

House Foreign Affairs Committee  
Tom Lantos Human Rights Commission

Hearing  
on  
Child Labor and Human Rights Violations in the Mining Industry  
of the Democratic Republic of Congo

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**STATEMENT SUBMITTED FOR THE RECORD**

Submitted by:

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Dear Honorable Members of the Commission,

My name is Terrence Collingsworth. I am Executive Director of International Rights Advocates, a non-profit human rights advocacy organization. I have been a practicing human rights lawyer for over 35 years. In September 2019, I spent two weeks in Kolwezi, Democratic Republic of Congo (“DRC”), the mining center of the country. I was invited by a local NGO that wishes to remain anonymous due to fear of violent retaliation by the mining companies. The NGO invited me to meet with former child miners who had been seriously injured while mining cobalt and family members of children who were killed in tunnel collapses while mining cobalt. The objective was for me to assess whether there was a reasonable possibility of taking legal action against the mining companies and/or end users of cobalt to obtain proper medical treatment for the injured children, compensation for the children and their families, and, most important, force those responsible for the horrific conditions for child (and adult) miners and the devastation of the environment to take effective remedial measures.

Before traveling to DRC, I researched the issue of child labor in DRC cobalt mining. I was surprised how well-known it was that child labor was prevalent in cobalt mining and that very little had been done to prevent this horrific practice and protect DRC children. Among the major sources I reviewed was the 2016 Amnesty International report on the horrific conditions for child laborers mining cobalt in the DRC, *This Is What We Die For – Human Rights Abuses in the Democratic Republic of Congo Power the Global Trade in Cobalt*.<sup>1</sup> The report states “[i]t is widely recognized internationally that the involvement of children in mining constitutes one of the worst forms of child labour, which governments are required to prohibit and eliminate. The nature of the work that [Amnesty’s] researchers found that the children do in artisanal cobalt mining in the DRC is hazardous, and likely to harm children’s health and safety.”<sup>2</sup> The Amnesty Report further states, “[i]t is no secret that children mine cobalt in the DRC. The US Department of Labor has listed it as a good produced by child labour since at least 2009. Several non-governmental organizations (NGOs) have also published studies on child labour in Katangan mines. UNICEF estimated in 2014 that approximately 40,000 boys and girls work in all the mines across the whole of the former province, many of them involved in cobalt mining.”<sup>3</sup>

I also researched cobalt, a mineral I was not personally familiar with. Approximately two-thirds of the global supply of cobalt is mined in the “copper belt” region of Haut-Katanga and Lualaba Provinces in the DRC. Cobalt is a key component of every rechargeable lithium-ion battery in all of the computer and smart phone devices as well electric vehicles (EVs) made in the world. Cobalt is found in crumbly, shale-like rock, and the so-called “artisanal” child (and

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<sup>1</sup> [www.amnesty.org](http://www.amnesty.org)

<sup>2</sup> *Id.* at 6.

<sup>3</sup> *Id.* at 28 (footnotes omitted).

adult) miners in DRC climb into deep tunnels with no supports or protective equipment. They die or are seriously injured when the tunnels collapse on them.

Here are photos of child artisanal miners climbing into tunnels to mine cobalt:



