

# Grand Theft Global

## Prosecuting the War Crime of Pillage in the Democratic Republic of the Congo

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By Holly Dranginis  
January 2015



enough



**COVER PHOTO:**

M23 rebel fighters north of Goma,  
Democratic Republic of the Congo (2012)  
AP Photo/Jerome Delay

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### Executive Summary

From the Islamic State of Iraq and the Levant (ISIL) to the Lord's Resistance Army (LRA) to Al-Shabaab, many of the world's most infamous and destabilizing armed actors today finance their activities in part through the illegal exploitation and trade of natural resources. Theft in the context of armed conflict constitutes the war crime of pillage, which is punishable in most domestic jurisdictions and at the International Criminal Court (ICC).

Prosecuting armed actors and their facilitators for natural resource pillage can help reduce incomes for perpetrators of atrocities, combat resource exploitation, and end the impunity that enables illegal financial networks to thrive in conflict zones. Furthermore, investigating pillage can strengthen cases addressing violent atrocity crimes like rape and murder by uncovering critical information about command responsibility and criminal intent. Prosecutions are a direct, effective way to help disrupt conflict financing and improve accountability for economic crimes—like trafficking and money laundering—and the atrocities they fuel.

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Despite the prevalence of natural resource-driven armed conflict, rarely are individuals and companies held criminally responsible for natural resource theft in war. From the Horn of Africa across the eastern and central regions of the continent, some of the deadliest ongoing conflicts in modern history are fueled in part by stolen natural resources. The Sudanese government draws income from a deadly gold trade in Darfur, the LRA and Séléka militias in the Central African Republic poach elephants for ivory trafficking, and an illicit charcoal trade in Africa's oldest national park, Virunga, helps fuel one of the region's most destabilizing rebel forces, the Forces Démocratiques de Libération du Rwanda (FDLR).<sup>1</sup>

The theft of natural resources—primarily minerals—is particularly destabilizing in the Democratic Republic of the Congo. Often mined and transported by civilians under threat of extreme violence, minerals provide lucrative incomes to rebels, factions of the Congolese army, and the businesses with which they work, helping to sustain their violent activities. Professor Gregoire Mpungu at Kinshasa University told Enough, “Most places where minerals are being exploited, rape is also going on.”<sup>2</sup> In some cases, theft in eastern Congo is highly orchestrated, spanning multiple countries and involving a range of actors. In the Great Lakes region, these networks include indicted war criminals, militias, business people, and government officials. Beyond the war zones, these networks involve corporations, front companies, traffickers, banks, and other actors in the international system that benefit from theft and money laundering.

Policymakers and nongovernmental organizations worldwide are paying increasing attention to combating natural resource-driven conflict in Africa's Great Lakes region, spurring new efforts to cut off funding to armed groups in Congo. The U.N. and U.S. sanctions regimes for Congo address illegal natural resource exploitation linked to armed groups.<sup>3</sup> Government agencies in the United States and Africa's Great Lakes region have introduced new border enforcement programs to curb the illegal trade of wildlife and ivory.<sup>4</sup> The conflict minerals disclosure requirements of the 2010 U.S. Dodd-Frank Wall Street Reform and Consumer Protection Act are among several new initiatives aimed at spurring more responsible supply chain management, and a number of companies have taken leading roles in reducing the global demand for untraceable minerals that may help fuel armed violence in Congo. Many of these initiatives have helped reduce income to armed groups, stimulated more formal minerals markets, and increased transparency and accountability related to illegal activities.<sup>5</sup>

Global efforts to address violent conflict associated with Congo's lucrative natural resources, however, are missing one powerful tool: criminal prosecution for the theft of those resources.<sup>6</sup> Accountability for war crimes is a critical component of sustainable peace, with the potential to achieve goals that regulation and sanctions schemes cannot. Prosecuting widespread natural resource pillage would combat the impunity that allows these crimes to continue. Prosecutions could undermine the power of key actors who orchestrate criminal networks by physically removing them from crime scenes. Prosecutions invite the participation of victims and witnesses, and prosecutions can result in the seizure of a defendant's assets in order to provide reparations for victims, helping to restore dignity and cohesion among affected communities. Prosecutions, unlike sanctions or supply chain regulations, create a public record of how crimes are committed. Such records deconstruct and expose how economic incentives interact with and enable atrocities, which is critical for preventing their recurrence.

Research conducted by the Enough Project in eastern Congo and The Hague reveals broad support, especially among affected communities and Congolese human rights defenders, for the prosecution of natural resource pillage. “Economic crimes are part of daily life here,” said one member of the bar in

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eastern Congo. “Mafia practices find good breeding ground here, and they’re mostly focused on natural resources—minerals and forests.”<sup>7</sup> A Congolese ex-minister said, “It’s a compelling idea: go after the worst human rights violators for economic crimes.”<sup>8</sup>

The Congolese military justice system, the ICC, and national courts in numerous countries can prosecute the worst suspected perpetrators of this crime—some of whom are already facing trial in The Hague, and some of whom continue to fan the flames of conflict. Many national jurisdictions can also prosecute the individuals and companies that knowingly purchase or otherwise appropriate resources that were illegally acquired during armed conflict.<sup>9</sup>

A number of steps, if begun now, will help advance cases and seed accountability for these crimes. Congo needs to increase the independence and expertise in its military court system and establish specialized mixed chambers to prosecute high-level war crimes cases, including natural resource pillage. The International Criminal Court has a number of cases in its docket addressing crimes that may have been fueled by the theft of natural resources, but the court needs specialized expertise in economic crimes and a comprehensive strategy for investigating the theft of natural resources as it relates to atrocity crimes. National jurisdictions and law enforcement agencies can address individuals and corporate entities further up the international supply chain that support, facilitate, and benefit from theft in Congo’s armed conflict. By building more independent legal structures and expertise in the regions where theft in war occurs, and by encouraging better coordination among international actors with the power to investigate and apprehend individuals and entities implicated in natural resource theft, policymakers and legal practitioners could break new ground toward ending the world’s worst resource-driven violence.

## Recommendations

1. International Criminal Court Chief Prosecutor Fatou Bensouda should revive the court’s financial crimes unit, which was discontinued for lack of effectiveness. With the resource support of the ICC Assembly of State Parties, she should appoint special advisors on financial forensics and natural resource theft, and she should develop a comprehensive approach to investigating and prosecuting widespread pillage. In particular, her office should expand investigations in Congo, the Central African Republic, and Sudan to cover natural resource pillage, especially theft of minerals and ivory. Congolese authorities and the U.N. peacekeeping mission in Congo, MONUSCO, should cooperate in the joint effort to collect evidence, apprehend indictees, and protect witnesses and victims.
2. U.N. and U.S. Special Envoys to Congo and the region, Said Djinnit and Russ Feingold, and European Union Senior Coordinator for the Great Lakes Koen Vervaeke, should pressure the Congolese government to strengthen protections against political interference and intimidation in the military justice system. Djinnit, Feingold, and Vervaeke should encourage the appointment of high-ranking judges in the east and prevent the unnecessary transfer of cases to different jurisdictions mid-adjudication. Individuals within the military justice system suspected of tampering with or destroying evidence or intimidating witnesses, investigators, or jurists working on pillage cases should be held responsible.

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3. The U.S. Department of State's Bureau of International Narcotics and Law Enforcement (INL) should support MONUSCO's justice unit and prosecution support cells as they assist their national counterparts in gathering evidence—physical, documentary and testimonial—on the war crime of natural resource pillage and atrocity crimes.
4. Djinnit, Feingold, and U.S. Ambassador-At-Large for War Crimes Issues Stephen Rapp should intensify their efforts to support the establishment of specialized mixed chambers in Congo, which could prosecute natural resource pillage and atrocity crimes. Building on the significant support they have shown the proposal thus far, the envoys should continue to encourage Congo's new justice minister, Alexis Thambwe Mwamba, to present the draft bill of mixed chambers draft bill to the national assembly for approval, while also highlighting the importance of the bill among members of the Congolese national assembly. In the event of the establishment of the mixed chambers, the U.N. Security Council should issue a resolution to enforce the court's regional jurisdiction and the extraditions of accused individuals in Rwanda and Uganda.
5. As it conducts its investigations, the U. N. Group of Experts in Congo should investigate financial flows stemming from minerals trafficking with attention to the elements of the war crime of pillage. The Group should submit evidence of pillage to the ICC and any relevant national courts, including those within Congo's military justice system.
6. The U.S. Agency for International Development (USAID) and the International Center for Transitional Justice should provide training on investigating and prosecuting the war crime of pillage for investigators, lawyers, and judges in Congo. Ambassador Rapp should encourage the Congolese army to open its military archives to those investigating the war crime of natural resource pillage and other atrocity crimes to improve access to evidence and crucial information related to military command and control.

## Introduction

Natural resource pillage in Congo is a crime involving violence, complex criminal networks, cross-border corruption, and global supply chains. It begins at mine sites, where armed groups and Congolese military officers control minerals through the use of terror and physical violence. Civilians, including women and children, are forced to mine for minerals, and those minerals are sold along trading routes that are controlled, taxed, and protected through the use of force and psychological coercion. Eventually minerals are smuggled out through neighboring countries, especially Uganda, Rwanda, and Burundi. From these Great Lakes countries, the minerals are sold onto the international market, through major hubs like Dubai and London. Many diverse actors are implicated in illicit minerals trafficking, including intermediary companies engaged in smuggling, refiners and smelters that buy materials and turn a blind eye to their illegal origins, and government officials that facilitate illegal transfers for a cut of the profits.

All individuals and entities involved should be held accountable for their participation in these crimes, and many could be prosecuted on the basis of pillage, money laundering, and corruption crimes. For the communities affected by violence in Congo, and for the benefit of the development of sustainable peace in Congo, special envoys to the region, Congo's military justice officials, and the ICC should focus on the in-region rebel and army commanders responsible for orchestrating natural resource pillage on the ground and the atrocity crimes they commit in the process. National courts and law enforcement agencies outside the region should exercise their authority to investigate intermediary perpetrators.

