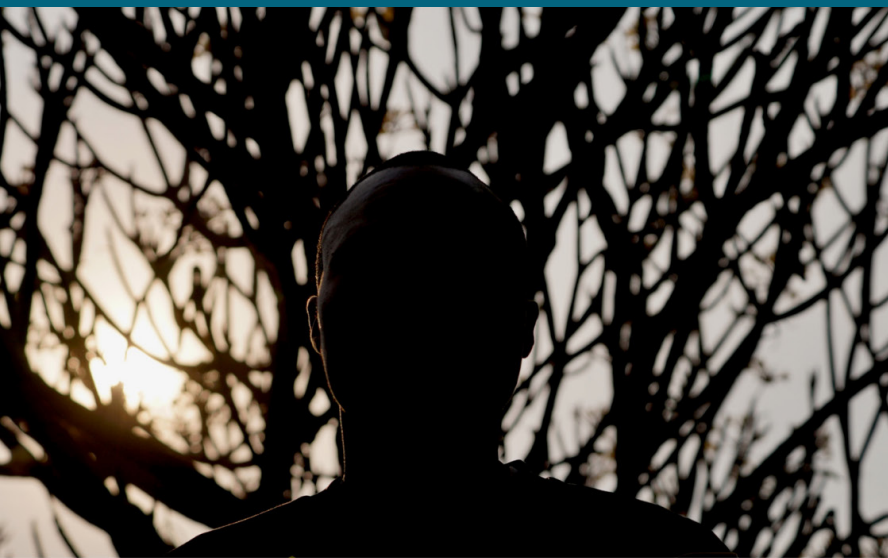


THE ROAD TO RUIN?

Electric vehicles and workers' rights abuses at
DR Congo's industrial cobalt mines



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EXECUTIVE SUMMARY

Cobalt is everywhere. It is a silvery-blue mineral used in the rechargeable batteries that power our mobile phones, laptops and tablets, and in larger quantities, the electric vehicles that will soon dominate our roads. It is a strategic mineral in the plan to decarbonise and move away from fossil fuels towards renewable energy. Accelerating this switch is one of the priorities to tackle the climate crisis and industry experts forecast that electric vehicle sales will skyrocket in the next 10 years. This will require a dramatic increase in cobalt production.

The booming demand for cobalt has a dark side, however. The Democratic Republic of Congo, one of Africa's poorest nations, holds the lion's share of the world's cobalt reserves. In 2020, 70% of the world's cobalt was extracted from within its borders with tens of thousands of workers labouring in large-scale industrial mines to dig up the ore. Multinational mining companies that own many of Congo's mines, eager to demonstrate their "green" and "responsible" credentials, say they produce "clean" and "sustainable" cobalt, free from human rights abuses, and that their operations contribute to good jobs and economic opportunities.

This report, based on extensive research over two years, paints a very different picture. It shows dire conditions for many Congolese workers in the industrial mines, often characterised by widespread exploitation and labour rights abuses. Many workers do not earn a "living wage" – the minimum remuneration to afford a decent standard of living – have little or no health provision, and far too often are subjected to excessive working hours, unsafe working conditions, degrading treatment, discrimination and racism.

"We were working hard, without any breaks, for \$2.5 a day. If you didn't understand what the boss said to you, he would slap you in the face. If you had an accident, they would just fire you."

- Congolese worker

In recent years attention has mainly focused on Congo's artisanal mining sector, partly because of the risks of child labour it creates, whereas the conditions for workers in the large-scale industrial mines have gone largely unnoticed. This report examines workers' rights at Congo's industrial mines where the large majority of cobalt is coming from, producing some 80% of the cobalt exported from the country (in contrast to the 20% produced in artisanal mines).

The findings presented in this report are based on detailed research over 28 months by UK-based corporate watchdog Rights and Accountability in Development (RAID) and the Centre d'Aide Juridico-Judiciaire (CAJJ), a Congolese legal aid centre specialised in labour rights. The research team carried out extensive field research in and around Kolwezi, a mining town where many of Congo's cobalt and copper mines are located. It is informed by 130 interviews of workers and former workers at five mining companies, as well as interviews with subcontractors, union representatives, lawyers, Congolese local authorities, medical staff and industry experts.

The research focuses on five of the world's largest copper and cobalt mines. They are owned or operated by multinational mining companies which together produced nearly half of the global supply of cobalt in 2020: (i) Glencore's Kamoto Copper Company (KCC), (ii) Eurasian Resources Group's Metalkol RTR, (iii)

China Molybdenum's Tenke Fungurume Mining (TFM), (iv) China Nonferrous Metal Mining Company (CNMC)'s Société minière de Deziwa (Somidez) of which the Congolese state company Gécamines owns 49% and, (v) Sino-congolaise des mines (Sicomines) a joint venture between Gécamines and a consortium of Chinese companies and investors.

A subcontracting model that erodes workers' rights and provides cheap labour

At the heart of the problem of workers exploitation is the subcontracting model used by the multinational mining companies to hire their workforce. Rather than employing workers directly, the mining companies turn to subcontracting firms to provide large parts of their workforce, from miners to cleaners, to drivers, to security personnel and others. Workers and managers from subcontracting firms we interviewed said they believed companies use this model as an intentional strategy to reduce costs, limit liability for workers' safety and prevent workers from joining unions.

Official figures show at least 26,455 workers are employed either directly or indirectly at the mines covered by our research, of which more than half (57%) are supplied by subcontractors. At some mines, it was even greater. At TFM, for example, 68% of the workforce in 2020 was employed by subcontractors; at Metalkol, it was 64%. The use of subcontractors or labour agencies is acceptable practice for short-term assignments or specialist recruitment, but there is unmistakable evidence to suggest that mining companies in Congo are using subcontractors to supply staff for their core business operations on a long-term basis, often on extremely low pay.

"There will be no electric vehicle revolution without Congo's cobalt."

- EV industry expert

Workers employed by subcontractors earn substantially less than those hired directly by the mining companies and most [63%] do not earn the living wage of \$402 per month, the minimum remuneration to afford a decent standard of living. Many earn substantially less. Workers described being treated as second-class citizens, with those directly employed earning pay and benefits far superior to their own low pay, with the principle of equal pay for equal work routinely violated. Many said they were in despair, unable to pull themselves or their families out of poverty.

Racism, discrimination and degrading treatment

Industry experts report that a sizeable 70% of Congo's mining sector is now backed by Chinese investment. This increased Chinese activity has come alongside reports of tensions between Chinese and Congolese workers. Not all of this has been one-sided: Chinese workers have described facing serious hostility from the Congolese. Yet even with the difficulties faces by Chinese expatriates, we have found that their working conditions are distinctly superior to those of Congolese workers.

At Sicomines, Somidez, TFM, and their respective subcontractors, as well as at Metalkol's subcontractors, workers reported either experiencing or witnessing racism and discrimination almost daily. This was expressed through physical violence and verbal abuse. Workers described a "colonial era" level of discrimination – being kicked, slapped, beaten with sticks, insulted, shouted at, or sometimes pulled around by their ear, when they were not able to understand instructions in Mandarin, made errors or refused to undertake dangerous tasks. In most cases, those who countered this treatment were immediately dismissed without pay.

Inadequate safety and workers' health cover

Congolese law requires employers to cover the healthcare costs of workers employed on permanent and fixed-term contracts, and of their dependent family members. It is a significant benefit of full-time work, and one that Congolese workers prize. But most subcontractors provide only partially subsidised healthcare, sometimes as little as \$10 per worker per month, far too low to enable health clinics to provide a decent standard of care. Some subcontractors provide no healthcare at all. RAID and CAJJ interviewed doctors and hospital managers who told us they regularly see chronic health problems and disabilities caused by exposure to toxic products and poor working conditions. We found that some mining companies and subcontractors are aware of these risks, but fail to provide fair compensation or to change their practices.

These issues are linked to significant safety breaches on mine sites. Workers hired by subcontractors at Metalkol, Sicominex, and TFM told us that they are not given personal protective equipment or if they are, it is poor quality. Others explained they are put in highly dangerous situations – such as being pushed to climb scaffolding at a faster pace, sometimes without a safety harness – but do not complain for fear of losing their job.

What is the Congolese government doing?

The Congolese government has the primary responsibility to ensure its labour laws are respected. But Congo's Labour Inspectorate, an administrative service which monitors the implementation of domestic labour regulation, is severely underfunded and understaffed. In 2021, there were only two Labour Inspectors assigned to the Kolwezi area with limited ability to carry out their work. They are sometimes refused entry to the mine sites and, even if they are granted entry, receive few complaints from workers who are too fearful of losing their jobs to report any concerns. Such ineffective enforcement has created a largely unregulated work environment.

Responses from the mining companies

In recent years, mining companies have sought to better align with societal values. The companies featured in our report have developed internal human rights standards, joined industry initiatives for more ethical mining, or made public commitments to promote and protect the rights of their workers. Although these commitments are much needed, the degree to which they are translated into practice is often unclear.

RAID and CAJJ wrote to the five mining companies to share our research findings and to seek responses to a detailed list of questions. We received responses from four companies: KCC, Metalkol, Sicominex and TFM. One of the companies, Somidez, did not respond despite repeated attempts to contact them.

Despite emphasising the positive measures in place for their employees, the mining companies provided significantly less support to workers hired via subcontractors. Only Glencore, the owner of KCC, said it had acted to suspend some of its subcontractors due to safety or non-performance. None of the other companies reported taking such action.

The letters and the full responses from the companies can be found on RAID's website.

Is your electric vehicle “clean”?

Using publicly available information, we traced the cobalt from the industrial cobalt mines covered in this report through the supply chain to electric vehicle and electronics manufacturers such as Tesla, Renault, General Motors, Volkswagen, Toyota, Samsung SDI, Panasonic and Apple, among others. These consumer-facing companies play an important role in ensuring that the cobalt (as well as other minerals and raw materials) used in their products is not tainted by human rights abuses and the exploitation of workers. There is increasing pressure from consumers and investors for them to act, as is evident from the growing trend in environmental, social and governance (ESG) investing.

In response to such pressure, industry initiatives that seek to demonstrate that cobalt and other critical minerals are clean have mushroomed in recent years. Yet, none of these initiatives are binding on companies and all rely on voluntary adherence. In addition, the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (OECD Guidance), a key standard for many mining companies operating in Congo, focuses on a narrow set of issues such as child labour, and does not address broader labour rights issues covered in this report. This gap means due diligence initiatives and industry schemes, which rely on the OECD Guidance, do not adequately cover labour rights or worker exploitation at all.

The way forward

Workers’ rights issues in cobalt mining require industry and governmental action. Without strong legal frameworks, industry initiatives create no real incentives or accountability along the cobalt supply chain. Mandatory human rights due diligence regulation – requiring companies to address the adverse impacts of their operations on human rights and the environment – would be a significant step in the right direction. As an immediate short-term measure, companies need to extend checks beyond the narrow OECD Guidance to cover broader ESG concerns such as workers’ rights.

We recognise that tackling the climate crisis is a global priority and that electric vehicles are considered key to the clean energy transition. Yet, we also believe this must come together with sourcing the minerals in a responsible way. Electric vehicles should not be built on the backs of exploited Congolese workers. The urgency of the climate crisis demands action from both industry and governments that sacrifice neither people nor the planet. Producing “ethical” batteries free from workers’ exploitation, human rights abuses and environmental harm, which contributes to a just transition and does not repeat the injustice of the fossil fuel based economy, is vital. By bearing witness to labour rights concerns at the cobalt mines in Congo, we hope this report can contribute to finding a bold way forward.

KEY TAKEAWAYS

1. Cobalt is considered an essential mineral for the transition to a low carbon economy required to tackle the climate crisis. It is used in lithium-ion (rechargeable) batteries for the anticipated electric vehicle boom.
2. Over 70% of the world's cobalt was mined in the Democratic Republic of Congo in 2020. It is mostly produced by largescale industrial mines which account for 80% of Congo's cobalt exports (20% is from artisanal miners).
3. Multinational mining companies who mine the ore say their cobalt is "clean" and free from human rights abuses. But research at five of the biggest cobalt mines exposes widespread labour exploitation and workers' rights abuses.
4. Workers said they are subjected to excessive working hours, degrading treatment, violence discrimination, racism, unsafe working conditions and a disregard for even basic health provision. They described being kicked, slapped, beaten with sticks, insulted, shouted at, or pulled around by their ears.
5. The use of subcontractors to hire the workforce is at the heart of the problem. As much as 57% of the 26,455 workers across the five mines are hired through subcontractors rather than being directly employed by the mining companies.
6. Many workers do not earn the living wage of \$402 a month, the minimum remuneration to afford a decent standard of living. About 63% of those we interviewed hired through subcontractors earn extremely low wages, often much less than the living wage and expressed despair that that they were unable to pull themselves out of poverty.
7. Those we interviewed said they believed multinational mining companies used subcontractors deliberately to reduce labour costs and limit their legal responsibilities.
8. Congolese labour inspectors appear unable to address the widespread abuses. The Kolwezi area, where Congo's largest mines are located, has only two inspectors with few resources.
9. Congo's cobalt is predominantly destined for the world's automotive companies. These companies have a role to play in ensuring the minerals they use are responsibly sourced in conditions that respect workers' rights.
10. Industry initiatives seeking to demonstrate that cobalt and other critical minerals are "clean" have mushroomed in recent years. None are binding on companies and many do not cover workers' exploitation or a broad range of labour rights. Laws that require mandatory human rights due diligence would help.
11. Electric vehicles should not be built on the backs of exploited Congolese workers. The urgency of the climate crisis demands bold action from both industry and governments that sacrifice neither people nor the planet. Producing "ethical" batteries free from workers' exploitation, human rights abuses and environmental harm is vital for a just transition.

RECOMMENDATIONS

For mining companies:

- Hire the majority of your Congolese workforce directly and limit outsourcing to workers with specialised skills for a limited period of time. Halt practices that rotate workers between subcontracting companies and provide full-time jobs to those who have had two consecutive contracts, as stipulated by Congolese law.
- Pay a living wage and publicly commit to paying at or above the living wage for all workers at your Congolese operations, whether direct or indirect hires.
- Review all contracts with subcontractors who provide workers to your operations to ensure they set remuneration rates at or above the living wage, provide legal benefits that meet or exceed Congolese labour law (free healthcare, paid leave, severance pay, etc.), promote freedom of association, and abide strictly by legal working hours and time off. End contracts with any who do not meet these standards.
- Conduct immediate, credible and transparent investigations into allegations of physical violence, racism and discrimination outlined in this report which relate to your mine, and take appropriate action against any employees or subcontractors who may have been responsible.
- Take active and public steps to ensure that all workers, including temporary and daily workers, are treated equally and without discrimination. This includes access to the same services, same facilities, same career progression and same treatment for all workers irrespective of their status, gender or origin. Amend company policies if needed.
- Ensure all workers, whether directly or indirectly hired, are provided with free healthcare for them and their dependent family members as per Congolese law. Review caps set on monthly allocations to health providers to ensure this does not, in practice, limit workers legal access to adequate healthcare.
- Ensure that all internal policies and procedures cover the protection of your entire workforce, those hired directly or indirectly. Such policies should be aligned with international standards and domestic regulation, and go over and above compliance with these when they do not protect workers adequately.
- Involve workers (direct and indirect hires) at all stages of your human rights due diligence processes. This includes, among others, ensuring that workers are aware and engaged in the protection of their rights, and contribute to risk assessments, monitoring of your labour rights performance, and the operation of grievance mechanisms. Do not use social auditing as a proxy for your own due diligence responsibilities.
- Review all health and safety standards on mine sites, including by subcontractors, ensure all direct and indirectly hired workers have appropriate PPE, and provide them with regular, comprehensive training about health and safety risks related to their employment.
- Address the gap in industry standards in relation to labour rights abuses as identified in this report. Apply relevant international standards on labour rights, such as those set out in the OECD Guidelines for Multinational Enterprises, and ensure they cover the entire workforce (direct and indirect hires).
- Support the call for mandatory human rights due diligence laws (see below).

For companies down the supply chain:

- Use all available means, as part of your leverage, to press suppliers and the companies who operate industrial cobalt mines in Congo to halt the exploitation of workers and to pay the living wage and decent benefits. If your leverage is insufficient to remedy the situation, end your contractual relationship with the supplier.
- Map your supply chain all the way to the cobalt mine and make it publicly available. Detail the due diligence measures you have in place to ensure these suppliers do not contribute to the exploitation of Congolese workers.
- Immediately review your due diligence processes to ensure the broad range of workers' rights concerns, including those identified in this report, are addressed in a systematic and comprehensive manner in your suppliers' operations, in line with international standards and domestic regulation. If not, urgently amend the process.
- Apply industry standards on responsible sourcing that comprehensively address human rights and workers' rights concerns, and go beyond child labour and forced labour in artisanal cobalt mining. Urge industry standard-setting organisations to address labour rights in a comprehensive manner and to include workers' rights issues into assurance and auditing schemes.
- Regularly engage with workers, trade unions, communities, international and local civil society, and consumers to establish clearly their expectations and your responsibilities.
- Apply best practices from other industries in relation to identifying workers' rights abuses in supply chains, and implement them in your operations.
- Support and join the call for mandatory human rights due diligence laws. Use your influence to push for laws that protect all human rights, workers' rights and environment standards relevant to your industry. Implement relevant due diligence laws and provide remedy to affected workers in a substantive manner, rather than as a "tick-the-box" exercise.

For the Congolese government:

- Urgently invest funds and resources for labour inspection to ensure more effective monitoring of the labour practices of mining companies and their subcontractors on the state territory.
- Establish strong enforcement and sanction mechanisms for non-compliant companies.
- Publicly call on mining companies to abide by Congo's labour laws and condition renewal of mining permits and contracts on such adherence.

For global states:

- Clean up mineral supply chains and ensure there is responsible sourcing of cobalt and other minerals needed for batteries in electric vehicles to deliver a just transition to a low-carbon economy.
- Introduce legally binding regulations to protect human rights and workers' rights such as through mandatory human rights due diligence laws that require companies to take action to prevent human rights abuses and environmental harm from their global operations, supply and value chains. Provide for effective enforcement and remedy where companies infringe or otherwise fail to prevent adverse impacts on human rights and the rights of workers, including through civil action.

INTRODUCTION

"We were working hard, without any breaks, for \$2.5 a day. If you didn't understand what the boss said to you, he would slap you in the face. If you had an accident, they would just fire you."

- Andre, Congolese worker at an industrial cobalt mine in DR Congo¹

Electric vehicle sales are expected to skyrocket over the next decade as the world shifts from fossil fuels to greener technologies. Cobalt is critical to this energy transition. It's a key mineral used in rechargeable batteries that will power the transformation. But for André,** as for tens of thousands of workers at large industrial mines in the Democratic Republic of Congo, the promise of better jobs and a better life has not become a reality.

Congo holds the lion's share of the world's cobalt. In 2020, the country contributed 70% of global cobalt production, as further explained in section 4 which sets out the context. Industry experts say there will be no electric vehicle revolution without Congo's cobalt.

This report looks at workers' rights at five large-scale industrial cobalt mines in Congo's copper and cobalt belt in the south of the country. Based on extensive research by UK-based corporate watchdog Rights and Accountability in Development (RAID) and the Centre d'Aide Juridico-Judiciaire (CAJJ), a Congolese legal aid centre specialized in labour rights, this report exposes the widespread exploitation of workers and abuses of their rights at some of the world's largest copper and cobalt mines.

At the heart of the problem is the subcontracting model used by the multinational companies to hire their workforce. The majority of Congolese workers at the mines are not hired directly by the companies but instead are hired indirectly via subcontracting companies or labour agencies. We found that workers in these jobs have significantly lower wages, minimal or no benefits, and precarious job security. Many of those we interviewed did not even earn a 'living' wage, the minimum amount for a decent living, and were unable to pull themselves out of poverty. The workers at some of the mines, were subjected to excessive working hours, degrading treatment, discrimination, racism, unsafe working conditions and a disregard for even basic health provision. More details on the abuses they suffered can be found in section 6, which constitutes the core of this report.

