

# Case Study: Democratic Republic of Congo Artisanal Mining and Conflict Minerals Study<sup>1</sup>



## I. Case Study Overview

### *Research Question*

The Democratic Republic of Congo (DRC) is a vast country located in the Great Lakes region of Africa. It has nearly 77 million inhabitants, and ranks 176<sup>th</sup> on the 2016 United Nations Human Development Index (UNHDI).<sup>2</sup>

Since 1960, the DRC has been struggling with political instability related to its accession to independence. Violence has worsened since the 1990s, when the aftermath of the Rwandan genocide instigated ethnic violence in the DRC and the beginning of a protracted proxy war between various rebel groups and government forces.<sup>3</sup> Fighting has been particularly fierce in the provinces of North and South Kivu, which has had significant impacts on local populations. Poverty levels are high, and there are large numbers of internally displaced people.<sup>4</sup> Women and children who have not been able to flee conflict zones are routinely abused;<sup>5</sup> militiamen and some army commanders manipulate local civilians in artisanal mining operations, and small businesses that spring up around such zones abuse civilians by underpaying for their labor and exploiting them in the illicit sex trade.<sup>6</sup>

With the help of a number of regional and international partners, the DRC has begun to address some of these trafficking issues. For instance, in 2002 the DRC government passed a new mining code; in 2006, it modified the criminal code to better address sexual and gender-based violence (SGBV), and passed a separate law to protect children in 2009.<sup>7</sup>

In addition, it created new units within the National Police to deal with women and children's protection matters; and with respect to artisanal mining, it agreed to participate in the International Conference of the Great Lakes Region (ICGLR)'s mineral certification scheme, in order to control

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<sup>2</sup> UNITED NATIONS DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT 2016: HUMAN DEVELOPMENT FOR EVERYONE 200 (2016), *available at* [http://hdr.undp.org/sites/default/files/2016\\_human\\_development\\_report.pdf](http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf) (last visited Aug. 23, 2017).

<sup>3</sup> *See Q&A: DR Congo Conflict*, BBC NEWS (No.v 20, 2012), <http://www.bbc.com/news/world-africa-11108589> (last visited Aug. 23, 2017).

<sup>4</sup> *Democratic Republic of the Congo IDP Figures Analysis*, INTERNAL DISPLACEMENT MONITORING CTR. (Mar. 31, 2015), <http://www.internal-displacement.org/sub-saharan-africa/democratic-republic-of-the-congo/figures-analysis> (last visited Aug. 23, 2017).

<sup>5</sup> *See, e.g.*, Hannah Summers, "I Hope One Day We'll See an End to Abuse": The Woman Striving to Save Congo's Kids, GUARDIAN (June 22, 2017), <https://www.theguardian.com/global-development/2017/jun/22/end-abuse-woman-striving-save-congo-kids-mama-colonel-honorine-munyole> (last visited Aug. 23, 2017).

<sup>6</sup> *See* U.S. DEP'T OF STATE, 2016 TRAFFICKING IN PERSONS REPORT 136-38 (2016), *available at* <https://www.state.gov/documents/organization/258876.pdf> (last visited Aug. 23, 2017).

<sup>7</sup> *See* Loi 02-07 of July 11, 2002); Jois 08/018-019, July 20, 2006; Loi 009/01 of January 10, 2009.

small-scale mining production and curb the production of ‘blood minerals’.<sup>8</sup>

### **Parameters**

This case study has been produced by the American Bar Association Rule of Law Initiative (ABA ROLI)’s local research team in the DRC. The team met with civil society organizations (CSOs) and governmental institutions in the eastern DRC, specifically the provinces of North and South Kivu. Specifically, ABA ROLI spoke to representatives of six local human rights organizations with experience in trafficking in persons; these included:

- the *Centre de Recherche sur l’Environnement, la Democratie et les Droits de l’Homme* (CREDDHO);
- *Reseau CREF*;
- *Association pour le Developpement des Initiatives Paysannes - North Kivu* (ASSODIP);
- *Observatoire Gouvernance et Paix - South Kivu* (OGP);
- *Solidarité des Femmes pour le Developpement Integral - South Kivu* (SOFEDI); and
- *Justice pour Tous - South Kivu*.

ABA ROLI also interviewed officials from the government and law enforcement agencies, including:

- members of the *Service d’Assistance et d’Encadrement de Small Scale Mining* (SAESSCAM);
- members of the Special Police for Protection of Children and Women (PSPEF); and
- members of the *Police de Mines*.

This case study specifically assesses the TIP risks associated with sexual violence and sex trafficking of women and children in the artisanal mining and conflict minerals zones in North and South Kivu. It is intended to inform a comparative analysis of legal, policy, institutional, and accountability frameworks that relate to TIP in the DRC, in order to help identify legal and policy gaps that contribute to the occurrence of TIP in sub-Saharan African supply chains.

