

STATEMENT FOR THE RECORD

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BEFORE THE

**TOM LANTOS HUMAN RIGHTS COMMISSION
U.S. HOUSE OF REPRESENTATIVES**

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

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The role the Democratic Republic of the Congo (DRC) plays in global supply chains, particularly as it pertains to the mining and utilization of cobalt and copper, makes it essential that we address the labor violations and human rights abuses that plague the DRC's mining industry. In order to meet the growing demand for electric vehicles (EVs) in the global marketplace,¹ factories must produce ever-greater numbers of rechargeable lithium-ion batteries, which require cobalt for their production. As a result, the demand for cobalt is forecasted to increase over the next 30 years, unless EV battery manufacturing becomes viable without the inclusion of cobalt.² To address that need, the White House issued Executive Orders relating to Critical Minerals (2020) and Supply Chains (2021), and the U.S. Department of Labor (USDOL) is coordinating with the National Security Council and other federal agencies to fulfill those directives.

The DRC is home to approximately 70 percent of the world's known cobalt deposits. In contrast to the "conflict minerals" tin, tantalum, tungsten, and gold (collectively referred to as 3TG, all of which are principally mined in eastern Congo)³, cobalt is found in the "Copperbelt" provinces of Haut-Katanga and Lualaba, located in the DRC's southern region between Lubumbashi and Kolwezi, along the border with Zambia. Cobalt in the DRC is mined as a comingled ore alongside the more abundant copper deposits.

¹ Cobalt is a critical component in the production of many goods, such as aircraft engines, gas turbines, high speed steels, magnets, and corrosion resistant alloys. It is used as a catalyst for the petroleum and chemical industries, as a drying agent for paint and inks, to irradiate and preserve food, and in the coloration of porcelain, stained glass, jewelry, and tile. At present, cobalt is also essential to the manufacture of rechargeable lithium-ion batteries, which are used to power electric vehicles (EVs).

² <https://pubs.usgs.gov/periodicals/mcs2021/mcs2021.pdf>

³ Cobalt is not designated a conflict mineral under section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. [note: section 1502 designates coltan, cassiterite, gold, wolframite, their derivatives, or "any other material or its derivatives determined by the Secretary of State to be financing conflict in the DRC or an adjoining country."]

PRC DOMINATION OF THE GLOBAL COBALT SUPPLY CHAIN

In 2020, the U.S. Geological Survey (USGS) estimated that the DRC produced over 70 percent of the global cobalt supply.⁴ Cobalt originating from large-scale mining (LSM) accounts for 80 percent of the DRC's cobalt exports, with companies linked to the People's Republic of China (PRC) owning or operating three of the DRC's five largest cobalt mines, as well as acting as competitive buyers, operating or controlling smelters, and having control over other logistical aspects of the mining industry.

The PRC dominates the entire global cobalt supply chain, from mining to refining to manufacturing of cobalt-based goods. A New York Times article⁵ detailed PRC dominance in the global cobalt supply chain, which parallels PRC's successful efforts to corner the solar supply chain. According to the UN, in 2020 the PRC imported \$2.4 billion in cobalt, with \$2.1 billion (88 percent) coming directly from the DRC. Within the PRC, cobalt is then refined into the chemicals required to produce lithium-ion batteries. In 2020, the United States imported 43.6 percent of its lithium-ion batteries from the PRC (\$2.1 billion of \$4.8 billion), a figure which increased to 80 percent in the final quarter of 2021.⁶

EXPLOITATIVE LABOR CONDITIONS IN COPPER AND COBALT MINING

Thousands of children work in artisanal and small-scale mining (ASM) in cobalt and copper mines in the DRC's Copperbelt region. This is classified by the government of the DRC as a worst form of child labor due to the extremely dangerous nature of artisanal mining. The prevalence of child labor is higher in the country's ASM sector, which operates with minimal oversight, than in LSM. Child labor has been detected at one in every four ASM sites⁷, with informal or illegal ASM operations leaving children uniquely exposed to hazardous working conditions and, in some instances, to forced labor. While the exact number of children working in copper/cobalt mining is unknown, estimates indicate between 5,000 and 35,000 children work in these mines.

