

House Committee on Foreign Affairs  
Subcommittee on Africa, Global Health and Human Rights

June 13, 2011

Written testimony of Dr. Kevin Bales, President, Free the Slaves, Washington DC

Thank you, Chairman Smith and Ranking Member Payne, for the invitation to share the views of Free the Slaves on the important topic of today's hearing.

My testimony today addresses slavery in the mining of conflict minerals in the Democratic Republic of Congo, the link between this slavery and products that we buy and use, the laws that pertain to this situation of "conflict minerals"; and possible responses and solutions for this problem. I base this testimony on the work of Free the Slaves in Eastern Congo, the detailed research we have carried out there, whose publication is forthcoming this week in a report entitled *The Congo Report: Slavery in Conflict Minerals*<sup>1</sup>, and my own experiences there as I studied the extent and types of slavery to be found in the region.

*Slavery in Mining in the DRC*

Tin, tungsten, tantalum, and gold are extensively mined in the Eastern Congo. These minerals are ubiquitously known today as "conflict minerals" for their role in fueling the world's deadliest ongoing conflict.<sup>2</sup> These tainted minerals follow a complex supply chain around the world, with most mineral supplies sold to smelters in Asia and Europe. Having been smelted, further refined and processed, the minerals are incorporated into component parts, and then assembled by end user companies in a range of products, from portable electronics to medical devices to advanced aeronautics. At the end of these supply chains are consumers – who unintentionally play a role in fueling the conflict and underwriting modern slavery and the worst sexual violence in the world.<sup>3</sup>

Minerals sourced from mines and surrounding zones controlled by armed groups pass from points along a supply chain with unreliable, falsified, or simply nonexistent documentation. Military and civilian authorities have proven unable to fulfill their most basic regulatory responsibilities and are simply preoccupied with extorting illegal "taxes" along trade routes and at checkpoints. This is a system that rewards illicit trade and discourages formalization. Such extortion by armed groups enriches war coffers and fuels the conflict. It also has the effect of making the cost of living in and near mining zones prohibitive, driving families to take desperate measures. Living and working in

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<sup>1</sup> Sections of this report represent extracts from a draft of the report: *Free the Slaves: The Congo Report: Slavery in Conflict Minerals*, forthcoming in June 2011, at <http://freetheslaves.net/congo>.

<sup>2</sup> The degree to which these minerals have fueled the armed conflict has been widely discussed. See, e.g. the G8 Muskoka Declaration, June 25-26, 2010, available at: <http://www.canadainternational.gc.ca/g8/summit-sommet/2010/muskoka-declaration-muskoka.aspx?lang=eng>. Free the Slaves concurs with the general view that the competition for control over mineral profits has played a central, but not exclusive, role in exacerbating conflict, regional instability, poor governance, and underdevelopment.

<sup>3</sup> For a list of goods connected to minerals from eastern DRC, see the Slavery Impact Calculator at [www.freetheslaves.net/congo](http://www.freetheslaves.net/congo).

squalid conditions, families quickly borrow beyond their meager means, finding themselves in debt bondage slavery at the mercy of shaft owners, lenders and their armed hosts. Women, who by some accounts simply are not allowed to be present at points of extraction, have few options for contributing to household income. As a result, girls and women are coerced into prostitution. Many become sex slaves to members of armed groups, sometimes forced into “marriage.”

Minimal benefit beyond immediate survival is derived from mining activities for many of those who physically extract and transport the minerals. Even so, in a country where the average income is only around US\$1 per day, many miners earn more than they could in any other activity. In the absence of alternative livelihoods, eastern DRC’s minerals are an essential lifeline for the region’s struggling poor, prompting many local groups to assert that miners would be devastated by full-scale boycotts of minerals sourced from the region. A mining ban instituted by President Kabila in Congo’s eastern provinces in September 2010 and subsequently lifted in March 2011 did have a negative impact on the economy. Partly as a result of pending U.S. regulation, end user companies have put pressure on their suppliers to no longer source from eastern Congo as of April 2011, resulting in the continuation of a *de facto* ban for many exporters. However, this impact must be weighed against the overall benefit of these measures, since they have played a role in catalyzing corporate action and leading to the recent withdrawal of the Congolese army, at least for the time being, from Bisie, the most important cassiterite mine in North Kivu province.

