

THE IMPACT OF COUNTRY-SPECIFIC CONTEXTUAL  
FACTORS ON THE OUTCOME OF SECTION 1502 OF THE  
DODD-FRANK ACT REGULATING CONFLICT MINERALS IN  
THE DEMOCRATIC REPUBLIC OF CONGO

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## ABSTRACT

The conflict mineral crisis has been ongoing in the DRC for nearly two decades, with armed groups and increased military presence have played on the tin, tantalum, tungsten and gold to fund a brutal war across the eastern region of the country. Recent international efforts to tackle such illicit trade in conflict minerals has focused on requiring relevant stakeholders involved in the mineral sourcing from the DRC to adhere to due diligence processes on their supply chains in an attempt to identify conflict-sourced minerals. In this regard, Section 1502 of the Dodd-Frank Act was passed by the US Congress in 2010, requiring the US publicly listed companies using minerals from the DRC or its adjoining countries to carry out such due diligence on their supply chains. However, past experiences have shown that Section 1502 of the Dodd-Frank Act backfired, resulting in many unintended consequences affecting the livelihoods of thousands of artisanal and small-scale miners, their families and local communities in general. The purpose of this study was not to address the quality of Section 1502 of the Dodd-Frank Act, but to rather gain an understanding of the contextual factors specific to the DRC under which these provisions were implemented and understand what entails successful implementation thereof. In this regard, the DRC was analysed in light of its social, economic and political dimensions to understand their potential influence on the unintended consequences of Section 1502 of the Dodd-Frank Act upon implementation, which resulted in, *inter alia*, a temporary ban on mining-related activities across the region and a *de facto* embargo on almost all cassiterite, tantalum, and tungsten, tantalum originating from the DRC. The findings made by this study will provide for the recommendations to ensure that policymakers do not focus on the policy alone, but rather adopt a holistic approach to the different strategic development options when formulating international policies regulating conflict minerals in the DRC and its adjoining countries.

## FOREWORD

This thesis marks the final chapter of my Master's Programme in European and International Trade and Tax Law at Lund University School of Economics and Management (LUSEM). Finding a topic for the thesis was both an interesting yet challenging experience. During my time in the Programme, I was introduced to a wide range of topics within, *inter alia*, trade, investment and sustainability taught by one of my Professors, Mr Andreas Inghammar. Seeing Mr Inghammar's passion and excitement for this novel topic, coupled with my general background knowledge and interest in natural resources from Africa, is what motivated me to ultimately choose this topic for my thesis.

I would like to direct a warm thanks to my supervisor, also Mr Inghammar, for assisting and directing me during my research, both with challenging questions and constructive input regarding my thoughts and writing.

Finally, I would like to thank my parents Ewa and Andrzej, sister Karolina, and girlfriend Rochelle. Without their love and support throughout, none of this would be possible.

## ABBREVIATIONS/ACRONYMS

The following abbreviations/acronyms are used in the text unless the context in which they are used indicated otherwise:

3T	Tin, tantalum and tungsten
3TG	Tin, tantalum, tungsten and gold
ADF	Allied Democratic Forces
AfDB	African Development Bank
ASMs	Artisanal and Small-scale Miners
BCC	Central Bank of Congo
CAHRAs	Conflict-Affected and High-Risk Areas
CAR	Central African Republic
CCA	Common Country Analysis
CMR	Conflict Minerals Report
DRC	Democratic Republic of Congo
EICC	Electronic Industry Citizenship Coalition
EIU	Economist Intelligence Unit
EU	European Union
FARDC	Forces armées de la république démocratique du Congo
FDLR	Rwandan Democratic Forces for the Liberation of Rwanda
GDP	Gross Domestic Profit
GeSI	Global e-Sustainability Initiative

ICGLR	International Conference on the Great Lakes Regions
ICT	Information and Communications Technology
IMF	International Monetary Fund
ITRI	International Tin Research Institute
KP	Kimberley Process
KPCS	Kimberley Process Certification Scheme
MSC	Malaysia Smelting Corporation
NDC-R	Nduma Defense of Congo-Renové
NGO	Non-Governmental Organisation
OECD	Organisation for Economic Cooperation and Development
OIF	Organisation Internationale de la Francophonie
PNC	Congolese National Police
R&D	Research and Development
SEC	Securities and Exchange Commission
SME	Small and Medium Enterprises
SNCC	Société Nationale des Chemins de Fer du Congo
SWF	Sovereign Wealth Fund
US	United States
USD	United States Dollars
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UNGA	United Nations General Assembly

# CHAPTER 1

## INTRODUCTION

### 1.1 BACKGROUND

If it were not for various challenges, the Democratic Republic of Congo (DRC) would be a highly attractive investment location, both in Africa and internationally. In Africa, the DRC is the second-largest country and currently has the third-largest population. Most significantly, the DRC is considered to have among the largest deposits of minerals on the continent. However, the country's social, economic and political conditions are very challenging, and the DRC is recognised as one of the most challenging locations in which to do business in the world due to these country-specific contextual factors.

An escalation in conflict minerals from the DRC, similarly, like with most other surrounding conflict-affected and high-risk areas (CAHRAs),<sup>1</sup> also stands to impact growth prospects. The International Rescue Committee conducted a mortality study that looked into conflict-related deaths from minerals between the early 2000s to 2007, in which it was estimated that approximately 6 million have people died as a result of such armed conflict in the eastern DRC, with the number ever so increasing every year.<sup>2</sup> Various campaigns similar to the one established to control the spread of blood diamonds, but focusing specifically on conflict minerals, are being implemented in the DRC with the view of combating the ongoing human rights violations associated with conflict minerals. More specifically, when Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) was first enacted, Congress decided that the exploitation and trade of conflict minerals originating from the DRC was helping to finance conflict characterised by severe levels of violence in the eastern DRC and warranting the provisions of Section 13(p) of the Securities Exchange Act of 1934<sup>3</sup>

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<sup>1</sup> According to the Organisation for Economic Cooperation Development (OECD) Due Diligence Guidance, Conflict-Affected and High-Risk Areas (CAHRAs) are identified by the presence of armed conflict, widespread violence or other risks of harm to people. Armed conflict may take a variety of forms, including conflict of international or non-international character, which may involve two or more states, or may consist of wars of liberation, or insurgencies, civil wars, etc. High-risk areas may include areas of political instability or repression, institutional weakness, insecurity, collapse of civil infrastructure and widespread violence. Such areas are often characterised by widespread human rights abuses and violations of national or international law.

<sup>2</sup> Coghlan B, Ngoy P, Mulumba F, Hardy C, Bemo VN, Stewart T, Lewis J, and Brennan R "Mortality in the Democratic Republic of Congo: An ongoing crisis" 2008 (16) New York: International Rescue Committee ii.

<sup>3</sup> In terms of Section 13(p), persons in possession of minerals originating from the DRC are required to submit to the Commission a report detailing the measures taken to ensure that the necessary due diligence on the source and

was included by subsection 1502(b) of the Dodd-Frank Act, which deals with the disclosure relating to conflict minerals originating from the DRC.<sup>4</sup> It is thought that making it more difficult to export conflict minerals from the DRC could decrease the level of conflict in some areas and potentially allow the country to take advantage of its rich mineral reserves.

However, Section 1502 of the Dodd-Frank Act has proven to be unsuccessful in formalising the sector, largely due to overlooked fundamental causes of the instability across the country.<sup>5</sup> Instead, this western advocacy effort has resulted in many unintended consequences, including increased smuggling of conflict minerals through neighbouring countries and leaving millions of Congolese artisanal and small-scale miners (ASMs) out of work.<sup>6</sup> As with the Kimberly Process,<sup>7</sup> good intentions and the belief that attacking the perceived economic roots of conflict was a path to peace have largely proven ineffective. Thus, the legal issue in this regard is the actual implementation outcome of Section 1502 of the Dodd-Frank Act regulating conflict minerals in the DRC, with a concern that country-specific contextual factors could potentially have influenced the outcome of its implementation on a practical ground level.

## 1.2 AIM AND RESEARCH QUESTION

Despite past literature providing insights and outlining how the intentions of Section 1502 of the Dodd-Frank Act regulating conflict minerals in the DRC have diverged from its actual outcome, it is largely limited to a discussion of effectiveness and (unintended) outcomes alone. However, little to no light is shed on how these outcomes arose. The analysis of Section 1502 of the Dodd-Frank Act which regulates conflict minerals in the DRC should go beyond measuring its effectiveness and mapping unintended consequences. Ultimately, it is not only crucial to understand whether the regulations have achieved their intended objective, but also to understand *why* they have or have not achieved these respective objectives. Thus, this study

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chain of custody of such minerals are in accordance with the reporting rules promulgated by the Commission and a description of the products manufactured that are not “DRC conflict-free” (products that do not contain minerals that finance or benefit armed groups in the DRC or an adjoining country) have in fact conducted an independent audit with reference to the facilities used to process the conflict minerals, the country of origin, and the efforts to determine the location of origin.

<sup>4</sup> Section 1502(a) of the Dodd-Frank Act.

<sup>5</sup> Autesserre S *Dangerous Tales: Dominant Narratives on the Congo and their Unintended Consequences* (African Affairs Forthcoming 2012).

<sup>6</sup> Hogg J and Holliday G “Conflict minerals crackdown backfiring in Congo” 2011 Reuters <http://af.reuters.com/article/drcNews/idAFL6E7NU25720111230?sp=true> (Date of use: 11 May 2021).

<sup>7</sup> The Kimberley Process started when Southern African diamond-producing State heads met to discuss ways of stopping the trade in conflict diamonds and to try ensure that diamond purchases were not financing violence by rebel movements and their allies seeking to undermine legitimate governments.

will aim to examine the country-specific contextual factors in the DRC which could potentially have resulted in the unintended effects of Section 1502 of the Dodd-Frank Act,<sup>8</sup> and to provide recommendations to policymakers in an attempt to safeguard the interests of local communities in the DRC and how other international policies regulating conflict minerals are implemented in the future. This study will seek to answer the following question, in light of the background as described above:

“Why did Section 1502 of the Dodd-Frank Act which regulates conflict minerals in the DRC result in various unintended consequences?”

