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Congo's Conflict Gold Rush

Bringing gold into the legal trade in
the Democratic Republic of the Congo

By Fidel Bafilemba and Sasha Lezhnev
April 2015



COVER PHOTO:

Congolese miners in a gold mine in the town of Pluto, in eastern Congo. The pit mine, which has taken over a year to excavate, is called Sufferance.
Photo Credit: Marcus Bleasdale

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Executive Summary

Conflict gold remains a major obstacle to peace and a driver of the black market economy in eastern Democratic Republic of Congo. It provides a significant source of income to armed actors, from the Democratic Forces for the Liberation of Rwanda (FDLR) rebel group and Mai Mai Sheka factions to Congolese army commanders, whose troops kill and sexually abuse civilians with impunity, and several of these armed groups trade gold for weapons and ammunition. While progress has been made on reducing armed groups' profits from three out of four conflict minerals in Congo—tin, tantalum, and tungsten—gold continues to finance armed groups and corrupt army officers and officials in Congo and the region.

Addressing the trade in conflict gold will not be easy, but with a series of targeted interventions it is possible to reduce the scale of the problem and cut into armed groups' profits. According to U.N. experts, an estimated 98 percent of gold produced by artisanal miners in Congo—8 to 12 tons worth roughly \$400 million—is smuggled out of the country.¹ Artisanal miners in Congo work by hand with pick-axes and shovels, largely illegally, due to an over-regulated, corrupt system put in place by government officials and army commanders who take sizeable cuts from the trade. Gold is easy to hide because of its high value in small quantities—half a million dollars' worth can fit in a briefcase—and a smuggling system has

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been in place for decades. The illicit conflict gold supply chain moves mainly through Uganda and Burundi, where military officers allegedly also profit, and then much of the gold arrives in Dubai, a major global gold trading and refining hub that has its own smuggling loopholes.²

Recent positive developments are beginning to offer encouragement for altering the conflict trade. There is a new, growing recognition in Congo and by an increased number of global gold industry companies that the conflict gold problem must be addressed now. Based on international due diligence guidelines,³ gold refiners and mining companies are now undergoing third-party audits by the London Bullion Market Association and associated programs focusing on conflict and high-risk issues.⁴ Sixty-nine refiners, including all of the world's nine largest, have passed the audits so far.⁵ In addition, gold mines in Congo are beginning to be inspected by multi-stakeholder teams of government, civil society, and business representatives. Ten gold mines that met the criteria for being conflict-free have been validated so far, and 50 more are due to be inspected in the remainder of 2015. Armed groups such as the FDLR and others have been removed from some gold mines by Congo's army, and some Congolese army officers have pulled out of a handful of mines reportedly because of local Congolese anti-conflict minerals campaigns and out of fear of being named and shamed in U.N. reports.⁶ There are also two industrial mining consortia producing conflict-free gold in eastern Congo: Banro and AngloGold Ashanti/Randgold Resources, which collectively exported 17.4 tons of gold in 2014 worth roughly \$700 million, a major development over the past three years.⁷ But much more effort is needed to build a clean gold trade. Fifty-seven percent of miners in gold mines surveyed in eastern Congo still work under the control of armed actors, according to IPIS.⁸

Policy reforms to address the conflict gold problem must begin with a wider vision that the Congolese state and its people can benefit from an increased legal gold trade in the formal economy, while corrupt actors in the current illicit system must face consequences for their actions. A shift in gold taxation policy in Congo and the region would help. Lessons from international attempts to control gold smuggling from the Philippines to Mongolia have shown that high taxes on gold only drive the trade further underground.⁹ Congo's current overall gold tax of 13 percent¹⁰—an enormous rate for gold compared to average rates of between 1 and 5 percent in other countries¹¹—is a major disincentive against bringing the trade into legal channels. Reduced taxes and improved artisanal mining regulations would help increase the *volume* of gold traded through the legal system. Initial estimates by the Enough Project show that Congo's government would increase its revenue by 870 percent by lowering taxes and streamlining regulations on artisanal mining – from \$230,000 per year in taxes to over \$2 million.¹² Mining communities would also benefit from an increased legal trade, as armed actors withdraw from mines and their revenue streams from the lucrative gold trade are reduced. The Congolese government must also implement its constitutional obligations to remit 40 percent of revenues back to the provinces, which would benefit communities. Unfortunately, Congo's current loophole-filled implementation of the gold component of the International Conference on the Great Lakes Region (ICGLR) regional minerals certification process is stifling the legal gold trade and creating more incentives for smuggling.

Constructively, there is a flurry of new proposals from Congolese and international civil society, the Congolese government, and the gold industry on ways to address the problem—from miners' registration programs to gold tracing schemes to increased inspections of gold mines.¹³ By identifying commanders in the conflict trade, the multi-stakeholder process to inspect and validate mines in Congo puts pressure on the government to remove armed commanders from mines, but the inspection process needs more robust support. As a Congolese civil society activist told Enough, "[Conflict-free mine] validation gives

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pride to the people. It brings security to mines. Where the system is functioning, life is taking off—with new pubs, businesses, etc.”¹⁴

Beyond mine inspections, there must be a serious anti-corruption initiative in Congo’s Mining Ministry, including prosecutions of corrupt officials and the consolidation of the five different government agencies that collect taxes on minerals. Furthermore, jewelers, investors, and other groups should signal increased demand for conflict-free Congolese gold and create a new, legal buying arrangement for it. As mines get inspected and validated, there must be a legal market ready to buy the gold that is certified as responsibly sourced. Otherwise, miners will be forced to sell through the illegal channels that benefit armed actors.

In addition, there is a need for robust livelihood programs for artisanal mining communities to accommodate shifts in the job market that accompany formalization of the gold trade. More than 100,000 Congolese miners and their families depend on the trade,¹⁵ and their lives will be harmed if their ability to support their families is undermined. Programs should include both projects to legalize mining and improve working conditions, as well as alternative livelihood projects such as small business, microfinance, and agriculture.

In addition to formalizing artisanal mining, more work should be done to increase responsible industrial gold investment in eastern Congo. Industrial mining companies can help limit revenues for armed actors operating in the informal market. For example, gold mines in South Kivu that were previously occupied by FDLR rebels are now certified conflict-free mines operated by the Canadian company Banro. The gold from those mines does not go to armed groups any longer. This is a challenging area to be sure, as industrial mining has a checkered past in Congo, as several regimes and some companies have exploited local communities, and risk is still high in Congo, and the world gold price is low. Industrial miners, foreign or Congolese, must operate in a transparent, responsible manner, including meeting high standards related to environmental protection, transparency, and community consultation.¹⁶ The Congolese government is currently reviewing dormant mining concessions, with 49 percent of mining titles in South Kivu and 41 percent of titles in North Kivu under review.¹⁷ Industrial miners and the Congolese government should also develop more constructive arrangements to work with artisanal miners.

Finally, criminal actors in the illegal trade that have acted as financial support networks for armed commanders for years should be targeted for sanctions and prosecutions. The U.N. Group of Experts has extensively documented and named certain criminal networks of Congolese armed actors and regional smugglers in Congo, Uganda, and Burundi, who are alleged to have committed crimes such as pillage and minerals trafficking. Furthermore, the U.S. and other governments should provide greater airport and customs scrutiny support to Uganda, Burundi, and other regional airports to help close smuggling loopholes. The Enough Project further recommends specific policy measures in the following areas.

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Recommendations

1. **Suspend gold certification until it is credible.** The U.S. State Department should urge Congo's Mining Ministry to halt the issuance of ICGLR certificates for gold exports from Congo until key steps are taken that would make the process compliant with ICGLR standards. Those steps include the validation of a sizeable number of gold mines and the adoption of a viable traceability scheme for gold.
 2. **Inspect gold mines.** The European Union, as it moves forward on conflict minerals regulation, should provide funding to mine inspection missions to assess mines on conflict issues in Congo. The inspection process, currently led by the International Organization for Migration (IOM) and supported by the U.S. Agency for International Development (USAID) and the German government, is one step to help get armed commanders out of mines. Relatedly, the Congolese Mining Ministry should designate more mines as Artisanal Mining Zones and allow mining cooperatives to apply for mining licenses.
 3. **Set up a responsible gold investment fund.** Socially responsible investors should set up a responsible gold fund for Congolese gold by partnering with jewelry retailers, fair-trade mining groups, civil society, refiners, local gold buyers, venture capital managers, and donor governments. Investors would provide the startup capital to pilot conflict-free projects and would earn revenues from increased productivity at artisanal and other mines. This would compete with the conflict gold smuggling network. Jewelry retailers and gold refiners should also commit to purchasing conflict-free gold from eastern Congo when available, following the lead example of Signet Jewelers.
 4. **Enforce effective anti-corruption measures and reduce red tape.** The U.S. State Department, USAID, the German government, the European Union, and U.N. envoys Said Djinnit and Martin Kobler should urge Congo's Mining Ministry to begin a comprehensive anti-corruption initiative. The initiative should include prosecuting high-level cases of corruption and consolidating the government agencies involved in regulating the gold trade. The envoys should also urge ministry officials and provincial governors in eastern Congo to significantly lower the 13 percent overall gold tax rate. Finally, donor governments should urge Congo's Centre d'Évaluation d'Expertise et de Certification (CEEC) agency to make its traceability program financially sustainable by making the fee for traders to use the program a maximum of 1 percent of the gold price.
 5. **Set up sustainable miners livelihood programs.** The U.S. Congress and the European Union should authorize funding for livelihood programs for artisanal mining communities, including microfinance for miners and alternative income projects and the reform of mining cooperatives. Jewelry retailers and electronics companies, and other metals companies should also contribute to mining community livelihoods initiatives.
 6. **Conduct geological mapping.** The World Bank should fund geological exploration of mining areas in the Kivu provinces of eastern Congo through a new mining support project and expanded support to the Cadastre Minier (CAMI) mining registry of the Congolese government. This would help open up other mines for responsible investment.
 7. **Sanction and prosecute gold smugglers and other criminal actors.** U.S. Ambassador to the United Nations Samantha Power should work with the U.N. Security Council to designate well-documented conflict gold smugglers in Congo, Uganda, and Burundi for targeted sanctions, as well as urging the International Criminal Court to prosecute illegal gold smugglers. Additionally, the U.S. State Department and U.N. Special Envoy Said Djinnit should pressure Uganda to cut its links to the gold smugglers and tighten airport checks on gold smuggling.
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The Problem: What Needs to be Addressed



Two child miners extract ore from the Sufferance mine in Pluto, eastern Congo. Photo credit: Marcus Bleasdale

Despite the dip in global gold prices, eastern Congo is going through a gold rush—a conflict gold rush. Gold is easily smuggled because of its high value in small amounts, and gold has become a highly lucrative source of conflict revenue for army commanders and armed groups in Congo. As U.S. legislation and industry conflict-free audits have contributed in part to the demilitarization of two-thirds of the tin, tantalum, and tungsten (“3T”) mines surveyed in eastern Congo,¹⁸ rebel groups and army commanders have turned to gold as a source of financing. Conflict gold provides revenue to armed actors that would otherwise be financially weaker, and the U.N. Group of Experts reported

again in 2014 how armed groups traded gold for ammunition.¹⁹ Rwandan-backed armed commander Bosco Ntaganda ran a large-scale conflict gold smuggling ring in Congo²⁰ before surrendering in 2013 and being handed over to the International Criminal Court. Other armed actors, including the FDLR militia, Congolese army officers, the Raia Mutomboki rebel factions, and others have also been widely involved in gold mining, taxation, and smuggling.²¹ Gold mines with child miners as young as eight years old²² operate across the region, and armed groups continue to fight over mines and trading routes. In November 2014, local residents had to flee when two rival rebel Raia Mutomboki factions fought over a gold mining area in Shabunda.²³

Sexual and gender-based violence (SGBV) is widespread in mining areas in eastern Congo. U.N. experts have documented high rates of SGBV by armed groups and army commanders.²⁴ Studies conducted in mining areas have documented increased rates of prostitution, rape, and forced marriage—including that of young girls—as well as lack of access to employment in the mines.²⁵ According to the 2014 U.N. Group of Experts, “Sexual violence, including forced marriage continues to be a problem in eastern Democratic Republic of the Congo. For example, during the first six months of 2014, the United Nations Population Fund documented 2,774 cases of sexual violence in North Kivu...”²⁶ Furthermore, a large number of children work at the mines. Children form as much as 40 percent of the labor force at some gold mines, and they work mainly as surface miners, rock crushers, transporters, or gold washers.²⁷ Although these tasks are relatively less rigorous than those for adults, child miners are more prone to severe injuries.²⁸

Conflict gold follows a six-step supply chain from eastern Congo to its final products—jewelry for consumers and gold bars for investors which in

The Six Steps of the Conflict Gold Supply Chain

- Step 1. **Gold Mines:** Illegal miners and soldiers
- Step 2. **Traders and Exporters in Congo.**
Transporting gold from mines and smuggling it out of the country
- Step 3. **Regional smugglers:** Uganda, Burundi, Tanzania, and Kenya
- Step 4. **First refiners:** Dubai
- Step 5. **International refiners:** Switzerland and India processing gold
- Step 6a. **Banks:** Holding gold for investors
- Step 6b. **Jewelry stores:** Sales to consumers

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2014 together accounted for 78 percent of global gold demand.²⁹ Gold is also the highest value mineral used in most electronics products, and 10 percent of gold is used in electronics worldwide.³⁰ Armed groups and corrupt officials appear to profit at the first four stages of the supply chain that involve miners, traders, exporters, and regional smugglers. According to IPIS, 65 percent of gold mines in eastern Congo are under the control of armed groups or the Congolese army,³¹ and only a handful of gold mines have been validated as conflict-free by multi-stakeholder teams of government, civil society, and business representatives. Armed actors also generate revenues at road checkpoints and behind closed doors with traders and smugglers. As part of a comprehensive approach to build a clean trade, several issues must be addressed at each juncture, beginning with the mines themselves.

