



Human Rights Violations in the Supply and Trade of Metals and Minerals Used in Our Daily Lives, and Lessons Working to Transform the Natural Resource Sector - Joanne Lebert

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This issue of NokokoPod presents a discussion on responsible sourcing and management of minerals and metals, within the context of a sector that is confronting serious allegations of human rights violations. The annotated PDF is available on the Nokoko journal website. This conversation took place on May 5th, with Logan Cochrane and Joanne Lebert both in Canada. This version of the PDF has been reviewed by Logan Cochrane and Joanne Lebert. In addition to the conversation, a set of annotations have been added as footnotes so as to strengthen the value of these publications and enable them to act as a resource for listeners and readers who want to have additional context and/or find additional resources on the topics discussed.

Logan: Welcome to NokokoPod #5 of 2020. In this episode we are joined by Joanne Lebert, the Executive Director of IMPACT, a Canadian-based NGO working to transform how natural resources are managed in areas where security and human rights are at risk.¹ Today, we will speak about human rights violations and questions of justice in the natural resource sector. Thank you for joining us today.

Joanne: My pleasure. Thanks for having me.

Logan: The idea of "conflict minerals" is not new. However, in late 2019, it was in the headlines again when well-known companies were named in a lawsuit, including Apple, Google, Microsoft, Tesla, Dell.² The case was raised in the United States regarding injuries and deaths of children in the Democratic Republic of the Congo (DRC) who are mining cobalt. Could you tell us about this case?

Joanne: This is technically not a 'conflict minerals' case.³ Rather, it is one of ensuring that one's supply chain and business conduct is not contributing to a human rights violation unrelated to armed conflict. Conflict minerals are actually understood as minerals whose production or trade are directly linked to armed conflict or related systemic impacts. This means links to armed groups or the financing of their activities, or public or private security forces directly engaged in human rights violations again that are linked to armed conflict or their systemic manifestations.⁴ In the case of cobalt and the presence of children in mine sites,

1 IMPACT: <https://impacttransform.org/en/>

2 For reporting on the case, see: <https://www.theguardian.com/global-development/2019/dec/16/apple-and-google-named-in-us-lawsuit-over-congolese-child-cobalt-mining-deaths>

3 For a recent article on this distinction, see: <https://africanarguments.org/2020/05/05/no-cobalt-is-not-a-conflict-mineral/>

4 See: Taylor (2011) and Woody (2012).

this is definitely a human rights concern but it is unrelated to conflict and more a symptom of deep poverty and/or economic injustice. The cobalt is definitely coming from a high-risk area of the DRC, but cobalt is not mined from an area where there is an active conflict or where there are armed groups active. This legal case that you are citing is more about the work conditions, about safety, about ensuring that there are no child laborers. While it may be a technical distinction, it is still disconcerting and still requires supply chain actors and those who are buying those products to make sure that they are not only not doing harm, but hopefully contributing to the betterment of lives and communities to make sure that children actually do not have to be working in that sector and in conditions that are not acceptable.

That lawsuit has received a lot of attention because, first of all, child labor is a very compelling issue. The conditions can be quite egregious. It is also because they have named very high-profile companies. It is important to bring to the issue to the public's attention so that more people become more aware of how and what they buy, and how that contributes, or not, to the betterment of society in another part of the world. However, it is a lot more complex than that. There are multiple tiers - that is supply chain language - multiple actors, multiple companies that are between Apple and those people that work on the ground.⁵ What is actually being asked of those companies is to deepen their engagement, because some of them are already attempting to clean up their supply chains, with mixed results. This would exert their influence, their pressure and mobilize their resources to make sure that they dig deep - right to the mine site, as far as possible - to know who is doing what, in order to make sure that they are not contributing to human rights abuses, but actually helping to solve the problem. The challenge is that the companies named in this lawsuit go through other companies,

⁵ See: Amnesty International (2016).

some of which are based in China or in other jurisdictions where operations can be quite opaque. While those challenges exist, it is still the case that all supply chain actors, and especially the influential ones at the end of the supply chain, like the Apples of the world, should be held accountable to make sure that their supply chains are not causing harm.