The main research question will be broken down into the following sub-paragraphs:

- 1.2.1 What are the main features of Section 1502 of the Dodd-Frank Act regulating conflict minerals in the DRC?
- 1.2.2 What country-specific contextual factors, and their extent thereof, could potentially have influenced the implementation outcome of Section 1502 of the Dodd-Frank Act regulating conflict minerals in the DRC?
- 1.2.3 How could future international policies regulating conflict minerals in the DRC and other CAHRAs be implemented to ensure that the interests of local communities are safeguarded?

### **1.3 SCOPE AND CONSTRAINTS**

The scope of this study is by design very wide, as it covers the general concept of successful policy implementation. In this regard, and to limit the scope thereof, this study will be limited to Section 1502 of the Dodd-Frank Act regulating conflict minerals in the DRC. Furthermore, most published literature on the implementation of Section 1502 of the Dodd-Frank Act has focused on the quality of the policy itself. However, this paper will focus on understanding the country-specific contextual factors in the DRC under which these regulations were implemented, to understand what resulted in the (unintended) outcomes upon implementation, rather than the quality of policy itself. Concerning the actual unintended consequence(s) of

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<sup>8</sup> OECD, 2015.

Section 1502 of the Dodd-Frank Act, the author narrowed the study down to focus on what past literature has deemed the “main” consequence thereof, namely a temporary ban imposed on all mining-related activities across the DRC coupled with a *de facto* embargo on 3T mineral exports. The reason for having to narrow the scope of this study such unintended consequences was due to the relevance and applicability of the established country-specific contextual factors (i.e. the findings would potentially have been different would the author not focused primarily on the impact on ASMs and their families, but also, for example, the ongoing human rights violations affecting most local communities across the region). Last, conflict minerals, which are extracted in a conflict zone and sold to perpetuate the fighting, are most commonly associated with the DRC, where various armed groups, rebels and outside stakeholders have made a profit from the mining sector while simultaneously contributing to the ongoing violence and exploitation during wars across the country.<sup>9</sup> For this reason, together with the fact that Section 1502 of the Dodd-Frank Act was primarily enacted to regulate conflict minerals in the DRC, is why the respective jurisdiction is the centrepiece of this study.

## **1.4 MATERIALS AND METHOD**

To analyse the potential link between country-specific factors in the DRC and the unintended effects of Section 1502 of the Dodd-Frank Act upon implementation, a systematic literature review will be used to evaluate and interpret all available research relevant to the questions of this study. Within the systematic review, a snowball method will be used which pursues the relevant references in articles cited herein.

A quantitative analysis will be used in deriving the country-specific contextual factors in the DRC which could have potentially influenced the outcome of Section 1502 of the Dodd-Frank Act regulating conflict minerals in the DRC. This was achieved by having a multidimensional analysis of risks done, taking into account the respective dimensions of the SDG-based Risk Framework by the UN.<sup>10</sup> By analysing each of these dimensions, namely social, economic and political risks, the analysis should outline existing and emerging risks directly linked to conflict minerals which could have potentially influenced the implementation outcome. In this regard, it is crucial to note that Chapter 3 of this study, which deals with the formulation of such

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<sup>9</sup> Granatstein S and Young N "How Gold Pays For Congo's Deadly War" 2009 CBS News.  
<sup>10</sup> See Appendix 1 of this study.



potential country-specific factors, differs from the remaining chapter in that the author was required to draw certain hypotheticals based on the UN SDG goals. This method was employed due to there being no universally accepted measurement in evaluating a country's development status in light of country-specific contextual factors.

Whilst a large degree of the resources for this aspect of the study will be secondary literature, it will nevertheless still involve an explorative element, whereby primary sources are deemed equally as crucial. Furthermore, due to this study having been written over several months, statistics and legislative provisions are up to date at the different timeframes indicated in the relevant information. The websites and sources cited herein will provide the reader with updated information regarding the respective issues.

## 1.5 LITERATURE REVIEW

Love in *The Handbook of Practical Program Evaluation* believes that mere adoption of an international policy will not always result in successful implementation thereof, and consequently fail to achieve anticipated outcomes. This is mainly due to ideas, which appear sound in writing, failing practically and/or due to be implemented in a manner not initially intended.<sup>11</sup> Such views were further confirmed by Smith in *The Policy Implementation Process*, who believes that policymakers tend to develop generalised legislation that lacks the necessary capacity for successful implementation.<sup>12</sup> For example, the implementation of Section 1502 of the Dodd-Frank Act has shown the discourse in DRC's conflict-mineral literature shift towards examining the repercussions of foreign responses to problems abroad. There has been a backlash on such western advocacy effort as the effects on the ground are only just being seen and felt. The implementation is having very negative unintended consequences<sup>13</sup> and is argued that such conflict mineral reporting regulations are ineffective and fail to safeguard the interests of those most vulnerable, namely the frontline workers and artisanal miners. To have laws as such is a waste, and as George Washington said to James Madison at the inception of this

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<sup>11</sup> Love AJ "Implementation Evaluation" in Wholey J, Hatry H, and Newcomer K (eds) *The Handbook of Practical Program Evaluation* Second ed (Jossey-Bass Inc San Francisco 2004).

<sup>12</sup> Smith TB "The Policy Implementation Process" 1973 (4) *Policy Sciences* 197-209.

<sup>13</sup> Seay L "What's Wrong with Dodd-Frank 1502? Conflict Minerals, Civilian Livelihoods, and The Unintended Consequences of Western Advocacy" 2012 Centre for Global Development.

country, “laws or ordinances unobserved, or partially attended to, had better never have been made.”<sup>14</sup>

De Luca et al in *Mineral Resources and Conflicts in the Democratic Republic of Congo* notes that conflict-free sourcing initiatives, such as Section 1502 of the Dodd-Frank Act which aimed to increase transparency on mineral resources and decrease the exploitation of the minerals, need to be supplemented by robust support. However, these kinds of measures have not been taken since the law was signed.<sup>15</sup> In addition, it has been noted that as foreign companies avoid buying minerals from the DRC, prices of the minerals have gone down. For example, before the signing of the Dodd-Frank Act in 2010, Congolese miners were selling a kilogram of tin for USD 7. At the time, the average world market price for a kilogram was approximately USD 18. In 2014, the same Congolese miners were getting as little as USD 4 for a kilogram, despite the average world market price valued high at USD 22 for a kilogram. The consequence, in turn, has been that many artisanal miners have joined different militia groups because the miners cannot support themselves by mining any longer.<sup>16</sup>

Public discussion on the unintended effects of Section 1502 of the Dodd-Frank Act seems to have been launched by a 2011 opinion in *The New York Times* titled “How Congress Devastated Congo” by Aronson D.<sup>17</sup> Aronson stressed the unintended and devastating consequences of the act and stipulated how the law has brought about a *de facto* embargo on the minerals mined in the region.

It is against this background that this study aims to fill the gaps identified in the literature review and to answer the research questions posed above. In doing so, the study aims to contribute to the body of literature on the subject matter through recommendations made in Chapter 5.

## 1.6 STRUCTURE

This study is comprised of five chapters, which can be summarised as follows:

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<sup>14</sup> Letter, *supra* note 1.

<sup>15</sup> De Luca, G, Maystadt JF, Sekeris, PG and Ulimwengu J “Mineral Resources and Conflicts in DRC: A Case of Ecological Fallacy?” 2012 Working Papers University of Namur, Department of Economics.

<sup>16</sup> Raghavan S “How a well-intentioned U.S. law left Congolese miners jobless” 2014 The Washington Post.

<sup>17</sup> Aronson D, “How Congress Devastated Congo” 2011 The New York Times  
<https://www.nytimes.com/2011/08/08/opinion/how-congress-devastated-congo.html> (Date of use: 05 May 2021).

**Chapter 1** introduces the background, aim and research questions, scope and constraints, materials and methods, and literature review of this study.

**Chapter 2** discusses the concept of conflict minerals in the DRC. Thereafter, the main relevant features of Section 1502 of the Dodd-Frank Act are highlighted.

**Chapter 3** goes on to establish the country-specific contextual factors in the DRC that could have potentially influenced the outcome of Section 1502 of the Dodd-Frank Act upon implementation.

**Chapter 4** analyses the unintended consequences of Section 1502 of the Dodd-Frank Act upon implementation in the DRC in light of the country-specific contextual factors established in the previous chapter to determine their applicability and extent thereof.

**Chapter 5** provides a summary of findings made by the study and makes recommendations for policymakers in developing future international policies regulating conflict minerals in the DRC and other CAHRAs.

## CHAPTER 2

# CONFLICT MINERALS IN THE DRC AND SECTION 1502 OF THE DODD-FRANK ACT

### 2.1 INTRODUCTION

This chapter introduces the concepts that form the pillars of this study. It discusses the concept of conflict minerals in the DRC, followed by a detailed discussion of Section 1502 of the Dodd-Frank Act, highlighting the main aspects of the provision, including its general background, “disclosure” mandate, relevant conditions, and the OECD Due Diligence Guidance reporting system. Thus, this chapter lays the foundation for the fulfilment of the first sub-research question of this study.<sup>18</sup> This discussion, coupled with those in Chapters 3 and 4, enables conclusions to be drawn and recommendations to be made in Chapter 5.

### 2.2 CONFLICT MINERALS IN THE DRC

The DRC, particularly the eastern region, has always been rich in mineral resources, and which includes cassiterite, cobalt, copper, gold, wolframite, rubber and oil, to name but a few. Katanga province in the southeast is home to high concentrations of cobalt, copper, and tin, while much of the country’s gold reserves are found in the northern part of North Kivu.<sup>19</sup>

Naturally, the country’s rich natural resource reserves have always been a lucrative draw for outsiders looking for wealth in the vast territory. The DRC mineral wealth first sparked international attention in the late 1990s as world prices for tantalum skyrocketed.<sup>20</sup> Such sudden market demand in tantalum, coupled with other respective minerals, in turn, gave rise to what is now known as “conflict minerals”, and which were linked to the ongoing conflict at the time and the DRC’s mining sector. According to Section 1502 of the Dodd-Frank Act, conflict minerals refer to cassiterite, coltan and wolframite originating from mining areas in the DRC

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<sup>18</sup> See Research Question 1.2.1 in Chapter 1 above.

<sup>19</sup> Nest M “Coltan” 2011 (12) (3) Cambridge: Polity Press 18.

