United States Government Accountability Office

Report to Congressional Committees

September 2019

CONFLICT MINERALS

2018 Company Reports on Mineral Sources Were Similar in Number and Content to Those Filed in the Prior 2 Years

GAO-19-607

GAO Highlights

Highlights of GAO-19-607, a report to congressional committees

September 2019

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Why GAO Did This Study

Since the UN first deployed a peacekeeping mission to the DRC 2 decades ago, the United States and the international community have sought to improve security in the country. In eastern DRC, armed groups have committed severe human rights abuses, including sexual violence, and reportedly profit from the exploitation of "conflict minerals"—in particular, tin, tungsten, tantalum, and gold—according to the UN. Congress included a provision in the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act that, among other things, required the SEC to promulgate regulations regarding the use of conflict minerals from the DRC and adjoining countries. The SEC adopted these regulations in 2012. The act also included a provision for GAO to annually assess the SEC regulations' effectiveness in promoting peace and security and to report on the rate of sexual violence in the DRC and adjoining countries.

In this report, GAO (1) examines how companies responded to the SEC conflict minerals disclosure rule when filing in 2018 and (2) provides recent information on the rate of sexual violence in eastern DRC and adjoining countries. GAO analyzed a generalizable random sample of SEC filings and interviewed relevant officials. GAO also reviewed U.S. government, UN, and international organization reports; interviewed DRC officials and other stakeholders; and conducted fieldwork in California at an industry conference.

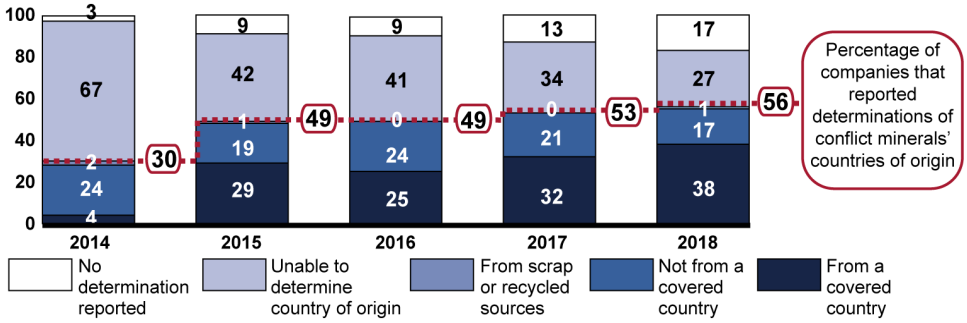
View GAO-19-607. For more information, contact Kimberly M. Gianopoulos at (202) 512-8612 or gianopoulosk@gao.gov.

What GAO Found

Companies' conflict minerals disclosures filed with the U.S. Securities and Exchange Commission (SEC) in 2018 were, in general, similar in number and content to disclosures filed in the prior 2 years. In 2018, 1,117 companies filed conflict minerals disclosures—about the same number as in 2017 and 2016. The percentage of companies that reported on their efforts to determine the source of minerals in their products through supply chain data collection (country-of-origin inquiries) was also similar to percentages in those 2 prior years. As a result of the inquiries they conducted, an estimated 56 percent of the companies reported whether the conflict minerals in their products came from the Democratic Republic of the Congo (DRC) or any of the countries adjoining it—similar to the estimated 53 and 49 percent in the prior 2 years. The percentage of companies able to make such a determination significantly increased between 2014 and 2015, and has since leveled off, as shown below.

Source of Conflict Minerals in Products as Determined by Companies' Reasonable Country-of-Origin Inquiries, Reporting Years 2014-2018

Percent (of company filings)



Source: GAO analysis. | GAO-19-607

Note: "Covered countries" include the Democratic Republic of the Congo and the adjoining countries.

In their 2018 disclosures, some companies reported taking the same actions to improve supply chain data collection that they had taken in past years, and many noted difficulties in determining conflict minerals' country of origin. A subset of the companies in the figure had not determined their minerals' origin or had reason to believe their minerals were from covered countries (and not from scrap or recycled sources) and were, as a result of the inquiry, required to conduct additional research (due diligence). Of those that conducted due diligence, an estimated 61 percent reported they were unable to confirm the source of minerals in their products. An estimated 35 percent reported using conflict minerals from covered countries or from scrap or recycled sources. Although some companies noted that guidance the SEC staff revised in 2017 had caused uncertainty about the filing process, most filings were similar to those submitted in prior years.

GAO found no new population-based surveys on the rate of sexual violence in eastern DRC and three countries adjoining that region—Burundi, Uganda, and Rwanda—but found other types of information on sexual violence.

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Abbreviations

Dodd-Frank Act	2010 Dodd-Frank Wall Street Reform and Consumer Protection Act
DRC	Democratic Republic of the Congo
EDGAR	Electronic Data Gathering, Analysis, and Retrieval
FARDC	Armed Forces of the Democratic Republic of the Congo
Form SD	Specialized Disclosure Report
MONUSCO	United Nations Stabilization Mission in Democratic Republic of the Congo
OECD	Organisation for Economic Co-operation and Development
SEC	Securities and Exchange Commission
SEC Disclosure Rule	SEC conflict minerals disclosure rule
State	U.S. Department of State
UN	United Nations
UNFPA	United Nations Population Fund
UNJHRO	United Nations Joint Human Rights Office in the Democratic Republic of the Congo
USAID	U.S. Agency for International Development

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U.S. GOVERNMENT ACCOUNTABILITY OFFICE
441 G St. N.W.
Washington, DC 20548

September 9, 2019

Congressional Committees:

The exploitation of the mining and trade of "conflict minerals"—in particular, tin, tungsten, tantalum, and gold from the eastern region of the Democratic Republic of the Congo (DRC)—has contributed to the displacement of people and severe human rights abuses. The 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act[1] (Dodd-Frank Act) addresses, among other things, trade in conflict minerals.[2] Section 1502 of the act required several U.S. agencies, including the U.S. Securities and Exchange Commission (SEC), to take certain actions to implement the act's conflict minerals provisions.[3] The act required the SEC to promulgate disclosure and reporting regulations regarding the use of conflict minerals from the DRC and adjoining countries (in this report also collectively referred to as "covered countries") by April 2011.[4] The SEC adopted a conflict minerals disclosure rule (SEC disclosure rule) in August 2012 and published it in the *Federal Register* in September 2012.[5]

[1]Pub. L. No. 111-203, § 1502, 124 Stat. 1376, 2213-18.

[2]The Dodd-Frank Act defines conflict minerals as columbite-tantalite (coltan), cassiterite, gold, wolframite, or their derivatives, or any other mineral or its derivatives that are determined by the Secretary of State to be financing conflict in the DRC or an adjoining country. See Pub. L. No. 111-203, § 1502(e)(4). Columbite-tantalite, cassiterite, and wolframite are the ores from which tantalum, tin, and tungsten, respectively, are processed.

[3]The act required the U.S. Department of State (State), in consultation with the U.S. Agency for International Development (USAID), to submit a conflict minerals strategy to appropriate congressional committees to address the linkages between human rights abuses, armed groups, mining of conflict minerals, and commercial products. Pub. L. No. 111-203, § 1502(c). The act also requires the Department of Commerce to report, among other things, a list of all known conflict minerals processing facilities worldwide. Pub. L. No. 111-203, § 1502(d).

[4]The term "adjoining country" is defined in the Dodd-Frank Act as a country that shares an internationally recognized border with the DRC. Pub. L. No. 111-203, § 1502(e)(1). Such countries included Angola, Burundi, Central African Republic, the Republic of the Congo, Rwanda, South Sudan, Tanzania, Uganda, and Zambia when the SEC issued its conflict minerals rule. For the purposes of the SEC disclosure rule, the SEC refers to these countries along with the DRC itself as "covered countries."

[5]77 Fed. Reg. 56,274. According to the SEC, when the SEC proposes or adopts a set of rules, those rules are published in a document called a "proposing release" or "adopting release."

The SEC disclosure rule requires companies to (a) file a specialized disclosure report known as a Form SD if they manufacture, or contract to have manufactured, products that contain conflict minerals necessary to the functionality or the production of those products, and, (b) as applicable, file a conflict minerals report.[6] The specialized disclosure report (Form SD) provides general instructions to companies for filing the conflict minerals disclosure and specifies the information that each Form SD and conflict minerals report must include.[7] In addition, the Dodd-Frank Act included a provision for us to report, beginning in 2012 and annually thereafter, on the effectiveness of the SEC disclosure rule in promoting peace and security in the DRC and adjoining countries and to report annually, beginning in 2011, on the rate of sexual violence in war-torn areas of the DRC and adjoining countries, among other things.[8]

In this report, we (1) examine how companies responded to the SEC conflict minerals disclosure rule when filing in 2018[9] and (2) provide recent information on the rate of sexual violence in eastern DRC and adjoining countries.