While in the past few years its artisanal mining that has garnered attention across industries, in part because of the risks of child labour it creates, the impacts of industrial cobalt mining on workers have gone unnoticed. The mining industry, as part of an expanding strategy to instil confidence in their operations, has contributed to the dominant narrative that industrial cobalt mining in Congo is "clean", "sustainable" and free from the human rights abuses that characterise artisanal mining. RAID and CAJJ's research depicts a different reality in which Congolese workers' lives, health and dignity appear to be put on the line in pursuit of profits.

* Pseudonym; all real names have been replaced

The five mines featured in this report are operated, respectively, by five mining companies, Kamoto Copper Company, Metalkol, Sino-congolaise des mines (Sicomines), Société minière de Deziwa (Somidez) and Tenke Fungurume Mining (TFM). Further information on each of these mines and their parent companies is set out below.

In order to provide a balanced report, RAID and CAJJ wrote to the five mining companies and their parent companies to share our findings and to give them the opportunity to answer a detailed list of questions about their corporate practices. The responses from four of these companies are outlined in section 8. Their full answers can be found on RAID's website. One of the companies, Somidez, did not respond despite repeated attempts by RAID and CAJJ.

The company responses must be understood as part of an overarching landscape on international business and human rights standards and a growing plethora of industry standards seeking to promote their 'clean' and 'sustainable' credentials, especially in light of the explosion of environmental, social and governance (ESG) investing. The most widely accepted standard is the UN Guiding Principles on Business and Human Rights (UNGPs), which sets expectations for states and companies for protecting and respecting human rights in corporate activities, including through supply chains. As set out in section 9, these expectations are to be implemented through a process of human rights due diligence. We traced the cobalt supply chain all the way to the consumer-facing companies who rely upon batteries to power their products, such as Tesla, Renault, and Toyota. How have they responded to the findings and what role can they play in ending these abuses?

We found that the international framework as it stands today, which is voluntary and instils no legal responsibility on companies, is failing to identify and prevent the exploitation of Congolese workers and the violation of their rights. It raises serious questions. What purpose does this framework, and ESG investing, serve and in whose interests?

We need clean energy to tackle climate change, but we cannot turn away from the exploitation of workers and labour rights abuses that are feeding this transition. This report contributes to exposing the workers' rights abuses at the starting point, where the cobalt comes out of the ground. We hope it will also contribute to finding a solution.

RESEARCH METHODOLOGY AND SOURCES

The findings described in this report are based on extensive investigations conducted over 28 months between June 2019 and October 2021 by RAID and CAJJ. It combines fieldwork in the copper and cobalt belt in Congo and desk-based research. As part of this research, RAID and CAJJ conducted 130 interviews with workers and former workers at the five largest industrial mining companies or their subcontractors, union representatives, lawyers, Congolese local authorities, medical staff, and industry experts, among others. RAID and CAJJ further engaged in extensive correspondence with the mining companies featured in this report, and companies which process or use cobalt extracted by these mining companies, including smelters, battery producers, electric vehicle manufacturers and tech companies.

For 18 days between October and December 2020 and in June 2021, a team of three RAID and CAJJ researchers visited five mine sites situated in and around Kolwezi, in the Lualaba province of Congo. The mine sites are operated respectively by five companies: Kamoto Copper Company (KCC), Metalkol,² Sino-Congolaise des Mines (Sicomines), Société Minière de Deziwa (Somidez) and Tenke Fungurume Mining (TFM). The researchers interviewed 102 individuals who were either working or had worked at the mine sites as follows: 18 workers at KCC, 25 workers at Metalkol, 18 workers at Sicomines, 32 workers at TFM and nine workers at Somidez. We interviewed both men and women, although the very large majority of workers at the five mine sites are male. Nearly all interviews were conducted individually, with interpreters if required. Copies of contracts or other documentation that workers brought with them were scanned and are kept on file at RAID's office.

In addition, RAID and CAJJ researchers interviewed staff members or managers of eight Congolese subcontracting firms, and five staff members from clinics and hospitals that had contracts with the mining companies to provide healthcare to workers. RAID and CAJJ also met with employees of two government agencies, the Minister of Labour and Employment and the General Labour Inspectorate, to assess opportunities and challenges in implementing Congolese labour law in the cobalt mining industry. Representatives from local non-government organisations (NGOs), legal experts and industry analysts specialized in cobalt supply chains were also interviewed.

Based on these findings, RAID and CAJJ wrote to the five companies and their parent company to notify them of our research findings, including alleged violations of workers' rights across the five mine sites and to seek responses to a detailed list of questions. Among other elements, RAID and CAJJ asked the companies to describe the measures adopted to ensure they and their labour suppliers respect international and Congolese legal standards on labour and human rights. The companies were also asked what steps they take to prevent and/or respond to the violations identified by the organisations during their field research. RAID and CAJJ also sent copies of the letters to the Congolese state-owned mining company, Générale des carrières et des mines (Gécamines), which holds shares in four of the five companies featured in this report. As the Congolese state holds 5% shares in Metalkol, the organisations copied the Congolese Minister of Mines to the letter to Metalkol.

RAID and CAJJ received substantive responses from four companies: KCC, Metalkol, Sicomines and TFM. RAID and CAJJ's assessment of company practices is informed by these responses, as well as by other reports, policies, statements and certificates that the companies have made publicly available or have shared with the organisations. RAID and CAJJ's letters in English, French and Mandarin, as well as companies' responses can be found in the annex.



The outskirts of Kolwezi ©2021 Pete Pattison/The Guardian

In addition to fieldwork and interviews, RAID also conducted comprehensive desk-based research. It included reviewing relevant material published by the five mining companies and their parent company. To understand the conditions in which cobalt extracted in Congo reaches final customers, RAID scrutinised publicly available documents from other mining companies in the cobalt industry, and from cobalt smelters and refiners, battery components manufacturers, battery manufacturers and electric vehicles and electronics manufacturers in the supply chains of the mining companies presented in this report. RAID also examined publications from third parties. These include reports, websites and other documents from industry associations, international organisations, and NGOs, among others. It also includes materials from court proceedings, published first-hand accounts, academic studies, and Congolese and international press coverage.

Part of this report focuses on understanding the domestic and international standards that frame mining companies' liability in relation to their workers and their labour practices. For that purpose, RAID reviewed international standards on business and human rights, the International Labour Organization's conventions and recommendations, as well as other relevant standards and legal analyses. CAJJ, which is comprised of Congolese employment lawyers, supported RAID in understanding and analysing Congolese labour law. RAID and CAJJ also received support from other Congolese and international lawyers to clarify and verify the validity of legal arguments made.

Many of those interviewed by RAID and CAJJ wanted their testimony to be shared but feared reprisal. Several workers, for example, explained they considered their employment at risk should their identity be known by the companies or labour suppliers. Consequently, RAID and CAJJ have taken great care to maintain confidentiality where necessary. The names of all the interviewees have been replaced by pseudonyms and information about their position or other details have been withheld when they could be used to identify individuals. Throughout the report, asterisks are added after pseudonyms. We have also withheld the names of subcontracting companies. Their names are on file at RAID.

Statistics and production figures cited in this report are accurate as of September 2021.

CONGO, THE WORLD'S LARGEST PRODUCER OF COBALT

"They're our minerals – they're not infinite. After they are all exploited, we want to see changes. We want to benefit from the extraction of our own resources. We want our lives to improve."

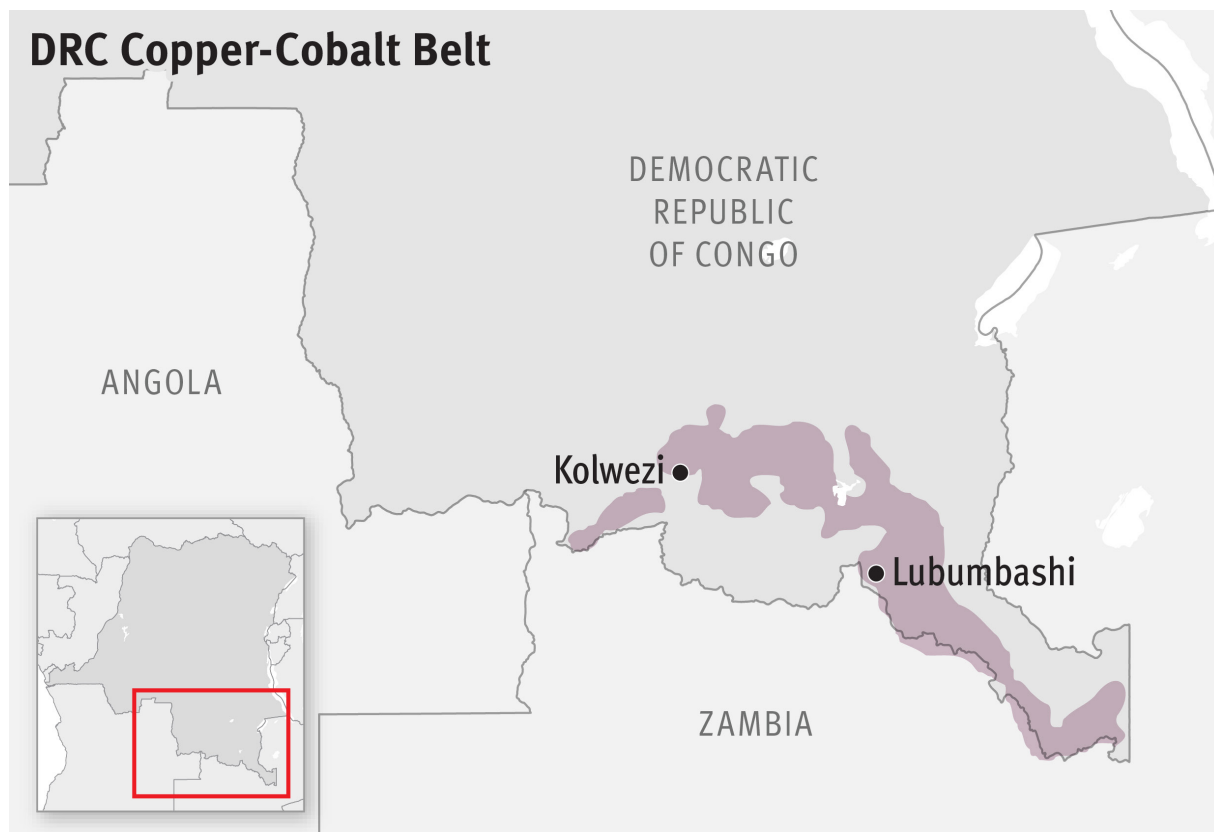
- Jöel,* worker at the TFM mine³

Cobalt is a silvery-blue metal that has come to define our modern technological world. A key component of our cell-phones, laptops and tablets, it is the mineral used in rechargeable lithium-ion batteries created to power portable electronics. It is considered an essential material in numerous sectors ranging from the chemical industry to aeronautics, and can be found in everyday medical devices, drones and smart watches. In a huge shift propelled by growing attention on the climate crisis, the demand for cobalt is only set to rise over the next 30 years.⁴ Driven by the call for a "green transition" and government policies to address the crisis, including new restrictions on petrol and diesel-powered vehicles, passenger electric vehicles sales are expected to surge from 3.1 million in 2020 to 14 million in 2025⁵ and then to 26 million in 2030⁶. Cobalt is at the heart of this change.

Industry experts predict that over the next decade, China and Europe are likely to remain the main markets for electric vehicles.⁷ China currently accounts for the largest share of global sales,⁸ but sales are anticipated to be overtaken by Europe by 2030.⁹ China is already the biggest global consumer of cobalt, with more than 80% being used to manufacture rechargeable batteries,¹⁰ and it is the world's largest producer of refined cobalt.¹¹ Meanwhile, Europe is intent on investing in refineries and battery production. In 2021, the European Commission announced that 12 European Union (EU) countries would jointly invest €2.9 billion in battery production, with the aim of manufacturing enough batteries to power at least six million electric vehicles each year by 2025.¹²

To meet the growing demand for lithium-ion batteries, global cobalt production is expected to mushroom to 585% by 2050.¹³ Significantly, over half of the world's cobalt reserve is in Congo,¹⁴ sub-Saharan Africa's largest country. Congo is already the largest producer of cobalt, with 70% of the world's cobalt having been extracted within its borders in 2020.¹⁵ The mining sector is critical to the Congolese economy, representing 30% of the country's gross domestic product (GDP) in 2019¹⁶ and 95.3% of total exports (made up almost entirely of copper and cobalt) in 2020.¹⁷ In 2019, the extractive sector represented a quarter of Congo's total employment.¹⁸ Despite its extraordinary mineral wealth, Congo remains one of the world's poorest countries, with 73% of the population, equating to 60 million people, live on less than the international poverty rate of \$1.90 a day.¹⁹

An estimated 80% of Congo's cobalt comes from industrial mines,²⁰ with the remainder coming from artisanal mining. Both industrial and artisanal cobalt mining in Congo rely on mines that produce both copper and its derivative cobalt. The economics and industrial processes of the two minerals are closely intertwined, though this report focuses on cobalt as the essential mineral in global efforts towards cleaner energies.²¹ Many of the industrial mines are run through partnerships between the state-owned mining company Gécamines and private foreign industrial mining companies that began operations in Congo in the late 1990s.²²



Several of these companies have been targeted by international legal actions and civil society criticism over their negative impact on the environment, communities and workers' rights globally.²³ Some are also facing criminal investigations by public prosecutors, including for alleged fraud and corruption.²⁴ Such companies are at pains to publicly demonstrate their corporate commitments to global "business and human rights" standards including, among the most prominent, the UN Guiding Principles on Business and Human Rights (UNGPs), the OECD Guidelines for Multinational Enterprises, and the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (OECD Guidance for Responsible Supply Chains).

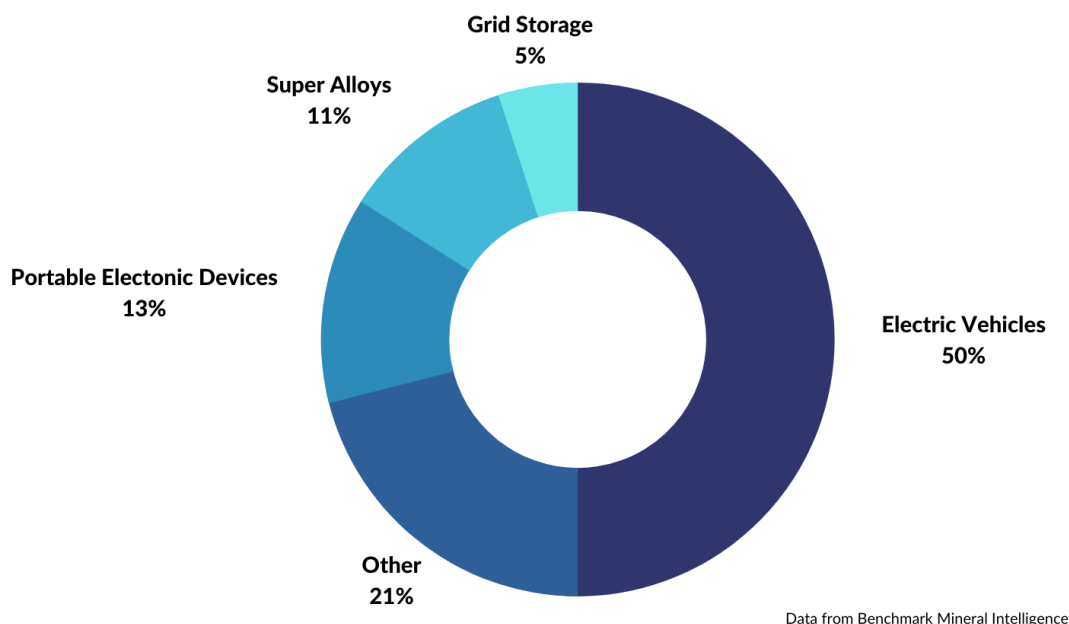
In the last 15 years, North American and European mining companies have been joined by Chinese firms in Congo, encouraged by the Chinese government to expand foreign direct investment, especially in relation to mineral resources and infrastructure in Africa and Asia.²⁵ The China-Congo 'minerals for infrastructure' deal saw China's state-owned banks invest \$3 billion in infrastructure projects in Congo in return for access to copper and cobalt mineral development rights.²⁶

As a result, a sizeable 70% of Congo's mining sector is now backed by Chinese investment.²⁷ However, some of these initiatives have been marred by accusations of discrimination and abuse of local people by Chinese companies. According to the Business and Human Rights Resource Centre, which investigated human rights abuse allegations linked to Chinese business conduct abroad, Africa recorded the second highest number of human rights allegations linked to Chinese investment overseas, mainly affiliated to metals and mining.²⁸ Congo ranked fourth in African countries where abuses were the most frequently recorded.²⁹

The remaining 20% of Congo's cobalt is produced by the 150,000 to 200,000 people working in artisanal and small-scale mining (ASM),³⁰ a legal but highly dangerous activity characterised by serious human rights abuses including child labour.³¹ After Amnesty International's research revealed how ASM cobalt tainted by child labour had entered electric vehicle supply chains, several major vehicle manufacturers, keen to be seen by consumers and investors as good corporate citizens and concerned about potential legal liability, pledged to take action.³² Many of these companies consider industrially-mined cobalt as a reliable, more easily traceable, 'clean' resource, which can be acceptably used as part of a green, low-carbon future.³³

This new report, based on in-depth field research at five large-scale European- and Chinese-operated cobalt mines, reveals a very different picture. We found that industrial mining companies, rather than hiring workers directly, increasingly turn to subcontracting companies to provide labourers for the core functions at the mines, as well as auxiliary services such as catering and transport. Driving a hard bargain on costs, with minimal or ineffective checks on the conduct of subcontracting companies, industrial mining companies operating in Congo appear to be driving a race to the bottom on workers' rights. In a context of escalating demand for cobalt, Congolese workers' lives, health and dignity appear to be put on the line in pursuit of profits. Yet, their plight has so far attracted little attention.

Uses of Cobalt in 2021



BEHIND THE FIVE INDUSTRIAL MINES

Resting on a history of colonialism and exploitation, lives and livelihoods in modern-day Congo revolve around the country's mining industry, as does its economy. This report examines labour practices at five core industrial mines providing a revealing insight into mining operations and ownership patterns in the Congolese cobalt mining sector.

The provinces of Lualaba and Haut-Katanga are located on Central Africa's copper and cobalt belt and are the economic backbone of an industrial mining sector that creates an estimated 40,000 direct jobs and at least 22,000 indirect jobs.³⁴ In 2019, copper and cobalt combined represented 84.6% of Congo's total exports.³⁵ The same year, at least 13 industrial-scale mining projects were in production in these two provinces.³⁶ Kolwezi, the capital of Lualaba province is at the heart of the copper-cobalt belt. Founded in 1938, mining is the only significant industry in the town and the main source of income for Kolwezi's estimated 600,000 inhabitants.³⁷ Three-quarters of developed space in Kolwezi is taken up by mining sites.³⁸

In 2020, the five mines discussed in this study accounted for approximately 40-45% of the global supply of cobalt³⁹ much of it destined for the world's automotive manufactures.⁴⁰ The five mines in this report are large-scale industrial mines, made up of open and underground pits, as well as plants where the rock is processed and prepared for export. Thousands of people work at the sites, both in the mines themselves and in auxiliary services such as accommodation, catering, transport, security and cleaning.

Three of the five mines we are examining in this report – Sino-Congolaise des Mines (Sicomines), Société Minière de Deziwa (Somidez) and Tenke Fungurume Mining (TFM) – are financed, owned and operated through partnerships between Congo's state-owned mining company, Gécamines, and private Chinese companies and investors. The other two mines, Kamoto Copper Company (KCC) and Metalkol, are respectively owned by Katanga Mining Ltd., a subsidiary of the commodities giant Glencore, registered in Switzerland, and the Luxembourg-registered, Kazakh-owned, Eurasian Resources Group (ERG).

