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Masisi Territory, North Kivu Province, Democratic Republic of the Congo. (UN Photo / Marie Frechon)

Doing Good, while Doing Well

Is There a Win-Win Formula for Investing Responsibly in Congo's Minerals Sector?

By Holly Dranginis July 2014

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Executive Summary

Natural resources have fueled violent armed conflict and invited corporate misbehavior for decades in eastern Democratic Republic of the Congo ("Congo"), but that trend is beginning to shift. While much of the minerals sector still lacks adequate security, and armed groups remain active, conditions in at least some areas are improving. State and regional institutions are beginning to advance reforms in the minerals sector, and there is a growing push for foreign private investment in the region.

Indeed, the goal of a safer and more regulated minerals market in eastern Congo and the Great Lakes region of Africa is slowly advancing, making sound investment and sourcing an increasing possibility. This shift is also linked to broader political efforts to establish sustainable peace. Due to the region's vast minerals wealth, economic development and minerals regulation are critical to the safety and wellbeing of its citizens. Meanwhile, there is growing awareness of the importance of corporate social responsibility related to private foreign investors in fragile, resource-rich states. Investment in the minerals sector requires companies to attend to many core principles of peacebuilding: transparency, human rights, and environmental management. As minerals sector regulation continues, companies and state actors should pursue investment and development with these larger goals in mind.

Congo remains a challenging operating environment for foreign investors and mining companies, with high corruption rates, severe gaps in infrastructure and rule of law, and significant security concerns. However, change is afoot, making responsible, profitable investment more realistic than in the past. A multi-stakeholder group has validated 112 mines in Congo as "conflict-free," and 21 companies are now sourcing from 16 of them.¹ Section 1502 of the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank law") spurred market changes that have helped significantly reduce the involvement of armed groups in the tin, tantalum, and tungsten ("3T") mines, giving rise to new clean sourcing initiatives ripe for investment. Artisanal gold mining, however, remains a significant challenge.

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A more regulated mining sector has the potential to benefit both local communities and private investors and companies by improving security, economic opportunity, and regional peacebuilding. Early progress in mineral sector reform is starting to benefit local communities and facilitate economic development. Meanwhile, regional dialogues aimed at formulating political agreements and plans for implementing the Peace, Security and Cooperation Framework are underway, led by Angolan President José Eduardo dos Santos and in coordination with U.S. Special Envoy Russ Feingold and the new U.N. Special Envoy, Said Djinnit.

A critical part of whether investors and companies will both make a profit and contribute to sustainable peace and development in the Great Lakes region is whether they conduct their operations in accordance with high standards of responsible business practice. Foreign investment must promote, not undermine, key good governance priorities. These priorities include advancing rule of law, eliminating human rights abuses within the security sector, conserving the environment and rich biodiversity, and respecting indigenous rights, land rights, and freedom of information. Companies must invest responsibly to ensure that they do good as they seek to do well and that local Congolese communities benefit from Congo's mineral wealth.

This report provides guidelines for companies investing in and sourcing from mines in the Great Lakes region, particularly eastern Congo, to ensure they do so in a responsible manner and maximize their investment opportunities. In particular, they should operate with transparency, engage affected communities meaningfully and responsibly, and prioritize environmental protection. Numerous international guidelines provide benchmarks to guide strategy development.² Aligning business practices with leading-edge international principles and values will help companies operate more efficiently, fulfill their legal and ethical obligations, build and protect brand reputation, and encourage peace in the region.

Recommendations

We offer the following recommendations for companies:

- 1. Invest in and/or source from certified conflict-free mines.** Companies should ensure their mines are validated as “green” (conflict-free) by multi-stakeholder validation teams³ and receive credible certification according to the standards of the International Conference on the Great Lakes Region (ICGLR).
- 2. Exercise transparency by implementing the Extractive Industries Transparency Initiative (EITI) guidance for companies and other transparency principles.** Companies should disclose payments to the government, contract terms, employee wages, and impact assessments whenever possible. In non-EITI compliant countries, companies should encourage governments to become EITI compliant. Companies should also cooperate with and publicly encourage freedom of information and transparency coalitions like Publish What You Pay.
- 3. Help create alternative livelihoods for artisanal mining communities, and support the formalization of the artisanal mining sector.** Companies can play a supportive role with artisanal mining communities by employing artisanal miners in large-scale operations, providing alternative livelihoods trainings and opportunities, and making financial contributions to the formalization of the sector.

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4. **Consult early and often with local communities to prevent and mitigate adverse social impacts.** Companies should consult with communities affected by the operations to establish realistic agreements, manage expectations, avoid contributing to health risks, and boost local economic opportunities. Companies should prioritize inclusivity, seeking input not only from village chiefs but diverse community members, especially women.
5. **Help child miners transition to school and vocational training.** Companies should address child labor with a transitional approach, working with organizations to help children transition from artisanal mining to school or alternative vocational training. Companies should support and cooperate with organizations that provide trauma counseling, education, and an emphasis on security and opportunities for girls.
6. **Disclose security arrangements, and require compliance with human rights standards among security providers.** Companies should incorporate human rights standards into their security risk assessments and disclose security arrangements to communities. Companies should avoid using national army units for security and prohibit the use of unreasonable force or violations of human rights among security partners, including private contractors and state police units.
7. **Protect Congo's biodiversity and mitigate negative environmental impacts.** Companies should prevent, mitigate, and monitor adverse environmental impacts of mining and infrastructure development, prioritizing human welfare as well as biodiversity and land conservation. They should conduct environmental impact assessments before exploration and throughout operations, and companies should involve community members in the assessments and make findings public. Government authorities should require strict compliance with all national and international environmental laws.

In order to build an environment that facilitates investment and benefits communities, we offer the following recommendations to relevant state authorities in the Great Lakes region:

1. **Improve the investment climate in Congo's minerals sector.** Congo's national government should operationalize the revised mining code and implement it fully and with consistency.
2. **Finalize the regional minerals certification scheme, and harmonize minerals tariffs.** The ICGLR should finalize the Great Lakes regional minerals certification process and harmonize minerals tariffs to incentivize investment in the region. Angolan President Dos Santos should incorporate these goals into the regional dialogues.
3. **Formalize the artisanal mining sector.** The Congolese Ministry of Mines and the Service for the Assistance and Supervision of Artisanal and Small-Scale Mining (SAESSCAM⁴) should take concrete steps to increase the formalization of artisanal mining, especially in the gold sector.
4. **Implement human rights standards in security sector reform.** Heads of state and U.N. peacekeeping operations should emphasize human rights, freedom of assembly, and non-use of unreasonable force in security sector reform, especially related to mining communities and nonviolent demonstrations.

- 5. Protect national parks, and enforce international environmental laws.** The Congolese government should disallow companies from operating in national parks or U.N. Educational, Scientific and Cultural Organization (UNESCO) World Heritage Sites and refrain from redrawing national park boundaries to accommodate extractives industry operations.

Introduction

For decades, dozens of armed groups and army elements have terrorized local populations in the Great Lakes region of Africa, particularly in eastern Congo, resulting in cycles of widespread atrocities. Many of Congo's worst perpetrators of human rights violations have drawn financial revenues and motivation from the country's natural resources, particularly valuable minerals essential to producing electronics, motor vehicles, and jewelry. Congo and the region also have a long history of exploitation and corruption by foreign investors. From King Leopold's rubber plantations to corrupt deals with speculators who have sold mining assets at unethical rates, many government authorities and corporate actors have tainted the landscape of large scale and foreign investment in the region.

The region's investment climate leaves much to be desired. The World Bank ranks Congo 183 out of 189 in its "ease of doing business" index, based on indicators like starting a business, paying taxes, and accessing electricity.⁵ Moreover, Congo's political situation is fragile, with armed groups still active, an uncertain timeline for presidential elections, and widespread concern that President Joseph Kabila may alter the country's constitution to seek a third term, despite popular opposition. Inadequate infrastructure, poor or non-existent governance regulatory systems, and weak rule of law create an environment that breeds corruption, undervaluation, and exploitation. In a 2013 report, the Africa Progress Panel, a public-private coalition of experts, estimated that just five major concession deals made between 2010 and 2012 involving offshore companies cost the Congolese government \$1.36 billion in revenues due to undervaluation.⁶ Opacity on the part of private and government actors persists, and many armed groups remain active, especially around gold mines in the Kivus.

