

And They Would Have Gotten Away with It, If Not for Those Meddling Federales:

Examining State Responses to Transnational Organized Crime and Developing a Policy Framework

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Abstract

Transnational criminal organizations (TCOs) have begun expanding their enterprise into criminal gold mining in South America. This is causing widespread harm from human trafficking, pollution, and disease. These groups exploit vulnerable artisanal miners (ASMs) to provide a foothold in the gold mining industry and avoid the reach of states. This note examines the policy responses that South American countries have taken to this phenomenon and develops a policy framework for state actors moving against TCOs.

Introduction

The first attack was on July 11, 2023. Creatures, “armored like the green goblin from Spider-Man,” descended upon a small Ikitu community in Northern Peru.¹ Community leader Jairo Reátegui Ávila described the creature as floating a meter in the air with a long head, a long mask, and yellow eyes.² After weeks of nightly attacks, Ávila was certain that the creatures were aliens.³ This fear was confirmed

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1. Nathaniel Janowitz, *‘Flying Aliens’ Harassing Village in Peru Are Actually Illegal Miners with Jetpacks, Cops Say*, VICE NEWS (Aug. 14, 2023), <https://www.vice.com/en/article/pkazgy/peru-aliens-illegal-miners-with-jetpacks>.

2. Redacción RPP [RPP Editorial], “*¿Son extraterrestres!?: pobladores loretanos denuncian la presencia de seres extraños que los atacan de noche* [“*They are aliens!?: Loreto residents denounce the presence of strange beings that attack them at night*], RPP (Aug. 1, 2023), <https://rpp.pe/peru/loreto/son-extraterrestres-denuncian-en-loreto-presencia-de-seres-extranos-que-atacan-de-noche-noticia-1498085?ref=rpp>.

3. *Id.*

in the community, when an “alien” attempted to abduct a teenage girl.⁴ Ávila described the harrowing event: “I shot him twice and he doesn’t fall, but rises and disappears.”⁵ Fear in the community reached such a pitch that the Peruvian Federal Government dispatched a team of agents to investigate the Close Encounters.⁶ Upon investigation however, the agents came up with a far more terrestrial explanation: illegal gold mining.⁷ Carlos Castro Quintanilla, the lead investigator, explained that the “alien attacks” were an attempt by Colombian and Brazilian mining gangs to scare the Ikitu community away from their homes so that the miners could extract gold without detection.⁸ The bulletproof armor and floating effects? Simply, advanced military flying technology.⁹ But despite the *Scooby-Doo*-esque¹⁰ plan, the state of gold mining in South America reflects a darker nature than the behavior of one gang would suggest.

While the antics of this gang were unique, illegal gold mining in South America is not. The Peruvian prosecutor’s office had shut down 110 illegal dredging operations and 10 illegal mining camps in the area just in the first half of 2023 alone.¹¹ Illegal gold mining has spiked across South America. Estimates in 2014 by the Colombian government found that 83% of all mines in Colombia were operated illegally.¹² Ecuadorian estimates from 2013 showed that 70% of gold produced in the country (roughly 9 to 14 tons of gold) came from illegal mining.¹³ Illegal mines in Bolivia employ approximately 13,500 children, half of whom are unpaid.¹⁴ This increased illegal mining has

4. *Id.*

5. *Id.*

6. Redacción RPP [RPP Editorial], *Loreto: Policía y la Marina llegaron a comunidad donde pobladores reportaron presencia de extraterrestres* [Loreto: Police and Navy arrived at community where residents reported presence of aliens], RPP (Aug. 1, 2023),

<https://rpp.pe/peru/loreto/loreto-agentes-de-la-policia-y-la-marina-llegaron-a-comunidad-donde-se-reporto-presencia-de-extraterrestres-noticia-1498184?ref=rpp>.

7. Janowitz, *supra* note 1.

8. *Id.*

9. *Id.*

10. This author takes notice that this is quite literally the plot of *Scooby-Doo and the Alien Invaders* from 2000. It is not inconceivable that the perpetrators of the attack on Loreto were familiar with, if not with the specific movie, at least the premise of dressing up like a monster to scare away witnesses to a financial crime.

11. Janowitz, *supra* note 1.

12. GLOB. INITIATIVE AGAINST TRANSNAT’L ORGANIZED CRIME, ORGANIZED CRIME AND ILLEGALLY MINED GOLD IN LATIN AMERICA 10 (Apr. 2016) [hereafter Global Initiative].

13. *Id.* at 13.

