

## HUMAN RIGHTS VIOLATIONS AGAINST CHILDREN IN THE DEMOCRATIC REPUBLIC OF CONGO, THE INTERNATIONAL TRADE IN MINERALS ■

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It is widely recognized internationally that the involvement of children in mining constitutes one of the worst forms of child labour, that governments are required to prohibit and punish. Cobalt and other minerals coming mainly from Africa are used in the manufacture of rechargeable lithium-ion batteries, which power electronic devices such as mobile phones, laptops and cameras, as well as electric vehicles.

The Democratic Republic of Congo is one of the largest source of minerals, like cobalto and coltan, and the poor conditions of its artisanal mines, and the presence of tens of thousands of child miners, has been reported publicly. The nature of the work that involves children in artisanal mining in the DRC is hazardous, and certainly able to harm children's health and safety.

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Artisanal mining is widely understood to mean "mining by hand", in fact artisanal miners use bare hands, and only the most rudimentary of tools to dig out or collect rocks containing minerals. The children involved in artisanal mining are exposed to a number of different health risks, because the exposure to high levels of minerals, like cobalt, have both short and long-term negative health effects. Chronic exposure to dust containing cobalt can result in a potentially fatal lung disease called "hard metal lung disease". In addition, inhalation of mineral particles can also cause "respiratory sensitization, asthma, shortness of breath, and decreased pulmonary function. Sustained skin contact with minerals may lead to contact dermatitis. In fact, children working in these mines do not have the most basic protective equipment, such as gloves, boots, helmets or facemasks. Children who work in mines often carry and lift heavy loads, between 20 – 40 kg, and this can be immediately injurious or can result in long-term damage such as joint and bone deformities, back injury, muscle injury and musculoskeletal injuries. They work for up 12 hours a day in the mines to earn between one and two dollars a day. Even those children who go to school work 10 -12 hours during the weekend and school holidays, and in the time before and after school. There are children who do not attend school work in the mines all year around. Furthermore, working in these areas exposes children to physical abuse, drug abuse, sexual exploitation and violence. The children in the mines mostly work independently, collecting and gathering minerals, which they then sell to traders, who then sell the minerals to buying houses, but others work underground. It is quite evident that the physically demanding nature of the work that the children do, as well as the disruption to their schooling when they or their parents do not have the money to pay , therefore have negative effects on children's education.

The government of the DRC has been criticized by UN human rights monitoring bodies and NGOs for its failure to put in place an adequate labour inspection system to remove children from the worst form of child labour and to prioritize primary school enrolment.

The DRC is a State party to various international and regional treaties, which require it to protect the rights of all persons to work, for health care, education and an adequate standard

of living. Children who work put in risk their health and safety. These treaties include the International Covenant on Economic, Social and Cultural Rights, Convention on the Rights of the Child, Convention on the Elimination of All Forms of Discrimination Against Women, ILO Worst Forms of Child Labour Convention, ILO Minimum Age Convention and the African Charter on Human and People Rights. According to this documents, children have the right to be protected from economic exploitation and performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

The International Labour Organization (ILO) Worst Forms of Child Labour Convention (No. 182) requires governments to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour. Children are defined as all persons under the age of 18 and the worst forms of child labour' comprises amongst others, "work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children".

ILO Recommendation 190 gives guidance to States Parties on determining the types of work that may harm the health, safety or morals of children. It recommends that consideration should be given to: work which exposes children to physical, psychological or sexual abuse, work underground, under water, at dangerous heights or in confined spaces, work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads, work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperature, noise levels, or vibrations damaging to their health, work under particularly difficult conditions, such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.

According to the ILO, mining and quarrying are forms of work dangerous to children in every way. They are physically dangerous because of the heavy and awkward loads, the strenuous work, the unstable underground structures, the heavy tools and equipment, the toxic dusts and chemicals and the exposure to extremes of heat and cold. The

ILO noted that "evidence from various surveys and research studies demonstrates that mining is by far the most hazardous sector for children with respect to fatal injuries". There are various health and other baseline studies on health problems associated with mining and exposure to chemicals measuring the levels of 17 different metals and non-metals in children below the age of 14 years working in or living at the mine. An analysis of urine sample can demonstrate far higher levels of toxic metals in children miners in comparison with adults despite their lower exposure. The cobalt, which has the potential to damage the heart, thyroid and lungs, and can exacerbate occupational asthma, can be found in more than 80 per cent of children living close to a mining site.