<sup>20</sup> Ware ND “Congo War and the Role of Coltan” 2001 American University  
<http://www1.american.edu/ted/ice/congo-coltan.htm> (Date of use: 29 April 2021).

and adjoining countries,<sup>21</sup> and whose extraction, trade and/or transportation is said to benefit armed groups and rebels in financing their operations in the ongoing conflict across the region. All three minerals are frequently used in electronic technology across the world. For example, tin – produced from cassiterite ore – is mostly used in products such as solar cell solders and lead-acid batteries, tantalum – produced from coltan ore – is usually used by most chip manufacturers, and tungsten – produced from wolframite – is used in transistors and electrodes.<sup>22</sup>

The ongoing conflict linked to these three minerals has resulted in millions of lives lost, coupled with even larger parts of the population experiencing severe violence and displacement after armed groups and rebels would storm neighbouring local community settlements. Such involvement of armed groups and rebels in the illicit minerals trade was particularly lucrative in the coltan sector, during which a temporary “coltan-boom”<sup>23</sup> in the early 2000s resulted in the world’s coltan prices dramatically increasing as a result of a decreasing worldwide supply and rapid demand from the electronics industry.

## **2.3 SECTION 1502 OF THE DODD-FRANK ACT**

### **2.3.1 Background**

Various activist groups which monitored the social and political stability in the DRC pursued a legislative strategy to try implement a law that would ultimately mandate companies to focus more on their transparency and accountability measures during the mineral sourcing practices in an attempt to prevent any further smuggling of conflict minerals and prevent the ongoing human rights violations linked to such minerals.<sup>24</sup> These legislative efforts by the activist groups were based on the House Resolution 4128 of the Conflict Minerals Trade Act (House Resolution), which purpose was to assist in preventing the deadly conflict over minerals in

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<sup>21</sup> In broader terms, this also includes the African Great Lakes Region.

<sup>22</sup> Geenen S “Constraints, opportunities, and hope: which future for gold miners and traders in Kamituga, South Kivu?” in Ansoms A and Marysse S (eds) *Natural Resources and Local Livelihoods in the Great Lakes Region of Africa* (New York: Palgrave 2011).

<sup>23</sup> During this period, the sudden rise in coltan prices pushed thousands of local community members of the Kivu region into what Cuvelier and Raeymaekers call a “gold rush for coltan”. This move towards a new form of survivalist economics not only radically changed the livelihood strategies of Kivu residents, it also economised the DRC’s mineral wealth into a financial means for warring parties, as Jackson argued.

<sup>24</sup> Enough Project “Getting to Conflict Free: Assessing Corporate Action on Conflict Minerals” 2010 [http://www.enoughproject.org/files/publications/corporate\\_action-1.pdf](http://www.enoughproject.org/files/publications/corporate_action-1.pdf) (Date of use: 27 April 2021).

eastern DRC by regulating the importation and trade of 3T minerals.<sup>25</sup> Under the House Resolution, auditors sanctioned by the US Commerce Department would have to audit mineral mines by declaring them as either conflict-free or not. Furthermore, importers would have to certify whether they were importing conflict minerals.<sup>26</sup> Unfortunately, the House Resolution was failed to gain any growing momentum and was never implemented into practice in the DRC.

During or about mid-2010, a new provision that focused on the DRC and conflict minerals was incorporated into the existing Dodd-Frank Wall Street Reform and Consumer Protection Act. This provision, namely Section 1502 of the Dodd-Frank Act, sets forth regulations concerning conflict minerals in company supply chains concerning a variety of relevant government stakeholders.<sup>27</sup> The logic behind Section 1502 of the Dodd-Frank Act was premised on the House Resolution as well as the Kimberley Process (KP),<sup>28</sup> a supply chain transparency mechanism for diamonds achieved through the Kimberley Process Certification Scheme (KPCS). The KPCS was a document that sets forth requirements for controlling rough diamond production and trade, and which was thought to have similar applicability for regulating conflict minerals in the DRC and other CAHRAs by ultimately hoping to put a stop to trade in such minerals by shining a light on the supply chain of concerned companies. Under these provisions, the SEC can require conflict mineral disclosures from public corporations,<sup>29</sup> which in turn must audit where their minerals come from with the view of eliminating, or at least partly decreasing, the use of conflict minerals in the DRC and other CAHRAs.<sup>30</sup>

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<sup>25</sup> H.R.4128 – Conflict Minerals Trade Act 111<sup>th</sup> Congress (2009-2010) Section 5 “Sense of Congress on Assistance for Affected Communities and Sustainable Livelihoods” <https://www.congress.gov/bill/111th-congress/house-bill/4128/text?q=%7B%22search%22%3A%5B%22conflict+minerals+trade+act%22%5D%7D> (Date of use: 24 May 2021).

<sup>26</sup> H.R.4128 – Conflict Minerals “OpenCongress Summary” 2009 <http://www.opencongress.org/bill/111-h4128/show> (Date of use: 27 April 2021).

<sup>27</sup> See § 78m; *Understanding Conflict Minerals Provisions*, *supra* note 6.

<sup>28</sup> The KP started when Southern Africa diamond-processing states met in Kimberley, South Africa, to discuss ways to stop trade in “conflict diamonds” and ensure that diamond purchases were not financing violence by rebel movements and their allies seeking to undermine legitimate governments <https://www.kimberleyprocess.com/en/about> (Date of use: 03 May 2021).

<sup>29</sup> § 78m(p)(1)–(2). The SEC, as the enforcement agency of both Dodd-Frank and the Securities Exchange Act, is the only agency able to bind issuers of securities (public corporations) to comply. See the SEC “What we do” <https://www.sec.gov/about/whatwedo.shtml> (Date of use: 25 April 2021)

<sup>30</sup> Beres B “Here’s the Absolute Worst Way to Show Your Support for Cecil” 2015 Huffington Post.

### 2.3.2 The “disclosure” mandate

It was viewed by the SEC that Congress in the US intended to further the humanitarian goal of putting a stop to the radical ongoing violence in the DRC which has been linked to the financing efforts by exploiting and trading in conflict minerals originating in the DRC.<sup>31</sup> The ideology was reflected in the heading of Section 1502(a) of the Dodd-Frank Act, namely “Sense of the Congress on Exploitation and Trade of Conflict Minerals Originating in the Democratic Republic of the Congo”.<sup>32</sup> The rationale of Congress in requiring such disclosure mandate and warranting the provisions of Section 13(p) of the Securities Exchange Act of 1934 is added by subsection (b), which provides the following: “It is in the sense of the Congress that the exploitation and trade of conflict minerals originating in the DRC is helping to finance conflict characterised by extreme levels of violence in the eastern DRC, particularly sexual and gender-based violence, and contributing to an emerging humanitarian situation therein, warranting the provisions of section 13(p) of the Securities Exchange Act of 1934”.<sup>33</sup>

Furthermore, Section 1502 of the Dodd-Frank Act issued so-called “Final Rules” that provide for the conditions as to when, how, and what companies involved in the extraction, trade and/or transportation of 3TG minerals should publish.<sup>34</sup> The rationale to this end was that should companies increase their transparency and accountability measures concerning the source and chain of custody of the employed minerals, investors would, in turn, be made aware of the mineral’s true origin and hopefully, avoid socially irresponsible investments, minerals not sourced conflict-free.<sup>35</sup> The Final Rules can be summarised as follows: Not later than 270 days after the date of the enactment of this subsection, the Commission shall promulgate regulations requiring that if an issuer’s conflict minerals originated in those countries, namely the DRC and adjoining countries, the issuer is required to submit a report to the Commission that includes a description of the measures taken in exercising due diligence on the conflict minerals’ source and chain of custody. Such measures taken must include an independent private sector audit of the report that is conducted following the UN Comptroller General. The provisions of section 13(p) of the Securities Exchange Act also mandates the issuer submitting the report to identify the auditor and to certify the audit. The report must also include, *inter alia*; (i) a description of the relevant products manufactured or contracted to be manufactured that are not “DRC

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<sup>31</sup> See the Final Rules at 8.

<sup>32</sup> Pub. L. No. 111-203, 124 Stat. 2213-2218 (2006).

<sup>33</sup> Vytopil L “The Conflict Minerals Rule: Private Alternatives?” 2015 Utrecht University

<sup>34</sup> Securities and Exchange Commission “Conflict Minerals” 2012 (Release No. 34-67716; File No. S7-40-10) SEC.

<sup>35</sup> *Ibid.*

conflict-free”; (ii) the facilities used to process the conflict minerals, (iii) the country of origin of the conflict minerals; (iv) and the efforts to determine the exact location of origin.<sup>36</sup>

### 2.3.3 Other relevant conditions

The addition of *adjoining countries* into the definition of conflict minerals means that Section 1502 of the Dodd-Frank Act does not only regulate minerals from the DRC but also Angola, Burundi, Central African Republic (CAR), Republic of Congo, Rwanda, Sudan, Tanzania, Uganda and Zambia, (and which collectively are also considered as CAHRAs).<sup>37</sup> The adjoining countries have also been included in the definition of conflict minerals, additionally to the DRC, since minerals that are tagged as conflict minerals are very often sourced in such neighbouring regions.

The *minerals* that originate in the aforementioned jurisdictions and to be designated as conflict minerals were listed in the final rules as cassiterite (tin); tantalum (columbite-tantalite and coltan); wolframite (tungsten); and gold, and which as a collective are also known as the 3TG minerals.<sup>38</sup> A unique feature in this regard is that this list of minerals is not exhaustive, and the Secretary of State could introduce further minerals to the list if required.

Regarding applicability and enforcement of Section 1502 of the Dodd-Frank Act, not all *companies* will be subject to the regulations as these disclosure requirements will only apply when the companies listed on the New York Stock Exchange in the US.<sup>39</sup> Furthermore, and very significant in this regard, Section 1502 of the Dodd-Frank Act does not prescribe any sanctions and/or enforcement mechanism for non-compliance by companies. This is rather surprising, given the severity of violence across the region and the need to curb the circulation of conflict minerals originating from the DRC and other CAHRAs.

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<sup>36</sup> Issuers must comply with the final rule for the calendar year beginning from 1 January 2013 with the first reports due on 31 May 2014. The SEC adopted the new Rule 13p-1 and a new Form SD under the Securities and Exchange Act of 1934 (15 U.S.C. 78a et seq).

<sup>37</sup> Section 1502(b)(p)(5) of the Dodd-Frank Act.

<sup>38</sup> Section 1502(e)(4)(A) of the Dodd-Frank Act.