14. *Id.*

coincided with an increase in malaria,¹⁵ forced labor and sexual exploitation,¹⁶ and increased negative health effects associated with mercury poisoning.¹⁷ Transnational Criminal Organizations (TCOs) have gotten bold enough to attack the security services of formalized mining operations, resulting in underground gun fights in a honeycomb of mining tunnels.¹⁸ As a result, Zijin—a Chinese mining conglomerate—has lost control of 60% of its mines to the Gaitanista Army of Colombia, a controlling TCO in Colombia.¹⁹ Illegal mining is not just increasing, but it is cascading into an international humanitarian disaster as criminal organizations exploit informal miners to bring the brutality of the drug trade to the inherent danger of gold mining.

This note will explore the existing laws and policies in South American countries to combat illegal gold mining and seek to make policy recommendations for actors in the region. Part I will examine the background of illegal gold mining in the region, touching on the legitimate, quasi-legitimate, and illegitimate actors. This section will also focus on existing policy to combat other forms of illegal natural resource harvesting. Part II will compare these policies and make recommendations for state actors within the region both in terms of specific policies and frameworks to pursue regulation. This note will conclude by proposing that adapting and harmonizing policy within the region can help ameliorate what has become one of the most dangerous and expansive forms of international criminal activity.

I. THE EMERGENCE OF ILLEGAL MINING

A. THE SPECTRUM OF ILLEGALITY

Gold mining in South America is not a binary system but instead operates on a spectrum. On one side of the spectrum are legitimate businesses, called large-scale mineral exploration and mining

15. Sandra Roza, *Unintended Effects of Illegal Economic Activities: Illegal Gold Mining and Malaria*, 136 *WORLD DEV.* 1, 11–12 (2020).

16. Sara Mariella Lambertini, *Consolidation of Organized Crime in the Orinoco Mining Arc (OMA): The Control of Illegal Mining, Human Trafficking, and Other Crimes*, 5 *J. ILLICIT ECON. & DEV.* 22, 26 (2023).

17. Leonardo Barcellos de Bakker et al., *Economic Impacts on Human Health Resulting from the Use of Mercury in the Illegal Gold Mining in the Brazilian Amazon: A Methodological Assessment*, 18 *INT'L J. ENV'T RSCH. PUB. HEALTH* 22, 23 (2021).

18. Joshua Collins, *An Underground Gold War in Colombia is 'a Ticking Ecological Time Bomb'*, MONGABAY (Dec. 31, 2024), <https://news.mongabay.com/2024/12/an-underground-gold-war-in-colombia-is-a-ticking-ecological-time-bomb/>

19. *Id.*

(LSMs).²⁰ These LSMs are exactly what one would expect: government-regulated, capital intensive, and result in high rates of ore production.²¹ While there is debate about the extent to which these LSMs follow the law, they are legal enterprises that are (theoretically) subject to oversight and regulation.²² On the other end of the spectrum are TCOs.²³ These organizations are also easy to imagine: large scale facilities operating outside of the scope of the law, often run by criminal organizations or paramilitary groups.²⁴ In between these two groups are artisanal and small scale miners (ASMs).²⁵ ASMs are not typically compliant with the law, and what differentiates ASMs from traditional illegal mining is size and scale.²⁶ Interpol uses the term “criminal mining” to emphasize the difference between large scale criminal organizations flaunting the law and small scale subsistence miners who are noncompliant with the law.²⁷ The Organisation for Economic Co-operation and Development (OECD) guidance report on this topic describes the archetypical ASM as a small partnership, sometimes within a family, mining in a designated area.²⁸ ASMs often start either as an alternative to subsistence farming or as a diversification of farming during the off-season.²⁹ This mining routinely occurs in inaccessible parts of countries, far away from city centers and concentrated populations.³⁰ Where ASMs are recognized by law, they are often defined by size of operation and production.³¹ This legal middle ground undermines the

20. Elizabeth Holley et al. *Coexistence of Large-Scale Mining with Artisanal and Small-Scale Mining—A Guide for Geologists*, 130 SEG DISCOVERY 22, 22 (July 2022).

21. *Id.*

22. *Id.*

23. See generally Global Initiative, *supra* note 12.

24. *Id.* at 20.

25. Livia Wagner & Marcena Hunter, *Links Between Artisanal and Small-Scale Gold Mining and Organized Crime in Latin America and Africa*, in *ILLEGAL MINING, ORGANIZED CRIME, CORRUPTION, AND ECOCIDE IN A RESOURCE-SCARCE WORLD* 77, 77 (Yuliya Zabyelina & Daan van Uhm eds., 2020).

26. *Id.* at 79.

27. *The Devastating Impact of Illegal Gold Mining in Latin America*, INTERPOL (Apr. 28, 2022), <https://www.interpol.int/en/News-and-Events/News/2022/The-devastating-impact-of-illegal-gold-mining-in-Latin-America>.

28. OECD, *OECD DUE DILIGENCE GUIDANCE FOR RESPONSIBLE SUPPLY CHAINS OF MINERALS FROM CONFLICT-AFFECTED AND HIGH-RISK AREAS* 65 (3d ed. 2016).