To examine how companies responded to the SEC conflict minerals disclosure rule when filing in 2018, we downloaded disclosure reports, along with any related conflict minerals reports, from the SEC's publicly available Electronic Data Gathering, Analysis, and Retrieval (EDGAR)

[6]As adopted, the final rule applies to any issuer that files reports with the SEC under Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a) and 78o(d)) and uses conflict minerals that are necessary to the functionality or production of a product manufactured or contracted by that issuer to be manufactured. For the purposes of our report, we refer to those issuers affected by the rule as "companies."

[7]Companies were required to file under the SEC disclosure rule for the first time by June 2, 2014, and annually thereafter by May 31.

[8]Pub. L. No. 111-203, § 1502(d), as amended by the GAO Mandates Revision Act, Pub. L. No. 114-301, § 3, 130 Stat. 1514 (2016). We are required to report on the effectiveness of the SEC disclosure rule annually from 2012 through 2020, with additional reports in 2022 and 2024. We are also required to report on the rate of sexual violence from 2011 through 2020, with additional reports in 2022 and 2024. This report contributes to our work in response to the annual reporting requirements in Section 1502 of the Dodd-Frank Act. To date, we have issued 10 reports in response to these requirements. See Related GAO Products at the end of this report.

[9]Conflict minerals disclosures filed with the SEC in a given year contain information about conflict minerals used in the previous year. For example, for this report we reviewed disclosures filed with the SEC in 2018 about conflict minerals used in 2017. All years cited in this report are calendar years, unless otherwise noted.

database. We determined that the EDGAR database was sufficiently reliable for identifying the universe of Form SD filings. To review the completeness and accuracy of the EDGAR database, we reviewed relevant documentation, interviewed knowledgeable SEC and Department of State (State) officials, and reviewed prior GAO reports on internal controls related to the SEC's financial systems. We randomly sampled 100 Forms SD from a population of 1,117 to create estimates generalizable to the population of all companies that filed in response to the SEC disclosure rule.[10] We selected this sample size to achieve a margin of error of no more than plus or minus 10 percentage points at the 95 percent confidence level, which applies to all our estimates unless otherwise noted. We reviewed the Dodd-Frank Act and the requirements of the SEC disclosure rule to develop a data collection instrument that guided our analysis of the Form SD filings. We also interviewed company representatives attending an industry conference to obtain additional perspectives on meeting disclosure requirements. In addition, we met with representatives of a range of stakeholders, including nongovernmental organizations, international organizations, and the private sector, in Santa Clara, California, and Washington, D.C.

To provide information about sexual violence in eastern DRC and adjoining countries published in 2018 and early 2019, we searched research databases to identify academic articles, and interviewed and obtained key documents from researchers and representatives of the SEC, State, and the U.S. Agency for International Development (USAID),

[10]A Form SD may include a conflict minerals report, if applicable. The number of Form SD filings we downloaded from the public EDGAR site on September 26, 2018, varies slightly from SEC's reported number of 1,124 Form SD filings as of December 2018. We excluded two of the filings made as of September 26, 2018, from our analysis of 2017 filings because they were filings for 2016, not 2017. In addition, according to SEC staff, some companies filed their Form SD after September 26, 2018. Also, because companies can file amendments or request corrections to filings, any updates to Form SD filings made after September 26, 2018, are not reflected in our analysis.

as well as several United Nations (UN) agencies.[11] See appendix I for more information on our objectives, scope, and methodology.

Background

History of Conflict in the DRC and the Region

The DRC is a vast, mineral-rich nation with an estimated population of more than 85 million people and an area that is roughly one-quarter the size of the United States, according to the UN. Since gaining its independence from Belgium in 1960, the DRC has undergone political upheaval and armed conflict. From 1998 to 2003, the DRC and eight other African countries were involved in what has become known as "Africa's World War," which resulted in a death toll of an estimated 5 million people in the DRC, according to State. During that period, in 1999, the UN deployed a peacekeeping mission to the DRC, and since then the United States and the international community have sought to improve security in the DRC. However, eastern DRC continues to be plagued by violence—including numerous cases of sexual violence reported by the UN—often perpetrated against civilians by nonstate armed groups and some members of the Congolese national military.

More recently, presidential elections were originally scheduled for 2016, when the president's final term in office expired, but the government delayed elections until December 2018. During this time, the UN reported an increase in human rights violations. In 2018 and 2019, the UN reported that serious violations of human rights remain widespread in the DRC, including continued acts of sexual violence by government security forces as well as nonstate armed groups. In addition, the UN noted that criminal networks and armed groups, including members of the Congolese national military and police, continued to derive illegal

[11]The Dodd-Frank Act directs us to submit a report that includes an assessment of the rate of "sexual and gender-based violence" in war-torn areas of the DRC and adjoining countries. UN officials and researchers advised us to focus our review on assessing "sexual violence." UN officials said that the term "sexual and gender-based violence" is redundant because sexual violence is included in the definition of gender-based violence. Violence against women, a form of gender-based violence, includes broad violations not related to sexual violence and refers to any act that results in "physical, sexual, or mental harm or suffering to women"; UN officials said it includes forced early marriage, harmful traditional practices, and domestic abuse. Violence against women does not include sexual violence against adult males or boys and would include other types of nonsexual violence against women.

revenues from smuggling and illicit taxation of minerals from eastern Congolese mines.

Uses of Conflict Minerals

Various industries, particularly manufacturing industries, use the four conflict minerals—tin, tungsten, tantalum, and gold—in a wide variety of products. For example, tin is used to solder metal pieces and is also found in food packaging, steel coatings on automobile parts, and some plastics. Tungsten is used in automobile manufacturing, drill bits, and cutting tools, and other industrial manufacturing tools and is the primary component of filaments in light bulbs. Most tantalum is used to manufacture capacitors that enable energy storage in electronic products, such as cell phones and computers, or to produce alloy additives used in turbines in jet engines. Gold is used as reserves and in jewelry and is also used by the electronics industry, including, for example, in cell phones and laptops.

SEC Conflict Minerals Disclosure Rule

In August 2012, SEC adopted its conflict minerals disclosure rule in response to Section 1502(b) of the Dodd-Frank Act.[12] In the summary section of the adopting release for the rule, SEC noted that to accomplish the goal of helping to end the human rights abuses in the DRC caused by the conflict, Congress chose to use the Dodd-Frank Act's disclosure requirements to bring greater public awareness of the sources of companies' conflict minerals and to promote the exercise of due diligence on conflict mineral supply chains. The map in figure 1 shows the countries covered by the SEC disclosure rule, including the DRC and its 26 provinces.

[12]77 Fed. Reg. 56,274.

Figure 1: The Democratic Republic of the Congo and Adjoining Countries (Covered Countries)

Source: GAO, based on United Nations map data. | GAO-19-607

Note: The term "adjoining country" is defined in Section 1502(e)(1) of the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act as a country that shares an internationally recognized border with the Democratic Republic of the Congo (DRC), which included Angola, Burundi, Central

African Republic, the Republic of the Congo, Rwanda, Tanzania, Uganda, South Sudan, and Zambia, at the time that the Securities and Exchange Commission (SEC) issued its conflict minerals disclosure rule. Pub. L. No. 111-203, § 1502(e)(1), 124 Stat. 1376, 2217. For the purposes of the conflict minerals disclosure rule, the SEC refers to these countries adjoining the DRC, along with the DRC itself, as "covered countries."

The SEC disclosure rule addresses the four conflict minerals named in the Dodd-Frank Act originating from the covered countries. The rule outlines a process for companies to follow, as applicable, to comply with the rule. (See app. II.) The process broadly requires a company to

1. determine whether it manufactures, or contracts to be manufactured, products with "necessary" conflict minerals;
2. conduct a reasonable country-of-origin inquiry concerning the origin of those conflict minerals; and
3. exercise due diligence, if appropriate, to determine the source and chain of custody of those conflict minerals, adhering to a nationally or internationally recognized due diligence framework, if such a framework is available for these necessary conflict minerals.[13]

If companies choose to disclose that their products are "DRC conflict free" in a conflict minerals report, the SEC disclosure rule requires companies to obtain an independent private-sector audit.[14]

Following an appellate court decision that a portion of the disclosure required by the SEC disclosure rule violated the First Amendment,[15] SEC staff issued guidance on April 29, 2014, indicating that, pending further action by the SEC or a court, companies required to file a conflict

[13]Performing due diligence on source and chain of custody is required if a company knows or has reason to believe that its conflict minerals may have originated in the covered countries and knows or has reason to believe that the conflict minerals may not be from scrap or recycled sources.

[14]Under the SEC disclosure rule, an independent private-sector audit expresses an opinion or conclusion as to whether the design of the issuing company's due diligence measures conforms in all material respects with the criteria set forth in the nationally or internationally recognized due diligence framework it used and whether the description of the due diligence measures it performed as set forth in the company's conflict minerals report is consistent with the due diligence process undertaken by the company.