Gold production in the Kivu provinces of eastern Congo is concentrated in approximately 20 major gold mines, where more than half of all gold miners in the Kivus work.³² According to IPIS, there are an estimated 377 total gold mines in the Kivus, although the smaller mines have as few as five miners.³³ At the mines, artisanal gold is dug mainly by hand with rudimentary equipment such as pick-axes and shovels, in dangerous conditions that fall significantly short of international safety limits and Congolese law. The slightly more advanced equipment such as air and water pumps are loaned to miners by local loan sharks, at exorbitantly high rates, forcing many miners into debt slavery.³⁴ Gold miners earn between \$36 and \$195 per month, but for many miners a large portion of that income goes to servicing debts.³⁵

Gold miners' cooperatives are beginning to emerge, but many are reportedly non-democratic and exploitative to miners.³⁶ This must be addressed through direct work with the mining groups, rather than simply increasing the number of mining cooperatives. As Gautier Misonia, a Congolese civil society activist, notes, "There is a huge disparity in wealth in the gold-rich areas, and the trickle down to the local population is very minimal."³⁷ The heads of the mining cooperatives, known locally as PDGs, get a large cut—between 75 and 84 percent—of the world gold price,³⁸ but they also frequently pay cuts to armed groups, corrupt officials, and debt collectors,³⁹ and miners ultimately get little.

Despite the presence of Congolese government officials at most gold mines, the vast majority of gold miners are not legally registered with the authorities.⁴⁰ The officials come from SAESSCAM, the independent government agency mandated to ensure the safety and build the capacity of miners, but which in reality is often a source of harassment and corruption.⁴¹ For example, a miner's registration card officially costs \$5, but miners reportedly actually pay SAESSCAM agents an additional \$75 per year or more, ostensibly in under-the-table fees, in addition to many other unofficial production taxes.⁴²

Another major issue with government oversight of mines is that the Congolese government has designated an extremely low number of mines as Artisanal Mining Zones (known in Congo by their French acronym, ZEA), compared to the number of mines at which artisanal miners actually work. Out of an estimated 1,088 artisanal mines in eastern Congo, only 64 are officially artisanal mining areas.⁴³ Not every mine can or should be an artisanal mine, as some may have industrial potential, but this giant mismatch is a major obstacle in moving the illegal gold trade into the formal economic trade. Designating more artisanal mining areas will encourage legalization by expanding the areas where miners may legally mine. Some mines are starting to slowly become industrialized—from river dredges in Shabunda and Oso in Lubutu to mechanical rock crushers in Misisi. These mechanized tools, which frequently belong to army commanders and government officials, increase production capacity and will likely increase significantly over the coming decade, as per global trends in artisanal gold mining.⁴⁴

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From the mines, the smuggled gold mainly flows to a handful of exporters in two of eastern Congo's cities, Bukavu in South Kivu and Butembo in North Kivu. The exporter/smugglers control a network of middlemen traders called *négociants* who go to the mines and buy the gold from the bosses of the mining cooperatives, or at times, miners themselves, and then bring the gold to large-scale exporters in Bukavu and Butembo.⁴⁵ A smaller amount of gold is smuggled out of the mines to smaller, independent traders. Various armed groups or Congolese army officers tax traders along the supply routes.

The exporters have their traders carry the gold by hand to Uganda, Burundi, and Tanzania.⁴⁶ From Uganda, traders smuggle the gold mainly to Dubai, in the United Arab Emirates, where laws allow people to hand-carry gold with very few checks on its origins.⁴⁷ Other significant regional gold trading centers may also be involved, such as those in Turkey and Egypt. In Dubai, the gold is sold to the gold market (*souk*) and to refineries and then exported to India or Switzerland, to be either further refined to a higher purity level or made directly into jewelry. Banks then buy a significant portion of the gold for investors and sell a large percentage to jewelers. Roughly 10 percent of gold worldwide goes into technology,⁴⁸ including cell phones and laptops.

A Five-Part Solution

Addressing the problem of conflict gold from Congo is an enormous task, but progress on the other three conflict minerals shows that it is possible to move toward conflict-free mining in Congo. In 2010, the U.N. Group of Experts on Congo found that military groups controlled “almost every mining deposit” in the Kivus.⁴⁹ By 2014, IPIS found that 70 percent of tin, tantalum, and tungsten mines it had surveyed across several provinces in eastern Congo were not controlled by armed actors.⁵⁰ As a Congolese civil society leader told Enough, “This is an excellent time to focus on gold, because there has been progress on tin and the other 3T minerals.”⁵¹ Building on the Dodd-Frank legislation on conflict minerals⁵² and consumer pressure, leading banks and large-scale mining companies are paying increasing attention to conflict gold. They have initiated conflict-free auditing programs, which are putting pressure on suppliers to conduct additional due diligence on their supply chains and avoid purchasing conflict gold. However, because gold is so easily smuggled and can be easily sold to a much more diverse range of buyers than other minerals, unique solutions will be needed to add to the top-down supply chain pressure.

“This is an excellent time to focus on gold, because there has been progress on tin and the other 3T minerals.”
- Congolese civil society leader

Solution One: Creating Incentives for a Conflict-Free Trade

There are strong reasons why miners and traders in Congo use the illegal system rather than legal channels for buying and selling gold. Corruption at nearly every level, an entrenched smuggling system that pays very high prices, high official tax rates, and involvement in the trade by the military and intelligence service create a critical mass of disincentives in the current system for gold trade actors at many levels to use formal legal channels. This system also promotes a culture in which it is impossible to do business or make

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a living in mining without violating laws. Addressing these issues and establishing new legal channels will require concerted efforts to reduce corruption and taxes, while helping officially certify new conflict-free mines.

A new anti-corruption drive

There is significant corruption in the gold sector that must be addressed by new measures. Some official fees have been reduced (see below), but unofficially, Congolese government agents, army officers, and local politicians continue to illegally tax miners and traders. One local businessman told Enough, “The *de facto* tax rate that people pay on gold is as much as 20 percent,”⁵³ which is high, considering that the vast majority of gold royalty tax rates around the world are between 1 and 5 percent (for example, gold taxes are 3 percent in the U.S. and between 0.5 and 5 percent in South Africa).⁵⁴ Despite the official reduction in taxes and fees, there is still only one official gold exporter in Butembo, three official gold exporters in Bukavu, and no official gold exporters in Goma.⁵⁵ One Congolese mining agent confessed to Enough: “I haven’t been paid by Kinshasa in over six years. I must admit, I live off the backs of the miners. I harass them, and that’s how I get any money.”⁵⁶

There is a need for a robust new anti-corruption effort on gold that incorporates lessons from successful anti-corruption work in Africa. The initiative should be part of the “Single Window” reform process to consolidate government revenue collection agencies led by Congo’s Prime Minister Augustin Matata Ponyo, and should involve the Constitutional Court which is mandated in part to deal with corruption cases. The initiative should include five key components. First, the Congolese government should prosecute high-level cases of corruption related to mining. Second, the Mining Ministry should improve payment systems within the ministry, including through mobile banking. Third, the Ministry should have a lustration process for corrupt or incompetent officials and it should launch a hiring process that sets firm standards for competency. Fourth, the Ministry should incorporate plea deals and limited amnesties for some specified past crimes for agents who come clean. Fifth, there should be a public messaging campaign including radio and media ads supported by donors to government agents making clear that agents will be prosecuted if caught taking bribes. Several former and current mining officials in Congo recommended such a multi-faceted anti-corruption approach to establish a break with the past and send clear messages to agents who have been part of a corrupt system for years. The campaign will succeed only if it comes with legitimate, independent trials and real reforms. In addition to the above measures, donors should lend greater support to the existing anti-fraud committees in the Mining Ministry and CEEC. Whistleblowers should have increased protection as part of this added support.

Donors should support the campaign by working with the Mining Ministry to establish a capacity-building program that places international mining experts throughout the Ministry, including at provincial and local levels. This initiative could be similar to but broader than the U.S. Treasury Department Office of Technical Assistance program,⁵⁷ with a group of approximately 100 international mining experts within the ministry funded by international donors. Such a joint effort would provide greater transparency, help implement anti-corruption efforts, improve legal revenue collection, and support government agencies in developing a cadre of mining and customs officials who are capable of handling these tasks independently. The exact nature of such an initiative must flow from dialogue with Congolese civil society. There are also useful lessons from similar cases in Africa, for example with the Crown Agents/U.K. Department for International

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Development (DFID) customs reform in Mozambique that increased customs revenue by 350 percent over a decade and reduced corruption through prosecutions of corrupt officers, stronger enforcement measures, and new hiring plans.⁵⁸

A second significant area of reform should be the consolidation of government agencies, SAESSCAM in particular. There are five different Congolese government agencies that collect taxes, often illicitly, from mining.⁵⁹ This structure and these practices create tremendously high inefficiencies and they increase corruption. While government agents are present at nearly every gold mine, it is clear that SAESSCAM does not perform its capacity-building role at all; instead it mainly collects high rents from miners. Despite being under the eye of SAESSCAM agents, mine conditions and equipment remain unchanged, as miners continue to dig outside the bounds of safety regulations without receiving new mining or other equipment. Miners, local civil society, traders, regional experts all told Enough that SAESSCAM was not performing its mandate. If SAESSCAM does not significantly reform, starting with a management and financial audit and the implementation of strong anti-corruption measures, it should be eliminated altogether.⁶⁰

Reducing taxes

The Congolese state loses significant revenues from gold, because the high 13 percent overall gold tax rate on gold from the Kivus discourages trade through formal channels and drives most of the trade into informal or illicit channels. If miners, for example, paid the 10 percent provincial gold production tax required for selling through formal channels, they would receive a lower price on the gold they sell and also be taxed at a much higher rate compared to the black market where some interviewees claimed buyers offer miners a large percentage of the world gold price.⁶¹ The lessons from other countries such as the Philippines and Mongolia show that high taxes contribute to increased smuggling and vice versa.⁶² Numerous traders, miners, and civil society groups in eastern Congo told Enough that the government's gold production tax must be reduced if the legal trade has any chance of succeeding. Congo's mining ministry, in coordination with the Finance Ministry, as well as the governors of the eastern provinces, have the authority to make the change. By lowering gold taxes and limiting the reach of many corrupt state agents in the trade, the government could increase incentives for gold trade to begin to flow through formal channels, vastly increasing state revenues. At the current high tax rates, the Congolese government only generates an average of from \$230,000 per year in gold tax revenues per year, because it only taxes a paltry 216 kg of artisanally produced gold annually.⁶³ By contrast, if the Congolese government lowered its overall gold tax to 1 percent and taxed the actual volume of artisanal gold in Congo, 8 to 12 tons, it would generate approximately \$4 million in tax revenues.⁶⁴ The lowered tax rate would be a significant incentive to move the illegal gold trade into the formal, taxable sector. Provided this were split 50/50 between Kinshasa and the provinces, this would mean \$2 million per year for the central government, and \$2 million in tax revenues for the provincial governments.⁶⁵ Even if the government were only able to capture half of the artisanal trade, this would still mean \$2 million in tax revenues—nearly 10 times what it receives currently.

There has been some recent success with reduced taxes. Interviewees said that the license fee to open a gold exporting “processing unit” business (an *entité de traitement*) has decreased from \$75,000 to \$7,500, and gold export fees have been cut in half, dropping from five percent to two percent.⁶⁶ Moreover, the varied export tax rates between Congo, Uganda, and Burundi that were major obstacles to moving gold

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into legal channels in the past have now largely been harmonized. Congo's export tariff is two percent, while Uganda's is one percent on any imported gold.⁶⁷ Negotiations between the two countries to fully harmonize these export tariffs would help and should be brokered by the ICGLR and the U.N. and U.S. Special Envoys.

Inspecting mines and getting them to conflict-free status

Another critical incentive to increase the formal, conflict-free artisanal gold trade are mine inspections. The mine inspection and validation process is underway, with limited funding from USAID and the German government, but the effort needs additional support.⁶⁸ The validation process involves a team of representatives from the Congolese government, business, civil society, and the international community visiting a mining area and assessing whether armed actors are present or if there are signs of the worst forms of child labor.⁶⁹ The inspection team then recommends to Congo's Mining Ministry the mines to be designated as green (conflict-free), yellow (needs improvement),⁷⁰ or red (conflict-affected).⁷¹ Identifying conflict-free mines through the validation process is the first step toward ICGLR certification of conflict-free minerals for export. The validation process brings added spotlight and follow-up monitoring on military involvement at the mines, and it has an impact on miners. The head of North Kivu's Chamber of Commerce told Enough, "Miners want to work under legal conditions. Validation of more gold mines would increase miners' self-confidence, so they could be more sure of themselves to sell gold outside the smuggling networks."⁷² In an interview with Enough, one civil society activist described the situation at a South Kivu mine where the inspection process has involved engagement with community groups. "Validation decreases the presence of armed groups," the interviewee noted. "For example, the Mukungwe mine, where there has been a multi-stakeholder commission since September [2013] Gen. [Pacifique] Masunzu said the game is up for the military at mines and gave orders to them to vacate."⁷³

Ten gold mines have been validated thus far as conflict-free in eastern Congo, and insecurity and lack of funding impede further mine inspections. USAID and the German government currently provide some

support for the International Organization for Migration to lead the missions, but the limited funding does not allow inspection missions to go to all of the mines that could be validated where security has increased. The European Union and other donors would make a significant impact by funding additional validation missions. The Congolese government must also identify ways to make funding and other support for validation missions sustainable, including through mining revenues. In the short term, however, funding from international donors would help counteract the high levels of corruption and vested interests in the trade.

Robust donor support for independent monitoring of conditions at a mine following its official designation of green, yellow, or red is critical. The situation at the mine may change, and monitoring by Congolese civil society and the ICGLR can help counter endemic corrupt influences. As a recent former Congolese mining official told Enough, "When we [at the ministry] tried to crack down on gold smugglers, we got

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- Congolese civil society activist

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calls from Kinshasa military generals saying, ‘why are you cracking down?’⁷⁴ The remark reflected the degree to which those benefitting from the gold trade as it is are likely to resist efforts to institute a clean gold trade. The ICGLR’s Independent Mineral Chain Auditor, designed to be an investigative team to cross-check any suspect information about conflict mines and audits, will play an important role in the process and provide oversight to help ensure that mines designated as conflict-free retain their status and continue to meet the criteria of the conflict-free designation. The ICGLR should appoint this audit team as soon as possible.