Congo also hosts some of the most valuable biodiversity and open space on the planet, adding to investment challenges. Companies must develop and comply with rigorous environmental standards concerning both human health and the preservation of the region's natural flora and fauna. Increased local and global activism aimed at conserving Congo's national parks in the face of corporate extractives interests highlights the importance of thoughtful business practice in this area for preserving brand reputation, avoiding legal complaints, and advancing the notion that a profitable minerals sector in Congo is not inherently at odds with environmental interests.

Recent developments have indicated that opportunities for sound investment are growing. A new regional certification mechanism is taking shape, with stricter transparency standards and infrastructure development, offering companies the opportunity to source verifiably conflict-free minerals from the region. With the reduced presence of armed actors in mines, spurred in part by the Dodd-Frank law's disclosure requirement related to conflict minerals, retailers, investors and mining companies are joining forces to test the waters of minerals sector development. Electronics companies like Motorola Solutions and Intel, along with regional governments and coalitions like the Public-Private Alliance for Responsible Minerals Trade (PPA) have expanded conflict-free sourcing in artisanal and small-scale mining areas. These initiatives provide options for companies to invest in closed-pipe regulated mines and serve as models for

new responsible mining operations. Initiatives like the Virunga Alliance demonstrate how development, profits, and environmental protection should no longer be considered at odds and provide models for ethical and effective impact investment opportunities.

Finally, extractives companies operating in fragile states are increasingly vulnerable to media attention, both positive and negative. When the major electronics retailer Intel announced that its entire line of microprocessors in 2014 would be conflict-free, the story made headlines in numerous international news outlets and business journals, and celebrities and college students across the country sang Intel's praises.⁷ When communities and human rights activists accused Royal Dutch Shell of involvement in the violent suppression of local protests against its operations in Nigeria, news outlets and organizations reported the story widely. The coverage, the allegations, and the lawsuit that followed put Shell in the spotlight for years.⁸ In Congo, local activism in the minerals sector is growing, with particular attention on new companies' transparency and community relations practices. Emerging international protocols and guidelines give companies an opportunity to better understand their impact, avoid costly delays and litigation, preserve brand reputation, and promote mutually profitable development.

Guidelines

1. Conflict-free: Use certified conflict-free mines and smelters.

The recent progress in Congo and the region toward a conflict-free minerals trade presents a unique opportunity to investors. In order to support that momentum, companies should contribute to the growth of new regulatory systems and infrastructure. One of the core components of investing responsibly in Congo is to ensure that the mine the company helps build or support is certified as conflict-free by ICGLR standards. This involves two steps: first, implementing the Organization for Economic Cooperation and Development (OECD) due diligence guidance, and second, requesting that the host government conduct an ICGLR mine inspection. So far, 95 mines have passed as "green," which is the first step under ICGLR to be certified as "conflict-free." That latter status has only been achieved by a handful of mines but should increase as ICGLR builds out its certification process. Companies should also join related multi-stakeholder groups like the Public-Private Alliance for Responsible Minerals Trade (PPA) and source from conflict-free smelters audited by the Conflict-Free Sourcing Initiative (CFSI), which aims to bring smelters and refiners into compliance with international conflict-free standards. Finally, companies can source from closed-pipe gold mines in the Kivus. In doing so, they should follow OECD due diligence guidance and support civil society monitoring by cooperating with community groups like GATT-RN,⁹ which monitor minerals sector activities to promote transparency and security.

2. Transparency: Implement the Extractive Industries Transparency Initiative (EITI) Business Guidelines for companies and other transparency standards.

Transparency is critical to responsible investment on the part of the government and companies alike and cuts across virtually every stage of the relationship between parties in mining operations, including affected communities. Companies should conduct contract negotiations, revenue sharing, community engagement, employment contracts, social and environmental impact assessments, and dispute resolution in accordance with high standards of transparency. Without keeping these processes open, civil society has few means to effectively monitor companies and governments and to demand public benefit

and respect for citizens' rights. Secrecy inhibits the growth of civil society, sows seeds of resentment and distrust, and encourages corruption in both the public and private sector, which ultimately harms companies and their operations. Keeping activities transparent will also help companies avoid potential unfounded claims of abuse or illegal activity, preserve their reputations, and save valuable time and money.

Advocacy organizations like Transparency International, Publish What You Pay, and Revenue Watch have led reforms in the minerals sector to combat corruption and ensure that revenues from extractives industries in fragile states benefit local populations. Early standards required companies and governments to disclose tax payments and revenue flows in the hope that civil society would take those public records and demand more responsible behavior. Since then, advocates have found that if the public is to combat corruption effectively, companies and governments must disclose a range of information and processes in addition to revenues. New standards include the disclosure of employee wages, contract terms, and impact assessments.

Tax avoidance and lack of transparency related to mining operations in fragile states is common, spurring a cycle of state and corporate corruption and limiting revenues that could potentially benefit the public.¹⁰ "African countries often fail to collect reasonable taxes on mining," reported an panel of experts led by Kofi Annan in May 2013. "For example, Zambia's copper exports were worth \$10 billion in 2011, but its tax receipts from mining were a meagre \$240m."¹¹ In January 2014, an ongoing probe by the Congolese public prosecutor's office revealed claims that mining companies owe the Congolese government \$3.7 billion in unpaid customs duties and fines, though some state representatives and companies named have challenged the accuracy of the claims.¹² The probe also implicated Congo's customs agency (Direction générale des douanes et accises, DGDA) of corruption and destroying evidence of tax evasion.¹³ Quoting an International Monetary Fund report, Revenue Watch said, "The macroeconomic environment in DRC remains uncertain. In 2007, the International Monetary Fund stressed 'the weaknesses of revenue mobilization [which] are particularly pronounced in the mining sector. Widespread corruption, lack of controls, and tax exemptions lead to large revenue losses. A sustained approach to managing joint venture contracts would improve government revenue from mining (less than ½ percent of GDP in 2005) and improve transparency.'"¹⁴

Companies should demonstrate their commitment to transparency by following the Extractive Industries Transparency Initiative (EITI) standards, and by pressing the non-EITI compliant governments to implement EITI standards. They should disclose payments as well as information about their operations. They should provide the names of local companies with which they work and disseminate their policies on human rights and anti-corruption for the host government, home governments, and the public.¹⁵

In April 2013, EITI suspended Congo for failing to meet its requirements. In July 2014, Congo reached EITI "compliant" status for demonstrating its commitment to transparency and accountability in its natural resource sectors.¹⁶ In a July 2014 press release, civil society groups said they "congratulate all parties (government, private sector, civil society) who made it possible to attain this significant step." The groups emphasized that "the DRC's Compliant status does not imply the country has suddenly become 100% transparent..."¹⁷ Congolese authorities should complete an independent investigation of DGRAD,¹⁸ a revenue collection agency that is allegedly missing \$26 million dollars.¹⁹ EITI focuses on government actors and compliance, but it also offers useful standards for company practices in the EITI Business Guide.²⁰

Finally, companies should also cooperate with civil society groups, journalists, and other transparency advocates. By building positive relationships with them and publicly encouraging their work, companies can demonstrate their own good behavior for public recognition and facilitate greater transparency, including among their peers and government partners.

3: Artisanal mining: Support formalization and create alternative livelihoods

Artisanal and small-scale mining is prevalent in eastern Congo, providing livelihoods for tens of thousands of miners and their families.²¹ Companies that develop large-scale mining projects in eastern Congo should engage with affected artisanal miners to avoid land disputes and abrupt loss of livelihoods for miners. Companies should maintain inclusive, sustained dialogue with miners, and they should employ local miners and establish or support alternative livelihoods programs.

Many artisanal miners in the Kivus operate informally, often outside the scope of laws governing land rights and labor requirements. They often mine areas for which foreign companies have exploration permits or where land titles are unclear. Sometimes artisanal miners migrate to areas where companies are beginning operations in pursuit of a high yield. Artisanal miners in eastern Congo are often transient and uniquely impacted by the armed conflict; when armed groups take control of mining areas, artisanal miners are often forced to flee or conscripted into forced labor. Some artisanal miners in Congo have formed cooperatives, which are designed to organize artisanal miners, create roles and equitable earnings among them, give them formal recognition by the state and local authorities, and provide bargaining power with middlemen and companies. At the moment, many cooperatives in eastern Congo only exist on paper, and they need resources and government recognition to formalize their activities.

Mining companies should assess the scope of their impact on artisanal mining communities in the area. They should clearly communicate the company's rights to the concession and how its leaders plan to mitigate adverse impacts on artisanal miners. Once companies establish communication, they can help artisanal miners by supporting efforts to formalize the sector²² and allow miners to surface mine select parts of the concession.