Though not all artisanal miners and workers in related activities are enslaved in eastern DRC, slave labor is present along the supply chain of minerals from the region. Likewise, slavery as a form of gender-based violence within Eastern DRC needs to be more fully acknowledged and understood.<sup>4</sup> Although there is growing awareness of the frequent incidents of horrific rapes against women and girls, for many the violence goes beyond specific attacks and is a long-term reality, taking the form of sexual slavery and forced “marriage”.

#### *Forms of Slavery in Mining Sector*

While there is work yet to be done to further determine the extent of slavery, it is possible to identify several forms of slavery that are used in the extraction of these minerals or allied to mineral extraction, namely:

1. Forced labor by armed forces (both national army and militias)
2. Debt bondage slavery
3. Peonage System based in corruption and coercion
4. Sexual slavery
5. Forced Marriage
6. The recruitment and use of children by armed forces and groups
7. Child slavery

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<sup>4</sup> See: Kirsten Johnson, Jennifer Scott, Bigy Rughita, Michael Kisielewski, Jana Asher, Ricardo Ong, Lynn Lawry, “Association of Sexual Violence and Human Rights Violations With Physical and Mental Health in Territories of the Eastern Democratic Republic of the Congo” *Journal of the American Medical Association*, Aug. 4, 2010, 304, 5, 553-562. This first large scale representative sample survey also highlights a significant incidence of sexual violence perpetrated against men.

1. *Forced labor by armed forces* – Forced labor at the hands of military groups exists along a continuum. At the extreme end are villagers rounded up at gunpoint by an armed group and put to work under threat of violence. No payment is offered, there is no freedom of movement or choice, and resistance is met with violence to the point of murder. The work may entail digging of minerals, hauling of ore, or processing, such as sorting, of mineral ore. This enslavement has marked parallels in state-sponsored slavery in countries such as Burma where armed groups take complete and violent control of local populations for similar types of work.

In order to exercise psychological control over forced workers, in addition to the control based on the threat of violence, some of those transported to the mines by armed groups are told that each week or so they will be allowed to keep the minerals they have produced on a particular day for their own profit. A number of those interviewed described a system of mandatory labor whereby everyone in a mine would be required to work for a designated official on a particular day (often the same day each week). This system, known as *salongo*, is an adaptation and perversion of a traditional custom of mandatory communal labor originally conceived as time set aside to work for a local tribal leader or on public works. This traditional practice was previously adapted by colonial administrations to justify forced labor and was known at the time as the *corvée system*.

The inter-relation between different types of enslavement is demonstrated by what a Walikale human rights defender described as the collusion between *commerçants* (small buyers) and armed forces in mines to force individuals to work for them: A *commerçant* may approach a military leader to say that he has X tons of minerals in Bisie, and negotiates to have them transported to Njingala. The *commerçant* will have purchased these minerals from armed groups who have used forced labor for their extraction, from a money-lender or local official having debt-bonded workers, or will have their own debt-bonded workers in the mines. The *commerçant* agrees to pay the commander for the transport of the minerals, and the commander then sends out troops to arrest individuals to force them to port the bags (without pay or choice).

2. *Debt Bondage* – In addition to workers captured and forced into the mines, some workers travel to the mines in hope of securing a livelihood. These workers often find themselves trapped in debt bondage as well as mandatory labor requirements enforced by armed groups. Debt bondage appeared to be one of the more common forms of slavery in the mining communities. As in similar debt bondage situations, money, food, tools, or some other item of value are advanced to the worker to set them up in the mining work. The repayment of the “advance” and the debt it represents is soon compounded by other charges (real or fraudulent), high interest rates, as well as false accounting. The worker (and their families if they have accompanied the worker) then find themselves in a situation where they must do anything for the lender – including digging and porting.

The civil society chief in Walikale described a system whereby a lender/recruiter may force an individual to work off a debt in a mine, with enforcement of the debt and violent control provided by the judiciary, police, and local leaders who receive a percentage/cut of the minerals produced. Informants stated that this is for debts starting at \$100 USD. When in the mining sites, partially due to extraordinary inflation, free workers who have not initially taken on debt can become further indebted because the costs of basic services and food that are prohibitively expensive relative to income

received. In mining areas, such as Bisie, cassiterite is the currency – varied amounts of minerals are bartered for food and other goods. Informants stated that a worker could be held for 10 to 15 years in debt bondage slavery if they don't die first, and that lenders may sell or transfer the debt, and thus the worker, to other people.