Adults who mine these minerals are also victims of labor exploitation and unsafe conditions, such as collapsing tunnels and debt-based coercion (some of which amounts to debt bondage). These abuses are widespread at LSM sites owned or operated by PRC interests. The U.S. Departments of Labor and State have both found evidence of forced labor in PRC-owned mining operations in the DRC.

According to a recent report⁸, many PRC commodity firms use a subcontracting model to reduce costs, limit liability for workers' safety, and preclude collective bargaining. Safety and labor

⁴ <https://pubs.usgs.gov/periodicals/mcs2021/mcs2021.pdf>

⁵ <https://www.nytimes.com/2021/11/21/world/us-china-energy.html>

⁶ <https://www.spglobal.com/marketintelligence/en/news-insights/blog/infographic-2022-top-tech-trends-shaping-corporations>

⁷ [Interconnected-supply-chains-a-comprehensive-look-at-due-diligence-challenges-and-opportunities-sourcing-cobalt-and-copper-from-the-DRC.pdf \(oecd.org\)](https://www.oecd.org/corporation/interconnected-supply-chains-a-comprehensive-look-at-due-diligence-challenges-and-opportunities-sourcing-cobalt-and-copper-from-the-drc.pdf)

⁸ https://www.raid-uk.org/sites/default/files/report_road_to_ruin_evs_cobalt_workers_nov_2021.pdf

inspectors are often refused entry to these sites, despite the highly dangerous conditions typically present. Abuses under a subcontracting model that allows commodities traders to exploit vulnerable workers are known to be rampant at LSM sites owned by PRC interests.

Tenke Fungurume (TF), one of the largest cobalt/copper mines in the world, is particularly notorious for worker exploitation. China Molybdenum (now known as CMOC) acquired TF from an American company in 2016 and has since blocked safety inspectors from accessing the site. CMOC has also called on Congolese troops to expel artisanal miners, engagements which have resulted in fatalities. The company acquired Kisanfu from Freeport-McMoRan, a U.S.-based mining company, in 2020.

In 2021, provincial governments in the eastern DRC suspended PRC-owned gold mining contracts for labor and environmental abuses. The Congolese government is currently revisiting a \$6 billion joint DRC-PRC copper/cobalt venture known as SICOMINES.⁹ The Congolese government is also reviewing the Tenke Fungurume deal between CMOC and state mining company, Gécamines. USDOL welcomes these developments, as they afford an opportunity for workers' rights and safety considerations to be included in any future contract iterations. The U.S. government also commends the Ministry of Mines for progress it has made in increasing oversight over mining communities.

CURRENT CHALLENGES AND POINTS OF OPPORTUNITY

No national government authority is monitoring health or safety conditions in the mining sector, while provincial-level inspections are minimal and their impacts unknown. As reported in the Department of Labor's annual Worst Forms of Child Labor Report, the DRC's national labor inspectorate's staff remain underfunded, underequipped, and poorly trained. The national inspectorate does not appear to inspect mines for two principal reasons. First, it is insufficiently resourced. Second, despite having some legal authority to address child labor and health and safety issues, the Ministry of Mines' mandate appears to overlap with MOL's. This displaces MOL's ability to enter and inspect these sites. In 2021, the national government employed only 212 labor inspectors, 75 percent of whom were over the age of retirement and did not report to work. The remaining 25 percent (roughly 53 inspectors) are charged with investigating labor violations in agriculture and other industries. Both the national and regional labor inspectorates suffer from poorly equipped offices and irregular electrical power, while lacking government-issued computers and mobile phones. Moreover, labor inspectors do not have access to vehicles to conduct inspections. At present, the national inspectorate is unable to carry out even baseline inspections in mining or any other sector of the economy. PRC-linked mining concessions are known to deny access to formal and informal oversight mechanisms, including mine safety and health inspectors, NGOs, and local multi-stakeholder committees. Following my February 2022 visit to the DRC, the MELSS recommitted to hiring and training 2,000 additional labor inspectors. USDOL's technical experts stand ready to assist in the training and capacity building of these new inspectors.