This is a roundabout way to draw the distinction between what a conflict mineral is and what a supply chain risk linked to human rights violations are. In either case, it requires what we call supply chain *due diligence*. The private sector should be held accountable for how their business practices and their purchase and trade of those commodities are, or are not, contributing to good or bad conditions on the ground.⁶

Logan: For this case of human rights abuses and child labor in the supply chain of cobalt, Amnesty International produced a short documentary about five years ago and conducted an investigative assessment of supply chains and put pressure on the companies involved.⁷ Do you think this lawsuit will be able to make progress where previous initiatives to put pressure on these companies have not?

Joanne: I am not terribly optimistic it will. In my estimation and in my reading of the documentation that has been presented, I would say that the evidence and the connection is not adequately robustly presented. There are some legal gaps and there is some further research that needs to be done. The arguments need to be more shored up and perhaps even better researched. I think those that have launched the lawsuit are very passionate about the issue and really want to see justice done. However, you still need a very strong legal case to be successful. I

⁶ For guidance on supply chain analysis, see Rissgard et al (2010).

⁷ Short documentary is available here: <https://www.youtube.com/watch?v=7x4ASxHlrEA> and the report is Amnesty International (2016).

do not think that some of that is there in this case. I actually found that some of the facts in the case were incorrect. That is a legal issue. It does not make the intent or the action any less commendable.

Amnesty's reports drew a lot of global attention to cobalt, for good and for bad. One issue is that the global attention actually zeroed in the attention on artisanal mining, which is where some of the world's most vulnerable eke out a living by extracting, processing, washing, pre-refining or pre-treating and then trading these materials and minerals, like cobalt. People engage in artisanal mining because they are poor.⁸ These minerals, which are high value commodities, essentially mean cash in their pockets at the end of the day. It can be more lucrative than other forms of livelihood but is often carried out in combination with other livelihood activities as a way to protect oneself or one's family from economic shocks and overall insecurity. The Amnesty report had a positive impact in that it drew international attention to the issue, especially as we are so reliant on cobalt for the green economy.⁹ If we are going to transition away from fossil fuels, it does not get us away from mining. We still need to mine in order to make the electric and rechargeable batteries that we need, be it for our cars or be it for solar panels. We need to make sure that that is done responsibly, ethically and without harm. The Amnesty report drew attention to the fact there was child labor in these supply chains that will power a green economy. A very important issue. However, it exclusively focused on artisanal mining, which is where the world's poor essentially toil away; the World Bank has estimated that more than 40 million people globally work in the artisanal mining sector. If you multiply that by five, that gives you a sense of the amount of people globally that rely on the sector, their families and dependents, et

⁸ For more information on artisanal mining, see, for example: Banchirigah (2006), Bashwira et al (2014), Fisher (2007), Hilson and Garforth (2012), Tschakert and Singha (2007) and Tschakert (2009).

⁹ See: IISD (2019).

cetera. The report and subsequent discussions have consistently under emphasized the role and the importance of large-scale mining, as well as the responsibilities that they have to make sure that they are not harming either the communities around them or the natural environment. It overemphasized, and essentially vilified, artisanal mining.

Mining companies have been very quick to point to artisanal mining, and to child labor in particular, as the "nasties" of the of the sector when they themselves should be held accountable for some of the negative impacts they are having as well. The fact that large scale mining companies (with the complicity of national and local governments) hold sweeping rights and legal titles to land that could otherwise be used by local populations is never addressed. This presents an unbalanced view of the sector. The Amnesty report has also fostered responses or propelled responses to child labor that are very short term and reactionary: get the children out of the mine site. This is essentially addressing the symptoms, rather than addressing the larger structural reasons for child labor in the first place. There is a kind of bifurcation now of actors and those who are looking to intervene and find a solution, where I think one side is very reactive, to get the children out of the mine site, without seeing this as a symptom of poverty and a symptom of insecurity or the absence of rights. That is a kind of a short-term solution. It may look good and sell well for those that are passionate and want to see change as soon as possible, but it may not be a lasting, long term solution, which I think the other segment is working on, which is more of a development approach. A long-term development approach may not have great marketing appeal especially for the private sector who want a 'cleaned up sector', who want risk free supply chains and to see children out of mine sites. However, in 'cleaning up' supply chains and making sure kids are not in it, they may actually be pushing the problem elsewhere and not necessarily addressing the bigger structural issues behind it. It is a complex issue. It is not black and white. Unfortunately, how it gets picked up