There are four main components to ICGLR certification, according to the Regional Certification Mechanism signed by all 12 member states. The components involve (1) mines getting validated; (2) a traceability system to track the minerals; (3) audits for exporters; and (4) an independent mineral chain auditor conducting spot checks along the chain of custody. When those four steps are taken, certificates can be issued, according to the ICGLR system. These four components, however, are not yet fully in place or operating as efficiently as needed. Only 10 mines are validated as conflict free. The Congolese government bureaucracy associated with getting an ICGLR certificates delays exports by two weeks, complicating matters for a trade that depends heavily on the speed of transactions. The auditing authorities have not been appointed. Despite gaps in the four ICGLR certification components, however, Congo has now prematurely required all gold exports to have ICGLR certificates. U.N. experts have found this situation is contributing to increased smuggling to Uganda.⁷⁵ Gold is also being trafficked from red mines and relabeled as green, or conflict-free. To begin to address these complications, Congo should suspend the issuance of ICGLR gold certificates until a significant number of additional gold mines earn conflict-free validations and ICGLR certificates meet standards and have export procedures are streamlined to a much more rapid rate than a two-week waiting period.

“When we [at the ministry] tried to crack down on gold smugglers, we got calls from Kinshasa military generals saying, ‘why are you cracking down?’”

- Former Congolese mining official

Solution Two: Increasing the Market for Conflict-Free Gold

As mines are inspected and validated as conflict-free, there must be a formal, legal market ready to buy the gold from conflict-free mines. Because of its widely diverse and available buyers, gold will always have a market. However, if the existing buyers from eastern Congo who have relationships with armed commanders and corrupt officials built over many years continue to control the trade, then the armed groups will continue to benefit, and conflict and corruption will likely continue. Without new legitimate buyers for a nascent clean and formalized trade, miners at certified conflict-free mines may still have incentives to sell their gold through the illegal channels that benefit armed groups and army officers. According to several stakeholders interviewed by Enough in eastern Congo, setbacks in reform efforts would dampen miners’ faith in reforms, making them much less likely to participate in subsequent reform efforts.⁷⁶ Significant effort must be put into increasing the number of alternative buyers for conflict-free Congolese artisanal gold to replace the smugglers. Alternative buyers could include jewelry retailers, Fairtrade/Fairmined organizations,⁷⁷ artisanal mining coalitions and refiners, new exporters, Congo’s Central Bank, private banks, and industrial mining companies. These companies could start today with

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public commitments, for example, by issuing statements on their websites pledging to purchase conflict-free gold from Congo once a legitimate supply emerges. There is already growing consumer demand for responsibly sourced gold from Congo, and jewelry retailers that are moving toward sourcing it earned high marks on the Enough Project's Jewelry Leader Review in late 2014.⁷⁸ Signet Jewelry and Tiffany & Co. topped the leader review for their progress on four main conflict-free gold criteria.

A responsible gold investment fund

One way to generate increased demand and supply would involve bringing together several of these actors to form an end-to-end conflict-free gold supply chain. An international conflict-free gold-buying consortium, or a "Responsible gold fund" backed by investors could be established, similar to mutual fund or exchange-traded funds managed by socially responsible investors (SRIs). SRIs such as Calvert Asset Management or Trilium, as well as impact investors, jewelry retailers such as Signet Jewelers, J.C. Penney, or Hume Atelier, governments, and nongovernmental organizations (NGOs) could contribute funds. Such a structure would allow multiple partners to shoulder any risk involved. The fund could join or build on the model of the Artisanal Gold Fund developed by the Artisanal Gold Council, which pays dividends for financial investors by increasing the production of artisanal mines through provision of low-level technology to artisanal miners.⁷⁹ A Congo-specific fund could target artisanally-mined gold or any conflict-free gold in Congo.

The responsible gold fund could then partner with responsible buyers, refiners, and transporters to form a conflict-free gold supply chain. Potential partners could include Fairtrade/Fairmined organizations, civil society groups, and local buyers who are committed to developing the capacity of artisanal mining groups in validated green mines. Refiners, such as Rand Refinery or refiners in the Alliance for Responsible Mining supply chain⁸⁰ could purchase the gold. A reputable secure transportation business could then move the gold out of Congo. Such an end-to-end conflict-free chain would require practical and policy support from the Congolese government.

Investors could pursue a business model that would first provide the much-needed startup capital to organizations working with the miners to initiate pilot projects. Investors would then be able to realize returns from the project from increased productivity of the miners. For example, a gold project involving Partnership Africa Canada and the Diamond Development Initiative in 2013 and 2014 in Congo's Orientale province increased miners' production by 25 to 30 percent by providing improved gold sluices and other technology to the miners.⁸¹ Large-scale mining companies operating in Congo might consider learning about this model or joining this initiative, if there were interest on both sides. A variety of Congolese stakeholders identified nine different possible mining areas in the Kivus where security has improved and conflict-free pilot projects could be explored.⁸²

Congo is a high-risk area due to security and governance issues. If mineral-rich areas were developed in spite of these obstacles through responsible partnerships that build a conflict-free market supporting artisanal miners and communities, the increased production would benefit many collectively. Congo's investment environment presents considerable challenges, but several conflict-free mining projects have begun and had success. The Solutions for Hope projects, the Conflict-Free Tin Initiative, and the Kemet Partnership for Social and Economic Sustainability are examples of conflict-free projects that have begun with the commitment to mine inspection missions, civil society monitoring of projects, and negotiations

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with the local governments to secure political will. For future projects, securing support from provincial governors will be a critical step, as governors exercise substantial control over government functions in the province and have important potential roles to play in conflict-free processes. One way to leverage this role would be for the organizers of the conflict-free gold mining project to bring high-profile publicity and visitors to the province in recognition of implementation of a conflict-free gold project. The purpose of such visits would be to strongly and publicly encourage the development of conflict-free mining. Provincial governors can play a significant role in influencing government policies in the provinces if their support for mining projects is earned and signaled publicly to communities, for example, through public events.

Jewelry retailers represent another important part of the effort to counter the conflict gold trade. These retailers should be involved in the process, either through the investment fund or on their own through closed-pipe programs that would provide for initiatives like a “responsible jewelry” line to meet demand from consumers seeking conflict-free materials. Jewelers should begin the initiative by sourcing gold from Congo through partnering with suppliers, including mining cooperatives, fair trade or artisanal mining groups, and refiners. The initiative should seek to develop responsible, traceable, certified investments in gold mines that help local communities.

Getting the price right

Price and production, the most important ingredients to making any gold reform scheme function, would improve for miners under such a new conflict-free gold buying arrangement. By eliminating middleman smugglers from neighboring countries, helping lower taxes, and selling directly to refiners, a responsible gold fund could improve the price offered to miners compared to current legal prices—i.e. increased incentives to miners and *négociants* to sell to it. Despite the improved prices for miners and traders, the numbers would still not add up to *better* prices than the conflict smuggling network that pays no tax and frequently offers above-market prices because of possible money laundering. Two possible options could potentially out-compete the illicit actors on price. First, buyers and investors in a responsible gold fund could offer fair-trade prices, which are set at a premium of approximately 10 percent relative to the world gold price. Current fair-trade gold arrangements in other areas of the world give miners 95 percent of the world gold spot price.⁸³ That price would be competitive with smuggling networks in Congo, who reportedly pay 95 to 98 percent of the world price. A second option would be a long-term strategy of paying above-market prices during an initial period—for example, one year—in order to capture the market share from illicit buyers. Once these illicit actors lose the capital to pre-finance gold operations, the Fund could resume normal, globally competitive prices such as a 10 percent discount to the world price. Altering the incentives and gold market structure in Congo would be difficult and require coordinated engagement by many actors, but if successful could do much to counter a highly lucrative gold smuggling enterprise with many international criminals.

Other options

Smaller-scale legal gold buying initiatives have been tried in recent years in Congo⁸⁴ but they have not been combined with wider reforms. For example, U.K.-based trader Métaux Précieux opened a gold trading business in Bunia, Orientale province in 2012 and reportedly increased official gold exports in Ituri.⁸⁵ However, it eventually pulled out in 2014, as the effort was not accompanied by other reforms,

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and the competition from smugglers was high. Belgian company Emeko is currently attempting a similar gold-buying scheme in Kisangani but is having limited success due to the illicit smuggling networks and the burdensome, incomplete implementation by the Congolese government of the ICGLR certification process for gold.⁸⁶ If new gold-buying businesses were tried on a larger scale and combined with a comprehensive reform package, they might take hold and begin to edge illicit activity out of the market. One gold trader argued to Enough, “The only solution is to flood the system – i.e. match the pricing of gold smugglers. You would need at least \$5 million of working capital, and another \$10 to 20 million to buy product. If you starve competition for a year, the smugglers would go away.”⁸⁷



This gold mine in Baru, Congo, hosts thousands of workers, traders, and soldiers who have immigrated to this area since gold was discovered in November 2012. The landowner sells 3 by 6 meter sections of the 500 meter pit for 250 USD. Photo Credit: Marcus Bleasdale

Another option would be to push for Congo’s Central Bank to buy any artisanally produced gold. This model that has been tried in the Philippines and Sudan with mixed success. Such a measure would require the Congolese government to pass a law obligating artisanal miners and *négociants* to sell gold to the Congolese Central Bank or private banks that partner with the Central Bank that would all offer competitive rates. An initiative like this was tried in the Philippines at met with success initially but then failed due to the government’s increase in taxes.⁸⁸ The Central Bank of Sudan also has a monopoly on industrial and artisanal gold trading,

being the only entity in Sudan legally allowed to export gold.⁸⁹ However, the Bank does not exercise due diligence on its gold purchases and likely purchases gold from conflict-affected mines in North Darfur and Blue Nile, where armed groups control mines and ethnic cleansing and violent displacement have been widespread.⁹⁰ Gold exports also provide valuable foreign exchange to the government in Khartoum, which faces international sanctions, indictments, and investigations by the International Criminal Court for atrocity crimes committed against the Sudanese people. In order for a central bank-run system to help reduce the trade in conflict gold rather than exacerbate the problem in Congo, a strict system of only buying from validated green mines would have to be put in place, accompanied by continuous monitoring by civil society groups and ICGLR actors. Given the very high levels of corruption in the Congolese government, this would be unlikely to succeed in Congo and would carry risks. The chances of success would increase somewhat if the Central Bank and the Mining Ministry were to have international technical assistance deployed at multiple levels, which would help bring needed transparency and oversight into the process.

Industrial gold mining companies present in the area—for example, Banro, AngloGold Ashanti/Randgold Resources, or Casa Mining—could buy artisanal gold.⁹¹ These three industrial gold companies currently sell to Rand refinery in South Africa and could act as buying agents for conflict-free artisanal gold. To counter the risk of miners smuggling gold from conflict mines, the companies would have to purchase

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from controlled mines in and around their concessions that are validated as green. They would also have to conduct vigorous due diligence on the ground, likely through local monitoring committees and with spot checks by company representatives. Local traders could be incorporated into such schemes, as they are in the Rubaya conflict-free tantalum mining operation. It is important to note that the activities of some of these companies have also raised important social and environmental concerns among some community and civil society groups,⁹² concerns that these companies should address (see below).

Solution Three: Supporting Congolese Artisanal Miners and Mining Communities

While leaders pursue market-based efforts and press for institutional and policy reforms, artisanal miners and their communities must be part of the approach from the outset because they are the most vulnerable part of the gold supply chain. If the trade changes and reforms fail to address the needs of miners, their families, and their communities, they could be left poorer and without alternative means to secure their livelihoods. If, by contrast, miners and communities are empowered with the introduction of effective programs and policies, miners will not only be more secure but also have more stable income, lower debt, and access to funds for mining or other alternative small business activities.

Miners and mining communities must have incentives to participate in the reform process. If new reforms and regulations are introduced without accompanying benefits to miners and mining communities, many miners will likely circumvent the reforms. As a local gold trader told Enough, “If you want to have an impact on the ground, you have to benefit the local miners.”⁹³ Donor governments and NGOs must begin work now to develop livelihood programs for artisanal miners and their communities, through microfinance support projects, alternative income generation, and the development and reform of mining cooperatives.