<sup>39</sup> See H.R. REP. No. 111-517 “*Joint Explanatory Statement of the Committee of Conference, Title XV, ‘Conflict Minerals’*” 2010 Conference Report 879. The conference report requires disclosure to the SEC by all persons otherwise required to file with the SEC for whom minerals originating in the Democratic Republic of Congo and adjoining countries are necessary to the functionality or production of a product manufactured by such person.



### 2.3.4 Applicability of the OECD Due Diligence Guidance

Once the disclosure mandate and other relevant conditions have been satisfied, the next part of Section 1502 of the Dodd-Frank Act concerns the determination of whether the minerals have originated from the DRC or adjoining countries, and if they do, the issuer must publish the relevant information in a Conflict Minerals Report (CMR).<sup>40</sup> Despite the Final Rules requiring a reasonable-country-by-origin inquiry to satisfy its due diligence obligation, the rules do not stipulate what steps and outcomes are necessary to satisfy the reasonable-country-of-origin inquiry requirement since such determination depends on each issuer's specific circumstances in a given case. Nonetheless, the SEC's approach to the reasonable-country-of-origin inquiry is consistent with the supplier engagement approach in the Organisation for Economic Cooperation and Development (OECD) Due Diligence Guidance (OECD Guidance),<sup>41</sup> where a wide range of tools are used by insurers in their engagement with various suppliers.<sup>42</sup> Under the OECD Guidance, a five-step plan was established which can be described as a collaborative government-backed multistakeholder initiative by providing firms with a due diligence framework for responsible supply chains of minerals and a model mineral supply chain policy among other detailed tools and recommendations to prevent further contributions to armed conflict and human rights violations.<sup>43</sup> The five-step plan involves the following, namely to: (i) establish strong company management systems; (ii) identify and assess risk in the supply chain; (iii) design and implement a strategy to respond to identified risks; (iv) carry out an independent third-party audit of supply chain due diligence at identified points in the supply chain; and (v) report on supply chain due diligence.<sup>44</sup>

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<sup>40</sup> Section 1502(d)(3)(A) of the Dodd-Frank Act.

<sup>41</sup> The OECD Guidance is the first example of a collaborative government-backed multi-stakeholder initiative on responsible supply chain management of minerals from conflict-affected areas. Its objective is to help companies respect human rights and avoid contributing to conflict through their mineral sourcing practices. The OECD Guidance is also intended to cultivate transparent mineral supply chains and sustainable corporate engagement in the mineral sector to enable countries to benefit from their mineral resources and preventing the extraction and trade of minerals from becoming a source of conflict, human rights abuses, and insecurity.

<sup>42</sup> For example, see *National Association of Manufacturers, Chamber of Commerce of the USA, and Business Roundtable v SEC and others* Case 1:13-cv-00635-RLW <https://www.sec.gov/rules/final/2014/34-67716-opinion.pdf> (Date of use: 11 May 2021).

<sup>43</sup> OECD, 2016

<sup>44</sup> CPI Aerostructures, Inc "Conflict Minerals Report" 2014 <https://www.sec.gov/Archives/edgar/data/889348/000143774915011503/ex1-01.htm> (Date of use: 17 May 2021).

## 2.4 CONCLUSION

This chapter began by discussing the concept of conflict minerals in the DRC. Thereafter, Section 1502 of the Dodd-Frank Act was discussed, highlighting the main aspects of its provision.

Conflict minerals refer to cassiterite, coltan, wolframite (3T minerals) and gold (3TG minerals) originating from mining areas in the DRC and adjoining countries, and whose extraction, trade and/or transportation is said to benefit armed groups and rebels in financing their operations in the ongoing conflict across the region. Today, conflict minerals are frequently used in electronic technology across the world, including the US and European Union (EU). Unfortunately, the ongoing conflict in the DRC is linked to these three minerals, and which has resulted in millions of lives lost, coupled with even larger parts of the population experiencing severe violence and displacement after armed groups and rebels would storm neighbouring local community settlements.

In an attempt to stop, or at least reduce the ongoing violence linked to conflict minerals, Section 1502 was incorporated into the Dodd-Frank Wall Street Reform and Consumer Protection Act, a western advocacy effort that sets forth regulations concerning conflict minerals in company supply chains concerning a variety of relevant government stakeholders. To address the first sub-research question of this study, namely determining the main features of Section 1502 of the Dodd-Frank Act regulating conflict minerals in the DRC, the provisions enable the SEC to require conflict mineral disclosures from public corporations, which in turn must audit where their minerals come from with view of eliminating the use of conflict minerals in the DRC and adjoining countries (also known as CAHRAs). So-called Final Rules in the provision, which the SEC was given 270 days to implement, provide for the conditions as to when, how, and what companies involved in the extraction, trade and/or transportation of 3TG minerals should publish. The Final Rules also refer to a due diligence obligation by all companies that are premised on the OECD Guidance, a collaborative government-backed multistakeholder initiative by providing firms with a due diligence framework for responsible supply chains of minerals and a model mineral supply chain policy among other detailed tools and recommendations to prevent further contributions to armed conflict and human rights violations. Lastly, the provisions of Section 1502 of the Dodd-Frank Act only apply to companies that are listed on the New York Stock Exchange in the US. This, coupled with the fact that there are not any prescribed sanctions and/or enforcement mechanisms in place for

non-compliance, suggests an underlying weakness for potential abuses by companies and a lack of accountability. In this regard, it would also be worth mentioning the limited scope of applicability, as the regulations focus solely on companies adhering to prescribed due diligence requirements on their supply chains in an attempt to curb the circulation of conflict minerals. However, there is no mention of the broader societal economic development across the DRC, consequently disregarding crucial correlated aspects relating to local employment/content and R&D initiatives. Ultimately, conflict minerals affect the livelihoods of thousands of ASMs, their families and local communities across the eastern DRC, and such a situation requires policies to utilise a more holistic approach since the problem and/or root of the cause does not merely stop at the due diligence stage itself.

The next two chapters will seek to establish what country-specific contextual factors, and their extent thereof, could potentially have influenced the outcome of Section 1502 of the Dodd-Frank Act in regulating conflict minerals in the DRC.

## **CHAPTER 3**

# **COUNTRY-SPECIFIC CONTEXTUAL FACTORS AND RELATED ASPECTS**

### **3.1 INTRODUCTIONS**

It will be recalled that one of the sub-research questions of this study was to determine the country-specific contextual factors, and their extent thereof, that could have potentially influenced the outcome of Section 1502 of the Dodd-Frank Act regulating conflict minerals in the DRC.<sup>45</sup> This chapter, coupled with the analysis conducted in Chapter 4, will address the abovementioned research question and the recommendations made in Chapter 5. This chapter begins with a discussion on how country-specific contextual factors were established for this study. Thereafter, each of the contextual dimensions will be discussed, highlighting their indicative scope and hypothetical country-specific examples on a practical ground level in the DRC.

### **3.2 ESTABLISHING COUNTRY-SPECIFIC CONTEXTUAL FACTORS**

Unfortunately, there is no standardised measurement in determining the social, economic and political contextual factors specific to the DRC which could potentially have influenced the implementation outcome of Section 1502 of the Dodd-Frank Act. As such, and for this study, the contextual factors developed are premised on the UN Common Country Analysis (CCA) in line with the UN Sustainable Development Cooperation Framework Guidance which is responsible for analysing a country's situation for its internal use in developing the Cooperation Framework.<sup>46</sup>

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<sup>45</sup> See Research Question 1.2.2 in Chapter 1 above.

<sup>46</sup> UN Common Country Analysis "Companion Piece to the United Nations Sustainable Development Cooperation Framework Guidance" Procurement Notices UNDP [https://procurement-notices.undp.org/view\\_file.cfm?doc\\_id=194928](https://procurement-notices.undp.org/view_file.cfm?doc_id=194928) (Date of use: 28 April 2021).

In this regard, it is necessary to track the DRC’s progress in achieving the 2030 Agenda’s goals and targets by examining respective Social Development Goals (SDGs), which in turn would provide insight as to the progress made, or lack thereof, by the DRC in achieving the 2030 Agenda.<sup>47</sup> The SDGs are intended to be universal as they embody a universally shared vision towards a safe, just and sustainable environment for all. Briefly speaking, the SGDs are crucial for all countries in identifying respective challenges in a social, economic and political sense, and could potentially represent the different degrees of challenges for each jurisdiction depending on its current state of affairs and development.<sup>48</sup> For example, social risks, such as climate change and poverty, are global issues that demand actions and responses from all relevant stakeholders, both on an international and domestic level.<sup>49</sup>

Tracking the performance of DRC’s commitment to achieving the SGDs could enable us to gain an understanding of the country’s current state of development in terms of social, economic and political dimensions. In this regard, a multidimensional analysis of risks is used to take into account certain dimensions of the SDG-based UN Risk Framework.<sup>50</sup> By analysing each dimension, a hypothesis can be drawn on the existing and emerging risks directly linked to conflict minerals which could potentially have influenced the implementation of Section 1502 of the Dodd-Frank Act in the DRC.

### **3.3 SOCIAL RISK AREAS**

#### **3.3.1 Displacement and migration<sup>51</sup>**

**(a) Indicative scope**

The risks to displacement and migration include that of the DRC’s population and its stability. In this regard, the indicative scope could include aspects such as the degree of rights and protections afforded to minority groups – including ASMs – as well as the social, economic and cultural impact of migration.

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<sup>47</sup> Sustainable Development Goals “The Sustainable Development Agenda” 2018 United Nations <https://www.un.org/sustainabledevelopment/development-agenda/> (Date of use: 13 May 2021).

<sup>48</sup> *Ibid.*

<sup>49</sup> Karns MP, Karen AM and Stiles KW *International organizations: The politics and processes of global governance* (Colorado: Lynne Rienner Publishers 2015).

<sup>50</sup> See Appendix 1 of this study.

<sup>51</sup> SDG 16 (Peace and Justice Strong Institutions) and SDG 17 (Partnerships to achieve the Goal).

## (b) Country-specific examples of risks

The country-specific examples of risks to displacement and migration in the DRC could include, *inter alia*; large-scale displacement of the country's population; the politicisation of the status relating to migrants and other minority groups; the exposure of minority groups to any sort of exploitation, abuse and/or violence caused by armed groups, rebels and the military; or tensions between the DRC's government and those local populations with migrants and minority groups.

### 3.3.2 Environment and climate<sup>52</sup>

#### (a) Indicative scope

The risks to the environment and climate concern the DRC's ecology and ecosystem on its local communities. In this regard, the indicative scope could include the exploitation of natural resources from the DRC as well as any natural weather patterns with destructive consequences on the local community.