by the media can be both positive and negative. That goes as well with lawsuits that only capture one issue or focus on a few individuals rather than larger structural issues around poverty, development and security. In all of this, the government is critical in addressing those issues as well. Meaning that it is not just about the Apples of the world. There are larger development, rights and governance issues that need to be addressed if conditions on the ground – including for children and their families – are to improve in a way that is lasting.

Logan: To take a few steps back for listeners who might be holding a smart device or listening on a phone or reading on a screen, could you give us a sense of what uses these different natural resources have in our everyday lives? You mentioned the green economy transition as one. Maybe give us a few others?

Joanne: If we go back to conflict minerals and a technical definition linked to armed groups and predatory actors linked to criminal networks that essentially fuel or finance or potentially sustain armed violence - those minerals are essentially what we call the three T's: tin, tungsten and tantalum (tantalum is also known as coltan, which is a derivative of tantalum). Those three, plus gold, and we can throw in diamonds as well, are the “classic conflict minerals”. The three Ts are all in some way, shape or form involved in the production or the components for our electronic products, be it the smartphones or the laptops or anything with a circuit board or capacitors. Any sort of electronics has those minerals in it. They also have gold in them - in small quantities, but they are also essential to those electronics. Gold has many other uses as well. It is in everything from paint thinners to jewelry and, of course, acts as currency that holds its value (bullion) or as financial instrument. Electronics, if I am not mistaken, constitutes about 9% of the global gold demand.¹⁰ It

¹⁰ Demand statistics of gold by quarter are available at:
<https://www.gold.org/goldhub/data/gold-supply-and-demand-statistics>

is not insignificant. There are other industrial uses. It is also used in medical equipment, including medical equipment used to treat COVID19. These minerals are in essential everyday materials. Our demand for them is not decreasing, it is increasing. What we want to do is to make sure that these are extracted and traded in ways that are responsible, that are linked to security and development dividends, rather than to harm.

Logan: In IMPACT's work around the world, could you give us a sense of the impact this has on the people working at the end of the supply chain and the beginning of the supply chain? Also, could you speak to who the actors are that are perpetuating the continuation of the status quo, or in other words who are benefiting by how the system currently operates?

Joanne: Let us broaden beyond conflict minerals and look at responsible supply chains more broadly in conflict-affected and high-risk areas, which is the contemporary definition that includes all minerals to make sure that they are sourced and traded responsibly and that they do not contribute to what is called Annex 2 risks, according to the OECD.¹¹ These include serious abuses associated with extraction, transportation and trade, direct and indirect support to non-state armed groups, public or private security forces engaged in human rights violations, bribery, fraud, money laundering and any kind of illegal activity. We should be concerned about all of these because those forms of poor governance and these larger structural issues are also what keep, especially artisanal mining communities, stuck in poverty and in precarious, insecure situations. Over time, since the late 1990s to the current situation, the definition of the concerns continues to broaden, to be more comprehensive and to understand that these things are interconnected. At the very be-

¹¹ See: <http://www.responsiblemineralsinitiative.org/minerals-due-diligence/issues/oecd-annex-ii-risks/>

ginning you had diamonds, you had three Ts, gold and now cobalt because of the green economy and the transition away from carbon-dependent economies. There is also mica,¹² which is used in a number of different everyday products as well. There are more and more minerals and metals that are added all the time as it is becoming clear that supply chain risks extend to multiple commodities that span multiple geographies.

