Tackling Corruption in the Artisanal Cobalt and Gold Sectors:

How Taxation Discourages Supply Chain Actors from Legal Trade in Democratic Republic of Congo

August 2023 100-135 Laurier Ave W, Ottawa, Ontario K1P 5J2 Canada | Tel +1-613-237-6768 | www.impacttransform.org

The international community is supporting the introduction of responsible artisanal supply chains across Democratic Republic of Congo (DRC) with efforts across 3Ts,[1] gold, and now—cobalt. However, corruption fueled by inadequate taxation creates roadblocks to efforts for transparent and legal supply chains. Furthermore, these efforts haven't made a dent in levels of smuggling or informal trade.[2]

High taxes and arduous administrative burdens are pushing artisanal mining actors into informality and illegality—even when legal trade is an option. This jeopardizes any efforts towards cleaning up supply chains, especially as the spotlight shines on cobalt and gold.

Mapping Taxes and Fees for Transparency

IMPACT's Mapping Payments project[3] aims to reduce corruption and illicit trade in DRC by bringing transparency to the taxes and fees required along the artisanal cobalt supply chain. The project brings together provincial and national stakeholders to agree on the legally required taxes, fees, and administrative steps in the cobalt supply chain, as well as creating proposals on how to increase transparency and legal trade.

The project builds off our similar work in artisanal gold in Ituri Province. Four technical notes were developed in 2022 which outlines taxes, fees, and steps to transfer artisanal gold between provinces, export artisanal gold, purchase and sell artisanal gold, or extract artisanal gold in Ituri Province.[4] Work with stakeholders to create similar technical notes for the cobalt sector is currently underway.

Our findings and recommendations are based on multi-stakeholder consultations across the artisanal cobalt and gold supply chains with workshops in Kinshasa, as well as in Lualaba Province, and Ituri Province.[5] Stakeholders including policymakers, mining and financial authorities, artisanal miners, mining cooperative members, traders, warehouse managers, processors, and civil society have been brought together to discuss the various taxes, as well as potential recommendations to improve transparency across the sectors.

Corruption in Cobalt and Gold Supply Chains

While significant focus over the years in DRC has focused on conflict minerals (3Ts and gold), cobalt's dominance in the clean energy transition positions it as a mineral of increasing criticality. Both gold and cobalt have significant artisanal production, along with poor working conditions, human rights violations, and environmental damage.

Artisanal mining is largely informal across the country and makes actors in the supply chain, including miners, cooperatives, and even traders, vulnerable to corruption. In cobalt, the lack of viable artisanal mine sites for miners pushes them to work on the concessions of large-scale mining (LSM) companies, pushing them deeper into illegality.[6]

Similarly to IMPACT's findings for gold, artisanal cobalt actors including mining cooperatives and warehouse managers, are being charged additional taxes and fees which have no legal basis.[7] According to an OECD report, up to 20 percent of the total value of production is being extorted from artisanal cobalt miners through unofficial payments by cooperatives or state agents.[8]

Charging artisanal supply chain actors' exorbitant taxes or fees discourages them from participating in the legal supply chain. If the price for legal production and trade becomes too burdensome, it dissuades legality and therefore participation in any ongoing efforts to establish responsible supply chains.

1 tin, tungsten, tantalum

2 Oscar Katho et al., *The Just Gold Project: Lessons for the Future of Artisanal Gold in Democratic Republic of Congo*, IMPACT, March 2021, https://impacttransform.org/wp-content/uploads/2021/03/IMPACT_Just-Gold-Lessons_March-2021_EN-web.pdf.

3 "Mapping Payments," *IMPACT*, accessed May 19, 2023, https://impacttransform.org/en/work/project/mapping-payments/.

4 "Mapping Taxes & Fess in DRC's Artisanal Gold Supply Chain," *IMPACT*, May 31, 2022, https://impacttransform.org/en/mapping-taxes-drc-artisanal-gold/.

5 Workshops have been held in Kinshasa and Kolwezi between March and May 2023 for the cobalt sector, and in Kinshasa and Bunia between 2020 and 2022 for the gold sector.

6 Artisanal mining activities take place on these concessions with written authorization from the title holder and with a request for a waived by the title holder, as provided for in Article 30 (e) of the Mining Code no. 007/2002 of July 11, 2002, and amended by no. 18/001 on March 9, 2018.

7 Findings from multi-stakeholder workshops in Kinshasa and Kolwezi, May 2023.

8 OECD Responsible Business Conduct Unit, *Interconnected supply chains: a comprehensive look at due diligence and opportunities sourcing cobalt and copper from the Democratic Republic of Congo*, 2019, https://mneguidelines.oecd.org/Interconnected-supply-chains-a-comprehensive-look-at-due-diligence-challenges-and-opportunities-sourcing-cobalt-and-copper-from-the-DRC.pdf.

As ore is processed within DRC to extract cobalt, the fiscal regime isn't contributing to transnational smuggling. Mining cooperatives and depots direct artisanal cobalt production towards the processing entities, who have the authorization to export to refineries. However, informal taxes and payments are being imposed onto the upstream artisanal cobalt supply chain, contributing to corruption.

In DRC's artisanal gold sector, corruption as a driver of smuggling has long been studied.[9] DRC's artisanal gold sector in undermined by heavy and exorbitant taxes and fees that push supply chain actors to illegality, like the cobalt sector. Actors bypass formal channels, or only declare small percentages of their volumes.[10] However, cross-border smuggling to jurisdictions to with lower export taxes in the region, makes DRC's fiscal regime unenforceable.