3. *Peonage System* – There are very close parallels in the use of judicial corruption to ensure enslaved mine labor in the DRC and the historical use of the same methods to coerce African-American mine workers in the American South in the period from 1870 to 1940. In the US this systematic enslavement, for historical legal reasons, became known as the *peonage system* and that tends to be its descriptor today when it is discovered in other countries. A member of law enforcement, a local official, or a member of a militia will arrest an individual. The arrest will have no basis in law and is simply a way of gaining control over a person in order to exploit their labor. The arrest will then be typically followed by one of three outcomes. The individual may simply be put straight to work as a prisoner under armed guard; or there may be some type of fallacious trial or hearing in which the individual will be “sentenced” to work and again taken to the mines as a prisoner; or, finally, the arrested person will be “convicted” and then fined a significant sum of money. Unable to pay the fine, the individual will either be sent to the mine to “work off” the fine, or the debt will be sold to someone who wishes to acquire an enslaved mine worker. All of these variations reflect the complete breakdown of the rule of law in the region and how that vacuum is filled by the corrupt.

4. *Sexual Slavery and Pervasive Sexual Violence* – Girls and women ultimately carry the greatest burden in this war, for their bodies are literally taken and used both as weapon and battlefield. In our meetings, group after group described how militias and the Congolese army alike target women and girls in their attacks on villages and will often take them into the bush to serve as sexual slaves. Some women and girls wind up in mining sites this way, while others are lured into mining zones by older women who promise to provide for them but in fact sell them for sexual exploitation in exchange for small quantities of mineral ore. Girls as young as 12 are prostituted by these older women, and there is great demand for young girls and teenagers. Still other girls are born into the mines, likely doomed to sexual predation from birth.

From one account, women aren't allowed to work in the actual mines. And because women make even less than men – less than a dollar a day – they often feel they must resort to prostitution, and indeed feel pressure from family to do so. The dearth of alternatives is particularly pronounced for girls since there are rarely schools near mining sites and they feel increased pressures from their family to contribute to household income in these communities, where inflation of prices on basic goods is extraordinary and the cost of living prohibitive. No woman or girl in the mining zones is free to refuse sex to the armed men who control the mines. If there is a problem with a miner, for instance, his wife or a daughter could be forced to have sex with a military leader, and may be taken into sexual slavery.

5. *Forced Marriage* – There was an interesting distinction made by some informants concerning the treatment of women taken by force from their communities by armed groups. While non-government forces were described as taking women by force and enslaving them into sexual exploitation, and that government forces were known to do the same, there were also descriptions of members of government forces taking women by force but then keeping them as “wives.” This description involved the holding of a

woman by a single individual, and that over time this relationship would be transformed into one of traditional (though clearly forced) marriage.

6. *Recruitment and Use of Children by Armed Forces and Groups* – So-called “child soldiering” is also linked directly to the mining sector because children are taken from the local communities to build the ranks of armed forces and are then found to be present exerting control over mining zones – this is well-documented by international and local agencies.

7. *Child Slavery* – One of our research partners found a total of 388 children working in two mining areas in North Kivu. Of these, 89% of the children ASSODIP interviewed were either already enslaved or perilously close to being enslaved. Their stories paint a grim portrait of life in the mines from the perspective of those most vulnerable to physical, mental and sexual abuse. Work directly linked to mineral extraction involves the use of children to dig, clean, shovel, pick and transport minerals, as well as pounding ore with hammers. Children are forced to do this work for hours on end without payment or for wages that only cover their basic subsistence. Children are also used in commercial sex trafficking and other types of sexual slavery, in looting, to bring food and firewood to other workers, and as workers in small businesses around the mines.

### *Congolese Law and Slavery*

It is not necessary here to review all of the international instruments that concern slavery in its many forms. The prohibition against slavery is a fundamental principle of international law, a peremptory norm, from which no derogation is ever permitted.<sup>5</sup> As such, it is a crime of universal jurisdiction, illegal no matter where it occurs. There are a number of international treaties that specifically outline the crime of enslavement<sup>6</sup>. As party to these treaties, the state of DRC is bound to its principles. The law of treaties obliges all member states to refrain from “acts which would defeat the object and purpose” of the treaties they are party to.<sup>7</sup>

In addition, the acts of modern day slavery documented in this report violate the Constitution of the Democratic Republic of the Congo, which entered into force in 2006, and the Congolese penal code. One gap in the law appears to be for civilian acts of labor trafficking committed without weapons. However, we must be clear: there is very little chance for most of these laws to be consistently implemented in the short term. There is little to no law enforcement infrastructure in the mining areas of eastern Congo, and social services including child protection are virtually unheard of. Still, it’s important for outside stakeholders to know the legal norms that have developed within the country. One hopes that such legal norms will foster corporate, community and individual norms and build the backbone for a real state response.