Miners and their communities must also have greater agency over their revenues and more reasonable registration conditions. Congolese government agencies are recognizing the value of community-managed revenues from mining. Government authorities have started “basket funds” in each province in the Kivus to which exporters contribute in order to benefit local mining communities.⁹⁴ Such basket funds must, however, be managed more transparently to ensure the funds are not misused. The price of official registration for miners should also be reduced and regularized. Lessons from past work in this area should inform these efforts. For example, the Diamond Development Initiative partnered with the Congolese government to lower the price of miner registration in Kasai, in order to encourage miners to register. The government benefited from such projects, because they brought in additional state revenue.⁹⁵

“If you want to have an impact on the ground, you have to benefit the local miners.”
- Congolese gold trader

Mining areas need improved protection strategies, particularly to prevent sexual and gender-based violence and to hold police accountable for SGBV crimes. The Congolese national and mining police must, for example, incorporate trainings on the protection of women and the prevention of SGBV. The policy should furthermore involve recruiting and training female staff who are attached to the Special Police for the Protection of Children and Women (PSPEF).⁹⁶

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Artisanal mining zones and microfinance

To further support artisanal miners, Congo's Mining Ministry should designate several more areas in the Kivus as artisanal mining zones (ZEAs), and allow artisanal miners to buy small-scale mining titles. According to Congolese law, artisanal miners must operate only on artisanal mining zones. The government, however, has done a very poor job at allocating mining areas to artisanal miners; only 64 gold mines are designated as ZEAs. Demarcating more mining concessions as ZEAs would begin to empower miners, as they could become part owners of the mines themselves and help formalize the trade. Part of the government's reluctance to authorize more ZEAs lies in the fear that many current artisanal mines may contain deep deposits that would be attractive for industrial mining, which the government prefers. Geological studies are therefore needed, in order to differentiate industrial from artisanal mining areas (see below). In addition to authorizing more ZEAs, the Congolese government should also institute a new kind of permit to allow artisanal mining cooperatives and individuals to be granted mining titles. Such systems have succeeded in helping transform the artisanal mining trade in Brazil by empowering artisanal miners and increasing official artisanal mining production. Uganda, Rwanda, and South Sudan have also recently adopted similar measures.⁹⁷

*"Miners are in dire need of microfinance."
- South Kivu civil society activist*

Microfinance projects and related community market-based projects are needed in gold mining communities. Many miners face severely high debt from exorbitant loan rates for basic equipment. As the USAID Property Rights and Artisanal Diamond Development (PRADD) project in the Central African Republic showed, if an equipment rental pool is created for miners, they can rent tools such shovels, pickaxes, pumps, or jigs for a decreased price.⁹⁸ This option can cut out the exploitative loan systems for mining communities. Small-scale savings and loan programs or microfinance would also expand opportunities and improve conditions for miners, ex-miners, and their surrounding communities. As a South Kivu civil society activist told Enough, "Miners are in dire need of microfinance."⁹⁹

Microfinance projects in the Kivus could help miners and mining cooperatives obtain new equipment and expand the range of alternative livelihoods and projects such as high-value agriculture, local groceries, and other small businesses. Enough Project interviews with mining communities revealed that miners are most interested in agriculture (coconut, plantains, cassava, maize, potatoes), livestock, and brick-making projects.¹⁰⁰ As Emmanuel, a former miner, told Enough, "I left mining, but if I got a small loan, I would like to set up a butcher shop. There is demand for it in my community. I could make money and be away from the deadly mining business."¹⁰¹ Microfinance projects are not without challenges and pitfalls. Mining cooperatives are often unstable, and they are always not rooted in the local community. Microfinance initiatives would need to be tailored to local needs and dynamics.¹⁰²

Any mining community livelihood initiative must incorporate gender considerations, including women's participation, opportunities, roles, and interactions in families and communities. As recent research by Partnership Africa Canada has highlighted, there is a strong need to revisit rules and procedures at mines so that women's participation in mining is on an equal footing with that of men.¹⁰³ Numerous interventions are needed to address these issues. Furthermore, a one-stop window for income generating government services near mine sites would help end the harassment of women who perform mining-

related activities. Government agents should also be given training in gender-based perspectives in mining communities. Furthermore, donors should support education and training for women in mining areas so that they can organize associations, savings cooperatives, and other local development initiatives to overcome isolation and improve the living conditions and the lives of their families.¹⁰⁴



A woman waits for sacks of ore and rock to be filled before bringing them down the hillside to the main village in Baro, Congo.
Photo credit: Marcus Bleasdale

Finally, donors and jewelry retailers would empower miners and local traders (*négociants*) by supporting training programs in gold assaying and by providing them with proper gold weighing equipment. Research conducted by Partnership Africa Canada at 20 mines in eastern Congo showed that miners and small traders were routinely cheated out of profits by larger traders falsely weighting gold scales and resulting in prices for miners and small traders that were between 21 and 39 percent below the actual value.¹⁰⁵ If miners and traders were educated by donor- or jewelry retailer-supported training on

proper assaying and ways to determine the fair market price of gold, they would be empowered to make better choices in their sales.

More work should also be done by the Congolese government, NGOs, and donors to develop, formalize, and help democratize gold mining cooperatives. There are few cooperatives in the gold sector in Congo, yet having them is an important step to formalizing the sector. As one local government official told Enough, “Having more gold cooperatives could help us advance from artisanal mining to small-scale mining.”¹⁰⁶ Furthermore, the current cooperatives often function as hierarchical and at times exploitative businesses for miners. Capacity-building projects could help the cooperatives with bookkeeping, business plan development, and microfinance, as well as promoting more participatory decision-making processes.

Solution Four: Developing Responsible Industrial Gold Investment

While artisanal and small-scale mining is a critical source of employment, industrial gold investment, if done in a responsible manner according to international standards,¹⁰⁷ has an equally important role to play in countering the conflict gold trade. When they have more tightly controlled mining areas and are transparent about revenue payments and operations, industrial mines can benefit local communities and reduce access by armed groups and army commanders to lucrative mines. For example, the Canadian company Banro now operates mines in South Kivu that were formerly a stronghold of the FDLR rebel group, which like several other armed actors in eastern Congo, profited from gold revenues, used funds to sustain and expand its activities, and carried out brutal attacks against civilians.¹⁰⁸ While these mines have become conflict-free, some local communities have raised concerns with, and at times protested, Banro operations on social and environmental issues such as land disputes and landslides allegedly due to the company’s drilling. The company should address these concerns.¹⁰⁹

If done in a transparent, responsible manner—including meeting environmental, transparency, and community engagement standards¹¹⁰—industrially mined gold can also spur development by generating

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revenue for much-needed infrastructure projects. Many Congolese stakeholders from local civil society, religious leaders, business leaders, and mining ministry officials across the east told the Enough Project that they believe that large-scale or semi-industrial mining would benefit eastern Congo with development and revenue for much-needed infrastructure projects, but they also underscored the importance of companies working closely with local communities. “Having more industrial gold companies would help Congo make money,” asserted one business leader.¹¹¹ “It would help us get roads, like what Banro did [in South Kivu],” argued a local civil society leader.¹¹² Another business leader added, “If gold were formalized, it would kick off the country’s economy.”¹¹³ Some interviewees expressed skepticism about industrial mining, because the current industrial investment in eastern Congo has not led them to have the kinds of jobs they expected to have. Others have feared that industrial mining would cause them to lose their current jobs.¹¹⁴ Community outreach and programs, as well as expectations management, will have to be key components of an industrial strategy.

In eastern Congo, many miners are ex-combatants. If industrial companies hired some ex-combatants as security guards or miners, this would help provide an incentive to increase defections from armed groups. When speaking about industrial mines and the potential for employment, a prominent religious leader in eastern Congo told Enough, “I’m in contact with armed groups. I can guarantee if they know that they’ll have means to keep themselves busy, there will be a tidal wave of disarmament.”¹¹⁵ If companies take this step, they should thoroughly vet such ex-combatants for crimes committed as members of armed groups. Companies should also partner with civil society groups to hold human rights trainings and trauma counseling to ensure that ex-combatants are mentally prepared for the workforce. Communities should be sensitized and consulted about the new roles of the ex-combatants in the mining areas. Finally, companies should be transparent about their security arrangements with the government and with civil society.

Miners, their communities, and multinational mining companies in Congo have faced conflicts for decades. For example, U.N. investigators found that Australian-Canadian mining firm Anvil Mining allegedly provided Congolese soldiers with logistical support during an operation in which more than 70 civilians were killed and many others were raped in 2004.¹¹⁶ The company denied wrongdoing and the allegations that its workers had a role in the atrocities but admitted that its vehicles had been used, although it said the equipment had been requisitioned by the Congolese military.¹¹⁷ Three Anvil employees were acquitted in a military trial in Congo in 2008, and a Canadian court refused to hear the case against Anvil in 2012, but several human rights advocates claimed that these legal proceedings did not allow for proper scrutiny of the company’s actions regarding the massacre.¹¹⁸ Other industrial mining companies have been implicated in human rights abuses, signed opaque contracts, and faced issues with local communities over the social and environmental impact of mining operations. For example, Human Rights Watch alleged that AngloGold Ashanti paid \$9,000 to one armed group in Ituri in 2003 and 2004. The company eventually admitted to having done so but said “as soon as it came to our attention we publicly acknowledged it, condemned it and said it would not happen again.”¹¹⁹ Furthermore, mining revenues have scarcely been used by Congo’s national government to benefit its people, and public demands for accountability and transparency have been stifled. There are, however, useful models for resolve issues that arise between mining companies, local communities, and government actors. One framework is the multi-stakeholder dialogue facilitated by the Congolese nongovernmental organization Observatoire Gouvernance et Paix (OGP) among Banro, local communities, and the government regarding the Mukungwe mine in South Kivu.¹²⁰ According to a November 2014 study commissioned by the

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Organisation for Economic Cooperation and Development (OECD) and some Enough Project interviews, the process has helped to lower some local tensions and has helped delineate the borders between the mining concession and the community.¹²¹ With improved stability and greater investment, industrial mining could help contribute to a reformed, more peaceful mining sector in Congo. However, history demonstrates that transparent reporting by companies, in addition to close independent monitoring by civil society of industrial operations, are important components to preventing and mitigating violations.¹²² The Initiative for Responsible Mining Assurance (IRMA) is developing a forthcoming guideline for mining companies and supply chains to act in a responsible manner.¹²³

Initiatives by the gold and minerals industries, the OECD, the Congolese government, the U.N., and the U.S., building on the 2010 Dodd-Frank legislation, to build a clean regional minerals trade now require companies to be more transparent and conduct due diligence on their suppliers and operations. Together, the initiatives are establishing rules for companies to buy gold in a transparent manner that can be traced and audited. For example, the OECD finalized specific due diligence guidelines for gold in 2012, including a five-step process for companies to take supply-chain action on conflict gold and also help formalize artisanal miners in high-risk areas.¹²⁴ The Congolese government also passed regulations in 2011 requiring companies to conduct due diligence.¹²⁵ Other industry programs—including the World Gold Council, London Bullion Market Association, and Responsible Jewellery Council—are establishing more formal rules for purchasing gold to ensure that it does not originate from conflict mines or trading routes. While there is fear among some that these programs will marginalize artisanal miners, as buyers could focus only on purchasing gold only from

easier-to-vet large-scale mining companies, the OECD guidance provides recommendations on how companies and governments can build up clean supply chains from high-risk artisanal mining areas through formalization and legalization.¹²⁶ These programs are imperfect and evolving, and conflicts have occurred between communities and companies, as a recent controversy over the Bisie tin mining concession has shown.¹²⁷ These issues must be addressed more comprehensively. At the same time, the potential for solutions is stronger today than it was in the past, because of the collective impact of new transparency laws, increased scrutiny by local and international NGOs, and the increased stability in several areas of eastern Congo.

Industrial Gold Mining in Congo

Gold reserves across sub-Saharan Africa, and in Congo in particular, have attracted the interest of many mining companies. One research group estimated that eastern Congo alone possesses 26 million ounces of gold reserves.¹ Initial prospecting results have been favorable for several industrial companies. For example, Canadian exploration company Loncor has found 7.59 grams per tonne (g/t) of gold at its main concession, which is a high grade by international standards.¹ Tin miner Alphamin has found one of the world's highest grades of tin ore (3.5 percent) at the Bisie tin mine in North Kivu.¹ A handful of large-scale mining companies already operate in Congo, including AngloGold Ashanti (South Africa), Randgold Resources (South Africa), Freeport McMoRan (U.S.), and the smaller Banro (Canada) and Casa Mining (South Africa). Banro is currently conducting gold exploration in South Kivu.

Overcoming obstacles: cleaning up the mining registry and geological mapping

Three major obstacles to increased responsible industrial investment in eastern Congo remain, and these obstacles must be addressed through proactive policy action. First, a large number of mining concessions in the Kivus are owned by absentee titleholders who do not develop the concessions. Congolese law states that the titleholder must start geological research within six months of obtaining the permit. Several of these companies or individuals have claimed *force majeure*, a legal status indicating a condition of extraordinary circumstances suspending obligation that allows them to delay investment in the mine because of insecurity. However, the *force majeure* status does not align with improved security conditions in some areas. For example, IPIS reported in January 2015 that 35 percent of gold mines in eastern Congo are not controlled by any armed group or the Congolese army.¹²⁸ Improved security conditions in some areas should allow for the active involvement of the titleholder to help develop the mines.

Congo's mining titling agency CAMI is reportedly in the process of updating and streamlining the mining registry to check on whether titleholders are developing their mines. CAMI, however, is severely under capacity, with only one official in charge of all of North and South Kivu. A CAMI official described the challenges to Enough, saying "Most people with titles don't come to the ground... We need to cancel the dormant titles... In 2015 we will begin to crack down on title holders."¹²⁹ As part of this process, according to CAMI, 49 percent of mining titles in South Kivu (53 out of 109 titles) and 41 percent of titles in North Kivu are under review.¹³⁰ The World Bank, the U.K. Department for International Development (DFID), and other donors should help build up CAMI's capacity to enforce such regulations and then open up more transparent processes for awarding concessions.

Gold mining companies that hold concessions in eastern Congo—Loncor, Banro, and Casa Mining—should work with investors to responsibly develop gold mines on their concessions. Some of these companies have had issues with communities and should address these issues more proactively through responsible engagement and following social, environmental, and community engagement standards.¹³¹ Companies should begin by holding more extensive consultations with communities, starting small-scale mining in those areas, including with those who work as crushers. Industrial miners should also allocate a certain percentage of revenues for the provinces or communities, until Kinshasa begins reallocating the 40 percent of revenues to provinces as it is constitutionally mandated to do.

A second obstacle to increased responsible industrial investment is a lack of geological data about which mining areas in the Kivus hold the most reserves. Apart from limited research by a handful of individual companies, there have not been any major studies done in eastern Congo since the Belgian colonial times. The World Bank and other donors should fund more systematic geological studies in the east. The World Bank decided to not conduct geological mapping in the Kivus in past years due to poor security conditions, but this decision should be revisited in at least some areas of the Kivus where security has improved.

A third major barrier to increased responsible industrial investment concerns perceptions of political risk. There are no new investors currently coming to the Kivus, apart from smaller Chinese and Indian companies in the Shabunda territory of South Kivu. Investors fear the elections scheduled for 2016 could bring instability. Investors also have other governance and insecurity concerns and are wary of the potential for tax increases following the adoption of the new Mining Code and in the lead-up to elections. As one mining investor told Enough, "Congo is one of the last frontiers of mining. But the First Quantum

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risk is huge.¹³² They got their money back in the end, but who wants to go through that [lengthy legal process]?”¹³³ Investors are also waiting to see if the current industrial projects in the region, particularly those led by Alphamin, Banro, and AngloGold Ashanti, are successful.

