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DRC: CRISIS IN MINES REQUIRES SUSTAINABLE SOLUTION



Excavators and drillers at work in an open pit at Tenke Fungurume, a copper and cobalt mine 110 km (68 miles) northwest of Lubumbashi in Congo's copper-producing south, now owned by miner China Molybdenum Co., Ltd. Picture taken January 29, 2013.

A deadly accident and the deployment of the army to two massive copper and cobalt mines in the south of the Democratic Republic of the Congo (DRC) in the past four weeks have exposed the country's weak regulation of its mining sector and poor protection of human rights.

The crisis has been caused by the government's failure to manage a situation where hundreds of thousands of people in the mineral-rich region make a living through informal, unregulated artisanal mining. Typically, this involves hand-digging tunnels, sometimes up to 60-70 metres underground, or collecting, washing and sorting stones on the surface.

While most artisanal miners dig for minerals outside operational mine complexes, some miners trespass onto mines owned by multinational large-scale mining companies to extract valuable ore. This often brings them into conflict with the police and security guards who try to prevent them from accessing these privately-owned concessions. The concessions can cover huge extensions of land, which sometimes include whole villages or makeshift towns of artisanal miners.

On 27 June, at least 43 artisanal miners died when the tunnel they were in collapsed. They had been digging for cobalt on the Kamoto Copper Company (KCC) mine in Kolwezi, owned by Glencore International AG (Glencore).

At around the same time, the DRC government ordered several hundred soldiers, carrying military weapons, to evict artisanal miners from the Tenke Fungurume Mine (TFM), 100 km from Kolwezi, which is owned by China Molybdenum Company Limited (CMOC). The government then ordered the army to clear miners from KCC as well.

At TFM, the army threatened to forcibly remove up to 10,000 people from the 1,600 square km concession, some of whom lived there. According to African Resources Watch (Afresource) and media reports, local residents said that soldiers destroyed housing and shelters in two villages, which could amount to forced evictions contrary to international law. Afresource also reported that soldiers had fired shots to disperse artisanal miners, and said it had received reports of casualties.

The army subsequently deployed troops to the area around KCC, where they dispersed artisanal miners on 4 July. According to Glencore, soldiers remain present at the KCC perimeter.

Glencore and CMOC deny requesting the army's deployment.

RISK OF EXCESSIVE USE OF FORCE

The DRC army has a long history of excessive use of force, and its soldiers are not properly trained or equipped to carry out policing functions in accordance with international law and standards. Troops deployed to TFM carried military weapons.

In light of this and given that local reports suggest the army remains present at or near both mines sites, Amnesty International remains concerned that the army will commit serious human rights violations during such operations.

Amnesty International is calling for the DRC government to immediately withdraw its troops from the mines. In the future, it should refrain from deploying the army to

remove or carry out evictions of miners from large-scale mines and to ensure that any public security forces deployed to secure mining concessions exercise restraint, are properly trained and equipped, and do not use excessive force in any attempt to remove artisanal miners, which must be carried out in full conformity with human rights standards, including those on the use of force by law enforcement and on evictions.

The authorities in the DRC must also investigate and act upon any human rights violations that may have been committed during the operations to remove artisanal miners.

NEED FOR SUSTAINABLE SOLUTIONS



Artisanal miners hold up handfuls of cobalt ore (left) and copper ore (right) that they have scavenged from the mounds of tailings from active and inactive industrial mine sites near Lake Malo, Kapata on the outskirts of Kolwezi, in the DRC. The miners must then sort, wash and crush the mineral ore before selling it to buying houses, May 2015.

Deploying the army might temporarily discourage artisanal miners from entering large-scale mining concessions but does not address the issues that drive them to work in this way in the first place.

Government officials and the media routinely refer to artisanal miners as “illegal” miners. But since 2002, DRC government policy provides artisanal miners with areas to mine safely and legally (*Zones d’exploitation artisanale* or Artisanal Mining Zones, ZEAs). This policy has not been adequately implemented and the authorities have created very few ZEAs. Many of those that have been created are not viable or are far from population centres. As a result, most artisanal miners are compelled to continue

working in unauthorized and unregulated areas or to trespass onto industrial mines. These are the most hazardous conditions for artisanal mining and accidents are frequent.

Artisanal miners interviewed by Amnesty International in the region in 2016 explained that they did not wish to trespass, or work in unregulated and unauthorized locations, but that they had little choice.

The DRC government should initiate a dialogue with artisanal mining representatives to address the underlying issues that lead to incursions on large-scale mines. While the government has announced plans to create new authorized artisanal zones, it must ensure that these are adequate in number, economically viable, and that mining operations can be carried out safely, whilst also preventing child labour. The government must boost efforts to remove children from the mines and increase its efforts to address children's health, physical, educational, economic and psychological needs.

THE RESPONSIBILITY OF MINING COMPANIES

It is not only the DRC government that has a role to play.

Amnesty International has written to CMOC and Glencore to remind them of their responsibility to respect human rights in the context of these events and operations.