29. Kuntala Lahiri-Dutt, *Reframing the Debate on Informal Mining*, in *BETWEEN THE PLOUGH AND THE PICK: INFORMAL, ARTISANAL AND SMALL-SCALE MINING IN THE CONTEMPORARY WORLD* 1, 18 (Kuntala Lahiri-Dutt ed., 2018).

30. Marjo de Theije & Tom Salman, *Conflicts in Marginal Locations: Small-Scale Gold-Mining in the Amazon*, in *BETWEEN THE PLOUGH AND THE PICK: INFORMAL, ARTISANAL AND SMALL-SCALE MINING IN THE CONTEMPORARY WORLD* 261, 264 (2018).

31. Lahiri-Dutt, *supra* note 30 at 6–7.

status of ASMs.

Some states approach ASMs with the primary goal of formalization.³² Unfortunately, due to a broader state of hostility to informal mining, this often results in further marginalization for ASMs.³³ From the state perspective, informal miners are expected to either formalize at any cost,³⁴ or leave the gold market to the legal corporations.³⁵ Considering the economic situation of many ASMs, neither of these choices are possible. This is where TCOs return to the discussion. While the state is unwilling or unable to protect ASMs, TCOs are eager to prey upon them.³⁶ TCOs will extort miners to pay “vacunas” for protection,³⁷ force children to work in mines,³⁸ kidnap women and force them into the sex trade,³⁹ and murder whoever interrupts these operations.⁴⁰ Since artisanal miners and their communities are outside the scope of the state control and antithetical to state interests, there has been little successful state action to combat illegal mining.⁴¹ Where states have taken limited action to combat TCO exploitation of ASMs, the authorities did not treat workers as victims of trafficking, but instead as criminals, going so far as to arrest the workers.⁴² ASMs gray status between legality and criminality allow for TCOs to prey on ASMs without any state interference.

B. FINDING EL DORADO: HOW TCOs STUMBLED ON A GOLDEN OPPORTUNITY

Criminal organizations did not wake up one day and decide to start mining. Instead, a series of economic and political decisions created incentives that motivated TCOs to engage in gold mining. Understanding these factors is necessary to contextualize state action against TCOs. Without knowing what attracted TCOs to the gold

32. Patrick Wieland, *Hernando De Soto, the Lone Prospector and the Formalization of Artisanal and Small-Scale Mining: A Case Study from La Rinconada, Peru*, 43 ENVIRONS: ENV'T L. & POL'Y J. 1, 4 (2020).

33. *Id.*

34. *Id.*

35. Guillermo Arribas Irazola, *Of Mines and Men: Toward A Foundational Theory of the Rise, Evolution and Decay of Property*, 7 SEATTLE J. ENV'T L. 1, 37–38 (2017).

36. Global Initiative, *supra* note 12, at 1.

37. Global Initiative, *supra* note 12, at 10.

38. *Id.* at 28–29.

39. *Id.* at 29.

40. *Id.* at 30.

41. *Id.*

42. *Id.* at 33.

market in the first place, it would be impossible to construct a policy framework to address and eventually remove these criminal elements.

First, gold became good business for TCOs. Following the 2008 recession, gold was seen as a “safe” investment and the price of gold skyrocketed.⁴³ The Covid-19 pandemic, and the resulting economic instability in the following years, compounded this, raising the price of gold to a staggering \$3,050 per ounce (the equivalent of \$107,585.7 per kilogram) by March of 2025.⁴⁴ Gold is currently at its highest recorded price in history, and is quickly approaching its inflation-adjusted high of \$3,200 per ounce that was set in 1980.⁴⁵ Meanwhile, the cocaine trade has become significantly less lucrative for Latin American traffickers.⁴⁶ For example in Peru, following successful state efforts to destroy coca leaf farms (necessary for the production of cocaine), there was a rise in criminal mining in the Madre de Dios.⁴⁷ State intervention in the drug trade, both in producing countries and importing countries,⁴⁸ has made the cost of the drug business significantly higher for TCOs. Considering that states had little to no existing oversight on ASMs, criminal mining became an obvious destination for TCOs.

TCOs also have an added interest in gold outside of its monetary value: for money laundering. Gold mining is a perfect avenue for money laundering, as once gold is “laundered” it becomes legal to

43. *Id.*

44. Anmol Choubey, *Gold Hits Record High as US Tariffs Spark Trade Tensions*, REUTERS (MAR. 27, 2025), <https://www.reuters.com/markets/commodities/gold-rises-fears-mount-over-trumps-reciprocal-tariff-plans-2025-03-27>.