[15]According to SEC staff, in April 2014, the U.S. Court of Appeals rejected challenges to the bulk of the SEC conflict minerals rule but held that Section 1502 of the Dodd-Frank Act and the rule violate the First Amendment to the extent that they require regulated entities to report to the SEC and to state on their website that any of their products "have not been found to be DRC conflict free." *Nat'l Ass'n of Mfrs. v. SEC*, 748 F.3d 359 (D.C. Cir. Apr. 14, 2014).

minerals report would not have to identify their products as "DRC conflict undeterminable," "not found to be 'DRC conflict free,'" or "DRC conflict free."[16]

In April 2017, following the entry of the final judgment in the case,[17] the SEC's Division of Corporation Finance issued revised guidance, indicating that, in light of the uncertainty regarding how the commission would resolve those issues and related issues raised by commenters, the Division of Corporation Finance had determined that it would not recommend enforcement action to the commission if companies did not report on specified due diligence disclosure requirements.[18] However, the SEC staff told us that the guidance is not binding on the commission and that the commission could still initiate enforcement action if companies did not report on their due diligence in accordance with the rule.

According to SEC staff, the 2017 guidance, while temporary, is still in effect, pending review of the rule by the commission. As of June 2019, the rule was on the SEC's long-term regulatory agenda, which means—according to SEC staff—that any action would likely not take place until after March 2020.[19]

[16]See Keith F. Higgins, Director, SEC Division of Corporation Finance, *Statement on the Effect of the Recent Court of Appeals Decision on the Conflict Minerals Rule* (Apr. 29, 2014). According to SEC staff, the April 2014 guidance is still in effect.

[17]The final judgment set aside the SEC disclosure rule "to the extent that the Statute and Rule require regulated entities to report to the Commission [SEC] and state on their websites that any of their products have not been found to be 'DRC conflict free.'" *Nat'l Ass'n of Mfrs. v. SEC*, No. 13-cv-635 (D.D.C. Apr. 3, 2017). The District Court also remanded the case to the SEC.

[18]Specifically, the updated guidance stated that "in light of the uncertainty regarding how the Commission [SEC] will resolve those issues and related issues raised by commenters, the Division of Corporation Finance has determined that it will not recommend enforcement action to the Commission if companies, including those that are subject to paragraph (c) of Item 1.01 of Form SD, only file disclosure under the provisions of paragraphs (a) and (b) of Item 1.01 of Form SD." The statement noted that it "is subject to any further action that may be taken by the Commission, expresses the Division's position on enforcement action only, and does not express any legal conclusion on the rule." See SEC Division of Corporation Finance, *Updated Statement on the Effect of the Court of Appeals Decision on the Conflict Minerals Rule* (Apr. 7, 2017).

[19]The *Unified Agenda of Federal Regulatory and Deregulatory Actions* is published semi-annually and generally includes regulatory actions, such as notices of proposed rulemaking and final rules, that executive agencies plan to issue within the next 12 months.

Conflict Minerals Disclosures Filed in 2018 Were Similar in Number and Content to Those Filed in Prior Years

Almost as Many Companies Filed Conflict Minerals Disclosures in 2018 as in Each of the Past 2 Years

In 2018, 1,117 companies filed conflict minerals disclosures—slightly fewer than the number of companies that filed in 2017 and 2016 (1,165 and 1,230, respectively).[20] Our analysis of a generalizable sample of the 1,117 filings found that an estimated 85 percent of the companies filed as domestic, while the remaining 15 percent filed as foreign. This domestic-to-foreign ratio is similar to the ratio in 2017 and 2016.[21] Overall, when reporting on the conflict minerals used in their products, an estimated 62 percent reported using tantalum; 63 percent, tungsten; and 66 percent, gold—percentages similar to those reported in 2017 and 2016. An estimated 76 percent reported using tin, which was similar to the 69 percent reported in 2017 and significantly higher than the 61 percent in 2016. An estimated 24 percent did not specify the minerals they used.

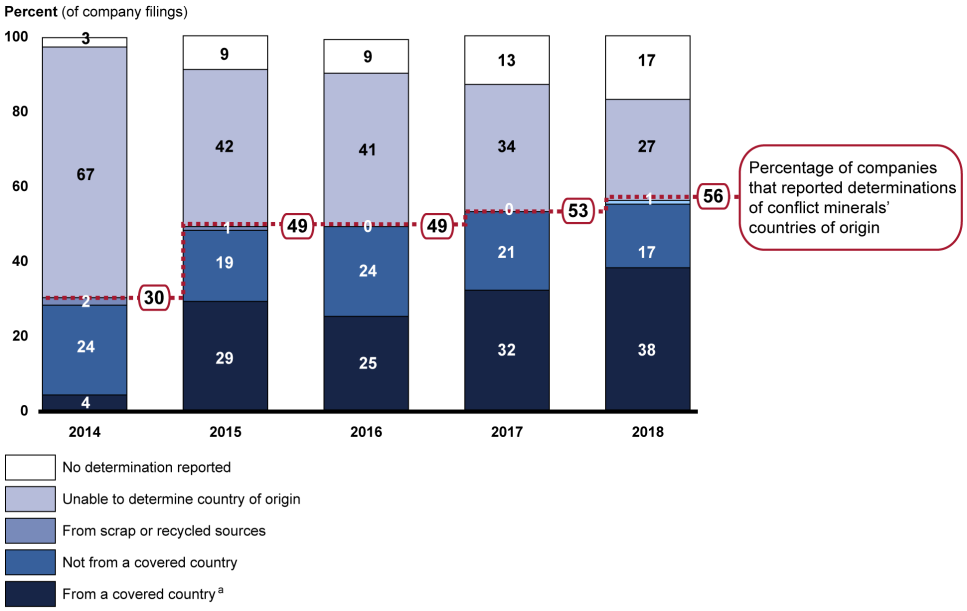
[20]According to SEC officials, this decrease may be attributable to a variety of factors, such as mergers and acquisitions among electronics and semiconductor companies, privatization of companies, or changes in business practices by companies previously required to file disclosures. For our analyses of 2017 and 2016 filings, respectively, see GAO, *Conflict Minerals: Company Reports on Mineral Sources in 2017 Are Similar to Prior Years and New Data on Sexual Violence Are Available*, GAO-18-457 (Washington, D.C.: June 28, 2018); and GAO, *SEC Conflict Minerals Rule: 2017 Review of Company Disclosures in Response to the U.S. Securities and Exchange Commission Rule*, GAO-17-517R (Washington, D.C.: Apr. 26, 2017).

[21]Our generalizable sample of 100 filings for 2018, 2017, and 2016 resulted in confidence intervals of plus or minus 10 percent, at the 95 percent confidence level, except where noted. When we compare estimates across these years and call them “similar in number,” we mean that the difference between the two numbers is not statistically significant at the 95 percent confidence level.

A Similar Percentage of Companies Conducted Country of Origin Inquiries as in the Past 2 Years; the Percentage of Companies Reporting a Determination Has Increased since 2014

Our analysis of our generalizable sample found that, as in 2017 and 2016, almost all companies that filed conflict minerals disclosures indicated that they had conducted country-of-origin inquiries. Specifically, an estimated 100 percent of companies that filed reported that they had conducted such an inquiry, similar to the percentages that reported doing so in the prior 2 years.[22] As a result of the inquiries they conducted, an estimated 56 percent of companies that filed reported whether the conflict minerals in their products came from covered countries—similar to the estimated 53 percent in 2017 and 49 percent in 2016. The percentage of companies able to make such a determination significantly increased between 2014 and 2015, and has since leveled off. [23] (See figure 2.)

Figure 2: Source of Conflict Minerals in Products as Determined by Companies' Reasonable Country-of-Origin Inquiries, Reporting Years 2014-2018



Source: GAO analysis. | GAO-19-607

Note: Company determinations were reported in 2014-2018 in response to the U.S. Securities and Exchange Commission conflict minerals disclosure rule. Data shown are estimates that have a

[22]The lower bound of the confidence interval for this estimate is 97 percent.

[23]As we reported in 2016, the 19 percent increase between 2014 and 2015 was statistically significant at the 95-percent confidence level. GAO, *SEC Conflict Minerals Rule: Companies Face Continuing Challenges in Determining Whether Their Conflict Minerals Benefit Armed Groups*, GAO-16-805 (Washington, D.C.: Aug. 25, 2016).

margin of error of no more than plus or minus 10 percentage points at the 95-percent confidence level.

[a]"From a covered country" means the company determined that it knows or has reason to believe that the conflict minerals in its products came from covered countries, which comprise the Democratic Republic of the Congo and adjoining countries. "Adjoining countries" is defined by Pub. L. No. 111-203, § 1502(e)(1), 124 Stat. 1376, 2217.