## The Human Cost of Minerals Pillage

Theft in war may appear “victimless” relative to other war crimes. Murder, rape, and child soldiering have a more recognized, visible human impact. However, minerals pillage in Congo is closely linked to human atrocities. As one Congolese human rights advocate in Goma told the Enough Project, “Many children are forced to stay in minerals areas by the armed groups APCLS or Sheka...if they quit on their own, they'll be killed.”<sup>10</sup> A Congolese political opposition leader that Enough spoke with agrees. “These crimes kill many more than a typical massacre. You just don't see the impact.”<sup>11</sup>

Prosecuting pillage alongside atrocity crimes will expose and help address the human cost of large-scale theft. In many cases, commanders of troops that commit murder and mass rape also control natural resource pillage networks. “Bosco had his own bank where he could secure his earnings from Rubaya [mine],” another human rights advocate told the Enough Project. “Many elements of armed groups were stationed there to secure that area. We found debt bondage, forced marriage, and child labor. These acts would instill fear, and the communities would flee, leaving the mines open to control by the armed groups.”<sup>12</sup> Understanding these networks and how they secure profits while brutalizing civilians is critical for building strong cases.

## The Case for Prosecuting Pillage

For decades, the competition for natural resources, among other drivers of conflict, has fueled atrocity crimes in eastern Congo. Control of natural resources, and the pursuit of wealth is at times both the purpose that motivates militias as well as the means that sustains them. Widespread natural resource pillage should be prosecuted because it is a war crime that fuels—and occurs in tandem with—other grave crimes. Pillage is largely unpunished, and impunity for some grave crimes begets impunity for others. Large-scale theft in Congo has privileged the strong and the violent at the expense of the most marginalized, exacerbating inequalities and subjecting millions of people to extreme poverty and violence. The legal framework for the war crime of pillage provides a yet-untapped tool for directly combatting a complex problem that supply chain regulation, military offensives, and sanctions have not fully addressed.

Pillage is important to prosecute because it is interwoven with crimes of violence, like murder, rape, and forced labor. Prosecuting pillage will help end impunity for the crime itself and also provide important context and evidence for more successful cases against these related atrocity crimes. For communities in conflict-affected areas, pillage is a crime of deception and against land ownership; it is a crime that pays, sustaining armed groups and their brutality. Even without the bloodshed characteristic of executions or torture, pillage subjects communities to loss of livelihood and property, which can lead to forced displacement, starvation, and disease. Prosecuting both pillage and the range of associated violent crimes will afford survivors more holistic justice and give analysts a more comprehensive understanding of conflict dynamics.

Many policy reform efforts have attempted to curtail the trade of “conflict minerals.” These efforts have included support for in-region mining regulations, supply chain due diligence requirements, military offensives against violent groups known to control minerals, and robust U.N. and U.S. sanctions regimes to counter natural resource exploitation.<sup>13</sup> These mechanisms are essential for addressing the trade in conflict minerals, but they are not enough to end the practice and bring justice to victims. As a Congolese attorney with an international legal aid organization Lawyers without Borders told Enough, “Lack of prosecution in the area of organized financial crime encourages war crimes and war itself.”<sup>14</sup> Pillage prosecutions—whether in Congo, The Hague, or elsewhere—could do what other policy tools cannot: remove perpetrators from the scenes of crimes and conflict to face trial. Prosecutions also create a public record of crimes, support victims, and help deter future crimes.

The war crime of pillage offers a legal framework for holding individuals and corporations responsible for minerals exploitation. It is the responsibility of ICC Chief Prosecutor Bensouda and her office to pursue investigations of natural resource pillage in order to end impunity for the crime and bring justice to affected communities. The ICC has the opportunity to do so within the scope of ongoing investigations in the case of former rebel commander Bosco Ntaganda, as well as in ongoing investigations in eastern Congo, the Central African Republic, and other areas where violent competition over natural resource threatens civilian lives. Likewise, in Congo, prosecutors in the military justice system have an obligation to investigate the widespread pillage of natural resources and develop dossiers of evidence for the advancement of independent cases at the national level.

Congo has been a focal point for the development of international criminal justice, at both international and domestic levels. The ICC has had seven active cases related to Congo, including the court’s first-ever conviction, that of Thomas Lubanga Dyilo. Congo’s domestic military justice has adjudicated a relatively

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robust set of war crimes cases, including the case against Lt. Col. Bedi Mobuli Egangela, which one U.N. official called a “test case” for Congo’s military justice system.<sup>15</sup> In particular, cases examining child soldiering and sexual violence in Congo have established jurisprudence and lessons for prosecuting those crimes elsewhere. However, neither the ICC nor Congolese courts have ever heard cases of widespread natural resource pillage as a war crime.

## The Crime of Pillage: Legal Elements and Challenges

Codified by the Hague Convention in 1907, then again by the Geneva Conventions in 1949, the war crime of pillage is most simply defined as theft in war.<sup>16</sup> Prosecutors used this legal framework to hold individuals accountable for pillage at the Nuremberg trials after World War II and in a large number of cases addressing atrocities in the former Yugoslavia and Rwanda – primarily related to episodic theft of personal property.<sup>17</sup> The laws of pillage have rarely, however, been used to prosecute the widespread theft of natural resources in modern resource wars like those in Sierra Leone, Congo, and the Central African Republic. Prosecutors have rightly focused on prosecuting violent atrocity crimes, but they have failed to investigate or charge widespread natural resource pillage, missing a critical opportunity to develop deterrence for the illegal business underlying violent conflict.<sup>18</sup>

To convict an individual of pillage, prosecutors must prove that (1) the perpetrator appropriated certain property; (2) the perpetrator intended to deprive the owner of the property and to appropriate it for private or personal use; [and] (3) the appropriation was without the consent of the owner.<sup>19</sup> The prosecutor must also show that the theft occurred in the context of an armed conflict, with the perpetrator’s knowledge that the armed conflict would facilitate the theft. Criminal accountability is critical, but prosecutions will only be legitimate when jurists have a full understanding of the crimes’ elements and when they have the resources they need to gather and preserve relevant evidence. “If you could catch a handful of the heads of minerals pillage, it would be a deterrent—it would weaken the illicit trade,” a MONUSCO official told Enough. “But it would only be helpful if you have a dossier of evidence. If it’s just speculation, it would harm the whole mission.”<sup>20</sup> War crimes cases without thorough investigations, preservation of evidence, and solid prosecution strategies have undermined the credibility of the justice system in eastern Congo.<sup>21</sup> Pillage cases without sufficient investigations and evidence proving the above elements could further undermine the credibility of Congo’s justice system and result in a missed opportunity to end impunity.

Lawyers, investigators, and human rights defenders in eastern Congo and The Hague that spoke to the Enough Project about prosecuting natural resource pillage identified three major challenges to putting forward a strong case: identifying ownership of the natural resources in question, demonstrating links between high-level individuals accused of pillage and wealth derived from widespread illegal mining and trading operations, and showing that the backdrop of armed conflict facilitated the theft and that perpetrators were aware of that advantage.

First, in order to show theft, prosecutors have to prove who the original legal owner of the resource was at the time of the theft to show that the accused perpetrators had no legal right or claim to the minerals.<sup>22</sup> In Congo, ownership of land and property can be difficult to prove because some title records do not exist

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or are difficult to access or are subject to manipulation. “There is big confusion about who the true owner[s] of the minerals are,” one Congolese human rights defender told Enough. “Everyone thinks they own rights to the [large] Bisie [tin] mine, for example.”<sup>23</sup> In addition, given evidence of Congolese army involvement in minerals trafficking,<sup>24</sup> prosecutors should also prepare to address the issue of state ownership in claims involving state military actors. A military defendant might argue that his or her activities at state-owned mine sites were legal. However, army officials can and should be liable for pillage if the state did not authorize activities by the military on state-owned property, or if the exploitation occurred on a privately-owned concession. In this way, pillage law can actually protect the property and concessions of a company with a title from theft by state actors. In cases addressing the Congolese army’s involvement in pillage in eastern Congo, prosecutors should differentiate between public and privately-owned natural resources and investigate whether army officials may have acted out of the scope of their duties.

A second challenge involves showing that the accused perpetrator in fact received stolen materials or wealth derived from stolen materials. Prosecutions would ideally target high-level actors in criminal networks—those leaders issuing orders who may themselves not directly oversee the mining and trafficking activities from which they derive wealth. It can be difficult, however, in such investigations, to link high-level perpetrators—or their wealth—with theft and sale of stolen goods on the ground.<sup>25</sup> In some cases, documentation of these ties can be quite straightforward. Company paper trails can show that decision-makers knew about links to armed groups, or employees admit they knew details about the scope of transactions. In order to better show links between suspects and crimes, prosecutors should investigate bank transactions for signs of ill-gotten gains, and prosecutors should enlist financial forensic experts to track assets and investigate shell companies. Prosecutors should pair these angles of investigation with probes into the chains of command of armed groups. Innovative prosecutorial strategies that blend traditional military and human rights approaches with forensic financial investigations can punish and deter pillage criminals and counter the climate of impunity for such large-scale theft in conflict.

Third, to prove that perpetrators committed pillage as a war crime, prosecutors must show that the acts in question were closely related to the armed conflict. While the test for showing a link between the acts of pillage and an ongoing armed conflict is broad, it is an important aspect of what distinguishes pillage as a war crime from simple theft. As a Congolese minerals policy expert told Enough, “You can only have illicit exploitation on this scale with armed conflict.”<sup>26</sup> In Congo, the lack of rule of law maintained in part by the armed conflict in the east facilitates minerals pillage in that area. Criminal networks thrive in a setting that lacks functioning governance structures, where local and national state authorities focus mainly on fighting armed groups and at times profiting from minerals obtained illegally by armed groups.

It is critical to recognize the complexity of the crime and the challenges to prosecuting pillage in order to ensure policies and resources are adequate for cases to advance successfully. However, the complexities of pillage can be overstated, and concerns about these challenges should not deter decision-makers at the ICC and in Congo’s military justice system from taking steps to develop and support pillage cases. Devoting resources to developing expertise on pillage investigation and prosecution can help strengthen existing atrocity crimes prosecutions and also ensure that theft in war is punished and deterred.