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<sup>5</sup> M. Cherif Bassiouni. (Autumn 1996) "International Crimes: 'Jus Cogens' and 'Obligatio Erga Omnes'." *Law and Contemporary Problems*. Vol. 59, No. 4, Pg. 68.

<sup>6</sup> The 1926 Slavery Convention; 1956 *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*; ILO Conventions C105: Abolition of Forced Labour Convention, and - C182: Worst Forms of Child Labour Convention; the Palermo Protocol, and the *Rome Statute of the International Criminal Court*, UN Doc A/CONF.183/9; 37 ILM 1002 (1998); 2187 UNTS 90 (Rome Statute). The Rome Statute opened for signature 17 July 1998 and entered force for DRC on 1 July 2002.

<sup>7</sup> *Vienna Convention on the Law of Treaties*, May 23, 1969, 1155 U.N.T.S. 331; *8 I.L.M. 679* (1969), Art 18.

### *Appropriate Responses and Solutions*

The acts of slavery prohibited under international and Congolese law clearly apply to enslavers who are physically present in Congo's mines. But what regime applies to multinational companies doing business along the (long) international supply chains that the minerals travel on their way from the mines into our laptops and light bulbs, our pacemakers and precious jewelry?

In 2010, the U.S. Congress included a DRC conflict minerals provision<sup>8</sup> as part of its Wall Street reform law, requiring publicly traded companies to disclose annually their "due diligence on the source" of conflict minerals originating in the DRC. The law's goal is to ensure that the minerals trade does not illegally benefit armed groups or lead to widespread labor and human rights abuses in Congo.<sup>9</sup>

Meanwhile, the Organisation for Economic Co-operation and Development (OECD) has developed guidelines on the responsible management of conflict minerals.<sup>10</sup> The guidelines include a *Model Supply Chain Policy for A Responsible Global Supply Chain of Minerals from Conflict-Affected or High-Risk Areas*. Under the policy, a company sourcing from conflict-affected areas commits to "neither tolerate nor by any means profit from, contribute to, assist with or facilitate the commission by any party of... *any forms of forced or compulsory labour*, which means work or service which is exacted from any person under the menace of penalty and for which said person has not offered himself voluntarily; [or] *the worst forms of child labour*..."<sup>11</sup>

While strictly voluntary, the UN Security Council and eleven African nations comprising the International Conference on the Great Lakes Region endorsed the OECD guidance document, which has also been backed by the private sector. Important momentum exists to harmonize the OECD guidance with industry due diligence initiatives like iTSCi (the ITRI Tin Supply Chain Initiative) and the Conflict Free Smelter (CFS) program, a joint project of the Electronics Industry Citizenship Coalition (EICC) and the telecommunications industry's Global e-Sustainability Initiative (GeSI).

In addition, there may be criminal or other legal liability in the United States or other consumer countries, beyond the scope of this analysis, for companies who knew or should have known of slavery violations within their supply chain.

### *Addressing the Underlying Vulnerabilities Faced by Artisanal Miners*

One of the most promising practices in anti-slavery work is to implement rights-based community development efforts that will sustainably protect mining communities from slavery and other human rights abuses. In particular, this approach involves consulting with local communities to determine their priorities, which may include access to education; support for forming true mining workers' associations, as Free the Slaves and its partners are pursuing in Ghana, where slavery in gold mining also exists; and

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<sup>8</sup> The Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub.L. 111-203), § 1502. All stakeholders await the final implementing regulation with baited breath.

<sup>9</sup> *See id.*, § 1502(c)(1)(B)(ii).

<sup>10</sup> Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas at <http://www.oecd.org/dataoecd/62/30/46740847.pdf> (last visited April 24, 2011).

<sup>11</sup> *Id.*, pp. 13-16.

developing alternative livelihoods through agricultural development, micro-credit programs, and vocational training.

In pointing to potential solutions, it is also essential to recognize the correlation between enslavement and widespread insecurity, impunity and an absence of rule of law.