Companies should train and employ as many local artisanal miners as possible, ensuring safe conditions and fair hours and wages. In most circumstances it will be impossible to employ all artisanal miners in the area. Companies should thus support or establish alternative livelihoods programs in order to alleviate security concerns and unrest that companies often face when their operations invite in-migration. In order to ensure quality and streamline these efforts, companies can collaborate with nongovernmental organizations that are already setting up programs, for example in agriculture or microfinance. Alternative livelihoods programs should always be developed in consultation with artisanal miners and with the understanding that artisanal mining is relatively lucrative employment. Transitioning to other sectors can be difficult for miners and may require added incentives and significant upfront capital.²³ Companies can also establish small commercial zones near the concession for alternative business opportunities like cafés or convenience shops to absorb the influx of job seekers. Finally, companies should be aware that prostitution and child labor are common in artisanal mining communities. Companies should report rights abuses to U.N. agencies and government authorities.

The primary responsibility for formalization and alternative livelihoods for artisanal miners lies with the state. Thus, the Congolese Ministry of Mines and the Service for the Assistance and Supervision of Artisanal and Small-Scale Mining (SAESSCAM) should help formalize the artisanal mining sector.²⁴ For

example, they should designate more areas as Artisanal Mining Zones (zone d'exploitation artisanal, ZEA) for legal artisanal mining by registered miners. Moreover, Congo's mining mapping initiative, Cadastre Minier (CAMI), established to survey and demarcate artisanal mining land, should work to fulfill that mandate. Local and national government authorities should not rely on mining companies to formalize artisanal mining or build out alternative livelihoods. Instead, state authorities should develop these sectors, preserving farm land for agriculture and building the financial and political institutions necessary for viable employment, leaving companies to fill gaps among only select miners and communities directly affected by the companies' operations.

4. Community impact: Consult early and often with local communities to prevent and mitigate adverse social impacts.

One of the greatest challenges for mining companies in fragile states is managing their impact on local communities. Industrial mining projects have significant effects on surrounding community members' land rights, health, environment, livelihoods, and cultural practices. The key elements of a successful community engagement model are early consultations, the development of realistic, consensus-based agreements, and strategic social investment in community programs like health clinics and schools. Companies should conduct a social impact assessment before exploration begins²⁵ and consult with local communities, aided by mediators, on an ongoing basis.²⁶ Social impact assessments should account for demographics, community relations, communication between local authorities and citizens, and social and cultural values.²⁷

GUATEMALA CASE STUDY: CONDUCT THOROUGH AND INCLUSIVE SOCIAL IMPACT ASSESSMENTS

In 2006 when the company Goldcorp acquired Glamis Gold, it inherited the Marlin mine, situated in a northwestern region of Guatemala near Huehuetenango. In the years that followed, Goldcorp became an industry leader in growth.²⁸ Meanwhile, the Guatemalan government saw opportunity in gold's ballooning price, and it issued 300 MINING concessions, the majority in close proximity to indigenous Mayan Mam communities. Without adequate transparency and community engagement, deep divisions between artisanal miners and surrounding communities developed.²⁹ Members of the indigenous community San Miguel Ixtahuacan filed complaints about health concerns, contamination, and a growing climate of intimidation driven by Goldcorp and state actors.³⁰ In response, Goldcorp spokesperson Jeff Wilhoit said the allegations were "simply unfounded."³¹ The Canadian government accepted the complaint, and upon review said the situation merited "further examination," then later closed the complaint without ruling on allegations.³² Goldcorp admits the mine has been the subject of attention among activists, and maintains that it "places high priority on open, participative dialogue."³³ Studies led by Physicians for Human Rights found that out of fear of toxicity, community members had stopped using rivers surrounding the dam. In fact, water sources tested high for arsenic, aluminum and manganese against the US EPA's National Drinking Water Standards.³⁴ Goldcorp has responded, "Water samples taken by [the Guatemalan Ministry of Environment and Natural Resources] and analyzed in their own lab...concluded no negative results from any discharges to date."³⁵

In 2010, community protests escalated and the International Labor Organization and the United Nations called for suspension of the mining operations. "Our fight is pacifist and democratic because we are using the ancestral mechanisms of our people to make decisions

about our land,” said one community member.³⁶ Based on the community’s claims, the Inter-American Commission of Human Rights (IACHR), used a rare provisional authority to force the government to suspend operations and ensure that the community had clean drinking water.³⁷ Today, Goldcorp has established new community initiatives, acknowledging, “Engagement with the [IACHR] has improved relationships with and among the Guatemalan government and local communities.”³⁸ The IACHR has since lifted the suspension of operations on the Marlin mine.³⁹

Yet lack of transparency in mining projects, repressive state conduct, and longstanding land rights issues fuel ongoing disputes today. On June 23, 2014, thousands of indigenous farmers blocked the main highways in Guatemala to protest mining and hydroelectric operations in their communities.⁴⁰ The demonstrators, convened by the community council (Consejo de Pueblos Mayas de Occidente, CPO), blocked roads to denounce the exploitation of indigenous lands by foreign mining companies. Joining the CPO were unionists from the health industry, who called for an end to mining activities, citing environmental concerns.⁴¹ A comprehensive approach, combining dedicated community engagement, respect for land rights and human rights, and transparency can help companies avoid this entrenched cycle of liability, delayed operations, and community dissatisfaction in their activities in eastern Congo.

Consultations and Mediation

Early and regular consultations with communities are critical to engender local trust in a company’s operations and to manage expectations and prevent unrest. Mike Loch, Director of Supply Chain Sustainability at Motorola Solutions, said when the company set up its pilot closed-pipe mine in Katanga, communication was key. “We made sure everyone knew what we were doing,” he said. “If it’s not credible and not reliable, it’s not sustainable.”⁴² This approach is not a given among companies operating in the region. In Karamoja, Uganda, Human Rights Watch found that in collaboration with the national government, several extractive companies came to Karamoja seeking gold and marble and failed to adequately communicate with affected communities. As a result, they infringed on land and indigenous rights by exploring and mining on land that belonged to indigenous groups.⁴³ One of the community members said, “If companies come, as a visitor comes to your home, they should first consult you.... Instead, they go to the government only, they don’t come to us...”⁴⁴ Even where a company consults with select community representatives, chiefs, or elders in addition to the government, members of the general population may feel excluded if information dissemination by local leaders is inadequate.

In eastern Congo, many communities are organized into a system of civil society committees with leaders appointed by local government. While this system aims to give civil society a unified voice in meetings with state and private sector actors, it does not always allow for inclusivity, particularly for marginalized groups like women and indigenous people. Women often bear a disproportionate burden when extractive industries are mismanaged, yet they are often underrepresented in dialogue related to memorandum of understanding agreements and social impact assessments.⁴⁵ In running its operations at the Twangiza mine in South Kivu, Banro Corporation (a Canadian gold exploration company) initially engaged only with national and provincial authorities along with community chiefs in a good faith effort to communicate with the appropriate stakeholders about their operations.⁴⁶ Banro eventually found that the village chief was not sufficiently informing them of all relevant local concerns, and community members felt excluded.⁴⁷ By expanding their consultations to reach ordinary citizens and civil society groups with the

guidance of the American Bar Association Rule of Law Initiative (ABA ROLI), Banro's community relations are improving.⁴⁸ "They are showing good faith," said ABA ROLI's Congo Country Director Charles Ghee, of Banro.⁴⁹ "They're now open to learning."⁵⁰ To capitalize on this lesson, companies should meet with communities at least once every three months, using both group and individual consultations, to ensure the process is inclusive. Companies should gather input from those who are unable to participate in group consultations or who may be excluded from the process due to stigma, hierarchies, or discrimination.

Strategic Social Investment

Companies should help ensure that local communities benefit from mining operations, and companies should work to offset potential negative impacts by establishing a strategic social investment plan. To do this, many companies create a foundation for funds earmarked for health, education, and alternative livelihoods programs. Congo's constitution requires that companies engaged in natural resource extraction "improve the wellbeing of local communities through the implementation of economic and social development programs."⁵¹ Social programs may include microfinance projects, water treatment systems, schools, and health facilities, but the programs pursued should be tailored to each specific community's stated needs. Companies should engage with communities in an inclusive process to discuss communities' needs and companies' capacity for investment. Together, they should develop and implement a memorandum of understanding to memorialize agreements, and they should clearly communicate the nature and scope of the proposed projects to establish realistic expectations and authority structures.⁵²

Community-based organizations and local professionals should manage the implementation and operation of strategic social investment programs to ensure long-term sustainability and effectiveness. In setting up health clinics and schools near its Twangiza mine in South Kivu, Banro found that transferring ownership to community-based organizations and local professionals helps encourage long-term sustainability and effectiveness of projects.

