

# Toward Electronics Free of Conflict Minerals

By Arthur Izeboud

January 2014



*With the acquisition of conflict minerals for their manufacturing, the electronics industrie is involved in an ongoing humanitarian crisis in eastern Democratic Republic of Congo. Recent law reforms for US listed companies have so far failed to incentivize investors to change corporations' "bad" practices. Can social enterprises like Fairphone can help achieve a world free of conflict mineral products?*

**By Wasima Khan, PhD Candidate in Corporate Law, Erasmus University – Rotterdam.** Repost from Student Reporter 10/28/13 07:50 PM ET. For more Posts on conflict minerals on this blog [click here](#).

One of the world's deadliest wars continues to wrack the eastern Democratic Republic of Congo (DR Congo) and it is partly financed and sustained by the electronics industry. Electronics-makers seek a variety of natural resources for the production of their products in DR Congo. Yet armed militia have taken over the natural resource mines in this region and commit severe [human rights abuses](#). As the corporations are forced to reckon with these armed groups to acquire natural resources, the latter have effectively become a part of the electronics industry's supply chain. As a result, aggressive militia, violating human rights, are profiting from the exploitation of raw material resources.

So how do big legal sticks force corporations to remove themselves from this ugly situation? In order to address DR Congo's humanitarian crisis, law reforms have recently taken place in the United States specifically targeting electronics corporations. In August 2012, the U.S. Securities and Exchange Commission [adopted](#) new regulations in the securities law to implement section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. This section deals with conflict minerals originating in DR Congo or an adjoining country. Conflict minerals include tin, tantalum, tungsten and gold (the so-called "3TG minerals"). These conflict minerals are used in the manufacturing process of power electronics such as laptops, digital cameras and mobile phones, mostly for consumers in Western markets.

According to the rule, US-listed corporations are obliged to publicly disclose their use of these minerals on an annual basis if they are "necessary to the functionality or production of a product" manufactured by those corporations. But the rule extends far beyond US-listed corporations. Foreign companies and private companies involved in the supply chain are also supposed to comply with the disclosure requirements. Existing global guidelines from the [OECD](#) and the [United Nations](#) provide corporations with practical guidance on how to identify the source of conflict minerals in their supply chains. Taken together, it's an impressive sounding collection of legal tools.

But while the US disclosure rule aims to accelerate reform of the electronics industry, its benefits are limited. The US disclosure rule [does not forbid](#) corporations from using conflict minerals as such. Complementary steps need to be taken to gradually [demilitarize](#) DR Congo's mining sector in order

to create a structural change. Another problem is the uncertainty around punishment as it is not clear which sanctions will follow if corporations disobey the law.

Equally serious, the rule comes with a series of unintended consequences. When it comes to practical terms, many electronics manufacturers have stated that they are [unprepared](#) to meet their new obligations as they do not have information available on their usage of conflict minerals. The rule requires corporations to look into complex supply chains and in some cases will force them to find new suppliers. In fact, it is claimed that the US legislation has caused a '[de facto embargo](#)' in some parts of DR Congo. This apparent success has led to a decrease in conflict financing but at the same time increased poverty for mining communities. In addition, when American and European buyers started to draw back from conflict-ridden regions in the DR Congo, Chinese corporations gained a virtual monopoly. Allegedly, they exploited this advantage to lower the prices of the minerals with 20 to 30 percent.

Under such circumstances, it's doubtful whether the law reforms in the United States can reduce the problem while other countries do not restrict the purchase of conflict minerals. As yet, the EU does not have a similar legal provision but it is increasingly [urged](#) by human rights organizations to adopt comparable legislation. Meanwhile, calls for a European version of the US legislation are growing louder in Brussels.

"I have stressed that there needs to be a European response to the US rule. For a long time there did not seem to be any interest within the European Commission but now developments are finally taking place," says member of the European Parliament, Judith Sargentini (Dutch Green Left Party).

The European Commission is currently busy [setting up](#) an EU initiative on responsible sourcing of minerals originating from conflict-affected and high-risk areas. According to Sargentini, the European legislative initiative will be more far-reaching than the US law, recognizing that conflict minerals are also sourced from other countries besides the DR Congo. She mentions the example of [Colombia](#) where tungsten is mined illegally by the terrorist organization, FARC and supplied to some of the world's leading multinationals.

But probably the biggest challenge to ending the use of conflict minerals through law is that corporations are not inclined to promote human rights on a voluntary basis when profits are sacrificed. In the United States, the resistance from the business community became explicit on November 21, 2012 when the National Association of Manufacturers, together with the US Chamber of Commerce and the Business Roundtable brought a [lawsuit](#) against the SEC seeking to bar implementation of the new rule. They claimed that the rule was too costly and violated the corporations' right of free speech. Last July, a federal judge [decided](#) in favor of the SEC and upheld the rule. The business industry groups have decided to appeal the decision.

