

Mind the Mines: CSR and Government in The Case of DRC Conflict Minerals

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Abstract: CSR is by no means a go-to solution for human rights abuses. This paper examines the mineral trade in the Democratic Republic of the Congo (DRC) with a focus on the effect of Section 1502 of the Dodd-Frank Act on this trade. U.S. firms who outsource to DRC mines for metals like tin, tantalum, and tungsten risk the incorporation of human rights abuse into their supply chain. Section 1502 of Dodd-Frank represents a U.S. corporate governance effort to do something about this inclusion. The complexities behind the issue are outlined and contextualized from recent DRC history through the aftermath of Dodd-Frank 1502. An empirical financial assessment is then given, followed by a theoretical framework that posits Public-Private Partnerships as a possible solution.

If a corporation wishes to act against human rights abuses, it might do so through CSR, but what does a government have to say about how the corporation invests and acts? This government may not even be one under which the corporation operates if the corporation is a transnational corporation (TNC) or a multinational corporation (MNC). The case of the Democratic Republic of the Congo (DRC) conflict minerals trade in the past decade presents an intersection between the DRC government, the U.S. government, DRC firms, and U.S. firms that reveals that the financial responsibilities of government and corporate entities are linked by the effect these entities have on people.

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Context

Presently, the Democratic Republic of Congo (DRC) is experiencing violent military occupation and political instability, which may spread to neighboring Uganda, Rwanda, or Burundi (Violence in the Democratic Republic of Congo). Tied to these concerns are the vast resources of the Great Lakes region over which military forces are fighting for control to generate revenue to finance their activities involving human rights abuses. Tungsten, Tantalum, Tin, and Gold (known as 3TG) are mined in militarily occupied zones and sold internationally, making up much of the DRC's Gross Domestic Product (GDP). DRC violence is the result of a complicated history that includes international economic controversy on minerals from the region. As such, an assessment of the economics and ethics of dealings with the DRC requires a basis for analysis of the larger issues involved. One basis is the miners of the region.

In their literature review, Cuvelier et al. present a view of these miners from northern Katanga, South Kivu, and North Kivu. The authors discuss the effects of U.S. involvement in the region through Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank 1502). Years later, Emerson in his empirical study supports the claim that Dodd-Frank 1502 is ineffective legislation, noting prominently the consequences of the act. This prompts a revisiting of earlier work by Seay and Narine, which examine two different consequentialist arguments concerning Dodd-Frank 1502. In the context of the empirical evidence and ethical argument, a new solution involving Public-Private Partnerships (PPPs) is addressed. The current problem in the DRC arises from the conflict between U.S. firms, the U.S. government, DRC firms, and the DRC government. The unacceptable consequence is violence, and its solution arises from the recognition of moral ties between these four entities.

History

3TG are used in the production of electronics and are often sourced from the DRC, which has experienced conflict in its 3TG mines since 1994 (Violence in the Democratic Republic of Congo). International firms, especially U.S. firms bought 3TG from DRC firms and used them in electronics. As part of a wave of ethical consumerism in the early 2000s, movements such as the Enough Project became prominent and began lobbying high U.S. officials to take a stand on the sourcing of these minerals. In 2010 – as part of the Dodd-Frank Act, Section 1502 was passed – stating that a U.S. firm, if it suspects a DRC firm of unethically sourcing minerals, is to file a report with the SEC (Emerson, 11). Filing a report is a costly endeavor that end up costing firms as much as \$7.3

billion extra per year overall, according to a study sponsored by U.S. Senator Dick Durbin (D). The Act took effect one year later, but Section 1502 did not take effect until 2012. Yet, Joseph Kabila, the President of the DRC who had won the electoral runoff in 2011 for the DRC had installed a six-month-long ban on mining in the DRC. Later, in 2015, there were protests against Kabila, attacking his legitimacy as president (DR Congo country profile). In 2017, the U.S. Congress considered a replacement to Dodd-Frank – the Financial Choice Act – which contained a proposal to eliminate the Due Diligence procedure mandated by Section 1502. The Bill passed the U.S. House in June 2017 (H.R.10 - Financial CHOICE Act of 2017) but the U.S. Senate failed to act on it.