Community Resettlement

Companies commonly resettle local communities when establishing exploration or mining operations in highly populated areas.⁵³ Relocation is often economically, culturally, and socially disruptive; companies should thus make efforts to ensure relocation is limited and rights-based.

Article 452 of the Congolese constitution requires companies to "provide compensation in the event of the relocation of the populations from their place of residence."⁵⁴ But companies inevitably face nuanced challenges in resettlement decisions and implementation, and they should follow guidelines that go beyond minimum domestic legal requirements. Doing so will ensure that companies fulfill the rights of affected communities and avoid unrest or litigation that could delay operations and cause unnecessary strife and expenditure for all affected parties.

Companies should begin with an assessment of the need and scope of resettlement. If resettlement is necessary, companies should identify potential partners and liaisons to assist in the process, including nonprofits, consultants, village chiefs, community members, and neighboring communities. They should keep the process as inclusive and transparent as possible by holding regular consultations with affected

residents and communicating their plans for relocation to local government authorities and all affected communities. Relocation should occur only where necessary and legal according to the concession contract and domestic and international law. Companies should adequately compensate and comfortably resettle communities without upsetting the economic and social balance between resettled and non-resettled communities.

A critical part of the resettlement assessment should be whether or not the land has ancestral value, in which case resettlement should be a last resort and companies should take extra measures to understand what compensation is appropriate for communities being moved off the ancestral land.⁵⁵ In some cases appropriate compensation will extend beyond financial compensation and housing to funding more costly initiatives like specialized community-led education programs or memorials preserving cultural and ancestral values and practices associated with the land. Companies should avoid seizing and operating on ancestral land in compliance with international legal instruments to which Congo is a signatory that guarantee the rights of indigenous groups, including the right to independently manage their land, protection of their land against the larger state, and the right to conservation of biological diversity.⁵⁶

Finally, companies must consider the impact resettlement will have on social cohesion and livelihoods, particularly agriculture. When communities are resettled into environmentally limited or linguistically isolated areas, they are often cut off from critical social and economic networks. Companies should avoid moving a community into such isolation by consulting with them about these issues and assessing the surrounding area. Resettlement programs in the past have also faltered when communities are moved from an area with fertile soil to an area where soil is low quality or barren. As a general rule, communities relying on agriculture should only be resettled to land with equal or higher soil quality and water access than their original land.

Grievance Mechanisms

Companies can use grievance mechanisms as a tool to mitigate negative social impact and support the fulfillment of social, economic, and civil rights of the communities affected by company operations. Grievance mechanisms give citizens a venue for filing complaints and receiving fair consideration. International financial institutions like the World Bank have developed working models for these processes. For example, the Office of the Compliance Advisor Ombudsman (CAO) was developed in 1999 to process community grievances related to projects established by the private investment arm of the World Bank.⁵⁷ It aims to provide quasi-judicial processes by which grievances related to development projects, like hydroelectric dams, are investigated and resolved. The African Development Bank has a similar safeguard, called the Independent Review Mechanism, which monitors the bank's compliance with its own protocol and resolves disputes related to a project's potential harm to communities or the environment.⁵⁸ These models are in their early stages and require improved independence and equality of arms, but they illustrate a trend toward providing community grievance mechanisms for large-scale projects.⁵⁹

Companies investing in eastern Congo's mining sector should support the development and improvement of accountability and grievance mechanisms like these, cooperate with investigations, and ensure that the protocol is inclusive and transparent.

5. Child labor: Help child miners transition to school and vocational training.

Child labor is widespread in eastern Congo, due in large part to the extreme poverty and lack of rule of law. Manager of advisory services at the nonprofit organization Business of a Better World (BSR) France Bourgouin said recently, “If your company sources tin, tantalum, and tungsten from the Democratic Republic of the Congo (DRC) and the Great Lakes Region, chances are, children are working in your supply chain.”⁶⁰ Companies should exercise due diligence to learn the extent to which child labor is occurring on or near its concession. Companies should alert state authorities about its activities and findings related to children affected by mines, and companies should cooperate with partners who are well-positioned to help children transition out of mining work.

The International Labor Organization calls mining one of the worst forms of child labor, due to the dangers and health risks it poses to children.⁶¹ Children often work voluntarily or are forced to work in mines to support themselves and their families. Despite Congolese and international laws against child mining, thousands of children work in Congo’s mines. Although Congo’s Ministry of Labor, the Ministry of Justice and the national police are responsible for enforcing child labor laws, these agencies are understaffed and carry out most of their investigations in urban areas.⁶²

Companies should refrain from employing children or allocating surface mining areas for mining by children. However, they should also avoid abrupt investment suspension or disengagement from mines where child labor occurs. Instead, companies should carefully investigate the status of child labor and how it affects the local population’s livelihoods. They should then support transition programs to gradually move children from mining dependency into school or vocational training. For example, groups such as United Nations Children’s Fund (UNICEF) have developed one- to three-year transition programs with incentive structures and support systems to keep children out of artisanal mining work.⁶³ Companies can also address this issue by joining the OECD’s child labor working group or by becoming a member of the International Tin Research Institute (ITRI) Tin Supply Chain Initiative (iTSCi), which is encouraging public-private partnership solutions to the specific issue of child mining.⁶⁴ Companies can also support remediation programs that include trauma counseling and assistance for families whose children were working in mines and seek alternative livelihoods.

Government authorities also have a role to play in addressing children in the artisanal mining sector. SAESSCAM should work to enforce labor laws, and the national government should improve access to education and rule of law in mining areas, especially in the Kivus.

6. Security: Disclose security arrangements and require compliance with human rights standards among security providers.

Maintaining the safety and security of miners, employees, infrastructure, and operations can be particularly challenging for companies investing in the Great Lakes region where law enforcement is often weak and abusive, and armed groups are still active. Companies should conduct risk assessments that consider the real threats of armed violence, petty crime, and riots.

In conducting security assessments, companies should also account for the human rights records of existing security mechanisms (including police, army, and private security). The Business and Human Rights Centre has reported on numerous incidents in Congo involving the unreasonable use of force by

police or the Congolese army against civilians associated with natural resource extraction, including incidents in 2011 related to logging activities in Equateur province and incidents in 2012 related to mining in Katanga.⁶⁵ Companies should adopt a zero-tolerance policy for sexual violence, arbitrary detention, corruption, and the illegal use of force. If companies suspect that public security officers in their area are engaged in human rights abuses, they should consult with local state representatives about their concerns, communicate the company's human rights policies to local authorities, encourage public security units to publish their protocols, and report the allegations to human rights groups in the region. They should carefully vet their security providers and report arrangements to their host and home country authorities. Companies that fail to do so can face costly lawsuits, fines, and lasting brand damage. They should also keep abreast of community complaints of human rights abuses among the security sector and ensure protection for informants and whistleblowers.⁶⁶ Companies should report their security providers to local and national authorities and to the company's home country.⁶⁷ By exercising transparency, companies provide an extra measure of protection against legal claims and harm to their reputation for suspected involvement in repression or abuse by security forces.⁶⁸

While the Congolese government is primarily responsible for security in Congo, law enforcement is chronically weak and corrupt in the east, and companies may have to take a significant role to ensure the security of their operations. Companies may have to supplement local security forces with private security to ensure the protection of their land and equipment. However, the prerogative to fill gaps in the public security sector does not extend to excessive use of force or human rights abuses.⁶⁹ Private security agents should be used only to protect assets and to ensure the safety of employees and communities. Private security agents should be held to all the aforementioned standards of respect for human rights and transparency.