According to some Amnesty International and Afrewatch reports, not only State officials in DRC aware of the children involved in mining activities in unauthorized locations, but they also financially benefit from them, because they extort illegal payments from children artisanal miners, while turning a blind eye to the prohibition on child labour in mines that breaches the law, because child labour in the mine is illegal in the DRC. More precisely, the DRC Mining Code (2002) bans anyone under 18 from engaging in artisanal mining and the Labour Code (2002) outlaws "the worst forms of child labour". However, the DRC government is failing to adequately enforce these laws in artisanal mines. Furthermore, the DRC is amongst the countries with the highest number of children who are out of school, estimated by UNESCO to be above 2 million.

However, the responsibilities for this phenomenon do not concern only the State. The UN Guiding Principles on Business and Human Rights (UNGPs) set out the responsibility of companies to respect international human rights in their global operations, including their supply chain. This requires, amongst other things, that companies carry out human rights due diligence "to identify, prevent, mitigate and account for how they address their impacts on human rights".

It has been shown that companies, along the mineral supply chain, are failing to conduct adequate human rights due diligence, furthermore some of them are expected to know how the mineral that they buy is extracted, handled, transported and traded, and that certain minerals

are contributing to the funding of armed groups or fuelling human rights abuses. Licenses mineral buying houses are required to buy mineral ore from licensed artisanal miners, but are not obliged by law to ask other questions such as the exact location of where the mineral was mined nor about the conditions of extraction, such as whether children were involved.

According to the UNGPs, companies have the responsibility to respect human rights wherever they operate in the world and the corporate responsibility to respect human rights exists independently of the State's ability or willingness to fulfil its own human rights obligations. This means that if a State where companies operate lacks the necessary regulatory framework or is unable or unwilling to enforce applicable laws to protect human rights from abuse, the company must still act to ensure respect for human rights in their operations. The UNGPs require that companies do not harm or, in other words, take pro-active steps to ensure that they do not cause or contribute to human rights abuses within their global operations and respond to any human rights abuses when occur. To know and show that they comply with their responsibility to respect human rights, companies must carry out human rights due diligence. This is a process to identify, prevent, mitigate and account for how they address their impact on human rights. This responsibility extends to companies' global mineral supply chains.

Therefore, in line with current international standards, it is expected that all companies that purchase cobalt, or components that contain it, must conduct supply chain due diligence, in line with the Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (OECD Guidance), a practical guidance provided by the Organization for Economic Co-operation and Development (OECD) and accepted from 34 OECD member States in 2010. Even China has recognized the guidance as an international standard for conducting responsible mineral supply chain due diligence. The OECD Guidance defines due diligence as "an on-going, proactive and reactive process through which companies can ensure that they respect human rights and do not contribute to conflict". The purpose of the OECD Guidance is to ensure that companies are not profiting from, or contributing to, serious human rights abuses in

the mines that they source from, or anywhere else along their supply chains. The OECD Guidance also aims to ensure that companies are transparent about what they are doing to identify and address human rights issues. Accordingly, companies must be able to demonstrate that they source their minerals responsibly.

The UN Committee on Economic, Social and Cultural Rights has clarified that States have a duty to prevent third parties, such as companies, from violating human rights abroad, if they are able to influence these third parties by legal or political means. These States are typically the States in whose territory multinational companies are domiciled or headquartered. States' extraterritorial obligations require that they take measures to prevent companies incorporated or headquartered in their jurisdiction from causing or contributing to human rights abuses in other countries.

To sum up, under international human rights law, States have a duty to protect from human rights abuses by all actors, including businesses. This requires all governments to enact and enforce laws requiring corporate due diligence and public disclosure in relation to minerals, whereas companies have to undertake and publicly disclose their due diligence practices. Furthermore, they also have a responsibility to undertake remedial actions if human rights abuses have occurred at any point in an existing supply chain. The company must, in cooperation with other relevant actors, such as its suppliers and national authorities, remediate the harm suffered by people whose human rights have been violated. Unfortunately, these obligations are not respected yet neither by State or by companies, that is why 14 families of baby-miners death or injured in DRC have, for the first time in December 2019, denounced some of the biggest companies in the world.