Photo credit: Siddharth Kara

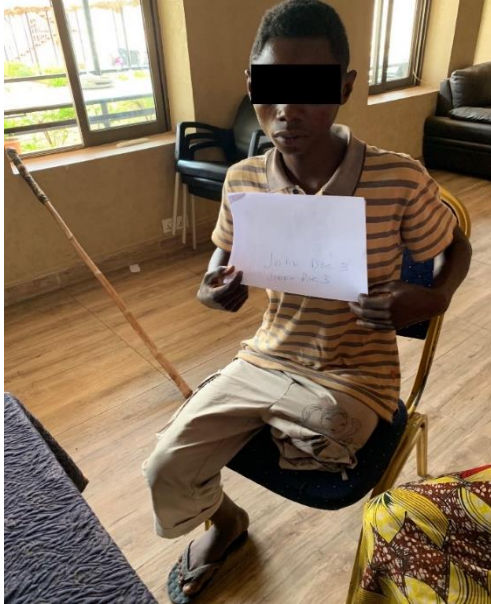


Photo credit: Siddharth Kara

There is a shocking irony that children are mining cobalt under stone age conditions for paltry pay (less than a dollar a day) at immense personal risk to provide cobalt that is essential to the new, modern, future-oriented EV and tech sector, dominated by the likes of Tesla, Ford, Daimler, Apple, Microsoft, Google, and Dell. As one boy I interviewed who had been maimed in a tunnel collapse told me, “we all know that every tunnel out there is eventually going to collapse. The only question for us is will it happen while I am in it?” Billions of dollars are generated by the EV and tech giants, very little of it stays in the DRC, and the workers, including children, live in dire poverty while their life-threatening work powers the future.

When I arrived in Kolwezi at a secure hotel complex, about 50 families were waiting to meet me, organized by the local NGO that invited me. Most of the children present were severely maimed from mining accidents. Even though I have been a human rights lawyer for decades and visited war zones and researched some of the most horrific abuses of workers all over the world, seeing all of these desperate families with their maimed children together left me stunned and speechless. Here are two of the former child miners I interviewed:





John Doe 3  
Photo credit: IRAdvocates



John Doe 5  
Photo credit: IRAdvocates

Eventually, we organized the interviews of the families. We learned that many of the child miners had worked at specific cobalt mines we determined were owned or operated by Glencore, which was founded by convicted tax evader and illegal trader Marc Rich, and is known for widespread violations of human rights and environmental laws, as well as participation in rampant corruption all over the world. Indeed, Glencore recently pled guilty in the United States to violations of the Foreign Corrupt Practices Act, which included bribes paid to DRC officials.<sup>4</sup> In 2020, Tesla bought an undisclosed portion of Glencore's cobalt mining operation to assure a steady supply of cobalt for its expanding EV production.

The other major mining company that some of the gathered children had worked for is Zhejiang Huayou Cobalt ("Huayou"), a notorious Chinese mining company that openly uses child miners in the DRC.

At the conclusion of the interviews, I selected a total of 16 families to serve as test plaintiffs in a lawsuit IRAdvocates had decided to file. The plaintiffs are eleven children who were severely injured in tunnel collapses and legal representatives for five children who were killed while mining cobalt. As for defendants, we felt it was highly unlikely that we could get personal jurisdiction over Glencore or Huayou due to the U.S. Supreme Court's decision in *Daimler AG v. Bauman*, 571 U.S. 117 (2014). Using a variety of means, we were able to confirm that Glencore and Huayou were major suppliers of cobalt to Tesla, Apple, Dell, Microsoft, and

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<sup>4</sup><https://www.justice.gov/opa/pr/glencore-entered-guilty-pleas-foreign-bribery-and-market-manipulation-schemes>

Google, and we named these companies as defendants. We are still doing research linking other tech and EV companies using these companies as suppliers of cobalt.

The case was filed under the Trafficking Victims Protection Reauthorization Act (“TVPRA”), 18 U.S.C. § 1595 (a) *et. seq.*, a broad remedial statute passed by Congress and amended in 2008 to provide a tool for victims of trafficking and forced labor to obtain remedial relief. Based on section 1595 (a) of the statute, the former child miners can assert claims for forced child labor and trafficking if the defendants are in a “venture” with Glencore and/or Huayou, they knew or should have known that the mining companies were using forced or trafficked child labor, and they received a benefit from the unlawful practices, in this case a steady supply of cobalt that is less expensive because it is mined in part by exploited children.