Spotlight on Gold

Between 2017 and 2019, when accompanying the cooperative and exporter through the export process, IMPACT's Just Gold project documented 26 steps involving multiple agencies and government representatives, some who had to be visited multiple times over a two-week period. At the point of export in Ituri Province, 12 percent was paid by supply chain actors to export gold from the Just Gold project.[11]

This is a stark difference to neighbouring Uganda where, instead of an export tax, mine site owners had to pay a 5 percent royalty on the value of the gold mined during this same period. The difficult export process and high taxes on artisanal gold become incentives for smuggling.

In 2022, IMPACT worked with multi-stakeholders to identify the legal payments and administrative steps in the artisanal gold supply chain, publishing them in technical notes. The previous 26 steps to export gold, has been reduced to nine—as per the law—with the number of taxes and fees similarly decreasing.

These technical notes can be used as a reference guide by stakeholders in the supply chain. Since they've been published, our partner exporter in Ituri Province has been using the documents to deter demands for illegal payments.

Spotlight on Cobalt

In 2023, IMPACT began working with stakeholders to discuss the taxes, fees, administrative steps in the artisanal cobalt supply chain. While there is significant attention on the country's cobalt sector, there has been little understanding of the artisanal cobalt sector's fiscal regime, the burden when national and provincial requirements are combined—and what this all means for supply chain actors.

The initial findings indicate that too many taxes and fees—both formal and informal—are being imposed on mining cooperatives and warehouse managers.

When examining the payments applicable to production at the mine site level for miners and cooperatives, we've identified eight taxes or fees. To meet its tax obligations, a mining cooperative would have to pay upwards to $18,000 USD to begin working at a mine site, in addition to paying volume-based fees.

Drawing on provincial and national legislation, stakeholders mapped payments applicable to the artisanal cobalt mining sector. At the extraction level, the number of payments to be made would be reduced from eight to four. This would allow cooperatives to avoid informal payments which have no legal basis, such as $10,500 USD charged by SAEMAPE for technical advice on installations in the mine site.

9 IMPACT, *The Intermediaries: Traders Who Threaten the Democratic Republic of Congo's Efforts for Conflict-Free Gold*, September 2020, https://impacttransform.org/wp-content/uploads/2020/09/The-Intermediaries_Sept-2020_EN-web.pdf.

10 Ibid.

11 Oscar Katho et al., The Just Gold Project, pp. 45-47.

12 Such as production report slips or transport certificates.

Recommendations to the DRC Government to address corruption in the artisanal cobalt sector:

- Support the validation and publicly endorse the technical notes which establish legal taxes and fees for national transfer and export of artisanal cobalt, as well as its production, trade, and processing in Lualaba Province.
- Abolish all payments relating to the production, trade, transfer, processing, and export of artisanal cobalt that are contrary to the Mining Code and other regulations.
- Publish an Interministerial Order outlining the fees and costs for services rendered to be collected by SAEMAPE, in accordance with Article 542bis of the Mining Code.
- Publish an Interministerial Order fixing the price of receipt books and tamper-proof bags issued by the CEEC to avoid variations in costs across provinces.
- Harmonize the national and provincial fiscal regime to avoid duplication of taxes and fees.
- Prohibit payments for documents required as part of traceability and outlined as free in Interministerial Order No. 0149/CAB.MIN/ MÎNES/01/2014 and No. 0116/CAB.MIN/FINANCES/ 2014 of 25 July 2014 relating to the procedure manual for traceability and trade of minerals, but for which many state services charge fees.[12]
- Prohibit the mining administration services to collect administrative fees or per diems from mining operators, in accordance with Article 3, Law No. 18/003 of March 13, 2018 which established the rights, taxes, and royalties from the Central Bank, modified by Articles 220 and 220 bis of Law No. 18/001 of March 9, 2018 supplementing Law No. 007/2002 of July 11, 2002 of the Mining Code.
- Publish a Ministerial Order Act outlining the procedures for collecting 5% of each mining cooperative's annual income as a tax towards the rehabilitation of mine sites, as per Article 417 of the Mining Code.
- Establish new viable artisanal mine sites and support current ones to ensure their viability.

Recommendations to the DRC Government to address corruption in the artisanal gold sector:

- Publicly endorse the available technical notes which establishes legal taxes and fees for national transfer and export of gold, and production and trade in Ituri Province.
- Abolish all payments relating to the production, trade, transfer, and export of artisanal gold that are contrary to the Mining Code and other regulations.
- Publish an Interminsterial Order outlining the fees and costs for services rendered to be collected by SAEMAPE, in accordance with Article 542b of the Mining Code.
- Harmonize the national and provincial fiscal regime to avoid duplication of taxes and fees.
- Set appropriate taxes for the small-scale gold sector, which is currently charged at artisanal levels.
- Publish an Interministerial Order fixing the price of receipt books and tamper-proof bags issued by the CEEC to avoid variations in costs across provinces.
- Align the export tax with neighbouring countries to de-incentivize smuggling.
- Provide supply chain actors with beneficial tax incentives to promote investment and legal trade.
- Simplify taxation by testing the creation of a single tax payment point at export (guichet unique).

Photo on cover: Sebastian Meyer/Corbis via Getty Images - Cobalt mine in Kasulo, Democratic Republic of Congo

Funded by
the European Union

The **Mapping Payments project** is undertaken with funding provided by the European Union. Funding for complimentary activities is provided by Microsoft. Funding for fiscal transparency in the artisanal gold sector was previously provided by Global Affairs Canada, Google, as well as GIZ as commissioned by the Government of the Federal Republic of Germany and with funding provided by the European Union.