Work now is more about increasing the global standard that the private sector is being held to for all minerals and metals sourced from or via high-risk or fragile contexts. Depending on the jurisdiction, and depending on where they are based, it is either voluntary or, ideally, a legal requirement. That sort of entrenchment in the law sets expectations of the private sector that they will do full supply chain due diligence, that they will make a best concerted effort to identify these kinds of risks, to mitigate them, and then to report on what risks were identified and how they mitigate them, as well as to make this all of this information public. Those are today's expectations of the private sector. And this is what civil society and others are pushing for. That is the best-in-class standard at the moment that all industries are being pushed to adhere to. This context sets the scene for how expectations of the private sector have changed over time and the kind of accountability, increasingly, that we can expect from them. It is very clear that if they do not do meet these expectations, and there is lots of evidence to support it, that on the ground communities risk being exploited or rendered even more vulnerable - I am talking about artisanal mining communities, but we could also talk about communities living adjacent to large scale mining operations. We want the conditions of work to not only be secure and safe but that the sector becomes a contributor to economic development and security and not a destabilising or form of indentured or slave or forced labor.

12 <https://responsible-mica-initiative.com/mica/mica-uses>

The conditions on the ground can be quite difficult. They do range from commodity to commodity, but the expectation is that the private sector will make every effort to know what the conditions are and to take corrective action to do no harm. And, ideally, to work with the government to do good. One could argue that we should simply stop buying the goods that use these minerals and metals, but global needs are actually increasingly, not decreasing. It may be counterintuitive but our transition to digital and green economies is dependent upon mining, even if we seriously intensify the recycling of existing material. Better to ensure that the sector benefits the world's poorest than to maintain the status quo of indifference or to cut them out of the sector altogether.

As demand has grown for these minerals over time and the value of those materials have increased we see - even now during COVID19 - that gold is reaching 5-year highs but on the ground gold is being seriously discounted because illicit actors are taking advantage of the supply chain disruption to position themselves and undercut the market locally. We are seeing artisanal mining communities suffer doubly currently because supply chains are disrupted. The artisanal miners do not have access to regular markets and as a result they are accepting that their gold be purchased at low rates. Even for three Ts, they are selling at discounted prices in order to make sure they continue to earn a living. Meanwhile, global prices are going up. The margin between what they get and how gold is actually being traded and stockpiled on the international market is growing. We continue to see these larger issues of inequity in the supply chain that marginalize artisanal mining communities, especially in crisis times. This shows, in part, the limitations of the private sector or the market to solve what are essentially development problems or issues of economic injustice. It is one that requires a human rights-based approach and requires governments to be much more proactive to create environments where people's livelihoods are protected, especially in times of crises. The private sector has a role to play. The government has

a role to play. Security and development have to be privileged because the situations on the ground are quite egregious.

Logan: There are civil society actors, and potentially some governments, that are pushing for these changes. Are there other actors that are resisting these changes, putting blockages in the pathway for transforming the sector?

Joanne: Always. Depending on the material or the mineral, you have the early adopters, which are some private sector actors that are more keen than others and are trying to get ahead of the game and be industry leaders. They may even see this as a competitive advantage if they do business conduct in a way that's responsible. However, truth be told, the majority are laggards. They are the ones that need to be brought on board. This goes back to the large companies, like the Apples of the world, who have a tremendous amount of influence in bringing those laggards on board because if they put pressure on their suppliers to change the way they do their business conduct, they will align themselves with that. If you consider, for example, that Boeing has 40,000 parts in a single airplane many of which have some material that may be linked back to the 3TGs, and then consider all the suppliers involved in the refining, smelting, manufacturing etc, you can get a sense of how exponential their influence could be on global business conduct. It is important for them to do that sort of thing. The excuse that it's too complicated no longer cuts it. It's been proven to be doable and, in more and more jurisdictions, it is now a legal requirement (such as in the EU with Conflict Minerals regulation coming online in January 2021). You have outliers but there are opportunities, leverages and pressures that need to be brought more on board.