Some Companies Filing in 2018 Reported Taking Actions to Improve Supply Chain Data, Though Many Continue to Report Difficulties in Determining Country of Origin

As in past years, our review of our generalizable sample of filings found that some of the companies in our generalizable sample reported taking the same actions to improve supply chain data collection that they had taken in past years, including using standardized tools and conducting surveys. Those companies that conducted surveys reported doing further investigation into the source of minerals, for example, by following up with suppliers to improve the specificity and completeness of their survey responses. Other actions companies reported taking to improve supply chain data collection included educating suppliers about conflict-free sourcing and creating and publicizing conflict minerals policies. In interviews, representatives of selected companies and other industry participants also noted, as they had in prior years, that awareness among suppliers about the use of conflict minerals continued to increase.[24] However, many companies reported difficulties in determining the country of origin of conflict minerals, in part as a result of lack of access to suppliers and complex supply chains involving many suppliers and processing facilities.[25] Specifically, some companies reported that some suppliers did not respond to requests for information, or that supplier and smelter information was incomplete or contained errors. Some companies also reported, among other factors, confusion among suppliers about the requirements of the SEC disclosure rule, and gaps in supplier education and knowledge.

[24]Industry participants are entities with expertise in conflict minerals, such as technology service providers, consultants, and nongovernmental organizations. See GAO-18-457 and GAO-17-517R.

[25]Companies reported similar difficulties in past years. See GAO-18-457, GAO-17-517R, and GAO-16-805.

Almost All Companies Required to Conduct Due Diligence Reported Conducting It in Their 2018 Filings

Our review of our generalizable sample found that 94 percent of the companies that were required to conduct due diligence, as a result of their country-of-origin inquiries, reported conducting it.[26] This percentage is similar to those in prior years: 96 percent in both 2017 and 2016. An estimated 89 percent of the companies that were required to conduct due diligence reported using a due diligence framework prescribed by the Organisation for Economic Co-operation and Development (OECD) guidance to conduct due diligence on the source and chain of custody of the conflict minerals in their products. This percentage is comparable to the 87 percent in 2017 and 92 percent in 2016.[27] The remainder of the companies reported using non-OECD guidance or did not specify the guidance they used, if any.

Of all the companies that conducted due diligence (a subset of the companies that conducted country-of-origin inquiries shown in figure 2 above), an estimated 35 percent reported that they were able to determine that their conflict minerals came from covered countries or from scrap or recycled sources, compared with 37 percent in 2017 and 39 percent in 2016. However, an estimated 61 percent of the companies reported in 2018 that they could not definitively confirm the source of the conflict minerals in their products, compared with 47 percent in 2017 and 55 percent in 2016.[28] As in prior years, almost all of the companies that conducted due diligence reported that they could not determine whether the conflict minerals in their products had financed or benefited armed groups. Three companies in our generalizable sample determined that

[26]The SEC disclosure rule requires that companies that know, or have reason to believe, that conflict minerals necessary to their products may have originated in one of the covered countries and may not be from recycled or scrap material must conduct due diligence on the source and chain of custody of their conflict minerals and must use a nationally or internationally recognized due diligence framework, if such a framework is available for the necessary conflict minerals.

[27]Organisation for Economic Co-operation and Development, *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, Third Edition* (Paris, France: OECD Publishing, 2016). The OECD framework includes five steps: (1) establish management systems, (2) identify and assess risk in the supply chains, (3) design and implement a strategy to respond to identified risks, (4) carry out an independent third-party audit of supply chain due diligence, and (5) report on supply chain due diligence. The OECD guidance is for use by any company potentially sourcing minerals or metals from conflict-affected and high-risk areas and, according to the OECD, is one of the international frameworks available to help companies meet their due diligence reporting requirements.

[28]The differences between the 2018, 2017, and 2016 estimates are not statistically significant.

the minerals in at least some of their products had not financed or benefited armed groups in covered countries. None of these three companies declared their products "DRC conflict free," which would trigger the requirement to file an independent private-sector audit report. However, one of the three companies did include one such audit report.[29] Overall, SEC officials approximated that a total of 14 companies filed independent private-sector audit reports in 2018, compared with 16 in 2017 and 19 in 2016.[30]

Some Companies Noted That SEC Staff Guidance Regarding Due Diligence Reporting Requirements Had Caused Confusion, but Most Companies' Filings Were Similar to Those Submitted in Each of the Prior 2 Years

Some companies and industry representatives told us—as they did last year—that even though the revised guidance and other statements made by SEC staff had raised some uncertainty about the filing process, companies generally planned to continue to report conflict minerals disclosure information. As noted earlier, the SEC's Division of Corporation Finance issued revised guidance in April 2017 indicating that it would not recommend enforcement action to the commission if companies did not report on specified due diligence disclosure requirements.

Some companies and industry participants told us that the SEC staff's revised guidance had caused confusion among some suppliers and stakeholders about reporting requirements, sometimes leading suppliers to be reluctant or slow to share information required by companies for their due diligence reporting. In addition, some companies had changed their approach to filing as a result of the guidance.[31] Specifically, one company in our generalizable sample of SEC filings for 2018 cited the SEC staff's revised guidance recommending no enforcement action as the reason for its decision not to report on due diligence efforts, despite noting it had determined there was reason to believe that minerals in its products may have come from covered countries. Another company we

[29]In addition to these three companies, another company cited the SEC staff's 2017 guidance in its decision not to obtain an independent private-sector audit report, though it never claimed the minerals in its products to be "DRC conflict free" and, consequently, was not required to file an independent private-sector audit.

[30]GAO-18-457. Six companies filed independent private-sector audit reports in 2015; four filed independent private-sector audit reports in 2014.

[31]Similarly, in 2018, we reported that three companies in our sample of companies filing in 2017 cited this guidance and other statements issued by the SEC in their filings as a rationale for not reporting on due diligence activities. See GAO-18-457.

interviewed cited the same SEC staff guidance as one of the reasons the company chose not to file an independent private-sector audit.[32]

However, representatives of other companies we interviewed told us that, generally, their companies planned to continue to report conflict minerals disclosure information, including information from their due diligence efforts. In addition, as noted above, our review of a generalizable sample of SEC filings from 2018 found that the filings were similar in number and content to those filed in 2017. Some companies told us that they would continue to file, and even expand their due diligence, in response to the conflict minerals disclosure rule and other incentives for filing—such as consumer pressure and European Union reporting requirements scheduled to take effect in 2021.[33] Furthermore, State reported they had begun to take actions related to the revised guidance. Specifically, State officials told us that they had conducted public outreach, such as attending industry events to remind stakeholders that the conflict minerals disclosure rule was still in effect, provide an overview of the rules and requirements, and answer questions.[34] In addition, as of June 2019, the SEC's long-term regulatory agenda included an item indicating that the SEC Division of Corporation Finance is considering recommendations for the commission to address the effect of litigation over the conflict minerals rule. According to SEC staff, these recommendations may affect the 2017 guidance pertaining to the conflict minerals rule.[35]

[32]This company did not declare the minerals in its products to be "DRC conflict free," which would have triggered the requirement for an independent private-sector audit.

[33]The European Union regulation containing these reporting requirements includes annual reporting on due diligence regarding conflict minerals supply chains. The regulation requires European Union companies to ensure that they import tin, tungsten, tantalum, and gold from conflict-free sources only, according to the European Commission's Directorate-General for Trade website. Representatives of one company we interviewed told us the company was in the process of expanding their due diligence to cover minerals in addition to these four, such as cobalt, in response to the European Union regulation.

[34]State and SEC officials told us that State consulted with the SEC to the extent possible, and cleared all of its public statements with the SEC to ensure accuracy.

[35]The conflict minerals rule is on the long-term agenda, which means that any action would likely not take place until after March 2020, according to SEC staff.

No New Information on Rates of Sexual Violence in Eastern DRC and Adjoining Countries Has Been Published; Case-File and Other Information on the DRC and Burundi Is Available

We did not identify any new information on the rate of sexual violence in eastern DRC, Burundi, Rwanda, or Uganda since we last reported in June 2018; we did identify new case-file information and other information from UN reports for the DRC and Burundi. Since 2011, we have reported annually on rates of sexual violence derived from population-based surveys, as well as on case-file data as applicable, for eastern DRC (which consists of the provinces of Ituri, Maniema, North Kivu, and South Kivu) and three countries that adjoin that region: Burundi, Rwanda, and Uganda. See appendix III for population-based surveys containing sexual violence rates published since 2007. As explained in the sidebar, case-file information is unsuitable for estimating rates of sexual violence.

Data Collection on Sexual Violence in Eastern DRC and Adjoining Countries

There are two types of information on sexual violence in eastern DRC and adjoining countries:

1. Data from population-based surveys
2. Case-file data, such as data collected by international entities, law enforcement agencies, or medical service providers on sexual violence victims

Data from population-based surveys provide a more appropriate basis for deriving a rate of sexual violence because such surveys are conducted using random sampling techniques and their results are generalizable to the target population from which a representative sample was surveyed.

As we have previously reported, several factors make case-file information unsuitable for estimating rates of sexual violence. For example:

- Case-file data are not based on a random sample of a population, and therefore the results of analyzing these data are not generalizable.
- Case-file data are not aggregated across various sources, and the overlap among different reports can be unclear.
- Time frames, locales, and definitions of sexual violence may not be consistent across case-file data collections.

However, case-file data can provide indicators that sexual assaults are occurring in certain locations and can help service providers respond to the needs of victims.

