

"WE ARE NOT ALONE. AFRICA, ASIA AND FREE AND LIBERATED PEOPLE FROM EVERY CORNER OF THE WORLD WILL ALWAYS BE FOUND AT THE SIDE OF THE CONGOLESE."

PATRICE EMERY LUMUMBA

Conflict Minerals Trade Act Critique and Suggestions

Framework

The Congo faces a profound political and historical challenge. In spite of the spirit of support and good intentions behind the Conflict Mineral Trade Act, it is far from sufficient in addressing many of the core challenges of the Congo.

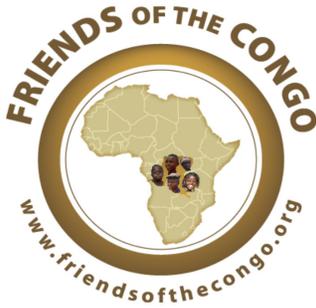
The US Congress would best serve the people of the Congo by implementing public law 109-456, Democratic Republic of the Congo relief, security and Democracy Promotion Act of 2006. Nonetheless, even within the narrow confines of a conflict mineral bill, gaps can be filled and refinements made to improve what is an extraordinarily limited tool.

Critique and Suggestions

1. In Section 2 No. 7 of the Conflict Mineral Trade Act, the bill references the December 2008 UN Group of Experts Report. The predominant feature of that report dealt with the Rwandan government's support of rebel groups inside Congo, which destabilized the entire Eastern region of Congo. This report followed two previous invasions of Congo by Rwandan troops (1996 and 1998). As a result of the December 2008 UN report, Sweden and Netherlands withheld aid from Rwanda with the expectation of pressuring Rwandan leadership (President Paul Kagame and the Rwandan Patriotic Front) to be a partner for peace as opposed to continuing its destabilizing role in the region.

As damning as the December 2008 report was, the United States remained publicly silent even though its own laws via public law 109-456, calls for the Secretary of State to withhold foreign assistance to neighboring countries that destabilize the Congo. The conflict mineral bill should either adopt section 105 from public law 109-456 or explicitly call for its enforcement.

2. In section 2 No. 12A suppliers are called upon to make sure that they do not source minerals from the Congo that result in labor or human rights violations or damage the environment. However, this can apply to the entire country, human rights violations and damage to the environment is taking place in areas where American companies are mining copper and cobalt. Cobalt is central to the batteries found in the cell phones and laptops sold by electronic companies. Congolese civil society in the Katanga province of Congo says US company, Freeport McMoran is the beneficiary of a "fraudulent" odious contract that is devastating to the development of the Congolese mining sector and economy. Section 2 12A lays bear the narrow and circumscribed nature of the bill that restricts itself to so-called conflict minerals when the elements of the violations it identifies as conflict minerals is occurring as a result of the exploitation of other minerals. Conflict cows could be added to the list as cattle is a valuable



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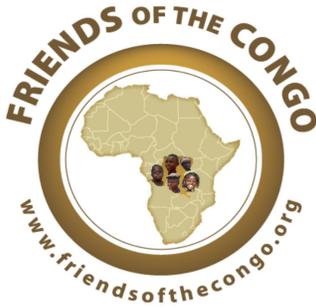
resource that fuels conflict among militia as well. Land and trade routes are also valuable assets fought over that fuel the conflict.

3. Section 4A (2) - This section speaks to the mapping of areas controlled by illegal armed groups. In the Congo, yesterday's armed group is today's government army. Mines change hands between militias and government troops (often rogue elements that operate under their own command structure or with a pass from superiors in Kinshasa) as often as alliances shift in a war economy. For example, the former rebels, CNDP who are now integrated into the Congolese military, are now in control of mines in Walikale and Mwenga – areas. They were not formerly in control of these areas when they were rebel groups. However, now that they have been integrated in the military, they control lucrative mines while maintaining their rebel group command structure and business and political relationships with Rwanda.

4. Section 4 (f) Support of Mandate of the United Nations Groups of Experts – the United Nations Group of Experts reports have been invaluable and should remain intact. However, there is a gross omission as the UN has published studies on the illegal exploitation of Congo's wealth since 2001, yet the US government, particularly the National Contact Point at the State Department has been negligent in addressing the findings of the UN Reports that implicate US companies and their violation of OECD guidelines. The bill should call for a thorough assessment since the beginning of the conflict in 1996 to discern which American companies have participated in fueling the conflict due to the illegal exploitation of Congo's riches. There is ample documentation to execute a thorough investigation in this matter. The US National Contact Point (NCP) should be called upon to investigate whether any US companies breached the OECD guidelines from the beginning of the conflict in 1996 to present. In addition, the NCP should take into consideration the Carter Center studies and recommendations to discern the role that odious contracts signed during the midst of the conflict played in the weakening of the state and indirect fueling of the conflict.

Additional Notes or Concerns:

1. Weak Congolese institutions will be called upon to be engaged in the auditing or monitoring process.
2. The focus of the problem on the Congolese and away from the foreign mining interests.
3. There is no focus on retroactive punishment for corporations engaged in the Congo throughout the conflict.
4. Lack of focus away from the rampant smuggling into Rwanda and Uganda. In fact, the law only mentions "neighbors" when it is well documented that Rwanda and Uganda are the prime culprits in the looting of Congo's wealth as the 2005 International Court of Justice ruling



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demonstrated along with the Spanish and French court indictments of Rwanda's top officials in 2008 and 2006 respectively.

5. The penalties for violation of the law if the so-called conflict mineral is undeclared lacks substantial punitive measures.

6. There is also no mention of how an auditing/certification system will be arranged logistically in light of the utter lack of infrastructure in the vast majority of the mining areas.

7. The mines controlled by rebel or government troops are militarized and there is no clear policy as to how these mines will be demilitarized.

Recommendations that would have a far greater impact than a conflict mineral bill

1. Congressman McDermott should consider rallying other Congress people as well as the electronics industry to call on President Obama to make Congo a priority and take the diplomatic lead to bringing an end to the conflict through a political framework that would bring all the players together to address reconciliation in Rwanda, expansion of political space in Uganda and reinforcement of Democratic Process in Congo.

2. Call for Special Adviser to the Great Lakes Howard Wolpe to be elevated to special Envoy and be accorded all the resources necessary to carry out his duties in the same fashion that the Sudan Special Envoy is equipped

3. Call for an international conference on the Great Lakes region to include all parties engaged in the conflict, both state and non-state actors, particularly civil society.