



# The losing battle against conflict minerals

Minerals from countries where sales fund corruption and violence continue to enter the US, as oversight proves tricky

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by [Natasja Sheriff](#)

United States regulations concerning the trade in conflict minerals, aimed at reducing the devastating violence in eastern Democratic Republic of Congo (DRC), are proving difficult to enforce, as illegal armed groups and corrupt members of the Congolese military continue to create instability in the region, according to a [report](#) released this summer by the U.S. Government Accountability Office.

"We do see these armed groups are still present and they are most likely still benefiting from the mineral trade," said Evie Franco, a DRC researcher with Amnesty International in Nairobi.

"What we see is there are still very big displacements of the population, people that are fleeing abuses by rebel groups," she said, adding that civilians have also become caught up in army operations against those groups, like the Democratic Force for the Liberation of Rwanda (FDLR).

"Often civilians are targeted either by the armed group or by the [Congolese] army because they're suspected of giving information about the group to the army or about different groups that are fighting against each other," she said.

In the last three weeks the UNHCR, the United Nations refugee agency, has registered an influx of people at its camps in North Kivu, where military operations against the FDLR and other armed groups are creating a humanitarian crisis, according to Gloria Ramazani, a spokeswoman for the UNHCR in Goma.

Four conflict minerals mined in Congo — tantalum, tin, tungsten (3TG) and gold — are used in all kinds of everyday items, from mobile phones to [food containers](#). Tantalum is widely used in electronic equipment, such as cellphones and laptops, as well as camera lenses and medical implants.

The Democratic Republic of Congo is believed to produce [about 20 percent](#) of the world's tantalum. (The U.S. imports more than half its supplies from Brazil, Canada and Australia.) In the DRC, armed groups use revenue from the trade in these minerals to [finance](#) their operations, and it's this link that U.S. lawmakers and advocates want to break.

The DRC has been mired in war and upheaval since it gained independence from Belgium in 1960, and violence escalated after the 1994 genocide in Rwanda, which spilled over into neighboring Congo, then called Zaire. Two wars followed, drawing in nine African nations, until a transitional government was formed and a peace deal brokered in 2003.

Much of the country is now at peace. But in eastern Congo, the conflict continues, a shifting power struggle involving foreign armies and [more than 50 armed groups](#), each with their own motivations and ideologies. According to the [UNHCR](#), the fighting displaced more than 3 million people in the country in 2014. Human rights groups continue to [document](#) abuses by armed groups and the Congolese army, including killings and mass rapes.

## Consumers' right to know

In 2010 the U.S. government attempted to intervene in the conflict by introducing a provision under the Dodd-Frank Act, aimed at stymieing the flow of funds from the exploitation of the country's rich mineral resources to violent groups.

Under the law, public companies must investigate where the minerals in their products are coming from and report their findings annually to the Securities and Exchange Commission (SEC), declaring whether their products contain a conflict mineral from the DRC or adjoining countries.

The idea that companies should be checking to see if their supply chains are free of conflict minerals is nothing new or radical, said Chris Albin-Lackey at Human Rights Watch.

"The thing that is really unique about Dodd-Frank and the reason it attracts so much attention," he said, "is ... it represents the first time that a government has taken that principle of human rights due diligence and made it a legal requirement for companies operating not just on U.S. soil but overseas."

Consumers usually don't know if the products they buy have somehow contributed to conflict in some part of the world, said Albin-Lackey.

"It has to be the responsibility of the companies that are sourcing and purchasing these minerals to make serious investigations about whether their supply chains are tangled up in really serious human rights problems or not."

But a review of 147 companies that submitted conflict mineral reports in 2014, the first year they were required to do so since the introduction of the rule, found that more than two-thirds of companies could not identify the source of the minerals in their products, and none of those companies were able to say for certain whether the minerals financed or benefited armed groups, according to the GAO report.

That's not surprising, said Carly Oboth, a policy adviser on conflict minerals with the advocacy group Global Witness.

"This is a process, and it does take years," she said. "It takes a bit of time for companies to get to grips with their supply chain, to better understand where all the minerals are coming from."

In April this year, Global Witness and Amnesty International [reported](#) that 79 out of 100 companies they analyzed failed to meet the law's requirements to check and report on the use of conflict minerals in their products.

More than 1,300 companies filed disclosures in 2014, including Barnes & Noble, Google, Colgate, Kraft Foods, [Apple](#) and [J.C. Penney](#). In a [report](#) filed by Google, the company states, "We have reason to believe that a portion of the 3TG used in our products originated from the covered countries, but we have not identified any instances of sourcing that directly or indirectly supported conflict in the covered countries."

Google and Barnes & Noble did not respond to requests to discuss the SEC disclosure.

## Major industry pushback

Since the introduction of Dodd-Frank, a number of schemes have sprung up as part of efforts to certify mines as conflict-free — demilitarized and free from the control of armed groups — and to track and trace minerals along the supply chain from the source.

But according to the GAO report, efforts to certify mines and the minerals they produce are severely restricted by conditions on the ground. Mining areas in eastern DRC "continue to be plagued by insecurity because of the presence and activities of armed groups and some corrupt members of the national military," the authors write. Local officials attempt to monitor the mines with little training and often for no pay, but their efforts are crippled by corruption, lack of infrastructure and poorly maintained or nonexistent roads.