We felt the allegations of our complaint easily satisfied these elements and filed the case in the federal district court for the District of Columbia in December 2019. After several procedural steps, Judge Carl J. Nichols, a Trump appointee, dismissed the case on November 2, 2021. In an unprecedented ruling, the District Court ignored the TVPRA’s text, remedial purpose, and decisions of numerous federal courts to become the first federal court to narrowly define “venture” to require a formal contract between the tech firms and the mining companies. This is particularly egregious in that almost every TVPRA case involves illicit transactions that would never be memorialized in writing to create evidence of a crime. The District Court’s ruling would require, for example, that a child who was kidnapped, sold as a slave, and forced to work as a domestic laborer would need to prove there was a formal agreement between the trafficker and the recipient of the child in order to establish a “venture” under the TVPRA.

Further, in this case, all of the tech company defendants claim to have issued “policies” against child labor assuring consumers and regulators that they had the right to inspect their suppliers’ mines to prevent violations of these “policies. This means that they likely do have contractual relationships with their cobalt suppliers that should have satisfied even Judge Nichols’ erroneously narrow definition of “venture.” In a glaring fabrication, the tech companies argued in court that they are mere purchasers of cobalt and have no control over conditions in the cobalt mines, despite the assertions of their “policies.”

The Court used its narrow definition of “venture” to rule the plaintiffs lacked standing to sue because the tech companies had no connection to the harm caused to the child miners by the mining companies. The District Court then foreclosed most trafficking and forced labor claims that could be brought by becoming the first court ever to rule that section 1596’s express grant of extraterritorial jurisdiction did not apply to any civil claims. The Court then narrowed well-established precedent and again became the first federal court to rule that forced labor claims are determined exclusively by whether the child miners began work voluntarily and regardless of whether they were later coerced to continue working against their will.

The case is on appeal in the Court of Appeals for the DC Circuit, and updates will be posted on [www.internationalrightsadvocates.org](http://www.internationalrightsadvocates.org).

The purpose of this Statement is not to argue the merits of our case, which was discussed for concrete context of the ongoing child labor problem in cobalt mining, but to highlight **three major points**:

**First**, there is no question that child miners are being killed and maimed mining cobalt for the richest and most powerful companies in the world. From all reliable sources, including Amnesty International, the U.S. Department of Labor, the United Nations, and numerous news outlets that have covered the issue, as well as our own ongoing research, children are mining cobalt in the DRC under extremely hazardous conditions.

**Second**, the richest and most powerful companies in the world who need the DRC's cobalt and have generated unimaginable wealth from their products powered by cobalt, have done nothing to help the victims of unregulated DRC cobalt mining. Further, it seems they will never do anything unless they are forced to by law. The sole action Tesla, Apple, Microsoft, Google, and Dell have taken is to issue paper "policies" against child labor, but they have not implemented independent monitoring, which for these high tech companies, could easily be accomplished by drone or satellite surveillance of the open air cobalt mining sites. Further, while they have asserted to the public that they have policies that allow for site inspections of all aspects of their supply chains, they argued to Judge Nichols they are mere purchasers of cobalt with no control over the mining process. This is the oldest trick in the corporate playbook – publish a strong paper policy to assure consumers, but do nothing to implement it. With their trillions or hundreds of billions in wealth, these companies have done nothing to help a single child miner injured or killed in cobalt mining tragedies.

**Third**, we lack effective tools to address blatant, open, dangerous child labor in cobalt mining, an industry problem that has been exposed at the highest levels for years, but the child abuse continues nonetheless. And if Judge Nichols could seek to prevent application of the TVPRA in this case, then it will be even more difficult to reach more subtle, less visible cases of forced child labor. The TVPRA has great potential, but Judge Nichols' decision demonstrates the key areas where a hostile judge can undermine the text, history, and remedial purpose of the TVPRA. While the child miners IRAdvocates represent hope to prevail on appeal and establish strong precedent and reclaim the intended scope of the TVPRA, the TVPRA should be clarified to prevent future judges from attempting to nullify the act through narrow interpretation with a few easy amendments:

- Section 1595 (a) should be amended to add the highlighted language to ensure that the informal "ventures" that organize to profit from criminal exploitation of children need not have a formal contract, as Judge Nichols required: The TVPRA should allow a civil claim against any person who "knowingly benefits financially or by receiving anything of value from participation in a venture, **an association in fact based on a tacit business relationship**, which that person knew or should have known has engaged in [trafficking or forced labor]." 18 U.S.C. § 1595(a).
- To preserve the intent of Congress to extend extraterritorial application of the TVPRA to civil **and** criminal claims, section 1596 (a) should be amended to add

the highlighted language: “In addition to any domestic or extra-territorial jurisdiction otherwise provided by law, the courts of the United States have extra-territorial jurisdiction over any **criminal or civil** offense (or any attempt or conspiracy to commit an offense) . . . . 18 U.S.C. § 1596(a).

- Judge Nichols parsed whether the child minors were subjected to “forced labor” because they first sought employment as cobalt minors voluntarily out of desperate poverty and fear of starvation. Judge Nichols found that as long as the child sought to work voluntarily, this could not be considered “forced” regardless of whether continued employment was based on coercion. While the child miners were coerced and satisfy the current definition of forced labor, the TVPRA should be amended to recognize that children cannot consent to perform hazardous work that constitutes the “Worst Forms of Child Labor” under ILO Convention No. 182, which was ratified by the U.S. The definition of “forced labor” under the TVPRA under section 1589 should be amended to include that **“no child under the age of 16 can consent to perform the ‘Worst Forms of Child Labor’ under ILO Convention No. 182, and any person who requires a child to perform such work violates this section and is deemed to have forced the child to work.”**

In addition, the United States needs to join the global effort, led by the European Union, to enact rigorous “due diligence” legislation. In the case of child labor in cobalt mining, as noted, Tesla, Apple, Google, Microsoft, and Dell assert they have “zero tolerance” policies against child labor and assure consumers and regulators that their policies allow mine-level inspections and enforcement. A reasonable due diligence law would hold them to their own promises to the public and require that they demonstrate that no component of their products was manufactured in whole or in part by children enduring life-threatening conditions. The tech industry in particular should be held to a high standard that they themselves claim to have set. They should be required to use their vast wealth to clean up their mess in cobalt mining.

A further potential tool to combat child labor in cobalt mining is section 307 of the Tariff Act of 1930, 19 U.S.C. § 1307. This law prohibits the importation of any products made with “forced labor.” In 1997, the definition of “forced labor” was amended to clarify that it “includes forced or indentured *child* labor.” As with the TVPRA, a further amendment should clarify that forced child labor includes **“no child under the age of 16 can consent to perform the ‘Worst Forms of Child Labor’ under ILO Convention No. 182, and any person who requires a child to perform such work violates this section and is deemed to have forced the child to work.”** This will ensure that a child performing extremely hazardous work, such as cobalt mining, need not prove that he was “coerced” beyond the obvious that no child can consent to risking their life working to avoid starvation.

Finally, the great power of the purse of the United States government can be harnessed to stop child labor in cobalt mining (or in the production of any other products). There are many possible options, but one good example is a recent bill introduced by the New York State Assembly, [A.9241A](#). This law calls for the state of New York common retirement fund to divest from any company that cannot independently verify that their cobalt and lithium mining



production is not using child labor and that any adult workers are subject to acceptable criteria lined out in the Conventions of the International Labor Organization. Similarly, the U.S. can prevent any government agency from ***purchasing*** any product including cobalt unless the supplier demonstrates that cobalt within the product was not produced by with child labor. Again, the tech companies assert they have “zero tolerance” for child labor “policies” in place. They should be required to demonstrate that they have effectively implemented their own policies.

The EV and tech sectors have generated tremendous wealth and yet they are powered by what activists call “Blood Cobalt.” These industries can serve as the perfect vehicle for using all possible tools to require the major companies to comply with their own professed standards that child labor is prohibited in their supply chains. They can afford to meet the reasonable standards that would ensure that child miners are not regularly maimed or killed to produce their expensive futuristic products.