Kamoto Copper Company SA (KCC)⁴¹

A complex of open pit and underground cobalt and copper mines located near Kolwezi, the company KCC is a joint venture between Gécamines (25%) and Katanga Mining Ltd (75%), the operator.⁴² Katanga Mining's parent company is Glencore Plc, one of the world's largest commodity trading and mining companies. Glencore is headquartered in Switzerland and listed on the London Stock Exchange.⁴³ KCC became the world's largest cobalt mine when Glencore closed its Mutanda mine in 2019.⁴⁴ In 2020, Glencore produced 24,000 tonnes of cobalt.⁴⁵

Glencore has faced repeated questions about the manner in which it obtained and held its mining rights in Congo.⁴⁶ The company is currently under investigation by the UK's Serious Fraud Office (SFO),⁴⁷ the US Department of Justice,⁴⁸ and the Office of the Attorney General of Switzerland⁴⁹ for alleged corruption relating to the group's business in Congo. Glencore has stated its cooperation with the authorities concerned. This report draws no conclusions on any of these allegations.

Metalkol SA⁵⁰

The Compagnie de Traitement des Rejets de Kingamyambo, also known as Metalkol, is a Congo-registered company, which holds the mining permit for the Metalkol RTR (Roan Tailing Reclamation

project) mine, located 35km from Kolwezi and near KCC. Metalkol SA is owned by Eurasian Resources Group (ERG), a privately-owned Kazakh firm, registered in Luxembourg.⁵¹ ERG is the successor company to Eurasian Natural Resources Corporation PLC (ENRC). ENRC Ltd (formerly ENRC PLC) is the subject of an ongoing criminal investigation by the UK's Serious Fraud Office into alleged fraud, bribery and corruption.⁵² ENRC denies any wrongdoing and has not been charged with any offence. ENRC is suing the SFO over its mishandling of the investigation,⁵³ a claim the SFO denies. This report draws no conclusions on any of these allegations.

Metalkol re-processes copper and cobalt waste, known as tailings, deposited in the 1950s by Gécamines in the Kingamyambo Tailings Dam and Musonoi River Valley.⁵⁴ The construction of the Metalkol operation was financed by a capital investment of approximately \$650 million, secured through a financing package with a private Chinese consortium including China Nonferrous Metal Industry's Foreign Engineering and Construction Company (NFC).⁵⁵ Production started in October 2018 and the project is currently extracting 15,000 tonnes of cobalt⁵⁶ and 77,000 tonnes of copper in its first phase.⁵⁷ ERG stated in its 2019 Sustainability Report that it expects a target of 24,000 tonnes of cobalt and 120,000 tonnes of copper at Metalkol's full capacity.⁵⁸

Tenke Fungurume Mining SA (TFM)⁵⁹

Located 106 km from Kolwezi, the Tenke Fungurume Mining (TFM) project was one of the first large private sector projects to be initiated following Congo's years of war which ended in 2003.⁶⁰ Construction began in late 2006 and TFM produced its first copper output three years later. Since 2016, TFM has been 80% owned by Hong Kong-listed China Molybdenum Co., with Gécamines owning the remaining 20%.⁶¹ The mine produced 15,436 tonnes of cobalt in 2020 while its 2021 production target is between 16,500 and 20,100 tonnes of cobalt.⁶² In August 2021, China Molybdenum announced its plan to double the size of TFM with a \$2.5 billion investment to add 200,000 tonnes of copper capacity and 17,000 tonnes for cobalt by 2023.⁶³ The mine is estimated to have around 103 million tonnes of cobalt reserves, with mining activity projected to last for 20 years and mineral processing for 40 years.

In August 2021, Congo's President Felix Tshisekedi established a commission to probe whether the company is complying with its contractual obligations.⁶⁴

Sino-Congolaise des Mines SA (Sicomines)⁶⁵

Sicomines is situated 18 km from Kolwezi in Kapata town. Covering an area of 11 km², it is estimated to contain 8.55 million tonnes of copper reserves and 0.51 million tonnes of cobalt.⁶⁶ In 2020, it produced 866 tonnes of cobalt⁶⁷ although, as phase II of the project started on 30 June 2021, production is expected to ramp up to 5,180 tonnes of cobalt annually.⁶⁸ One of the manifestations of China's "Belt and Road" initiative,⁶⁹ the mine is a joint venture between Gécamines, the Société Immobilière du Congo (32%), and a consortium of Chinese companies and investors (68%).⁷⁰ According to the Collaboration Agreement between the Congolese state and the Chinese investors,⁷¹ the Chinese consortium agreed to loan around \$3.2 billion for the mining project and an additional \$3 billion for infrastructure development and social projects to benefit Kolwezi communities. Notably, it was agreed that loan repayments would be made from the mine's future profits and Sicomines is exempt from taxes until the loans are repaid.⁷²

In September 2021, the Congolese government began reviewing the \$6.2 billion deal following what it said were "major legal, technical and financial problems observed in the collaboration agreement".⁷³

More than ten years after the Sino-Congolese agreement, Sicominex has reportedly only received about three-quarter of the promised Chinese investment.⁷⁴

Société Minière de Deziwa (Somidez)⁷⁵

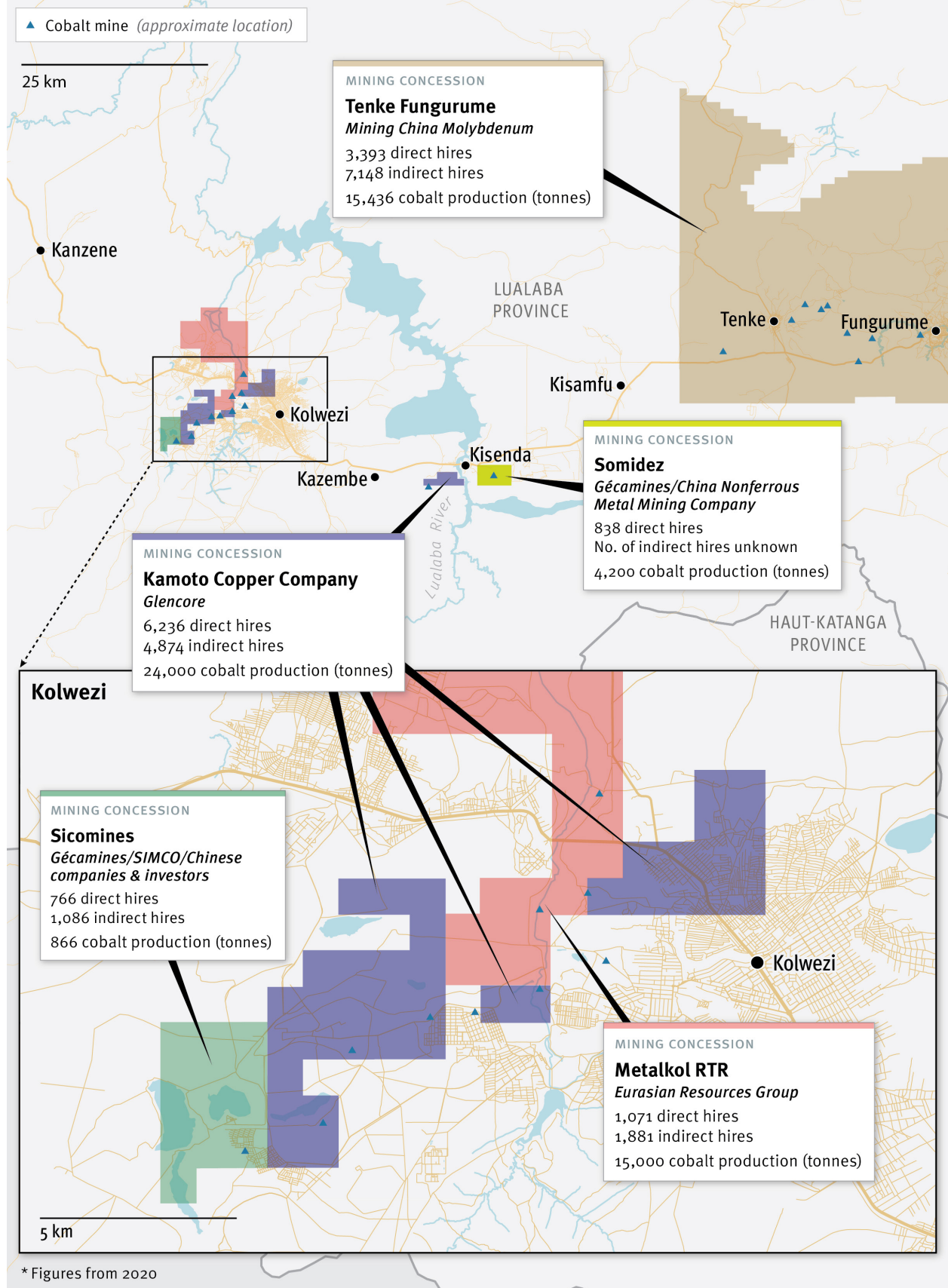
The new Somidez mine is one of the largest greenfield copper discoveries ever made in Congo and has been described by Gécamines as its 'flagship' project.⁷⁶ Located 35 km east of Kolwezi, it is made up of a new partnership between Gécamines, which holds 49% ownership and retention of concession rights, and China Nonferrous Metal Mining Company (CNMC), which holds 51% ownership, and is the main investor and operator.⁷⁷ The open-pit mine contains reserves of around 420,000 tonnes of cobalt and 4.6 million tonnes of copper. An \$880 million project, it started production on 15 January 2020, and aims to produce 80,000 tonnes of copper and 8,000 tonnes of cobalt per year.⁷⁸ CNMC will operate Somidez for nine years, with a possible two-year extension, before transferring it to state-owned Gécamines.⁷⁹

Mine cobalt and copper production in 2020⁸⁰

Mine	Cobalt Production (Tonnes)	Copper Production (Tonnes)
KCC	24,000	271,000
Metalkol	15,000	77,000 (Phase 1)
TFM	15,436	182,597
Sicomines	866	155,444
Somidez	4,200*	80,000 (Forecast)
TOTAL	59,502	766,041

* Information provided by Benchmark Mineral Intelligence

Workforce & Cobalt Production at Five Industrial Mines



GÉCAMINES: CONGO'S CASH COW

Congo's state-owned company, Gécamines, owns between 20% and 49% of each of the KCC, Sicomines, Somidez and TFM mines. In fact, as its turbulent history demonstrates, it has played a pivotal role in the Congolese mining sector.

From 1885 to 1908, Belgium's King Léopold II created the world's only private colony, the "Congo Free State", under his personal authority.⁸¹ In 1891, he established the Compagnie du Katanga to annex and administer an economic infrastructure, in what was described as the "unoccupied" Katanga province, in exchange for significant land and mineral exploration rights.⁸²

In 1900, the Compagnie du Katanga and Léopold II created a public-private structure, the Comité Spécial du Katanga (CSK), charged with governing the province administratively, politically and economically.⁸³ In the same year, the CSK and British company Tanganyika Concessions Ltd (TCL)⁸⁴ jointly started to prospect minerals in the southern part of Katanga. In less than two years, they had discovered what was then considered "the richest copper deposits on earth."⁸⁵

Several companies were born out of the agreement including, most significantly, Union Minière du Haut-Katanga (Union Minière), constituted in 1906.⁸⁶ Union Minière became the world's third largest producer of copper and the largest producer of cobalt.⁸⁷ Up to a quarter of a million men were forcibly "pressed into its service" during the first 30 years of the company's existence, according to historian John Higginson.⁸⁸ In 1937, Union Minière used Congolese workers to build the town of Kolwezi, an arrangement which ensured that the labour force lived nearby and minerals could be extracted faster.⁸⁹

The company became so powerful it was known as "a state within a state".⁹⁰ When Congo gained independence in 1960, Union Minière's copper and cobalt accounted for 70% of the country's hard currency exports.⁹¹ The company's dominion spread over 7,000 square miles. It was in charge of its employees' lives from birth to death, schooling their children, who then became workers themselves.

When President Mobutu Sese Seko took power in 1965, failed negotiations with Union Minière led him to set up a new company, the Générale Congolaise des Mines (GECOMIN) to replace it. In 1971, GECOMIN became the Générale des Carrières et des Mines (Gécamines), a fully state-owned company.

In the decades to follow, Gécamines ran a virtual monopoly in Katanga's copper and cobalt belt, while providing its tens of thousands of employees and their families with social services including health, education and housing benefits.⁹² President Mobutu also used Gécamines' profits for his own political purposes, using its funds to sustain his grip on power.⁹³ Gécamines collapsed in the early 1990s as a result of over-production and under-investment.

Despite this, the company remained strategically important as a result of its valuable mining permits. In the late 1990s, partly due to pressure from the World Bank and the International Monetary Fund to privatise state-owned companies, Gécamines began to sell off assets to private investors.⁹⁴ It transferred the most valuable permits to joint venture partnerships in which it retained a minority stake.⁹⁵

Since 2009, Gécamines has collected revenues estimated at \$262 million annually, nearly one-quarter of all mining company payments to state entities over the same period. Yet, because those revenues are not directed to the public treasury, they are largely beyond scrutiny.⁹⁶ According to EITI reporting, of the \$1.5 billion in income that Gécamines earned from its partnerships between 2009 and 2014, less than 5% was sent to the Congolese treasury in the form of tax payments and dividends. According to the company's own records, \$750 million that it should have received from its joint venture partnerships between 2011 and 2014 does not seem to have been registered in Gécamines' partnership accounts.⁹⁷ In a detailed study published in 2017, the US-based Carter Center identified that about half of this revenue had been spent on "debt repayments, asset acquisitions, and modest infrastructure investment". The remainder of the money could not be traced.⁹⁸

Though it has remained a significant player in the Congolese mining industry, Gécamines has made no commitment to international and domestic human rights and labour standards in publicly available documents.

HUMAN AND LABOUR RIGHTS VIOLATIONS AT INDUSTRIAL MINES

Much of the research to date on human rights abuses in Congo's copper and cobalt sector has focused on artisanal and small-scale cobalt mining (ASM), which accounts for an estimated 20% of the country's cobalt production.⁹⁹ Yet human rights and labour concerns in the much larger industrial sector representing the remaining 80% has largely been ignored. This imbalance has been compounded by a concerted effort from international mining companies to create a perception that industrially mined cobalt is 'clean' and free from the highly abusive practices that characterise ASM.¹⁰⁰ Yet RAID and CAJJ's findings, as set out in this report, shatters the image of industrial mining companies as the supposedly good corporate guests of Congo.

As part of an expanding strategy to refresh confidence in the source of their supply chains, international mining companies now publish detailed annual sustainability reports. Often, they also declare support for industry-created, *voluntary* sustainability initiatives such as those initiated by the Cobalt Institute,¹⁰¹ of which ERG, China Molybdenum and Glencore are members, and the Global Battery Alliance,¹⁰² of which ERG and Glencore are members, among other companies. This strategy appears to be paying off, as companies refining and manufacturing cobalt have taken up the discourse that purchasing from these mining giants is the safest way to acquire sustainable and abuse-free cobalt. Car manufacturer Tesla, for instance, has explained its decision to secure a cobalt-sourcing deal with Glencore as a plan to establish processes to remove human rights issues, particularly child labour in artisanal mining in Congo, from its supply chain.¹⁰³



RAID and CAJJ's research raises serious questions about both the claims made by mining companies and the effectiveness of such voluntary schemes. Of course, industrial mining and the employment it creates can, and should, contribute to reducing poverty, generating livelihoods, and promoting regional stability.¹⁰⁴ Yet for tens of thousands of workers, the promise of economic opportunity promoted by industrial mining companies has not become a reality. The abuses RAID and CAJJ have documented reveal a deeply troubling picture, illustrating that large-scale mining has left many Congolese workers in chronic poverty – abused, discriminated against, and affected by serious, lifelong health issues.

Multinational mining companies, their subsidiaries and their subcontractors operating in Congo are required to comply with the Congolese 2002 *Code du travail* (Labour Code),¹⁰⁵ which regulates most labour issues in the country. It includes, among others, clauses on the rights and obligations of employers and employees, contracts, remuneration and additional benefits, and health and safety standards at the workplace. It applies to all workers and all employers and, alongside other Congolese laws, governs the working conditions in copper and cobalt mines. Relevant sections of the Labour Code are highlighted throughout this report.¹⁰⁶ RAID and CAJJ's research shows that in a shocking number of instances, predominately through the use of sub-contractors (or labour agencies), the labour code is violated or ignored with little or no repercussions.

Industrial mine worker ©2021 Pete Pattison/The Guardian

CATEGORIES OF CONGOLESE WORKERS AT THE MINES AND THE CONGOLESE LABOUR CODE

Permanent workers are employees whose contract has no pre-determined end date. According to the Congolese Labour Code, such contracts include several benefits such as paid leave and free healthcare (art. 7). Permanent workers are primarily directly hired by mining companies.

Temporary workers are employees on a fixed-term contract. We found that temporary workers are commonly hired through subcontractors and sometimes have access to some benefits, although considerably less advantageous than benefits enjoyed by permanent workers.

Fixed-term contracts cannot exceed two years or be renewed more than once, after which a worker must be offered a permanent position if the employment continues

– art. 41, Congolese Labour Code

Based on the interviews conducted by RAID and CAJJ it appears mining and subcontracting companies frequently compel workers to shift from one subcontractor to another when the two-year maximum period of their contract is reached, likely to avoid granting them permanent employment.

Daily workers are a category of temporary workers whose expected duration of employment under Congolese law is less than 22 days over a period of two months. Such jobs are usually seasonal or attached to a specific task. These workers typically receive the lowest salaries and have no rights to benefits.

If a daily worker has already completed 22 days of work in a two-month period, the new contract they enter into before the end of their two months is deemed permanent

– art. 40, Congolese Labour Code

If a daily worker

We found that numerous subcontractors engage daily labourers for longer periods of employment, requiring them to take weeks of unemployment between the short-term contracts before re-hiring them for the same tasks.

Artisanal miners are subsistence workers who are not officially employed by a mining company or a subcontractor. They often work independently, in largely informal settings, and mine minerals using their own resources, usually by hand. Artisanal mining is often associated with low levels of safety measures, health care or environmental protection.¹⁰⁷

This report focuses on the first three categories of workers.

A subcontracting model that erodes workers' rights

RAID and CAJJ's research at the five mines featured in this report show that mining companies are increasingly using subcontractors to supply the majority of their workforce. In fact, the mining industry appears reliant on outsourced labour. According to figures supplied by the mining companies or obtained from the Congolese Labour Inspectorate, four of the five mines employ (directly or indirectly) at least 26,455 workers, of which more than half (57%) are supplied by subcontractors (see table below).¹⁰⁸ Mine workers, truck drivers, cleaners, catering staff, construction workers and security personnel, among others, are frequently hired through labour agencies rather than being employed directly. The result is a two-tier employment system with workers typically doing the same job, but those employed through a subcontractor subjected to lower pay, minimal or no benefits, and precarious job security.

Direct and indirect hires at industrial mines¹⁰⁹

Mine	Workers (Direct Hire)	Workers (Indirect Hires)	Total Workforce	% Indirect Hires (Subcontractors)
KCC	6,236	4,874	11,110	44%
Metalkol	1,071	1,881	2,952	64%
TFM	3,393	7,148	10,541	68%
Sicomines	776	1,086	1,852	59%
TOTAL	11,466	14,989	26,455	57%

While the use of subcontractors or labour agencies is normal and necessary for short-term assignments or specialist recruitment, there is evidence to suggest that mining companies are using subcontractors to supply staff for their core business operations on a long-term basis. The average time spent on a job among the workers RAID and CAJJ interviewed was between 2 to 3 years, indicating such assignments were not short-term. Some workers had spent over 8 years in the same post, switched from one subcontractor to another without ever being provided permanent employment. Workers and managers from labour agencies interviewed in this report said they believed companies used this model as an intentional strategy to reduce costs, limit liability for workers' safety and well-being, and to prevent workers from joining or forming unions.¹¹⁰

Civil society organisations have described the increasing use of subcontracting by multinational mining companies as "highly problematic with regard to workers' fundamental rights."¹¹¹

"This phenomenon is causing a worrying casualisation of the workforce as it leaves workers without an adequate standard of living, equal remuneration for work of equal value, equal opportunity of positions, security of a permanent contract, pension and health insurance and, in practice, the right to form or join trade unions."¹¹²

In the copper and cobalt belt, RAID and CAJJ found that the subcontracting model used by the mines is at the core of the exploitation of workers and rights abuses. Indeed, unlike directly hired employees, workers hired via subcontracting companies do not accumulate benefits such as annual pay rises, increased annual leave entitlements, and have no right to a *décompte final* (final pay). Their access to collective bargaining via unions to raise concerns is also severely limited. They are generally poorly paid, undertake physically punishing work for long shifts, receive minimal healthcare coverage with limited or no cover for their families (despite it being required by Congolese law)¹¹³ and are frequently denied their entitlement to paid leave.¹¹⁴

By using subcontracting firms to lower their overheads, mining companies appear to be contributing to an erosion of Congolese workers' rights while minimising their role in improving the dire conditions faced by these workers.