#### (b) Country-specific examples of risks

The country-specific examples of risks to the environment and climate in the DRC could include, *inter alia*; unjustified and/or unsustainable exploitation of natural resources, including conflict minerals; sustained pollution of local rivers, land or air; or increased "acts of god" in the form of draught, flooding and any other-related natural phenomena which could negatively affect local communities living in those areas resulting in loss of infrastructure, destroyed crops and food shortages.

### 3.3.3 Food security, agriculture and land<sup>53</sup>

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<sup>52</sup> SDG 12 (Responsible Consumption and Production), SDG 13 (Climate Action), SDG 14 (Life Below Water), SDG 15 (Life on Land) and SDG 17 (Partnership to achieve the Goal).

<sup>53</sup> SDG 2 (Zero Hunger) and SDG 17 (Partnership to achieve the Goal).

(a) Indicative scope

The risks to food security, agriculture and land in the DRC concern its local communities, agriculture or food production resulting from the crop, livestock and land-related issues. In this regard, the indicative scope could include insufficient arable land as well as regional conflict preventing farming, consequently resulting in food shortages across the country.

(b) Country-specific examples of risks

The country-specific examples of risks to food security, agriculture and land in the DRC could include, *inter alia*; loss of crop diversity and damage to livestock from ongoing violence caused by armed groups and military presence uprooting farming communities; a severe lack of resources to sustain a functioning food production sector; or increased level of famine across the local population resulting from food shortages.

3.3.4 Social cohesion, gender equality and non-discrimination<sup>54</sup>

(a) Indicative scope

The risks to social cohesion, gender equality and non-discrimination in the DRC concern the country's social unity and equality resulting from direct/indirect discrimination, inequalities and demographic trends. In this regard, the indicative scope could include pressures to power and demographic imbalances as well as discriminatory practices.

(b) Country-specific examples of risks

The country-specific examples of risks to social cohesion, gender equality and non-discrimination in the DRC could include, *inter alia*; unequal or limited access by local communities to the country's natural resources, including the social exclusion of minority groups; prejudice based on sex, race and beliefs; unequal rights afforded to minority groups; or

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<sup>54</sup> SDG 1 (No Poverty), SDG 5 (Gender Equality), SDG 10 (Reduced Inequality) and SDG 17 (Partnership to achieve the Goal).

sexual violence in conflict-affected regions at the hands of armed groups, the FARDC and other national security groups.

### **3.4 ECONOMIC RISK AREAS**

#### **3.4.1 Economic stability<sup>55</sup>**

(a) Indicative scope

The risks to DRC’s economic stability will encompass the financial and fiscal influence on its governance, social cohesion and the population’s ability to have basic needs satisfied. In this regard, the indicative scope could include economic inequality, macro-economic volatility and economic underdevelopment.

(b) Country-specific examples of risks

The country-specific examples of risks to economic stability in the DRC could include, *inter alia*; increased unemployment and poverty levels; the decrease in international investors resulting in a collapse of key employers and industries; currency and market depreciation; a lack of local content initiatives safeguarding the employment rights of local communities; or the difficulty for national and international corporations in conducting their business practices across the region.

#### **3.4.2 Infrastructure and access to social services<sup>56</sup>**

(a) Indicative scope

The risks to infrastructure and access to social services concern the DRC’s security and the population as a result of limited access to physical infrastructure and/or basic social services. In this regard, the indicative scope could include inequitable access to basic services and

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<sup>55</sup> SDG 8 (Decent Work and Economic Growth) and SDG 17 (Partnership to achieve the Goal).  
<sup>56</sup> SDG 4 (Quality Education), SDG 6 (Clean Water and Sanitation), SDG 7 (Affordable and Clean Energy), SDG 9 (Industry, Innovation and Infrastructure), SDG 11 (Sustainable Cities and Communities) and SDG 17 (Partnership to achieve the Goal).



infrastructure as well as any disruptions to relevant services, infrastructure and modes of transportation.

(b) Country-specific examples of risks

The country-specific examples of risks to infrastructure and access to social services in the DRC could include, *inter alia*; unequal access to services, infrastructure and transport afforded to minorities; disruptions to key air, ground or water transport by armed groups and the military; or a lack/degradation of physical infrastructure.

**3.5 POLITICAL RISK AREAS**

3.5.1 Democratic space<sup>57</sup>

(a) Indicative scope

The risks to DRC’s democratic space concern the country’s decreased civic space, repression and intimidation. In this regard, the indicative scope could include active repression on civil society stakeholders as well as undue limits placed on democratic rights.

(b) Country-specific examples of risks

The country-specific examples of risks to democratic space in the DRC could include, *inter alia*; unequal access to information; obstruction or censorship of media, including arbitrary arrests and detentions of activists; the outlawing of human rights entities safeguarding the basic fundamental rights of all citizens; and violence linked to the country’s broader political context, including corrupted political figures serving their agendas.

3.5.2 Internal security<sup>58</sup>

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<sup>57</sup> SDG 16 (Peace and Justice Strong Institution) and SDG 17 (Partnership to achieve the Goal).  
<sup>58</sup> SDG 16 (Peace and Justice Strong Institutions) and SDG 17 (Partnership to achieve the Goal).

(a) Indicative scope

The risks to internal security in the DRC concern that of its territory, people and infrastructure, and the international community's ability to operate effectively. In this regard, the indicative scope could include internal conflict and insecurity as well as an increased presence of armed groups, rebels and the military.

(b) Country-specific examples of risks

The country-specific examples of risks to internal security in the DRC could include, *inter alia*; the control or takeover of a certain region in the DRC by armed groups and rebels, resulting in high levels of violent crimes and forced labour; the trafficking of natural resources by armed groups or rebels; increased militarisation on an arbitrary basis; or readily available arms and weapons.

3.5.3 Justice and rule of law<sup>59</sup>

(a) Indicative scope

The risks to DRC's justice and rule of law concern the fair, effective and comprehensive implementation and application of the principles of justice, rule of law and accountability. In this regard, the indicative scope could include a culture of denied rights, which directly relates to weak or compromised institutions as well as military forces acting outside of their scope or disobeying the rule of law.

(b) Country-specific examples of risks

The country-specific examples of risks to justice and rule of law in the DRC could include, *inter alia*; a lack of accountability for widespread crimes relating to human rights violations, coupled with weak and/or captured justice system and no enforcement mechanisms; excessive

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<sup>59</sup> SDG 16 (Peace and Justice Strong Institutions) and SDG 17 (Partnership to achieve the Goal).

use of force and/or violence by the military against local communities; or the interference by the executive in judicial affairs.

3.5.4 Political stability<sup>60</sup>

(a) Indicative scope

The risks to DRC’s political stability concern the estimated political and government structures in its territory resulting from politically driven factors. In this regard, the indicative scope could include irregular changes to executive governance structures as well as politically compromised government institutions.

(b) Country-specific examples of risks

The country-specific examples of risks to political stability in the DRC could include, *inter alia*; corruption by state officials which compromise the country’s interests, coupled with political elites operating outside of their state structures; widespread social unrest amongst the local communities; chronic loss of a legitimate government; or disruptions to the electoral process.

3.5.5 Regional and global influence<sup>61</sup>

(a) Indicative scope

The risks to regional and global influence concern the DRC’s integrity, safety and stability as well as its people from actions influenced by external stakeholders. In this regard, the indicative scope could include arbitrary sanctions and embargos imposed by the government as well as political tensions between adjoining countries to the DRC.

(b) Country-specific examples of risks

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<sup>60</sup> SDG 16 (Peace and Justice Strong Institutions) and SDG 17 (Partnership to achieve the Goal).  
<sup>61</sup> SDG 16 (Peace and Justice Strong Institutions) and SDG 17 (Partnership to achieve the Goal).

The country-specific examples of risks to regional and global influence in the DRC could include, *inter alia*, the restriction of access to natural resources and/or infrastructure, including all modes of transport; a spill-over of criminal stakeholders from neighbouring countries; transitional organised crimes; or aggressive military presence from the outside.

### **3.6 CONCLUSION**

This chapter provided reasoning for how country-specific contextual factors were established for this study. Thereafter, each of the social, economic and political contextual factors specific to the DRC was discussed, highlighting their indicative scope which assisted in developing a hypothesis on the country-specific examples of risks in the DRC that could have potentially influenced the outcome of Section 1502 of the Dodd-Frank Act regulating conflict minerals. To partly address the second sub-research question of this study, specifically to establish country-specific contextual factors in this regard, the study referred to the CCA in line with the UN Sustainable Development Cooperation Framework Guidance.

The DRC's progress in achieving the 2030 Agenda's goals and targets were examined to provide insight into DRC's commitment to achieving the 2030 Agenda. The purpose thereof enabled an understanding to be drawn from all sources of information in terms of social, economic and political risks. By analysing these three risk groups, all of which relate to a respective SDG goal, light can be shed on existing and emerging risks which could potentially correlate, whether directly or indirectly, on the implementation outcome of Section 1502 of the Dodd-Frank Act regulating conflict minerals in the DRC.

The first dimension concerned social risks, with the areas covering risks to displacement and migration; environment and climate; food security, agriculture and land; and social cohesion, gender equality and non-discrimination. The second dimension, namely economic risks, included risks to economic stability; and infrastructure and access to social services. The last dimension concerned political risks and included democratic space; internal security; justice and rule of law; political stability; and regional and global influence. Directly linked to each area's indicative scope was a hypothesis on some, but not limited to, risks in the DRC that could potentially have influenced the outcome of Section 1502 of the Dodd-Frank Act regulating conflict minerals.

The next chapter will analyse the implementation outcome of Section 1502 of the Dodd-Frank Act regulating conflict minerals in the DRC in light of the established social, economic and political factors. By analysing each of the three dimensions in DRC's current situation, it will be possible to determine the extent to which each of the three dimensions potentially influenced the implementation outcome on a practical ground level. Thus, the aim is to fully answer the second sub-research question of this study.

