

**Testimony of John Prendergast
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Introduction

Thank you, Chairman Smith and Ranking Member Payne for the opportunity to testify at this crucial moment for the Democratic Republic of the Congo.

My testimony today will focus on two of the key catalytic elements of change in Congo: a senior partnership to drive certification of conflict minerals, and the transformation of the country's army from predator to protector. At the Enough Project, we believe these are the two areas of policy where the United States potentially has the most influence, and where a concentrated push could yield the biggest impact in terms of a reduction of violence and the building blocks for a comprehensive solution to Congo's multi-faceted crisis.

Congress has a unique opportunity right now to ensure a more coherent and assertive strategy from the Obama administration. The conflict minerals provision in Section 1502 of the Dodd-Frank Wall Street Reform Act required the Obama administration to develop a strategy for addressing the linkages between the trade in conflict minerals, armed groups and human rights abuses in eastern Congo by January 17. This strategy has yet to be submitted. Congress should press the administration to put forward a strategy that fully invests in an international certification process with independent monitoring and enforceable penalties on the ground, as well as comprehensive reform of the Congolese Army, to effectively end the conflict minerals trade in Congo and bring a measure of security and genuine economic opportunity to the lives of Congolese civilians.

The United States has an opportunity to contribute to finally breaking the cycle of violence that has devastated eastern Congo and destabilized the wider Great Lakes region for the last 15 years, but it will not succeed unless U.S. efforts are dramatically increased. Preventing a further deterioration of this already dire crisis will require far greater attention from senior policymakers, a step change in our diplomatic engagement in the region, and concentrated focus on areas of U.S. leverage, especially efforts to transform the minerals trade from a driver of violence into a catalyst for regional peace, and a focus on military justice as a means of promoting accountability and improving the behavior of Congo's predatory army.

During the last year, we have actually seen a sea change in the international response to Congo driven by citizen demand for an end to the crisis, and channeled through strong bipartisan leadership in Congress, which led to the passage of the conflict minerals provision in the Wall Street Reform Act. Spurred in part by this legislation and thanks to investigative work by the U.N. Group of Experts, the international architecture needed to

sever the linkages between the minerals trade and the conflict is taking shape, with the U.N. Security Council supporting an emerging norm for due diligence on purchasing minerals. These are important first steps, but the next challenge will be developing effective means of implementation.

The risks from continuing the present policy of incrementalism are growing precipitously. Although Secretary Clinton's visit to Goma in eastern Congo helped jolt U.S. Congo policy out of stasis, in the 19 months since her visit little has been accomplished. Insecurity, including ongoing instances of mass rape, remains pervasive in the Kivus and the Lord's Resistance Army continues to prey upon civilians in the northeast. We have already begun to see a worsening of political tensions, including what appears to be an attack on President Kabila's residence a little more than a week ago, attesting to the potential for much worse violence, human rights violations, and further instability as Congo moves toward Presidential elections scheduled for November 2011.

The state-of-play

Heightened tensions across Congo and the region

Heading into Congo's election year, there are a number of potential flashpoints that could lead to additional instability across the region. Rising tensions between the government and political opposition groups has led to a rise in politically motivated violence throughout the country. Controversy continues over the electoral calendar, legitimacy of provincial voter roles, and the transitioning electoral commission.

As the international community begins to prepare for a diplomatic surge around elections, it is important to be mindful that continuing to address the issue of the illicit conflict minerals trade as well continuing to build momentum on military justice will be critical not only to address the ongoing humanitarian crises in eastern Congo, but to ensure lasting stability nationwide.

Congo, its neighbors, and the international community now have an opportunity to change the equation in addressing the issues that have caused suffering in the region for decades. The increased international focus on the illicit mineral trade is forcing the business leaders, governments, and armed groups involved to re-assess the political and economic calculus of the status quo and choose between two paths—one, marked by apathy and corruption leading to a political, economic and humanitarian crisis worse than we have now; or the other marked by regional and international cooperation, leading to an environment in which the government of the Congo, neighboring governments, other concerned governments, and relevant actors in the private sector can contribute to reforms necessary to create stability and engender regional economic and infrastructural development.

Violence, illicit mineral extraction continues in the east

In eastern Congo the future remains uncertain. Violence and illicit mineral extraction has continued despite President Kabila's imposition of a mining ban in three provinces last September, due to be lifted officially on March 10. This haphazard approach to addressing the conflict minerals trade created a number of problems, including increasing the militarization of mine sites, punishing mining communities by increasing exploitation by armed actors, and delaying multi-stakeholder efforts to create on-the-ground mineral traceability schemes.