SUBCONTRACTING AND LABOUR RIGHTS

Since the privatisation of the African mining sector promoted by the World Bank in the 1990s, countless European, North American and, increasingly, Chinese companies have started new mining projects in Congo. This “mining boom” has led to the creation of a large market for labour or employment agencies offering a pool of workers for the mines.¹¹⁵ Outsourcing of labour has become an entrenched practice for mining companies at all stages of the mining process, notably because it allows for reduced operational costs.¹¹⁶

As mining companies have entered into more agreements with international and Congolese labour agencies – “subcontractors” – to provide them with a substantive part of their workforce, many tasks that were initially performed by permanent employees have been outsourced. For instance, in 2020, TFM reported that nearly 68% of its workforce were hired through subcontractors. It reported having 3,393 “full-time operational workers” (directly hired employees) and 7,148 contractors from labour agencies.¹¹⁷ For the same year, while KCC set better practice by prioritising direct hires (6,236 employees), 44% of its workforce still remained subcontracted (4,874 contractors).¹¹⁸ This is despite the relatively lengthy average employment period at subcontracting firms, two years and eight months – although some of the workers interviewed reported being on temporary contracts for up to ten years – which suggests a long-term need for the services being provided.

In principle, labour agencies or subcontractors hire out not only the workers, but the full service package. This means that they have a responsibility to oversee the execution of the work and management of the workforce, although it is frequently the case that some aspects of the supervision are performed jointly with the mining company.¹¹⁹

The impact of price-setting pressure on workers' rights

RAID and CAJJ interviewed the managers of seven Congolese-led subcontracting companies to better understand the systems governing employment at the mines. They explained that their clients, the mining companies, effectively determine workers' contract periods and salaries. According to these managers, because it entails less costs and liability, mining companies press subcontractors to employ workers on shorter, cheaper contracts, with fewer benefits.¹²⁰

At one of the subcontracting firms which supplies KCC and Metalkol, 60% of workers are on fixed-term contracts. At another KCC subcontractor, only 20 out of 300 workers are permanent employees, while a subcontractor for TFM reported trying not to issue workers with two consecutive fixed-term contracts, to avoid the requirement of moving them onto a permanent contract.¹²¹ "We avoid giving permanent contracts", the manager of a subcontracting company said, "because then we legally have to provide specific benefits and because the process to terminate permanent contracts is too difficult".¹²²

According to the managers of subcontracting companies interviewed by RAID and CAJJ, the pressure to keep costs low has significantly increased since the arrival of Chinese mining companies and competitors who are pushing down prices paid for contracts. As a result, workers' salaries have become even lower and benefits have been cut, such as bonuses and school fees for dependent children.¹²³ The representative of one subcontractor for TFM said that contract periods and salary levels are determined by his client, the mining company. Due to the cost levels imposed by TFM, the subcontractor's workers providing services at TFM are paid substantially less than TFM's own workers: "The Chinese want things to cost as little as possible," he said. "They want to reduce the costs, so they also reduce the standards."¹²⁴

The manager of another subcontractor for TFM similarly reported seeing a steep decline in the prices TFM was willing to pay for its workforce since China Molybdenum took over.¹²⁵ The subcontractor was forced to reduce its price for contracts by a staggering 40%. This meant, for example, cutting drivers' salaries from \$1000 to \$600 per month. Contracts length for workers also went from four years between 2013 and 2017 to one year in 2018 when China Molybdenum acquired TFM, thereby increasing job insecurity.¹²⁶



Worker's uniform at the TFM industrial mine ©2021 RAID

CONGOLESE LAW AND THE USE OF NON-CONGOLESE SUBCONTRACTORS

The 2017 Law on the Rules Applicable to Subcontractors in the Private Sector (Law on Subcontractors)¹²⁷ establishes that subcontracting is an activity reserved to businesses whose social capital is Congolese, which are owned by Congolese nationals, and which have their registered office in Congo. If they can prove to national authorities that no such business is available, multinational mining companies can use foreign subcontractors but only for a period of six months (art. 6). In addition, companies are only allowed to use subcontractors to cover 40% of the total value of a contract (art. 11). The other 60% of the material and human resources needed for a project must be provided by the company itself.

RAID and CAJJ have found that numerous foreign labour agencies or subcontractors operate in the copper and cobalt belt and provide part of the workforce to mining companies. Workers and subcontractors we interviewed suggested that at least two of the five companies examined in this report, Metalkol and Sicomin, have used foreign subcontractors to recruit significant parts of their workforce for periods longer than 6 months.¹²⁸ However, we were not able to confirm this point as neither companies responded to our questions on that subject.

Workers face the adverse consequences of the price pressure on subcontractors and the degradation of work standards. Precarious employment, low salaries and long work hours appear increasingly as a day-to-day reality. The manager of one subcontracting company interviewed by RAID and CAJJ expressed regret over how the situation in the region has deteriorated since the number of mining companies exploded in the area. “Conditions for workers have worsened”, he said, and “Chinese companies are imposing their standards and culture in a way that amounts to neo-colonialism”.¹²⁹

Subcontracting and precarious job security

Except for daily workers, employees must be provided with written contracts. If the contract is verbal, it is presumed to be permanent unless proven otherwise.

Congolese Labour Code, art. 44

For workers, the implications of being hired by a subcontractor, rather than a mining company, are significant. Most of the workers we interviewed reported having no written contract and little preliminary information about their employers.¹³⁰ They are mostly hired on a fixed-term contract, ranging from a few months to two years.¹³¹ This leads to job insecurity and places them in a highly precarious position, at risk of being dismissed at any time, particularly if they attempt to challenge employers to improve pay and conditions.¹³²

Patou’s* story highlights the insecurity that comes with working for a subcontracting company, even at one of the largest mines. Patou started working at KCC in September 2020 through a subcontractor.

When RAID and CAJJ met him, two months later, Patou was still waiting to be given a contract to sign. Patou was frustrated about the inferior conditions for those employed by such agencies, who fail to reward workers for their loyalty and efforts. Pointing to a visible difference between the two types of hires, he told us, “If you’re directly hired by the mine, it’s okay, but not by the subcontractors. Even if we work for years, they don’t help us.”

The subcontracting company appears to be characterised by an elusive nature and lack of transparency, which Patou finds worrying. He said: “I don’t know where the office is, even if I ask. It’s hard to know where [those representing] the subcontractors are at KCC.” He explained that the subcontracting company’s failure to provide the legally required final pay when contracts end places workers under huge financial strain and leaves them with little or no security: “We lose our job and that’s it. When we work, we want to prepare for retirement, but it’s impossible... Those hired by the mines earn more and are given their *décompte final*...”¹³³

The growing foreign interest in Congo’s subcontracting sector is clear, and the practice of hiring cheap labour on unreliable day-to-day contracts is expanding. At Metalkol, much of the construction work in 2016 and 2017 was undertaken by Chinese subcontracting firms that hired daily workers from impoverished villages around the site. While using local employment is laudable, workers said they had been paid a very low wage. Many workers told RAID and CAJJ they were paid only \$2 per day and were required to wait several weeks or even months without work between repeated 21-day contracts. The workers said they believed it enabled their employers to evade the Congolese legal requirement to place anyone who works more than 22 days in a two-month period on a permanent contract with benefits¹³⁴

Patrick* was hired as a daily worker by a subcontracting company at Metalkol in March 2017. He worked for the company over a period of five months. Initially he worked for 21 days, then was required to take 40 days off before being rehired for the same job for another 21 days. He never signed a contract. “We were working hard,” he told RAID and CAJJ. “It was physical... We had to dig, lift heavy loads, and haul cables high up.” Patrick and his colleagues – he estimated around 100 people – had no healthcare and no bonuses. For 21 full days of work, he was paid the staggeringly low wage of \$55. The transport provided to reach the mine from the nearby town of Kolwezi was often full, so at the end of exhausting shifts Patrick found himself having to walk 15km to return home. During one shift, he burnt his fingers very badly, but was only given a small bandage to treat his work injury. He saw other people fired for having similar accidents, often through no fault of their own. Despite these harsh conditions, he took pride in his work. “We built this plant from the start,” he said.¹³⁵

At TFM, workers reported being required to repeatedly sign one-year, fixed-term contracts.¹³⁶ One TFM worker explained being transferred every two years to a new subcontracting labour agency for a period of ten years. He said TFM Human Resources Department directly oversaw and ordered the transfers showing how such dubious, sometimes illegal, arrangements have become central to the management of operations:

“They were not forcing us, they just told us we would be transferred to another structure. They would call and tell us. It was our chief at TFM that would call us. If you refused, they would fire you without thinking about it – very quickly... But it was so common no one complained”.

Three other employees at a TFM subcontracting company, told us that they had never signed contracts and were unclear what kind of contracts they were employed under.¹³⁷ Another worker for the same subcontractor said he had no contract, no healthcare, no bonus, no annual leave and no access to a union.¹³⁸

* Pseudonym; all real names have been replaced

PASCAL'S** STORY: “Eight years of work for nothing”

“I live here at Fungurume. I work for a TFM subcontracting company. I started in 2013. I’m a bus driver. I work 9am to 9pm for three days, then 4am to 4pm for three days, followed by three days off. We call that 6-3.

When I started, I had a one year fixed-term contract that was renewed every year. I had seven contracts like that. My monthly salary is \$580 and it has never changed. I still make exactly the same [as when I started]. They used to give us one bag of flour per month, but that stopped six months ago. I get free [basic] healthcare for me and family, but if we require more care or complicated care, I need to pitch in as well, at 50%. It happened to me. My wife had a cyst and needed surgery, so I had to pay \$180 and the company paid the same. That was three years ago.

We’re not given a bonus. Since 2013, I’ve only had annual leave once, after four years of service, and that was because I asked for it. I had 12 days off. I’ve never been paid the 13th-month salary¹³⁹ because I was on a one-year contract. I never received anything other than my salary.

There is a huge difference between the Chinese [mine owners] and the [previous] American [mine owners]. With the Americans, we felt protected, the work was serious and they respected us. But the Chinese don’t listen to workers, it’s very hierarchical. Even during the [Covid-19] confinement, at first the Chinese only gave a bonus to workers who had permanent contracts. They only gave it to the rest of us after we protested.

On 27 October 2020, the supervisor from a new subcontracting company told us we were no longer employed by our subcontractor because the company’s contract with TFM had ended. He told us he was our new boss and asked us to resign from the previous company and sign a new contract with them. My previous contract was [not yet completed and was only due to end] on 31 December 2020. Those who refused were just told they could leave.

We called our previous employer [for advice] and were told to wait, so we waited. On the third day, they told us it was okay to sign the new contract. We signed, but we never got our *décompte final*. My previous employer said they didn’t know what was happening because TFM had not told them. Then nothing happened. I just kept on working for the new subcontractor, but I didn’t get paid for my final month. I never received my *décompte final*, even though I had worked for my previous employer for eight years.

When we wrote a letter to complain, we received threats from our supervisor at TFM. He told us we had to accept our new contract, otherwise he would just replace us. He said that what we did – writing a letter – could put people in the morgue. He called the people who signed the letter and told us not to cause problems, not to claim our missing wages.

I feel I was forced to sign the contract with the new subcontractor. I asked for my copy, but I never received it. It's a one-year contract, with the same salary, same benefits. I have no clue who this company is. I don't know who the boss is, I only know the supervisor. I don't know where their offices are. We don't know anything about them."¹⁴⁰

The manager of the subcontractor mentioned in Pascal's testimony interviewed by RAID and CAJJ confirmed this account. He said the workers were transferred from one subcontractor to another without notice. He had been provided with no advance notice by TFM of its intention to end the contract. Instead, TFM only informed the company that its workers would be transferred to a new subcontractor on the day of termination. For TFM, this practice was acceptable, he said, because the vehicles and other equipment used by the workers are TFM's property, with the subcontracting company simply providing the personnel. As a result, the subcontractor lost all the workers they had trained over several years. "We didn't pay *décompte final*," the manager admitted. "How could I? We had no notice period. I couldn't prepare myself."¹⁴¹

Very low pay

Workers must receive at least the minimum salary established by the law

- Congolese Labour Code, arts 87 and 88

Congolese law sets minimum wages for the various sectors of the labour market and states that wages must increase 3% annually for continuous work with the same employer.¹⁴² At the time of publication, Congo's minimum wage was the equivalent of \$3.5 per day¹⁴³ (or \$80 per month for a 5-day week). It is amongst the lowest in Africa. By contrast, the minimum "living wage" in the Kolwezi area, as calculated by RAID and CAJJ using an internationally recognised methodology, is \$402 per month (see box).

In Lualaba and Haut-Katanga provinces, there are very few job opportunities other than in the mining sector. In this context, international and industry standards set the expectation that mining companies offer adequate pay and benefits for their workers, many of whom are supporting large families, including ill, disabled and elderly people.

For example, the International Council on Mining and Minerals, of which Glencore is a member,¹⁴⁴ states that, its members will "commit to provide fair pay and wages that equal or exceed legal requirements or represent a competitive wage within the job market (whichever is higher) and assign regular and overtime hours within legally required limits."¹⁴⁵ Similarly, the UNGPs encourage companies to implement the International Labour Organization's (ILO) Declaration on Fundamental Principles and Rights at Work, which recognises the right for workers to claim freely "their fair share of the wealth which they have helped to generate".¹⁴⁶

THE LIVING WAGE IN KOLWEZI

To assess whether the salaries provided by the five mining companies and their subcontractors were adequate and provided Congolese workers with decent living conditions, RAID and CAJJ conducted desk and field research to calculate the living wage in the Kolwezi area. According to the Global Living Wage Coalition, a living wage is:

“Remuneration received for a standard work week by a worker in a particular place sufficient to afford a decent standard of living for the worker and her or his family. Elements of a decent standard of living include food, water, housing, education, health care, transport, clothing, and other essential needs, including provision for unexpected events.”¹⁴⁷

Several methodologies have been developed to estimate a minimum living wage, including the Anker methodology, which has gained some prominence and has been used to calculate a living wage in 30 countries¹⁴⁸, and the Minimum Expenditure Basket (MEB) methodology developed by humanitarian agencies to assess the basic needs of populations in emergencies. The MEB identifies requirements to meet basic needs of a household on a regular or seasonal basis and their average costs.¹⁴⁹

In this report, we use the MEB methodology because it is very similar to the calculation of a minimum living wage as determined in the Anker methodology and because UNICEF conducted a MEB calculation for Congo in 2016, which we used as a reference.¹⁵⁰

The MEB is always tailored to a specific context and situation. We used the different item categories established by UNICEF (food; living expenses and household items; water, sanitation and hygiene products; education; health; and livelihoods), assessed their validity in the context of Kolwezi, and adapted it where needed. We did so by consulting other Lualaba-based organisations who identified the minimum items used by workers in the area, and by conducting an in-person assessment of prices in local markets in Kolwezi.



Most mineworkers hired through a subcontractor are earning less than the living wage

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RAID and CAJJ adjusted the MEB as follows:

- We modified the “education” criteria to cater for the fact that Congo made access to primary school education free in 2019, although the practice remains that parents provide some subsidy.¹⁵¹
- We adapted the “food” category to portray more accurately eating habits in the Kolwezi area.
- We added a “transportation” category which was calculated considering public transport between Kolwezi and the Luilu neighbourhood where most mine workers live.
- We added a small amount for “leisure activities” because the MEB applies only to the very minimum needs in situations of humanitarian emergencies. This was also an item added by other civil society groups when determining the living wage of artisanal miners in Congo’s Kivu provinces.¹⁵²

Please see Annex 1 for the full calculations we used.

Using this methodology, we determined the living wage for Kolwezi to be a monthly minimum of \$402.

Our research demonstrates that the majority of workers directly hired by KCC, Metalkol, Sicominex and TFM earn a salary that is higher than a living wage. At Somidez, the average monthly wage for the directly employed workers we interviewed was just \$355.

By contrast, the average pay for those employed via subcontractors in our research sample (irrespective of the mine) was only \$330.10. Indeed, 63% of those we interviewed who were indirectly hired to work at the industrial mines earned less than \$402. These workers are thus left unable to meet their basic needs and those of their family.

Yet, RAID and CAJJ’s research has uncovered that rather than driving up salaries, the companies’ use of subcontractors is contributing to reducing already very low wages. Workers employed by subcontractors earn on average substantially less than those hired directly by the mining companies and most (63%) do not earn a living wage that would enable a minimum decent standard of living and help to begin to pull people out of poverty. It should be noted, however, that most of the more qualified, higher paying, jobs are often held by workers who are directly hired by mining companies, which may, in part, contribute to increasing the disparity between wages.

Among the people we spoke to, the average monthly salary of a directly hired worker was \$898, compared with an average of \$330 for those working through subcontractors, below the minimum living wage floor. Those employed as daily labourers on 22-day contracts earned substantial less.

At three of the mines, the difference was stark. At KCC, directly employed workers interviewed by RAID and CAJJ earned an average of \$1,221 per month, while the average wage of workers hired by subcontractors was \$259 per month. Julien*, hired by KCC to work underground, was a clear example.

* Pseudonym; all real names have been replaced

He told RAID and CAJJ that his salary increased from \$300 when he was employed by a KCC subcontractor, doing the same job, to \$1,000 when KCC offered to employ him directly.¹⁵³ At Metalkol, from the workers we interviewed, a worker employed directly by the company earned on average \$1,037 per month, while subcontractors earned on average \$193, well below the living wage. At TFM, the workers we interviewed who were employed by the mine earned \$1,250, while those employed via a subcontracting company earned \$393. The salary paid to drivers exemplified the difference. A driver directly hired by TFM said to us that he was earning \$1,300 per month, while another driver doing the same job but hired via one of TFM's subcontractors earned half of that. He reported earning \$580.¹⁵⁴

Workers we interviewed from Sicominas and Somidez appeared to have lower salaries for those directly employed by the companies. At Sicominas both categories of workers earned around \$500 per month. Salaries were the lowest at Somidez, where workers reported an average monthly wage for those directly employed by the company as \$355, below the living wage.¹⁵⁵ Out of the workers we interviewed who were directly hired by a mining company and received less than \$402 monthly, 75% were hired by Somidez.

Many workers, especially those on daily labourer contracts, earned well below the living wage. Workers described how hard it was to survive on their meagre salaries and the difficult choices they were forced to make. One worker, employed on a permanent contract by a subcontractor as a security guard for KCC, told RAID and CAJJ he received a monthly basic pay of \$35, rising to a maximum of \$135 per month depending on shift patterns and hours worked. This worker described his situation as follows:

“...I live alone. It is very difficult, I can only fulfil around 25% of my needs. My rent is \$40 – it gives me two rooms [in total]. Food costs me around \$60 per month and that is only for me. After that, well, that is it – I need to buy clothes but I try not to. Transport is provided to get to work.”