**“A War about Diamonds”:  
Prosecuting Atrocities against a Backdrop of Natural Resource Pillage**

Lawyers prosecuting former Liberian president Charles Taylor for war crimes and crimes against humanity made some of the first attempts to link atrocities with natural resource theft in an international criminal trial. Their experience provides lessons for advancing pillage cases in the future. In 2006, Taylor was arrested and transferred to The Hague. He was charged by a U.N. tribunal with committing atrocity crimes in Sierra Leone.<sup>27</sup> On April 26, 2012, Taylor was convicted of all charges and sentenced to 50 years in prison.<sup>28</sup> His case demonstrates that it is important and possible to use natural resource pillage as a tool for prosecuting atrocities committed by high-level individuals, even when such individuals orchestrate the crimes remotely, from outside the country where pillage occurs. Taylor’s case also shows the importance of exposing links between natural resources and atrocities early in investigations in order to improve the overall prosecution strategy.

Though Sierra Leone’s civil war was characterized in the public arena by the trade of “blood diamonds,” Taylor was never charged with the war crime of natural resource pillage. However, diamonds featured prominently throughout his trial, particularly in questioning about whether Taylor received diamonds from the Revolutionary United Front (RUF) rebel army, on his orders and in exchange for arms.<sup>29</sup> In the final judgment, the court found that civilians were “abducted and forced” to mine diamonds, and the court agreed with prosecutors’ assertions that Taylor ordered rebel troops to control diamond mines in order to facilitate his arms-for-diamonds trading schemes.<sup>30</sup> Diamond-rich territories were often the battlegrounds on which the civil war was fought. Civilian residents in those territories became human shields, sex slaves, child soldiers, and casualties of the violence. At one point during Taylor’s trial, one of the prosecutors read from a newspaper article in which Taylor admitted, “I think that the war in Sierra Leone is a war about diamonds but not for Liberia to take those diamonds.”<sup>31</sup>

Prosecutors used evidence of Taylor’s connection to diamond mining first as the crux of the criminal conspiracy in which they charged him with participation.<sup>32</sup> The purpose of Taylor’s “Joint Criminal Enterprise,” (a mode of liability resembling conspiracy) which perpetrated brutal, calculated attacks against Sierra Leonean civilians, prosecutors argued, was to control Sierra Leone’s diamond wealth. Prosecutors sought to show that diamonds served a dual function as both the purpose of the criminal network and the means that kept it going.<sup>33</sup> When the theory of Joint Criminal Enterprise dropped out of the case for lack of evidence, prosecutors still successfully showed that Taylor’s strategies often hinged on the pursuit of

diamonds and that he benefitted from Sierra Leonean diamonds through multiple direct diamond deliveries.<sup>34</sup>

The case reflects key lessons for addressing pillage in Congo. “Pillage should be approached as an organized crime, as all atrocity crimes should be,” Ken Hurwitz, an attorney with Open Society Justice Initiative, told Enough. “With pillage, changing the way people look for information on the ground is key.”<sup>35</sup> Lawyers involved in the Taylor case have suggested that prosecutors addressing pillage use insider testimony, satellite imagery of mine sites, and mining logs as key evidence. The Taylor case also showed the importance of asset recovery for potential victim reparations. Though the accused claimed indigence, some pushed to recover and restore to Sierra Leonean people the assets Taylor was suspected of gaining by allegedly orchestrating control with RUF over diamond mines in Sierra Leone.<sup>36</sup> Amnesty International’s Congo researcher, Evie Francq, says this is critical consideration for Congo. “Approaching human rights issues with an understanding of mining and supply chains is critical to developing an approach to compensate victims.”<sup>37</sup>

## Incidents of Minerals Pillage in Congo and the Region

### Eastern Congo

Numerous researchers and investigators have documented evidence of theft in Congo’s armed conflict in recent years.<sup>38</sup> Their reports highlight abuses such as forced labor, sexual slavery, and illegal taxation committed in tandem with raids on mines, minerals smuggling, and other forms of theft.<sup>39</sup> Dozens of armed groups have been accused of involvement in these activities, including Forces de Résistance Patriotique d’Ituri (FRPI), Forces Démocratiques de Libération du Rwanda (FDLR), Maï-Maï groups, Rally for Unity and Democracy (RUD), Alliance des Patriotes pour un Congo Libre et Souverain (APCLS), Sheka, Raia-Mutomboki, and Lafontaine.<sup>40</sup> A human rights defender in North Kivu told Enough, “The worst incidents of minerals pillage tied to human rights violations in the last two years for example are in Walikale, allegedly committed by FDLR, Maï-Maï Sheka, and APCLS.”<sup>41</sup> He added,

“They control or use certain mines and traffic the minerals. Specifically gold mines [in southern] Lubero. And they commit violations along the way. The men are armed, they go to the villages, take people and force women into sexual slavery, recruit children. Some people mine voluntarily, some are forced. Torture happens at several of the sites, and illegal taxation. Illegal taxes prevent the villagers from accessing livelihoods.”<sup>42</sup>

Over the years, U.N. investigators have repeatedly echoed these observations. In a 2009 report, the Group of Experts stated,

“The most coercive form of involvement of armed groups and FARDC in the mineral trade is gained through pillage. Armed actors may be complicit in these attacks through the provision of weapons to bandits or armed groups and informing them of the movement of minerals or the money used to purchase

them in order to share a percentage of the looted goods. Armed actors may also forcefully seize productive pits in order to exploit them themselves, or pits may be sporadically looted. Arbitrary arrests for the purposes of extortion are also frequent at mining sites.”<sup>43</sup>

Elements of the Congolese army have also been accused of taking part in illegal minerals trading and providing protection arrangements for armed groups that pillage minerals.<sup>44</sup> Investigating these relationships and networks is critical to preventing the impunity with which state and non-state actors commit both financial and violent crimes.

## **Regional actors**

Regional actors have been involved both directly and indirectly in the pillage of Congo’s natural resources. Neighboring countries, their armies, and their proxy fighters have for decades played a significant role in the fight over Congo’s natural resources.<sup>45</sup> The alleged involvement of Rwandan and Ugandan state agents, as well as by armed groups backed by those countries, in pillaging natural resources and public assets in eastern Congo is particularly noteworthy.

Following interventions by the Ugandan and Rwandan armies into eastern Congo in 1998, the Rwandan defense ministry allegedly established units known as “Congo Desks.”<sup>46</sup> These units, with ties to both military and commercial interests in Rwanda and Uganda, managed organized criminal networks that focused on taking natural resources and other assets in the eastern Congo.<sup>47</sup> In 2002, the U.N. Group of Experts reported that units within Rwanda’s defense ministry generated revenue by means of three interlinked tactics: “military intimidation; maintenance of a public sector facade, in the form of a rebel movement administration; and manipulation of the money supply and the banking sector, using counterfeit currency and other related mechanisms.”<sup>48</sup> The Rwandan government has denied findings in the U.N.’s 2002 report related to Rwanda’s involvement in the theft of Congo’s minerals.<sup>49</sup> Armed groups backed by Rwanda and Uganda have also been repeatedly accused of engaging in natural resource theft and trafficking, including the CNDP, UPC, and others.<sup>50</sup>

In 1999, the Congolese government applied for proceedings at the International Court of Justice (ICJ) in The Hague, presenting evidence that Rwanda pillaged timber, gold, and diamonds in Congo.<sup>51</sup> Congo requested the court order a cessation of violence by Rwandan forces and reparations for the stolen resources.<sup>52</sup> The court dismissed the case for lack of jurisdiction because Rwanda was not party to requisite international conventions.<sup>53</sup> In 2005, in a separate proceeding before the ICJ, the court held that Uganda was responsible for acts of “looting, plundering and exploitation” of Congolese natural resources committed by members of Uganda’s armed forces in 1998 and 1999.<sup>54</sup>

In 2013, the U.N. Group of Experts reported it had “confirmed a continuing pattern of smuggling [of minerals] to Rwanda and documented seizures made by the authorities of the Democratic Republic of the Congo of minerals being smuggled to Rwanda... a key incentive for smuggling to Rwanda is the price differential between the Democratic Republic of the Congo, where few minerals are tagged, and Rwanda, where all minerals are tagged.”<sup>55</sup> These economic incentives for regional actors to steal Congo’s minerals in the context of its armed conflict could add to evidence that perpetrators committed the war crime of pillage.<sup>56</sup>

Rwandan and Ugandan state actors may be among the most well-documented offenders, but they are hardly alone. As a Goma-based lawyer told Enough, “With regard to minerals pillage, there are links to all the neighboring countries.”<sup>57</sup> Investigating and prosecuting minerals pillage will help expose important cross-border criminal networks and may implicate leaders and actors of different nationalities in financial and atrocity crimes in Congo.<sup>58</sup> Congolese, regional and international prosecutors should investigate those most responsible for the gravest incidents of minerals pillage in Congo, wherever they may operate or hold citizenship.

## Barriers to Economic War Crimes Justice: Lack of Resources, Expertise, and Independence

Despite significant evidence of minerals pillage in Congo, and growing normative and legal frameworks emphasizing justice for war crimes and atrocities, significant barriers have prevented pillage cases from advancing. These barriers—some unique to the crime of pillage, some characteristic of justice for atrocity crimes in Congo in general—fall into two basic categories: capacity gaps and the lack of judicial independence that enables political interference.

### Capacity gaps

Lack of capacity in equipment, technology, and legal expertise for prosecuting natural resource pillage prevents investigations from advancing at both international and domestic levels. Proving that state or non-state actors on the ground have orchestrated and benefitted from the theft of natural resources can be expensive and time-consuming. Such investigations typically require a sophisticated understanding of the intersection between conflict financing, theft, and armed group command structures.<sup>59</sup> Because conflict-affected countries may lack funding and expertise in this type of investigation, international or foreign courts may be best positioned to prosecute some cases. But local investigations and prosecutions are critical to developing local deterrence and serving affected communities, so more is needed to help improve accountability both in Congo and internationally.