The Miners

Cuvelier et al. write about the effects that the Dodd-Frank Act has had on the people who actually do the mining. The Kabila embargo constitutes the DRC national government's response to U.S. government pressure to reform the mining sector. The miners were caught by surprise upon hearing of Kabila's embargo and "it is a shared impression that decision-makers – both at the international and national levels – did not give much thought and consideration to the impact of their initiatives on people's everyday lives in Congo's mining areas" (Cuvelier, Bockstael and Vlassenroot, 10). One NGO worker said that a local artisanal miner did not know of the existence of Dodd-Frank and several others complained that only a "small group of powerful people at the local level" had a "general idea" of the law (Cuvelier, Bockstael and Vlassenroot, 10). The people themselves were grossly affected. One mine pit owner lost his home and pit because mining was no longer bringing him needed profits (Cuvelier, Bockstael and Vlassenroot, 12) and, because this was happening to several pit owners, there were "closures of bars and restaurants, taxi motos (sic.) stopped circulating, houses didn't find any tenants, construction sites stopped functioning, there was less traffic, and poverty entered our houses" (Cuvelier, Bockstael and Vlassenroot, 12). As a consequence of Dodd-Frank, albeit well-intentioned, local DRC economies lost their major source of revenue and shrank as a consequence.

Yet, there have been some benefits like the added protection of the mines and the encouragement of people to develop other sectors of the DRC economy. The mines are victim to the conflict between military forces in the DRC. However, in one particular mine with "high profile Due Diligence initiatives", soldiers in conflict with a man who fled into the mine did not enter the mine due to fear of "negative publicity" (Cuvelier, Bockstael and Vlassenroot, 12). The high profile of the U.S. government initiative carried out by U.S. firms, in this particular case,

interfered with the soldiers' entry into the mine but had also made the mine into a safe space of sorts. In a focus group study, researchers found that "Dodd-Frank may have indirectly contributed to a modest revival of agriculture in the eastern part of the country" (Cuvelier, Bockstael and Vlassenroot, 13). The mines are no longer generating as much revenue due to lack of U.S. and other foreign trade. This is because businesses in the U.S. have many hoops to jump through if they want to source minerals from the DRC. Rationally, firms now source less 3TG from the DRC. In turn, the people who are not making enough to sustain themselves have gone back to agriculture, their original means of sustenance.

More complex effects of Dodd-Frank occur on the political level between U.S. firms, the U.S. government, and the DRC government. The Act has been a sort of "wake-up call" (Cuvelier, Bockstael and Vlassenroot, 13). Security and costs factor into the maintenance of the SEC (the institution accepting Due Dilligence Protocols), and into the security of U.S. and DRC firms transacting 3TG. In addition, Asian firms have been taking advantage of the open mineral market in the DRC to do mineral trading while U.S. and European markets shrink. Overall, DRC exports have experienced a decline and the number of monopolies has increased in the DRC mineral industry. Since Dodd-Frank Act's introduction, companies have been coming together to address the issue of human rights violations in their supply chains.

Data

Three years after Cuvelier et al., Emerson completed an empirical analysis in 2017 of the changes in violence since the introduction of Dodd-Frank 1502. He introduces the language of consequentialism in his claim, "I believe that the Congolese and their neighbors deserve better policy making where unintended consequences are less prevalent" (Emerson, 8). He looks at trends in DRC GDP, DRC violence, and U.S. foreign direct investment into the DRC. Since these three measures are all consequential, he looks at the effects on the DRC since the introduction of Dodd-Frank 1502.