Under the United Nation Guiding Principles on Business and Human Rights (UNGPs), companies have a responsibility to respect all human rights wherever they operate. The corporate responsibility to respect is independent of the state's own human rights obligations. This means that to meet their responsibility to respect human rights, companies might need to go beyond what is legally required in the relevant jurisdiction.

The UNGPs indicate that to meet their responsibilities, companies should have a human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights. They should also seek to "prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts."

CMOC and Glencore must ensure that excessive force is not used in policing their concessions and must take measures to ensure that public security forces carry out interventions in full conformity with human rights standards, including those on the use of force by law enforcement and on evictions.

The companies must also take action to address the underlying problems that are causing thousands of artisanal miners to enter their concessions at great risk to their lives and physical integrity. In this context, CMOC, Glencore and the other corporations that operate large-scale mines in the DRC have a responsibility to prevent or mitigate the serious risks involved in the unregulated and dangerous artisanal mining that takes place within their concessions. Given the enormous scale of these areas, simply fencing them off is impractical and does not work. As noted earlier, the deployment of the army is not a solution either and exposes the artisanal miners to further human rights risks. Mining companies must work with the DRC authorities and representatives of the artisanal miners and civil society groups to find long-term, sustainable solutions that ensure the respect for human rights.

In a response to Amnesty International's letter, Glencore explained that it was taking several measures.¹ These include:

- Informing the local communities of the dangers of artisanal mining;
- Making it harder for artisanal miners to access certain areas, by for example, deliberately collapsing underground "galleries", digging trenches and adding soil and mud into known "illegal mining areas";
- Supporting alternative sources of income for community members so that they do not need to rely on artisanal mining;
- Working with NGOs and churches to deliver a holiday camp for thousands of school children to deter them from mining.

While these measures are positive, they are clearly insufficient and fail to prevent artisanal miners from entering Glencore's sites. For this reason, Amnesty International calls on Glencore, and other large-scale mine operators in the DRC, to actively work with the authorities to create regulated, authorized, safe and viable artisanal mining zones.²

Companies which use the cobalt and copper that these mines produce have their own responsibilities to avoid contributing to human rights abuses. Companies should undertake and publicly disclose their human rights due diligence practices, in line with the international standards on responsible mineral sourcing that have been established by the OECD.

¹ CMOC did not reply to Amnesty International's letter, and unlike Glencore has not provided any update or information on its website.

² Some companies have begun taking steps in this direction. Working with the local authorities, Huayou Cobalt has supported an artisanal cobalt mining area at Kasulo, in Kolwezi. Trafigura and Chemaf have allowed artisanal miners to continue operating on part of the Mutoshi mine. Amnesty International has not yet been able to assess what impact these have had.



Children sort rocks containing cobalt ore by hand, March 2017 © Amnesty International/Afrewatch

RECOMMENDATIONS FOR COMPANIES

Amnesty International is calling on all companies with large-scale mining operations in the south of the DRC to:

- Immediately call for the withdrawal of the army if deployed to their concessions or operations;
- Engage with the DRC authorities to ensure that any public security forces deployed to secure their concessions exercise restraint, are properly trained and equipped, and do not use excessive force in any attempt to remove artisanal miners, which must be carried out in full conformity with human rights standards, including those on the use of force by law enforcement and on evictions;
- As part of their efforts to prevent incursions onto their concessions by artisanal miners, these mining companies must develop sustainable solutions that address the root causes of this crisis. These should include developing plans, with the government as well as representatives of artisanal miners, to support the creation of authorized and viable mining zones where artisanal mining can be conducted safely and without child labour;
- Amnesty International also calls on all companies sourcing from the DRC to conduct supply chain due diligence for cobalt and other minerals and publicly disclose their due diligence policies and practices in accordance with international standards, including how human rights risks are identified,

prevented and addressed in global operations. As part of this, these companies should also include addressing the root causes of artisanal mining, and support efforts by the DRC government to establish authorized mining zones.

BACKGROUND

In 2016, an investigation by Amnesty International and Afreewatch, a Congolese human rights organization, showed how artisanal cobalt miners, including children as young as seven, were exposed to huge health dangers and exploitation³.

We found that the DRC government was failing to meet its obligations to protect people from abuses of their rights to and at work and health through its failure to put in place and enforce adequate safeguards for artisanal miners.

More than two thirds of the world's total supply of cobalt comes from the DRC. The mineral is essential for the world's shift to green energy, since it is used in most types of rechargeable batteries, including those that power electric vehicles.

In our 2017 investigation we found that cobalt mined by artisanal miners in the DRC was entering the supply chains of many of the world's leading electric vehicle and consumer electronics brands.

³ Afreewatch and Amnesty International, *"This is what we die for": Human Rights Abuses in the Democratic Republic of the Congo Power the Global Trade in Cobalt* (Index: AFR 62/3183/2016); Amnesty International, *Time to Recharge: Corporate Action and Inaction to Tackle Abuses in the Cobalt Supply Chain* (Index: AFR 62/7395/2017).