Solution Five: Pressure the Criminal Gold Elements

As efforts to build a clean, formalized market and trade for Congo’s gold gain momentum, known criminals in the trade must be targeted for investigations, sanctions, and prosecutions. The U.N. Group of Experts has extensively documented several large-scale criminal operations in Congo, Uganda, Burundi, and the United Arab Emirates (particularly in Dubai) over the past decade. Many individuals and business entities have been acting as financial support networks for armed groups. U.N. investigations have turned up evidence of trafficking, money laundering, extortion, personal violence crimes like murder and forced labor, and the war crime of pillage. Pillage could be prosecuted by the International Criminal Court (ICC) or most domestic jurisdictions.¹³⁴

The U.N. Group of Experts on Congo should investigate the direct linkages between the gold trade and armed groups with attention to the elements of the war crime of pillage and crimes often perpetrated in tandem with pillage like forced labor, rape, and child soldiering. Experts should submit evidence of pillage and other war crimes to the ICC and relevant national courts, including Congo’s military justice system. The most recent U.N. Group of Experts report did not go far enough in this respect, because it did not document direct trading chains from armed groups to traders.

Sanctions, prosecutions, and diplomatic pressure on individuals who profit most from conflict gold would also have a strong impact. Such measures should be taken against three main groups: key smugglers in Uganda, Congo, and Dubai; military officers for Congo and neighboring countries; and commanders of armed groups who trade in gold. As one former gold smuggler told Enough, “If [some of the important Ugandan smugglers] were out, I’m not sure who would be the replacement, because the whole system is built on trust and confidence. If they were out, who would the people in Dubai trust? They would have to rebuild an entire system, and that would take time.”¹³⁵ The companies run by two of the traders were added to U.N. and U.S. sanctions lists in 2007, but there has been little to no consequence for the company-only sanctions, as the owners have continued the smuggling under different company names.¹³⁶ The U.N. Security Council, U.S. Treasury Department, and European Union should follow up by imposing and effectively enforcing targeted sanctions against the beneficial owners of these companies.

Sanctions and prosecutions will not eliminate conflict gold smuggling. These measures can, however, make it more costly for illicit gold sellers and their partners to conduct business and access their assets. In an era of heightened due diligence and oversight, refiners and other buyers may be less likely to risk doing business with parties under international sanctions for fear of facing sanctions themselves. Furthermore, sanctions can limit access to the formal banking system through asset freezes and other measures. While enforcement of targeted sanctions in central Africa need significant improvement, the impact is felt in other ways. A former Congolese mining official explained:

Sanctions would have an impact because...it creates a reputational issue for the businesses. Congolese civil society can build on that. They also know that international justice is above Congolese justice, and you can’t buy off the international judges. The government and ICC should

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threaten judicial consequences, and then enforce them. For now, when you talk about reforming the gold trade, people start shaking.¹³⁷

Sanctions and prosecutions must also be buttressed by greater airport and customs scrutiny to close smuggling loopholes. Significant smuggling of Congolese gold occurs at Uganda's Entebbe International Airport, where traders frequently carry it by hand in briefcases or carry-ons or transfer it from plane to plane. Airport officials report that people hand-carrying gold pass through the airport 2-3 times per week.¹³⁸ According to one analyst, Ugandan customs authorities do not regularly inspect such hand-carried parcels, as there is no official revenue collection involved.¹³⁹ USAID and other donors should set up a program to tighten customs and export procedures in Uganda and other areas in the region that includes training and staffing support. Emirates Airlines should carry out additional security checks for gold smuggling on flights from central and east Africa to Dubai. These measures should be supplemented by steps in Dubai to institute more rigorous gold import requirements. Specifically, the government and the Dubai Multi Commodities Centre (DMCC) should require original invoices stating consignees, certificates of origin, and proof of original export taxes paid to accompany all imported gold.

Conclusion

The \$400 million conflict gold trade from eastern Congo is a monumental problem—it is almost entirely an illegal black market trade, armed actors and corrupt officials in Congo and neighboring countries profit at many different stages, and there are strong vested criminal interests against reform. Addressing the problem is not only an issue of tracing and auditing supply chains, it is also one of formalizing an informal trade. However, for the first time ever, there are strong constituencies within areas of the donor community, local and international civil society, the gold industry, and in the Congolese government who are beginning to confront the complex issues of the murky trade. Going forward, tackling the conflict gold trade will require new, innovative approaches from lowering taxes to compete with smugglers to significantly strengthening anti-corruption prosecutions to incentivizing Congolese miners to join the formal trade. Furthermore, more mining areas must be inspected and validated, programs for mining communities to enhance livelihoods are needed, and responsible gold buyers, sellers, investors must come together to develop the demand for conflict-free gold from Congo. Finally, law enforcement and judicial authorities must begin to investigate, prosecute, and punish criminal elements in the illicit gold trade. To be sure, this will be a major multi-year endeavor. But the cost of not addressing it—hundreds of millions of dollars worth of gold continuing to fund the most abusive armed groups and army commanders in the world's deadliest war since World War II—is unacceptable.

Endnotes

¹ This consolidated figure is based on estimates from the U.N. Group of Experts, the International Peace Information Service (IPIS), and Enough Project calculations. The U.N. Security Council Group of Experts report from 2014 estimated that 9.78 metric tons of gold, valued at between \$383 and \$409 million, was smuggled from Congo in 2013. A 2015 U.N. Group of Experts report indicated the illicit trade and smuggling had continued in 2014 with “virtually no progress.” Field research conducted by IPIS and published in May 2014 indicated that artisanal gold mines IPIS had surveyed produced an estimated 8 to 10 metric tons of gold per year. A January 2015 U.N. Group of Experts report noted that “There was virtually no progress in addressing gold smuggling in 2014 in the Democratic Republic of the Congo and Uganda, and scant evidence of interest in traceability and due diligence by those Governments or by the Government of the United Arab Emirates.” U.N. Security Council, “Final report of the Group of Experts,” S/2014/42, p. 171; U.N. Security Council, “Final report of the Group of Experts,” S/2015/19, p. 3. IPIS, “Analysis of the interactive map of artisanal mining areas in Eastern DR Congo,” (2014), p. 12, available at <http://ipisresearch.be/publication/analysis-interactive-map-artisanal-mining-areas-eastern-drc-may-2014-update/>; Ruben de Koning and the Enough Team, “Striking Gold: How M23 and its allies are infiltrating Congo’s gold trade,” Enough Project, October 2013, footnote 4, available at <http://www.enoughproject.org/files/StrikingGold-M23-and-Allies-Infiltrating-Congo-Gold-Trade.pdf>.

² U.N. Security Council, “Final report of the Group of Experts,” S/2014/42, pp. 39-42; U.N. Security Council, “Final report of the Group of Experts,” S/2015/19, pp. 41-44.

³ Organisation for Economic Cooperation and Development, “OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas” (2013), available at <http://www.oecd.org/daf/inv/mne/GuidanceEdition2.pdf>.

⁴ These audits are run by the Conflict-Free Smelter Program (CFSP), the World Gold Council (WGC), and the Responsible Jewellery Council (RJC).

⁵ The world’s nine largest refiners are Valcambi Suisse, Metalor, Rand Refinery, Tanaka Kikinzoku Kogyo, PAMP [Produits Artistiques Métaux Précieux], Heraeus (Germany), Argor Heraeus (Switzerland), Perth Mint, and Johnson Matthey. The Real Asset Co., “Where are the World’s Largest Refineries,” May 20, 2013, available at <http://therealasset.co.uk/gold-refinery-list/>. See also Electronics Industry Citizenship Coalition and Global e-Sustainability Initiative, “Conflict-Free Smelter Program Indicators,” available at <http://www.conflictreesourcing.org/program-indicators/> (last updated March 25, 2015; last accessed April 2015).

⁶ Enough Project interviews with Congolese civil society organizations and the International Organization for Migration, Bukavu, October 31 and November 1, 2014.

⁷ In 2014 the world gold price fluctuated between \$40,088 USD per kilogram (\$1,246 USD per ounce) and \$43,024 USD per kilogram (\$1,338.20 per ounce), averaging \$41,556. The Kibali mine, a joint venture among AngloGold Ashanti, Randgold Resources, and the DRC government produced 14.63 tons (516,902 ounces), while the Banro mines produced 2.78 tons (98,184 ounces). For gold prices see the interactive chart for gold price fluctuation at www.goldprice.org (last accessed April 2015). For other references see Randgold Resources, “Kibali update: Q4 2014,” available at <http://www.randgoldresources.com/sites/randgoldresources/files/Kibali%20Update%20-%2031%20December%202014.pdf>; Banro Corporation, “Banro provides Q4 2014 Gold production,” January 5, 2015, available at <http://news.banro.com/press-releases/banro-provides-q4-2014-gold-production-and-brief-nyse-mkt-baa-201501050986224001>.

⁸ International Peace Information Service, “Infographic-Mapping Mining Areas in Eastern DRC,” January 28, 2015, available at <http://ipisresearch.be/2015/01/infographic-mapping-security-human-rights-mining-areas-eastern-drc/> (last accessed April 2015). The percentage of gold mines under the control of armed groups is high compared to the percentage of total mines (including those producing tin, tantalum, tungsten, and gold) under the control of armed groups that IPIS surveyed in eastern Congo. IPIS found that of 943 gold mines surveyed 330 (35 percent) have no armed actors and 613 (65 percent) have armed actors, including the Congolese army (FARDC), Raia Mutomboki, Mai-Mai Sheka, the Forces Démocratiques de Liberation du Rwanda (FDLR), Mai-Mai Yakutumba, and others. Total figures for armed group presence at all mines surveyed by IPIS in eastern Congo found that of 1184 mines surveyed 497 (42 percent) have no armed actors, and 687 (58 percent) do have armed actors, including the groups referenced above.

⁹ In 2012, the Philippines government introduced a seven percent tax on precious metals, reportedly driving miners and traders away from the official trade and toward the black market. According to local estimates, at least 90 percent of small-scale gold produced in the Philippines is currently being smuggled out of the country. Similarly, the Indian government raised the import duty on gold three times in 2013, fueling an increased demand for gold entering the country through illicit channels. Rosemarie Francisco, “Special Report: Philippines’ black market is China’s golden connection,” Reuters, August 22, 2012, available at <http://www.reuters.com/article/2012/08/23/us-philippines-gold-idUSBRE87M02120120823>; Swansy Afonso, “Gold Imports by India May Surge While Jaitley Retains Tax,” Bloomberg, March 2, 2015, available at <http://www.bloomberg.com/news/articles/2015-02-28/gold-jumps-to-one-week-high-as-india-leaves-import-tax-unchanged>.

¹⁰ The Congolese tax is based on the national export tax of 2 percent, the provincial negociant tax of 1 percent, and the production taxes of 10 percent in North and South Kivu. Arrête Provincial No 14/002 du 25/02/2014 Portant Fixation de la Siette des Impôts, Droits, Taxes et Redevances a Percevoir par l’Entité Province du Sud-Kivu, Arrête Provincial no 01/198 du 04 Juillet 2014.

¹¹ PricewaterhouseCoopers, “Corporate income taxes, mining royalties and other mining taxes A summary of rates and rules in selected countries,” June 2012, available at https://www.pwc.com/en_GX/gx/energy-utilities-mining/publications/pdf/pwc-gx-miining-taxes-and-royalties.pdf.

¹² This includes \$172,000 in taxes captured by the central government and \$56,680 captured by the South Kivu government. The North Kivu provincial government did not generate revenues from gold in 2014. The Congolese government only captures an average of 216 kg of gold per year at its 13 percent overall tax rate. If the government lowered the tax rate to 1 percent and captured half of the artisanal gold trade of 8 to 12 tons per year at an average gold price of \$40,000/kg, it would generate \$1.6 to \$2.4 million – 870 percent higher than the current amount. If the government were able to capture all of the artisanal trade, revenues would double to between \$3.4 million and \$4.6 million. Interview with Shawn Blore, Kinshasa, February 20, 2015.

¹³ These are outlined include work by the Diamond Development Initiative, Partnership Africa Canada, the USAID-supported Capacity Building for Responsible Minerals Trade project operated by TetraTech, the Alliance for Responsible Mining, the Congolese Service d’Assistance et d’Encadrement du Small Scale Mining (SAESSCAM) government agency, the Public Private Alliance for Responsible Minerals Trade (PPA), as well as proposals by the Artisanal Gold Council and others.

¹⁴ Enough Project interview with South Kivu civil society leader, Bukavu, October 26, 2014.

¹⁵ IPIS lists 176,000 miners as working in the gold trade in eastern Congo. International Peace Information Service, “Infographic-Mapping Mining Areas in Eastern DRC,” January 28, 2015.