## CHAPTER 4

# ANALYSIS OF THE OUTCOME OF SECTION 1502 OF THE DODD-FRANK ACT IN LIGHT OF COUNTRY-SPECIFIC CONTEXTUAL FACTORS

### 4.1 INTRODUCTION

This chapter will analyse the (unintended) implementation outcome of Section 1502 of the Dodd-Frank Act regulating conflict minerals in the DRC in light of country-specific contextual factors as established in Chapter 3 of this study. By understanding the extent to which such contextual factors could potentially have influenced the outcome of the regulations on a practical ground level, this chapter will ultimately lay the foundation to fully answer the second sub-research question of this study.<sup>62</sup>

### 4.2 BACKGROUND TO THE IMPLEMENTATION OUTCOME

In terms of subsection (1)(a) of the Dodd-Frank Act, the SEC had no more than 270 days to release rules on how US publicly listed companies were to report and audit their activities concerning conflict minerals in the DRC, which mean by no later than April 2011.<sup>63</sup> In the interim, then Congolese President Mr Joseph Kabila instituted an unexpected ban on all mining-related activities across the eastern DRC.<sup>64</sup> The ban imposed led to the shutting down of all mining activity in the region as well as increased militarisation across the country's mining sector with the FARDC, being the DRC's national army, taking over mine sites that have previously always been non-militarised.

The reasons behind imposing the ban are unknown, however, when the ban was eventually lifted towards the end of March 2011, there was a significant increase in the disbarment of various military groups.<sup>65</sup> Thus, by permitting the FARDC to consolidate control over mining

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<sup>62</sup> See Research Question 1.2.2 in Chapter 1 above.

<sup>63</sup> Refer to Appendix 2 of this study concerning the implementation timeline of Section 1502 of the Dodd-Frank Act.

<sup>64</sup> DeKonick H "Breaking the Curse: A Multilayered Regulatory Approach" 2015 (22) (1) Indiana University Press 121-148.

<sup>65</sup> *Ibid.*

sites that had previously always been non-militarised, it could be argued that the Congolese President used the ban as a chance to persuade electoral voters who were actively engaged in constructive activities to improve the security situation across the eastern DRC.

Shortly after the ban was lifted by the Congolese President, and with the deadline fast approaching for the SEC to release rules on how US publicly listed companies were to report and audit their activities concerning conflict minerals in the DRC, one of the largest mining corporations – the Malaysia Smelting Corporation (MSC) – made a public announcement that it would discontinue purchasing tin from the DRC due to pressure mounting from the industry watchdog group, the Electronics Industry Citizenship Coalition (EICC).<sup>66</sup> The EICC is responsible for establishing a tracing scheme in the DRC for all smelters requiring companies to document that their products are sourced as conflict-free by working through a tin industry group called the International Tin Research Institute (ITRI).<sup>67</sup> Unfortunately, the MSC was incapable of guaranteeing that all of their products would be compliant with the ITRI and subsequently stopped purchasing all minerals from the DRC with immediate effect.<sup>68</sup>

### 4.3 CONSEQUENCES OF THE IMPLEMENTATION OUTCOME

The SEC's unexpected and abrupt exit from the mining sector in the DRC resulted in a *de facto* boycott on almost all cassiterite, tantalum, and tungsten, with certain regions of the country reporting a drop in tin exports by nearly 90 percent.<sup>69</sup> This *de facto* ban on almost all the mining activities across the DRC resulted in devastating consequences for ASMs and their families in the DRC.<sup>70</sup> Unfortunately, and due to no alternative livelihood alternatives, ASMs have always been exposed to horrific working conditions with little remuneration.<sup>71</sup> It was estimated by local civil society groups that approximately 2 million people were left

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<sup>66</sup> Willbros Group Inc “Conflict Minerals Report” 2013 SEC.

<sup>67</sup> Upstream Pilot Implementation of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas “Baseline Report on the Supplement on Tin, Tantalum and Tungsten” 2011 The Organisation for Economic Cooperation and Development <https://www.oecd.org/daf/inv/mne/49301591.pdf> (Date of use: 19 May 2021).

<sup>68</sup> Reuters Staff “Congo in talks with Malaysia Smelting over tin foundry” 2011 Basic Materials Reuters <https://www.reuters.com/article/congodemocratic-msc-idUKL5E7L31IP20111003> (Date of use: 02 May 2021).

<sup>69</sup> Kavanagh MJ “Congo Tin Sales Tumble 90% as Companies Avoid ‘Conflict Minerals’” 2011 Bloomberg News <https://www.bloomberg.com/news/articles/2011-05-23/congo-tin-sales-tumble-90-percent-as-companies-avoid-conflict-minerals-> (Date of use: 20 May 2021).

<sup>70</sup> Bukavu and Goma “Digging for Victory” 2011 The Economist <http://www.economist.com/node/21530110> (Date of use: 29 April 2021).

<sup>71</sup> The Congo Report “Slavery in Conflict Minerals” 2011 Free the Slaves <https://www.freetheslaves.net/wp-content/uploads/2015/03/The-Congo-Report-English.pdf> (Date of use: 21 May 2021).

unemployed in the mining sector after 2011, with the indirect consequences affecting more than 15 million people when factoring in their families. Furthermore, due to the rapid decrease in tin exports, many ASMs shifted from 3T mineral trade into the gold sector, which has seen an increasing demand for sales from smuggling.<sup>72</sup>

The abovementioned consequences ultimately affected the entire economy of the DRC, whether directly on the ASMs themselves and their families or indirectly through increased unemployment which resulted in many small SMEs losing crucial income and consequently contributing to the weakening DRC economy.<sup>73</sup> Furthermore, the DRC's undeveloped infrastructure attributed to remote mining areas not having the necessary transport modes available to export the little-to-no mineral reserves that were left for circulation after SEC's exit from DRC's mineral sector market.<sup>74</sup>

## **4.4 COUNTRY-SPECIFIC CONTEXTUAL FACTORS IN THE DRC**

### **4.4.1 Social context**

Focusing first on displacement and migration, increased militarisation and unrest in the eastern DRC has displaced approximately 5 million people between 2017 and 2019, and hundreds of thousands more fleeing to adjoining countries such as Angola and Zambia due to living in fear.<sup>75</sup> Unfortunately, human rights violations continue to be widespread at present and approximately 918,000 DRC refugees and asylum seekers being hosted in adjoining countries, with 5 million people displaced in the DRC and approximately 500,000 refugees and 3,000 asylum seekers in the DRC.<sup>76</sup>

Next, looking at DRC's environmental and climate status, the country is considered the largest country in Francophone Africa and home to large swaths of arable land, vast quantities of

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<sup>72</sup> United Nations Security Council "Final Report of the UN Group of Experts on the Democratic Republic of Congo" 2011 United Nations [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2011/738](http://www.un.org/ga/search/view_doc.asp?symbol=S/2011/738) (Date of use: 01 May 2021).

<sup>73</sup> Kisangani EF "Conflict in the Democratic Republic of Congo: A Mosaic of Insurgent Groups" (20) (3) Paragon House 51-80.

<sup>74</sup> *Ibid.*

<sup>75</sup> The UN Refugee Agency "DR Congo Emergency" 2021 UNHCR <https://www.unhcr.org/dr-congo-emergency.html> (Date of use: 21 April 2021).

<sup>76</sup> Operational Data Portal "Refugees and asylum seekers from DRC" 2021 UNHCR [https://data2.unhcr.org/en/situations/drc#\\_ga=2.86582744.1363779385.1618742153-2047071849.1618742153](https://data2.unhcr.org/en/situations/drc#_ga=2.86582744.1363779385.1618742153-2047071849.1618742153) (Date of use: 29 April 2021).



natural resources and minerals. Unfortunately, this abundance of resources has not translated into wealth for the majority of local communities.<sup>77</sup> Recently, there has been an increase in extreme weather patterns such as intense rainfall after prolonged dry spells that led to erosion and flash floods, damaged roads and infrastructure, and having crops wiped out resulting in severe food shortages. For example, heavy rains during January 2018 resulted in severe flooding, landslides and silting in many local communities across the Kinshasa region, consequently affected approximately 16,000 people and claiming over 50 lives.<sup>78</sup> The consequences of such severe weather patterns have a direct correlation to the country's rapidly decreasing infrastructural quality (which will be explored under economic contextual factors) and the impact thereof on relevant investors expanding their presence in the DRC's mining sector.

Regarding the DRC's food security, agriculture and land, the country's fertile land has enormous agricultural potential, however, production is often limited or hampered by several factors, including the ongoing violence associated with natural resources.<sup>79</sup> The ongoing violence caused by armed groups and military presence has uprooted farming communities, consequently resulting in vital planting seasons being missing, in turn, unable to afford seeds and basic inputs to resume food production due to the loss in income. Despite agriculture deemed as the mainstay of the DRC's economy, the country remains one of the world's poorest, with approximately 72 percent of the population is currently living in poverty and suffering from food insecurity/shortages.<sup>80</sup>

Conflict-related sexual and gender-based violence across the DRC has consequently attributed to the risks associated with social cohesion, gender equality and non-discrimination.<sup>81</sup> Incidents of sexual violence in conflict-affected provinces are on the rise, both at the hands of armed groups and security officials.<sup>82</sup> Women and girls also face increasing rates of violence in social

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<sup>77</sup> "Climate Risk Profile: Democratic Republic of Congo" 2018 Climatelinks <https://www.climatelinks.org/resources/climate-risk-profile-democratic-republic-congo> (Date of use: 11 May 2021).

<sup>78</sup> US Agency for International Development "Climate risk profile: Democratic Republic of Congo – Fact Sheet" 2018 Reliefweb <https://reliefweb.int/report/democratic-republic-congo/climate-risk-profile-democratic-republic-congo-fact-sheet> (Date of use: 19 May 2021).

<sup>79</sup> "Climate Risks in Food for Peace Geographies: Democratic Republic of Congo 2017 Climatelinks <https://www.climatelinks.org/resources/climate-risks-food-peace-geographies-democratic-republic-congo> (Date of use: 11 May 2021).

<sup>80</sup> The Global Hunger Index "Democratic Republic of Congo: A closer look at Hunger and Undernutrition" 2020 <https://www.globalhungerindex.org/case-studies/2020-drc.html> (Date of use: 12 May 2021).

<sup>81</sup> UN Team of Experts "Rule of Law/Sexual Violence in Conflict" 2017 Annual Report at 22.

<sup>82</sup> UN Document "Report of the Secretary-General on Conflict-Related Sexual Violence (SG-CRSV)" 2018 United Nations para 37.

and home environments.<sup>83</sup> In 2017, a report conducted by the United Nations Population Fund (UNFPA) reported approximately 6000 cases of sexual violence in conflict-affected provinces.<sup>84</sup> Such incidents extend beyond armed groups and are additionally attributable to the FARDC and the Congolese National Police (PNC).