Source: GAO. | GAO-19-607

No New Surveys Have Been Published on the Rate of Sexual Violence

We did not identify any new population-based surveys providing rates of sexual violence in eastern DRC, Burundi, Rwanda, or Uganda published since our June 2018 report.[36] The most recent information for eastern DRC and Rwanda dates from 2016, and for Burundi and Uganda, from 2018.

New Case-File Information about Sexual Violence in the DRC and Burundi Is Available

UN entities, State, USAID, and a USAID-funded program have produced additional case-file information reported in 2018 and 2019 about instances of sexual violence in the DRC and Burundi that occurred in 2017 and 2018. While State's annual country report on human rights practices for Uganda noted that rape remained a common problem in the country in 2018, we did not identify new case-file information for the country, nor did we find new case-file information regarding Rwanda.

Periodic Reporting of Case-File Information on Sexual Violence in the DRC and Adjoining Countries

United Nations (UN) entities and the U.S. Department of State (State) report periodically on case-file information, while the U.S. Agency for International Development (USAID) periodically receives such information from an implementing partner, as follows:

- **The United Nations Joint Human Rights Office in the Democratic Republic of the Congo** reports annually on human rights violations in the Democratic Republic of the Congo (DRC), including sexual violence.
- **The United Nations Special Representative of the Secretary-General on Sexual Violence in Conflict** reports annually on cases of conflict-related sexual violence in several countries, including the DRC, using information from the United Nations Stabilization Mission in the Democratic Republic of the Congo and the United Nations Population Fund, among others.
- **State** reports annually on human rights practices in countries around the world, including the DRC and each of its adjoining countries.
- **USAID** receives annual and quarterly reports containing case-file information from a 5-year program that began in 2017 to counter gender-based violence in parts of eastern DRC's North and South Kivu provinces.

Source: UN, State, and USAID. | GAO-19-607

[36] GAO-18-457.

New Information on the DRC

UN entities, State, USAID, and a USAID-funded 5-year program located in North and South Kivu provinces have produced new case-file information pertaining to sexual violence in the DRC. UN entities reported the following case-file information pertaining to sexual violence in the DRC for calendar year 2018:

- **United Nations Joint Human Rights Office in the Democratic Republic of the Congo (UNJHRO)** confirmed and documented at least 939 sexual violence victims (657 women, 279 children, and three men).[37] According to UNJHRO, this sexual violence was perpetrated by DRC armed forces and police in many instances. Specifically, Armed Forces of the Democratic Republic of the Congo (FARDC) soldiers were responsible for 218 of these victims, 195 of whom were located in conflict-affected provinces of the DRC.[38] Members of the Congolese National Police were responsible for 100 victims of sexual violence, 60 of whom were in conflict-affected provinces of the DRC.
- **United Nations Stabilization Mission in the Democratic Republic of the Congo (MONUSCO)** documented and verified[39] 1,049 cases of conflict-related sexual violence[40] against 605 women, 436 girls, four

[37]United Nations Joint Human Rights Office in the DRC, *Analysis of the Human Rights Situation in 2018* (New York, N.Y.: Jan. 22, 2019).

[38]In 2018, UNJHRO—composed of MONUSCO's Human Rights Division and the former Office of the UN High Commissioner for Human Rights in the DRC—defined conflict-affected provinces as follows: Bas-Uele, Haut-Uele, Ituri, Kasai, Kasai Central, Kasai Oriental, Maniema, North Kivu, South Kivu, and Tanganyika.

[39]MONUSCO, through its Working Group on Monitoring, Analysis, and Reporting Arrangements on Conflict-Related Sexual Violence, collects and verifies cases of conflict-related sexual violence and reports to the UN Special Representative of the Secretary-General on Sexual Violence in Conflict, in accordance with the principles outlined in the *Provisional Guidance Note—Implementation of Security Council Resolution 1960 (2010) on Women, Peace, and Security (Conflict-Related Sexual Violence).* MONUSCO requires confirmation of an incident of conflict-related sexual violence from two independent sources to consider them to be verified cases.

[40]According to the UN, the term "conflict-related sexual violence" refers to rape, sexual slavery, forced prostitution, forced abortion, enforced sterilization, forced marriage, and any other form of sexual violence of comparable gravity perpetrated against women, men, girls, or boys that is directly or indirectly linked to a conflict. The link to conflict may include situations that involve, for example, (a) a perpetrator affiliated with a state or nonstate armed group; (b) a victim who is an actual or perceived member of a political, ethnic, or religious minority group or is targeted on the basis of actual or perceived sexual orientation or gender identity; (c) state collapse; (d) displacement or trafficking; or e) violations of a ceasefire agreement. The term also encompasses trafficking in persons in situations of conflict for the purpose of sexual violence or exploitation.

men, and four boys.[41] According to MONUSCO, 741 of those cases were perpetrated by combatants of nonstate armed groups and armed militiamen, with the remaining 308 perpetrated by FARDC soldiers and Congolese National Police.

- **United Nations Population Fund (UNFPA)** reported 32,342 incidents of sexual violence in conflict-affected provinces between January 2018 and September 2018.

UN agencies also reported in 2018 that they had provided medical assistance to over 5,200 survivors of sexual violence, and MONUSCO reported that it had supported legal clinics that provided counseling and referrals to 2,243 civilian survivors of sexual violence for calendar year 2017.[42]

State noted two instances of armed groups in eastern DRC perpetrating sexual violence reported by UN entities in calendar years 2017 and 2018. Specifically, the Bana Mura, an armed group with ties to local government, kidnapped 66 people (64 of them children) in Kasai province and used them as sexual slaves, and members of Raia Mutomboki, a rebel armed group, perpetrated sexual violence, including gang rape, against at least 66 women and girls in South Kivu province.[43]

In 2018, USAID reported that it had provided medical, legal, and other services to 7,755 survivors of sexual and gender-based violence, and had also worked with local organizations to strengthen their ability to respond to and prevent such violence, during calendar year 2017. USAID also reported that it had collaborated with the Ministry of Education to develop a curriculum focused on preventing such violence, and had worked with gender-based violence monitoring committees in 618 schools. One of USAID's implementing partners addresses sexual and gender-based violence as part of a 5-year program. This implementing partner reported reaching 3,135 victims of gender-based violence (including 2,559 adults and 576 children) in North and South Kivu provinces, providing those

[41]United Nations Security Council, *Report of the Secretary-General on Conflict-Related Sexual Violence*, S/2019/280 (New York, N.Y.: Mar. 29, 2019). The Special Representative Report used the same definition of conflict-affected provinces of the DRC in 2019 as UNJHRO.

[42]United Nations Security Council, *Report of the Secretary-General on Conflict-Related Sexual Violence*, S/2018/250 (New York, N.Y.: Apr. 16, 2018).

[43]Department of State, *Democratic Republic of the Congo 2018 Human Rights Report* (Washington, D.C.: Mar. 13, 2019).

victims with health, legal, and psychosocial support services during fiscal year 2018.[44] The implementing partner also reported providing services to 1,150 victims (including 953 adults and 197 children) during the first quarter of fiscal year 2019.[45]

New Information on Burundi

State's annual human rights report for 2018, as well as UNFPA, provided some case-file information on sexual violence in Burundi.

- State's annual human rights report for 2018 noted that the government-operated Humura Center had recorded 627 cases of sexual and gender-based violence in Burundi, including domestic violence, from January 2018 to early September 2018. This organization provides survivors of sexual and domestic violence with legal, medical, and psychosocial services.[46]
- UNFPA reported in 2018 that it had recorded 10,592 cases of gender-based violence in 2017 and noted that the Burundian government had decided to close the local UN Office of the High Commissioner for Human Rights in December 2018, reducing the access of survivors of sexual violence to legal services.

UN Reports Some Steps Taken to Address Sexual Violence in the DRC and None Taken in Burundi

UN entities noted that the government of the DRC had taken steps to address sexual violence in the DRC since 2013, but identified an increase in the number of incidents reported beginning in 2017. The reports also noted continued difficulties providing services to victims of sexual violence and combating a climate in which perpetrators act with impunity. According to the 2018 annual UN report on conflict-related sexual violence and UN officials we interviewed in 2019, the government of the DRC has continued to take steps to address sexual violence by, for example, holding awareness-raising campaigns and establishing a nationwide victim helpline.[47] The UN Special Representative of the Secretary-General on Sexual Violence in Conflict cited other examples,

[44]IMA World Health, *Counter Gender-Based Violence Program Annual Report (FY18)* (Washington, D.C.: U.S. Agency for International Development, Oct. 30, 2018).

[45]IMA World Health, *Counter Gender-Based Violence Program Quarterly Report (Q1FY19)* (Washington, D.C.: U.S. Agency for International Development, Feb. 4, 2019).

[46]Department of State, *Burundi 2018 Human Rights Report* (Washington, D.C.: Mar. 13, 2019).