¹⁶ For more on what criteria and guidelines companies and governments should follow regarding responsible mining in Congo and the Great Lakes region, see Holly Dranginis, “Doing Good While Doing Well: Is There a Win-Win Formula for Investing Responsibly in Congo’s Minerals Sector?” (Washington: The Enough Project, July 2014), available at <http://www.enoughproject.org/reports/doing-good-while-doing-well>. See also U.N. Office of the High Commissioner for Human Rights, “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework,” 2011, available at http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

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- ¹⁷ Enough Project interview with Congolese government official, Bukavu, October 21, 2014.
- ¹⁸ An independent study conducted by IPIS and analyzed by the Enough Project in 2014 showed that 67 percent of tin, tantalum, and tungsten (3T) mines surveyed at the time were free of armed actors. Fidel Bafilemba, Timo Mueller, and Sasha Lezhnev, “The Impact of Dodd-Frank and Conflict Minerals Reforms on Eastern Congo’s Conflict” (Washington: The Enough Project, June 2014), p. 2, available at <http://www.enoughproject.org/files/Enough%20Project%20-%20The%20Impact%20of%20Dodd-Frank%20and%20Conflict%20Minerals%20Reforms%20on%20Eastern%20Congo%E2%80%99s%20Conflict%2010June2014.pdf>. Using an interactive map developed by IPIS, available at <http://www.ipisresearch.be/mapping/webmapping/drcongo/>, in 2014 Enough counted 103 of 154 total mines in North Kivu, South Kivu, and Maniema provinces that did not have armed groups. For the full report see International Peace Information Service, “Analysis of the interactive map of artisanal mining areas in Eastern DR Congo: May 2014 update” (Antwerp: May 2014), available at http://ipisresearch.be/wp-content/uploads/2014/04/20141031-Promines_analysis.pdf.
- ¹⁹ U.N. Security Council, “Final report of the Group of Experts,” S/2015/19, p. 19.
- ²⁰ Ruben de Koning and the Enough Team, “Striking Gold: How M23 and its Allies are Infiltrating Congo’s Gold Trade” (Washington: The Enough Project, October 2013), available at <http://www.enoughproject.org/files/StrikingGold-M23-and-Allies-Infiltrating-Congo-Gold-Trade.pdf>.
- ²¹ U.N. Security Council, “Final report of the Group of Experts on the Democratic Republic of the Congo,” S/2015/19, paras. 193-4.
- ²² Hannah Poole Hahn, Karen Hayes, and Azra Kacapor, “Breaking the Chain: Ending the supply of child-mined minerals,” PACT, October 2013, p. 22, available at <http://www.pactworld.org/sites/default/files/PACT%20Child%20Labor%20Report%20English%202013.pdf>.
- ²³ Radio Okapi, “Shabunda: 2 factions Raïa Mutomboki se disputent le contrôle d’une concession minière” November 18, 2014, available at <http://radiookapi.net/actualite/2014/11/18/shabunda-2-factions-raia-mutomboki-se-disputent-le-controle-dune-concession-miniere/> (translation by Enough).
- ²⁴ U.N. Security Council, “Final report of the Group of Experts on the Democratic Republic of the Congo,” S/2015/19, pp. 3, 30-31, 100; paras. 138-139.
- ²⁵ Free the Slaves, “Congo’s Mining Slaves: Enslavement at South Kivu Mining Sites,” (Washington: June 2013), p. 18, available at <https://www.freetheslaves.net/wp-content/uploads/2015/03/Congos-Mining-Slaves-web-130622.pdf>.
- ²⁶ U.N. Security Council, “Final report of the Group of Experts on the Democratic Republic of the Congo,” S/2015/19, para. 138.
- ²⁷ International Labour Organization International Labour Office, “Minors out of mining! Partnership for global action against child labour in small-scale mining,” (Geneva: 2006), p. 5 available at <http://www.ilo.org/ipecinfo/product/viewProduct.do?productId=2519>; see also Hahn, Hayes, and Kacapor, “Breaking the Chain,” p. 10.
- ²⁸ Ibid.
- ²⁹ Enough Team, “From Child Miner to Jewelry Store: The Six Steps of Congo’s Conflict Gold” (Washington, The Enough Project, October 2012), available at <http://www.enoughproject.org/files/Conflict-Gold.pdf>; World Gold Council, “Gold Demand Trends Full Year 2014,” February 12, 2015, p. 1, available at <http://www.gold.org/supply-and-demand/gold-demand-trends>. World Gold Council figures for 2014 demand indicate that 2,152.90 tonnes of gold demand went to jewelry; 904.6 tonnes went to investment demand, 477.20 tonnes went to Central Bank net purchases, and 389 tonnes went to technology.
- ³⁰ Jim Nash, “How much gold is in smartphones and electronics?” Dell Tech Page One, available at <https://techpageone.dell.com/tech-culture/how-much-gold-is-in-smartphones-and-computers/>; World Gold Council, “Gold Demand Trends Full Year 2014.”
- ³¹ International Peace Information Service, “Infographic-Mapping Mining Areas in Eastern DRC,” January 28, 2015.

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³² The largest 20 mines are defined here as those with at least 400 miners. The percentage of gold miners from the Kivus who work at the largest 20 mines is 51.8 percent (35,424 miners out of a total estimated 68,318 gold miners in the Kivus). The largest mines, in order from largest to smallest, are Musigha, Mukungwe, Akyanga, Ala, Omate, Israel, Masumu, Zone Muvumbuko, Mwana River, Nalubuze Ntula, Muchele, Nkambye-Chondo, Trois Maisons, Kasongo, Tshakindo, Koweit, Lukungurhi, Mufa, Munjuli, and Bundabunda. Yannick Weyns and Filip Hilgert, "Interactive map of artisanal mining areas in eastern DRC: May 2014 update," International Peace Information Service, May 2014, available at <http://www.ipisresearch.be/mapping/webmapping/drcongo/v2/>.

³³ Weyns and Hilgert, "Interactive map of artisanal mining areas in eastern DRC: May 2014 update."

³⁴ Debt bondage is the most persistent form of slavery among those involved in the mining sector. Senior individuals such as the President Director General (PDG), who own mining shafts and employ workers, enter into this form of enslavement as they generally invest their money to begin production by taking loans at high rates. New miners also become enslaved when they have to borrow money to sustain their daily needs before mining production begins. Free the Slaves, "Congo's Mining Slaves: Enslavement at South Kivu Mining Sites," (Washington: June 2013), p. 17, available at <https://www.freetheslaves.net/wp-content/uploads/2015/03/Congos-Mining-Slaves-web-130622.pdf>.

³⁵ The income estimates come from International Peace Information Service and Sara Geenen. International Peace Information Service, "Analysis of the interactive map of artisanal mining areas in Eastern DR Congo," p. 12 (Antwerp: May 2014), available at <http://ipisresearch.be/publication/analysis-interactive-map-artisanal-mining-areas-eastern-drc-may-2014-update/>. The debt bondage research comes from Free the Slaves, which notes, "The team leader will borrow money for tools and to pay living expenses until the mine begins to pay off, which doesn't always happen. The miners fall behind in their obligations, which can lead to debt bondage slavery." Free the Slaves, "On the front lines of slavery in Congo," July 14, 2014, available at <http://www.freetheslaves.net/on-the-front-lines-of-slavery-in-congo/>.

³⁶ The Alliance for Responsible Mining conducted research on this issue in eastern Congo in 2014. Interview with the Alliance for Responsible Mining, Kinshasa, February 17, 2015.

³⁷ Enough Project interview with Gautier Misoni, Centre de Recherche sur l'Environnement, la Démocratie et les Droits de l'Homme (CREDDHO, Centre for Research and Investigation into the Environment, Democracy and Human Rights), Goma, October 22, 2014.

³⁸ Enough Project interviews with consultants for the Organisation for Economic Cooperation and Development and Partnership Africa Canada, April 2015.

³⁹ Enough Project interviews with Congolese civil society organizations, Goma and Bukavu between October 29 and November 2, 2014.

⁴⁰ Enough Project interview with mining consultant Shawn Blore, Kinshasa, February 16, 2015; interview with four Centre d'Évaluation d'Expertise et de Certification (CEEC) officials, Kinshasa, November 3, 2014.

⁴¹ Enough Project interviews with Congolese civil society organizations, Goma and Bukavu between October 29 and November 2, 2014.

⁴² Enough Project interviews with Congolese mining officials, Goma, March 2015, and with Shawn Blore, April 2015.

⁴³ International Peace Information Service, "Analysis of the interactive map of artisanal mining areas in Eastern DR Congo," p. 12. Email correspondence with Shawn Blore, March 27, 2015.

⁴⁴ Enough Project interview with Shawn Blore, Kinshasa, February 18, 2015.

⁴⁵ U.N. Security Council, "Final report of the Group of Experts on the Democratic Republic of the Congo," S/2014/42, pp. 40, 12.

⁴⁶ Ibid.

⁴⁷ Partnership Africa Canada, "All that Glitters is not gold" (Ottawa: May 2014), available at <http://www.pacweb.org/images/PUBLICATIONS/All%20That%20Glitters.pdf>.

⁴⁸ World Gold Council, "Gold Demand Trends: Full year 2014" (London: February 2015), p. 1, available at <http://www.gold.org/supply-and-demand/gold-demand-trends>.

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⁴⁹ U.N. Security Council, “Interim report of the Group of Experts on the DRC,” S/2010/252, para. 77, May 24, 2010, available at http://www.un.org/ga/search/view_doc.asp?symbol=S/2010/252

⁵⁰ International Peace Information Service, “Infographic-Mapping Mining Areas in Eastern DRC,” January 28, 2015. IPIS found 116 of 167 cassiterite mines (70 percent), 26 of 31 coltan mines (84 percent), and 11 of 21 wolframite mines (52 percent) to be free of armed groups, making a total of 153 of 219 mines surveyed (70 percent) free of armed groups in eastern Congo. By contrast, IPIS survey results showed inverted proportions for eastern Congo’s gold mines, with only 330 of 943 gold mines (35 percent) surveyed free of armed actors.

⁵¹ Enough Project interview with Gautier Misoni, CREDDHO, Goma, October 22, 2014.

⁵² Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

⁵³ Enough Project interview with gold exporter, eastern Congo, October 23, 2014.

⁵⁴ PriceWaterhouseCoopers, “Corporate income taxes, mining royalties and other mining taxes: A summary of rates and rules in selected countries,” June 2012, available at https://www.pwc.com/en_GX/gx/energy-utilities-mining/publications/pdf/pwc-gx-miining-taxes-and-royalties.pdf.

⁵⁵ Enough Project interviews in Goma, March 2015.

⁵⁶ Enough Project interview with Congolese mining agent, eastern Congo.

⁵⁷ For more information, see U.S. Treasury Department, “International Affairs: Technical Assistance,” available at <http://www.treasury.gov/about/organizational-structure/offices/Pages/Technical-Assistance-.aspx> (last accessed April 2015).

⁵⁸ In Mozambique, British firm Crown Agents helped reduce corruption in the Mozambiquan Customs Agency and increase revenue collection by 350 percent from 1996 to 2006. The strategies used were to implement staff rotations, firing and recruitment of staff (including firing more than a third of the customs officers), inspections and audits, and the establishment of an enforcement system against illegal imports through increases in disciplinary cases against corrupt staff members—188 cases in the first 3 years of the program. Marcelo Mosse, “Corruption and Reform in the Customs in Mozambique,” Centro de Integridade Publica, 2007, available at <http://www.integrityaction.org/sites/www.integrityaction.org/files/documents/files/Mozambique%20Customs%20Case%20Study.pdf>.

⁵⁹ The different government agencies include (1) the Mining Ministry, which delivers mining cards to miners and handles mineral exports and relevant taxes; (2) the mining mapping authority, or CAMI that handles large-scale mining (LSM) contracts, grants mining titles and collects relevant taxes/royalties; (3) the minerals Expertise, Evaluation and Certification Center (CEEC), which is a lab center that determines the grade of minerals to be exported, and collects taxes thereof; (4) the SAESSCAM that collects artisanal and small-scale mining (ASM) taxes or royalties at the mines and is meant to deliver technical assistance and empower small cooperatives in return; (5) the Coordination Technical Cell and Mining Planning, or CTCMP, an office in the Ministry of Mines tasked with studies and coordinating mining activities.

⁶⁰ Southern Africa Resource Watch also recommended in 2013 that SAESSCAM be significantly reorganized or closed altogether. Southern Africa Resource Watch, “Congo Gold: A Southern Africa Resource Watch Project” (2013), available at <http://gold.sarwatch.org/reports/recommendation-4-reorganise-or-close-saesscam>.

⁶¹ Interviews with two different regional gold exporters, January 30, 2015 and February 18, 2015.

⁶² During the 1990's the government of Mongolia implemented a series of laws in an attempt to change its existing mineral regulation policies and encourage foreign investment. This move was a decisive shift away from policies emphasizing Monetary Nationalism. (See Ian Jeffries, "Mongolia: A guide to political and Economic Developments," May 9, 2007, p. 68.) Since 1995, gold producers were no longer forced to sell their output to the Central Bank at less than competitive prices. In 1997, the government passed the Minerals Regulation law containing a comprehensive legal framework for mining and exploration to ease the process of obtaining licenses and ensure transparency in the process. This shift in the mining policy was hugely favorable to the country's economy as it encouraged large-scale foreign direct investment. The legal and investment climate took a turn for the worse, in May 2006, the Parliament approved a windfall profit tax on copper and gold exports that requires companies that export copper and gold to pay a tax at a rate of 68 percent when the copper price exceeds \$2,600 per metric ton and the gold price reaches \$500 per troy ounce on the London Metal Exchange. (See USGS, "2006 Minerals Yearbook: Mongolia," October 2007, available at <http://minerals.usgs.gov/minerals/pubs/country/2006/myb3-2006-mg.pdf>.) Four years before the tax was introduced, gold production was at 77 tonnes annually; this figure dropped by 38 percent four years after the windfall tax law. (See Emerging Frontiers, "Mongolia eases gold mining regulations to increase transparency and national reserve," September 4, 2013, available at <http://www.emergingfrontiers.com/article/16955-mongolia-eases-gold-mining-regulations-to-increase-transparency-and-national-reserve>). Recognizing the negative consequences of the tax particularly in its incentivizing of illegal mining, the government formally repealed the law in 2012. (See The Mongolian Real Estate Report, "Macroeconomics: Mining Sector," August 2013, available at <http://mad-research.com/mongolia/macroeconomics-mongolia/mining-sector-mongolia/>). On January 16, 2014, the parliament approved the State Minerals Policy for 2014 to 2025. The new framework seeks to re-invigorate the economy while also encouraging gold producers to sell to the central bank instead of going through illicit channels. For example, one of the amendments includes a relaxing of the royalty rates on gold produced from 5 to 2.5 percent. (See more at Solongoo Bayarsaikhan, "Mongolia adopts its State Minerals Policy until 2025," Lexology, April 11, 2014, available at <http://www.lexology.com/library/detail.aspx?g=08859970-ac29-40f7-a0b5-ad7814737d15>).