### *Recommendations to the U.S. Government*

With regard to the U.S. government's role in Congo, we urge the Obama Administration to acknowledge and make full use of its influence over Congolese and neighboring governments, making it a high priority to wield that influence so that they fulfill their obligations to their own citizens. With other Congolese advocacy groups, we recommend the appointment of a Special Envoy to the Great Lakes Region to stay constantly informed and maintain consistent diplomatic pressure throughout the region,<sup>12</sup> and we thank members of this subcommittee and other members of the House of Representatives for supporting that approach.

With regard to Congress, Free the Slaves, together with other anti-slavery organizations within the Alliance to End Slavery and Trafficking (ATEST), has proposed a package of draft provisions for inclusion in the Trafficking Victims Protection Reauthorization Act of 2011. ATEST is a diverse alliance of U.S.-based human rights organizations, acting with a shared agenda to end modern-day slavery and human trafficking around the world.

I will discuss two of those proposals today, because they relate to the supply chain from eastern Congo's mines to U.S. consumers. First, we recommend that you adopt a provision requiring U.S.-based companies, both public and private, to be transparent about the efforts they are making to address risks of slavery in their supply chains and provisions of services, in their labor recruitment practices, and in adopting zero tolerance policies toward employees participating in the commercial sexual exploitation of children.

Similar to the new law enacted in California in 2010, this proposed provision would require retail sellers and manufacturers doing business inside the United States to develop, maintain, implement, and publically disclose their policies on eliminating human trafficking and slavery from their supply chains and throughout their business operations.

It is worth noting that, with the momentum created behind the new law in California, advocates in other states are already considering similar state legislation. Passage of a federal law would pre-empt states' passage of additional laws, protecting companies from having to ensure compliance with multiple and likely different state requirements. In the meantime, federal action would prevent a competitive advantage for companies that do not happen to do business in California and, thus, are not subject to the requirements of its law.

The DRC Conflict Minerals law is a great first step with regard to minerals from eastern Congo, but it is unclear whether the implementing regulations will specifically address due diligence with respect to extreme human rights abuses at the mines, which Free the Slaves and other anti-slavery groups have recommended.

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<sup>12</sup> See Letter to Secretary of State Hillary Clinton from 17 advocacy and responsible investor groups, January 7, 2011; on file with Free the Slaves and available at [www.freetheslaves.net/congo](http://www.freetheslaves.net/congo).

Second, we recommend a provision that closes the loophole in the Smoot-Hawley Tariff Act of 1930, which aims to prevent importation of goods that have been identified as having been made with forced or indentured labor.

The current legislative and regulatory framework to prevent goods produced by forced labor and slave labor from passing into the stream of commerce in the U.S. is gravely inadequate. The Smoot-Hawley Tariff Act contains a major loophole for goods made with forced labor or convict labor if those goods cannot be produced in the United States in sufficient quantities to meet the consumptive demands of American consumers. Similarly, other mechanisms meant to address slavery and trafficking in the stream of commerce suffer from similar problems of limited scope, broad exceptions, and inability to provide information about specific suppliers whose goods are tainted. Consequently, there are fewer than 40 enforcement actions on record in the past 80 years.

I thank you, Mr. Chairman, Ranking Member Payne, and members of this subcommittee for this opportunity to be heard on the critical problem of slavery in the Democratic Republic of the Congo, and U.S. government efforts to address the problem of slavery and human trafficking in DRC and around the world.

United States House of Representatives  
Committee on Foreign Affairs

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Clause 2(g) of rule XI of the Rules of the House of Representatives and the Rules of the Committee require the disclosure of the following information. A copy of this form should be attached to your written testimony and will be made publicly available in electronic format, per House Rules.

<b>1. Name:</b>	<b>2. Organization or organizations you are representing:</b>
Kevin Bales	Free the Slaves
<b>3. Date of Committee hearing:</b>	
13 June 2011	
<b>4. Have you received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify?</b>	<b>5. Have any of the organizations you are representing received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify?</b>
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>6. If you answered yes to either item 4 or 5, please list the source and amount of each grant or contract, and indicate whether the recipient of such grant was you or the organization(s) you are representing. You may list additional grants or contracts on additional sheets.</b>	
State Dept, TIP office - for India projects State Dept. TIP office - for Haiti projects	
<b>7. Signature:</b>	
	

*Please attach a copy of this form to your written testimony.*

State Department Grants to Free The Slaves:

India program:

2008-09: \$189,706

2009-11: \$440,000

Haiti program:

2009-11: \$400,000

2011-14: \$700,000