[47]United Nations Security Council, *Report of the Secretary-General on Conflict-Related Sexual Violence*, S/2018/250.

including the prosecution of military and police officials, as well as leaders of nonstate armed groups, for conflict-related sexual violence. Specifically, the UN reported in 2018 that 59 members of the Congolese National Police and the FARDC were convicted of rape in 2017. Among those convicted was a FARDC colonel sentenced for failing to prevent subordinates from committing rape. The UN also noted that the DRC had successfully prosecuted a commander of the armed group Democratic Forces for the Liberation of Rwanda for sexual violence as a war crime, and a South Kivu provincial lawmaker and his militia for crimes against humanity for the abduction and rape of 39 children.[48] In 2019, an armed group leader—and former FARDC colonel—was convicted of war crimes, including rape.[49]

As mentioned earlier, armed conflict and political upheaval within the DRC and particularly in eastern DRC have long created an environment of persistent human rights abuses, including sexual violence, according to UN reports. The UN reported this environment worsened during the lead-up to the presidential elections between 2016 and 2018. Case-file information the UN collected on sexual violence for 2017 and 2018 indicated an upward trend in incidents in the DRC, according to UN reports. A UN report cited an increase in documented cases of sexual violence, linking it to two factors: (1) nonstate armed groups' use of sexual violence to enforce control over illicit exploitation of natural resources, such as gold, and (2) FARDC military operations responding to the activities of these nonstate armed groups.[50] In addition to these recent developments, UN officials we interviewed cited longstanding difficulties such as a significant shortage of response services in the DRC; common instances of retaliation against survivors who reported

[48]United Nations Security Council, *Report of the Secretary-General on Conflict-Related Sexual Violence*, S/2018/250, and United Nations Security Council, *Report of the Secretary-General on Conflict-Related Sexual Violence*, S/2019/280.

[49]United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, *Report of the Secretary-General*, S/2019/218 (New York, N.Y.: Mar. 7, 2019) and United Nations Organization Stabilization Mission in the Democratic Republic of the Congo*, Child Recruitment by Armed Groups in the DRC from January 2012 to August 2013* (Kinshasa, D.R.C.: Oct. 24, 2013).

[50]United Nations Security Council, *Report of the Secretary-General on Conflict-Related Sexual Violence*, S/2019/280.

abuse; and, as mentioned above, a climate in which perpetrators act with impunity.[51]

The UN Commission of Inquiry on Burundi did not identify any steps taken by the government of Burundi to address the country's human rights issues, including sexual violence, in 2017 or 2018. The Commission of Inquiry—which, according to State, was denied access to the country by the government of Burundi but conducted interviews with more than 400 witnesses living in exile—reported that serious human rights violations, including acts of sexual violence, persisted in 2017 and 2018.[52] For example, the commission reported that the National Intelligence Service, police, and the youth wing of the ruling political party used sexual violence to target supporters of the political opposition or their relatives. The commission also recommended that the government of Burundi establish investigative bodies to look into human rights violations and take measures to ensure that victims of sexual violence have access to appropriate care, including sexual health services and psychological support.

Agency Comments

We provided a draft of this report to the SEC, State, and USAID for comment. USAID provided written comments describing some of their related activities in the DRC, which we have reprinted in appendix IV. All three agencies provided technical comments, which we have incorporated as appropriate.

We are sending copies of this report to appropriate congressional committees and to the Chairman of the Securities and Exchange Commission, the Secretary of State, and the Administrator of the U.S. Agency for International Development. The report is also available at no charge on the GAO website at http://www.gao.gov.

If you or your staff have any questions about this report, please contact me at (202) 512-8612 or gianopoulosk@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on

[51]Similarly, State's 2018 Human Rights Report for the DRC noted that most survivors of rape did not pursue formal legal action because of insufficient resources, lack of confidence in the justice system, family pressure, and fear of humiliation or reprisal.

[52]United Nations Human Rights Council, *Report of the Commission of Inquiry on Burundi* (New York, N.Y.: Aug. 8, 2018).

the last page of this report. GAO staff who made key contributions to this report are listed in appendix V.

Kimberly M. Gianopoulos
Director, International Affairs and Trade

List of Committees

The Honorable Richard Shelby
Chairman
The Honorable Patrick Leahy
Vice Chairman
Committee on Appropriations
United States Senate

The Honorable Michael Crapo
Chairman
The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Chuck Grassley
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The Honorable Ron Wyden
Ranking Member
Committee on Finance
United States Senate

The Honorable James Risch
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The Honorable Bob Menendez
Ranking Member
Committee on Foreign Relations
United States Senate

The Honorable Nita Lowey
Chairwoman
The Honorable Kay Granger
Ranking Member
Committee on Appropriations
House of Representatives

The Honorable Maxine Waters
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The Honorable Patrick McHenry
Ranking Member
Committee on Financial Services
House of Representatives

The Honorable Eliot Engel
Chairman
The Honorable Michael McCaul
Ranking Member
Committee on Foreign Affairs
House of Representatives

The Honorable Richard Neal
Chairman
The Honorable Kevin Brady
Ranking Member
Committee on Ways and Means
House of Representatives

Appendix I: Objectives, Scope, and Methodology

In this report, we (1) examine how companies responded to the U.S. Securities and Exchange Commission (SEC) conflict minerals disclosure rule when filing in 2018[1] and (2) provide recent information on the rate of sexual violence in eastern Democratic Republic of the Congo (DRC) and adjoining countries that was published in 2018 and early 2019.[2]

To address our first objective, we downloaded the specialized disclosure reports (Form SD) from the SEC's publically available Electronic Data Gathering, Analysis, and Retrieval (EDGAR) database in September 2018. We downloaded 1,117 Form SD filings and any associated conflict minerals reports included in EDGAR.[3] Companies filed these Forms SD, along with related conflict minerals reports in some instances, to provide information in response to the SEC disclosure rule. To review the completeness and accuracy of the EDGAR database, we reviewed relevant documentation, interviewed knowledgeable SEC officials, and reviewed our prior reports on internal controls related to the SEC's financial systems. We determined that the EDGAR database was sufficiently reliable for identifying the universe of Form SD filings.

[1]Conflict minerals disclosures filed with the SEC in a given year contain information about conflict minerals used in the previous year. For example, for this report we reviewed disclosures filed with the SEC in 2018 about conflict minerals used in 2017. All years cited in this report are calendar years (January–December), unless otherwise noted.

[2]The 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) directed us to submit a report that includes an assessment of the rate of "sexual and gender-based violence" in war-torn areas of the DRC and adjoining countries. UN officials and researchers advised us to focus our review on assessing "sexual violence." UN officials said that the term "sexual and gender-based violence" is redundant because sexual violence is included in the definition of gender-based violence. Violence against women, a form of gender-based violence, includes broad violations not related to sexual violence and refers to any act that results in "physical, sexual, or mental harm or suffering to women"; UN officials said it includes forced early marriage, harmful traditional practices, and domestic abuse. Violence against women does not include sexual violence against adult males or boys and would include other types of nonsexual violence against women.

[3]Not all Form SD filings include a conflict minerals report. The number of Form SD filings we downloaded from the public EDGAR site on September 26, 2018, varies slightly from SEC's reported number of 1,124 Form SD filings as of December 2018. We excluded two of the filings made as of September 26, 2018, from our analysis of 2017 filings because they were filings for 2016, not 2017. In addition, according to SEC staff, some companies filed their Form SD after September 26, 2018. Also, because companies can file amendments or request corrections to filings, any updates to Form SD filings made after September 26, 2018, are not reflected in our analysis.

We reviewed the conflict minerals section of the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)[4] and the requirements of the SEC disclosure rule[5] to develop a data collection instrument that guided our analysis of a generalizable sample of Forms SD and conflict minerals reports. Our data collection instrument was not a compliance review of the Forms SD and conflict minerals reports. The questions were written in both yes–no and multiple-choice formats.[6] An analyst reviewed the Forms SD and conflict minerals reports and recorded responses to the data collection instrument for all of the companies in the sample. A second analyst also reviewed the Forms SD and conflict minerals reports and verified the responses recorded by the first analyst. Analysts met to discuss and resolve any discrepancies.

We randomly sampled 100 Forms SD from a population of 1,117 to create estimates generalizable to the population of all companies that filed. We selected this sample size to achieve a margin of error of no more than plus or minus 10 percentage points or less at the 95-percent confidence level, which applies to all our estimates except where noted. Because we followed a probability procedure based on random selections, our sample is only one of a large number of samples that we might have drawn. Since each sample could have generated different estimates, we express our confidence in the precision of our particular sample's results as a 95-percent confidence interval. This is the interval that would contain the actual population value for 95 percent of the samples we could have drawn. After using the data collection instrument to analyze the sample of filings submitted in 2018, we compared the resulting estimates with our estimates regarding filings submitted in prior years to determine whether there had been any statistically significant changes. We also attended an industry conference on conflict minerals and spoke with company representatives and industry representatives to gain additional context and perspectives.

To address our second objective, we identified and assessed any information on sexual violence in eastern DRC and the three adjoining

[4]Pub. L. No. 111-203, § 1502, 124 Stat. 1376, 2213-18.

[5]17 C.F.R. § 240.13p-1.

