of Section 1502 of the Dodd-Frank Act. If this happens, it could diminish our efforts and hard work; and given the evil-creativity of armed groups operating in the Congo there is a chance that cobalt could be the next target. Furthermore if rebel groups are cut off from their mines where they generate much of their revenue they can simply pray on the population to sustain their military campaigns. We understand that the U.S. Secretary of State reserve the power to determine which minerals is or is not funding or sustaining the wars in the Congo. However, this is not enough. Section 1502 of the Dodd-Frank Act must reflect the political war-economic of the situation in the African great lakes region, if it is to succeed.
4. **Financial penalties:** the role played by conflict minerals in funding or sustaining the wars in Congo has been well documented by the UN Panel and Group of Experts as well as dozens of local and international rights agencies; and in-spite of dozens of recommendations by the UN and rights agencies no much seem to have changed. The Security and Exchange Commission must take a different take on things. We urge you to consider placing financial penalties on products that are used to sustain conflict in the Congo. These penalties could be placed into an independent account that could then be used to fund education, build hospitals, infrastructure and DDR programs.
5. **Due diligence standards:** we urge you to adopt the due diligence standard published by the OECD and the UNSC as the supreme requirements for Section 1502 of the Dodd-Frank Act. These standards consist of five key points:
 - 1) Conflict minerals policy,
 - 2) Supply chain risk assessment,
 - 3) Remedial action,
 - 4) Independent third party audit, and
 - 5) Public reporting

We hope you will find the above suggestions useful. Section 1502 of the Dodd-Frank Act has been modelled around the Kimberly Process. The Kimberly Process, however, did not bring an end to the civil war in Sierra Leone rather the British military intervention did. If we are serious on ending the killing and raping in the Congo President Obama must take bold and effective political actions in line with the 2006 Congo Relief Act and Public Law 109-456. We would welcome the opportunity to discuss them or any other matter that you find helpful.

We look forward to hearing from you.

Sincerely yours,

Vava Tampa
Executive Director, Save the Congo