The MELSS primarily relies on provincial labor inspectorates, the mining police, industrial mining companies, and NGOs to conduct labor inspections. In 2021, provincial authorities

⁹ <https://chinaglobalsouth.com/2022/03/08/drc-opposition-leader-slams-sicomines-deal/>

reportedly conducted a small number of inspections in the formal mining sector in Haut Katanga, Tanganyika, and Lualaba, areas where child labor is prevalent. According to the Labor Inspector General, only three inspections of mine sites in the copper-cobalt producing region (Lubumbashi, Kalemie, and Kolwezi) took place in 2021 given restrictions related to the pandemic; the results of these inspections are unknown.

Progress on mining regulation. The Mining Code of 2018, now in effect, aims to boost development of the mining industry, including with tax incentives to attract foreign investment. As the Government of the DRC (GDRC) is currently working to draft and implement regulations required by the 2018 Mining Code, the MELSS has a leading role in specifying elements relating to the social responsibility of mining companies. Currently, the government lacks capacity to hold accountable companies that use a dubious subcontractor model to shed liability—both for poor labor conditions and tax evasion. Thus, USDOL supports revisions that clarify the DRC’s mineral resource sector legal model and contract frameworks. These amendments should seek to maximize the benefits of resource development for the Congolese people. Other national government agencies are reviewing tax regulations, customs and exchange regimes, and government management of land titles, along with permitting requirements.

Through USDOL’s engagement following DRC’s suspension from the African Growth and Opportunity Act (AGOA) trade preference program, the Congolese Ministry of Human Rights enacted a decree on artisanal mining with provisions for child labor and worker protection. These efforts contributed to the DRC’s reinstatement into AGOA in January 2021.

Although the GDRC has improved its regulatory framework to address formalization of the ASM sector, weak implementation has significantly diminished the effectiveness of the recent reforms. Furthermore, the GDRC lacks capacity to inspect mines across the Copperbelt, let alone enforce the applicable laws and regulations for ASM operations. Recent efforts to strengthen the regulatory framework for ASM operations, including with support from some mining companies and commodity traders, have been hampered by the COVID-19 pandemic and shifting market conditions. However, the GDRC-backed company, “*Enterprise General du Cobalt*” (EGC), created a tangible framework for ASM standards that was issued in March 2021 (the “EGC Responsible Sourcing Standard”).¹⁰ As of July 2022, EGC no longer holds its previous monopoly to purchase artisanally mined cobalt. Thus, the path toward ASM formalization remains unclear.

Voluntary initiatives are insufficient to address labor and other human rights violations.

Major companies that use cobalt in their products have joined numerous voluntary due diligence initiatives, such as the Responsible Mineral Initiative (RMI), Cobalt Action Partnership (CAP), the Fair Cobalt Alliance, and Cobalt for Development. However, these initiatives do not coordinate and often overlap; as such, they cannot effectively trace minerals from mine to smelter and further downstream. Many also do not focus on labor, health, or safety conditions at the mining level and have resulted in little to no tangible change for workers on the ground.

¹⁰ <https://www.egcobalt-rdc.com/app/uploads/2021/03/20210326-EGC-Responsible-Sourcing-Standards-English.pdf>

The U.S. Department of Labor funds programming in the DRC. We are currently managing a portfolio of more than \$10.5 million in active programming in the DRC, including:

- [**Supporting Progress on Labor Standards in the DRC**](#), a \$3 million project to help the DRC comply with labor standards, including strengthening the ability of the government, employers, and workers to improve work conditions related to wages, hours, and occupational safety and health in potential sectors such as mining and agriculture.
- [**COTECCO \(Combatting Child Labor in Cobalt Supply Chains\)**](#), a \$3.5 million project to address child labor in the cobalt supply chain through awareness raising, strengthening localized government enforcement capacity, and improving private sector monitoring and remediation of child labor violations.
- [**Global Trace Protocol Project \(GTP\)**](#), a \$4 million project that includes a focus on cobalt in the DRC and a pilot to implement a tracing program for Congolese cobalt, leveraging existing RCS Global and RMI tools. The Department of Labor also has also developed an app, [**Comply Chain**](#), to help the private sector mitigate risks in the supply chain. Additionally, USDOL's [**Better Trade Tool**](#) helps companies develop rigorous social compliance systems and advance strategic sourcing priorities. The tool's search feature enables users to search for data by country, good, type of labor exploitation, and year.