[6]For the purposes of this review, we collected data on company disclosures of their due diligence efforts, when available, even if the company did not report that it knew whether its conflict minerals originated from a covered country or from recycled or scrap sources after performing a reasonable country-of-origin inquiry.

countries—Burundi, Rwanda, and Uganda—that had been published or otherwise had become available in 2018 and early 2019 and therefore would not have been included in our most recent report on the topic.[7] We discussed the collection of sexual violence–related data in the DRC and adjoining countries, including population-based survey data and case-file data, with Department of State and U.S. Agency for International Development officials and with representatives of nongovernmental organizations and researchers.[8] We also interviewed officials from the United Nations (UN) Children's Fund, the UN Special Representative of the Secretary-General on Sexual Violence in Conflict, and the UN Statistics Division, and we obtained information from the UN Population Fund and UN Organization Stabilization Mission in the Democratic Republic of the Congo. In addition, we searched research databases, including MEDLINE and Scopus, to identify new academic articles containing any additional information on sexual violence published in 2018 and early 2019. Through these searches, we identified an initial list of 164 articles, which we then narrowed down to a priority list of studies by considering a variety of factors pertaining to the studies' relevance to our second objective. These factors included (1) whether the study included rates, particularly related to the nation-wide rate of sexual violence in the DRC and region-wide rate in eastern DRC; (2) whether the study included case-file information; (3) whether the study contained data from 2011 or later; (4) whether the study focused on a subset of a broader population; (5) the geographic scope of the study; and (6) whether the study included original research. We reviewed the priority list of 16 articles and determined that none of them met our criteria for inclusion.

We conducted this performance audit from September 2018 to September 2019 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the

[7]GAO, *Conflict Minerals: Company Reports on Mineral Sources in 2017 Are Similar to Prior Years and New Data on Sexual Violence Are Available,* GAO-18-457 (Washington, D.C.: June 28, 2017). We identified this information about sexual violence in eastern DRC and adjoining countries in response to a provision in the Dodd-Frank Act that we submit an annual report that assesses the rate of sexual and gender-based violence in war-torn areas of the DRC and adjoining countries. Pub. L. No. 111-203, § 1502(d).

[8]See GAO-18-457; GAO, *Conflict Minerals*: *Information on Artisanal Mined Gold and Efforts to Encourage Responsible Sourcing in the Democratic Republic of the Congo*, GAO-17-733 (Washington, D.C.: Aug. 23, 2017); and GAO, *SEC Conflict Minerals Rule: Companies Face Continuing Challenges in Determining Whether Their Conflict Minerals Benefit Armed Groups,* GAO-16-805 (Washington, D.C.: Aug. 25, 2016).

audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

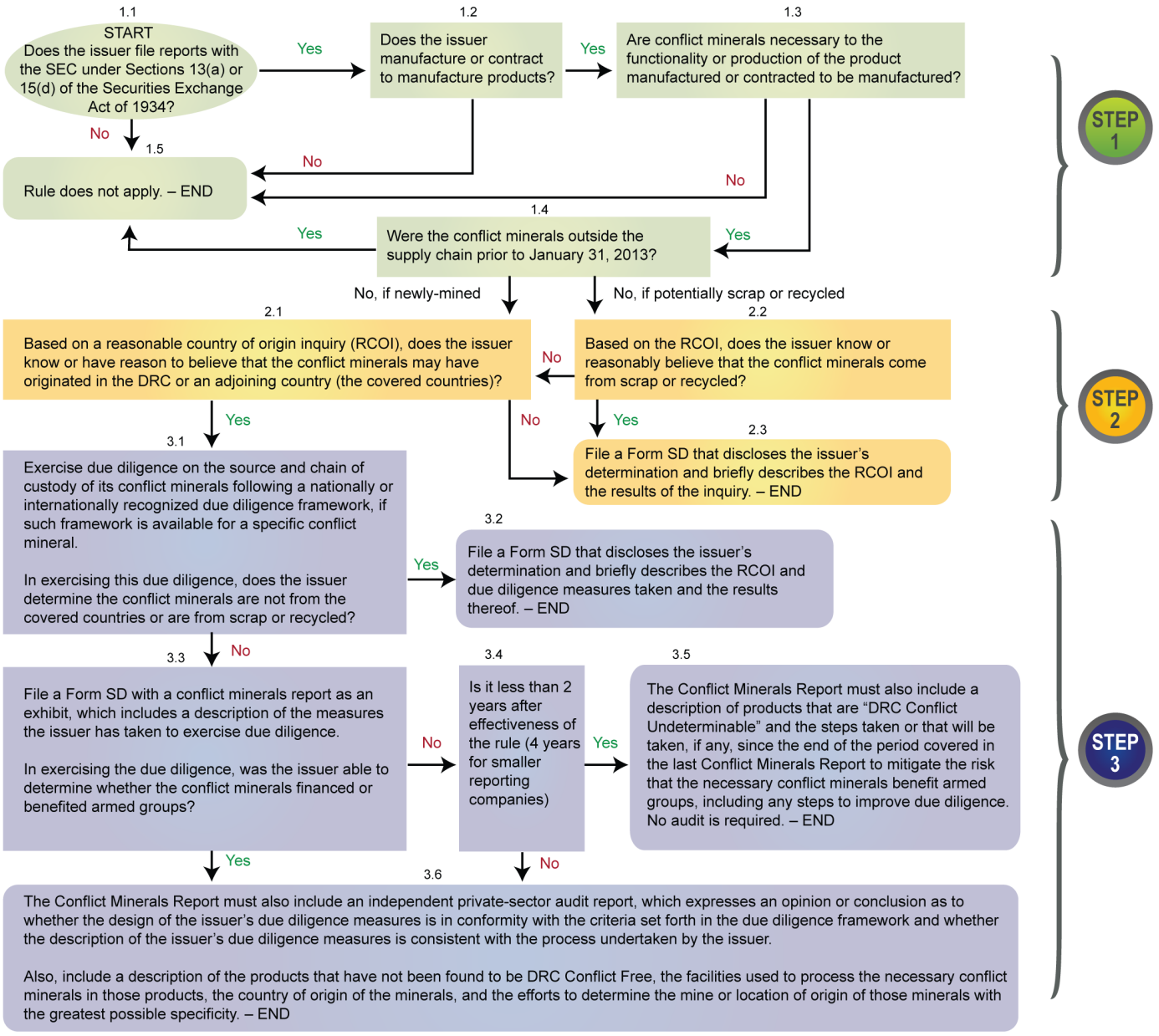
Appendix II: Summary of the U.S. Securities and Exchange Commission's Conflict Minerals Rule Disclosure Process

The U.S. Securities and Exchange Commission (SEC) conflict minerals disclosure rule requires certain companies to file a specialized disclosure report (Form SD), if the company manufactures, or contracts to have manufactured, a product or products containing conflict minerals that are necessary to the functionality or the production of those products.[1] The rule also requires each company, as applicable, to conduct a Reasonable County of Origin Inquiry to determine whether it knows, or has reason to believe, that its conflict minerals may have originated in the covered countries or that the conflict minerals may not be from scrap or recycled sources. If the company's inquiry shows both conditions to be true of its conflict minerals, the company must exercise due diligence and provide a description of the measures it took to exercise due diligence in determining the source and chain of custody of the conflict minerals, the facilities used to process the conflict minerals, their country of origin, and of the efforts it made to determine the mine or location of origin with the greatest possible specificity.[2] The Form SD provides general instructions for filing conflict minerals disclosures and specifies the information that companies must provide. Companies were required to file under the rule for the first time by June 2, 2014, and annually thereafter on May 31. Figure 3 shows the flowchart included in the SEC's adopting release for the rule, which summarized the conflict minerals disclosure rule at the time it was adopted.

[1]The SEC conflict minerals rule applies to companies that file reports with the SEC under sections 13(a) or 15(d) of the Securities Exchange Act of 1934.

[2]SEC staff issued revised guidance, indicating that "in light of the uncertainty regarding how the Commission [SEC] will resolve those issues and related issues raised by commenters, the Division of Corporation Finance has determined that it will not recommend enforcement action to the Commission if companies, including those that are subject to paragraph (c) of Item 1.01 of Form SD, only file disclosure under the provisions of paragraphs (a) and (b) of Item 1.01 of Form SD. This statement is subject to any further action that may be taken by the Commission, expresses the Division's position on enforcement action only, and does not express any legal conclusion on the rule." See SEC, *Updated Statement on the Effect of the Court of Appeals Decision on the Conflict Minerals Rule* (Apr. 7, 2017). Pursuant to the guidance issued by the staff on April 29, 2014, a company that is required to file a conflict minerals report is not required to conduct the independent private-sector audit unless it describes its products as "DRC Conflict Free" in that report.

Figure 3: Securities and Exchange Commission Flowchart Summary of the Conflict Minerals Disclosure Rule



Legend: DRC = Democratic Republic of the Congo, form SD = specialized disclosure report.