- **The ban did not stop extraction or smuggling.** It allowed the Congolese military, including the ex-CNDP forces, to consolidate their control over strategic mineral reserves in the three eastern provinces by wresting control over extraction and transport from rebel groups that previously relied on local communities for labor. Since September, there have been numerous incidents of mineral smuggling, perpetrated primarily by the Congolese military. These include the seizure of truck loads of tin ore on the Rwandan border at Rubiya and the recent dramatic cases of gold smuggling in Goma and Nairobi—all linked to senior military commanders.
- **Communities continue to suffer.** Although the ban applied to both civilian and military entities, while recently traveling through North and South Kivu, our staff heard multiple reports of armed groups not wanting to relinquish control or exploitation of mine sites, forcing individuals from nearby communities to work in the mines.
- **Certification initiatives stalled.** Finally, international multi-stakeholder efforts to create mineral traceability schemes were hampered by the ban. Projects that were being piloted prior to the ban, such as the tin industry's "bag and tag" system, had to shut down because they could not legitimately trace extraction and transport of the minerals from the mines. These groups attempted to shift their pilot areas to Rwanda and the Katanga province, but were unable to operate where it really counted—in the eastern provinces.

Two days from now the mining ban will be lifted and civilian extraction and transport will resume. It will be critical that the United States, in conjunction with regional governments and other donor nations, play a larger role in ensuring a transparent and credible process.

The way forward

The United States and the nations of the Great Lakes region now have unprecedented momentum for turning the tide on the conflict in eastern Congo. A window of opportunity has been created for increased security and stability in the region through strategic policy reform. The U.S. government, and particularly the Departments of State and Defense have the opportunity to create leverage through leadership on two critical issues that will propel a solution to the larger issues of conflict in the region: the illicit

trade of conflict minerals and military justice reform to prosecute war crimes and economic crimes.

Minerals certification

Reducing violence and enacting political and military reform in Congo is not possible without stamping out the illegal trade in conflict minerals and the environment of impunity for those involved. The United States, as home to the companies that are the largest end-users of conflict minerals and as a powerful diplomatic actor in Africa's Great Lakes region, now has a choice to make: exercise leadership and help transform the current efforts into a robust certification system or to step back and allow vested interests to develop systems that lack appropriate checks and balances. The administration does not need to construct an entirely new certification initiative, but rather use its convening power, diplomatic influence, and sanctioning power to alter incentives, lend credibility, and close loopholes. There are three critical areas where the U.S. can provide much needed leverage:

- **Political will matters.** A “conductor” is needed to convene a high-level diplomatic partnership on certification and help transform words into action. A critical lesson from other certification systems, such as the Kimberley Process for blood diamonds, is the need for a “conductor” – a leader with the *gravitas* and political support needed to bring all of the players to the table and to issue the call to action.
- **Creation of a multi-stakeholder commission.** Certification should be governed and funded by a multi-stakeholder body that includes companies, governments, and NGOs. Nothing matters more to the legitimacy of a process than how it makes decisions and who pays for it. Genuine partnership requires shared ownership of the process, with equal representation for government, civil society and industry in the steering body of the initiative. In order to ensure independence of the system, the certification process should be paid for by a multi-stakeholder trust with contributions from companies, donors, and NGOs.
- **Transparency of audits and data.** This point is essential to making certification work. Disclosure helps build public confidence in the process. Making audits and other collected data publicly available not only lends credibility and legitimacy to a certification system but also allows governments, industry, and civil society to monitor participants and the initiative, as well as hold them accountable.

In order to maintain the congressional intent of the conflict minerals provision within the Dodd-Frank Act, it is critical that a credible and sustainable regional certification system be in place.

Only if mineral processing facilities, component manufacturers, and end-user companies can rely on the assurance of viable regional process will the pieces be in place for a streamlined supply-chain reporting mechanism.

Military justice

Efforts to fight impunity in Congo continue to struggle, as wanted war criminals freely lead military operations on behalf of the Congolese government. However we have seen small steps toward accountability. In recent weeks the Congolese government tried and convicted several military officers for their role in an incident of mass rape in Fizi, South Kivu. This was accomplished under significant pressure from the United States, and with U.S. support for the mobile court that tried the case. This is a small but important step on the road to reform that must be expanded.

