

## UN OHCHR

### Call for inputs: Extractive sector, just transition and human rights

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*Submission by the Geneva Center for Business and Human Rights and NYU Stern Center for Business and Human Rights*

#### Question 12. What role can the informal economy (e.g., artisanal and small-scale mineral exploitation, including supply chains) play in advancing a just and human rights-based energy transition?

In our research at the NYU Stern Center for Business and Human Rights and the Geneva Center for Business and Human Rights (GCBHR) at the University of Geneva, we have focused on the role of artisanal and small-scale mining (ASM) in the cobalt supply chain. Human rights risks in mining are well-documented but in the informal economy, they are most pronounced. Child labor is commonplace and there are frequent mining accidents.

Cobalt is a key transition mineral used in rechargeable batteries that power electronic devices and electric vehicles. The fast-growing demand for electric vehicles is driving up the global cobalt demand and the role of ASM in cobalt is emblematic for a range of different mineral supply chains.

The Democratic Republic of the Congo (DRC) produces over 70% of the cobalt used in rechargeable batteries worldwide. ASM makes up 15% to 30% of total production in the DRC. The Congolese ASM sector accounts for approximately 10% of the world's total, making it the second-largest cobalt supplier in the world, followed by Russia at 6% and Australia at 5%. Without ASM cobalt, the estimated gap between existing supply and global demand would widen over time.

Companies that rely on cobalt for their products – particularly manufacturers of consumer electronics and electric vehicles – have tried to contractually exclude artisanally mined cobalt because of its association with heightened human rights risks.

Artisanal and industrial mining are inseparably intertwined in the DRC. Apart from the high number of artisanal miners who flock to large-scale industrial mining sites to try to scrape out small amounts of the valuable mineral ore, it is virtually impossible to separate the flow of ASM cobalt from the larger supply of industrially mined cobalt. That is because cobalt extracted at ASM sites typically enters the general supply chain when it is combined with industrially mined cobalt at mineral refineries in the DRC and mostly in China.

ASM cobalt is an integral part of the battery supply chain that all cobalt buyers need to address. This is especially important given the unparalleled cobalt production capacity of the DRC, the significant share of artisanal cobalt production in that system and the near impossibility of separating ASM cobalt from industrially mined cobalt.

To advance a just and fair transition, companies in the battery supply chain need to encourage the formalization and responsible extraction of the mineral rather than engaging in a futile attempt to avoid cobalt associated with ASM:

- **Formal recognition of ASM mining supports jobs for hundreds of thousands of people in an economically depressed region and advances broader development objectives in the DRC.** ASM offers 90% of the mining jobs and without a diversified industry, mining is the only sector in many regions that can provide a livelihood. The increasing global demand for cobalt presents a unique development opportunity for the DRC if downstream buyers acknowledge that ASM is part of their cobalt supply chain and help address the systemic human rights risks in the sector.
- **Formalization of ASM sites is vital to address the twin challenges of mine safety and child labor.** Measures such as personal protective equipment, ID cards and entry controls ensure that artisanal miners work in safer conditions while children, pregnant women, and those under the influence of alcohol are denied access to concessions.
- **Formalization enables the integration of women in ASM** which can alleviate the extreme poverty in mining communities, provide money for school fees, and diminish incentives for sending children to work in cobalt mines. Higher participation of women in formalized artisanal mining means a reduction in child labor and increased school attendance.

The findings of the University of Geneva's GCBHR and the NYU Stern Center for Business and Human Rights during two research field trips to artisanal cobalt mines located in Kolwezi, DRC, between September 2019 and December 2022 suggest that **ASM formalization can contribute to a global energy transition that is not just green but also just.**

For details of our findings and concrete recommendations to different stakeholders in the cobalt supply chain, please read [this report](#) published by the two centers as part of the World Economic Forum's white paper series which assesses three ASM formalization pilots in the DRC. [A more recent report](#) dated February 2023 describes the post-pandemic findings at one of the formalization projects that was assessed during the first field research. It highlights how the pandemic-related suspension of that formalization project resulted in heightened safety risks, the return of frequent mining accidents, and the resurgence of child labor.

**Question 14. How could extractive sector associations, higher education institutions and other stakeholders promote awareness and encourage human rights-compatible business practices (e.g., addressing greenwashing and green scamming practices)?**

Based on the observations and findings during our field research and our continuous engagement with different stakeholders in the battery value chain both inside and outside of the DRC, we recommend the following to ensure that human rights are respected in all cobalt mining operations in the DRC:

- **Global cobalt buyers need to legitimize ASM as an integral component of cobalt mining.** New due diligence standards such as the European Union Batteries Directive provide a direct incentive for companies using cobalt to encourage the formalization of ASM. It is not credible for any company to assert that it is limiting its purchases to cobalt produced in large industrial mine sites and therefore its supply chain is free from child labor or other human rights risks. Industrial cobalt production is routinely combined with ASM cobalt during processing.
- **Strong leadership from local cooperatives is necessary to further the empowerment of women and protect children.** Having cooperatives train female leaders is critical. Cooperatives can help break down cultural barriers to female participation in the extraction process and support creation of new childcare and educational options.
- **All stakeholders should support formalization of ASM** to address child labor, hasten the integration of women, and improve mine safety. Companies in the battery supply chain, the DRC government, other governments, and other stakeholders must collectively develop common standards on mine safety and child labor. Only well-defined standards and adequate monitoring will make companies confident that sourcing cobalt from ASM sites can be integrated into their overall responsible sourcing strategies.
- **Participants in the cobalt sector should promote open-pit extraction** to reduce safety risks and mitigate child labor. Relatively shallow open pits significantly reduce safety risks. Beyond safety, the argument for open pits needs to be linked to the empowerment of female miners. At present, women are unable to fully participate in the extraction process because it is physically too strenuous. So, the use of tunnels limits their participation and reduces overall production and household income. These reductions are the most critical factors driving child labor.
- **The DRC government should strive to mandate formalization and help to develop and apply practical standards on mine safety and child labor.** To the extent that the DRC government is not achieving these objectives, governments in countries where major global buyers are based need to engage diplomatically with the DRC government to support the formalization of all ASM mine sites and enforcement of strong human rights standards. They also need to encourage global buyers to work together to support the formalization of ASM and the development of such common standards.