45. *See id.* (“Looks like we’re going to see (gold futures hit) \$3,100 here shortly and the main catalyst is safe-haven buying,’ driven by uncertainty around Trump’s tariff plans”); Spencer Kimball, *Gold Rises to Above \$2,100 to Highest Level Ever as Traders Bet on Interest Rates Cuts*, CNBC (Mar. 4, 2024), <https://www.cnbc.com/2024/03/04/gold-rises-above-2100-to-highest-level-ever-as-traders-bet-on-interest-rate-cuts.html> (“When adjusted for inflation, gold set an all-time high of about \$3,200 in 1980”).

46. *See, e.g.*, Jeremy McDermott & Steven Dudley, *GameChangers 2023: The Cocaine Flash-to-Bang in 2024*, INSIGHT CRIME (Jan. 5, 2024), <https://insightcrime.org/news/gamechangers-2023-cocaine-flash-to-bang-2024/>. A kilogram of cocaine varies in price across the U.S. and around the world, but it is around \$25,000 a kilo on average. This makes gold between three and four times as valuable per kilogram. *Id.*

47. R. EVAN ELLIS, TRANSNATIONAL ORGANIZED CRIME IN LATIN AMERICA AND THE CARIBBEAN 33 (2018).

48. SAMUEL MUSA, COMBATING TRANSNATIONAL ORGANIZED CRIME: STRATEGIES AND METRICS FOR THE THREAT, (Ctr. for Tech. & Nat’l Sec. Pol’y ed. 2012), <https://apps.dtic.mil/sti/pdfs/ADA586153.pdf>.

move across borders.⁴⁹ Historically, TCOs in South America would buy gold from Africa to launder their drug money,⁵⁰ but mining gold (or forcing others to mine the gold for you) at home is a cheaper and easier alternative. Gold is prime for money laundering as once it is smelted, it is incredibly difficult to trace its origin.⁵¹ Forensic Geologists have been attempting to expand the data to allow for profiling of gold, necessary to trace its origin, but these methods have been used to measure quantities of diluents (such as copper) in the gold.⁵² Without better data about the surrounding geology where the gold is mined or a series of purity laws,⁵³ these advancements will not help identify illegally mined gold from legally mined gold.⁵⁴ This makes illegally mined gold the “gold standard” for money laundering.

Finally, TCOs have the necessary factors for expansion. Take, for example, the situation in Colombia and its impact on the proliferation of TCOs across the region. Following the end of the civil war in Colombia in 2016, violence spiked again in 2021—typically taking the form of violence associated with organized crime.⁵⁵ The former rebel groups, primarily the FARC (The Revolutionary Armed Forces of Colombia), have long been associated with criminal elements within Colombia.⁵⁶ So, when the civil war ended, former FARC members either joined or created TCOs across South America.⁵⁷ The group that attacked Ávila’s community, as discussed above, was suspected to be former FARC.⁵⁸ As of the time of publishing, over half of the revenue from TCOs comes from illegal gold mining, surpassing traditional

49. Livia Wagner & Marcena Hunter, *Links Between Artisanal and Small-Scale Gold Mining and Organized Crime in Latin America and Africa*, in *ILLEGAL MINING* 77, 97 (Yuliya Zabyelina & Daan van Uhm eds.) (2020).

50. *Id.* at 98.

51. Roger Dixon & Robert Schouwstra, *The Role of Forensic Geology in the Illicit Precious Metals Trade*, 40 *EPISODES* 132, 139 (2017).

52. *Id.* at 135–36.

53. *Id.* at 133.

54. *Id.*

55. HUMAN RIGHTS WATCH, *Colombia: Events of 2021*, <https://www.hrw.org/world-report/2022/country-chapters/colombia> (last visited Jan. 26, 2024).

56. Phillip A. Hough, *Guerrilla Insurgency as Organized Crime: Explaining the So-Called “Political Involution” of the Revolutionary Armed Forces of Colombia*, 39 *POL. & SOC’Y* 379, 379 (2011).

57. Diálogo, *Amazon: Brazilian Criminal Groups and FARC Dissidents Join Forces for Cocaine Trafficking*, *DIÁLOGO AMÉRICAS*, (Dec. 11, 2023), <https://dialogo-americas.com/articles/amazon-brazilian-criminal-groups-and-farc-dissidents-join-forces-for-cocaine-trafficking/>.

58. Janowitz, *supra* note 1.

forms of illegal revenue.⁵⁹ This has allowed TCOs in South America to expand⁶⁰ in scale, scope, and industry. Unsurprisingly, the difficulties of the pandemic exacerbated this expansion, making criminal organizations an attractive alternative for civilians and former fighters, alike.⁶¹

The expansion of criminal groups into gold mining is a result of the combination of state inaction and broader macroeconomic trends that South America is not immune to. It is important to keep this economic ecosystem in mind, as policies that do not address the underlying economic motivations of TCOs will invariably fall short of their goals in addressing the issues of TCOs. This is further evidenced by a review of existing laws and state actions against TCOs in South America.