On the international level, the ICC and nongovernmental human rights organizations should help bridge gaps in capacity to prosecute pillage by bringing together experts from two traditionally separate fields: financial crimes and atrocity crimes. Prosecution teams for atrocity crimes cases such as those for Slobodan Milosevic at the International Tribunal for the Former Yugoslavia or Joseph Kony at the ICC, traditionally have expertise in humanitarian law, military operations, and human rights law. Legal professionals specializing in atrocity crimes may lack expertise in tracking assets or investigating corporate entities and money laundering schemes in order to build pillage charges into their cases. Correspondingly, experts and prosecutors in transnational financial crimes tend to lack experience in internal armed conflict dynamics and atrocities. “The key with the war crime of natural resource pillage is that it links two areas that aren’t normally linked,” Ken Hurwitz told Enough.<sup>60</sup> “People in the room [on atrocity crimes cases] tend to be very uncomfortable with looking at money flows.” Prosecuting pillage presents an opportunity to weave together approaches to fact-finding for both human violence and financial crimes. Linking and prosecuting the two areas together can advance more sophisticated international crimes cases in general.

On the domestic level, justice institutions in Congo need resources to improve legal expertise, especially as it relates to war crimes. Congolese lawyers are seeking training on the elements of pillage as it relates

to criminal activity in Congo. “One month ago [April 2014] the mining minister appointed a focal point with the aim of opening cases on minerals pillage crimes,” a Congolese human rights advocate told Enough. “But we have no judges with expertise—no one knows anything about the crime of natural resource pillage.”<sup>61</sup> One lawyer who represents victims in eastern Congo told Enough, “There is still a lot to learn—those operating the system need to integrate the know-how, experience, and we need domestic jurisprudence.”<sup>62</sup> Providing Congo’s jurists with proper training on how to investigate, prosecute, and adjudicate pillage cases would advance cases and build jurisprudence in Congo’s military justice system.

Material resources are also sorely lacking in Congo, particularly for local lawyers and investigators. One Congolese attorney told Enough, “There aren’t any prosecutions for pillage first because of lack of equipment and capacity. We have no means of investigation—starting with pens, paper, computers, and lack of knowledge of how to investigate [this type of crime].”<sup>63</sup> Another local advocate said, “We have the research, but we don’t have the money or resources to link it to the international community, which can put the evidence in the pipeline for action.”<sup>64</sup> Material support will not, on its own, close the gaps needed to advance minerals pillage cases, but without basic resources, legal practitioners in Congo cannot carry out adequate investigations or trials.

### **Political interference**

Another significant barrier to minerals pillage prosecutions in Congo is a lack of judicial independence, which consistently enables political interference in cases. Influential Congolese leaders are among those suspected of perpetrating or facilitating atrocity crimes linked to pillage. A human rights activist in Goma told Enough, “The guys accused of involvement in the crimes would be the ones charged with actually conducting the investigation. We don’t have a tribunal that has the means to open a solid, independent dossier or case.”<sup>65</sup> Among investigators and human rights defenders in eastern Congo, there is substantial suspicion that high level state authorities consider themselves above the law, and interfere directly with investigations and cases to maintain that status.

The lack of judicial independence directly undermines the integrity of high-stakes war crimes cases, including rape and natural resource pillage. The Minova trial, though it did not involve charges of natural resource pillage, illustrates the military court system’s vulnerability to political influence. In the spring of 2014, the Congolese military court in North Kivu put 39 army officers on trial for rape and other war crimes perpetrated during an attack on the town of Minova, in South Kivu, in late 2012. A local lawyer and civil party advocate who represents victims in eastern Congo told Enough, “[At Minova] there was no coherence, no logic, [and] facts didn’t relate to motives. You have to stay inside the law, but here, politics got involved.”<sup>66</sup> A recent Human Rights Watch report noted that although the Minova trial marked some progress, there were “indications of military interference by senior military officers and an unwillingness to investigate and prosecute the most senior officers bearing command responsibility.”<sup>67</sup> Political interference in the Minova trial contributed to an expectation of impunity for crimes committed by those backed by powerful political and military influence. Several legal and human rights advocates based in eastern Congo told Enough that interference disproportionately impacts cases that involve high-level, high-stakes war crimes in particular, not only related to sexual violence but also involving the theft of minerals.<sup>68</sup>

Lack of judicial independence in Congo leads to political interference that manifests in several specific forms. One structural feature of Congo's military justice system is the policy that prevents judges from presiding over cases that involving the indictment of officials at the judge's rank or lower.<sup>69</sup> In cases in eastern Congo, many judges do not have high enough ranks to prosecute the high-level actors who are most instrumental in perpetrating the crimes in question. Therefore, keeping judges at low-ranks in areas where politically sensitive crimes like rape and natural resource pillage take place is one way to protect high-ranked officials from prosecution.<sup>70</sup>

Political interference extends beyond this structural issue to include direct intimidation. Investigators, human rights defenders, and lawyers pursuing evidence of war crimes, including minerals pillage, are often direct targets. "I was intimidated for working on Minova," one lawyer told Enough. "I got anonymous calls, and they asked if I appreciate the danger of the case. It terrified me. I told myself to lay low, under the radar. The message was clear: this is high politics that shouldn't be investigated."<sup>71</sup> In cases that involve minerals and economic crimes, the intimidation and interference can debilitate cases altogether. Another local lawyer told Enough, "In pillage cases, people have money to pay for silence, so it's very difficult to get information."<sup>72</sup> One added that police act to intimidate investigators when word gets out that minerals pillage charges are in play. "In high-profile cases, police checkpoints in the areas where evidence could be gathered spring up," she explained. "As an investigator or a lawyer, you can get through [the police checkpoints] to conduct investigations, but the problem is getting out with the evidence."<sup>73</sup>

Finally, administrative interference routinely disrupts cases in the military justice system, particularly related to minerals investigations.<sup>74</sup> Dossiers of evidence disappear. Prosecutors are ordered to drop cases or indict only low-ranking officers.<sup>75</sup> Cases are moved from one location to another,<sup>76</sup> stalling the case or leading to lost evidence. "On paper, judges are independent. But there are political injections along the way,"<sup>77</sup> a local civil party advocate told Enough. He said, "For example, the minister can change the jurisdiction of the case to disrupt momentum or to a jurisdiction where there's less expertise or leverage to make the case go forward."<sup>78</sup> In some cases, administrative interference may also rise to the level of intimidation, creating a compounded freezing effect. Minerals pillage cases are particularly vulnerable to interference because successful prosecutions stand to disrupt not only the impunity of powerful actors, but also their lucrative revenue streams. Thus, increased transparency and accountability are critical not only as an end but as a means for advancing minerals pillage cases.

Judicial independence and protection from political influence are necessary for Congolese investigators and lawyers to effectively pursue atrocity crimes and natural resource pillage cases. Even with state-of-the-art legal training and ample funding, Congo will never deliver justice for the war crime of natural resource pillage if state agents meddle in cases and intimidate lawyers, judges, witnesses, and victims. Congolese officials and MONUSCO authorities must collaborate to establish better protection measures for investigators, lawyers, witnesses, and evidence related to these cases.

## Solutions: Build Capacity and Independence

Prosecuting minerals pillage in Congo is possible with additional policy steps by the International Criminal Court, international envoys to the region, the Congolese government, foreign domestic courts, and capacity-building organizations in Congo. With the right reforms and innovative strategies, impunity for economic war crimes and related atrocities can end.

### **Congo's military justice system: increase judicial independence and appoint high-ranking judges**

Congo's operational military courts are currently the most viable local forum for prosecuting the war crime of minerals pillage perpetrated in Congo. These courts have developed some significant case law and experience related to war crimes prosecution in recent years,<sup>79</sup> but they remain hamstrung by political interference and intimidation. In order to address these issues, first, judges should be promoted. "When the judges are too inferior to accuse the right people, we need to promote the judges," one local attorney told Enough.<sup>80</sup> Second, higher-ranking judges should be posted to the areas where these crimes are taking place, such as the Kivus, Ituri, and Katanga. Doing so would allow judges to hear cases against higher ranking officers and commanders.

The Congolese army should also improve access to evidence. U.S. Ambassador Stephen Rapp and MONUSCO officials should encourage the Congolese army to open its military archives to war crimes investigations. Witnesses and jurists involved in minerals pillage investigations also need more robust protective measures. With greater personal security and access to archives and adequately protected witnesses, prosecutors will have the opportunity to carry out more independent, thorough inquiries into the commission of minerals pillage.

While Congo's government should lead efforts to improve accountability for natural resource pillage in the military justice system, many people in Congo told Enough that it would benefit from the support of the international community.<sup>81</sup> MONUSCO, for example, has an essential role to play in military justice reforms. Its justice unit, which assists military prosecutors as well as witness and victim units,<sup>82</sup> should emphasize the importance of prosecuting pillage and help improve judicial independence and access to evidence. A Congolese lawyer told Enough that "Within the military, no one can take initiative to penetrate the network of protection at the high levels of minerals trading. With international pressure, the influence of the United States, maybe you could start to break that up."<sup>83</sup> Collaborative efforts by local authorities, legal specialists and international stakeholders can elevate the standards of justice for investigations and prosecutions in Congo that include pillage.

### **Specialized mixed chambers: establish a competent, independent mechanism for prosecutions**

Congo's specialized mixed chambers, a proposed legal institution designed to prosecute atrocity crimes in Congo, would address gaps in the military justice system and bring together Congolese and international jurists. The mixed chambers would be a national judicial institution created under Congolese law and composed of both Congolese and international judicial staff and mandated to prosecute atrocity crimes in relative proximity to where they took place, with high standards of independence and due process, insulated from political interference. It would likely have a more expansive jurisdiction than the military justice system, with the power to prosecute foreign nationals and civilians. Cases in the mixed chambers would address grave crimes committed in Congo, including pillage, with the oversight and

support of international experts and resources. The mixed chambers are also designed with long-term justice reform in mind: they would provide Congolese jurists with hands-on legal training and improve judicial protocols, strengthening Congo's justice sector overall.