⁶³ This includes \$172,000 in taxes captured by the central government and \$56,680 captured by the South Kivu government. The North Kivu provincial government did not generate revenues from gold in 2014. The Congolese government only captures an average of 216 kg of gold per year at its 13 percent overall tax rate. If the government lowered the tax rate to 1 percent and captured half of the artisanal gold trade of 8 to 12 tons per year at an average gold price of \$40,000/kg, it would generate \$1.6 to \$2.4 million – 11.6 times the current amount. If the government were able to capture all of the artisanal trade, revenues would double to between \$3.4 million and \$4.6 million. Interview with Shawn Blore, Kinshasa, February 20, 2015. Enough Project interview with CEEC, Kinshasa, February 18, 2015.

⁶⁴ For eight tons, this would be \$3.2 million. For 12 tons, this would be \$4.8 million – calculated at an approximate average gold price in 2014 of \$40,000/kg of gold.

⁶⁵ For South and North Kivu, this includes a 10 percent production tax supposed to be collected by SAESSCAM at the provincial level, a 1 percent *négociant* tax, and the 2 percent national export tax. Arrête Provincial No 14/002 du 25/02/2014 Portant Fixation de la Siette des Impôts, Droits, Taxes et Redevances a Percevoir par l'Entité Province du Sud-Kivu, Arrête Provincial no 01/198 du 04 Juillet 2014.

⁶⁶ Enough Project interviews with Congolese business figures and local government officials, Goma and Bukavu, October 21-31, 2014.

⁶⁷ Interview with researcher Shawn Blore, Kinshasa, February 18, 2015.

⁶⁸ According to the ICGLR Regional Certification Mechanism, only mineral exports can be "certified," with an official ICGLR certificate. The process of approving mines as conflict-free or not is referred to in the region as validation. Validation is one of the four steps to certification, the others being traceability, audits, and independent inspection by the Independent Mineral Chain Auditor.

⁶⁹ In assessing child labor conditions, the Congo mine validation process follows International Labour Organization (ILO) definitions considering those 17 and older separately from those who are younger. Mine validation teams consider conditions based on the framework set forth in ILO Convention 182, known as the “Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor,” adopted in June 1999. The convention seeks to eliminate “(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; (d) 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.” See International Labour Organization, ““Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor,” June 1999, available at <http://www.ilo.org/public/english/standards/relm/ilc/ilc87/com-chic.htm>. See also International Labour Organization International Programme on the Elimination of Child Labour, “A future without child labour” (Geneva: December 2002), available at <http://www.ilo.org/ipeinfo/product/viewProduct.do?productId=2427>; International Labour Organization, “Worst forms of child labour,” available at <http://www.ilo.org/ipec/facts/WorstFormsofChildLabour/lang--en/index.htm> (last accessed April 2015).

⁷⁰ The Congolese Mining Minister’s decree that minerals from yellow-flagged mines cannot be exported is counter-productive to improving the conditions at mines and should be reversed.

⁷¹ Guidelines for each type of designation are outlined in the ICGLR Certification Manual. “Green” mines meet international standards against conflict and the worst forms of child labor. “Yellow” mines have infractions that must be resolved within six months. “Red” mines are not certified and have grave infractions that must be addressed and assessed with follow-up inspections. See International Conference on the Great Lakes Region (ICGLR), “ICGLR Regional Certification Mechanism (RCM) — Certification Manual,” p. 12, available at <http://www.oecd.org/investment/mne/49111368.pdf>.

⁷² Enough Project interview with Yvette Mwanza, President of the Fédération des entreprises du Congo (FEC) of North Kivu, Goma, October 23, 2014.

⁷³ Enough Project interview with South Kivu civil society representative, Bukavu, November 1, 2014.

⁷⁴ Enough Project interview with former mining ministry official, Bukavu, October 31, 2014.

⁷⁵ In a June 2014 report, the U.N. Group of Experts note, “The validation system is just one of the conditions for an official export licence for minerals and gold from a particular mining site. The other crucial element is the presence of supply chain management. In the Kivus and in other provinces, however, there is no such system for gold. For example, in Ituri district, the Group found that the two official gold comptoirs—Métaux Précieux and Cut Congo Mining and Exploration SPRL—had been unable to export officially since the certificates issued by the International Conference on the Great Lakes Region became compulsory, because there are no validated artisanal gold mines in Orientale Province, which includes the Ituri district. As a result, the Centre d’expertise, d’évaluation et de certification cannot issue certificates authorizing the comptoirs to export gold. The situation is unsustainable for the comptoirs and further encourages smuggling to Uganda, as documented in the final report of the previously mandated Group (S/2014/42, para. 174).” U.N. Security Council, “Interim report of the Group of Experts on the DRC,” S/2014/428, para. 83, June 25, 2014, available at <http://www.un.org/sc/committees/1533/egroup.shtml>.

⁷⁶ Enough Project interview with former mining official, Bukavu, November 1, 2014; Enough Project interview with artisanal mining expert, Goma, October 28, 2014.

⁷⁷ For more on Fairtrade/Fairmined gold standard, see Alliance for Responsible Mining, “Fairtrade & Fairmined Standard,” 2013, available at <http://www.communitymining.org/en/our-work/standard-setting/history-and-processes/fairtrade-and-fairmined-standard>.

⁷⁸ Holly Dranginis, “Going for Gold: Engaging the Jewelry Industry in Responsible Gold Sourcing in Africa’s Great Lakes Region” (Washington: The Enough Project, November 2014), available at <http://www.enoughproject.org/reports/going-gold-engaging-jewelry-industry-responsible-gold-sourcing-africa%E2%80%99s-great>.

⁷⁹ For more information, see the Artisanal Gold Fund described at the Artisanal Gold Council website, available at <http://www.artisanalgold.org/artisanal-gold-fund> (last accessed April 2015).

⁸⁰ See the websites for Patrick Schein, available at <http://www.patrickschein.com/us/who-are-we.php>, and Alliance for Responsible Mining, available at <http://www.communitymining.org> (last accessed April 2015).

⁸¹ Partnership Africa Canada, “Conflict-Free artisanal gold,” available at <http://www.pacweb.org/en/conflict-free-gold> (last accessed April 2015); Enough Project interview with Governance Committee of the Public Private Alliance on Responsible Minerals Trade, January 2015; Enough Project interview with Joanne Lebert, Partnership Africa Canada, November 2014.

⁸² The gold mines near Mpofi (Walikale), Mangurejipa (Lubero, subject to approval by the company Loncor), Makana (Walikale), Muchele (Walikale), Abambua (Walikale), Lwizi (Masisi), the gold mines near Ruzirantaka, Nyamurhale, and Misisi.

⁸³ Fairmined also endeavors to boost social development, environmental protection, labor conditions and economic development in mining communities. Enough Project interview with the Alliance for Responsible Mining, Kinshasa, February 17, 2015; Enough Project interview with the Artisanal Gold Council, by phone to Vancouver, Canada, March 20, 2015. For more information on Fairmined gold, see <http://www.communitymining.org/en/fairmined-gold> (last accessed April 2015).

⁸⁴ For example, a buying house Métaux Précieux opened a gold trading business in Bunia, Orientale province in 2013 for formal trade that had support from the local mining authorities. Partnership Africa Canada was shown due diligence plans by Métaux Précieux to ensure the legal purchase of documented conflict-free products. See Reagan Kimbale, “Un comptoir d’achat d’or agréé ouvre ses portes à Bunia,” Radio Canal Révélation, Echos Grands Lacs, September 30, 2013, available at <http://www.echos-grandslacs.info/productions/rdc-un-comptoir-dachat-dor-agree-ouvre-ses-portes-bunia> (translation by Enough); Partnership Africa Canada, “All that Glitters is not Gold,” p. 13.

⁸⁵ Enough Project interview with regional gold trader by phone, January 28, 2015.

⁸⁶ Enough Project interview with regional gold trader, Kinshasa, February 19, 2015.

⁸⁷ Enough Project interview with regional gold trader by phone, January 28, 2015.

⁸⁸ The government of Philippines enacted a law in 1991, known as the “People’s Small Scale Mining Law” stating that all gold produced by small-scale miners within the country must be sold to the Central Bank of the Philippines. The law was enacted as a measure to protect and develop small-scale mining, which accounts for 80 percent of total gold production in the country. In 2012 the government introduced a seven percent tax on precious metals, which has driven miners towards the black market according to data from purchasing trends. According to local estimates, at least 90 percent of small-scale gold produced in the Philippines is currently being smuggled out of the country. Data on the Central Bank’s gold purchasing trends over the last year coincide with these estimates. The numbers shows a decline in gold purchasing by an annual percentage of four, 76, and 88 percent in the second, third, and fourth quarters of 2011 respectively. By the first quarter of 2012, gold purchases had declined by 92 percent. Despite these negative market trends, the government continues to support and implement the tax, focusing instead on heightened labor regulations to curb the illicit trade. See Republic of the Philippines, Congress of the Philippines, “Republic Act no 7076: An Act Creating a People’s Small-Scale Mining Program and for Other Purposes” (1991), available at <http://www.mgb.gov.ph/Files/Policies/RA%207076.pdf>; Joni Teves, “A Heart of Gold: Gold at the Heart of Bangko Sentral ng Pilipinas Reserve Management,” London Bullion Market Association blog, available at http://www.lbma.org.uk/assets/blog/chemist_articles/Alch52Teves.pdf; Rosemarie Francisco, “Special Report: Philippines’ black market is China’s golden connection,” Reuters, August 22, 2012, available at <http://www.reuters.com/article/2012/08/23/us-philippines-gold-idUSBRE87M02120120823>.

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⁸⁹ The Sudanese Central Bank has a monopoly on artisanal gold market, as it operates the country's only gold refinery and is the only entity allowed to sell gold abroad. Since gold exports are currently the government's primary source of foreign exchange, the Central Bank is willing to offer competitive domestic prices to discourage small-scale miners from clandestinely selling their gold to smugglers. The Central Bank of Sudan prints money to buy local gold at high black-market currency rates and then sells it for dollars on the global market at the much lower official exchange rates. Still, smuggling remains a serious concern. Analysts estimate that the government of Sudan could be losing as much as \$700 million in taxation due to gold smuggling because the mining companies would pay a seven percent royalty and 30 percent business profit tax. Interview with Enough Project's Akshaya Kumar, February 2, 2015.

⁹⁰ Akshaya Kumar, "Fool's Gold: The Case for Scrutinizing Sudan's Conflict Gold Trade" (Washington: The Enough Project, March 2015), available at <http://www.enoughproject.org/reports/fools-gold-case-scrutinizing-sudans-conflict-gold-trade>.

⁹¹ Gregory Mthembu-Salter has described such an approach in the case of Mukungwe mine and Banro in South Kivu in a paper for the OECD. Gregory Mthembu-Salter, "Baseline Study Two: Mukungwe artisanal mine, South Kivu, DRC," study for the OECD, November 2014, available at <http://www.oecd.org/daf/inv/mne/Gold-Baseline-Study-2.pdf>.

⁹² Southern Africa Resource Watch, "Congo's Golden web: The people, companies and countries that profit from the illegal trade in Congolese Gold" (Johannesburg: May 2014), pp. 21-23, 25, 32, available at http://www.sarwatch.org/sites/sarwatch.org/files/Publications_docs/congogold3web.pdf; Swedwatch, "A lot of gold

a lot of trouble: A study of humanitarian impacts of the gold industry in DR Congo" (Stockholm: May 2012) p. 15, available at http://www.swedwatch.org/sites/default/files/swedwatch_-_a_lot_of_gold_a_lot_of_trouble.pdf.

⁹³ Enough Project interview with Congolese gold trader, Bukavu, November 2, 2014.

⁹⁴ The provincial steering committees in North and South Kivu on mining issues manage the funds, but there is still significant discussion going on regarding the transparency and management of these funds. Interviews with local civil society organizations, Bukavu and Goma, October 29-31, 2014.

⁹⁵ National Jeweler, "Diamond Development Initiative expands into the DRC", April 18, 2014, available at <http://www.nationaljeweler.com/diamonds/social-issues/Diamond-Development--3543.shtml>; Tiffany & Co. Foundation, "The Tiffany & Co. Foundation Supports Registration of Artisanal Miners in the DRC," Press release, October 2014, available at http://www.tiffanyandcofoundation.org/news/article/Artisanal_Miners.aspx.

⁹⁶ Gisèle Eva Côté, "Women in the Artisanal Gold Mining Sector in the Democratic Republic of Congo," Partnership Africa Canada, November 2014, available at <http://www.cirdi.ca/wp-content/uploads/2014/01/Women-in-the-Artisanal-Gold-Sector-in-DRC.pdf>.

⁹⁷ In Brazil, the Permissao de Lavra Garimpeira (PLG) license gives individuals the right to purchase exclusive mining rights for up to 50 hectares and cooperatives the right to mine up to 200 hectares. The process for obtaining a PLG is simpler: the miner consults the mining cadaster, identifies an area with no outstanding claims, and then submits the GPS coordinates. If there are no other overlapping claims, a PLG that is valid for five years and is renewable is granted. In Uganda, the 'Location License' is similar. Exclusive mining rights are granted for artisanal production for up to 16 hectares for two years. Rwanda and South Sudan also have similar licensing systems for small-scale and artisanal miners. Approval does not lie within the political discretion of a minister, governor or other elected official. Experts say the Brazilian PLG, which has existed since 1989, has helped transform Brazil's artisanal mining sector from a largely artisanal industry to one in which the majority of mines have mechanization, higher productivity, and better wages. Ugandan officials hope the location license will yield similar results. Enough Project interview with Shawn Blore, Kinshasa, February 18, 2015.