C. CHOICE OF LAWLESSNESS

Almost definitionally, TCOs operate across international borders. Research shows that they do so in a strategic manner, adapting their criminal enterprises to the differing laws of the various states they are in.⁶² Not only do the TCOs ignore state borders, but the harms of criminal mining cross borders, affecting neighboring countries. The environmental impacts of criminal mining spread across state lines, with mercury deposits in Peruvian and Colombian rivers being found across borders.⁶³ Allowing easier access to international markets is the inspiration behind gold laundering, incentivizing criminal elements to take advantage of different laws and standards between countries.⁶⁴ This undermines state enforcement, where TCOs are not

59. Will Freeman & Steven Holmes, *Illegal Gold Finances Latin America's Dictators & Cartels. The United States Must Lead the Fight Against It*, COUNCIL ON FOREIGN REL. (Nov. 15, 2024), <https://www.cfr.org/blog/illegal-gold-finances-latin-americas-dictators-cartels-united-states-must-lead-fight-against>.

60. ANGEL RABASA ET AL., COUNTERNETWORK: COUNTERING THE EXPANSION OF TRANSNATIONAL CRIMINAL NETWORKS (RAND Corporation 2017), https://www.rand.org/pubs/research_reports/RR1481.html.

61. INT'L CRISIS GRP., *Virus-proof Violence: Crime and COVID-19 in Mexico and the Northern Triangle* (Nov. 13, 2020), <https://www.crisisgroup.org/latin-america-caribbean/83-virus-proof-violence-crime-and-covid-19-mexico-and-northern-triangle>.

62. INT'L CRISIS GRP., *Latin America Wrestles with a New Crime Wave* (May 12, 2023), <https://www.crisisgroup.org/latin-america-caribbean/latin-america-wrestles-new-crime-wave>.

63. Global Initiative, *supra* note 12, at 27.

64. *Id.* at 27.

uprooted but simply shifted to a country that either has lax enforcement or no enforcement at all. This again recalls the criminal miners terrorizing the Itiku, who were forced out of Colombia by the military.⁶⁵ With this perspective in mind, examining the specific laws countries have passed to combat criminal mining underscores why these state responses have, so far, been ineffective against TCOs.

II. STATE ACTORS

A. INEFFECTIVE STATES: PERU AND COLOMBIA

Peru and Colombia have passed significant legislation to try to address criminal mining in the region.⁶⁶ These efforts are twofold: the legislation uses state security forces to physically disrupt and destroy illegal mines while prosecuting the people found at these mine sites.⁶⁷ At first, these measures appeared to be successful. Peru's Operation Mercury in 2018 had short term reductions in illegal mining before the pandemic.⁶⁸ But these benefits did not last. Research analysis shows that the illegal miners simply crossed from Peru into Bolivia and continued mining unabated, resulting in pollution returning to Peru through the same waterways.⁶⁹ To make matters worse, political crises within Peru have resulted in these small gains being washed away.⁷⁰ Funding for the reduction of illegal mining was 33 million soles in 2019 (\$9.9 Million USD) but has since fallen to 8.4 million

65. Janowitz, *supra* note 1.

66. ORG. OF AM. STATES: DEP'T AGAINST TRANSNAT'L CRIME, *On the Trail of Illicit Gold Proceeds: Strengthening the Fight Against Illegal Mining Finances Peru's Case* (Nov. 2021) [hereinafter OAS Peru], <https://www.oas.org/en/sms/dtoc/docs/On-the-trail-of-illicit-gold-proceeds-Peru-case.pdf>; ORG. OF AM. STATES: DEP'T AGAINST TRANSNAT'L CRIME, *On the Trail of Illicit Gold Proceeds: Strengthening the Fight Against Illegal Mining Finances Colombia's Case* (Feb. 2022) [hereinafter OAS Colombia], https://www.oas.org/en/sms/dtoc/docs/On-the-trail-of-illicit-gold-proceeds_Colombias-case.pdf [hereinafter OAS Colombia].

67. *Id.*

68. 16 EVAN N. DENTHIER ET AL. OPERATION MERCURY: IMPACTS OF NATIONAL-LEVEL ARMED FORCES INTERVENTION AND ANTICORRUPTION STRATEGY ON ARTISANAL GOLD MINING AND WATER QUALITY IN THE PERUVIAN AMAZON (WILEY, 2023).

69. Amy Olson, *Operation Mercury' Curbed Illegal Gold Mining in Peru*, DARTMOUTH, (Sept. 29, 2023), <https://home.dartmouth.edu/news/2023/09/operation-mercury-curbed-illegal-gold-mining-peru>.