Source: Securities and Exchange Commission (SEC). | GAO-19-607

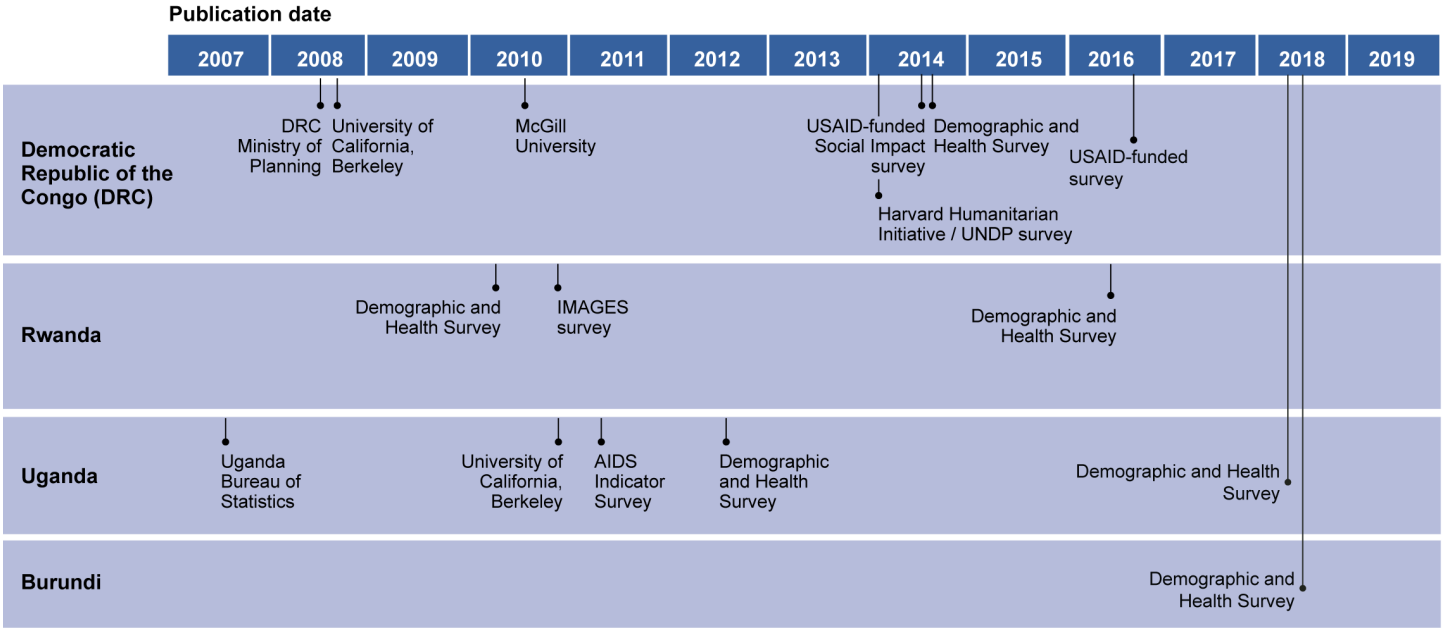
Note: The flowchart was included in the SEC's 2012 release adopting the conflict minerals rule (Rel. No. 34-67716). The commission has not revised the flowchart to reflect the decision of the U.S. Court of Appeals for the District of Columbia Circuit on the rule or to reflect statements issued by the SEC Division of Corporation Finance on the effect of the court's decision. According to SEC staff, the

commission had no plans to update the flowchart as of April 2019. SEC staff also noted that the transition period mentioned in steps 3.4 and 3.5 is now complete. Furthermore, they noted that, should a company decide to submit a conflict minerals report, it would be required to conduct the independent private-sector audit mentioned in step 3.6 if it decided to describe its products as "DRC Conflict Free"—a term that may be used voluntarily but is not required.

Appendix III: Population-Based Surveys on Sexual Violence Rates Since 2007

Since 2011, we have reported on population-based surveys containing sexual violence rates in eastern Democratic Republic of the Congo (DRC) and three adjoining countries: Burundi, Rwanda, and Uganda. Figure 4 shows the publication dates for these surveys, starting with surveys published in 2007.

Figure 4: Population-Based Surveys on Sexual Violence Rates in Eastern DRC, Burundi, Rwanda, and Uganda, by Publication Date



Legend: DRC = Democratic Republic of the Congo; USAID = U.S. Agency for International Development; UNDP = United Nations Development Programme.

Source: GAO analysis. | GAO-19-607

Appendix IV: Comments from the U.S. Agency for International Development

AUG 1 2 2019

Kimberly M. Gianopoulos
Director, International Affairs and Trade
U.S. Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20226

Re: Conflict Minerals: 2018 Company Reports on Mineral Sources Were Similar in Number and Content to Those Filed in the Prior 2 Years (GAO-19-607)

Dear Ms. Gianopoulos:

I am pleased to provide the formal response of the U.S. Agency for International Development (USAID) to the draft report produced by the U.S. Government Accountability Office (GAO) titled, *Conflict Minerals: 2018 Company Reports on Mineral Sources Were Similar in Number and Content to Those Filed in the Prior 2 Years* (GAO-19-607).

The report contains no recommendations for USAID, and the Agency remains committed to promoting the responsible trade in minerals and providing medical, legal, and other services to survivors of sexual and gender-based violence in the Democratic Republic of Congo (DRC). As noted in the draft report, in 2017 USAID provided medical, legal, and economic support to 7,755 survivors of sexual and gender-based violence. In the broader work on responsible commerce in minerals, USAID's Capacity-Building for Responsible Minerals Trade project, working with several U.S. companies and the Responsible Artisanal Gold Solutions Forum, successfully facilitated the first export of conflict-free gold from South Kivu Province in the Eastern DRC for sale in the United States in the Fall of 2018.

Thank you for the opportunity to respond to the draft report, and for the courtesies extended by your staff while conducting this engagement. We appreciate the opportunity to participate in the complete and thorough evaluation of our programming to promote responsible commerce in minerals and eliminate sexual and gender-based violence in the Democratic Republic of Congo.

Sincerely,

Frederick Nutt
Assistant Administrator
Bureau for Management

Appendix V: GAO Contact and Staff Acknowledgments

GAO Contact

Kimberly M. Gianopoulos, (202) 512-8612 or gianopoulosk@gao.gov

Staff Acknowledgments

In addition to the individual named above, Godwin Agbara (Assistant Director), Katherine Forsyth (Analyst-in-Charge), Debbie Chung, Justin Fisher, Jieun Chang, Christopher Keblitis, Grace Lui, Nisha Rai, John Villecco, and Timothy Young made key contributions to this report. Diana Blumenfeld, Julia Jebo Grant, Farahnaaz Khakoo-Mausel, and Michael McAtee provided additional assistance.

Related GAO Products

Conflict Minerals: Company Reports on Mineral Sources in 2017 Are Similar to Prior Years and New Data on Sexual Violence Are Available. GAO-18-457. Washington, D.C.: June 28, 2018.

Conflict Minerals: Information on Artisanal Mined Gold and Efforts to Encourage Responsible Sourcing in the Democratic Republic of the Congo. GAO-17-733. Washington, D.C.: August 23, 2017.

SEC Conflict Minerals Rule: 2017 Review of Company Disclosures in Response to the U.S. Securities and Exchange Commission Rule. GAO-17-517R. Washington, D.C.: April 26, 2017.

Conflict Minerals: Insights from Company Disclosures and Agency Actions. GAO-17-544T. Washington, D.C.: April 5, 2017.

SEC Conflict Minerals Rule: Companies Face Continuing Challenges in Determining Whether Their Conflict Minerals Benefit Armed Groups. GAO-16-805. Washington, D.C.: August 25, 2016.

SEC Conflict Minerals Rule: Insights from Companies' Initial Disclosures and State and USAID Actions in the Democratic Republic of the Congo Region. GAO-16-200T. Washington, D.C.: November 17, 2015.

SEC Conflict Minerals Rule: Initial Disclosures Indicate Most Companies Were Unable to Determine the Source of Their Conflict Minerals. GAO-15-561. Washington, D.C.: August 18, 2015.

Conflict Minerals: Stakeholder Options for Responsible Sourcing Are Expanding, but More Information on Smelters Is Needed. GAO-14-575. Washington, D.C.: June 26, 2014.

SEC Conflict Minerals Rule: Information on Responsible Sourcing and Companies Affected. GAO-13-689. Washington D.C.: July 18, 2013.

Conflict Minerals Disclosure Rule: SEC's Actions and Stakeholder-Developed Initiatives. GAO-12-763. Washington, D.C.: July 16, 2012.

The Democratic Republic of the Congo: Information on the Rate of Sexual Violence in War-Torn Eastern DRC and Adjoining Countries. GAO-11-702. Washington, D.C.: July 13, 2011.

The Democratic Republic of the Congo: U.S. Agencies Should Take Further Actions to Contribute to the Effective Regulation and Control of

the Minerals Trade in Eastern Democratic Republic of the Congo. GAO-10-1030. Washington, D.C.: September 30, 2010.

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