If there were other jobs available, I wouldn't be there. If I found something else, I would quit. My employer [subcontractor's name withheld] is at the top [in terms of pay], so I am working there. At other [security] companies, it is not a permanent contract, so it's either [low] salary or instability. At other companies, they have to pay their boss to keep their job.”¹⁵⁶

Working for a subcontractor at TFM, David's* monthly salary was only \$90, which increased to \$150 if he worked during his lunch break. He did so to receive more money, which often required him to work 9.5-hour shifts for 14 days straight without a break.¹⁵⁷

Mutamba* is married with five children and lives in Fungurume. In late 2019, he started working for the same subcontractor at TFM as David. He never signed a contract, and no one explained why. His monthly salary was \$200. The only other benefits he received were a monthly bag of flour and healthcare for himself, but not for his family. Mutamba told RAID and CAJJ that employee care was poor quality. “They didn't even look at us,” he said. Shortly before we met him, Mutamba had arrived at work one evening and was told that some steel had gone missing. A team from TFM arrived to investigate and said that Mutamba and his colleagues were not responsible, but the subcontractor fired them regardless. Having worked there for a year, Mutamba tried to claim his final pay, but the subcontracting company refused. There was no union for him to turn to. He recalled: “The Chinese were treating us weirdly, insulting us, cutting our salaries for anything.”¹⁵⁸

Low pay offered to those on temporary contracts or working for subcontractors is also driving down wages for workers directly employed by mines on permanent contracts. Pierre* has been directly employed by Somidez on a permanent contract for almost two years. He is a father to four children. His base salary is \$177 a month, increasing to \$250 with extras. Pierre does not receive an annual bonus and has never had a pay rise. He is entitled to 14 days of annual leave, but if he takes time off, the company cuts his salary accordingly. He told us that there is no union at the company and that workers who try to claim their rights are often dismissed. “With the Chinese, we work in poor conditions,” he explained. “Poverty pay, bad blood between the Chinese and Congolese, unfair dismissal – sometimes for nothing, [and] the Chinese hit and insult Congolese workers...”¹⁵⁹

Excessive working hours

The working day is limited to 9 hours and the maximum working week is 45 hours. Additional work performed outside these hours is considered overtime and is paid at a higher rate

- Congolese Labour Code, art. 119

The systematic use of subcontractors by mining companies has also pushed workers to work significantly in excess of the Congolese legal limit of 45-hour weeks, usually without receiving overtime pay. Several workers also reported being required to work long periods without leave.

At TFM, Mutamba* works night shifts for a subcontractor, from 5pm to 6am without a break, for 30 days straight. He is then allowed to take two-day leave but must request it.¹⁶⁰ Another employee of the same

subcontractor, Jean-Florent* had worked every day – without days off – from January to July 2020.¹⁶¹ Also at TFM, David* reported being occasionally required to work double shifts (day and night) for 21 hours per day with two breaks, of 90 minutes and two hours, for an entire week. He was not granted any additional leave at the end of this intense work period. On his usual schedule, he is allowed to take one day off after working for 14 days without any additional annual leave at the end of the year.¹⁶²



At a subcontractor at Sicomin, Lyambo* worked seven days a week, with time off given on request but deducted from his pay. In two years, he was only allowed to take a total of 9 days leave and eventually left the company because he struggled to get time off.¹⁶³ According to Lyambo, it is current practice at the subcontractor to dismiss workers for making too many requests for time off.¹⁶⁴

One health clinic manager told RAID and CAJJ that workers “...come to ask for sick notes because they don’t get any time off.” He said that out of sympathy for the workers, he issued us sick notes when requested, but stopped when the mining companies found out and threatened him and his staff with ending their contract with the clinic.¹⁶⁵

* Pseudonym; all real names have been replaced

THE CONSTRUCTION OF THE METALKOL MINE:

“They treated us like things, not humans”

Samuel* was employed at the Metalkol mine,¹⁶⁶ a rich copper and cobalt tailings site considered one of the crown jewels of Congo’s mining assets. His story below is one of many that shines a light on the lack of dignity and rights afforded to mineworkers.

Kingamyambo Musonoi Tailings SARL (KMT), now operating as Metalkol, was a mining project previously owned by Canadian miner First Quantum Minerals Limited, before its licence was revoked by the Congolese government in 2009.¹⁶⁷ The KMT mine was then sold, for a fraction of its value, to a company controlled by businessman Dan Gertler, a close associate of Congolese president, Joseph Kabila.¹⁶⁸ In 2010, Kazakh multinational mining company, ENRC PLC (now called ERG) acquired its initial holding in the mine from Gertler’s Camrose Resources.¹⁶⁹ As noted, the SFO launched a criminal investigation into ENRC PLC in April 2013 (the company denies any wrongdoing and no charges have been brought)¹⁷⁰ and ERG took KMT (alongside ENRC’s other assets) into private ownership later that same year.¹⁷¹

The legal disputes at the time over the mine’s ownership led to its closure in September 2009, with the loss of 700 jobs and significant negative impacts on local residents living near to the mine.¹⁷² For nearly a decade it lay dormant. In late 2018, ERG secured financing from a China’s Nonferrous Metal Industry’s Foreign Engineering and Construction Company (NFC) to complete the construction of the mine and move it to production.¹⁷³

RAID and CAJJ spoke to five men who worked on short-term 21-day contracts at Metalkol during its construction stage. The men were all hired by a subcontractor and describe stories of brutal abuse, gruelling shifts and shockingly low wages. The degrading work conditions stand in stark contrast to Metalkol’s public commitments on human rights.¹⁷⁴

Samuel* began working for the subcontractor at the Metalkol mine site in December 2016. He had been hired on a 21-day contract but was never given a written copy to sign. He told RAID and CAJJ that he had been humiliated and treated poorly during his employment. Although employed as a cook, he was often asked to do other unrelated work including unloading sacks of cement, pouring concrete and unblocking drains. He witnessed how people who fell ill onsite were immediately dismissed.

Samuel worked a full week from Monday to Sunday, from 7.30am to 5pm, and was paid only \$3.65 per day. He told us that he did not receive adequate personal protective equipment (PPE). Samuel’s testimony was confirmed by most of the Congolese workers RAID and CAJJ interviewed.

Whenever he and other workers tried to raise the alarm about the poor working conditions, they were ignored.

High safety risks were also highlighted by Isaac,* who worked for the subcontractor for 14 months. He told RAID and CAJJ that managers treated Congolese workers “like slaves” and failed to conduct proper risk assessments. Workers, he explained, were made to work at great heights without safety belts and were forced to lift heavy items by hand rather than using machines.

Work conditions during the Metalkol construction phase left many workers feeling abused and degraded. “They treated us like things, not humans,” Ravy* told RAID and CAJJ.

On 23 March 2020, following the declaration of a national emergency due to the Covid-19 pandemic, Samuel and 31 other workers were fired without warning.

Inadequate safety and workers’ health

Employers must organise a workplace that ensures the health, safety and dignity of workers

- Congolese Labour Code, art. 55

Mines remain among the most dangerous places to work in the world. Despite accounting for only 1% of the global workforce, mining is responsible for around 8% of fatal workplace accidents, according to ILO estimates.¹⁷⁵ Industrial mining companies pride themselves on their safety records and all of the mining companies referenced in this report emphasise their efforts to create a safe working environment.¹⁷⁶ Workers we interviewed told a very different story, and said they saw a cavalier attitude to risk at Metalkol, Sicominex, Somidez and TFM, sometimes with fatal consequences.

Several workers at TFM had witnessed numerous deadly accidents and consistently reported that safety standards had deteriorated when the mines came under the management of China Molybdenum.¹⁷⁷ Francis* has worked at TFM since 2007 when he was taken on by a subcontractor during the construction phase. He is now directly employed by the company on a permanent contract. He told us that he knows of at least four people who had died during his time with the company, including a South African worker who fell to his death from a footbridge. He explained how he saw the safety culture at the mine change when China Molybdenum took over from Freeport McMoran:

“With the Americans, they were taking safety seriously. They were also very careful. But with the Chinese, they’re the first ones to violate safety rules. It’s more difficult for people to follow rules if they [the managers] are not doing it themselves – not wearing helmets, not being careful, using phones, etc. It’s less organised... and there was clearly an increase in the number of accidents. With the Americans, we could do 60 days without any incident. With the Chinese, it is more like 25-30 days. The Chinese are not going to stop the production for protection or safety reasons.”¹⁷⁸



A worker at an industrial mine hired through a subcontractor says that he earns \$200 a month

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Cédric* recalled seeing several serious injuries and two or three avoidable fatal vehicle accidents in 2020, all of them involving Congolese workers. A driver had died when his truck fell from a cliff edge at the mine, while another was killed after his vehicle became unstable and flipped over due to a badly attached load. Cédric also noted that since China Molybdenum took over the mine, the accident rate had increased because workers were tired and driving faster, in an effort to claim bonuses paid for each load brought from the mine to the processing plant.¹⁷⁹

Others described being forced to work in highly dangerous conditions. One former worker said he constantly feared for his life while working at TFM – such was the company's disregard for safety.¹⁸⁰ Another one, Pierre,* explained:

"Before [under the Americans], there was no distinction between races or positions. Safety applied equally to everyone. If you broke a rule, no matter who you were, you got the same sanction. Now, with the Chinese, they don't have the safety culture... We were at the top for safety before. It was everyone's responsibility to stop unsafe work. Now, you can't do that. It's just rules on the wall, it's not respected – the Chinese are not respecting the rules themselves... We even saw them transport workers on forklift... They forced the Congolese men to do it..."¹⁸¹

He went on to detail how this culture has egregious effects on vulnerable workers at subcontracting companies, who are unable to speak out about their concerns: "People remain quiet because they are afraid for their jobs. They might work without proper equipment, risk their lives, but they stay quiet."¹⁸² Ravy,* a daily worker for a subcontractor at Metalkol, told RAID and CAJJ that he and others had been treated "like machines" and pushed to climb scaffolding faster, in flagrant breach of the most basic safety standards.¹⁸³ Nelson,* directly employed at Metalkol told us that the company covered up accidents, in order to maintain an appearance of high safety standards:

"I injured myself once and they took me to the hospital onsite... I had to return the day after, even though I had a huge injury. They forced me to go back to work. I went to the human resources department to ask to have a day off. But they refused because they didn't want to record my accident – because we have a target for a number of days without accidents. So if we'd declared my accident, we wouldn't have reached our target. There were three similar injuries in less than a month. I don't know if they recorded them."¹⁸⁴

The situation was similarly dangerous at Sicomin, where Lyambo,* in one incident, was forced to climb a scaffolding platform without a safety harness. Suddenly the structure began to shake violently, and looking down, he saw other workers had started drilling into the cement foundations without any warning.¹⁸⁵

Workers at Somidez told RAID and CAJJ that there was no Hygiene and Safety Committee (*Comité de sécurité, d'hygiène et d'embellissement*) on the mine site, despite Congolese law making this requirement compulsory for companies with more than 20 employees.¹⁸⁶

At some mines and their subcontractors, the provision and quality of personal protective equipment (PPE) is also a serious concern for workers.¹⁸⁷ Interviewees told us that they were not given PPE or if they were, it was poor quality.¹⁸⁸ At Sicomin, workers described seeing overloaded trucks and workers without boots and other PPE.¹⁸⁹ At a TFM subcontractor, Dieudonné said "the PPE are not adequate. If my boots are with holes and I asked for new ones, they tell you to go home and stop complaining. We have to keep our work clothes for 6 months no matter what, even if it's damaged."¹⁹⁰

Chronic health problems

Employers must ensure healthy working conditions. They must collaborate with health services to ensure doctors are available at the workplace when needed. A medical service must be available on site.

- Congolese Labour Code, arts 160, 161 and 177

Apart from putting workers in immediate danger, the lack of sound safety measures and adequate PPE at the mines exposes workers to hazardous work conditions, sometimes with harmful and long-term impacts on their health.

We interviewed two doctors (one of whom is also a clinic owner) and two hospital managers, all from different healthcare providers. Two interviewees told us that companies know their operations are causing serious illnesses and, in their view, are deliberately withholding critical medical information from workers. One clinic owner contracted by subcontractors of two of the mining companies to provide healthcare for their workers said: "It is very risky for me to talk to you, but I feel I need to speak out. There are serious issues and workers' health is at risk".¹⁹¹ He told us that he saw cases of silicosis and asbestosis at an alarming rate. "I maybe saw ten people with that per month," he said. When he reported this to the company's human resources department, he was told "to keep quiet" and to stop talking about it. He was also instructed never to divulge diagnoses of serious illness to workers and, instead, to inform the company.¹⁹²

Similar suspicions of asbestos exposure were shared by the manager of a hospital contracted by one of TFM's subcontractors. According to him, the presence of asbestos in mines was reported a few years ago by a local radio and is still having impacts on workers: "We see a lot of problems for the eyes; we

think it is because of toxic products. We think there is still asbestos and that's why we are encountering all these problems.”¹⁹³

Two clinic and hospital managers saw a range of other chronic and serious health problems caused by poor working conditions. These included conjunctivitis and lung complaints caused by dust and serious back pain from heavy labour.¹⁹⁴ They reported that workers at two of the mines, and several of those from subcontracting companies, also experience eye problems (suspected to have resulted from exposure to toxic products), issues with hips and legs; and coughs, sometimes chronic.¹⁹⁵

Companies are aware that workers can experience life-changing illnesses due to poor working conditions, but are failing to provide fair compensation for injury, or to change their practices. In May 2007, Alain* started working on a permanent contract as a driver for TFM, firstly on small vehicles and then 100-ton trucks. In 2017, Alain was forced to stop work due to a painful, chronic spine injury caused by the constant movement of the heavy vehicles he drove. The company paid for surgery, but Alain was unable to return to work and was placed on paid sick leave for two years. After this, a doctor declared that Alain would no longer be able to work as a truck driver but was capable of taking on lighter duties. The company, however, informed Alain that the doctor had declared him completely unfit for work. He was made redundant and given a payment of \$6,500, a little over four months' salary. He has been unable to work since and is in constant pain. He told RAID and CAJJ that he was aware of 30 other workers who had been injured in the same way.¹⁹⁶

Inadequate healthcare

In cases of sickness, accident or pregnancy, the employer must cover the costs of healthcare, dental care, surgery, medication and hospitalization for employees and their dependent family members

- Congolese Labour Code, art. 178

Overall, workers' ongoing access to adequate healthcare is limited, further contributing to enhanced risks of medium to long-term disease or disability. According to Congolese law,¹⁹⁷ employers must cover the healthcare costs of workers employed on permanent and fixed-term contracts, and the healthcare of their immediate families, defined as their spouse and dependent children (in Congo, the average household has six children).¹⁹⁸ Daily workers – the lowest paid and most vulnerable – are not covered by this provision.¹⁹⁹

Companies pay private clinics to provide workers' healthcare. Directly hired workers, – regardless of their contract type, reported that the companies paid clinics between \$50 and \$80 per month per worker and family, giving the clinics sufficient income to avoid workers having to contribute to the costs of care. Every worker RAID and CAJJ met who was directly hired by a mine had free healthcare.

Yet this was no guarantee of appropriate care. Cédric* was directly hired by TFM on a permanent contract to work as a mechanic and driver. Despite benefiting from free healthcare, he has also sometimes had to find the money to pay for private healthcare because he did not trust the clinic contracted by TFM, which runs with limited resources. His distrust came from his own experience. When his daughter, one of seven children, was sick and sought medical treatment, the company clinic simply prescribed her paracetamol. Concerned about her deteriorating health, he took her to a private clinic who diagnosed the child with typhoid and provided an appropriate treatment. Cédric said the company clinic's fallback medicine of choice is nearly always paracetamol, regardless of the patient's symptoms.²⁰⁰

Contrary to mining companies, subcontractors pay health clinics much lower premiums, sometimes as little as \$10 per worker per month, far too low to enable the clinics to provide a decent standard of care. As an indicative example, a malaria blood test alone can cost up to \$10. Some subcontractors ignore their legal obligations altogether and do not contribute to their employees' healthcare.

Indeed, the workers RAID and CAJJ's interviewed who were hired by subcontractors reported either not having access to free healthcare at all or being provided with poor quality care. For example, Lyambo** has worked for two Sicomines subcontractors since 2013. He explained that the companies covered the cost of his healthcare, but no provision was made for his family, contrary to Congolese law.²⁰¹ Others told us that they had to contribute to the costs of more expensive treatment.²⁰² Landry,* former worker for various subcontractors at Sicomines, told us that after a fellow worker was severely burnt in an acid spill at work, the company refused to pay for treatment on the grounds that the worker was responsible, and the treatment would cost \$50.²⁰³

* Pseudonym; all real names have been replaced

WORKERS' RIGHTS AMID THE COVID-19 PANDEMIC

The COVID-19 pandemic has had significant adverse impacts on the human and labour rights of workers hired by mining companies and their subcontractors.

Representatives of subcontracting companies for KCC, Metalkol and TFM told RAID and CAJJ that, due to the pandemic, they had ended the temporary contracts of a considerable portion of their workforce, often without any allowance or final pay, due to a lack of financial resources.²⁰⁴ In relation to workers with permanent contracts, one representative said: "We ask them not to come to work. During this time, we are supposed to pay them 50% of their salary, but we often don't have that money, so we accumulate months of delay."²⁰⁵



According to the Congolese organisation Afrewatch, a third of workers in the Lualaba and Haut-Katanga mining sector lost either their job or the benefits linked to their contract between May and December 2020 amid the pandemic.²⁰⁶ Afrewatch considers most of these dismissals illegal. Indeed, while economic reasons may justify mass dismissals in the context of

COVID-19, Congolese labour law establishes strict procedures for such dismissals, which most subcontracting companies did not follow.²⁰⁷ The Kinshasa Provincial Labour Inspectorate issued a rare, but clear, statement: "COVID-19 measures taken by [Congo] do not constitute an opportunity for employers to terminate the contracts of their workers and employees on the basis of 'force majeure'."²⁰⁸

Workers and trade unions also reported that three of the companies featured in this report, Sicomin, Somidez and TFM, had adopted "lockdown" policies to prevent the spread of COVID-19. To implement these measures, workers were asked to stay and work confined on site, 24 hours a day and seven days a week, having no contact with their families, for up to five months (between March and August 2020).²⁰⁹ If they refused, workers stated, they would lose their jobs.²¹⁰ A staff member at Sicomin told RAID and CAJJ that at least 500 workers had been confined at the mine site.²¹¹

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At a number of the mines, workers reported confinement conditions which were abusive and degrading. In June 2020, eleven leading international and Congolese human rights groups wrote to the mines expressing concern about the conditions. “Workers at some of the mines said they received inadequate food and water rations, and had overcrowded sleeping arrangements and unsanitary toilet and washing facilities, risking the spread of COVID-1”, the letter said. “Some [workers] said they were required to work beyond the regulatory maximum eight-hour shift without any additional pay.”²¹²

At TFM, a worker told RAID and CAJJ: “During COVID, they confined us on site and the conditions were bad. We had to share 1 bed sometimes between 3 people. It was packed. We had food twice a day, morning rice and evening bukari (cassava dough).”²¹³



Workers and union representatives also reported that the many mining companies were failing to respect the World Health Organisation’s recommendations on preventing the spread of COVID-19 such as social distancing, PPE and handwashing.²¹⁴

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Freedom of association rights undermined

Workers have the right to establish, join and be represented by unions to study, protect and develop their labour interests

- Congolese Labour Code, arts 230-234

Freedom of association is a fundamental right proclaimed in the Universal Declaration of Human Rights.²¹⁵ It allows workers and employers to form and join organisations and is essential to ensure workers’ human and labour rights. In this context, trade unions, as the workers’ collective voice in the workplace, contribute to providing workers with better and fair benefits, including higher salaries, paid leave, healthcare, safer working conditions, and protection from discrimination, among other factors.

In the last decade, strikes – although small in number and length – have broken out across the copper and cobalt belt because of differences in salaries, bonuses and benefits between mining companies, and between expatriates and Congolese workers. Union representatives have used these comparisons, and the risks of strikes associated with them, to demand improvements for workers.²¹⁶

For example on 23 May 2020, TFM workers held a strike demanding the payment of a special allowance to the 6,000 workers that were confined to the mine site for 24-hours during the two-months of quarantine that the mining company decided was its Covid-19 prevention strategy. After unions entered into negotiations with the mine management, the company agreed to pay an allowance of \$600 to each of the workers.²¹⁷ The Congolese Labour Code recognises the right for workers to establish, join and be represented by unions.²¹⁸ Congo also ratified ILO Conventions C087 and C098, which state that workers can establish and join organisations and unions, and that employers cannot interfere in these organisations.²¹⁹ Yet, due to the scarcity of resources needed to enforce the law in Congo, these rights are difficult to implement.