70. Dan Collins, *Peru's crackdown on illegal gold mining a success, but only briefly, study shows*, MONGABAY (Dec. 5, 2023), <https://news.mongabay.com/2023/12/perus-crackdown-on-illegal-gold-mining-a-success-but-only-briefly-study-shows/>.

soles (\$2.2 million USD) in 2023.⁷¹ During the active years of Operation Mercury, mining decreased between 70–90%. However, once the funding dried up, the mining returned⁷². During Operation Mercury, Peru also had increased rates of formalization by ASMs, with 90,000 miners beginning the formalization process.⁷³ By December of 2021, fewer than 2% of miners had actually completed the formalization process.⁷⁴ While Peru was temporarily effective at mitigating the criminal mining, unrelated political disputes cost the government its desired formalization and reduction of criminal mining.

Colombia, following its ceasefire, has been able to use state security forces in a similar way to Peru, directly shutting down mines and illegal operations. For now, this has been successful, with the Brigade Against Illegal Mining (BRCMI) touting that it had destroyed 349 illegal dredges and 49 mineshafts in 2022 alone.⁷⁵ Instead of incentivizing formality, the Colombian government has a stricter set of standards for ASMs who wish to become legal miners.⁷⁶ While this has resulted in more arrests in Colombia, it has not changed the overall economic structure that drives people towards ASM in the first place.⁷⁷ Additionally, the BRCMI has been unsuccessful in coordinating with Colombia's Financial Information and Analysis Unit (UIAF).⁷⁸ The goal of the UIAF is, in theory, to track down the financiers behind the criminal mines in an effort to prevent the necessary capital flow to begin illegal mining.⁷⁹ The UIAF is also tasked with preventing gold laundering out of Colombia once the gold

71. *Id.*

72. *Id.*

73. OAS Peru, *supra* note 66.

74. *Id.*

75. Myriam Ortega, *Colombian Security Forces Dismantle Illegal Mine in the Amazon*, DIALOGO AMERICAS (Jan. 20, 2023), <https://dialogo-americas.com/articles/colombian-security-forces-dismantle-illegal-mine-in-the-amazon/>.

76. Ryan C. Berg et al. *A Closer Look at Colombia's Illegal, Artisanal, and Small-Scale Mining*, CTR. FOR STRATEGIC AND INT'L STUD (Dec. 20, 2021) [hereinafter CSIS Colombia], <https://www.csis.org/analysis/closer-look-colombias-illegal-artisanal-and-small-scale-mining>.

77. *Id.*

78. *Id.*

79. Katie Jones & Maria Fernanda Ramirez, *A Long Way to Go: Responses to Environmental Crime in Colombia's Amazon*, INSIGHT CRIME (Sept. 29, 2021), <https://insightcrime.org/investigations/responses-environmental-crime-colombia-amazon/>.

is mined or smuggled across the border with Venezuela.⁸⁰ UIAF has been almost entirely ineffective at stopping the financing of gold.⁸¹ This has resulted in foot soldiers getting arrested, while the larger TCOs and the financiers of these operations remain at large, able to simply hire (or kidnap) new workers to start new mines all over again.⁸²

Peru and Colombia serve as examples of countries that are attempting to combat criminal mining. While both countries have fallen short of their goals in eliminating TCOs and criminal mining, the states are still making an active effort to stop these harms and have, at one time, been successful in the quest. Peru and Colombia have more exposure to criminal mining and therefore more experience in combating it. This experience can be helpful for other states who are beginning to see a rise in criminal mining and a need to counter it.

B. THE NEWCOMER STATES: BRAZIL AND ECUADOR

Brazil and Ecuador are beginning to experience the effects of criminal mining, but not yet to the level of Peru and Colombia.⁸³ These fledgling TCOs can give the states an opportunity to remove criminal mining before it becomes more severe. In Ecuador, the primary TCOs are not sophisticated or entrenched enough to significantly overrun the gold mining industry, but recent developments indicate that this could change.⁸⁴ In Brazil, its laissez-faire response to TCOs was due to a lack of political will,⁸⁵ which has drastically changed.⁸⁶

80. CSIS Colombia, *supra* note 76.

81. *Id.*

82. Jones & Ramirez, *supra* note 82.

83. ORG. OF AM. STATES: DEP'T AGAINST TRANSNAT'L CRIME, *On the Trail of Illicit Gold Proceeds: Strengthening the Fight Against Illegal Mining Finances Ecuador's Case* (Dec. 2021) [hereinafter OAS Ecuador], <https://oas.org/en/sms/dtoc/docs/On-the-trail-of-illicit-gold-proceeds-Ecuador-case.pdf>; Sean Doherty & Chris Dalby, *Brazil's PCC Complicates Fight Against Illegal Mining in Amazon*, INSIGHT CRIME (May 26, 2023), <https://insightcrime.org/news/narcogarimpo-pcc-complicating-brazils-fight-against-illegal-mining/>.