Mixed chambers would provide the resources and oversight that cases like Minova lacked, which led to trials that many viewed as incomplete or illegitimate.<sup>84</sup> In an interview with the Enough Project, a Congolese lawyer involved in the Minova trial said that problems in that trial indicate a clear need for mixed chambers. "You wouldn't have had the same problems had [the Minova] case been adjudicated by the mixed chambers," he noted, explaining that the mixed chambers would provide the transparency and legal expertise required for fair trials.<sup>85</sup>

Importantly, the mixed chambers could provide a central platform for prosecutions against regional actors with safeguards against political influence. "The mixed chambers has territorial benefits," a Congolese lawyer and victims advocate told Enough. "As it is now, the Rwandans come in, commit a crime, then leave. Police can't get them."<sup>86</sup> The proposed chambers have the potential to disrupt the regional impunity that allows minerals pillage to continue.

In terms of structure and staff, the mixed chambers would be integrated into the Congolese judicial system and housed in select provincial appeals courts.<sup>87</sup> For the first several years, the chambers would include international jurists and receive international funds to help close Congo's expertise and resource gaps. With oversight by the international community and a blending of experience between military and civilian lawyers, the specialized mixed chambers would act as an innovative means for justice sector reform. Congolese civilian lawyers could learn from Congolese military lawyers, and all Congolese lawyers could exchange lessons with international practitioners.

Congolese civil society has advocated for a mixed chambers for more than a decade,<sup>88</sup> but despite having much local, national, and international support, the law instituting the mixed chambers still has not passed the Congolese legislature. In 2010, a seminal U.N. report on Congo's crimes endorsed the idea of a mixed chambers,<sup>89</sup> and the Congolese government also endorsed the institution. The following year, Congolese civil society continued to push for the draft law on the mixed chambers to advance,<sup>90</sup> but parliament failed to approve the bill that year. In October 2013, President Kabila expressed his support for the bill in front of parliament, but the bill did not pass.

The draft bill is currently pending promulgation. In order to move the proposal forward, international special envoys to Congo and the Great Lakes region should continue their efforts in support of the proposed bill, highlighting the importance of a robust international role in its design and cases. The envoys should continue encouraging Congo's justice minister to prioritize the bill and push for its approval by Congo's parliament in the next session. The mixed chambers themselves, if established, should have financial crimes experts in the office of the prosecutor. The mixed chambers' victims and witnesses unit should have experts who can trace stolen assets to ensure their redistribution to either the rightful owners or victim communities as part of a coordinated reparations program.

## **The International Criminal Court: Revive the financial crimes investigation unit**

The ICC offers the judicial independence, expertise, and capacity to prosecute atrocity crimes that the proposed mixed chambers could someday help address, and that Congolese military courts cannot always provide. With a number of active investigations in Congo and other natural resource rich countries, the ICC is well positioned to prosecute natural resource pillage, adding charges where appropriate and considering the role of natural resources in the commission of violent crimes.

The ICC should improve its expertise in financial crimes, particularly the war crime of natural resource pillage. In an unprecedented effort to improve prosecutions in a particular category of crimes—sexual and gender-based violence crimes—ICC Chief Prosecutor Fatou Bensouda developed a new comprehensive strategy.<sup>91</sup> She invited input from experts all over the world to shape innovative policies on approaches ranging from witness protection to evidence gathering. At the release of the new strategy, she said the new policy was a “key tool” her office developed to “effectively respond to the challenge [of sexual and gender-based violence].”<sup>92</sup>

Bensouda should take a similarly targeted, comprehensive approach to natural resource pillage, given the prevalence of natural resources in countries with active ICC investigations and cases. In addition to gathering input from the growing set of experts on this topic, the court should revive its financial crimes investigation unit, which was shut down due to disjointed, ineffective tactics. The revived unit should staff experts in both atrocity crimes and financial crimes in order to better investigate interconnected crimes and drivers of violence. Prosecutors should explore the possibility of adding natural resource charges to cases where appropriate. In addition, prosecutors should apply pillage analysis to the investigation of other crimes, taking into account the role natural resource theft may play in funding and motivating violent crimes. Finally, experts advising Bensouda’s office should also prioritize finding effective approaches asset recovery and charitable redistribution to restore stolen wealth to victim communities.

With the right experts and resources, a unit focused on investigating the financial crimes that fuel and enable atrocities could counter impunity in Congo and transform the court’s effectiveness in prosecuting these interlinked crimes.

## **Corporate liability: prosecute the most egregious cases of natural resource pillage**

Armed rebels in Congo are not the only beneficiaries of pillaged minerals, nor do they hold exclusive liability for the war crime of natural resource pillage. Commercial entities provide the demand that makes stolen minerals profitable for the perpetrators of natural resource theft in Congo, and some may be liable for pillage if they knowingly or recklessly source minerals stolen in the context of armed conflict. James Stewart, a leading scholar on corporate liability for war crimes and a former Open Society Fellow, has said, “We occupy a very strange position in history whereby there is almost complete impunity for corporation acting in war zones.”<sup>93</sup> Criminal corporations knowingly or recklessly appropriating natural resources stolen from eastern Congo and other resource-rich countries at war should be held accountable.

Prosecuting companies for pillage is a critical complement to prosecuting individuals, because companies provide business and resources to armed groups without which war crimes and crimes against humanity may not be possible. “Minerals pillage,” one Congolese opposition leader told Enough, “is exacerbated by

the complicity of the state, and the creation of offshore companies—many companies [for which] no one knows the owner.”<sup>94</sup> Companies too often operate in a shroud of impunity, particularly in war zones.

There has been some progress in the area of corporate liability for pillage, in large part because of legal scholars and investigators who have advanced the theory of corporate responsibility for war crimes, and who have pursued the Swiss gold refiner, Argor Heraeus, for potential involvement in gold pillaging in Congo. In 2004, the U. N. Group of Experts named several commercial entities suspected of involvement in gold smuggling by armed groups in eastern Congo’s Ituri region. In 2012, the Open Society Justice Initiative and TRIAL<sup>95</sup> requested that the Swiss government investigate one such entity—Argor Heraeus—for money laundering in connection with gold allegedly pillaged and bought by the Jersey Channel Island company Hussar Ltd. Argor Heraeus has denied the allegations, arguing that as soon as it became aware of possible connections between the gold in question and criminal activities in Ituri, it stopped refining gold from Hussar Ltd.<sup>96</sup> Kathi Lynn Austin, an investigator centrally involved pursuing the case against Argor, has said, “The true-life villains...are the ones setting up trafficking networks in war zones around the world, and meanwhile the perpetrators of atrocities that they are facilitating...are in places like the Congo where women are raped on a regular basis by soldiers.”<sup>97</sup> When credible evidence points to illegal behavior by a company involved in natural resource supply chains, the company should be investigated by state authorities in the company’s home country.

The law of natural resource pillage does not put every company sourcing minerals from conflict zones on a track for criminal investigations, and this framework should not deter responsible companies from sourcing minerals from countries affected by armed conflict. Companies investing in such environments should use internationally accepted due diligence guidelines, such as the Organization for Economic Cooperation and Development’s (OECD) Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.<sup>98</sup> “We don’t want to demonize business,” Stewart has said, “We do want to facilitate corporations doing things that are appropriate.”<sup>99</sup> If the Argor case goes forward, it has the potential to set critical precedent.

It is critically important for corporations to invest responsibly in the Great Lakes region using the OECD due diligence guidance and other standards for responsible business investment.<sup>100</sup> Criminal accountability for corporations should serve as a complement, not a deterrent to legal, responsible investment. In fact, pillage prosecutions against business entities would help distinguish the companies investing responsibly from those committing crimes. Those acting illegally and doing well out of war at the expense of local communities should not enjoy immunity.

## Conclusion

The theft of minerals and other natural resources has fueled and motivated some of the most brutal atrocities in modern history, leaving millions of people dead or disenfranchised. Pillage and atrocities will continue and leave lasting legacies of trauma, mistrust, and poverty even with advances in regulatory reforms and military efforts unless there is justice. It is essential that advocates of criminal accountability in Congo use strategies that address natural resource pillage as a driver of atrocity crimes as well as a grave war crime in its own right.

Accountability is critical for deterring future atrocities in Congo, promoting regional stability, and developing jurisprudence for prosecutions in other resource-rich countries beset by brutal armed conflict. With robust financial crimes investigations, the growth of strong independent justice institutions in Congo, and better protective measures for local advocates, prosecuting natural resource pillage in Congo and at the ICC is possible. Without justice for this crime, efforts to combat the illicit trade in natural resources will be incomplete, and peacebuilding in Congo will falter.