7. Environment: Protect Congo's biodiversity and mitigate negative environmental impact.

Companies engaged in mining operations in Congo are responsible for complying with the Congolese Mining Code and international environmental protocols governing the mitigation of environmental and health risks. With regard to environmental management, companies should follow the OECD Guidelines for Multinational Enterprises and the Equator Principles, a financial industry benchmark for determining, assessing and managing environmental and social risk. Complying with environmental protections and protocols benefits a company's reputation and should be done in collaboration with state authorities and communities wherever possible.⁷⁰ Companies should create a long-term strategy for environmental impact assessment and mitigation that complies with all Congolese laws on environmental management and conservation and that monitors and minimizes pollution to the air, water, and soil. Environmental strategy plans should encompass the protection of community health—especially with regard to water contamination—and should ensure conservation of biodiversity and living natural resources.⁷¹

Environmental impact assessments (EIAs) should address not only the human impact of environmental degradation caused by mining operations and infrastructure development but also the impact on biodiversity, especially endangered species, and ecosystem conservation. Operations should have limited to no damage to biodiversity and maintain the benefits of living ecosystems.⁷² Public demand for wildlife protection in local communities and globally is generally weaker than demands on companies to improve human security and protect public health.⁷³ Similarly, laws protecting the environment are more susceptible to revision or lack of enforcement where they concern conservation.⁷⁴ Therefore, it is critical that companies take internal initiative to include environmental concerns in their protocols. When carrying out their EIAs, they should include relevant threats to biodiversity, especially loss of habitat,

hydrological changes, and pollution. This is particularly important where the project impacts natural resources like clean air and water over which the company has direct control or habitats critical to protected species. Finally, EIAs and mitigation efforts should not be limited to the mining operation itself but also include the impact of infrastructure like roads and social investment projects like schools and clinics.⁷⁵

VIRUNGA CASE STUDY: HEED INTERNATIONAL ENVIRONMENTAL LAWS AND REGULATIONS

Africa's oldest national park, Virunga, extends over 7,900 square kilometers in northeastern Congo. It enjoys the distinction and protection afforded to U.N. Educational, Scientific and Cultural Organization (UNESCO) World Heritage sites, and it is recognized for its rich biodiversity and "outstanding universal value."⁷⁶ As a signatory to UNESCO conventions, the Congolese government has an obligation to protect Virunga from environmental damage and interference. UNESCO has found that oil and minerals extraction defy the spirit of the World Heritage Convention, and Congolese law prohibits activities harmful to protected areas like Virunga.⁷⁷

Despite these principles, beginning in June 2010, London-based oil and gas company SOCO International and the Congolese government negotiated in pursuit of oil exploration in the southern region of Virunga, and on April 26, 2014, SOCO began seismic testing.⁷⁸

Wildlife and conservation groups warned that even seismic tests could disrupt the environment, and that both exploration and drilling could damage forests, endanger the habitats of protected species like forest elephants, and disrupt fishing and farming in nearby communities.⁷⁹ Civil society has widely opposed SOCO's activities,⁸⁰ though the Congolese government has made supportive statements about SOCO's work⁸¹ and SOCO says it is sensitive to the "environmental significance" of the park, engages with local communities, and has conducted social investment.⁸²

SOCO's exploration activities have drawn widespread attention. In 2011 UNESCO's Director-General, Irina Bokova, traveled to Kinshasa to remind Congolese government officials that no oil exploration should be approved in the park, according to their international obligations.⁸³ Others filed charges against SOCO.⁸⁴ On April 27, business tycoon Richard Branson, peace advocate Desmond Tutu, and philanthropist Howard Buffett co-wrote a widely-shared opinion piece about SOCO's activities for Huffington Post.⁸⁵ They warned, "Oil exploration could be devastating to Africa's most iconic national park—and its people," and they emphasized public-private opposition to SOCO's behavior. Other companies have publicly declared their commitment to stay out of the park, and diverse high-level stakeholders from industry, activism, and politics have collaborated to oppose SOCO's activities.

On June 11, 2014, SOCO committed to cease exploratory or other drilling within Virunga "unless UNESCO and the DRC government agree that such activities are not incompatible with its world heritage status." The statement continues, "We will complete our existing operational programme including completing the seismic survey on Lake Edward... The conclusion of this phase of work will give the DRC government vital information it will need in

deciding how to proceed in Virunga national park.”⁸⁶ However, a leaked letter from the head of SOCO’s Congolese company called reports of the company’s pullout “inaccurate.”⁸⁷ “We wish to clarify that as soon as phase one of this exploration is completed ... SOCO will process and interpret the data set and we will be able to determine mid-2015 if there are areas to be drilled so that the DRC government [can] take all appropriate steps to continue or not this exploration,” the letter says.

SOCO should stop all activities in Virunga National Park and restore the area affected by its seismic testing. Even small companies acting in concert with governments can face enormous setbacks and criticism for even perceived violations of international environmental standards and community rights. Environmental concerns in the extractives industry are increasingly cross-sector, creating greater incentives for companies to heed international environmental standards in spite of government cooperation to the contrary.

Evolving approaches to environmental management reveals that including community members in environmental monitoring creates trust and ownership and reduces complaints about environmental damage. Both Banro and multinational mining and metals company Rio Tinto have piloted initiatives that embrace this notion, consulting extensively with community members and involving them in environmental management.⁸⁸ Chris Anderson of Rio Tinto says this has helped reduce distrust in the company’s practices, save valuable time for operations that might otherwise be spent alleviating misperceptions and mistrust, and provide vocational skills to community members.⁸⁹

Conclusion

Socially and environmentally responsible foreign corporate investment is a critical component of achieving peace and development in Congo. With increased stability and a growing minerals regulation scheme, companies are finding it increasingly realistic and attractive to invest in large-scale mining in one of the most minerals-rich places in the world. With increased interest and investment must come high standards of due diligence and transparency and respect for local communities, artisanal miners, and the environment. Upholding these standards is the responsibility of all stakeholders involved—including national and local governments, the Congolese army, civil society groups, and companies throughout the supply chain. Companies investing in or establishing mining projects in the Great Lakes have an opportunity to reshape and improve the standards by which industrial mining is conducted. By adhering to advanced social and environmental standards, they can pioneer truly mutually beneficial models that protect universal rights while capitalizing on new business opportunities in the region.

Endnotes

¹ This includes mines in northern Katanga. Joseph Ikoli Yombo Y'Apeke (Directeur de Cabine Adjoint du Ministère des Mines), "Exposé Présent à la session d'alignement de l'alliance public-privé pour le commerce responsable des minerais (PPA)," May 29, 2014. The validation teams are made up of representatives of the United Nations, Congolese government, nongovernmental organizations, and local civil society groups. A recent U.N. Group of Experts report notes, "Congolese mining authorities, MONUSCO, and the German Institute for Geosciences and Natural Resources (BGR) have validated 41 tin mines and three gold mines in Maniema, and validated six tin mines and one tungsten mine in South Kivu." See U.N. Security Council, "Final report of the Group of Experts submitted in accordance with paragraph 5 of Security Council resolution 2078 (2012)," S/2014/42, Annex 79, January 23, 2014, available at http://www.un.org/ga/search/view_doc.asp?symbol=S/2014/42.

² International Finance Corporation, "Environmental, Health, and Safety Guidelines," available at http://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/IFC+Sustainability/Sustainability+Framework/Environmental,+Health,+and+Safety+Guidelines/ (last accessed July 2014); Organization for Economic Cooperation and Development, "Guidelines for multinational enterprises," available at <http://www.oecd.org/corporate/mne/> (last accessed July 2014); Organization for Economic Cooperation and Development, "OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas," available at <http://www.oecd.org/investment/mne/mining.htm> (last accessed July 2014); Voluntary Principles on Security and Human Rights, "What are the Voluntary Principles?," available at <http://www.voluntaryprinciples.org/what-are-the-voluntary-principles/> (last accessed July 2014); U.N. Principles for Responsible Investment, "The six Principles," available at <http://www.unpri.org/about-pri/the-six-principles/> (last accessed July 2014); U.N. Human Rights Council, "Guiding Principles on Business and Human Rights" (2011) available at http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf; Equator Principles, "The Equator Principles – June 2013" (2013), available at http://www.equator-principles.com/resources/equator_principles_III.pdf; World Gold Council, "Conflict-Free Gold Standard" (2012), available at http://www.gold.org/download/private/Conflict_Free_Gold_Standard_English.pdf; U.S. Department of State, "Burma Responsible Investment Reporting Requirements," (May 23, 2013) available at <http://www.humanrights.gov/wp-content/uploads/2013/05/Responsible-Investment-Reporting-Requirements-Final.pdf>.

³ According to guidelines issued by the Organization for Economic Cooperation and Development (OECD), a "green flagged" mine may certify minerals for export and meets international standards against conflict and child labor. A "yellow flagged" mine has infractions of one or more key criteria and has six months to resolve the infraction(s). A "red flagged" mine is un-certified and has grave infractions requiring follow-up inspection to verify resolution. For these specifications and others see the Organization for Economic Cooperation and Development and the Mineral Certification Scheme of the 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>.