#### 4.4.2 Economic context

Regarding the DRC's economic stability, the country's economy has decelerated from its pre-COVID-19 level of 4.4 percent in 2019 to an estimated 0.8 percent in 2020 due to increasing levels of unemployment opportunities and a lack of any local content and/or R&D initiatives.<sup>85</sup> In response to the COVID-19 pandemic, the DRC government was faced with pressure mounting from overspending, whilst revenue continued to decline due to its reduced economic activity.<sup>86</sup> As a result, the fiscal deficit worsened to 1.9 percent of GDP in 2020. For financing, the government initially resorted to Central Bank of Congo (BCC) advances until April 2020 and subsequently mobilised emergency support from the International Monetary Fund (IMF) and the African Development Bank (AfDB).<sup>87</sup> It also increased domestic debt issuance and accumulated arrears. Consequently, the total stock of both external public debt and domestic debt rose in 2020 to an estimated 15.9 percent and 8.9 percent of GDP, respectively. Today, the DRC is ranked 183 out of 190 countries in the 2020 Ease of Doing Business report.

Last, The DRC is one of the most infrastructurally challenged countries in the world when it comes to infrastructure and access to social services. The most severe impact of risks to infrastructure development has been felt in the eastern region of the country, where conflict and instability have had a major impact on infrastructure development.<sup>88</sup> The DRC's port infrastructure is very poor and connections to the ports are hampered by the country's abundance of nature and vast remote areas. The DRC also has several main strategic railway systems, including the Société Commerciale des Transports et des Ports (SCPT) and the Société Nationale des Chemins de Fer du Congo (SNCC). Unfortunately, both the SCPT and SNCC are

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<sup>83</sup> United States Department of State "DRC 2017 Human Rights Report" at 39

<sup>84</sup> UN Document "Report of the Secretary-General on Conflict-Related Sexual Violence (SG-CRSV)" 2018 United Nations para 38.

<sup>85</sup> The World Bank in DRC "Democratic Republic of Congo – Overview" 2021 The World Bank <https://www.worldbank.org/en/country/drc/overview> (Date of use: 19 May 2021).

<sup>86</sup> *Ibid.*

<sup>87</sup> *Ibid.*

<sup>88</sup> PWC Africa Gearing Up "Democratic Republic of Congo" (undated) PWC <https://www.pwc.com/gx/en/transportation-logistics/publications/africa-infrastructure-investment/assets/drc.pdf> (Date of use: 26 April 2021).

of very low standard and with tariffs relatively high.<sup>89</sup> Furthermore, and following years of armed conflict, much of the DRC is disconnected with the majority of the road infrastructure in poor condition having approximately 2 percent of all roads tarred.

#### 4.4.3 Political context

Regarding the DRC's democratic space, the country has witnessed ongoing violence over the years linked to armed groups and rebels attacking and killing thousands of civilians. Such violence is said to be linked to the country's broader political crisis.<sup>90</sup> For example, in September 2018, Congolese police arbitrarily arrested nearly 90 pro-democracy activists and injured more than 20 others during peaceful protests. The protesters had called on the national electoral commission to clean up the voter rolls after an audit by the Organisation Internationale de la Francophonie (OIF) found that over 16 percent of those on the lists had been registered without fingerprints, raising concerns about potentially fictitious voters. Directly linked was the killing of 7 opposition supporters during December 2018.

Next, the degree of internal security in the DRC is close to non-existent. Most recently, approximately 140 armed groups were active in the eastern DRC's North Kivu and South Kivu provinces, and many continued to attack civilians, including the largely Rwandan Democratic Forces for the Liberation of Rwanda (FDLR), the Ugandan-led Allied Democratic Forces (ADF) and the Nduma Defense of Congo-Renové (NDC-R). Many of these armed groups have been implicated in war crimes, including ethnic massacres, rape, forced child labour and pillage.<sup>91</sup> Furthermore, during late 2017 and early 2018, the north-eastern region of the DRC has seen intensified violence, whereby armed groups launched deadly attacks on local communities which resulted in having thousands of civilians raped and/or killed, and displacing approximately 350,000 people.

Directly linked is DRC's complete disregard for the justice system and rule of law. The Congolese judicial system does not meet the minimum required international standards relating to the administration of justice. Despite the principle of separation of powers enshrined in the country's Constitution,<sup>92</sup> the executive continues to interfere with the judiciary, particularly in

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<sup>89</sup> *Ibid.*

<sup>90</sup> "Democratic Republic of Congo: Events of 2018" 2019 Human Rights Watch <https://www.hrw.org/world-report/2019/country-chapters/democratic-republic-congo> (Date of use: 11 May 2021).

<sup>91</sup> *Ibid.*

<sup>92</sup> Article 147 of the Transitional Constitution provides for the independence of the judiciary.

nominating, promoting, imposing sanctions against and dismissing judicial officers and other court officials without consulting the Supreme Council of the Judiciary.<sup>93</sup> For example, an audit conducted between October 2003 and May 2004 on the DRC judicial system by partners in development found that the country's judicial system is ineffective due to corruption, insufficient judicial independence from the executive and a lack of qualified and trained judges and resources.<sup>94</sup>

Much of the violence that plagues the DRC is linked to the country's broader political crisis, with the past Congolese President – Mr Joseph Kabila, who was also responsible for the controversial ban on all mining activities across the region – remained in power beyond his constitutionally two-term limit by intentionally delaying elections and quashing dissent, consequently adding to the country's increasing political instability.<sup>95</sup> The country's index concerning Political Stability and Absence of Violence/Terrorism measures perceptions of the likelihood that the government would be destabilised by unconstitutional or violent means, including politically motivated violence. In this regard, the index is an average of several other indexes from the Economist Intelligence Unit (EIU), the World Economic Forum (WEF), and the Political Risk Services (PRS).<sup>96</sup> The political stability index (-2.5 weak; 2.5 strong) between 1996 and 2019 averaged -2.21 points with a minimum of -2.84 points in 1998 and a maximum of -1.81 points in 2019.<sup>97</sup>

Last, and from a regional and global influence, any risk of interstate war involving the DRC is unlikely to occur due to the country's new President – Mr Felix Tshisekedi – seeking to secure regional and international support for his administration rather than provoke external conflicts.<sup>98</sup> Furthermore, any incursions by adjoining countries with the consent of the Congolese government, including Angola and Uganda, will be likely to continue unlikely to trigger a wider conflict.

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<sup>93</sup> “Attacks on Justice – Democratic Republic of Congo” (undated) Refworld <https://www.refworld.org/pdfid/48abdd680.pdf> (Date of use: 20 May 2021).

<sup>94</sup> A Human Rights Watch Briefing Paper “Making Justice Work: Restoration of the Legal System in Ituri, DRC” Human Rights Watch <http://hrw.org/backgrounders/africa/drc0904/index.htm> (Date of use: 05 May 2021).

<sup>95</sup> Sawyer I “Overview of the Political Crisis in DR Congo and the Human Rights, Security, and Humanitarian Consequences” 2018 Human Rights Watch.

<sup>96</sup> *Ibid.*

<sup>97</sup> The Global Economy “Democratic Republic of the Congo: Political Stability” 2021 The World Bank [https://www.theglobaleconomy.com/Democratic-Republic-of-the-Congo/wb\\_political\\_stability/](https://www.theglobaleconomy.com/Democratic-Republic-of-the-Congo/wb_political_stability/) (Date of use: 24 May 2021).

<sup>98</sup> DRC Congo Country Report “Country Risk Level” Crisis 24 <https://crisis24.garda.com/insights-intelligence/intelligence/country-reports/dr-congo> (Date of use: 02 May 2021).

## 4.5 CONCLUSION

This chapter began with a discussion of the unintended consequences that were linked to the delayed implementation of Section 1502 of the Dodd-Frank Act regulating conflict minerals in the DRC. Thereafter, the DRC contextual factors were analysed, namely from a social, economic and political context, to determine their potential applicability and extent in having influenced the implementation outcome of Section 1502 of the Dodd-Frank Act.

While the exact reasons for the Congolese President imposing the temporary ban on all mining-related activities in the DRC are still unknown, it is safe to conclude that the arbitrary ban would not have occurred had Section 1502 of the Dodd-Frank Act already been in operation. The delay by the SEC in implementing the legislation, by failing to comply with the required 270 days to release rules on how companies were to report and audit their activities concerning conflict minerals in the DRC, resulted in far-reaching unintended consequences on ground level across the DRC, and none of which involved a reduction in ongoing violence throughout the region. Armed groups continue to terrorise local communities by ambushing them for food, money and other resources. Furthermore, directly linked was the exit made by the MSC due to pressure mounting from the EICC, due to the corporation incapable of guaranteeing that their products would be compliant with the ITRI, consequently stopping the purchasing of all minerals from the DRC with immediate effect.

The consequences that followed the abovementioned events were devastating on the local communities, particularly for the ASMs and their families. Approximately 2 million people were left unemployed in the mining sector following the MSC's exit from the DRC, with the indirect consequences affecting over 15 million people. Furthermore, there was an increase in smuggling through adjoining countries, and little-to-no reduction in the ongoing violence throughout the eastern region with armed groups, rebels and the military governing various regions.

To fully address the second sub-research question of this study, namely the country-specific contextual factors and their extent of applicability in potentially influencing the implementation outcome of Section 1502 of the Dodd-Frank Act regulating conflict minerals in the DRC, the country's current situation was examined in light of a social, economic and political context.

The DRC's social dimension is very worrisome, with millions currently displaced due to ongoing militarisation and unrest throughout the eastern DRC linked to the illicit conflict mineral trade. Furthermore, increased occurrence in droughts and flash floods has resulted in severe damage to the little-to-no infrastructure and destruction of crops, consequently resulting in severe food shortages that contribute to the country's high poverty and famine levels. The country's food shortage is also caused by the ongoing violence associated with natural resources, as armed groups and the military has uprooted farming communities that resulted in vital planting seasons missed and lack of income made to resume food production. The ongoing violence also includes sexual abuse of woman and children which has been attributable to the FARDC and the PNC.

From an economic dimension, the DRC's economy is very unstable, with unemployment levels on the rise to due investors pulling out of the country, such as the MSC. Such lack of investor confidence is confirmed by the World Bank Report which found the DRC currently ranked 183 out of 190 countries in the ease of doing business. The decrease in international corporation presence is also exacerbated by the country's poor infrastructural quality, particularly in the eastern region where conflict and instability have had a major impact on infrastructure development. There is a lack of port and railways connections, with the majority of roads in poor condition having approximately 2 percent of all roads tarred.