## Endnotes

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- <sup>1</sup> See, for example, Global Witness, “City of Gold: Why Dubai’s First Conflict Gold Audit Never Saw the Light of Day” (London and Washington: February 2014), pp. 4-6, available at [http://www.globalwitness.org/sites/default/files/library/dubai\\_gold\\_layout\\_lr.pdf](http://www.globalwitness.org/sites/default/files/library/dubai_gold_layout_lr.pdf); Omer Ismail and Akshaya Kumar, “Darfur’s Gold Rush: State-Sponsored Atrocities 10 Years After the Genocide” (Washington: The Enough Project, May 2013), available at [http://www.enoughproject.org/files/Darfur\\_Gold\\_Rush.pdf](http://www.enoughproject.org/files/Darfur_Gold_Rush.pdf); and Ulf Laessing, “The Darfur conflict’s deadly gold rush,” Reuters, October 8, 2013, available at [www.reuters.com/article/2013/10/08/us-sudan-darfur-goldidUSBRE99707G20131008](http://www.reuters.com/article/2013/10/08/us-sudan-darfur-goldidUSBRE99707G20131008); Alexis Arieff and Lauren Ploch, “The Lord’s Resistance Army: The U.S. Response,” (Washington: U. S. Congressional Research Service, May 2014), available at <http://www.refworld.org/docid/539eccb54.html>; The Resolve, The Enough Project, and Invisible Children “Kony to LRA: Bring me ivory, gold and diamonds,” November 19, 2014, available at <http://www.enoughproject.org/files/publications/LRA-Trafficking-Presser-Enough-TheResolve-InvisibleChildren-Nov2014.pdf>; Kasper Agger and Jonathan Hutson, “Kony’s Ivory: How Elephant Poaching in Congo Helps Support the Lord’s Resistance Army,” (Washington: The Enough Project, June 2013), available at <http://www.enoughproject.org/files/KonysIvory.pdf>; Kasper Agger, “Behind the Headlines: Drivers of Violence in the Central African Republic,” (Washington: The Enough Project, May 2014), available at <http://www.enoughproject.org/reports/behind-headlines-drivers-violence-central-african-republic>; The Enough Project, “How to Dismantle a Deadly Militia: Seven Non-Military Tactics to Help End the FDLR Threat in Congo,” November 18, 2014, available at <http://www.enoughproject.org/reports/how-dismantle-deadly-militia>.
- <sup>2</sup> Author interview with Gregoire Mpungu, University of Kinshasa, Kinshasa, May 21, 2014.
- <sup>3</sup> Executive Order no. 13,671, *Federal Register*, title 3, vol. 79, no. 132 (July 8, 2014), available at <http://www.treasury.gov/resource-center/sanctions/Programs/Documents/13671.pdf>.
- <sup>4</sup> The White House, “Fact Sheet: U.S. Support for Combating Wildlife Trafficking,” August 4, 2014, available at <http://www.whitehouse.gov/the-press-office/2014/08/04/fact-sheet-us-support-combating-wildlife-trafficking>.
- <sup>5</sup> See, for example, Fidel Bafilemba, Timo Mueller, and Sasha Lezhnev, “The Impact of Dodd-Frank and Conflict Minerals Reforms on Eastern Congo’s War,” (Washington: The Enough Project, June 2014), available at <http://www.enoughproject.org/reports/impact-dodd-frank-and-conflict-minerals-reforms-eastern-congo%E2%80%99s-war>; Tom Odula, “Interpol: Kenyan suspected ivory smuggler arrested,” Associated Press, December 23, 2014, available at [http://staging.hosted.ap.org/dynamic/stories/A/AF\\_KENYA\\_IVORY\\_ARREST?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT&CTIME=2014-12-23-09-36-35](http://staging.hosted.ap.org/dynamic/stories/A/AF_KENYA_IVORY_ARREST?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT&CTIME=2014-12-23-09-36-35); Arthur Neslen, “Most-wanted environmental fugitives list leads to arrest of ivory suspect,” *The Guardian*, December 11, 2014, available at <http://www.theguardian.com/environment/2014/dec/11/environmental-fugitives-list-arrest-ivory-suspect>.
- <sup>6</sup> Pillage is often charged in international criminal cases, but only to address small-scale episodic theft of personal property, rather than the organized, widespread theft of natural resources.
- <sup>7</sup> Gregoire Mpungu, University of Kinshasa, Kinshasa, May 21, 2014.
- <sup>8</sup> Author interview with Congolese ex-minister, Goma, eastern Congo, May 18, 2014.
- <sup>9</sup> Illegal appropriation can be direct or indirect. see James G. Stewart, *Corporate War Crimes: Prosecuting the Pillage of Natural Resources* (New York: Open Society Foundations, 2011): pp. 33-37.
- <sup>10</sup> Author interview with the representative of a Congolese nongovernmental community development organization, Goma, May 15, 2014.
- <sup>11</sup> Author interview with Congolese political opposition leader, Kinshasa, May 22, 2014.
- <sup>12</sup> Author interview with the representative of a Congolese nongovernmental human rights organization, Goma, May 16, 2014.

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<sup>13</sup> For support for in-region mining initiatives, see Partnership Africa Canada, “[International Conference on the Great Lakes Region] Regional Certification Mechanism for Conflict Minerals,” available at <http://www.pacweb.org/en/regional-certification> (last accessed January 2015) and U.S. Government Accountability Office, “Dodd-Frank Regulations: Agencies Conducted Regulatory Analyses and Coordinated but Could Benefit from Additional Guidance on Major Rules,” (Washington: December 2013), available at <http://www.gao.gov/assets/660/659586.pdf>. For supply chain due diligence requirements, see *Dodd-Frank Wall Street Reform and Consumer Protection Act*, H.R. 4173, 111 Cong. 2 sess., Section 1502, available at <http://www.sec.gov/about/laws/wallstreetreform-cpa.pdf>. For military operations see U.N. Organization Stabilization Mission in the Democratic Republic of the Congo, “MONUSCO Background,” available at <http://www.un.org/en/peacekeeping/missions/monusco/background.shtml> (last accessed January 2015). For sanctions, see Executive Order no. 13,671.

<sup>14</sup> Author interview with Congolese representative of international legal aid organization, Goma, May 14, 2014.

<sup>15</sup> Scott Campbell, the director of the U.N. Joint Human Rights Office (UNJHRO), told the BBC, “The UN Security Council and different special representatives of the [UN] secretary general have been very focused on this case as a bit of a test case to see if military justice can deliver justice for very serious crimes - and committed by a senior officer within the Congolese army.” BBC News, “DR Congo war crimes trial of Egangela ‘a test case of justice’,” August 14, 2014, available at <http://www.bbc.com/news/world-africa-28792436>.

<sup>16</sup> For an overview of pillage as prohibited under international law, see International Committee for the Red Cross, “Rule 52. Pillage,” available at [https://www.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule52](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule52) (last accessed January 2015). For a list of precise references to legal prohibitions on pillage under the Hague Convention and other treaties, international legal instruments, and national laws see International Committee for the Red Cross, “Customary International Humanitarian Law: Practice Relating to Rule 52. Pillage,” available at <http://www.opensocietyfoundations.org/sites/default/files/pillage-manual-2nd-edition-2011.pdf>; [https://www.icrc.org/customary-ihl/eng/docs/v2\\_rul\\_rule52](https://www.icrc.org/customary-ihl/eng/docs/v2_rul_rule52) (last accessed January 2015). See also, Stewart, *Corporate War Crimes*.

<sup>17</sup> For a comprehensive table of cases involving pillage charges, including at Nuremberg and before the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, see Stewart, *Corporate War Crimes*, pp. 95-124.

<sup>18</sup> See, for example, Prosecutor v. Charles Ghankay Taylor, Case No. SCSL-03-01-I, Amended indictment, (March 17, 2006), available at [http://www.haguejusticeportal.net/Docs/Court%20Documents/SCSL/Taylor\\_Amended%20Indictment.pdf](http://www.haguejusticeportal.net/Docs/Court%20Documents/SCSL/Taylor_Amended%20Indictment.pdf); Prosecutor v. Dusko Tadic, Case No. IT-94-1-I, Amended indictment, available at <http://www.icty.org/x/cases/tadic/ind/en/tad-2ai951214e.pdf>; Prosecutor v. Akayesu, Case No. ICTR-96-4, Indictment (1998), available at: <http://www1.umn.edu/humanrts/instree/ICTR/AKAYESU ICTR-96-4/Indictment ICTR-96-4-I.html>.

<sup>19</sup> International Criminal Court, Elements of Crimes, ICC-ASP/1/3, art. 8(2)(b)(xvi), available at <http://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>.

<sup>20</sup> Author interview with MONUSCO official, Goma, May 10, 2014.

<sup>21</sup> See analysis of and reactions to the 2014 Minova trial in North Kivu, eastern Congo, Millie Lake, “After Minova: Can War Crimes Trials Overcome Violence in the DRC?” African Arguments, May 8, 2014, available at <http://africanarguments.org/2014/05/08/after-minova-can-war-crimes-trials-overcome-violence-in-the-drc-by-millie-lake/>; Fédération Internationale des ligues des Droits de l'Homme (FIDH), “Acquittal of Minova soldiers: a new insult to victims of sexual violence in the DRC,” May 7, 2014, available at <https://www.fidh.org/International-Federation-for-Human-Rights/Africa/democratic-republic-of-congo/15510-acquittal-of-minova-soldiers-a-new-insult-to-victims-of-sexual-violence-in>.

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<sup>22</sup> The requirement that an individual or entity must appropriate property from its rightful owners can make prosecuting state actors for pillage difficult since in many jurisdictions the natural resources of a country belong to the government. “One strategy is to pursue the public angle,” an international prosecutor told Enough in a May 2014 interview. “Showing that the resources were publicly owned helps get around the government involvement challenge.” Even in cases targeting non-state actors, finding evidence of original title in Congo and other conflict-affected areas can be difficult due to scarce census data and other documentation and records.

<sup>23</sup> Author interview with the Congolese representative of a nongovernmental human rights organization, Goma, May 16, 2014.

<sup>24</sup> See, for example, U.N. Security Council, “Final report of Group of Experts on DRC, submitted in accordance with paragraph 6 of Security Council resolution 1896 (2009),” S/2010/596, paras. 173, 178b, 178c, 178d, 279e, November 29, 2010, available at [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2010/596](http://www.un.org/ga/search/view_doc.asp?symbol=S/2010/596); U.N. Security Council, “Report of the Group of experts submitted pursuant to resolution 1616 (2006),” S/2006/525, para. 18, July 18, 2006, available at [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2006/525](http://www.un.org/ga/search/view_doc.asp?symbol=S/2006/525).

<sup>25</sup> Remarks by Mohamed Bangura, Prosecutor at the Residual Special Court for Sierra Leone, “Loot, Pillage and Plunder: Prosecuting Economic War Crimes in the 21st Century,” Washington, D.C. event hosted by the Johns Hopkins School for Advanced International Studies (SAIS) October 8, 2014, video available at <https://www.youtube.com/watch?v=xA40Lx18ryo>.

<sup>26</sup> Author interview with George Bokundo, Open Society Initiative for Southern Africa (OSISA) Southern Africa Resource Watch (SARW), Kinshasa, May 22, 2014.