⁴ The full name in French is "Service d'assistance et d'encadrement du Small mining ou de la petite mine."

⁵ The World Bank, "Ease of Doing Business in Congo, Dem. Rep.," available at <http://www.doingbusiness.org/data/exploreeconomies/congo-dem-rep/> (last accessed July 2014).

⁶ See Africa Progress Panel, "Africa Progress Report 2013 - Equity in Extractives: Stewarding Africa's natural resources for all," (2013), p.100, available at http://www.africaprogresspanel.org/wp-content/uploads/2013/08/2013_APR_Equity_in_Extractives_25062013_ENG_HR.pdf.

⁷ Rahim Kanani, "Why Intel Is Taking A Stand On Conflict Minerals," *Forbes*, March 17, 2014, available at <http://www.forbes.com/sites/rahimkanani/2014/03/17/why-intel-is-taking-a-stand-on-conflict-minerals/>; Marc Gunther, "Intel unveils conflict-free processors: will the industry follow suit?" *The Guardian*, January 13, 2014, available at <http://www.theguardian.com/sustainable-business/intel-conflict-minerals-ces-congo-electronics>; Joe Miller, "Intel vows to stop using 'conflict minerals' in new chips," BBC News,

January 7, 2014, available at <http://www.bbc.com/news/technology-25636001>; Jon Swartz, "CES 2014: Robin Wright battles dark side of tech," *USA Today*, January 9, 2014, available at <http://www.usatoday.com/story/tech/2014/01/08/robin-wright-intel-ces-world-problems/4378873/>; Conflict-Free Campus Initiative, "Flinders University: Please pass a resolution giving preference to conflict free electronics products," available at <http://www.change.org/en-CA/petitions/flinders-university-please-pass-a-resolution-giving-preference-to-conflict-free-electronics-products>.

⁸ John Vidal, "Shell oil paid Nigerian military to put down protests, court documents show," *The Guardian*, October 2, 2011, available at <http://www.theguardian.com/world/2011/oct/03/shell-oil-paid-nigerian-military>; Human Rights Watch, "The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria's Oil Producing Communities" (1999), available at <http://www.hrw.org/reports/1999/nigeria/nigeria0199.pdf>; Jeff Stone, "The World's Worst Human Rights Violators," *International Business Times*, July 11, 2014, available at <http://www.investing.com/news/stock-market-news/the-world%27s-worst-corporate-human-rights-violators-294435>; David Smith, "Shell accused of fuelling violence in Nigeria by paying rival militant gangs," *The Guardian*, October 2, 2011, available at <http://www.theguardian.com/world/2011/oct/03/shell-accused-of-fuelling-nigeria-conflict>; Center for Constitutional Rights, "Factsheet: the case against Shell" (2009), available at <http://ccrjustice.org/learn-more/faqs/factsheet%3A-case-against-shell-0>. In June 2009, Royal Dutch Shell agreed to a \$15.5 million settlement related to legal accusations of its involvement in the killing of Ken Saro-Wiwa and eight other Ogoni leaders in Nigeria. See Ed Pilkington, "Shell pays out \$15.5m over Saro-Wiwa killing," *The Guardian*, June 8, 2009, available at <http://www.theguardian.com/world/2009/jun/08/nigeria-usa> and Jad Mouawad, "Shell to pay \$15.5 million to settle Nigerian case," *The New York Times*, June 8, 2009, available at http://www.nytimes.com/2009/06/09/business/global/09shell.html?_r=0http://www.nytimes.com/2009/06/09/business/global/09shell.html?_r=0.

⁹ GATT-RN is the French acronym for the Support Platform for Traceability, and Transparency in the Management of Natural Resources (Groupe d'Appui à la Traçabilité et la Transparence dans la Gestion des Ressources Naturelles). For more information about GATT-RN see Fidel Bafilemba, "North Kivu Civil Society Engages on Conflict Minerals" (Washington: The Enough Project, 2011), available at http://www.enoughproject.org/publications/north-kivu-civil-society-engages-conflict-minerals#_ftnref.

¹⁰ *The Economist*, "Murky Minerals," May 18, 2013, available at <http://www.economist.com/news/business/21578076-how-bad-it-murky-minerals>.

¹¹ *Ibid.*

¹² Business and Human Rights Centre, "Business and Human Rights in Francophone Africa – Regional briefing" (2014), available at <http://business-humanrights.org/sites/default/files/media/documents/francophone-afr-briefing-bus-human-rights-mar-2014.pdf>.

¹³ Pete Jones and Bienvenu Bakumanya, "Exclusive: Disputed Congo report says miners owe \$3.7 billion in tax, fines," *Reuters*, January 30, 2014, available at <http://www.reuters.com/article/2014/01/30/us-congo-democratic-mining-idUSBREA0T12L20140130>.

¹⁴ Revenue Watch Institute, "Transparency Snapshot: Democratic Republic of Congo," available at <http://archive-2011.revenuewatch.org/our-work/countries/drc/transparency-snapshot> (last accessed July 2014).

¹⁵ Section 1504 of the Dodd Frank Wall Street Reform Act requires reporting issuers engaged in the commercial development of oil, natural gas, or minerals to disclose in an annual report certain payments made to the United States or a foreign government. Often referred to as the "Publish What You Pay Section" or the "Cardin-Luger Amendment," Section 1504 applies to either a single payment or a series of payments equal to or greater than \$100,000, including taxes, royalties, fees, bonuses, dividends. *Dodd Frank Wall Street Reform and Consumer Protection Act*, Public Law 203, 111th Cong., 2d sess. (July 21, 2010) Section 1504. Although the rule was vacated as a result of a 2012 lawsuit by the American Petroleum Institute, the Securities and Exchange Commission is currently revising the rule for reinstatement, and there is strong support for the spirit of the rule among nongovernmental

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organizations like Global Witness and congressional representatives, which Global Witness describes as, “helping to prevent corrupt government officials from siphoning off natural resource revenues.” See Global Witness, “Global Witness condemns API lawsuit to strike down Dodd-Frank oil, gas and mining transparency provision,” Press release, October 11, 2012, available at <http://www.globalwitness.org/library/global-witness-condemns-api-lawsuit-strike-down-dodd-frank-oil-gas-and-mining-transparency>. Companies should stay abreast of their obligations related to 1504 and comply with the new rule to increase transparency and government accountability in the United States and in the Great Lakes extractives sector.

¹⁶ Extractive Industry Transparency Initiative, “Democratic Republic of Congo ‘suspended,’” April 18, 2013, available at <http://eiti.org/news/democratic-republic-congo-temporarily-suspended>; and Energy Global, “Democratic Republic of Congo and Guinea move toward transparency,” March 7, 2014, available at http://www.energyglobal.com/news/exploration/articles/EITI_membership_844.aspx#.U8dIxqhRbdQ.

¹⁷ Extractive Industry Transparency Initiative, “Press release by civil society organizations on DRC’s compliant status,” July 16, 2014, available at <http://eiti.org/news/press-release-civil-society-organizations-drc-compliant-status>.

¹⁸ The full name in French is Direction générale des recettes administratives, judiciaires, domaniales et de participation.

¹⁹ Extractive Industry Transparency Initiative, “DRC civil society calls for judicial investigation over missing funds,” October 3, 2013, available at <http://eiti.org/news/drc-civil-society-calls-judicial-investigation-over-missing-funds>; See also Extractive Industry Transparency Initiative, “DR Congo: Shedding light on tax collecting agencies’ practices,” May 21, 2014, available at <http://progrep.eiti.org/2014/country-focus/dr-congo>.

²⁰ Extractive Industries Transparency Initiative, “EITI Business Guide” (2013), available at <http://eiti.org/document/businessguide>.

²¹ Global Witness, “Artisanal mining communities in eastern DRC: seven baseline studies in the Kivus: A summary by Global Witness” (2012), p. 3, available at http://www.globalwitness.org/sites/default/files/library/Summary_of_baseline_studies_Global_Witness.pdf.

²² International Peace Information Service, “The formalisation of artisanal mining in the Democratic Republic of the Congo and Rwanda” (2012), available at <http://www.cifor.org/fileadmin/subsites/proformal/PDF/RIPIS1212.pdf>.

²³ Pact, “PROMINES Study: Artisanal Mining in the Democratic Republic of Congo,” (2010), available at <http://www.congomines.org/wp-content/uploads/2011/10/PACT-2010-ProminesStudyArtisanalMiningDRC.pdf>.

