

THE COBALT SUPPLY CHAIN'S CHOICE

In 2016, Amnesty International released a report on artisanal cobalt mining and alleged human rights abuses in the Democratic Republic of the Congo. In this exclusive feature, **Mark Dummett**, explores recent developments and the choice facing companies in the cobalt supply chain

The choices facing companies committed to sourcing minerals responsibly were on stark display late last year in the Congolese mining town of Kolwezi. Such are the riches that lie beneath its dark red soil that it can justifiably claim to be the world's "cobalt capital".

In November of 2019, I was there, along with representatives of international firms that source cobalt or require the mineral for their products, to hear how the authorities, along with civil society groups and some mining companies are trying to address the problems associated with unregulated artisanal mining.

Much of the cobalt produced in the Democratic Republic of the Congo (DRC) is dug by hand, often in very dangerous conditions. This is often done by children too. This is not a marginal problem - since as much as 10 percent of the world's total supply of the battery-critical mineral comes from such artisanal mining.

In 2016, Amnesty International exposed the human rights abuses linked to artisanal cobalt mining and how this was entering the supply chains of major battery makers and their customers. Since then, there has been a steady stream of media reports criticising the DRC government for its failure to tackle the issue and also naming the global brands that are potentially benefitting from this

exploitative trade.

During the event, the DRC's authorities were keen to reassure the visitors that they had a plan for formalising these mines and improving traceability. During my time in Kolwezi, I indeed witnessed that some progress appears to have been made since 2016. Some actors are trying to make artisanal mining less dangerous and more sustainable. The government is building a new trading centre in order to make the trade more transparent, and ensure that miners get a fair price, it says. A Catholic charity, the Good Shepherd Sisters, has opened new schools for thousands of vulnerable children.

And yet a mere fifteen-minutes' drive away from the conference, the enormity of



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At the Mustoshi mine in Kolwezi, Trafigura has sponsored an attempt to formalise artisanal cobalt mining. With the overburden removed, the miners no longer needed to dig dangerous tunnels, and children were barred from entering the site

► the challenge the government, the local community, and companies face was obvious.

As we drove along the boundary of one industrial mine, my Amnesty International colleagues and I spotted about fifty children carrying sacks. They appeared to be on their way to hand pick ore-rich stones from mounds of waste sand and rock inside the mine's perimeter. Most of them were boys between the ages of eight and fifteen, I guessed. Other children were sitting along the side of the road, huddled around a bucket, washing stones of cobalt that they or others had presumably gathered from inside the mine. The mine was only partially fenced and guarded, even though it sits on the edge of the town, next to densely populated neighbourhoods.

Most dramatically, we then saw a group of several hundred people gathered on the slope of the mine, several metres high. Above them, at the top of the mound, bulldozers were pushing earth and boulders over the edge. These rocks rushed down dangerously towards the gathered adults and children, who, sacks in hand, ignored the risks to gather the falling stones, in the hope that

they contained valuable traces of metal.

The fact is that in Kolwezi, as in many other parts of the developing world, artisanal mining is the best opportunity that many people have for earning a living – in spite of the risks and back breaking nature of the work. The numbers are huge. Across the whole of the DRC, there are more than one million people engaged in artisanal mining, and there is a ready market for the copper, cobalt, diamonds, gold and other minerals that they dig.

The desperate and agonising economic choices facing local residents was explained to me by Micheline Ilunga (not her real name). Two of her sons began artisanal mining when they were both just fifteen. They did so after their father had died of illness, leaving the family unable to feed itself.

"They did not do it [mining] for fun. They used to say it was very dangerous. It is work of sweat and suffering," Micheline told me.

The two boys used to work illegally as a "clandestine" artisanal miners inside the fence of the KOV mine in Kolwezi, which is owned by Glencore. In June 2019, an underground tunnel collapsed, after there had been heavy

rain. The collapse crushed Micheline's sons to death, and killed at least forty other artisanal miners as well, according to the government.

Six months later, Micheline said that she was struggling to feed her surviving children, and they are all now considering mining. "What's our choice?" Micheline asked me.

The choice facing companies

Companies sourcing batteries are also asking similar questions. Faced with conditions in the DRC, what choices do they have?

Broadly speaking, perhaps one could say that they have three. Firstly, they could do nothing, and simply ignore the conditions under which the raw materials that enter their products are mined and traded. Secondly, they could try to remove any risk that cobalt mined by hand enters their supply chain, by shifting perhaps to producers who claim to be "clean" or to those based in other countries. Thirdly, they could take measures to source responsibly, and contribute to those trying to improve conditions for the miners.

It is only natural for the companies to question why the plight of Congo's artisanal miners has anything to do with them. After

all, this has been a fact of a life there for many years. The DRC is extremely rich in natural resources but largely lacks the governance capacity to harness these resources to help its people. In 2013, when the residents of the Kasulo neighbourhood in Kolwezi discovered that their homes were sitting on a rich seam of cobalt, why would they not want to dig their own tunnels and seek to profit from it? Micheline's two sons started mining aged 15 because they had no other way to buy food. It is not the fault of downstream firms that the DRC government failed to provide the family with other sources of income or ensure they attended school instead of digging tunnels.

But just because companies in the supply chain did not cause this situation, this does not mean they have not contributed to it, and in some cases not benefitted from it too. Option one, ignoring the problem, exposes those companies who choose this approach to the risk of reputational damage if found out. It also runs counter to the growing, global recognition that businesses have a responsibility to respect human rights throughout their global operations and supply chains.