These recommendations should be supported by industry associations (such as the Cobalt Institute and the Responsible Minerals Initiative) and multi-stakeholder platforms (such as the Global Battery Alliance and the Fair Cobalt Alliance).

Understanding of the role of ASM for responsible sourcing also needs to be brought into the curricula of business schools. We discuss responsible cobalt sourcing strategies in our classes at University of Geneva and at New York University. We also have developed teaching material including a case scenario and a microsimulation based on the insights of our research on responsible sourcing in the battery value chain.

**Question 19. Please provide examples of good practices regarding the integration of human rights issues in the extractive sector in the context of the energy transition.**

A promising pilot project that served as a responsible cobalt sourcing practice and integrated human rights standards in artisanal cobalt mining was the Mutoshi project in Lualaba province in the south of the DRC.

At Mutoshi, artisanal small-scale mining (ASM) had been “formalized” in 2018. Miners who extracted cobalt at that site with basic tools got access to a mechanically prepared mine site with open pits. Site-safety standards also were put in place, among other measures. The Mutoshi formalization project was launched in January 2018 by a coalition that included agencies of the national and provincial DRC government; Chemaf, a Dubai-based mining company; Trafigura, a global commodity firm that purchases copper and cobalt from Chemaf; COMIAKOL, a Congolese mining cooperative active at the Mutoshi concession; and Pact, a nonprofit that specializes in making ASM safe, formal, and more productive.

The Mutoshi project demonstrated how formalization can improve miner safety, encourage female participation and diminish child labor. Key to the success of the Mutoshi formalization experiment from 2018 to early 2020 was the use of a semiautomated extraction method: The mine operator, Chemaf, used excavation machines to create shallow open pits where ASM workers could comb for cobalt ore. Shallow open pits both increased productivity among ASM workers and reduced the risk of severe mining accidents.

Integration of women on mining sites played a critical role not only in ending the marginalization of women, but also in mitigating child labor. The opportunity to double household income enabled families to send their children to school instead of mines.

The formalization project improved miner safety in other ways, as well. A substantial security fence combined with use of special identity cards limited access to 5,000 registered miners per day. All miners who had worked at Mutoshi prior to formalization received an identity card. On average, only 3,500 miners worked on the site at any one time. The entry controls ensured that children, pregnant women, and those under the influence of alcohol were denied access. All miners were required to wear boots, uniforms, gloves, and helmets, which were provided by Chemaf.

According to the project partners, there were over 3 million hours worked without a lost-time injury and no artisanal mine fatalities at the fenced Mutoshi pilot site during the roughly two years of the pilot project. Since the end of formalization in March 2020, due to the emergence of Covid, there have been seven work-related deaths, most related to tunnel collapses.

During formalization, less severe accidents could be treated in a clinic, staffed by Chemaf with a doctor and nurse, which was set up on-site in a large shipping container stocked with basic wound dressings, disinfectants, and pain medications. Since the end of the pandemic, about 400 non-severe accidents have occurred at the Mutoshi site, according to the cooperative COMIAKOL, but medical treatment was no longer available.

The Mutoshi formalization project should be of interest to companies in need of cobalt, particularly manufacturers of consumer electronics and electric vehicles (EVs), which are responsible for the surge in global cobalt demand. That demand is projected to increase four-fold by 2030, even as auto companies are beginning to reduce the cobalt content in EV batteries. While companies using cobalt are looking for alternative sources of the mineral as well as substitutes, experts predict that cobalt demand will remain very strong for years to come and that only the DRC has the resources and production capacity to meet the bulk of this demand.

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Below is a selection of publications authored by the two centers on the topic of responsible cobalt sourcing from the DRC:

- Cobalt Mining in the Democratic Republic of the Congo, White Paper, GCBHR & NYU Stern Center for Business and Human Rights (February 2023)
- To Meet Global Cobalt Demand, Companies Must Reform Mining Practices in the Congo, Op-Ed, Forbes (February 2023)
- Ethics of Cobalt Mining Must be Taken Seriously by Traders, Op-Ed, Financial Times (March 2022)
- Urgent action is needed to protect Congolese cobalt miners, Op-Ed, I by IMD (September 2021)
- Cobalt must be included in Swiss responsible business legislation, Op-Ed, Swissinfo (June 2021)
- As cobalt demand booms, companies must do more to protect Congolese miners, Op-Ed, The Conversation (November 2020)
- Mercurtrade Cobalt, Microsimulation for teaching (November 2020)
- Why Cobalt Mining in the DRC Needs Urgent Attention, Blog Post, Council on Foreign Relations (October 2020)
- How Tesla Should Combat Child Labor In The Democratic Republic Of The Congo, Op-Ed, Forbes (October 2020)
- Making Mining Safe and Fair: Artisanal Cobalt Extraction in the Democratic Republic of the Congo, White Paper, World Economic Forum (September 2020)
- Cobalt can be sourced responsibly, and it's time to act, Op-Ed, SwissInfo (September 2020)