²⁴ SAESSCAM was created as a public service agency in March 2003 to formalize the artisanal mining sector and small scale mining by providing assistance and supervision of artisanal miners and to promote the emergence of a middle class. It is also charged with developing post-mining alternatives and channeling artisanal mining and small-scale mining productions to official marketing channels in order to combat fraud and minerals and to maximize government revenues.

²⁵ Susan A. Joyce and Magnus MacFarlane, “Social Impact Assessment in the Mining Industry: Current Situation and Future Directions” (London: International Institute for Environment and Development and World Business Council, 2002), available at <http://pubs.iied.org/pdfs/G01023.pdf>.

²⁶ Resolve, the American Bar Association Rule of Law Project, and U.N. Development Programme are examples of organizations with expertise and experience mediating disputes and facilitating dialogue between companies and affected communities in the mining sectors of fragile states, including Congo.

²⁷ Joyce and MacFarlane, “Social Impact Assessment in the Mining Industry.”

²⁸ Lyuba Zarsky, “Gold Fever: Global investor search for ‘safe haven’ makes indigenous Guatemalan communities unsafe,” Triple Crisis, July 2, 2010, available at <http://triplecrisis.com/gold-fever/>.

²⁹ *Gold Fever*, directed by JT Haines, Tommy Haines, and Andrew Sherburne (2013; St. Paul, MN: Northland Films).

³⁰ Cameron French, “Guatemalan groups file complaint on Goldcorp mine,” Reuters, December 9, 2009, available at <http://www.reuters.com/article/2009/12/09/goldcorp-protest-idUSN0923516520091209>;

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and Mines and Communities, "Guatemalan groups file OECD complaint on Goldcorp mine," December 9, 2009, available at <http://www.minesandcommunities.org/article.php?a=9821>.

³¹ French, "Guatemalan groups file complaint on Goldcorp mine."

³² Goldcorp Out of Guatemala, "Canadian government accepts complaint against Goldcorp, affected communities urge investigation," March 29, 2010, <http://goldcorpoutofguatemala.com/2010/03/29/canadian-government-accepts-complaint-against-goldcorp-affected-communities-urge-investigation/> and Goldcorp Out of Guatemala, "Canadian government abdicates responsibility to ensure respect for human rights," May 16, 2011, <http://goldcorpoutofguatemala.com/2011/05/25/canadian-government-abdicates-responsibility-to-ensure-respect-for-human-rights/>.

³³ Goldcorp, "Dispelling the Myths of Marlin," Above Ground Blog, July 13, 2012, available at <http://www.goldcorp.com/English/blog/Articles-Details/2012/Myths-of-Marlin-Mine/default.aspx>.

³⁴ Niladri Basu and Howard Hu, "Toxic Metals and Indigenous Peoples Near the Marlin Mine in Western Guatemala Potential Exposures and Impacts on Health" (New York: International Forensic Program of Physicians for Human Rights, 2010), available at https://s3.amazonaws.com/PHR_Reports/guatemala-toxic-metals.pdf.

³⁵ Goldcorp, "Dispelling the Myths of Marlin."

³⁶ "Guatemala's Marlin Gold Mine," YouTube video, 2:58, posted by "David Brown," March 26, 2012, <http://www.youtube.com/watch?v=7rkLSgsQz8>.

³⁷ Interamerican Commission on Human Rights, "Communities of the Maya People (Sipakepense and Mam) of the Sipacapa and San Miguel Ixtahuacán Municipalities in the Department of San Marcos, Guatemala" (2010), available at <http://www.oas.org/en/iachr/decisions/precautionary.asp>.

³⁸ Goldcorp, "Marlin: Community Initiatives," available at <http://www.goldcorp.com/English/Unrivaled-Assets/Mines-and-Projects/Central-and-South-America/Operations/Marlin/Community-Initiatives/default.aspx> (last accessed July 2014).

³⁹ John Ahni Schertow, "Interamerican Commission on Human Rights Gives in to Pressure from Guatemala," *IC [Intercontinental Cry] Magazine*, January 5, 2012, available at <http://intercontinentalcry.org/inter-american-commission-on-human-rights-gives-in-to-pressure-from-guatemala/>.

⁴⁰ Agencia EFE, "Miles de campesinos protestan contra minería e hidroeléctricas en Guatemala," June 23, 2014, available at <http://www.efe.com/efe/noticias/america/sociedad/miles-campesinos-protestan-contra-mineria-hidroelectricas-guatemala/2/13/2352196> (translation by author).

⁴¹ Agence France-Presse, "Miles de personas protestan en Guatemala contra explotación minera y por aumento salarial," June 23, 2014, available <http://origin.swissinfo.ch/spa/miles-protestan-en-guatemala-contra-miner%c3%ada-y-por-aumento-salarial/38845038> (translation by author).

⁴² Mike Loch, phone interview with author, December 13, 2014.

⁴³ See Human Rights Watch, "How can we survive here? The impact of mining on human rights in Karamoja, Uganda" (2014), available at http://www.hrw.org/sites/default/files/reports/uganda0214_insertWithcover.pdf.

⁴⁴ Ibid.

⁴⁵ Yasap Popoitai and Waafas Ofosu-Amaah, "Negotiating with the PNG mining industry for women's access to resources and voice: the Ok Tedi mine life extension negotiations for mine benefit packages" (Washington: The World Bank, 2013), available at http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2014/02/21/000442464_20140221141303/Rendered/PDF/848380WPOP125000Resources0and0Voice.pdf.

⁴⁶ Charles Ghee, ABA ROLI, interview in Goma, May 8, 2014.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Charles Ghee Makongo, interview May 8, 2014, Goma, Democratic Republic of Congo.

⁵⁰ Ibid.

⁵¹ The Constitution of the Democratic Republic of the Congo, 2005, Art. 452(e), available at <http://www.constitutionnet.org/files/DRC%20-%20Congo%20Constitution.pdf>.

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⁵² The Constitution, Art. 69 and Art. 452.

⁵³ For example, in Congo, AngloGold Ashanti worked with the social assessment consultant rePlan to establish a comprehensive resettlement assessment and plan for communities affected by its gold explorations in Mongbwalu near Bunia, in Northeastern Congo beginning in 2008. See, AngloGoldAshanti, "Implementing a land management policy for AngloGold Ashanti," (last accessed July 30, 2014) <http://www.anglogold.com/subwebs/informationforinvestors/reports08/resettlement-roadmap.htm> and Banro Corporation, "The final stage of the Twangiza processing facility construction took place in Q4 2011 with a first gold pour in October 2011," (last accessed July 30, 2014) <http://www.banro.com/s/TwangizaGoldPlantUpdate.asp?numCols=1&page=0>.

More recently, Banro resettled communities to accommodate its Twangiza mine operations in South Kivu, learning a series of lessons that prompted the company to develop additional alternative approaches to resettlement. Banro Corporation, "2014 Sustainability Report: A 360° Approach to Sustainability" (2014), available at <http://www.banro.com/i/pdf/Banro-9634-CSR-EN.pdf>.

⁵⁴ The Constitution, Art. 452(e).

⁵⁵ Rio Tinto, "Why Cultural Heritage Matters" (2011), available at http://www.riotinto.com/documents/reportspublications/rio_tinto_cultural_heritage_guide.pdf.

⁵⁶ International Labor Organization, Convention Concerning the Protection and Integration of Indigenous and other Tribal and Semi-Tribal Populations in Independent Countries (ILO No. 107), 1957, 328 U.N.T.S. 247, available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C107; United Nations Declaration on the Rights of Indigenous Peoples, Sept. 12, 2007, A/61/L.67/Annex, Agenda 21: Chapter 26, available at <http://www.un.org/Docs/journal/asp/ws.asp?m=A/61/L.67>; Convention on Biological Diversity, June 5, 1992, 1760 U.N.T.S. 79; 31 I.L.M. 818, art. 8, available at <http://www.cbd.int/convention/text/>; World Bank, Declaration of Principles of Indigenous Rights, Operational Policy 4.10: Indigenous Peoples, July 2005, available at <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:20553653~menuPK:4564185~pagePK:64709096~piPK:64709108~theSitePK:502184,00.html>. Note: If a company does consider seizing ancestral land, it should ensure that it can finance advanced offset programs like memorials and education programs and be prepared for legal claims grounded in international cultural rights.

⁵⁷ Benjamin M. Saper, "The International Finance Corporation's Compliance Advisor/Ombudsman (CAO): An Examination of Accountability and Effectiveness from a Global Administrative Law Perspective," *New York University Journal of International Law and Politics* 44 (2012): 1279-1329 available at <http://nyujilp.org/wp-content/uploads/2012/04/44.4-Saper.pdf>.