### **Definition of Trafficking in Persons (TIP)**

“Trafficking in persons” is defined in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol) as the recruitment, transportation, transfer, harboring, or receipt of persons (i.e., the act), by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person (i.e., the means), for the purpose of exploitation. Exploitation includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude, or the removal of organs.<sup>9</sup>

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<sup>8</sup> See, e.g., INTERNATIONAL CONFERENCE OF THE GREAT LAKES REGION, REGIONAL CERTIFICATION MECHANISM (RCM) — CERTIFICATION MANUAL, available at <http://docplayer.net/17171344-Icglr-regional-certification-mechanism-rcm-certification-manual.html> (last visited Aug. 23, 2017).

<sup>9</sup> UN General Assembly, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crimes, art. 3, 15 November 2000.

## II. Background and Context

### *Legal and Policy Framework for Trafficking in Persons in the DRC*

#### Legal Framework

The DRC's legal system is fundamentally based on the national constitution, from which all the powers of the government and protections for citizens are derived. In relevant part, the Constitution provides that "all Congolese are equal before the law, and have the right to equal protection under the law."<sup>10</sup> It further provides that no individual "may be held in slavery or in a similar condition . . . [or] submitted to forced or compulsory labor."<sup>11</sup> Finally, the Constitution provides that "public authorities have the obligation to ensure the protection of children in a difficult situation and to bring the authors of acts of violence against children and their accomplices to justice. All other forms of exploitation of minors are severely punished in accordance with the law."<sup>12</sup>

The criminal code of the DRC has been modified to address sexual and gender based violence, as well as TIP-related offenses. The new criminal code prohibits any exploitation of an individual's sexuality, regardless of whether the individual consented to the act; violations of this provision could result in a maximum prison term of five years.<sup>13</sup> Furthermore, the criminal code prohibits sexual slavery; aggravated sexual slavery could carry up to 20 years' imprisonment. Under the military criminal code of 2003, persons accused of slavery, sexual slavery, or the crime of forced prostitution could face death sentences. Finally, the Labor Code of 2002 prohibits slavery and forced labor also; the definition includes debt bondage, child prostitution, and other dangerous works.<sup>14</sup>

#### Implementation Framework

The government of the DRC has established a number of agencies to help address the problem of sexual slavery and forced labor in the country's artisanal mining sector. These include:

##### *The Special Police Unit for the Protection of Women and Children*

The UN, the European Union (EU), and international civil society organizations have all supported the establishment of these women-led units for managing the needs of women and children. While these units have a substantial support structure, the officers with whom ABA ROLI researchers met outlined a number of challenges that hinder their effectiveness. These include the fact that commanders have limited capacity to control or guide officers in more rural areas, and the fact that the units lack personnel. While police battalions generally comprise up to 400 officers, the Women and Children's Unit has less than 50 officers spread over the large provinces.

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<sup>10</sup> Constitution of the Democratic Republic of the Congo, 2005, art. 12, *available at* [https://www.constituteproject.org/constitution/Democratic\\_Republic\\_of\\_the\\_Congo\\_2011.pdf?lang=en](https://www.constituteproject.org/constitution/Democratic_Republic_of_the_Congo_2011.pdf?lang=en) (last visited Aug. 23, 2017).

<sup>11</sup> *Id.* at art. 16.

<sup>12</sup> *Id.* at art. 41.

<sup>13</sup> Loi 06/018, *supra* note 6, at art. 174.b 1-4.

<sup>14</sup> See *Child Labor and Forced Labor Reports: Democratic Republic of the Congo*, DEP'T OF LABOR, BUREAU OF INT'L LAB. AFF., <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/congo-democratic-republic> (last visited Aug. 23, 2017).

### *The Special Police Mining Unit*

This Unit is charged with enforcing the mining code. Members of the Unit help to ensure, for example, that pregnant women and children under the age of 16 are not employed on mining sites or on any aspect of the mining production chain; they are also charged with investigating any other alleged violations of the Mining Code.

Like the Women and Children's Unit, the Mining Unit is understaffed and overwhelmed. Interviewees have reported that they lack sufficient capacity to control mining sites or effectively mitigate or manage TIP-related crimes that may occur in and around mining operations. Furthermore, officers do not have sufficient equipment or resources to identify pregnant women and children beyond mere visual inspection; as a result, it is not known how many at-risk individuals continue to be employed in artisanal mining operations owing to this lack of resources in the oversight body.

### ICGRL Independent Auditors

Local and international civil society organizations, together with auditors from the ICGRL who are charged with enforcing the regional mineral certification scheme,<sup>15</sup> inspect mining sites to ensure that they do not use child labor or otherwise use practices that would implicate the labor laws.

Other bodies that are involved in quarterly artisanal mining site audits are SAESSCAM, a government body, and elected members of civil society. Generally-speaking, these audits are intended to indicate whether mining sites comply with international best practices standards—particularly with respect to ensuring that mine workers are not underage, pregnant, or suffering some disability. If forced labor practices are found on mining sites, auditors may provide yellow or red certifications. While this on its face appears to be a fair check against the use of forced labor, ABA ROLI interviewees suggest that it is comparatively easy to get around the measure—it has been reported that laborers whose employment would otherwise cause a labor law violation are asked to avoid mining sites on known ICGLR inspection days.