Table 1
Descriptive Statistics before and after Dodd Frank Section 1502

Variable	DRC Countries			Non DRC countries		
	N	Mean	Std. dev.	N	Mean	Std. dev.
Panel A: Pre DF 1502						
<i>Agg_violent_deaths</i>	36	643.4722222	1379.2	157	220.433121	692.6783236
<i>US_FDI_Africa</i>	36	97.1388889	366.1213033	179	138.7932961	676.8597574
<i>Population</i>	36	18524539.5	24631911.25	176	19262450	28008632.25
<i>Refugee_pop</i>	36	91328.25	73246.87	147	45284.89	92001.42
<i>Control_Corruption_PRank</i>	36	22.7563959	19.964039	178	34.2572443	21.6087076
<i>Political_Stability_PRank</i>	36	23.5524393	20.8510667	177	36.4982083	22.6180978
<i>GDP_Growth</i>	36	2.9738	2.718	175	1.392	6.3021
<i>Inflation_pct</i>	36	10.1575263	5.7785461	165	7.2783645	7.8713817
<i>CPI_rank</i>	36	143.8888889	33.6569057	176	110.7045455	37.9893697
<i>International_Reserves</i>	28	94.6433671	3303.99	151	377.2481158	4486.37
<i>Control_Corruption_PRank</i>	32	21.0508906	20.501665	96	31.6233499	18.3939926
Panel B: Post DF 1502						
<i>Agg_violent_deaths</i>	27	903.8888889	1658.83	120	500.4583333	1466.06
<i>US_FDI_Africa</i>	9	-334.888889	1003.54	44	224.75	752.1065958
<i>Population</i>	27	20355374	26726641.83	129	21427923.96	31005906.73
<i>Refugee_pop</i>	27	92696.7	90880.01	121	66550.52	134041.07
<i>Control_Corruption_PRank</i>	27	20.8286919	23.0957098	135	31.8083624	21.6090208
<i>Political_Stability_PRank</i>	27	23.3967754	19.9631903	135	32.0452261	21.6382017
<i>GDP_Growth</i>	27	1.0336	8.2033	129	2.59945	10.879745
<i>Inflation_pct</i>	9	12.4385289	10.3574301	42	7.7028577	7.8931344
<i>CPI_rank</i>	9	134.5555556	40.4231095	43	105.7674419	36.7143654
<i>International_Reserves</i>	7	520.1991553	1872.35	39	596.4448644	3794.42
<i>Control_Corruption_PRank</i>	8	21.0900471	25.8171127	24	30.5294035	18.6086691

This table shows the descriptive statistics. The sample period is January 2008 to December 2014 for Aggregate Violent Deaths and January 2008 to December 2012 for US FDI flows to Africa. Panel A uses a subsample of observations from the pre-DF 1502 period (January 2008-December 2010); Panel B uses a subsample of observations from the post-DF 1502 period (January 2010 to December 2014). In all panels, the first column reports results for countries affected by DF 1502 regulation; the second column uses a subsample of African countries not affected by DF 1502.

Table 2
Correlation Matrix

	1	2	3	4	5	6	7	8	9	10
1. <i>Agg_violent_deaths</i>		-0.05	0.44	0.15	-0.33	-0.41	-0.15	0.02	0.06	0.01
2. <i>US_FDI_Africa</i>			-0.05	0.00	0.07	-0.01	-0.01	0.04	-0.03	0.13
3. <i>Population</i>				0.30	-0.18	-0.41	0.07	0.03	0.07	0.04
4. <i>Refugee_pop</i>					-0.25	-0.35	0.02	-0.07	0.10	0.02
5. <i>Control_Corruption_PRank</i>						0.68	0.07	0.01	-0.18	0.01
6. <i>Political_Stability_PRank</i>							0.05	0.13	-0.24	-0.03
7. <i>GDP_Growth</i>								-0.05	-0.08	-0.02
8. <i>Inflation_pct</i>									0.12	-0.02
9. <i>CPI_rank</i>										0.01
10. <i>International_Reserves</i>										

This table shows the correlations between the variables. Pearson correlations are reported.

Table 3
Aggregate Deaths by Violent Conflict

Panel A: Aggregate Deaths by Violent Conflict
(Agg_violent_deaths)

Variables	
DRC	0.2179 (1.23)
DF1502	0.1849 (1.33)
DRC_DF1502	0.9263 (0.09)
Refugee_pop	0.6301 (0.48)
Control_Corruption_PRank	0.1921 (-1.31)
Political_Stability__PRank	<.0001 (-4.2)
GDP_growth	0.0059 (-2.77)
Intercept	<.0001 (5.92)

Panel A test the relation between Aggregate Deaths by Violent conflict and the implementation of Dodd Frank 1502 on the affected countries. The column uses observations for the DRC countries before Dodd Frank 1502 was put into place and after Dodd frank 1502 was put into place. T-statistics are reported in parentheses, ***, ** And, * refer to significance at the 0.01, 0.05, and 0.10 level (two-sided test), respectively.