RECOMMENDATIONS FOR UNITED STATES ACTION

USG engagement with DRC government officials, mining industry executives, civil society groups, foreign government officials, and other cobalt stakeholders should advance the U.S. priority of connecting worker rights and responsible business practices with sustainable economic growth. Ongoing initiatives include:

- **Working with the Congolese government** through policy, projects, and sharing of tools and expertise to increase its capacity to address labor violations and remediate safety and health hazards in the mining sector. This includes enforcing child labor, forced labor, and mining-related laws; protecting collective bargaining rights; improving conditions related to occupational safety and health; increasing coordination among the Ministry of Labor, Ministry of Mines, and other relevant government agencies, particularly at the local level; and developing mechanisms for child protection. Continue collaborations with other U.S. Government stakeholders, including NSC, State, USDOL, USAID, USGS, USTR, and others in their engagements with GDRC on this shared goal.
- **Monitoring the cobalt supply chain from mine to battery**, as PRC-owned smelters in Kinshasa mix ASM and LSM cobalt. Monitoring and remediation efforts should also focus on refineries and further down the supply chain. ILAB is working to trace cobalt from the DRC produced with child labor at all stages of the supply chain in support of USDOL's mandate under the Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2018. This is supported by USDOL's close work with USGS to explore the upstream ASM cobalt supply chain in the DRC, in particular through discussions on shared projects (USDOL and USGS projects) to both map the cobalt supply chain and also assess the prevalence and conditions of labor violations at ASM sites.

- **Pursuing the formalization of ASM cobalt.** In furtherance of this goal, USDOL will convene a workshop to encourage private sector commitment to the EGC Responsible Sourcing Standard. This could be supported with complementary pilot projects on mining sites with a cooperative private sector operator and meaningful GDRC enforcement presence. Encouraging such a commitment to tangible and enforceable labor standards at the mine site level will help “level the playing field” for ASM miners and allow the GDRC to administer a meaningful legal framework for these most vulnerable communities.
- **Working with Treasury’s Office of Foreign Assets Control. USDOL is pursuing targeted nominations under relevant sanctions programs** to further bring attention to and address these labor abuses.
- **Encouraging the private sector to release information about their due diligence policies, processes, and mine concession operations in the DRC.** Companies should report on the sourcing and use of all minerals originating from the DRC, including the labor conditions under which they were mined.
- **Supporting multi-stakeholder coordination** to advocate for and carry out initiatives to address child labor, broader labor issues, and transparency in cobalt mining, including between the Ministries of Labor and Mines, mining communities, donor governments, businesses, worker rights organizations, and civil society organizations. This could include fostering local partnerships to (1) raise awareness of child labor and working conditions in mining; (2) pilot interventions to provide educational and livelihood services; (3) strengthen the capacity of unions and worker rights and civil society organizations to participate in natural resource governance processes; (4) share information about findings of risk assessments and third-party audits; and (5) increase labor inspections on mine sites, including those in rural areas.
- **Monitoring and addressing the role of the security sector in guarding mining concessions** through projects, research, reporting, and engagement. Both government and private security forces subject laborers to extortion and violence. Accountability for security sector abuses in the cobalt sector is gravely lacking. The USG should also encourage accountability for the rule of law, including property rights and labor rights.
- **USDOL bureaus, including the Mine Safety and Health Administration and ILAB, facilitating a south-south exchange program** between the GDRC and one or more other countries on child labor in mining, mine formalization, mining community development, and/or natural resource management. This could be accomplished by leveraging relationships with countries in the East African Community (EAC), and the Southern Africa Development Cooperation (SADC), where DRC is a member.