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<sup>15</sup> INTERNATIONAL CONFERENCE OF THE GREAT LAKES REGION (ICGLR) & PARTNERSHIP AFRICA CANADA, BRIEFING NOTE ON THE ICGLR REGIONAL CERTIFICATION MECHANISM 1-2, *available at* [http://www.pacweb.org/Documents/icglr/PAC\\_Briefing\\_Note\\_on\\_the\\_ICGLR\\_Regional\\_Certification\\_Mechanism\\_June\\_2012.pdf](http://www.pacweb.org/Documents/icglr/PAC_Briefing_Note_on_the_ICGLR_Regional_Certification_Mechanism_June_2012.pdf) (last visited July 19, 2017).

### III. Analysis

#### *Predominant Forms of TIP in the DRC*

Generally-speaking, the TIP risks at artisanal mining sites in North and South Kivu relate to: (1) sexual exploitation of women and children in and around mining sites; and (2) forced labor at and around mining sites.

Women and children are particularly vulnerable to TIP in the areas investigated in this case study; poverty forces them into dangerous and precarious employment, and other economic factors often impede victims' ability to consent to the conditions of their labor, or even necessarily be able to discern that they are victims of exploitation at all.

#### *Trafficking in Persons Risks*

##### Risk 1: Sexual Exploitation of Women and Children

Sexual exploitation exists in the artisanal mining zones at Walikale, Lubero, Masisi, Kalehe, Walungu, Mwenga, and Fizi.

In all of these zones, impoverished women and children are exploited to satisfy the sexual desires of mine workers and traders. Victims are reportedly hired to serve as hotel waitresses; they are not permitted to reject customers' sexual advancements, and must go to hotel rooms upon customer invitation. Hoteliers take advantage of victims in such cases, and in fact use the advertisement of waitresses' sexual services as a way to grow their businesses.

Some of the individuals interviewed by ABA ROLI have also mentioned that women are sexually exploited in order to facilitate the illegal transnational traffic of minerals. It is reported that illicit minerals traders informally promise women—often internally-displaced women—money, in exchange for their transporting substances (primarily gold) in their genital areas in order to facilitate the trafficking of those minerals across borders. One interviewee has suggested not only that traders often fail to pay their victims in such cases, but that they often require victims to provide additional sexual services before payment is rendered.

##### Risk 2: Labor Exploitation

ABA ROLI notes that many victims of labor exploitation in the DRC's artisanal mining sector are in fact unaware of the abusive conditions of their employment. Often, employees perform dangerous work, including carrying heavy weights, without being able to negotiate the cost of their labor. Debt bondage and coerced labor—i.e., workers being told to perform work at mines or lose their lives—also appear to be rife.

It also appears to be the case that those who run and/or operate artisanal mines lack negotiating power when it comes to setting minerals prices. Generally-speaking, interviewees note that it is traders and middlemen and not vendors that fix the prices of the raw materials. Fluctuations in international markets provides middlemen with excuses to offer lower payments for heavy labor; as such, the system allows for laborers, particularly women and children, to be under-compensated for their work.

### Risk 3: Security Concerns and Blood Mining

Security is a major concern in most artisanal mining zones. In many areas, rebel groups continue to battle the government army and police in order to obtain control over the mining sites. Villagers around the mining sites, during conflict conditions, have only two options: they may either permit themselves to be displaced and throw themselves on the mercy of scarce international help, or in the alternative, risk remaining in mining zones and living under the rules of whatever group happens to control the zone.

Particularly in conflict areas, exploitation by both rebel groups and the army is common. Interviewees note that migrant smuggling is common when conflict arises also.

## **IV. Conclusions**

The DRC is slowly improving its legal framework in order to try and prevent or mitigate the TIP risks in its artisanal mining industry. The criminal law takes greater account of sexual exploitation and labor abuses, and the country's participation in the ICGRL mineral certification scheme certainly promises to account for and reduce TIP risks in artisanal mining zones.

However, continued conditions of conflict make it difficult to realize the promises of these laws, and a lack of institutional capacity on the part of agencies charged with oversight of artisanal mines does nothing to decrease TIP and migrant smuggling risks.

Finally, institutional weakness in the justice system undermines the value of TIP criminalization. ABA ROLI's interviewees in both North and South Kivu were unable to identify any TIP cases that had resulted in a court decision, regardless of whether the result was conviction or acquittal; however, this is not to say that the justice system is not accounting for TIP at all. One interviewee in South Kivu mentioned that his attorneys at the Kamituga Peace Court were handling ten TIP-related cases, of which two were pending a final court decision.

In spite of these victories, much more needs to be done in terms of providing greater assistance to auditors and investigators, and working towards reducing conflict-related vulnerability, in order to reduce TIP risks in DRC's artisanal mining sector.