Table 4
US Foreign Direct Investment Inflows

Panel B: US Foreign Direct Investment Inflows to Africa (USFDIttoAfrica)	
Variables	
DRC	0.4673 (-0.73)
DF1502	0.4955 (0.68)
DRC_DF1502	0.0739* (-1.8)
_Inflation_pct	0.3585 (0.92)
International_Reserves	0.0074* (2.72)
Control_Corruption_PRank	0.2462 (1.17)
Political_Stability__PRank	0.0145 (-2.48)
GDP_growth	0.7219 (-0.36)
Intercept	0.2341 (1.2)

Panel A test the relation between US foreign direct investment into the African countries affected by Dodd Frank 1502 and the implementation of Dodd Frank 1502. The column uses observations for the DRC countries before Dodd Frank 1502 was put into place and after Dodd Frank 1502 was put into place. T-statistics are reported in parentheses, ***, ** And, * refer to significance at the 0.01, 0.05, and 0.10 level (two-sided test), respectively.

His empirical analysis shows significant drops in DRC GDP growth and an eventual increase in violence since the introduction of Dodd-Frank 1502. However, Emerson's data do not take into account the myriad of effects of the conflicts and violence that have existed since before Dodd-Frank 1502, so his analysis is subject to the claim that the observed data show certain trends as a result of perhaps Dodd-Frank itself, perhaps other factors themselves, or perhaps both. The quantitative approach taken here is not particularly revealing. It shows a host of changes from pre-Dodd-Frank 1502 to post-Dodd Frank 1502 and links them to violence and U.S. foreign direct investment, but only shows weak correlations between the control variables like the one between political stability and GDP growth. Yet, it opens the examination of the 4-way relation between U.S. firms, the U.S. government, DRC firms, and the DRC government by looking at consequences. Regardless of how they were produced, the descriptive

statistics in Table 1 are the consequence of an endeavor to reduce violence and sort out supply chain issues while supporting U.S. interests to keep violence from spreading to other countries.

Theory

Back in 2012, Seay – a political science professor – wrote more broadly about the “unintended consequences of Western advocacy” (Seay) because “Controversy in Washington is one thing. The effect of section 1502 on the Congolese is quite another” (Seay, 13). She goes on to claim that mineral trade issues are a result of weak governance rather than the cause of it. The moral blame lies more with the U.S. and DRC governments rather than with the corporations. Narine offers a view from the vantage of corporations on Dodd-Frank 1502. She suggests the SEC as an institution has experienced failures and that U.S. and DRC firms rather than governments, already had an active system of CSR that experienced interference from Dodd-Frank 1502 (Narine, 355). Her analysis seems to discredit the government and favor the firm in financial investment in human rights. In 2015, Sarfaty published a study that questions Narine’s claim of CSR’s self-dependability because the study showed an inequality in Due Diligence compliance where smaller, less-established corporations were shown to be less likely to comply than larger ones (Sarfaty). If the smaller, less-established corporations are less likely to comply with Dodd-Frank 1502 Due Diligence, then it is suggested that corporations, for any CSR initiative, fulfill their obligations to varying degrees. Tying together Seay’s, Narine’s, and Sarfaty’s arguments, corporations are not necessarily more financially effective against human rights abuses than are governments.

A Possible Solution

Late in 2017, Di Lorenzo built on the claim in Cuvelier et al. of corporations working together on Public-Private Partnerships, tying together firms and governments previously considered separately. An example of such initiatives is the Public-Private Alliance for Responsible Minerals Trade (PPA). According to the PPA’s webpage, they “maintain a website that is designed to be a resource for companies with reporting requirements mandated by section 1502 of the July 2010 Dodd-Frank legislation and other organizations seeking current, balanced information on conflict minerals” (About). PPA is a connector between firms and government. Because of the existence of this connector, the moral obligation of keeping minerals ethically sourced is shared between government and firms.

PPP's presence also suggests a shift in recent years towards accomplishing the goal rather than taking responsibility. The matter of ethically sourcing from the DRC is more of a collaborative endeavor with the PPP model.

Other implications arise. For instance, the power relations between firms and government in regulating this financial sector. Di Lorenzo says "Through the PPPs model, companies become political actors, as well as agents of human rights advancement, legal enforcement and legal efficiency" (Di Lorenzo). Firms gain political agency through this model and, in the democratic processes that underlie U.S. and DRC governments, may change the stakeholder status of a corporation in government to that of something more like a shareholder. Like a shareholder in government, the firms will share praise for successes but also the blame for failures. Even though PPPs present one possible solution to the ethical sourcing of minerals from the DRC, they may end up changing the dynamics of moral obligation.

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