⁵⁸ The African Development Bank, "The Independent Review Mechanism of the African Development Bank" (2013), available at <http://grievancemechanisms.org/grievance-mechanisms/regional-multilateral-development-banks/african-development-bank2019s-independent-review-mechanism>.

⁵⁹ For information on the flaws in grievance mechanisms and efforts to improve them, see Accountability Counsel, www.accountabilitycounsel.org (last accessed July 2014).

⁶⁰ France Bourguin, "Conflict Minerals' Child Labor Problem," Business for a Better World (BSR), June 12, 2014, available at <http://www.bsr.org/en/our-insights/blog-view/conflict-minerals-child-labor-problem>.

⁶¹ International Labour Organization, "The Worst Forms of Child Labor," available at <http://www2.ilo.org/ipec/Campaignandadvocacy/Youthinaction/C182-Youth-orientated/worstforms/lang--en/index.htm> (last accessed July 2014).

⁶² As part of an effort to combat child mining, Congo's department of labor increased its inspections in 2012 from 150 to 200, including in the Katanga mining district, though inspections still remain sparse in the east.

⁶³ Michelle Marrion, "In the Democratic Republic of Congo, helping children of the mines find a way out," U.N. Children's Fund (UNICEF), February 26, 2013, available at http://www.unicef.org/infobycountry/drcongo_67998.html.

⁶⁴ See International Tin Research Institute (ITRI) Tin Supply Chain Initiative (iTSCI) Project Overview, https://www.itri.co.uk/index.php?option=com_zoo&task=item&item_id=2192&Itemid=189 (last accessed July 2014).

⁶⁵ See, Business and Human Rights Centre, “Business and Human Rights in Francophone Africa – Regional briefing” (2014), available at <http://business-humanrights.org/sites/default/files/media/documents/francophone-afr-briefing-bus-human-rights-mar-2014.pdf>.

⁶⁶ Voluntary Principles on Security and Human Rights, “What are the Voluntary Principles?”, available at <http://www.voluntaryprinciples.org/what-are-the-voluntary-principles/> (last accessed July 2014).

⁶⁷ Ibid.

⁶⁸ This notion spurred the United States to require reporting by companies doing business in Burma. U.S. Department of State, “Burma Responsible Investment Reporting Requirements,” (May 23, 2013) available at <http://www.humanrights.gov/wp-content/uploads/2013/05/Responsible-Investment-Reporting-Requirements-Final.pdf>. See, Earthrights International, “First U.S. Companies Release Reports on Investments in Myanmar,” July 10, 2013, available at <http://www.earthrights.org/media/first-us-companies-release-reports-investments-myanmar>.

⁶⁹ Voluntary Principles on Security and Human Rights, “What are the Voluntary Principles?”

⁷⁰ Organization for Economic Cooperation and Development, “Environment and the OECD Guidelines for Multinational Enterprises: Corporate Tools and Approaches” (2004) available at <http://www.oecd.org/env/34992954.pdf>.

⁷¹ International Finance Corporation, “International Finance Corporation’s Policy on Environmental and Social Sustainability” (Washington: The World Bank Group, 2012), available at http://www.ifc.org/wps/wcm/connect/7540778049a792dcb87efaa8c6a8312a/SP_English_2012.pdf?MOD=AJPERES.

⁷² International Finance Corporation, “Performance Standards on Environmental and Social Sustainability” (Washington: The World Bank Group, 2012), available at http://www.ifc.org/wps/wcm/connect/115482804a0255db96fbfd1a5d13d27/PS_English_2012_Full-Documents.pdf?MOD=AJPERES.

⁷³ Amy Vedder, interview with author, New Haven, Connecticut, March 1, 2014.

⁷⁴ Global Witness, “Oil law before Congo parliament fails to safeguard against corruption or environmental damage,” May 9, 2014, available at <http://www.globalwitness.org/library/oil-law-congo-parliament-fails-safeguard-against-corruption-or-environmental-damage-%E2%80%93-global>.

⁷⁵ Conservation groups attentive to these issues in Congo include the International Rivers Project, the Wildlife Conservation Society, and the Jane Goodall Institute.

⁷⁶ U.N. Educational, Scientific and Cultural Organization, “The Criteria for Selection,” art. x, available at <http://whc.unesco.org/en/criteria/> (last accessed July 2014).

⁷⁷ World Wildlife Fund, “Virunga Under Threat,” available at http://wwf.panda.org/what_we_do/where_we_work/congo_basin_forests/problems/oil_extraction/virunga_under_threat/ (last accessed July 2014).

⁷⁸ SOCO International, “Block V and the Virunga National Park,” Press release, available at <http://www.socointernational.co.uk/block-v-and-the-virunga-national-park/>; Reuters, “Oil firm Soco to begin seismic testing in Congo’s Virunga park,” April 23, 2014, available at <http://www.reuters.com/article/2014/04/23/congodemocratic-oil-idUSL6N0NF36A20140423>.

⁷⁹ See, for example, African Conservation Foundation, “Virunga still under siege: Oil disaster looming for Africa’s Oldest National Park,” June 16, 2014, available at <http://www.africanconservation.org/in-focus/virunga/item/virunga-still-under-siege-oil-disaster-looming-for-africa-s-oldest-national-park>; Jon Rosen, “The Battle for Africa’s Oldest National Park,” National Geographic, June 6, 2014, available at <http://news.nationalgeographic.com/news/special-features/2014/06/140606-gorillas-congo-virunga-national-park/>; World Wildlife Federation, “Virunga under threat,” available at http://wwf.panda.org/what_we_do/where_we_work/congo_basin_forests/problems/oil_extraction/virunga_under_threat/ (last accessed July 2014).

⁸⁰ Save Virunga, "Message 4 NO TO OIL IN VIRUNGA: Declaration of Local Leaders in Butembo," December 11, 2013, available at <http://savevirunga.com/2014/03/19/message-4-no-to-oil-in-virunga-declaration-of-local-leaders-in-butembo/>; Save Virunga, "Message 6 NO TO OIL IN VIRUNGA: North Kivu Civil Society Declaration," January 31, 2014, available at <http://savevirunga.com/2014/03/21/message-6-no-to-oil-in-virunga-north-kivu-civil-society-declaration/>.

⁸¹ SOCO International, "DRC Ministry of Environment, Nature Conservation and Tourism in support of SOCO's activities," April 15, 2014, available at <http://www.socointernational.com/drc-ministry-of-environment-nature-conservation-an>.

⁸² SOCO International, "SOCO Comments on Unfounded Allegations and Inaccuracies on the Company's Current Activities in Virunga National Park," April 29, 2014, available at <http://www.socointernational.com/soco-comments-on-unfounded-allegations-and-inaccur>.

⁸³ U.N. Educational, Scientific, and Cultural Organization, "Irina Bokova visits the Democratic Republic of the Congo (DRC) and Congo," Press release, January 13, 2011, available at http://www.unesco.org/new/en/media-services/single-view/news/irina_bokova_visits_the_democratic_republic_of_the_congo_drc_and_congo/; U.N. Educational, Scientific, and Cultural Organization, "Director-General welcomes suspension of oil prospection at Virunga National Park (Democratic Republic of the Congo)," Press release, March 18, 2011, available at http://www.unesco.org/new/en/media-services/single-view/news/director_general_welcomes_suspension_of_oil_prospection_at_virunga_national_park_democratic_republic_of_the_congo/.

⁸⁴ Michael J. Kavanagh, "Congo's Wildlife Authority Says That it Presses Charges Against Soco," Bloomberg News, February 17, 2011, available at <http://www.bloomberg.com/news/2011-02-17/congo-s-wildlife-authority-presses-charges-against-soco.html>.

⁸⁵ Richard Branson, Howard Buffett and Desmond Tutu, "Troubles at the Gates of Virunga," Huffington Post, April 27, 2014, available at http://www.huffingtonpost.com/richard-branson/virunga-national-park_b_5222851.html.

⁸⁶ Ibid.

⁸⁷ John Vidal and David Smith, "Soco denies paying for Congo DRC trip to UN to discuss Virunga oil drilling," *The Guardian*, June 19, 2014, available at <http://www.theguardian.com/environment/2014/jun/19/soco-congo-drc-virunga-oil-unesco-doha>.

⁸⁸ Chris Anderson (discussion on community participation in decision making, RESOLVE Sustainability Breakfast, Washington D.C., December 17, 2013).

⁸⁹ Ibid.