At company level, KCC, Metalkol, Somidez and TFM – or their parent company – have made public commitments to respect workers' rights to freedom of association and collective bargaining.²²⁰ However, RAID and CAJJ's research found significant discrepancies between the mines, and between direct employees and those hired from subcontracting companies. Among the workers interviewed, employees hired directly were significantly more likely to be union members than workers hired through labour agencies. Of the 49 direct employees interviewed, 74% are union members (22% are not and 4% did not know), against a much lower 17 % of the 54 workers employed by subcontractors (65% are not; 11% did not know; 7% did not answer).²²¹

None or limited association rights for subcontractors' employees

The discrepancy between access to unions appears to be a direct consequence of the subcontracting model increasingly used by mining companies. In principle, contractual workers have the same association rights as direct employees. Yet, in practice, the temporary nature of their contracts and the recurring transfers of workers between subcontractors (to circumvent making workers permanent) prevents or weakens the ability of workers to organise. In fact, workers we interviewed said most labour agencies did not even offer the possibility to establish and join unions.

Pascal,* who works for a TFM subcontractor, told RAID and CAJJ that there was no union representation at his company. In his view, the subcontracting firm tried to prevent the formation of a union because workers were employed on fixed-term contracts: "TFM has its union, but... we can't have a union with the subcontractor – the subcontractor is not in favor of it, because we have fixed-term contracts. If we asked for more, they threatened to fire us."²²² Similarly, workers we interviewed who were employed as daily workers by several subcontractors during the construction phase of the Metalkol mine reported that being required to shift between different subcontracting firms had a detrimental effect on their ability to unionise.²²³

A few subcontracting companies have unions, although 33% of contractors RAID and CAJJ interviewed who were union members worked for a multinational company providing security personnel to KCC.²²⁴

Directly hired employees and employer interference

Unlike in subcontracting companies, unions are present for direct hires in KCC, Metalkol, Sicomines and TFM, but, according to workers, not in Somidez. A union representative at Metalkol reported that there were six unions at the mine site in 2020. At the time of the interviews, negotiations were ongoing to reach a collective agreement with the company to address the lack of benefits for workers.²²⁵ A union representative at KCC also mentioned that ten union houses were representing workers.²²⁶ In a letter addressed to us, China Molybdenum, TFM's parent company, stated: "All Congolese employees of TFM

have joined a trade union. Collective negotiation agreement signed by the company and the trade union cover 100% of Congolese employees, which stipulates working hours, wages and benefits that meet market standards and laws.”²²⁷

What union representatives and employees explain, however, is that imbalances of power, dismissal of union voices, and employer interference render unions, to a certain extent, ineffective. While these concerns are not generally confined to specific companies, Chinese-owned companies have long been perceived as hostile to independent trade unions and reluctant to engage into collective bargaining.²²⁸ In RAID and CAJJ’s investigations, workers at TFM and Sicomines were the most concerned about the effectiveness and independence of their unions. Similarly, the largest number of directly hired workers who reported not being union members were employed at Chinese-owned Somidez.²²⁹

Tshamala,** who is employed by TFM, explained that, although his employer deduces \$6 a month as a union fee, he did not feel the unions at TFM had much power to support workers. When Tshamala was suspended for three days for taking a day off without permission following the death of his brother-in-law, the union tried to negotiate on his behalf but was not successful. Tshamala was sceptical about the unions’ commitment to the workers: “We sometimes have the impression that they’re corrupt and forget to support us against the employer.”²³⁰ Other TFM employees, with higher positions, were less critical of their unions: “We still have a union representative for each department. We voted houses; the convention says we should have at least 11 houses. Last week, they had a meeting for the convention renewal. They help us in negotiating with the employer.”²³¹

At Sicomines, membership in a union is compulsory, employees told RAID and CAJJ. Every month, the company deducts \$1 from the salary of each worker as a union fee.²³² Yet, workers at Sicomines expressed the view that their unions were failing to represent them effectively, and that they were influenced by the company.²³³ Lyambo* spoke of his distrust in, and discontent with, the union’s lack of power:

“We have a union, but they’re Congolese workers like us. They can’t ask for anything, because they can get fired. They don’t do a thing for us. I pay \$1 per month for the union. They’re giving information to the Chinese, they’re not on our side. They are trying to prevent strikes. We don’t vote for them – they’re nominated by the Chinese.”²³⁴

Landry,* who worked for Sicomines for five years, also mentioned that his union representative was appointed by the company, rather than elected by workers, and therefore prioritised the company’s interests over those of workers. He added that in 2017, his union opposed a strike organised by workers to push for better pay and conditions.²³⁵ Another employee, Silvére,* said: “The company chose the union; we never voted for the union. They’re not working for us. We suggested to hide our salaries in envelopes and asked the union for that. But they didn’t do anything, they can’t ask the Chinese. They have to follow.”²³⁶

In these contexts, the presence of unions appears more like an effort from the companies to limit potential reputational damages than a real wish to protect the rights of their workers.

* Pseudonym; all real names have been replaced

Racism, discrimination and degrading treatment

Employers commit gross misconduct when they sexually or morally harass, intimidate, or abuse, physically or verbally, workers or allow others to do so

- Congolese Labour Code, art. 73

The increased Chinese activity and investment in Congo's mining sector have come alongside reports of tensions between Chinese and Congolese workers. Not all of this is one way. Chinese workers have also described facing serious hostility, harassment and assault from the Congolese.²³⁷ However, even if the conditions for Chinese expatriates can be difficult, they are distinctly superior to those of Congolese workers. In interviews with RAID and CAJJ, Congolese workers reported that racism and violence are a day-to-day reality for them at Chinese-operated TFM, Sicominex, Somidez. Similar conditions were also reported by workers employed at Chinese-owned subcontractors engaged by Metalkol. The level of discrimination and abuse was reported as being so severe that workers often compared it to the colonial era: "Our situation is worse than before. The Chinese come and impose their standards and culture. They don't treat Congolese well. This is new colonisation."²³⁸ Discrimination against Congolese workers is not limited to Chinese-owned companies and existed long before the arrival of Chinese stakeholders in the region. Workers we interviewed described that expatriates from many nationalities working across the mines seemed to enjoy preferential treatment and better working conditions than their Congolese counterparts.

Degrading treatment: physical and verbal abuse

Racism and tensions between Chinese expatriates and Congolese workers take several forms, workers explained to us, including palpable humiliation and other degrading treatment. Almost every worker we interviewed, employed at Sicominex, Somidez, TFM or Metalkol's Chinese-owned subcontractors, reported either experiencing or witnessing racism and discrimination, often expressed through physical violence and verbal abuse directed at Congolese workers.

One example workers described was the treatment by a subcontractor hired by Metalkol. Congolese workers said that when they did not understand instructions given in Mandarin, or made mistakes, or refused to undertake dangerous tasks, it often prompted violent assaults and degrading verbal abuse by Chinese managers. Between 2016 and 2019, Prince*, aged 29, earned between \$2 and \$5 a day working a series of 21-day contracts for various subcontractors at Metalkol. The poor treatment he repeatedly witnessed at the company included workers being insulted, slapped, pushed and having their ears pulled. Those who rioted were immediately dismissed.²³⁹ Another worker, Kazenga*, who was hired as a daily worker, had a similar experience with a Metalkol subcontractor. "It depends on the people you are working with", he reflected, "but some are very brutal. Some Chinese say Congolese people are not intelligent".²⁴⁰

Three men formerly employed by a subcontracting firm at the TFM mine were victims of repeated, violent assaults at the hands of their Chinese managers. When RAID and CAJJ met daily worker Luc*, he had been unemployed for a month after being unfairly dismissed by a subcontractor at TFM, following eight months of degrading treatment at work. He told us he was beaten and kicked regularly. The day of his dismissal, he arrived at work and was told that some of the building materials had been stolen during his shift. He and his colleagues tried to explain that they were not responsible for the theft, but TFM managers, refusing to enter into negotiations, called armed guards who violently ordered Luc and the others to leave the site and never return. They were not paid the salaries they were owed.²⁴¹

Jean-Florent,* also a daily worker at TFM confirmed Luc's assertions and told us that they were treated like animals, kicked by managers who wore steel toe boots, flogged with sticks, and frequently insulted. When managers spoke to workers, he said, they did not look at them.²⁴² David* added that he had seen a Chinese worker beating a Congolese worker with his helmet. When the Congolese worker tried to fight back, he was fired.²⁴³

Another worker explained that abusive practices are treated less seriously by TFM's subcontractors than they would be by TFM itself. Pierre,* who is directly hired by TFM, is married with four children. Pierre told RAID and CAJJ that he had often seen Chinese workers insulting and flogging Congolese workers.²⁴⁴ He explained that these incidents would have been investigated by TFM if the workers had been directly hired by the mine, but subcontracting companies simply fire Congolese workers who are treated poorly. He told us there is no accountability under the subcontracting companies: "...[they] do whatever they want. They don't care."²⁴⁵

Workers at Sicominex said they frequently witnessed similar violence.²⁴⁶ Every day, Lyambo* told us, he witnessed managers meting out brutal treatment to Congolese workers. Workers were beaten by managers when they refused to carry out unsafe tasks. Managers unable to speak Swahili or French routinely gave instructions in Mandarin, which Congolese workers could not understand. Again, the managers responded with violence: slapping, kicking and fighting with their Congolese employees. In one terrifying incident, Lyambo watched horrified and helpless as a Chinese worker seized a shovel and hit a Congolese colleague over the head with it.²⁴⁷ As workers explained, this was not an isolated event. Because of this violent environment, Silvère* avoids any contact with his Chinese counterparts: "I try not to have contact with Chinese people, because they don't treat us well. No one is satisfied with how they treat us. They insult us, but in their language so I don't understand".²⁴⁸

At Somidez, too, workers reported that Chinese managers slapped and insulted Congolese workers.²⁴⁹

Although only workers employed by Chinese-owned mining companies and subcontractors have expressed witnessing or suffering blatant racism and violent abuse, other forms of discrimination have been reported across the five mines featured in this report, including preferential treatment and facilities for expatriates (see below).

Unequal opportunities

Workers must receive equal pay for equal work regardless of age, gender or ethnic or national origin

- Congolese Labour Code, art. 86

Silvère* lives in Kolwezi and has been directly employed at the Sicominex plant on a fixed-term contract since 2019. He was reluctant to work for a Chinese company as he feared poor treatment. “They treat people like in the colonial era,” he told RAID and CAJJ. Yet, as he was unemployed, he felt he had no choice. Once employed, he immediately noticed unequal balance of power:

“At the plant the Chinese people are in the offices, but on the floor there are only Congolese workers. The Chinese people are always higher rank. Even if I train a Chinese person, I have to call them Chief or Boss. It is an official rule. My manager told me that on my first day. No matter the person's position in the company, I call him ‘Boss’, because it’s their company.”²⁵⁰

The requirement to call Chinese workers “Boss”, irrespective of their status, was also reported by TFM workers.²⁵¹

In addition to discrimination in hiring, other Sicominex workers have reported earning less than their expatriate counterparts, as Martin,* who has worked at Sicominex since 2018, explains: “It is unequal between Congolese and Chinese. We do the exact same work as the Chinese, and they are paid much more. They have an expat bonus of \$200 per week. They told me, and it is known, my chief told me as well.”²⁵²

Similarly, all the workers RAID and CAJJ interviewed at Somidez reported that Chinese workers received much higher salaries and better benefits than Congolese. According to workers we interviewed, Chinese workers earn between \$1,000 and \$1,500 more than the Congolese for the same work conducted.²⁵³ “There are no promotions or Congolese managers in Somidez,” Jean-Charles* added. “Only the Chinese supervise.”²⁵⁴

Preferential treatment of expatriate workers was also reported by workers at KCC. This included better roles, better opportunities for promotion, and no sanctions for breaking rules or disregarding safety standards.²⁵⁵ Cyprien,* who is hired directly by KCC, believed that all the superintendent positions are held by expatriates, “even if they have not studied as much as some of the Congolese workers”. If true, this would be contrary to Congolese law, which sets that only 2% of direction roles in companies operating in Congo can be held by foreign employees.²⁵⁶ Cyprien mentioned, however, that some Congolese workers are managers, including in cases where Congolese have taken up managerial positions left vacant by expatriates who have left because of COVID-19. This was confirmed by Glencore in their response to RAID and CAJJ’s letter: “As of July 2021, approximately 85% of management and direction positions are held by Congolese nationals [...]. This percentage has increased over the past two years, as KCC nationalised around 120 roles previously filled by expatriates.”²⁵⁷ According to Cyprien, expatriates receive a per diem²⁵⁸ on weekends, which is not offered to Congolese employees.²⁵⁹

Different facilities

Cyprien also reported that the lunches of Congolese employees and those of expatriate workers at KCC are prepared by two different companies, the lunches of expatriates in his view being “more expensive and much better”.²⁶⁰ This was confirmed by another worker, Muzuri*:

At lunch time, we receive a lunchbox but it is not good. Our lunch provider told me that it is up to the company to choose what goes in the lunch boxes so that it is the cheapest possible. The whites don’t eat that, nor the directors. It is another company that prepares the food for the expatriates. Their food is totally different.²⁶¹

Another recurring complaint at KCC, particularly amongst underground workers who work in hot and humid environments, was the lack of sufficient water and more water being provided to expatriates. André* said:

“We have only two small bottles of Canadian pure (600 ml) that they give us at lunch time. Otherwise, you have to bring your own water. I am often thirsty, but I have to endure. It is quite hot in the mine, so I am often thirsty, but I don’t have enough water. We asked KCC for more water, but they haven’t done anything. They said they will provide us with fountains, but nothing yet [...] Expats are not given the same food as us; they have more fruits, more choice and more water, around 2 litres.”²⁶²

According to Glencore, which responded to RAID and CAJJ’s letter, employees and contractors working underground receive a minimum of 1.5l of bottled water and all personnel have access to potable water stations.²⁶³ At Sicomin, Martin* said that in addition to receiving a different standard of food at lunch time, “Chinese don’t go to the same hospital as us – they go to the hospital onsite, which is only for Chinese.”²⁶⁴ Significantly, he added, Congolese workers have no access to safe drinking water on site: “There are taps onsite, but I think it is not potable. I drank some and felt sick, so I am fearful of it. I bring my own water. The Chinese are not drinking that water either. They bring their own.” Similar concerns were shared by TFM workers. According to Mwamba,* who used to work for TFM, although there was a room with bottled water, this room was only accessible to expatriates; Congolese workers had to use the taps on site.²⁶⁵

Metalkol’s Congolese workers also perceived differential treatment for facilities they have access to, with sections of the mine site only open to expatriates and senior management. “There is a camp for white people with very good food, there is a buffet,” said one Congolese worker. “This place is only for whites and black management that are resident onsite. The camp is called Inkwanzi.”²⁶⁶

The situation is similar at Somidez where several workers reported eating on the floor. According to Valère:* “The cafeteria is only for the Chinese, so when it is time to eat, each worker manages as best they can. For example, some use the changing rooms, without chairs or tables. We put our food on the ground.”²⁶⁷ Others explain they eat “at their working station” or “under a tree”.²⁶⁸

AN UNDERFUNDED LABOUR INSPECTORATE

The Congolese government has the primary responsibility to protect the rights of its citizens and to ensure that its laws are respected. But Congo remains a weak state, still recovering from years of brutal conflict and underinvestment in its public services. Through corruption, mismanagement and weak tax collection, the government has been hemorrhaging vital income over many years. In May 2021, an in-depth financial investigation by the anti-corruption coalition, *Congo is Not for Sale*, revealed that the government was facing losses of at least \$3.71 billion from suspect mining and oil deals struck with notorious businessman Dan Gertler. The coalition urged for action by the government, stressing that the funds are “desperately needed to rebuild the economy and pull Congo’s citizens out of poverty.”²⁶⁹

CORRUPTION AND BRIBERY

Congo has long been plagued by corruption and bribery, especially linked to its mineral sector. As identified by the OECD, two levels of corruption touch on the cobalt sector: (i) corruption linked to the acquisition and negotiation of mining rights, and (ii) corruption linked to the role of intermediaries and subcontractors.²⁷⁰ To date, significant attention has focused on the first risk with increasing amounts of information about corruption and bribery in the public domain through the work of civil society groups, investigative journalists, financial institutions such as the IMF and World Bank, and international bodies such as the United Nations and the Africa Progress Panel.²⁷¹ At the time of publication, there were at least three corruption investigations linked to Congolese copper and cobalt mining assets ongoing in the US, UK and Switzerland.²⁷² A key actor, Dan Gertler, who had close ties to former Congolese president, Joseph Kabila, was designated a “corrupt actor” by the US government and placed under sanctions in December 2018.²⁷³

Less attention has focused on the second risk. Managers of Congolese subcontracting firms interviewed for this research made allegations of corrupt relationships between non-Congolese subcontractors, mining companies and the Congolese government. They told RAID and CAJJ that personal friendships between local Congolese officials and expatriates involved in mining and subcontracting activities influenced decisions as to which labour agencies received contracts. Congo’s 2017 *Law No. 17/001*, which regulates subcontracting in the private sector, restricts, with limited exceptions, subcontracting to Congolese enterprises.²⁷⁴ Yet, managers alleged, the most significant contracts are often attributed to foreign firms, some of them using Congolese registration (or partnering with small Congolese firms to use their names in exchange for a small portion of the contract fees) to subvert the law.²⁷⁵ Others asserted that micro subcontracting companies, often linked to Congolese local politicians, are multiplying and are capturing the entire market.²⁷⁶ Some even claimed that all new subcontracting companies in the Kolwezi area belong to the Lualaba’s political elite.²⁷⁷

The research by RAID and CAJJ was not focused on these concerns and we did not seek to confirm the accuracy of these allegations. There is, however, clearly a need for further research into these claims.

One sector suffering from chronic under-investment is Congo's Labour Inspectorate, an administrative service which monitors the implementation of domestic labour regulation. Governed by the Congolese *Code du travail* (Labour Code), the *Inspection générale du travail* (General Labour Inspectorate) is responsible for ensuring that labour laws are respected.²⁷⁸ Its work is carried out by local Inspectors or Controllers, including rendering decisions on individual and collective labour-related disputes.²⁷⁹ This regulator also conducts inspection visits to ensure workplaces are safe and healthy, that workers enjoy adequate conditions and benefits, and are represented by trade unions.²⁸⁰

According to the Labour Code, inspectors should be allocated all the resources necessary to ensure they can perform their duties effectively.²⁸¹ Yet in practice, the Labour Inspectorate receives minimal funding.²⁸² Inspectors reported receiving low salaries, having no transportation means to conduct site visits, and lacking adequate communication tools.²⁸³ One inspector, in an interview for a news article, said he paid for his own office furniture and work-related travel costs.²⁸⁴ Others flagged the insufficient training of inspectors to adequately address labour issues.²⁸⁵ In such a context, labour rights violations have multiplied, largely with impunity.