U.S. agencies told the GAO they have validated 140 mines sites this year in eastern Congo, and USAID [said](#) that revenues for artisanal miners, traders and exporters are up 200 percent, thanks to conflict-free supply chains, which are bringing in tax revenue for the country's government. Still, "smuggling remains prolific, and instances of fraud call into question the integrity of traceability mechanisms," according to the GAO report. The U.N. Group of Experts [reports](#) finding tags from the [ITRI Tin Supply Chain Initiative](#), one of the largest traceability schemes, for sale in the DRC and Rwanda. If the scheme is to work, the bar-coded tags should be available only at audited, conflict free, mines and smelters, where they are attached to bags of minerals and logged for tracking.

Industry groups like the National Association of Manufacturers have pushed back against the law since its introduction, and in August they achieved a minor victory when two members of a three judge appeals court panel [found](#) part of the provision unconstitutional, citing the First Amendment. Although the disclosure rule still stands, companies no longer have to declare whether their products are DRC-conflict-free.

"Basically they'll file their [disclosure forms], they'll indicate what supply-chain due diligence they did, and then they can probably say whatever they want about whether they're conflict-free or not conflict-free. They don't have to say anything, which kind of guts the purpose of the rule," said Celia Taylor, the director of the international legal studies program at the University of Denver.

"I think that we, as Western consumers, have to remember that, ultimately, the situation in the Congo isn't about us."

— Laura Seay  
professor of government, Colby College

But there has also been pushback from other groups, including academics and international observers who have long argued that the Dodd-Frank provision is fundamentally flawed. In September 2014, 70 of these critics published an [open letter](#) condemning the regulation. The law, they say, is based on an oversimplified understanding of the country and the ongoing conflict, is impossible to implement and is causing more harm than good.

"I think the evidence is growing that the regulation has had a lot of unintended consequences," said Laura Seay, an assistant professor of government at Colby College. In a 2012 [report](#), she described how the Dodd-Frank rule led to a ban on small-scale mining introduced by Congo's President Joseph Kabila and a de facto boycott of minerals exports from Congo. "People lost their livelihoods ... We saw some of those people join rebel groups," she said.

While acknowledging that it's impossible to attribute all these changes to Dodd-Frank alone, Seay argued that the rule created the momentum for the ban and the boycott. "There are all these competing perspectives. There are multiple schemes. There are multiple regulations," she said. "All of this is collectively seen by the Congolese as part of the same phenomenon, and they certainly blame this law for all of the problems that have happened."

She isn't opposed to cleaning up the Congolese mineral trade; the problem is the all-or-nothing approach to the way companies report to the SEC. "Either their products are conflict free or they're not, and there's really no incentive in there to be making progress," she said.

Reporting incremental progress toward conflict-free minerals might encourage companies to stay in Congo, she suggested, instead of shaming companies that can't say they are 100 percent conflict-free. But ultimately, she said, she would rather see a stronger diplomatic approach to the conflict and more funding for reform.

## Other sources of violence

Despite often desperate and [dangerous working conditions](#), serious health risks and rampant exploitation of child labor, mining provides a vital source of income for millions of men and women in the DRC.

"What I've seen working for over five years in artisanal mining towns in eastern DRC is that mining has the potential to be a remarkable driver of economic recovery in a place where so many systems of livelihood have been destroyed by long-term war," said Jocelyn Kelly, the director of the women in war program at the Harvard Humanitarian Initiative.

Reducing the conflict to simply cause and effect between violence, resource exploitation and human rights abuses has been particularly damaging for women. The sexual abuse of women in eastern Congo is an issue that's hard to overstate, she said. But, she added, oversimplifying the problem overlooks much more important, complex and often pervasive forms of abuse women face.

"I think a common misconception in artisanal mining towns is that the armed groups are armed for all of the challenges and abuses in these areas," said Kelly. "In fact, what we have found is that armed [groups] are not in a majority of mining towns at all. Even when they are present, it is often the national military and not rebel groups who are consolidating control and who are extorting civilians for money."

Lauren Wolfe, the director of the women under siege project at the Women's Media Center, [wrote](#) in February 2015 that efforts to regulate minerals and thereby the conflict that has raged in Congo for decades "was not leading to change for women and other low-level miners."

Like Kelly's, Wolfe's [reporting](#) revealed that rape is mostly perpetrated by civilians — a finding echoed by the final report of the U.N. Group of Experts on the DRC.

Where does that leave conscientious consumers and well-intentioned efforts to try to intervene in a conflict that has claimed so many lives?

"I think that we, as Western consumers, have to remember that, ultimately, the situation in the Congo isn't about us," said Seay.

"Congo's problems are fundamentally not about the economic issues here. It's about the need for political settlement and the need for security sector reform and the need to build institutions, the long-term process of state building and including everyone under the banner of what's considered citizenship. And until you get that, you're not going to get any kind of regulation that works in the mineral sector."

Gloria Ramazani's name was misspelled in an earlier version of this story.

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