Some hope that the reputational damage – 'naming and shaming' – following from disobedience would be enough to compel corporations to obey. And it's true that legislative efforts can draw attention to an issue. As Arthur Izeboud, consultant at Resources Global Professionals, an international professional services firm working with electronics companies on [supply chain](#) management issues, says: "The US rule creates a broader sense of awareness of the issue of conflict minerals."

But, as Izeboud notes, legal efforts have limited effect in reforming a company's culture beyond a superficial compliance with the rules:

“Corporations do not have [the] ideological underpinnings to comply with this sort of legislation. In fact, if corporations weren't forced to disclose, they wouldn't address this issue at all. Customers prefer cheap products and shareholders demand high profit margins. In a highly competitive environment recently affected by a financial crisis, corporations simply choose profit as their first priority,” he says.

With the law in itself apparently insufficient to spur business leaders towards a sustainable shift in behavior and culture, social entrepreneurs have been trying to set an example in changing the way we do business. Until recently, however, the electronics industry did not have social enterprises with the purpose of creating conflict mineral-free products. Now, though, there is [Fairphone](#) ringing in the changes.

Fairphone – based in the Netherlands – is the world's first and only social enterprise with the aim to produce conflict mineral-free smartphones through an ethical supply chain. This year, the company will deliver its first 25,000 'fair' smartphones. The venture of CEO, Bas van Abel started as a non-profit organization two and a half years ago when he saw that there was no alternative on the market for electronics manufactured with conflict minerals. In order to bridge this gap, he says he thought the one thing that most of his competitors considered unthinkable: “Why not make a phone free of conflict minerals and let it speak for the story of a humanitarian crisis that needs to be told?”

According to van Abel, the electronics industry is too complex for people to stand up against the current injustice concerning conflict minerals. “People need to understand things before they can change them.” With his social enterprise, he is trying to make the complete supply chain transparent so that people have an insight on their phone's production lifecycle.

But exactly how 'fair' is a smartphone from Fairphone? Van Abel works in close association with the [Conflict Free Tin Initiative](#), a pilot project of industry partners – Royal Philips Electronics, Tata Steel, and Motorola to name a few – and the Dutch government for a conflict-free tin sourcing program in South Kivu.

Despite such initiatives, he's realistic about the continuing struggle to keep his products fair: “Of course I am aware of the fact that Fairphone cannot produce 100% fair smartphones. There is still child labor going on in the source countries and yes, bribery also takes place in Congo. We are transparent about it but at the same time we put an emphasis on the bigger picture: our product goes against the grain. The phone is not an end in itself. It is a means to spark a change and to eventually turn the electronics industry upside down.”

Van Abel sees his customers as activists taking part in a social movement and making a statement with their purchase. He foresees that Fairphone will be the much needed disruptive force to jolt the electronics industry. Without Fairphone's presence, no dissenting opinion would be voiced in the business community against the current business practices of the electronics industry.

Is Fairphone able to make a change within the highly competitive environment of the electronics industry? From a business perspective, the question is whether Fairphone can remain profitable in the long term. Van Abel says that his enterprise will hit the break-even point with its first batch of phones. Another relevant factor is the scale of Fairphone's enterprise. When asked about his future plans, he says that Fairphone doesn't have a driving urge for expansion. “In the long run we want to

grow, of course. At the rate we are going at the moment, we could probably sell five times the amount of phones we are now selling. But we also want to be able to meet the market demand. We are a small company – Fairphone has a team of 15 people based in Amsterdam – and we are keeping the situation well-organized.” He continues to say that it is difficult to look into the distant future. “Fairphone is taking one step at a time. We want to keep an eye on the brand ‘Fairphone’. We can continue to exist as a pioneer but we cannot afford to be an underdog.”

Aiming for a revolution, the law in itself may not have ready-made solutions to bring about a conflict mineral-free world. Instead, social entrepreneurship might be the awareness creating catalyst for change – running for-profit business whilst pursuing the social purpose of producing conflict-mineral free products. Democratic Republic of Congo has been the victim of a ruthless understanding of supply and demand for decades.

Fairphone’s betting the same market law can turn things around. Fairphone needs time to show it’s economic worth to survive in the competitive consumer market of electronic devices, but patience seems to be one of its virtues. On the other hand, large investors, like pension funds, will lose their patience the more corporations are required to disclose information on the asset risks of conflict minerals.

To achieve a world free of conflict mineral products it needs to be both consumers making a deliberate “ethical” choice and legal frameworks to allow investors assessing the “[right value of asset risks](#)” to change “bad” industry practices.

*This story was originally published on [studentreporter.org](http://studentreporter.org) on 27th of October, 2013.*