84. Mercedes Onofa, *Organized Crime's Illegal Mining Destroys Large Areas of Ecuador*, DIALOGO AMERICAS (Mar. 24, 2022), <https://dialogo-americas.com/articles/colombian-security-forces-dismantle-illegal-mine-in-the-amazon/>; Doherty & Dalby, *supra* note 83.

85. Maria Laura Canineu & Andrea Carvalho, *Bolsonaro's Plan to Legalize Crimes Against Indigenous Peoples*, HUM. RTS. WATCH (Mar. 1, 2020, 5:00 AM EST), <https://www.hrw.org/news/2020/03/01/bolsonaros-plan-legalize-crimes-against-indigenous-peoples>.

86. Gabriela Pereira & Fabio Murakawa, *"We can't lose the war against illegal mining," Lula says*, VALOR INT'L (Jan. 10, 2024), <https://valorinternational.globo.com/politics/news/2024/01/10/we-cant-lose-the->

Ecuador's overall gold industry is substantially smaller than either of its neighbors, and as such, its illegal gold mining is also significantly smaller. Data from the OAS indicates that in 2019, the entire country of Ecuador produced an estimated 6,293 kilograms of gold⁸⁷, or around 6.2 metric tons of gold. Ecuador exported 7,913 kilograms of gold (7.9 metric tons) in 2019, indicating the amount of illegal mining.⁸⁸ In comparison, using OAS numbers in 2019, Peru recorded 128.4 metric tons of gold being *legally* produced, and an estimated 14.6 metric tons being produced by ASMs.⁸⁹ Peru's ASM industry alone is estimated to be nearly twice as big as the entire Ecuadorian gold industry. This is not due to a lack of gold, there are still plenty of tapped and untapped deposits in Ecuador,⁹⁰ but instead due to economic considerations within the country. Ecuador has a smaller presence of TCOs compared to Peru and Colombia—a key factor in the development of criminal mining.⁹¹ Ecuador also has a significantly smaller legal gold market, with fewer ways to launder illegally mined gold.⁹² Ecuador has already established a Financial Intelligence Unit which has begun to combat existing gold laundering and establish preventative policies.⁹³ At this point, it is difficult to tell if these measures are successful or not. While a series of high-profile attacks by TCOs have recently rocked Ecuador,⁹⁴ it is still too early to establish if the violence would have happened sooner or been worse absent the existing policies.

Brazil is also a newcomer to targeting TCOs, but for different reasons than Ecuador. Brazil has long struggled with illegal logging and illegal mining in the Amazon, primarily on Yanomami land.⁹⁵ The Bolsonaro administration extensively opened up mining rights on

war-against-illegal-mining-lula-says.ghml.

87. OAS Ecuador, *supra* note 83.

88. *Id.*

89. OAS Peru, *supra* note 66.

90. Scott B. MacDonald and Bruce Zagaris, *Illicit Gold Mining in Ecuador—Challenges and Considerations*, GLOB. AMERICANS, (Jan. 25, 2022) <https://theglobalamericans.org/2022/01/illicit-gold-mining-in-ecuador-challenges-and-considerations/>.

91. OAS Ecuador, *supra* note 83.

92. *Id.* at 20.

93. OAS Ecuador, *supra* note 83.

94. Ana Cristina Basantes, *Daniel Noboa declares an 'internal armed conflict' in Ecuador after an armed commando breaks into a television station live on air*, EL PAIS (Jan. 9, 2024), <https://english.elpais.com/international/2024-01-09/daniel-noboa-declares-an-internal-armed-conflict-in-ecuador-after-an-armed-commando-breaks-into-a-television-station-live-on-air.html>.

95. Laura Sonter et al., *Mining drives extensive deforestation in the Brazilian Amazon*, NATURE COMM'N, Oct. 18, 2017, at 2.

indigenous land and turned a blind eye to illegal mining in the region.⁹⁶ Bolsonaro went so far as to cut federal funding to agencies that investigated claims of illegal mining or harvesting.⁹⁷ The election of Luiz Inácio Lula da Silva sparked a radical shift in Brazil's policy towards illegal mining in the Amazon.⁹⁸ Lula has been championing policies of internationalism, creating a mining database with the Amazon Cooperation Treaty Organization.⁹⁹ This requires member states to chemically examine illegal mined gold to create a forensic database, allowing investigators to determine where gold was illegally mined.¹⁰⁰ These efforts could not come sooner, as while Brazil internationalizes its response to TCOs, the TCOs themselves are also internationalizing. The First Capital Command (PCC) a prison gang that began in Sao Paulo, recently won a brutal gang war with the Red Command, another prison gang but based out of Rio de Janeiro.¹⁰¹ This victory allowed the PCC to expand into Paraguay, Uruguay, Colombia, and Bolivia.¹⁰² The goal of this expansion is to develop the infrastructure for the PCC to begin illegally mining gold in the Amazon.¹⁰³ While efforts by Brazil's security forces and intelligence, along with international cooperation, have been successful in preventing the PCC from gaining a foothold in the mining industry,¹⁰⁴ experts consider that absent stronger policy, it is only a matter of time before the PCC becomes entrenched in the region.¹⁰⁵

96. *Id.*

97. Stacey Na, *Securing (Land) Rights for the Indigenous People of Brazil*, CORNELL DIPLOMAT, June 9, 2023, at 20.

98. Rodrigo Machado Vilani, *The First Acts of Brazil's New President: Lula's New Amazon Institutional*, 50 ENV'T CONSERVATION 148, 148 (2023).