<sup>27</sup> Prosecutor v. Charles Ghankay Taylor, Case No. SCSL-03-01-I, Amended indictment.

<sup>28</sup> Prosecutor v. Charles Ghankay Taylor, Case No. SCSL-03-01-T-1285, Sentencing judgment, May 30, 2012, available at <http://www.rscsl.org/Documents/Decisions/Taylor/1285/SCSL-03-01-T-1285.pdf>.

<sup>29</sup> Alpha Sesay, “Charles Taylor Was Not Part Of A Plan To Commit Crimes In Sierra Leone; He Did Not Receive Diamonds From Sierra Leonean Rebels, Witness Says,” International Justice Monitor, February 25, 2010, available at <http://www.ijmonitor.org/2010/02/charles-taylor-was-not-part-of-a-plan-to-commit-crimes-in-sierra-leone-he-did-not-receive-diamonds-from-sierra-leonean-rebels-witness-says/>; Alpha Sesay, “Taylor Denies Giving Money to Rebel Leader or Safekeeping Diamonds,” International Justice Monitor, September 24, 2009, available at <http://www.ijmonitor.org/2009/09/taylor-denies-giving-money-to-rebel-leader-or-safekeeping-diamonds/>; Alpha Sesay, “There Was No Exchange Of Arms and Diamonds Between RUF and Charles Taylor and RUF Trained At Camp Nama In Liberia But Not With Taylor’s Assistance,” International Justice Monitor, April 24, 2010, available at <http://www.ijmonitor.org/2010/04/there-was-no-exchange-of-arms-and-diamonds-between-ruf-and-charles-taylor-and-ruf-trained-at-camp-nama-in-liberia-but-not-with-taylors-assistance/>. The articles by Sesay are part of the summaries and reports from the proceedings with Charles Taylor at the Special Court for Sierra Leone provided by the International Justice Monitor, a project of the Open Society Justice Initiative. For additional reporting see <http://www.ijmonitor.org/category/charles-taylor/>.

<sup>30</sup> Prosecutor v. Charles Ghankay Taylor, Case No. SCSL-03-1-T, Judgment, (April 26, 2012), available at: [http://iusgentium.ch/taylor\\_full.html](http://iusgentium.ch/taylor_full.html).

<sup>31</sup> Alpha Sesay, “Prosecutors question Issa Sesay about Sierra Leone’s diamonds,” International Justice Monitor, April 13, 2010, available at <http://www.ijmonitor.org/2010/08/prosecutors-question-issa-sesay-about-sierra-leones-diamonds/>.

<sup>32</sup> Remarks by Bangura, “Loot, Pillage and Plunder” event.

<sup>33</sup> Ibid.

<sup>34</sup> Prosecutor v. Charles Ghankay Taylor, Case No. SCSL-03-1-T, Judgment.

<sup>35</sup> Author interview by telephone with Ken Hurwitz, February 20, 2014.

<sup>36</sup> Remarks by Bangura, “Loot, Pillage and Plunder” event.

<sup>37</sup> Author interview by telephone with Evie Francq, May 26, 2014.

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<sup>38</sup> See, for example, the final 2002 report of the U.N. Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo, S/2003/1027, October 2003, available at <http://www.un.org/Docs/journal/asp/ws.asp?m=S/2003/1027>. See also the “Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003,” August 2010, available at [http://www.ohchr.org/Documents/Countries/CD/DRC\\_MAPPING\\_REPORT\\_FINAL\\_EN.pdf](http://www.ohchr.org/Documents/Countries/CD/DRC_MAPPING_REPORT_FINAL_EN.pdf). Reports issued by the U.N. Group of Experts since July 2004 are available at <http://www.un.org/sc/committees/1533/egroup.shtml> (last accessed January 2015). See also Human Rights Watch, “The Curse of Gold” (New York and Washington: 2005) pp. 15-36, available at [http://www.hrw.org/sites/default/files/reports/drc0505\\_0.pdf](http://www.hrw.org/sites/default/files/reports/drc0505_0.pdf).

<sup>39</sup> In addition to minerals pillage, elephant poaching can also amount to the war crime of pillage. Investigators and prosecutors should examine poaching and ivory trading as evidence of the war crime and explore links between armed actors profiting on ivory trading and the commission of atrocities in eastern Congo. In recent years, the U.N. Group of Experts and nongovernmental organizations have reported that elements of the Congolese army, the Lord’s Resistance Army, other armed groups and private individuals are responsible for poaching elephants and selling their tusks on the black market and into the global ivory supply. See, U.N. Security Council, “Final report of the Group of Experts submitted in accordance with paragraph 4 of Security council resolution 2078 (2012),” S/2014/42, paras. 225, 28, January 23, 2014, available at [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2014/42](http://www.un.org/ga/search/view_doc.asp?symbol=S/2014/42).

<sup>40</sup> U.N. Security Council, “Midterm report of the Group of Experts on the DRC submitted in accordance with paragraph 5 of Security Council resolution 2078 (2012),” S/2013/433, para. 82, July 19, 2013, available at [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2013/433](http://www.un.org/ga/search/view_doc.asp?symbol=S/2013/433); U.N. Security Council, “Final report of the Group of Experts,” S/2014/42, paras. 96 and 113; U.N. Security Council, “Final report of Group of Experts on DRC,” S/2010/596, Summary; U.N. Security Council, “Final report of the Group of Experts on the DRC submitted in accordance with paragraph 5 of Security Council resolution 1952 (2010),” S/2011/738, para. 230, December 2, 2011, available at [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2011/738](http://www.un.org/ga/search/view_doc.asp?symbol=S/2011/738).

<sup>41</sup> Author interview with the representative of Congolese nongovernmental human rights organization, Goma, eastern Congo, May 16, 2014. See also, U.N. Security Council, “Midterm report of the Group of Experts,” S/2013/433; U.N. Security Council, “Final report of the Group of Experts,” S/2014/42.

<sup>42</sup> Author interview with the representative of a Congolese nongovernmental human rights organization, Goma, May 16, 2014.

<sup>43</sup> U.N. Security Council, “Final report of Group of Experts on DRC,” S/2010/596, para. 178d.

<sup>44</sup> U.N. Security Council, “Final report of Group of Experts on DRC,” S/2010/596, paras. 173, 178b, 178c, 178d, 279e; U.N. Security Council, “Report of the Group of Experts,” S/2006/525, para. 18.

<sup>45</sup> See, Jason Sterns, “From CNDP to M23: The evolution of an armed movement in Eastern Congo” (London and Nairobi: Rift Valley Institute Usalama Project, 2012), p. 57, available at [http://www.riftvalley.net/publication/cndp-m23#.VD1tThaa\\_To](http://www.riftvalley.net/publication/cndp-m23#.VD1tThaa_To); Global Witness, “Coming Clean; How supply chain controls can stop Congo’s minerals trade fuelling conflict,” (London: May 2012), pp. 28-29, available at [http://www.globalwitness.org/sites/default/files/120531\\_Coming%20Clean\\_lowres.pdf](http://www.globalwitness.org/sites/default/files/120531_Coming%20Clean_lowres.pdf); U.N. Security Council, “Final report of the Group of Experts,” S/2014/42, para. 200; Jonny Hogg, “Insight: Ethnic, economic interests entangle Rwanda in Congo,” Reuters, October 17, 2012, available at <http://www.worldaffairsjournal.org/index.php?q=content/analysis-ethnic-economic-interests-entangle-rwanda-congo>.

<sup>46</sup> A 2002 U.N. Panel of Experts report on Congo notes, “The elite network’s operations in eastern Democratic Republic of the Congo are managed centrally from the [Rwandan Patriotic Army] Congo Desk, which serves to link the commercial and military activities of RPA.” U.N. Security Council, “Final report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo,” S/2002/1146, para. 70, October 2002, available at <http://www.un.org/Docs/journal/asp/ws.asp?m=S/2002/1146>. For references to Uganda’s Congo Desk and notes on the distinctions between the Rwandan and Ugandan desks,

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see Gérard Prunier, *Africa's World War: Congo, the Rwandan Genocide, and the Making of a Continental Catastrophe* (New York: Oxford University Press, 2009): pp. 198, 220, 245, 291.

<sup>47</sup> The 2002 U.N. Panel of Experts report on Congo further notes, "A reliable source associated with the Congo Desk has calculated that income to the Desk provided 80 per cent of all RPA expenditure in 1999. The official Rwandan budget for 1999 allocated \$80 million to the military...The Congo Desk's contribution to Rwanda's military expenses would therefore have been in the order of \$320 million. The activities funded by revenues generated by the Congo Desk strongly shape Rwanda's foreign policy and directly influence national decision-making in a number of domains. These transactions are, however, hidden from the scrutiny of international organizations." U.N. Security Council, "Final report of the Panel of Experts," S/2002/1146, para. 71.

<sup>48</sup> U.N. Security Council, "Final report of the Panel of Experts," S/2002/1146.

<sup>49</sup> Stefan Armbruster, "Rwanda denies DRC plundering" BBC News, February 18, 2003, available at <http://news.bbc.co.uk/2/hi/business/2775029.stm>.

<sup>50</sup> U.N. Security Council, "Final report of the Group of Experts on the DRC submitted in accordance with paragraph 8 of Security Council resolution 1857 (2008)" S/2009/603, summary and paras. 14, 16, November 23, 2009, available at [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2009/603](http://www.un.org/ga/search/view_doc.asp?symbol=S/2009/603); Human Rights Watch, "The Curse of Gold," pp. 15-36, 2005, available at [http://www.hrw.org/sites/default/files/reports/drc0505\\_0.pdf](http://www.hrw.org/sites/default/files/reports/drc0505_0.pdf); U.N. Security Council, "Report of the Group of experts submitted pursuant to resolution 1616 (2005)" S/2006/53, para. 91, January 27, 2006, available at [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2006/53](http://www.un.org/ga/search/view_doc.asp?symbol=S/2006/53).