Then you have those who are not in the legal sphere, illicit actors and illicit traders. This is particularly the case for gold because gold is

found all over the planet. Meaning that you do not have the same kind of legal or market pressures if it were concentrated in one country or a region, if it was more of a scarce resource and not scattered all over the world. It is also fungible, meaning that it can be recycled constantly. The provenance and information about that gold essentially can be merged or smelted with any other gold in any legal channel. It is also directly linked to money laundering and those types of illegal and criminal behaviors. Further, gold retains its value in times of crises, like we see now with COVID19.

Gold is the perfect example of a commodity that demonstrates how it is very difficult to get everybody on board, especially because that mineral is so entwined with fraud, criminal networks, money laundering and illicit financing, et cetera. What we see with gold is that illegal traders will buy gold from just about anywhere and look for opportunities to plug it into a legal supply chain somewhere. It can pass unnoticed in many different ways. It can be sold to a refiner who will ask no questions, which will smelt it with other gold. As a result, it is very easy to smuggle gold. It is very easy to find ways to introduce it into an otherwise legal and responsible supply chain because it is smelted and essentially sold all over the world. Trading hubs like Dubai, the Dominican Republic, Panama, Thailand, Singapore, Hong Kong are at the center of a lot of this illicit trade that goes on undetected, where very few questions are asked.

There are guidelines and there are standards, but to what extent those are actually implemented? It is pretty lax particularly in those trading hubs. Those are the kinds of networks, opportunities and holes in the systems that are that are extremely easy to exploit, especially for gold. If I can give a different example for three Ts, we are talking about 90-kilogram bags of material that come predominantly from the Great Lakes region of Africa and go to a very limited number of smelters globally, 500

or so. These must adhere to an auditing scheme and must provide full traceability and due diligence on the material to the source. The 500 smelters form a bottleneck and, because many of these same smelters are in jurisdictions of OECD adherent states, there is a lot of pressure, legal and regulatory, from the US markets and from the EU as to that material. You do not have the same pressures for gold, which is mined, trade and refined everywhere and anywhere so it depends on the mineral and metal. Gold is the perfect case study for seeing how illicit actors essentially move high value natural resources around and exploit loopholes in the system. Since they circumvent legal trade and export taxes (e.g. taxes and fees that would normally be associated with legal trade) they can offer a better price to miners and supply chain actors at the field level. As a result, it makes it very difficult to compete with them because legal trade is so much more expensive as they have to pay all the taxes and fees to a government. The incentives are just not in place and any responsible sourcing efforts are undermined by the scale and reach of the illicit markets in parts of the world where no questions are ever asked. These are important blockages that I think still need to be seriously addressed.

It is a matter of due diligence: knowing where this material or minerals come from and knowing the context and the conditions in which it was extracted, mined, traded, et cetera. These are all possible. There are systems and technologies that exist. That is not the issue. The issue is the loopholes that continue to be exploited, especially at the trading level and the buyers who turn a blind eye to it. There needs to be more serious investigation and enforcement of the those that are driving that illicit trade (in fact, many of the actors are well known but there is no meaningful penalties or enforcement) Those are the larger blockages that still need to be addressed.

Logan: Take another case study of a product that potentially has a much easier traceability to its origin: diamonds. The Kimberley Process was established in 2003 that sought to regulate the trade of conflict diamonds. However, organizations like IMPACT and Global Witness have withdrawn from it. Could you speak about some of the challenges that these organizations have raised?

Joanne: Maybe a bit of context: It was our report in the late 1990s that drew international attention to 'blood diamonds'. We had done research in Sierra Leone and a report was published called *The Heart of the Matter*.¹³ That report drew international attention to the phenomena of blood diamonds and the role that the production and trade of rough diamonds were playing in sustaining and financing conflict in West Africa and Sierra Leone in particular. We went on to co-found the Kimberley Process,¹⁴ for which we were nominated for a Nobel Peace Prize.¹⁵ I think that this is important to know because we were in it at the grassroots and we were in it in the very early days to set up the Kimberley Process. It was really the first of its kind, which is important to know as well: this was the first real responsible sourcing initiative that was multi-stakeholder, meaning governments, the private sector and civil society were involved to ultimately find a solution: They were working together to find a solution to blood diamonds because it was just so horrific. However, 17 years on, IMPACT quit the Kimberley Process. Since we had invested so much and it is so linked to the history of the organization, and then to quit, I think it is very important to note, and very telling of the failures of the Kimberley Process.