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- ⁹⁸ A USAID Property Rights and Artisanal Diamond Development report notes, “the equipment rental pools remain one of the most promising elements of PRADD’s financial empowerment efforts...” though adjustments had to be made to engage in more sustained capacity building for artisanal mining groups. USAID Property Rights and Artisanal Diamond Development (PRADD) Project, “Quarterly Progress Report (October–December 2012),” p. 15, January 2013, available at http://usaidlandtenure.net/sites/default/files/USAID_Land_Tenure_PRADD_CAR_2012_Q4_Progress_Report.pdf.
- ⁹⁹ Enough Project interview with South Kivu civil society representative, Bukavu, November 1, 2014.
- ¹⁰⁰ Enough Project interviews with miners and former miners, Rubaya and Goma, December 2014.
- ¹⁰¹ Enough Project interview with former miner, Goma, May 2, 2012.
- ¹⁰² Email correspondence with consultant Shawn Blore, April 2015.
- ¹⁰³ Côté, “Women in the Artisanal Gold Mining Sector in the Democratic Republic of Congo.”
- ¹⁰⁴ Ibid.
- ¹⁰⁵ Shawn Blore, “Responsible Sourcing of Artisanal Gold in Eastern DRC: Pilot Status and Planning” (Ottawa: Partnership Africa Canada, May 2013), pp. 26-7, 32.
- ¹⁰⁶ Enough Project interview with SAESSCAM official, Bukavu, November 1, 2014.
- ¹⁰⁷ For more on what criteria and guidelines companies and governments should follow regarding responsible mining in Congo and the Great Lakes region, see Dranginis, “Doing Good While Doing Well.”
- ¹⁰⁸ Sara Geenen and Jana Hönke, “Land grabbing by mining companies: Local contentions and state reconfiguration in South-Kivu (DRC),” in *Losing your Land: Dispossession in the Great Lakes*, An Ansoms, Thea Hilhorst, eds. (Suffolk and Rochester: James Curry, 2014): 58-81; see in particular pp. 65, 69-72.
- ¹⁰⁹ Banro has faced protests from mining communities in South Kivu due to land disputes and alleged landslides due to the company’s drilling. The company claims it has learned lessons from the processes and is now much more proactive about engaging communities, for example through the Mukungwe multi-stakeholder dialogue. Some Congolese have also raised concerns about the company’s alleged tax breaks. Sarah Geenen and Ben Radley, “In the face of reform, what future for ASM in the eastern DRC?” *Futures* 62 (2014): 58-66. Southern Africa Resource Watch, “Congo’s Golden web,” pp. 21-23.
- ¹¹⁰ For more on what criteria and guidelines companies and governments should follow regarding responsible mining in Congo and the Great Lakes region, see Dranginis, “Doing Good While Doing Well.” See also U.N. Office of the High Commissioner for Human Rights, “Guiding Principles on Business and Human Rights”, 2011, available at http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.
- ¹¹¹ Enough Project interview with Yvette Mwanza, President of the FEC of North Kivu, Goma, October 23, 2014.
- ¹¹² Enough Project interview with South Kivu civil society representative, Bukavu, October 31, 2014.
- ¹¹³ Enough Project interview with business person, Bukavu, November 2, 2014.
- ¹¹⁴ This refers to interviews in the Kivu provinces. Enough Project interviews with miners in Misisi, South Kivu, March 2014. In Ituri in Orientale province, to the north of North Kivu, a survey by three academics found that most miners surveyed in Ituri did not believe industrial mining was in their interest because it would not provide jobs. Only 20 percent of miners in South Kivu thought industrial companies should get concessions. Sara Geenen, Daniel Fahey, and Francine Iragi Mukotanyi, “The future of artisanal gold mining and miners under an increasing industrial presence in South Kivu and Ituri, eastern Democratic Republic of Congo,” (University of Antwerp: March 2013), available at <https://www.uantwerpen.be/images/uantwerpen/container2143/files/Publications/DP/2013/03-Geenen-Iragi.pdf>.
- ¹¹⁵ Enough Project interview, Goma, October 23, 2014.
- ¹¹⁶ For more detail on the incident and investigation see U.N. Mission in the Democratic Republic of Congo (MONUC), “Report on the conclusions of the Special Investigation into allegations of summary executions and other violations of human rights committed by the FARDC in Kilwa (Province of Katanga) on 15 October 2004,” paras. 24, 36-42, available at http://www.abc.net.au/4corners/content/2005/MONUC_report_oct05.pdf; Business & Human Rights Resource Centre, “Anvil Mining lawsuit (re Dem. Rep. of Congo),” available at <http://business-humanrights.org/en/anvil-mining-lawsuit-re-dem-rep-of-congo> (last accessed April 2015).

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¹¹⁷ The U.N. report notes that the Congolese army intervention “had been made possible thanks to the logistical efforts provided by Anvil Mining,” according to one army commander. Anvil Mining claimed that the allegations against its workers having a role in the atrocities were “unfounded and without merit.” (MONUC), “Report on the conclusions of the Special Investigation into allegations of summary executions and other violations of human rights committed by the FARDC in Kilwa (Province of Katanga) on 15 October 2004,” paras. 24, 36-42; Business & Human Rights Resource Centre, “Anvil Mining lawsuit (re Dem. Rep. of Congo).”

¹¹⁸ An investigation and trial by Congolese prosecutors had insufficient evidence to establish complicity by Anvil Mining in war crimes. Three Anvil Mining employees were acquitted in the trial in Congo, and Anvil Mining was found “not guilty” despite not having been tried. Global Witness, “No justice in Canada for Congolese massacre victims as Canada’s Supreme Court dismisses leave to appeal in case against Anvil Mining,” Press release, November 6, 2012, available at <https://www.globalwitness.org/archive/no-justice-canada-congolese-massacre-victims-canadas-supreme-court-dismisses-leave-appeal/>. In November 2012, the Supreme Court of Canada refused to act on a class-action lawsuit brought forward against Anvil Mining in the Kilwa case. The appeal was made by the Canadian Association against Impunity on behalf of the victims of the 2004 massacre; it was, however, denied by the Supreme Court which claimed It did not have jurisdiction over the company’s activities in the DRC. Arij Riahi, “No Justice Anywhere,” The Dominion community media cooperative, February 13, 2013, available at <http://dominion.mediacoop.ca/story/no-justice-anywhere/15751>; Global Witness, “The Kilwa Appeal – A Travesty of Justice,” May 5, 2008, available at <https://www.globalwitness.org/archive/kilwa-appeal-travesty-justice/>; Global Witness, “No justice in Canada for Congolese massacre victims as Canada’s Supreme Court dismisses leave to appeal in case against Anvil Mining.”

¹¹⁹ The group was the the Front des Nationalistes Intégrationnistes (FNI, Front of Integrationist Nationalists). Human Rights Watch alleged that “By entering into a relationship with the FNI [rebel group] who had effective control over the Mongbwalu gold mining area, AngloGold Ashanti delivered material benefits and prestige to the FNI. In its April 27, 2005 e-mail communication with Human Rights Watch the company denied the allegations, though they did add that on the occasions where there had been “unavoidable contact” with the FNI, the company had sought to ensure such contact was “transparent” and was “directly between ourselves and the militia group.” AngloGold Ashanti later admitted to paying the FNI \$9,000 under duress, but said it “as soon as it came to our attention we publicly acknowledged it, condemned it and said it would not happen again.” The company added that “Should we find ourselves in a situation where there is pressure on our staff again to yield to extortionate demands, we will consider that to be grounds for our withdrawal from the exploration project.” Human Rights Watch, “The Curse of Gold”, 2005, available at <http://www.hrw.org/reports/2005/06/01/curse-gold>; AngloGold Ashanti, “Report of Foreign Private Issuer Pursuant to Rule 13a-16 or 15d-16 of the Securities Exchange Act of 1934, Form 6-K, June 1, 2005, available at http://www.sec.gov/Archives/edgar/data/1067428/000120561305000100/anglo_rights.pdf.

¹²⁰ See Mthembu-Salter, “Baseline Study Two: Mukungwe artisanal mine, South Kivu, DRC.”

¹²¹ Ibid. Enough Project interview with Observatoire Gouvernance et Paix, Bukavu, November 1, 2015.

¹²² For further details, see Steven Spittaels, “The Complexity of Resource Governance in a Context of State Fragility: An Analysis of the Mining Sector in the Kivu Hinterlands” (International Peace Information Service and International Alert, November 2010), available at <http://www.international-alert.org/sites/default/files/publications/201011TheComplexityOfResourceGovernance.pdf>.

¹²³ For more information, see Initiative for Responsible Mining Assurance, “The IRMA Standard for Responsible Mining,” available at <http://www.responsiblemining.net/irma-standard/> (last accessed April 2015).

¹²⁴ For example, Appendix 1 “proposes measures to build secure, transparent and verifiable gold supply chains from mine to market and enable due diligence for legitimate ASM Gold to achieve these objectives, including through for legalisation efforts.” Organisation for Economic Cooperation and Development, “OECD Due Diligence Guidance for Responsible Supply Chains from Conflict- and High-risk Areas: Supplement on Gold” (2012), available at http://www.oecd.org/document/60/0,3746,en_2649_34889_49137660_1_1_1_1,00.html.

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¹²⁵ Organisation for Economic Cooperation and Development, “Upstream Implementation of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas,” January 16, 2013, available at <http://www.oecd.org/corporate/mne/DDguidanceTTTUpstreamJan2013.pdf>.

¹²⁶ Citing the Responsible Jewellery Council’s Standards Guidance, “COP 2.14 Artisanal and Small-Scale Mining” the OECD guidance recommends “Providing financing (loans) for technical and other improvements; Assisting and training miners on a range of issues (for example, occupational health, reclamation, mining and processing methods, value added processes, organizational and financial management, explosives management); Aiding miners in the determination of mineral reserves (combined with support for access to financing); Providing emergency response services; Availing processing services to miners or building their capacity to implement effective processing facilities themselves with improved technology; Liaising with government departments, NGOs, trade unions and international agencies to obtain additional support; Providing guidance on marketing and commercialization, including fair trade arrangements; Proactively supporting alternative livelihoods, economic development, and other improvements in ASM [Artisanal and Small-scale mining] communities; Supporting the wider community by locally sourcing the provision of as many goods and services as possible; Eliminating child labor as a condition of engagement in the community; Improving women’s conditions in ASM communities through gender awareness and empowerment programs.” See also Felix Hruschka and Cristina Echavarría, “Rock Solid Chances,” Alliance for Responsible Mining (2011). In the Great Lakes Region, see the fourth tool of the ICGLR Regional Initiative against the Illegal Exploitation of Natural Resources, “Formalisation of the Artisanal Mining Sector,” available at <http://www.icglr.org/index.php/en/six-tools> (last accessed April 2015).

¹²⁷ Radio Okapi, “North Kivu: towards a boundary of an artisanal mining area Bisié,” March 12, 2015, available at <http://radiookapi.net/economie/2015/03/12/nord-kivu-vers-une-delimitation-dune-zone-dexploitation-artisanale-bisie/>.

¹²⁸ International Peace Information Service, “Infographic-Mapping Mining Areas in Eastern DRC,” January 28, 2015. The interactive infographic provided by IPIS indicates that of eastern Congo’s 944 gold mines surveyed, 330 (35 percent) have no armed groups; 351 (37 percent) have a Congolese army presence; 73 (eight percent) have a Raia Mutomboki presence; 83 (nine percent) have a Mai Mai Sheka presence; 26 mines (three percent) have an FDLR presence; 23 (two percent) have a Mai Mai Yakutumba presence; 58 mines (six percent) have the presence of other armed groups.

¹²⁹ Enough Project interview with Congolese government official, Bukavu, October 21, 2014.

¹³⁰ Ibid.

¹³¹ See also U.N. Office of the High Commissioner for Human Rights, “Guiding Principles on Business and Human Rights”; Dranginis, “Doing Good While Doing Well.”

¹³² In 2010 the Congolese government nationalized concessions in Katanga province that were held by the Canadian company First Quantum.

¹³³ Enough Project interview with mining investor, Bukavu, November 1, 2014.

¹³⁴ For a detailed background on this issue, see Holly Dranginis, “Grand Theft Global - Prosecuting the War Crime of Natural Resource Pillage in the Democratic Republic of the Congo” (Washington: The Enough Project, January 2015), available at <http://www.enoughproject.org/reports/grand-theft-global>; James G. Stewart, “Corporate War Crimes: Prosecuting the Pillage of Natural Resources” (Washington: Open Society Justice Initiative, 2011), available at <http://www.opensocietyfoundations.org/reports/corporate-war-crimes-prosecuting-pillage-natural-resources>.

¹³⁵ Enough Project interview with regional gold expert, Kinshasa, November 8, 2014.

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¹³⁶ A January 2015 U.N. Group of Experts report on Congo alleges that gold from Congo continues to be purchased by the designated individuals and companies based in Uganda. The Group of Experts also requested a meeting in October 2014 with the Ugandan government and named gold companies to invite these parties to exercise their right of reply to U.N. allegations. Ugandan government representatives and Uganda-based gold traders have denied allegations of wrongdoing and described the complexities of the trade. Past efforts by the Enough team to reach Uganda-based gold traders associated with entities under sanctions have been unsuccessful. See U.N. Security Council, “Final report of the Group of Experts,” S/2015/19, paras. 190, 199, 202, 206; Emmy Allio, “Kampala Gold Traders Cry Foul,” *New Vision*, August 21, 2005, summary available at <http://allafrica.com/stories/200508220455.html>; full article available to AllAfrica subscribers and via Nexis subscription. See also, Stefano Liberti, “Congo and Uganda: a rush of gold,” *Le Monde Diplomatique*, December 2005; excerpt available at <http://mondediplo.com/2005/12/08congo> and full article available at <https://www.globalpolicy.org/component/content/article/181/33624.html>; Ruben de Koning and the Enough Team, “Striking Gold: How M23 and its allies are infiltrating Congo’s gold trade” (Washington: The Enough Project, October 2013), available at <http://www.enoughproject.org/files/StrikingGold-M23-and-Allies-Infiltrating-Congo-Gold-Trade.pdf>.

¹³⁷ Enough Project interview with former Congolese mining official, eastern Congo, October 31, 2014.

¹³⁸ Enough Project interview with Shawn Blore, consultant, Kinshasa, February 16, 2015.

¹³⁹ *Ibid.*