<sup>51</sup> See Application instituting proceedings filed in the Registry of the Court on 23 June 1999, Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Rwanda), 1999 I.C.J. pp. 5, 9 (Jun. 23), available at: <http://www.icj-cij.org/docket/files/117/7071.pdf>.

<sup>52</sup> See Application instituting proceedings filed in the Registry of the Court on 23 June 1999, Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Rwanda), 1999 I.C.J. pp. 5, 9 (Jun. 23), available at: <http://www.icj-cij.org/docket/files/117/7071.pdf>.

<sup>53</sup> Jaime Janson, "ICJ dismisses Congo human rights case against Rwanda," JURIST, Feb. 3, 2006, <http://jurist.org/paperchase/2006/02/icj-dismisses-congo-human-rights-case.php>.

<sup>54</sup> See Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda), 2005 I.C.J. 116 (Dec. 19), available at <http://www.icj-cij.org/docket/files/116/10455.pdf>. The ICJ has heard one other case addressing natural resource pillage, also affecting Congo. See Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Rwanda), 1999 I.C.J., available at <http://www.icj-cij.org/docket/index.php?p1=3&p2=3&code=cr&case=117&k=85&p3=0>.

<sup>55</sup> U.N. Security Council, "Final report of the Group of Experts," S/2014/42, para. 200.

<sup>56</sup> Stewart, *Corporate War Crimes*, para. 115, p. 70.

<sup>57</sup> Author interview with a Congolese lawyer, Goma, eastern Congo, May 16, 2014.

<sup>58</sup> While many of the activities have been documented, more information is needed to determine which individuals are orchestrating plans from across the border and how those plans are put into practice.

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<sup>59</sup> There are exceptions to this general rule that are important to note. Difficulty should not excuse failure to investigate, and some pillage cases could be easier to prosecute than violent atrocity crimes, particularly against business entities in countries with developed, experienced legal systems. Particularly in cases related to corporate liability, investigating and prosecuting the war crime of pillage could be significantly easier than carrying out other war crimes and atrocity crimes investigations. In public remarks in October 2014 James Stewart noted, “These cases will in many instances but not all, be easier to prove than the normal sorts of cases that I and everybody here on the panel have been involved in. It takes some evidence to link a president to people with weapons committing crimes on the ground. That really is a difficult task...But people send me copies of contracts...and customs manifests saying that these particular natural resources left the country – lovely, not difficult. Because we’re in this environment of almost unbroken impunity, in some instances there are CEOs almost admitting to this war crime in their annual reports...So the practical advice is there may be ways of focusing on these prosecutions that are in fact easier.” See “Loot, Pillage and Plunder: Prosecuting Economic War Crimes in the 21st Century,” Washington, D.C. event hosted by the Johns Hopkins School for Advanced International Studies (SAIS) featuring speakers Mohamed A. Bangura, Holly Dranginis, and James G. Stewart, October 8, 2014, video available at <https://www.youtube.com/watch?v=xA40Lx18ryo>.

<sup>60</sup> Author interview by telephone with Ken Hurwitz, February 20, 2014.

<sup>61</sup> Author interview with the representative of a Congolese nongovernmental community development organization, Goma, May 15, 2014.

<sup>62</sup> Author interview with a Congolese lawyer and civil party advocate, Goma, May 16, 2014.

<sup>63</sup> Author interview with the Congolese representative of an international legal aid organization, Goma, May 14, 2014.

<sup>64</sup> Author interview with a Congolese attorney, Goma, May 10, 2014

<sup>65</sup> Author interview with the representative of a Congolese nongovernmental human rights organization, Goma, May 16, 2014.

<sup>66</sup> Author interview with a Congolese lawyer and civil party advocate, Goma, May 16, 2014.

<sup>67</sup> Human Rights Watch, “Ending Impunity for Sexual Violence: New Judicial Mechanism Needed to Bring Perpetrators to Justice,” June 10, 2014, 16, available at <http://www.hrw.org/news/2014/06/10/democratic-republic-congo-ending-impunity-sexual-violence>.

<sup>68</sup> Author interview with a Congolese attorney, May 9, 2014, a Congolese attorney and human rights advocate, May 10, 2014, and a representative of a Congolese nongovernmental community development organization, Goma, May 15, 2014, all in Goma.

<sup>69</sup> Author interviews with a MONUSCO official, a Congolese civil party advocate, and a Congolese attorney, Goma, May 9-10, 2014.

<sup>70</sup> Author interviews with a Congolese civil party advocate and with a MONUSCO official, each on May 9, 2014.

<sup>71</sup> Author interview with a Congolese attorney, May 10, 2014.

<sup>72</sup> Ibid.

<sup>73</sup> Author interview with a Congolese attorney and human rights advocate, Goma, May 10, 2014.

<sup>74</sup> Author interviews with a civil party advocates and the representative of a Congolese nongovernmental community development organization, Goma, May 8-9, 2014.

<sup>75</sup> Author interviews with the representative of Congolese nongovernmental human rights organization, a Congolese attorney and human rights advocate, and a former U.N. Group of Experts member, all in Goma, May 2014.

<sup>76</sup> Author interview with a Congolese civil party advocate, and with a Congolese attorney and human rights advocate, Goma, May 9-10, 2014.

<sup>77</sup> Author interview with a Congolese civil party advocate, Goma, May 9, 2014.

<sup>78</sup> Ibid.

<sup>79</sup> For information on several recent war crimes cases adjudicated in the Congolese military courts, and analysis of weaknesses in the system, see Human Rights Watch, “Ending Impunity for Sexual Violence: New Judicial Mechanism Needed to Bring Perpetrators to Justice,” June 10, 2014, available at <http://www.hrw.org/news/2014/06/10/democratic-republic-congo-ending-impunity-sexual-violence>.

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- <sup>80</sup> Author interview with Congolese attorney, Goma, May 10, 2014.
- <sup>81</sup> Author interviews with a Congolese opposition leader (Kinshasa, May 22, 2014) with a Congolese attorney (Goma, May 10, 2014), and with a Congolese advocate based in North Kivu (Goma, May 17, 2014).
- <sup>82</sup> Author interview with MONUSCO official, May 9, 2014.
- <sup>83</sup> Author interview with a Congolese attorney, Goma, May 10, 2014.
- <sup>84</sup> See Fédération Internationale des ligues des Droits de l'Homme (FIDH), "Acquittal of Minova soldiers"; Human Rights Watch, "Democratic Republic of Congo: Ending Impunity for Sexual Violence: New Judicial Mechanism Needed to Bring Perpetrators to Justice," June 10, 2014, available at <http://www.hrw.org/news/2014/06/10/democratic-republic-congo-ending-impunity-sexual-violence>; BBC News, "DR Congo rape trial: Many soldiers cleared, two guilty," May 5, 2014, available at <http://www.bbc.com/news/world-africa-27285268>.
- <sup>85</sup> Author interview with a Congolese lawyer, Goma, May 16, 2014.
- <sup>86</sup> Author interview with a Congolese civil party advocate, Goma, May 9, 2014.
- <sup>87</sup> Human Rights Watch, "DR Congo: Establishment of a Specialized Mixed Court for the Prosecution of Serious International Crimes: Common Position Resulting from the Workshop Held in Goma on April 6-8, 2011," April 15, 2011, available at <http://www.hrw.org/news/2011/04/15/dr-congo-establishment-specialized-mixed-court-prosecution-serious-international-cri>.
- <sup>88</sup> Congolese civil society initially proposed the idea in 2004 and have routinely advocated for it since that time. Human Rights Watch, "DR Congo: Establishment of a Specialized Mixed Court for the Prosecution of Serious International Crimes."
- <sup>89</sup> Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003, paras. 61, 1038, 1043-1046.
- <sup>90</sup> Human Rights Watch, "DR Congo: The Establishment of a Specialized Mixed Court for the Prosecution of Serious International Crimes."
- <sup>91</sup> International Criminal Court, Office of the Prosecutor, "Policy Paper on Sexual and Gender-Based Crimes," June 2014, available at <http://www.icc-cpi.int/iccdocs/otp/OTP-Policy-Paper-on-Sexual-and-Gender-Based-Crimes--June-2014.pdf>.
- <sup>92</sup> International Criminal Court Office of the Prosecutor, "Opening Remarks: Launch of the ICC Office of the Prosecutor's Policy Paper on Sexual Violence and Gender-Based Crimes," November 7, 2014, available at <http://www.icc-cpi.int/iccdocs/otp/Prosecutor's%20opening-closing%20remarks-07-11-2014.pdf>.
- <sup>93</sup> Stewart comment at "Loot, Pillage and Plunder" event.
- <sup>94</sup> Author interview with Congolese political opposition leader, Kinshasa, May 22, 2014.
- <sup>95</sup> TRIAL, short for Track Impunity Always, is a nongovernmental organization that advocates on behalf of victims against impunity for perpetrators of grave crimes.
- <sup>96</sup> "The legal complaint against Argor Heraeus S.A.," Open Society Justice Initiative, November 2013, available at <http://www.opensocietyfoundations.org/sites/default/files/briefing-pillage-case-summary-11042013.pdf>.
- <sup>97</sup> Remark by Kathi Lynn Austin, Executive Director of the Conflict Awareness Project, "How can the United States disrupt the transnational criminal networks that enable atrocities?" Washington, D.C. Human Rights First Summit, December 2013, video available at <https://www.youtube.com/watch?v=Kr7aEGDGkKI>.
- <sup>98</sup> Organization for Economic Cooperation and Development Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, available at <http://www.oecd.org/corporate/mne/GuidanceEdition2.pdf>.
- <sup>99</sup> Stewart remarks at "Loot, Pillage and Plunder" event.
- <sup>100</sup> See U.N. Human Rights Council, "Guiding Principles on Business and Human Rights" (New York and Geneva: 2011), available at [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf); U.N. Principles for Responsible Investment, "The six Principles," available at <http://www.unpri.org/aboutpri/the-six-principles/> (last accessed January 2015); Equator Principles, "The Equator Principles – June 2013" available at <http://www.equator-principles.com/index.php/ep3>.