13 Summary version is available here: <https://impacttransform.org/wp-content/uploads/2017/09/Heart-of-the-Matter-Summary-Version.pdf> or the full report by Smillie et al (2000).

14 For more on the Kimberley Process, see: Haufler (2009) and Wright (2004).

15 For more on this history, see: <https://impacttransform.org/en/about-us/30-years-of-impact/>

The Kimberley Process just has not kept up with the times. I have explained, in broad brush strokes, how conflict minerals are defined and how we are looking beyond conflict minerals now at a broader spectrum of human rights violations and structural issues that keep artisanal mining communities and supply chain actors in perpetual poverty and work conditions that are quite abhorrent. I have been speaking about how responsible supply chains are supposed to address these issues. The Kimberley Process is a single target definition: armed groups involved in using the extraction or trade of rough diamonds to overthrow a government. That is a very narrow definition of a 'conflict mineral' or in this case, a 'blood diamond'. It is only applicable to essentially rebel groups and armed groups trying to overthrow a government, trying to use diamonds to fund their attempts to overthrow a government. That means, and this is where we have seen issues over time and the challenges of reform within the Kimberley Process, that when for example, Mugabe's government in Zimbabwe was using the proceeds from the diamonds from the country's mine sites to finance the government's abusive rule and related human rights violations, the KP could not (or chose not) to do anything about.¹⁶ Nobody could qualify that technically as a blood diamond.¹⁷

The Kimberley Process member states were very reluctant to raise issues about it because many producer countries did not want questions raised about their own government's complicity in human rights violations and how those were financed by diamonds. The singular focus on armed groups overthrowing governments has so narrowly defined the issue as to be rendered useless over time. The only place where that definition applies today is the Central African Republic, and even that is still

¹⁶ For some reporting on this, see: <https://www.bbc.com/news/world-africa-43839068>

¹⁷ For an academic discussion, see Saunders and Nyamunda (2016).

pretty limited.¹⁸ The fact that there few contexts where the KP blood diamond definition is applicable or relevant today is also used in the marketing of the diamond producers and the marketers of the Kimberley Process to say: 'look how successful we have been, we have eradicated conflict diamonds.' The public has largely bought into that. The public thinks this is an issue that has going away. The reality is that the definition is so narrow as to have been rendered absolutely irrelevant today. It is not that the situation has gone away, we still have blood diamonds if one was to apply today's definition of a "non" responsible supply chain: illicit trade, human rights violations and Dickensian working conditions in artisanal mine sites in particular continue unabated. Diamonds are still completely irresponsibly produced and traded in a number of different ways, including the involvement of state actors: from Russian state-sponsored mercenaries in the Central African Republic and Mozambique to child labor, money laundering and corruption. It is the same type of issues that apply to all minerals and metals today, it is just a different highly restrictive typology that has been used by the Kimberley Process. It means that it evades the public eye and it evades any sort of real solution or real change, unfortunately. Although, it's now clear that the OECD definition also applies to diamonds, many in the KP choose to ignore that fact, so comfortable are they with their existing highly narrow and limiting framework.

The definition of conflict minerals has been brought up by the Kimberley Process Civil Society Coalition,¹⁹ which is an observer in the Kimberley Process but has no decision-making power, only the states do. They have brought it up consistently, even the private sector has brought it up within the Kimberley Process, but the resistance has been continuous by member states. Not all member states, of course. The other