Last, the DRC's political context appears to be the worst of them all, showing extreme political instability across the country. The country's democracy and internal security is close to non-existent, with the ongoing violence – including ethnic massacres, rape, forced child labour and killings – by armed groups and rebels attacking ASM's, their families and local communities linked to its broader political crisis, including the potential motive behind the ban on mining activities before the implementation of Section 1502 of the Dodd-Frank Act. Linked to such restless and corrupt acts by political figures is the country's total disregard for the justice system and rule of law, with the Congolese judicial system failing to meet the minimum required international standards relating to the administration of justice and a lack of accountability on the rise. However, from a regional and global influence sense, there is little risk of any interstate wars occurring in the nearby future, and also seems to have no relation to the negative implementation outcome of Section 1502 of the Dodd-Frank Act.

The next chapter will provide a summary of findings made and make recommendations for policymakers on how future international policies regulating conflict minerals in the DRC and

other CAHRAs could be implemented to ensure that the interests of local communities are safeguarded.

## **CHAPTER 5**

### **FINDINGS AND RECOMMENDATIONS**

#### **5.1 SUMMARY OF FINDINGS**

This study aims to recap the answers to the research questions raised in Chapter 1. These questions were answered in the course of the discussions undertaken in Chapters 2 through 4. The following is a summary of the findings made throughout the study in this regard.

The DRC has many social, economic and political contextual factors which if identified at an early stage and understanding how to use them to one's advantage, could dictate the country's outcome in implementing international policies regulating conflict minerals. Unfortunately, this has not been the case when Section 1502 of the Dodd-Frank Act was implemented, with the policy failing to achieve its desired results and consequently resulting in many unintended consequences affecting the livelihoods of thousands of ASMs, their families and local communities in general. This study aimed to provide an understanding of the country-specific contextual factors in the DRC which could potentially have influenced the unintended effects of Section 1502 of the Dodd-Frank Act regulating conflict minerals upon implementation. Such understanding would assist the DRC in recognising what to expect from implementing future international policies regulating conflict minerals under the country's contextual situation, as well as policymakers by making recommendations confirming that a holistic approach is required on the different strategic development options when formulating such policies.

Conflict minerals in the DRC and adjoining countries (other CAHRAs) are regulated by Section 1502 of the Dodd-Frank Act which requires the US publicly listed companies to monitor their supply chains for 3TG minerals, and if they might originate from the DRC or its adjoining countries, to take the necessary steps in addressing the potential risks they find, including performing due diligence on their supply chain, and to report on their efforts to the SEC. In this regard, the author made several observations. Firstly, Section 1502 of the Dodd-Frank Act was passed into law in July 2010 and the SEC was given 270 days to implement the law, and provide for the conditions as to when, how and what companies involved in the extraction, trade and/or transportation of 3TG minerals should publish in its so-called "Final Rules. However, the SEC



only finalised the Final Rules in August 2012, consequently resulting in a ban on mining being imposed in the interim as well as major mining companies, including the MSC, withdrawing from the DRC mineral market due to regulatory uncertainty and a crisis of confidence. Secondly, the provisions of Section 1502 of the Dodd-Frank Act explicitly only apply to US companies that are listed on the New York Stock Exchange, to the exclusion of any other major international market players. Thirdly, despite the Final Rules “requiring” such US publicly listed companies to monitor their supply chains for 3TG minerals and report their efforts to the SEC, Section 1502 of the Dodd-Frank Act is silent on any provisions relating to penalties, sanctions and/or enforcement mechanisms concerning non-compliance and breaches by companies for failing to perform the necessary due diligence and reporting practices.

Next, when analysing the DRC in light of each social, economic and political context, not all country-specific contextual factors showed equal applicability in potentially influencing the outcome of Section 1502 of the Dodd-Frank Act. For example, the majority of social contextual factors did not necessarily have a direct influence on the outcome of Section 1502 of the Dodd-Frank Act, save for risks concerning social cohesion, gender equality and non-discrimination which attributed to incidents of sexual violence by armed groups and the FARDC, consequently contributing to the ongoing violence fuelled by conflict minerals which the policy was initially enacted to prevent, yet failed. On the other hand, both the economic and political dimensions showed significantly greater applicability in the implementation outcome of Section 1502 of the Dodd-Frank Act. The DRC’s economic instability, difficulty in doing business for investors and very poor infrastructure across the region contributed to the MSC’s decision to exit the country’s mineral market trade, and consequently resulting in a *de facto* boycott on almost all cassiterite, tantalum, and tungsten, tantalum in the DRC. Moreover, and this time from a political context, the complete disregard for democracy, no rule of law and a lack of accountability measures has contributed to the ongoing human rights violations in local communities caused by armed groups and the FARDC patrolling the mineral exaction sites, consequently affecting many ASMs and their families. Much of the violence that plagues the DRC is linked to the country’s corrupt political crisis, with the past Congolese President – Mr Joseph Kabila, who was also responsible for the controversial ban on all mining activities across the region – remained in power beyond his constitutionally two-term limit by intentionally delaying elections and quashing dissent, consequently adding to the country’s increasing political instability.

## **5.2 RECOMMENDATIONS**

To address the third sub-research question of this study,<sup>99</sup> this section makes recommendations for policymakers with the view of determining how future international policies regulating conflict minerals in the DRC and other CAHRAs could be implemented to ensure that the interests of local communities are safeguarded.

In this regard, it is recommended that:

### **5.2.1 A phased policy implementation be followed**

Future international policies regulating conflict minerals in the DRC and adjoining countries should be implemented in phases with clear time-frame review benchmarks. Section 1502 of the Dodd-Frank Act was envisaged to have been implemented immediately and have the SEC issue the Final Rules regulating the DRC mining sector without delays.<sup>100</sup> However, had the regulations been phased in through an integrated transitional period, more time would be available for the consultive process that integrates the interests of the ASMs. These transition benchmarks should be realistic and take into account local civil society actors' view on the feasibility of certain aspects.

### **5.2.2 Provisions include local content initiatives**

There is a need to have more local hire and training requirements incorporated into existing and future international policies regulating conflict minerals from the DRC. For this study, local content is the value-add that mineral-related activities bring to a host state, further to the direct natural resource revenues.<sup>101</sup> Placing greater emphasis on local job creation and R&D initiatives for the Congolese mining community could potentially safeguard the interests and needs of

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<sup>99</sup> See Research Question 1.2.3 in Chapter 1 above.

<sup>100</sup> Havranek K "Step Up for 1502 and Congo" 2011 Enough Project blog <http://www.enoughproject.org/blogs/step-1502-and-congo> (Date of use: 22 May 2021).

<sup>101</sup> Natural Resource Governance Institute "Local Content, Strengthening the Local Economy and Workforce" NRG Reader [https://resourcegovernance.org/sites/default/files/documents/nrgi\\_primer\\_local-content.pdf](https://resourcegovernance.org/sites/default/files/documents/nrgi_primer_local-content.pdf) (Date of use: 23 May 2021).

those most vulnerable during difficult and unforeseen periods, such as the *de facto* embargo in the DRC which had occurred pending the Final Rules.

### **5.2.3 Local stakeholders be more involved in the legislative and implementation process**

Section 1502 of the Dodd-Frank Act, just like with the majority of western advocacy efforts, made little-to-no reference to Congolese stakeholders and their concerns. Many of the unintended consequences associated with the implementation outcome could have been avoided had their perspectives been integrated into the advocacy process.

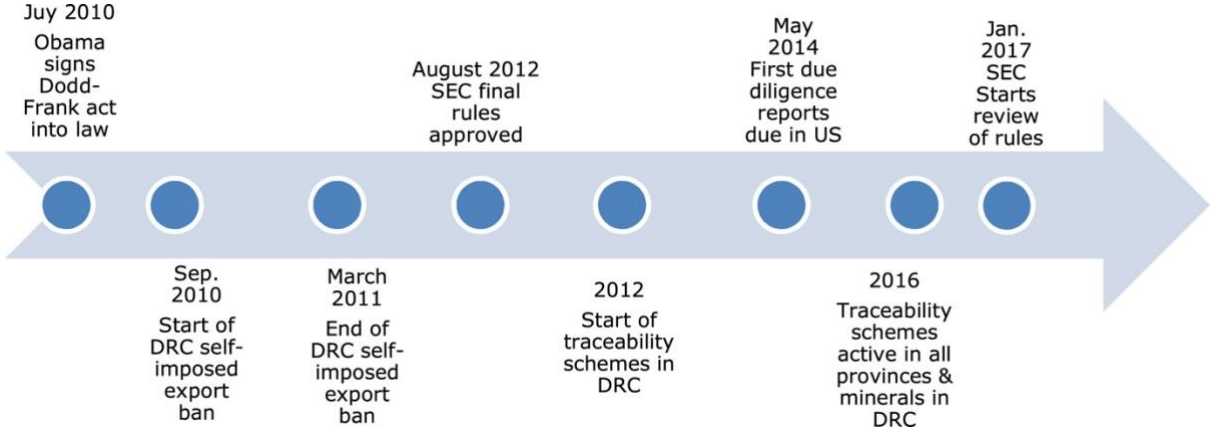
### **5.2.4 Stricter sanctions and enforcement mechanism relating to non-compliance with rules be incorporated**

The SEC Final Rules, coupled with the OECD Guidance, are essentially the equivalent of voluntary guidelines and/or recommendations to the US publicly listed companies. Such companies failing to comply with the due diligence requirements will not face any national or international remedial consequences for their breach. Punishment in the form of fines and even imprisonment for more serious breaches should be incorporated into Section 1502 of the Dodd-Frank Act if there is any hope of one day potentially reducing the ongoing human rights violations associated with conflict minerals in the DRC and its adjoining countries.

# APPENDIX 1: THE UN SDG-BASED RISK FRAMEWORK

SDGs	Risk Areas
 	Democratic space
 	Displacement and migration
 	Economic stability
    	Environment and climate
 	Food security, agriculture and land
 	Internal security
     	Infrastructure and access to social services
 	Justice and rule of law
 	Political stability
 	Public health
 	Regional and global influences
   	Social cohesion, equality and non-discrimination

# APPENDIX 2: TIMELINE OF SECTION 1502 OF THE DODD-FRANK ACT



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