The U.S., in coordination with other donor governments (or by itself) should:

- **Invest in a serious military justice initiative within the Congolese army.** Rather than spreading its assistance too broadly, the United States should concentrate its bilateral assistance on security sector reform in support of the greatest opportunity, military justice, which would pay dividends both in fighting impunity and reforming army behavior.
- **Continue to support and expand the mobile court system in eastern Congo.** The recent trials to prosecute the perpetrators of the Fizi assaults were held using mobile courts near the location of the incident in the town of Baraka. The trial and subsequent convictions were a promising example that the government in conjunction with the international community can begin to stomp out the environment of impunity in the east and send strong signals to malicious actors.
- **Provide technical and monetary support to the national judicial mixed chambers initiative.** In addition to mobile courts, the Congolese Parliament is set to begin debate on the proposed creation of specialized mixed chambers within the national judicial system in mid-March that would have jurisdiction over serious crimes in violation of international law committed on Congolese soil. The U.S. could play a critical role in capacity building and technical support through the mixed chambers process, ensuring that a sustainable framework for the prosecution of war crimes and crimes against humanity are punishable within the state.
- **Expand punishable war crimes to include economic crimes.** Building on existing programs, broaden the focus of military justice training programs so that in addition to sexual violence, it includes economic crimes, and demand Kabila hold up his commitments and crack down on senior FARDC commanders who are profiting from minerals and abusing civilians.

Ending the environment of impunity must coincide with the establishment of legitimate resource extraction in order to create a viable peace. Many of the same actors will be targeted under each initiative. Eastern Congo is a petri dish for reform in the country. The toughest challenges exist in the east and success there will translate nation wide.

Why U.S. policy is failing and what can be done about it

Following her visit to eastern Congo, Secretary Clinton rightly said “we will banish sexual violence into the dark past, where it belongs, and help the Congolese people seize the opportunities of a new day.” Lamentably, the actions of the Obama administration have not measured up to this bold call to action. Although the administration has identified the critical issues--illegal armed groups, the abusive role of the Congolese army, the culture of impunity, and the role of natural resources in fueling the conflict--the response has suffered from a lack of focused, empowered leadership and has amounted to less than the sum of its parts, illustrated by the lack of a formal policy toward Congo, and the overdue conflict minerals strategy mandated by Dodd-Frank.

The leadership gap. Secretary Clinton’s words sparked unprecedented interest in Congo from senior state department officials, including strong words from Under Secretaries and Assistant Secretaries throughout the building. On comparably complex crises in the Middle East, South Asia, and Sudan, the administration appointed Special Envoys of stature commensurate to the urgency of the issue. But for Congo and the Great Lakes region, the administration downgraded Howard Wolpe to a special advisor to the Assistant Secretary, without the political support and resources necessary to succeed in a challenging mission, a position that has not been replaced since his resignation in August 2010.

Technical solutions to political problems. Without an empowered envoy to implement Secretary Clinton’s vision of a new approach to Congo, the administration has largely focused its efforts on programs that emphasize technical solutions to Congo’s problems. The Department deployed five assessment teams that generated more than a thousand recommendations for greater U.S. engagement, and we have seen a flurry of ad hoc issue-specific initiatives, from the training of a Congolese army brigade in Kisangani to specialized pots of funding to fight sexual violence and increase government capacity around the minerals trade, absent an overarching strategy.

Recommendations for a revitalized strategy

It is crucial that the United States not back away from its laudable commitments to change the lives of Congolese women and their families for the better. With elections on the horizon, consistent high-level engagement from Secretary Clinton and her key deputies can begin to shape Congolese government behavior.

With the correct policy-making structure and a strategy that combines coordinated diplomatic pressure and commercial leverage, we can deliver concrete changes in behavior and steps toward transparency and accountability on the ground in eastern Congo that will pay enormous dividends in security and stability in the wider Great Lakes region:

- 1. Appoint a Special Envoy or Coordinator that has the commensurate respect in both the region and Washington to be effective.** There are several moving parts within the Administration's Congo policy apparatus, including conflict minerals, sexual violence, security sector reform, and elections, which represent a clear need for a focal point to provide the leadership and coordination to channel these pieces into a focused strategy.
- 2. Invest in minerals certification to shift the commercial incentives in the region away from conflict and toward peaceful development.** Building on the momentum around conflict minerals, convene a high-level meeting to bring together senior executives from end-user industries with President Kabila, regional governments, and mineral processors. Use this opportunity to establish an ongoing process toward an independent auditing mechanism for a certification system that includes representatives from stakeholder governments, industry leaders, and NGOs.
- 3. Revitalize a multi-donor framework to address national army reform, but focus U.S. bilateral assistance on the greatest opportunity, military justice, which would pay dividends both in fighting impunity and reforming army behavior.** Link training to implementation by deploying international legal teams to support prosecutions in the military justice system, focused on holding senior commanders to account.