¹⁸ See, for example: <https://www.bbc.com/news/world-africa-34405990>

¹⁹ For more, see: <https://www.kimberleyprocess.com/en/civil-society-coalition>

weakness of the Kimberley Process is that it is a consensus-based model. Any sort of reform to modernize the Kimberley Process, so it can actually be relevant, never gets approved because you will always have some state that throws down the gauntlet at the last minute and blocks any sort of reformed definition. There are other issues with the Kimberley Process, but I would say those are the two main ones. It has gotten to the point that civil society (via the Kimberley Process Civil Society Coalition) and the private sector that participate in the Kimberley Process are now looking to other initiatives to address their concerns. In particular, they are looking at the OECD Due Diligence Guidance that is applicable to all minerals and metals globally that are sourced from conflict-affected and high-risk areas. The OECD guidance is the standard at the moment that has a broader definition of issues that we need to be aware of as potential risks that need to be addressed by the private sector hand-in-hand with governments in order to make sure that conditions of extraction and trade are ethical and responsible to the fullest extent possible.

Logan: As IMPACT works not only to identify and raise these as issues of concern that everyone should be aware of, it is also working to engage in the transformation of the sector through regional certification processes and other activities. Could you give us a sense of the way forward for how the sector might transform or the ways in which IMPACT would like the sector to transform?

Joanne: We have not just worked with the Kimberley Process but also on a certification mechanism applicable to 3Ts and gold in Africa's Great Lakes Region. The International Conference on the Great Lakes Region (ICGLR) is a 12-state member intergovernmental body that approved the development and implementation of a certification scheme applicable to these conflict minerals. The Kimberley Process is a government led scheme, meaning that governments have an important role to

play and that has not changed. The ICGLR Regional Certification Mechanism is about state responsibility to put in place required systems and to create the conditions for responsible, conflict-free mineral production and trade.²⁰ We have been involved in a capacity building role to help the states do that. We have also been involved with the OECD, developing but then also field testing the OECD Due Diligence Guidance for responsible mineral supply chains in conflict-affected and high-risk areas. Essentially the OECD's is a guidance document that the private sector can look to, to step-by-step ensure that its supply chains are not conducive to harm, that they are aware or taking the steps and taking the responsibility to ensure that they are not contributing to human rights violations in the myriad of forms that I have already described. That is a private sector led initiative. It is voluntary. However, many states of the world have since adopted it or introduced it into their legal jurisdictions. For example, the EU has legislated its Conflict Minerals Regulation that points to the OECD, which is coming into effect in January 2021. There is U.S. regulation that was first introduced in 2010, which eventually also acknowledged the OECD. It has also been adopted into the legal frameworks of Rwanda, Burundi, the Congo and Uganda. It is under consideration in Colombia. So that private sector voluntary guidance also increasingly has legal teeth.

The OECD private sector initiative aligns with the ICGLR Regional Certification Mechanism that is about state responsibility in creating a conducive environment and building the capacity at the national level to ensure transparency and accountability as well as ensuring that the sector is responsible. In theory, this should be conducive to processes that are drivers of development and not ones that are harming the population. Those two initiatives align: government and private sector. We have

²⁰ For more details, see: <https://impacttransform.org/en/work/project/icglr-regional-certification-mechanism-implementation/>

been working at those two levels, drawing on our Kimberley Process experience. Our 34-year-history has been very steeped in working hand-in-hand with civil society, which is our first partner. Civil society has been trained and we continue to work in partnership with them to monitor all of this and to report on it. They have a monitoring function and a transparency, accountability and advocacy function that is absolutely critical to see all this happen.

As all this is going on, we are testing the OECD Guidance and testing the implementation of that Guidance as well as the ICGLR certification. We introduced a project called Just Gold in the Democratic Republic of Congo in Ituri province to test whether or not these things work on the ground.²¹ What does it actually look like in implementation? Not surprisingly, there are serious capacity issues and serious limitations to implementation. That was not altogether surprising. We were just trying to figure out what actual implementation looks like and how these weaknesses may be addressed, and where and how scaling and sustaining these kind of responsible sourcing efforts is possible, but only if they are proven to actually make a difference. We managed to demonstrate that it is possible to trace, to do due diligence, to certify artisanal gold from mine site all the way to market. You can actually buy gold with all the information you need on that supply chain. This was tested with a jewelry company in Toronto called Fair Trade Jewelry Company.²² They are marketing and turning this gold into some beautiful jewelry. That product conforms with all the regulations, all the standards, all the schemes, et cetera, and the documentary evidence is made available to all supply chain actors including the consumer.