This responsibility is laid out in the UN Guiding Principles on Business and Human Rights (UN Guiding Principles), which articulated that the corporate responsibility to respect human rights exists independently of a state's ability or willingness to fulfil its own human rights obligations. This means that if a state where a company operates, such as DRC, lacks the necessary regulatory framework or is unable or unwilling to enforce applicable laws to protect human rights from abuse, the company must still act to ensure respect for human rights in their operations.

The UN Guiding Principles, which were endorsed by the UN Human Rights Council in 2011 require that companies "do no harm" or, in other words, take pro-active steps to ensure that they do not cause or contribute to human rights abuses within their global operations and respond to any human rights abuses when they do occur. To "know and show" that they comply with their responsibility to respect human rights, companies must carry out human rights due diligence. This is a process "to identify, prevent, mitigate and account for how they address their impacts on human rights."



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Kasulo used to be a residential neighbourhood in Kolwezi, but then its inhabitants discovered their homes were sitting above a rich seam of cobalt. For several years there was unregulated artisanal mining there, but the government and Huayou Cobalt have since launched a scheme to formalise operations here too

A practical five step guide for how companies should source minerals responsibly from the DRC has been provided by the OECD through its Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. Importantly, given the central role that Chinese companies play in the battery supply chain, an official Chinese state body, the China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters has published similar guidelines for Chinese companies, that are based on the OECD guidance.

The growing relevance of this guidance is reflected in the fact many of the companies in the battery supply chain, including Chinese ones, explicitly refer to them in their corporate standards and commitments concerning the rule of law and ethical behaviour.

So what about Option Two – cutting ties with producers who buy artisanal cobalt, or sourcing exclusively from other countries? On the face of it, and from a purely short-term business perspective, this appears to be the rational choice. It is one that

many companies have chosen to follow. Most recently, in May, the Financial Times reported that China's biggest cobalt producer, Huayou Cobalt, would stop buying artisanal cobalt from the DRC, under pressure from its customers. Last year, BMW said it will only buy cobalt from Australia and Morocco, to ensure its batteries are not produced by child labour.

But this approach poses several problems. On a practical level, given that the vast majority of the world's cobalt is produced in the DRC, and so much of that is mined by hand, how can any company really make sure that this cobalt does not enter their supply chains? Smelters buy material from a wide range of sources, and then mix it. There is also potentially mixing of artisanal cobalt with industrially mined product within the DRC itself. The OECD reported at the November Kolwezi conference that many of the large-scale mines in the DRC also purchase artisanal cobalt, "despite the perception of the downstream market." Who is keeping track?

Further, is it really true that large scale mines are necessarily more ethical than artisanal mines? It is not only in the DRC where industrial mines have been implicated



Credit:
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Entry to Kasulo is controlled so that only accredited adult miners can work there

- ▶ in corruption scandals, labour rights abuses or environmental pollution.

Going further than that, what about other minerals, and other regions? Batteries do not run on cobalt from the DRC alone, as the readers of Benchmark Minerals know only too well. How are these other minerals extracted and traded, and what will be the environmental impact of the expected increase in mining as well as battery manufacturing? Amnesty International has teamed up with Greenpeace USA to explore these issues and will soon publish recommendations for companies and states to follow to ensure that batteries are greener and more ethical.

Amnesty International and partner organisations are also increasing research on lithium mining in the salt flats of Latin America, where indigenous communities complain of the impact that this is having on water resources and the fragile ecosystem. Greenpeace and others are raising the alarm over the huge risks posed by deep sea mining. Companies in the battery supply chain should be doing so too.

Finally, disengagement does not in itself mean that companies are avoiding contributing to human rights harm. By stopping purchases from artisanal sources, or forgoing DRC cobalt, companies actually risk making life much harder for the people

engaged in it. This irresponsible avoidance of the problem, including shirking from the responsibility to provide remedy for those already harmed in problematic supply chains, can have serious consequences on the lives and livelihoods of the adults and children who depend on artisanal mining for a living. According to the DRC government, there are 150,000 artisanal miners in and around Kolwezi alone. Simply disengaging will leave people like Micheline even more vulnerable.

Even worse, there is a risk that such decisions to disengage might even undermine those trying to develop sustainable solutions to the problem of unregulated artisanal mining. Huayou Cobalt for example states it only buys artisanal cobalt from the Kasulo mine. This is one of only two pilot mines in Kolwezi where industry actors have come together with artisanal miners and the government to try to demonstrate that artisanal mining can be done safely, fairly and without children. What impact will Huayou Cobalt's decision - under strong pressure from downstream brands - have on this project?

Amnesty International cannot vouch for every aspect of the Kasulo mine. We have spoken to several former residents who said that they had not been fairly compensated for their houses that were demolished to make way for the mine and have written to the

government expressing our concerns. There has also been a lack of transparency over the financing of the project.

But Kasulo, and the other pilot mine, Mutoshi, which has been set up with the involvement of Chemaf and Trafigura, represent the only current examples of how artisanal cobalt mining can be done responsibly and safely. The mining companies removed the top layer of soil so that in Mutoshi, the artisanal miners did not have to dig any tunnels, and in Kasulo these were quite shallow. They were also provided with safety equipment and training. The sites were fenced off and guarded so that no children could work there.

These efforts to support sustainable artisanal mining in the DRC should be studied, improved and then replicated. The downstream tech and EV manufacturers who have been purchasing batteries containing DRC cobalt for years with their eyes closed now have the responsibility to try to make projects like this work, and not undermine them.

The battery revolution will help the world tackle the climate crisis. It should also benefit, and not come at the cost of, the vulnerable communities where minerals, such as cobalt, are found.

So really, there is not much of a choice after all.