There can be little doubt that the Labour Inspectorate is severely understaffed. In 2017, there were 149 inspectors in the entire country covering an estimated 27 million workers (that is 185,283 workers per Inspector). The former Katanga province (which now constitutes the provinces of Tanganyika, Haut-Lomami, Lualaba and Haut-Katanga) had 31 employees of which 22 were inspectors. In 2018, only one of these inspectors was assigned to the Kolwezi area.²⁸⁶ Today, the number is not much better, with just two inspectors.²⁸⁷

Inspectors in Kolwezi say they carry out about ten inspections per month, though they are often refused entry to the mine sites, despite the Labour Code authorising them to enter a company's facilities freely, without prior notice, at any time of day and night.²⁸⁸ The ability to carry out their functions is further compounded by workers who are often too fearful of losing their jobs to report concerns.²⁸⁹

In this context, the inspectors whom RAID and CAJJ interviewed were reluctant to criticise the practices of mining companies. Instead, they explained, they focus on "supporting" mining companies to understand the law and to improve work conditions using persuasion and recommendations. The inspectors can follow up on the implementation of their recommendations, but their enforcement power is limited to issuing non-compliance reports. Fines and sanctions are handled by other administrative and judicial authorities, depending on the violation.²⁹⁰

Congolese civil society, trade unions and researchers have also highlighted that these poor working conditions have contributed to rampant corruption among labour inspectors.²⁹¹ For instance, some mining companies have been suspected of bribing labour inspectors to avoid inspection of their facilities or unfavourable reports.²⁹²

There is no public information available to demonstrate that Congo's government is taking action to strengthen the Labour Inspectorate, though there is a clear need to do so, especially in the mineral sector. The increased use of labour subcontractors, the decline in union representation – which plays a significant role in ensuring respect for workers' rights – and the introduction of new technologies (which alters workplace health and safety risks)²⁹³ make the mission of labour inspectors increasingly important. Ineffective and weak enforcement is creating a virtually unregulated space, resulting in extreme vulnerabilities for thousands of workers in Congo's copper and cobalt sector.

INTERNATIONAL LABOUR STANDARDS

International labour standards are legal instruments drawn up by the International Labour Organization setting out basic principles and rights at work. They are either conventions, which are binding for states, or recommendations, which serve as guidelines. The ILO has identified eight “fundamental” conventions.²⁹⁴ These principles are also covered by the ILO Declaration on Fundamental Principles and Rights at Work (1998). Congo has ratified all eight conventions, which are partially reproduced in Congolese law, and are thus binding on the country.

Congo is also party to additional ILO conventions. For example, Convention C095 prevents illegal deductions from wages,²⁹⁵ Convention C017 requires that workers who suffer personal injury due to an industrial accident, or their dependants, be compensated,²⁹⁶ and Convention C014 provides for rest in every period of seven days of work.²⁹⁷

RAID and CAJJ’s research indicates that a number of these obligations may have been breached in relation to the practices at cobalt mining companies.

RESPONSES FROM THE MINING COMPANIES

In August 2021, RAID and CAJJ sent detailed letters to the five mining companies and their parent companies, setting out the findings of our field research and requesting responses to the concerns raised by workers. Each company was also asked questions about the composition of its workforce, health and safety, remuneration, benefits and non-discrimination practices, its compliance and grievance procedures, its policies on subcontractors, and the due diligence it carried out to ensure its policies were being implemented.

Four of the five companies responded. Somidez did not respond despite repeated reminders and the hand-delivery of a physical copy of the letter addressed to the General Manager of the mine in Kolwezi. None of the companies answered all the questions, although Glencore and China Molybdenum provided the most comprehensive responses. Many responded in general terms, referring us to the policies and commitments in their public-facing literature.

In general, we noted that despite emphasising the positive measures in place for their employees, the mining companies provided significantly less support to workers provided by subcontractors. This is clearly an area that requires greater attention, especially since over 50% of the workforce across the mines are hired via subcontractors. Only Glencore said it had acted to suspend a number of its subcontractors in recent years due to safety or non-performance. None of the other mines reported taking such action. Glencore was also the only company to respond that its supplier policy included the provision of “fair” wages, though it did not define what this meant. China Molybdenum was the only company to report human rights-related complaints from workers. Although the allegations of such complaints at the TFM mine described by workers to RAID and CAJJ were noticeably higher than elsewhere, it is nevertheless surprising that none of the other mines reported receiving such concerns.

The letters and the full responses from the companies can be found on RAID’s website. Some of the information in this correspondence has been referred to above. Further salient points are listed below.

China Molybdenum/TFM

China Molybdenum communicated with RAID and CAJJ on two occasions, first responding to our letter and then to additional emailed questions. In its first letter on 4 August 2021, the company said it was “committed to providing a safe, healthy and decent working environment for all employees and attach great importance to the protection of employees’ rights.”²⁹⁸ On labour relations, the company said it was “committed to complying with the conventions of the International Labour Organization and local labour policies and regulations, and [has] established a fair employment mechanism.”²⁹⁹

In relation to occupational health and safety, China Molybdenum informed us that TFM is independently audited and certified by OHSAS 18001 each year to ensure safety performance and attached TFM’s certificate of registration. The company said “we treat employees and contractors equally, and all safety records include contractor data.”

In its correspondence of 4 August 2021, China Molybdenum stated that “Every year, we disclose the number of complaints we receive by mining area and category. In 2020, we did not receive information from TFM on health, safety or human rights.” The company’s 2020 ESG report, however, did reference that the company had received nine employment grievances and two damages grievances associated with TFM’s operations.³⁰⁰

When asked to clarify these complaints, China Molybdenum responded in a follow-up email on 16 August 2021: “In 2020, among the 9 employment grievances, most were related to discourteous languages, and a few are related to claims of promotion. The 2 damage grievances are community related.”³⁰¹ The company provided us with a description of its complaint procedure but did not provide further information on how or if these grievances had been resolved.

The company also attached to its letter TFM’s Zero Tolerance Rules, which outline company requirements on a number of questions. According to the rules, fighting or physical assault on TFM property “will result in immediate suspension of employee or employees pending an investigation of the incident which may result in disciplinary action up to and including termination”.³⁰² We asked the company additional information about a June 2021 viral video, which showed a fight between a Congolese worker and a Chinese worker and was reported to have occurred at TFM.³⁰³ The company said the fight had not occurred at TFM and shared with us the public statement the company had issued to the Congolese media at the time, which pointed out that “clothes worn by the people in the video, starting with the color of the clothes and the logo, have nothing in common with those worn by our workers.”³⁰⁴

On its relationship with suppliers and subcontractors, China Molybdenum said it uses “a third party international screening service for reputational screen of all potential suppliers before they sign [a contract] with TFM and other CMOC operations.” The company said it had “updated” its screening questionnaire in 2020 to “include the Annex II risks of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.”

For its existing suppliers, the company said “the third-party platform continues to monitor their reputational risks” and said the contracts were “regularly evaluated by [the] TFM on-site team.” The company emphasised that “all suppliers are bound by their contracts in which human rights, health and safety, anti-corruption, environment, community and other sustainability related requirements are included.” It added that if any of its subcontractors failed to comply with its policies that China Molybdenum was entitled to terminate the arrangement. The company did not provide any further details about whether any suppliers had been subject to corrective actions or whether any subcontractors had been terminated for violations of its policies.³⁰⁵

ERG/Metalkol

ERG did not specifically respond to our questions. Instead, it responded to our letter by referring us to a Metalkol webpage.³⁰⁶ On this newly created webpage, which the company made us aware of on 2 September 2021, ERG says it is “fully committed to the principle of equal opportunity and maintaining a fair and non-discriminatory work environment. We treat our employees fairly, equally and without prejudice, irrespective of gender, race, age, disability or sexual orientation.” The company said “As an open and transparent company, committed to in-country regulatory frameworks, our approach to labour relations is underpinned by constructive engagement with our employees’ unions.”

ERG said it provides its employees with “competitive remuneration aligned with union agreements and legislative requirements”, and “school fees, housing, transport and family allowance”, as well as other welfare benefits including medical care for permanent employees and their families. ERG provided no information on remuneration and benefits by the subcontractors who provide 64% of the mine’s workforce.

ERG reports conducting internal safety and hygiene audits, as well as safety training with all employees, contractors and visitors. According to the company, “concerns, which can be raised anonymously, are investigated, whether raised by or relating to an employee or a contract employee”.

ERG also said it is “committed to respecting universally recognised human rights and labour standards.” It said the company selected its suppliers in compliance with its Human Rights Policy and Supplier Code of Conduct, and includes in its contracts its requirements on “labour rights, health and safety, and human rights of workers”. Its Supplier Code of Conduct states that suppliers must “comply with all applicable employment laws and regulations,” including on working hours, and pay workers in compliance with applicable law on minimum wage, overtime and benefits.

ERG’s suppliers are requested to “conduct ongoing human rights due diligence in adherence to the UNGPs or a comparative standard.” The company added, “When a supplier becomes aware of a human rights risk to which ERG is linked directly or indirectly, it must immediately inform the ERG contract representative. ERG will investigate any credible allegations of breaches of human rights and suppliers may be requested to participate or co-operate with such investigations.”

ERG said it had a risk assessment process which encompassed supplier audits and “training for key/high risk suppliers.” It added, “Depending on the assessed risk profile of the supplier and the nature of services, additional requirements are included in contracts. As part of contractor management, onsite contractors are also subject to multiple types of inspections and reviews, from daily safety inspections to formal audits.” The webpage links to Metalkol’s Human Rights Statement of Commitment and ERG’s Supplier Code of Conduct, where more details are provided.

In follow-up correspondence to ERG on 15 September 2021, RAID and CAJJ asked for further details about whether there had been any non-compliance with Metalkol’s policies by its labour suppliers, if any had been suspended in the past 5 years, the results of audits and inspections of suppliers, and what criteria had been in place at the time of the construction of the Metalkol mine in 2018. In an email on 22 September, ERG sent a one lines response once again referring us to the special website page and said “Metalkol response to your inquiries on these topics is encapsulated in the information provided on the ERGA website.” RAID and CAJJ were unable to find answers to our questions on the webpage.

Glencore/KCC

Glencore sent RAID and CAJJ a response letter on 13 August 2021 and an email answering further questions on 13 September 2021. Both times, Glencore provided detailed responses, including to specific follow-up questions. Glencore emphasised that all its employees follow its Code of Conduct, which was updated alongside other company policies in 2020, which includes that it “engage[s] with business partners to respect human rights and adhere to established international standards.”³⁰⁷

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Among the four mines for which RAID and CAJJ had data on employment³⁰⁸, KCC employed 4,661 Congolese workers, or 43% of its workforce, via subcontractors, the lowest rate, although still substantial (see table). In its 13 August 2021 letter to RAID and CAJJ, Glencore said: “KCC does not outsource to contractors in order to minimise the employment of Congolese workers. KCC only utilises subcontractors with specific skills. As the fixed-term contracted workers have specific skills, KCC uses specialised agencies to provide these workers.”³⁰⁹ Glencore also said, “KCC does not select agencies on the basis of their links to local political elites, but rather because of their knowledge and skills.”

Regarding relations with its suppliers, Glencore said it expected “ethical business practices, safety, health, human rights and environmental stewardship for all of [its] suppliers”, and referred us to its Supplier Standards.³¹⁰ These standards “form the base of [Glencore’s] risk-based supply chain due diligence programme” and “apply to any individual, organisation or company that provides, sells or leases materials directly to Glencore companies, including goods and services”. These standards apply to KCC’s suppliers and subcontractors.

According to Glencore: “KCC’s Enterprise Development Process works across its procurement programme to support, encourage and engage Congolese-owned businesses, including labour. KCC’s supplier agreements and contracts include standard terms and conditions on the requirement for robust health and safety management programmes, upholding respect for human rights, the prevention of child labour, good working conditions and fair salaries.”

Upon our request, Glencore provided details about KCC’s “stringent tendering process” which is detailed in Glencore’s 13 September 2021 email to RAID and CAJJ. For labour supplier contractors specifically, Glencore stated that, “KCC undertakes a regular validation process with the contract owner. This includes engaging with the contractor management, reviewing the work done against an agreed work schedule and, regular safety meetings to assess and support safety compliance.”³¹¹

Glencore emphasised that KCC is the only mining operation in Africa to have received the Responsible Minerals Initiative (RMI) certification – which includes supplier due diligence “a core part of this third-party assessment” – for the 2020-21 period.

In relation to remuneration and benefits, the company stated that “all of KCC’s employees are paid above the DRC’s minimum wage”. They receive “additional benefits and allowances, including but not limited to medical support, meals, school fees, housing allowance, family allowance, leave of absence payment (in addition to labour law leave requirement).”³¹² About its subcontractors, Glencore said “KCC’s standard terms of engagement for its contractors stipulates conditions in line with DRC legislation and fair remuneration”, though it did not respond to our question about what standards and criteria KCC used to determine whether the remuneration offered by its labour suppliers was ‘fair’, nor how frequently this was reviewed.

Medical services to KCC’s employees and immediate families are provided by two hospitals owned and operated by KCC. Glencore added: “There is no upper limit to the medical services provided. In the event that KCC’s medical facilities are unable to provide a specialised service, KCC has an agreement in place with a third party hospital in Lubumbashi.” For subcontractors, Glencore’s Supplier Standards have little about benefits other than that suppliers must offer “fair” working hours and working conditions and “have appropriate policies and controls protecting the labour rights of their workforce.” Glencore did not provide information to our question about what concrete steps KCC was taking to ensure its suppliers adhered to Congolese law regarding the provision of free healthcare.

In relation to freedom of association, Glencore said: “All of our assets, including KCC, recognise and uphold the rights of their workforces to freedom of association and collective representation”. Glencore stated that 96% of KCC’s employees belong to a union, and that the KCC team meets regularly with union representatives. Regarding its subcontractors, the company added: “Respect[ing] workforce rights to lawful freedom of association and collective bargaining” is in KCC’s contract terms and conditions with its service providers.”³¹³

Glencore asserted its commitment to the health and safety of its workforce and said: “Safety is our first value and our top priority. We never compromise on safety.” The company added that KCC supplies all its employees with, at a minimum, “three sets of work clothes (trousers, shirts and coveralls), safety boots, safety glasses and, if required, reflective vests”, as well as additional PPE based on the requirements for specific functions or specialist activities. The company also reported that “KCC’s contractors, as set out in their contracts, are required to provide PPE that meets KCC’s standards.” It added that “if a contractor is unable to supply PPE, KCC will provide it to ensure that at no time is any workers’ safety jeopardized due to a lack of or inadequate PPE”. For Glencore, “KCC’s contractors receive the same conditions, entitlements and requirements for health and safety as KCC employees, including inductions and safety training.”³¹⁴

In 2020, KCC recorded nine lost time injuries, an increase from 2018 (seven). When requested to provide further information about the increase in injuries, Glencore said:

“The increase in Lost Time Injuries (LTIs) between 2018 and 2020 are due to improvements in recording and reporting of these numbers. Prior to 2018, injuries to our security providers caused by interactions with artisanal miners were not included. If these specific incidents are excluded from the LTIs recorded from 2018 to 2020, there is a downward trend in LTIs across KCC.”³¹⁵

Glencore also said, “KCC is not aware of any instances of life-threatening and chronic illnesses caused by working conditions, including possible silicosis and asbestosis.”

Numerous workers at KCC in interviews with RAID and CAJJ said they were not provided with enough clean drinking water while on site.³¹⁶ This was particularly emphasised by those who worked underground who reported receiving between 1.2 and 1.5 litres of bottled water, which they said was insufficient in light of the strenuous work. Those who were interviewed said they did not have access to additional sources of water. RAID and CAJJ asked Glencore about the facilities and services in place across the mine site to ensure both employees and contractors receive enough water, to which Glencore provided a detailed response:

“Within the underground environment, employees and contractors receive a minimum of 1.5l of bottled water and all personnel have access to potable water stations that are located in communal areas. In addition, further provisions are made available to those working 12-hour shifts (an additional 1.2l of bottled water).”³¹⁷

Glencore said KCC has a zero tolerance approach for any form of harassment, bullying, discrimination and violence. Glencore provided us with its Diversity and Inclusion Policy which sets expectations on “treating our workforce (employees and contractors) fairly and without any form of unlawful discrimination.” Glencore said it “will act to protect all our employees and contractors from discriminatory treatment that is unethical or unlawful” and that “all reported allegations are investigated.” It added that “KCC is not aware of any serious violent assaults, physical and verbal abuse against its employees or contractors, or of highly dangerous working conditions.”³¹⁸

RAID and CAJJ asked Glencore what the consequences of non-compliance to its policies by its labour suppliers were, and if KCC had suspended or terminated non-compliant labour suppliers in the past 5 years. In response Glencore said “When a non-compliance incident occurs, we undertake an investigation that may result in KCC ‘black-listing’ the vendor.” It said “[o]ver the past five years, KCC has both suspended and terminated a number of non-compliant labour suppliers for reasons including non-adherence to site safety regulations or unsafe work practices and non-performance of work in line with the agreed Statement of Work and deadlines.”³¹⁹ Glencore did not specify the number of times it had taken this action.

Sicomines

Sicomines responded to RAID and CAJJ with a brief letter on 20 August 2021 which failed to address most of our questions.³²⁰ The company instead responded in general terms. In its letter, Sicomines emphasised its commitment to human rights and said “as a responsible international joint-venture, SICOMINES SA always abides by principles of respect for human rights and never allows the possibility for discrimination, violence and intimidation”. Sicomines said that since its creation it “has always carried out its activities under the law.”³²¹

The company said it worked “tirelessly to ensure the legal rights of each employee” and “create a work environment where everyone is equal”.³²² Sicomines said it “always prioritises the security of workers by providing them with PPE and by conducting monthly safety inspections”.³²³ In its correspondence, Sicomines said it “organises physical examinations each year for its employees, sensibilizes them on how to prevent epidemics and provides them with drinking water.” It added that in order to better protect its local workers Sicomines had “signed the Collective Bargaining Agreement with a Congolese union who listen, analyse and collect complaints”.³²⁴ In the midst of COVID-19, Sicomines highlighted that it had “continued to create jobs and kept all its employees [...] unlike other companies that decided to stop production or reduce their staff”.³²⁵

The company did not respond to our questions about its due diligence practices nor how it monitored its supplier and contractor adherence to policies on human rights and labour rights.” The company also did not address questions relating to workforce composition, remuneration, benefits, medical care, health and safety, discrimination, harassment for its direct employees or those hired through subcontractors and gave no details on its grievance process. The company said that in order to ensure implementation of the joint project, the Congolese and Chinese governments had established the Bureau of Coordination and Monitoring of the Sino-Congolese Programme and referred us to it for more information. We could find no information relevant to Sicomines labour rights policies on this website. Sicomines did not respond to our email asking further questions.

Somidez

Somidez did not respond despite repeated reminders and the hand-delivery of a physical copy of the letter addressed to the General Manager of the mine in Kolwezi.

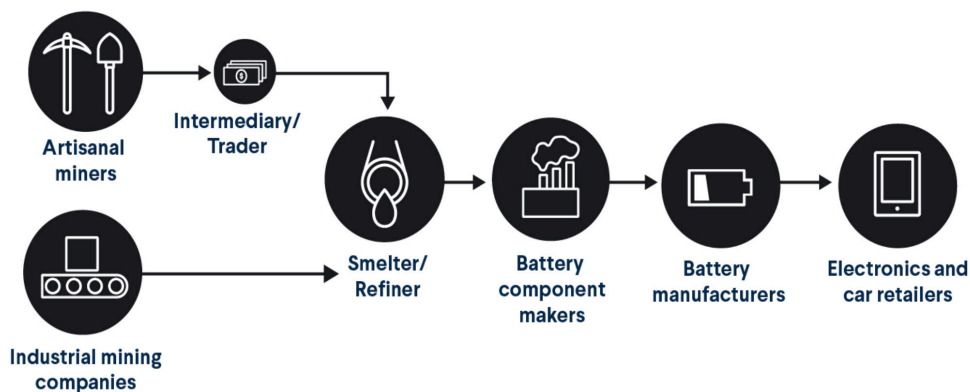
THE COBALT SUPPLY CHAIN AND HUMAN RIGHTS STANDARDS

Cobalt is an integral feature of today's lifestyles, used in rechargeable lithium-ion batteries to power portable electronics and electric vehicles. But what happens in the process from mining cobalt to having the mineral make-up part of our everyday phones, laptops, and now, most importantly perhaps, our electric vehicles?

Once cobalt is extracted from the ground in Congo's mines, it passes through multiple stages. Refiners convert the cobalt into usable form; cathode manufacturers craft refined ore into battery components; and cell manufacturers use these components to form battery packs. Finally, electronics and vehicle manufacturers use the battery packs in devices and electric vehicles that are sold to consumers.