21 For more details, see: <https://impacttransform.org/en/work/project/just-gold/>

22 For more information, see: <https://ftjco.com/>

I should state that I come from a human rights and women, peace and security background, having worked in conflict contexts globally for almost 20 years. I am also trained as an anthropologist. While the organization and I both appreciate and understand the role and the importance of these types of schemes, be it certification or private sector due diligence, the reality is that they do tend to be top down. That is where we see a lot of the limitations because it looks very different on the ground. Every community, every locality, globally has a power dynamic. Communities are not homogeneous. There is no absence of power at the local level. Our concern as an organization is that while these systems are good and important, what is happening when you apply them locally and how does it play into local dynamics? To give you an example, when we rolled out Just Gold, we heavily invested in not only the acquisition, monitoring and analysis of supply chain data so that consumers and buyers can be assured that there was no abuse of human rights, et cetera, but we simultaneously invested in systems to analyze socioeconomic data as well. We wanted to know whether or not we were advancing commitments to the Sustainable Development Goals. What we saw was in the rollout of a responsible sourcing initiative to bring artisanal gold to market, as the price offered to supply chain actors went up, men's incomes increased, but not women's. In fact, gender inequality, at least as it related to income, was growing. As an organization and building on research on gender and artisanal mining, we then started to introduce a number of complementary measures in response to that analysis, such as financial inclusion for women, supporting them to be in associations because they tend to work in a way that is more isolated than men, advocating for fair prices to be paid to women equitable to men, more inclusive and participatory governance structures, et cetera. Now, women's income is actually just surpassing men's. There has been a course correction where we now see women benefiting more fully from responsible trade, from responsible business conduct, from responsible sourc-

ing than what they would have otherwise. The fact is that a top down approach could have contributed to gender inequality inadvertently. I would go so far as to surmise that because most of the efforts have, at least until recently, been gender blind (and blind to any number of divisive/power issues locally), these inequalities and tensions may be unwillingly reinforced.

Having had this long experience and engagement with certification and with these schemes and due diligence, we now want to know what the actual development and security impact on the ground is. How that is being played out locally? Who is benefiting? How do we learn from that to support communities to benefit from responsible business conduct when the market engages (which is not always the case)? How do we make sure that the improvements or efforts to improve natural resource governance at the local level actually benefit everyone, and not just those that are already in relative positions of power? That is really the challenge. Bringing that up is becoming more apparent now, during this COVID19 crisis, because it is very clear that responsible business conduct has serious limitations in reach when the supply chain is disrupted. What we see is that investment in development leads to resilience and gender equality as well as security, which are the building blocks. You can leverage the market, but the market is not going to be an answer to something that is fundamentally about human rights, poverty and land rights.

In this time of supply chain disruption, the importance of development is coming to the fore as is the importance of providing rich socio-economic data and analysis that we can learn from to not only 'do no harm' but actually to do good in support of communities.²³ This would enable communities to be more resilient in times of crisis and also give

²³ For more on 'do no harm' principles, see <https://www.cdacollaborative.org/wp-content/uploads/2018/01/Do-No-Harm-A-Brief-Introduction-from-CDA.pdf>

them the power to bargain more effectively to be respected economic actors. They may then use the data and analysis to further advance their own development and security objectives. These are empowerment, peace, development and security aspects that we are going back to, in order to ensure that responsible business conduct is not just about supporting a select number of actors in the supply chain or cleaning up a supply chain, potentially pushing the problem somewhere else. It is a lot more. We have learned a lot and it is the combining of how we link trade and aid effectively, with evidence, to ensure that first and foremost development and security is improving for local populations. If that is not happening as a result of responsible sourcing, it is not worth doing.

Logan: Thank you for speaking with us today about the sourcing and management of natural resources and helping us to envision what a new, more positive future could and should look like.

Joanne: My pleasure. Thanks a lot.

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