Using publicly available information, and beginning "upstream", RAID and CAJJ traced the cobalt from the industrial cobalt mines covered in this report through the supply chain to the "downstream" electric vehicle makers and electronics manufacturers that purchase and use the batteries made from cobalt.³²⁶ The companies identified include some of the world's largest and most influential battery, automobile and electronics manufacturers, such as Tesla, Renault, General Motors, Volkswagen, Samsung SDI, Panasonic and Apple, among others. Ultimately their products end up in the hands of consumers.

The Cobalt Supply Chain



Relations

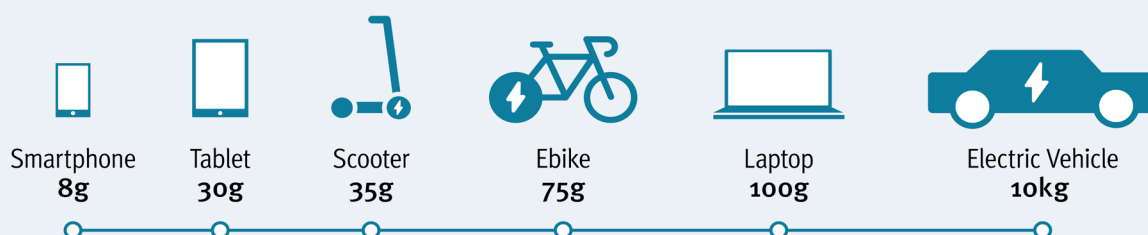
In this context, consumer-facing manufacturers have an important role to play in ensuring that the cobalt (as well as other minerals and raw materials) used in their products is not tainted by human rights abuses and the exploitation of workers, and there is increasing pressure from consumers, investors and employees for them to act.

In recent years, growing numbers of mining companies and other businesses in mineral supply chains have made public human rights commitments and published sustainability and other reports about human rights and the environment in response to these pressures. These practices developed alongside the rise of environmental, social and governance (ESG) investing, with growing numbers of institutional investors and funds integrating ESG requirements into their portfolios.³²⁷ Bloomberg estimates that ESG assets are on track to reach \$53 trillion in 2025.³²⁸ In this context, many mining companies have sought to better reflect long-term sustainability and stronger alignment with societal values.

Companies along the cobalt supply chain have not been immune from this trend and a number have publicly committed to international human rights standards, due diligence and disclosure standards as well as other industry-based initiatives seeking to promote responsible and transparent supply chains. In fact, commitments and industry initiatives seeking to demonstrate that cobalt and other critical minerals are 'clean' and free from human rights abuses and environmental harm have mushroomed in recent years. Among the most widely accepted, the Responsible Minerals Initiative focuses on responsible minerals procurement.³²⁹ Other industry initiatives focus exclusively on cobalt, such as the Cobalt Institute's Cobalt Industry Responsible Assessment Framework, the Global Battery Alliance and the Responsible Cobalt Initiative, for example.³³⁰

On the positive side, these initiatives demonstrate a recognition that human rights, labour rights, corruption and environmental concerns need to be addressed by companies from the mines to the consumer-facing manufacturers. But there remain major challenges. None of these initiatives are binding on companies and all rely on voluntary adherence. There is little or no independent oversight or penalties for non-compliance. Coordination between the initiatives is weak and the requirement they establish often overlap, making it confusing to navigate for companies, as well as for states and civil society groups involved in monitoring cobalt supply chains. Significantly, few of these initiatives specifically focus on labour rights at mine level.

How much cobalt are we using in our products?



* Figures based on data from industry experts, using average ranges.

Between August and September 2021, RAID and CAJJ wrote individual letters to four refiners (GEM Co., Huayou Cobalt, Jinchuan Group and Umicore); five battery component manufacturers (BYD Co., Contemporary Amperex Technology Co Ltd (CATL), LG Energy Solutions, Panasonic and Samsung SDI); six car manufacturers (General Motors, Renault Group, Tesla, Toyota, Volkswagen and Volvo Cars) and one electronics manufacturer (Apple).

The objective of these letters was to better understand human rights due diligence practices and company's strategies to limit human and labour rights abuses in their supply chains. We received responses from eleven companies and an overview of their commitments and practices is reflected in the table in Annex 2. These responses have informed our analysis set out in this chapter. Our complete correspondence with these companies is available on RAID's website.

International “Business and Human Rights” Standards

International instruments on business and human rights have developed substantially over the past two decades. Some are particularly relevant for the cobalt supply chain. Firstly, the United Nations Guiding Principles on Business and Human Rights (UNGPs), and secondly standards set by the OECD. The Chinese government is not a member of the OECD, but it has developed its own initiative, the Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains, inspired by the OECD Guidance on Mineral Supply Chains. It sets out guidance for all Chinese companies that extract, process, and use mineral resources and their related products regarding serious human rights abuses.³³¹

The UNGPs

The UNGPs are a set of guidelines for states and companies to prevent, address and remedy human rights abuses committed in business operations. The UNGPs establish that alongside states’ duty to protect human rights, companies should avoid infringing on the labour and human rights of workers and communities, and should address adverse human rights impacts in which they are involved.³³² This responsibility to respect human rights applies to all companies, irrespective of their size or of their role in global supply chains.

For all companies, the responsibility to respect human rights exists over and above compliance with national legal standards and independently of states’ ability or willingness to fulfil their own human rights obligations.³³³ In other words, even where Congolese labour and human rights laws fail to protect workers adequately, or when the Congolese government lacks the capacity or willingness to enforce domestic laws, mining companies extracting cobalt are expected to ensure respect for human rights throughout their operations and at the highest standard possible.

The principles set out in the UNGPs are voluntary. The instrument does not create legal obligations for companies but simply recommends what companies should do to make sure there are no human rights violations in their activities and supply chains. Out of the five mining companies featured in this report, China Molybdenum/TFM, ERG/Metalkol and Glencore/KCC have publicly committed to implementing the UNGPs.³³⁴

The OECD Instruments

The OECD Guidelines for Multinational Enterprises

Another important standard is the OECD Guidelines for Multinational Enterprises which sets out standards for responsible business conduct across a range of issues such as human rights, labour rights and the environment.

Workers’ rights are a significant component of the OECD Guidelines. Section V of the Guidelines establishes principles to ensure that companies align with domestic and international labour law, as well as “prevailing labour relations and employment practices”.³³⁵ This includes respecting the right of workers to establish, join and be represented by trade unions; not discriminating against workers and promoting equal opportunities and treatment in employment; taking adequate steps to ensure occupational health and safety; and hiring as many local workers as possible.³³⁶ When multinational companies operate in developing countries, such as multinational mining companies in Congo, they

should provide the best possible wages, benefits and conditions of work, within the framework of Congolese policies. These benefits should at least satisfy the basic needs of the workers and their families.³³⁷

The OECD Guidelines are not legally binding on companies, but they are binding on signatory governments, which are required to ensure the Guidelines are implemented and observed by companies registered in their jurisdictions. All 38 OECD countries and another 12 non-OECD countries have made commitments to adhere to the Guidelines. China is not one of them.

ERG/Metalkol and Glencore/KCC both publicly state they adhere to the OECD Guidelines.³³⁸

OECD Guidance on Mineral Supply Chains

In order to address the specific human rights risks that appear in mineral supply chains, the OECD has developed sector-specific guidance on how human rights due diligence should be implemented in the context of mining. The OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (OECD Guidance) is one of these and aims to help companies respect human rights and avoid contributing to conflict through mineral sourcing.³³⁹ The OECD Guidance applies to all minerals, including cobalt and applies to all companies, registered or operating in OECD countries or other adhering states, that source minerals from conflict-affected and high-risk areas including, for example, refiners and battery manufacturers.

The OECD Guidance provides companies with a detailed due diligence framework to help them source responsibly. This reproduces the UNGPs but it sets stronger expectations on companies and requires more detailed verification of the company's due diligence practices by independent third-party audits. The OECD Guidance does not create binding obligations for companies, but it has gained widespread recognition.³⁴⁰ Out of the five companies examined in this report, China Molybdenum/TFM, ERG/Metalkol and Glencore/KCC have publicly committed to implementing the Guidance,³⁴¹

The OECD Guidance is complemented by two industry-specific supplements, one on tin, tantalum and tungsten, and one on gold. Given the relative similarities with cobalt supply chains, the supplement on tin, tantalum and tungsten is considered applicable to cobalt as well.³⁴² It recognises that mining companies, traders, and smelters and refiners ("upstream" companies) have different due diligence responsibilities to companies that purchase, manufacture, use or sell cobalt, components or products that contain cobalt ("downstream" companies).

While the OECD Guidance says it is "intended to cultivate transparent mineral supply chains and sustainable corporate engagement in the mineral sector"³⁴³ it focuses on an extremely narrow set of issues concerning labour rights, namely child labour and forced or compulsory labour. It does not focus on the broader range of labour rights issues, such as those covered in this report. This gap means many due diligence initiatives linked to the OECD Guidance do not adequately cover these abuses at all, or do not do so in any comprehensive manner.

The above standards are usually implemented via industry schemes, with a growing number of such initiatives making commitments to them. The Responsible Minerals Initiative's (RMI) Responsible Minerals Assurance Process (RMAP), particularly, was developed to meet the requirements of the OECD Guidance on Mineral Supply Chains, among other standards.³⁴⁴ This initiative focuses on the pinch-point (where there are relatively few actors) to conduct voluntary third-party assessment of smelter and

refiner management systems and sourcing practices for responsible minerals procurement.³⁴⁵ Most of the downstream companies and some refiners RAID and CAJJ contacted are members of the RMI and rely on RMAP assessment of their refiners to evaluate the sustainability of their supply chains.³⁴⁶ Yet, because of the narrow labour rights focus of the OECD Guidance, nearly all violations of Congolese workers' rights in industrial mines seem to fall through the cracks of the RMAP and are, consequently, insufficiently addressed in manufacturers' supply chain assessments. In addition, as mentioned above, the RMI and other industry initiatives are not binding on companies and rely on voluntary adherence.

To address some of these gaps, the RMI released in June 2021 an ESG Standard for Mineral Supply Chains, which includes labour rights elements.³⁴⁷ At the time this report was published, the RMI was in the process of starting pilot assessments and no company had yet been declared conformant.³⁴⁸

HUMAN RIGHTS DUE DILIGENCE

Human rights due diligence is a way for companies to “identify, prevent, mitigate and account for how they address their impacts on human rights”.³⁴⁹ It involves four components according to which companies are expected to:

- (a) to assess risks in their supply chains as well as the potential and actual human rights impacts of their activities;
- (b) to integrate these findings into internal decisions and implement strategies to respond to identified risks;
- (c) to track the effectiveness of their response;
- (d) to publicly communicate their due diligence efforts.

Applying human rights standards along the supply chain

Cobalt smelters and refiners

Cobalt smelters and refiners, like Umicore, Huayou Cobalt or Gem Co, among others, are at the pinch-point and play a critical role. These companies are the last point at which the origin of the cobalt can be clearly identified, before cobalt from all origins is blended together through the refining process. They could therefore play a vital role in ensuring that the mining companies they source from respect the human and labour rights of their workers.

In order to conduct effective human rights due diligence, cobalt smelters and refiners are expected to establish systems through which they can collect information on the way the cobalt they process was extracted, traded, handled and exported. According to the OECD Guidance on Minerals (cited above), this can be achieved by smelters and refiners establishing “on-the-ground assessment teams” to assess potential human rights risks.³⁵⁰ Smelters and refiners should also share the results of risk assessments with the battery components manufacturers that purchase refined cobalt from them, and allow their due diligence practices to be audited by independent third parties.

Throughout this process, smelters and refiners should take all the necessary measures to identify, assess and respond to human rights abuses in their supply chain. This means, for example, that if Huayou, which directly purchases cobalt extracted at the TFM mine, identifies violations of TFM’s workers’ rights, it should use its leverage to mitigate these human rights impacts and support TFM in remedying the situation, or end its commercial relationship with TFM.³⁵¹

In 2021, following a pilot project, the responsible Minerals Initiative introduced the Cobalt Refiner Supply Chain Due Diligence Standard, which is specifically focused on the pinch-point and brings together the OECD Guidance and the Chinese Guidelines described above. The risks covered in the policies reflect the same gap concerning labour rights, though there is mention under the “additional risk(s)” category of “Occupational health and safety conditions... direct and indirect employee’s physical and mental health.”³⁵²

In practice, however, much remains to be done to ensure cobalt smelters and refiners implement voluntary international standards effectively. Numerous reports have found the practice of due diligence and audits, whether at smelters or refiners, or at companies further downstream, are ineffective in capturing human rights abuses in global supply chains, and ultimately in its current form are failing workers.³⁵³

For example, in 2018, Amnesty International reported that while Huayou had taken significant steps to address risks of child labour in its supply chain, it was unclear whether the company had considered addressing other human rights risks.³⁵⁴ The European Centre for Constitutional and Human Rights, which analysed cases of serious human rights abuses across four sectors including mining, went further and showed that not only can audits and certifications ignore some human rights abuses, they can also increase human rights risks because of lack of regulation and structural deficits in the social auditing industry.³⁵⁵ Indeed the “audit culture”, which is now a dominant feature of the mining industry’s approach to human rights due diligence, emphasises deficient standards and methodologies based on incomplete understanding of human rights and accountability.³⁵⁶

Manufacturers

Contrary to cobalt smelters and refiners, companies that manufacture battery components, batteries, electric vehicles and electronics are not required to map their supply chain all the way back to the mines. The OECD Guidance on Minerals establishes that “downstream” companies should focus their due diligence efforts on identifying who their smelters and refiners are and whether the smelters and refiners’ due diligence practices are effective in identifying and addressing human rights risks and abuses. This includes collecting information from the smelters and refiners on the country of origin of the cobalt, and on transit and transportation routes between the mine and the smelters and refiners.

If a manufacturer identifies that risks of labour and human rights still exist in the cobalt mines, it has the responsibility to collaborate with the smelter and refiner, including through industry initiatives, to mitigate risks and improve due diligence performance.³⁵⁷ Manufacturers can discontinue a business relationship with smelters and refiners that are unable or unwilling to address human and labour abuses in their supply chain. The UNGPs add that manufacturers may take a role in providing remedy to the workers whose rights have been violated.³⁵⁸

Some companies have demonstrated that it is possible to have a comprehensive understanding of their supply chain, as well as leverage over their smelters and refiners. Apple, notably, reported in 2021 that 100% of its identified cobalt smelters and refiners had participated in third party audits, and that it had removed 7 cobalt smelters and refiners from its chain because they were unable or unwilling to meet their due diligence requirements.³⁵⁹

Are electric vehicle companies failing Congolese workers?

Nearly all electric vehicle manufacturers have a direct link to Congo’s cobalt via their supply chain. As the consumer-facing companies, they have a critical role to play in helping to rectify labour rights abuses. Here are just two examples of the supply chain link. Tesla, the global leader of electric vehicles which in 2020 sold nearly a quarter of all electric vehicles worldwide,³⁶⁰ has a deal with Glencore to buy a quarter of KCC’s cobalt (6,000 tonnes, around 4% of global output).³⁶¹ Renault, the French carmaker which manufactures the Zoe, Europe’s best-selling electric vehicle,³⁶² uses cobalt from TFM, via its battery supplier, CATL, which purchases refined cobalt from Huayou, which was mined at TFM.³⁶³

These companies like many other electric vehicle manufacturers have pledged to implement international standards on business and human rights, and to conduct human rights due diligence in their cobalt supply chains. Yet, as our research reveals, widespread exploitation of workers at many of Congo’s industrial mines shows that there are significant gaps and that the voluntary schemes have been ineffective at tackling the problems. In fact, by presenting cobalt as ‘clean’ and responsibly sourced, and backing this up with lofty statements and appearances of due diligence checks, companies and voluntary schemes only serve to permit the violations to go unreported and unaddressed.

Some companies say they are working to reducing the amount of cobalt in their batteries,³⁶⁴ as a way to reduce the risks of exposure to Congo. But removing Congo’s cobalt from electric vehicle supply chains is likely to have adverse impacts on Congolese livelihoods. Congo needs investment and access to international markets to improve its economy, rebuild its infrastructure and pull its citizens out of poverty. Cobalt provides an important opportunity to contribute to such goals. But for such economic activity to play a positive role, companies must play their part in ensuring that Congolese workers operate work in safe conditions, where their human and labour rights are respected, and their salaries are enough to provide them a basic decent standard of living.

MANDATORY DUE DILIGENCE IN COBALT SUPPLY CHAINS

The limitations in corporate practice reflect larger issues in the regulation of cobalt supply chains. Because they are voluntary, international standards and industry initiatives fail to create real incentives and accountability for companies along the supply chain to protect workers and communities. Norms creating binding transparency and due diligence obligations for downstream companies importing minerals from Congo – such as section 1502 of the US Dodd-Frank Act³⁶⁵ and the European Union Conflict Minerals Regulation³⁶⁶ – do not include cobalt.

One possible option is for countries where companies in the cobalt supply chain are incorporated or operate make human rights due diligence mandatory regardless of the commodity. Indeed, under international human rights law, states have an obligation to prevent and respond to human rights violations committed by non-state actors, such as companies.³⁶⁷ To fulfil this obligation, states can legally require companies to comply with the UNGPs, both OECD guidelines, and other relevant instruments.

In Europe, some governments are currently developing mandatory human rights due diligence legislation.³⁶⁸ These developments come after France adopted its 2017 Duty of Vigilance Law.³⁶⁹ In March 2021, the European Parliament voted for a similar initiative to compel companies to conduct environmental and human rights due diligence within their value chains.³⁷⁰ The new rules should apply to companies established within the EU, but also to those established outside the EU that sell goods and services in the EU. The European Commission is expected to soon present its legislative proposal.

Mandatory human rights due diligence is, of course, not a silver bullet that will fix all the problems outlined in this report. Challenges will remain such as those relating to inadequate auditing; the scope of due diligence legislation that may be too narrow to adequately address labour rights; or liability risks that are too low to make companies feel compelled to establish effective due diligence practices. There are also associated risks with defining legal duties to undertake due diligence against a "checklist" without also extending a positive legal duty to address harm against workers. Yet, it could be a significant step in the right direction. The UN Working Group on Business and Human Rights, which promotes the implementation of the UNGPs, has recognised that such legislation can be critical for speeding and scaling up companies' respect for human rights.³⁷¹

CONCLUSION

The workers' rights issues in cobalt mining and cobalt supply chains, as detailed in this report, require worldwide industry and governmental action. Voluntary international and industry initiatives may have a role in guiding cobalt-mining companies in their due diligence efforts. But, without strong, state-based, legal frameworks, they will not be sufficient to ensure that the transition to greener energies is not tainted by human rights violations and workers' exploitation in Congo.

Electric vehicles and rechargeable batteries are an integral part of the clean energy transition. As electric vehicles and battery manufacturers move to the forefront of the market, they will need to implement stronger measures to ensure the cobalt they use is free from abusive labour conditions. They also need to ensure that consumers, as the final step of the cobalt supply chain, have access to transparent information and are given the tools to make more informed decisions. Indeed, by choosing to buy electric vehicles or electronics from companies that have transparent due diligence processes and come from a sustainable supply chain, consumers can play an important role in monitoring and pressuring the cobalt industry into respecting the rights of Congolese workers who extract cobalt for them.

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ANNEXES

ANNEX 1: LIVING WAGE CALCULATION FOR KOLWEZI

https://www.raid-uk.org/sites/default/files/final_annex_1.pdf

ANNEX 2: SUMMARY OF RESPONSES FROM SELECTED REFINERS AND

MANUFACTURERS

https://www.raid-uk.org/sites/default/files/final_annex_2.pdf

ANNEX 3: CORRESPONDENCE BETWEEN RAID/CAJJ AND COMPANIES

RAID and CAJJ's letters in English, French and Mandarin, as well as companies' responses have all been made publicly available on RAID's website:

Correspondence between RAID/CAJJ and the mining companies;

https://www.raid-uk.org/sites/default/files/raid_cajj_correspondence_mining_companies_1.pdf

with smelters and refiners;

https://www.raid-uk.org/sites/default/files/raid_cajj_correspondence_refiners-2.pdf

and with auto manufacturers

https://www.raid-uk.org/sites/default/files/raid_cajj_correspondence_manufacturers_1.pdf