99. Andréa Barretto, *Brazilian Organized Crime Destroys the Amazon with Illegal Mining*, DIALOGO AMERICAS (Mar. 18, 2022), <https://dialogo-americas.com/articles/brazilian-organized-crime-destroys-the-amazon-with-illegal-mining/>.

100. Anthony Boadle & Ricardo Brito, *Brazil to share intel, technology with Amazon nations at Manaus police hub*, REUTERS (Jan. 22, 2024, 12:39 PM), <https://www.reuters.com/world/americas/brazil-share-intel-technology-with-amazon-nations-manaus-police-hub-2024-01-22/>.

101. *First Capital Command—PCC*, INSIGHT CRIME (Mar. 9, 2020), <https://insightcrime.org/brazil-organized-crime-news/first-capital-command-pcc-profile/>.

102. *Id.*

103. Doherty & Dalby, *supra* note 83.

104. Christopher Newton, *Can Brazil Keep Illegal Miners Off Yanomami Lands*, INSIGHT CRIME (Jul. 3, 2023), <https://insightcrime.org/news/can-brazil-keep-illegal-miners-off-yanomami-lands/>.

105. Valerie Wirtschafter, *The internationalization of organized crime in Brazil*, BROOKINGS (Jan. 24, 2024), <https://www.brookings.edu/articles/the-internationalization-of-organized-crime->

Ecuador and Brazil are on the forefront of TCO expansion into illegal mining, giving them the ability to cut these TCOs off at the root. While Peru and Colombia are battle entrenched and ridden with historic criminal enterprises, Ecuador and Brazil have comparatively inexperienced adversaries. These states need to take advantage of the opportunity to prevent the illegal gold industry from spiraling out of control.

C. ANTAGONISTIC STATES

While most states in South America have taken a definite stance against illegal mining, and have enacted policies to combat it, Maduro's regime in Venezuela has supported illegal mining and undermined efforts by other states to restrict it. Despite Venezuela acknowledging the widespread harm from illegal mining,¹⁰⁶ between 86–91% of all gold mined in Venezuela comes from illegal sources.¹⁰⁷ While illegal mining in Peru and Colombia is hidden deep in the jungle, illegal mining in Venezuela is open and easily viewable. Satellite footage shows large scale illegal mines in national parks in the state of Bolivar.¹⁰⁸ Reporters from the Venezuelan investigative journal Armando.info used public satellite data to find 3,000 illegal mining sites, airstrips, and other evidence of criminal enterprise.¹⁰⁹ Despite this public, accessible, and obvious information, the Venezuelan government has somehow failed to take any action against the miners, instead visiting the mines to collect bribes.¹¹⁰ This corresponds with the overall environment of criminal activity in Venezuela, as Venezuela's principle TCO, Cartel de los Soles, is headed by ranking members of the Venezuelan Army.¹¹¹ Venezuela uses these criminal groups to send kickbacks to the Regime, allowing Maduro to directly

in-brazil/.

106. *Venezuela: UN releases report on criminal control of mining area and wider justice issues*, OFF. OF THE HIGH COMM'R FOR HUM. RTS. (Jul. 15, 2020), <https://www.ohchr.org/en/press-releases/2020/07/venezuela-un-releases-report-criminal-control-mining-area-and-wider-justice>.

107. Global Initiative, *supra* note 12, at 16.

108. *Venezuela: Violent Abuses in Illegal Gold Mines*, HUM. RTS. WATCH (Feb. 4, 2020, 12:01 AM), <https://www.hrw.org/news/2020/02/04/venezuela-violent-abuses-illegal-gold-mines>.

109. Mariel Lozada, *How They Did It: Uncovering a Vast Network of Illegal Mining in Venezuela*, PULITZER CTR. (Jun. 3, 2022), <https://pulitzercenter.org/stories/how-they-did-it-uncovering-vast-network-illegal-mining-venezuela>.

110. *Venezuela: Violent Abuses in Illegal Gold Mines*, *supra* note 108.

111. Global Initiative, *supra* note 12, at 16.

profit from this illegal mining.¹¹² U.S. sanctions against Venezuela have decimated its economy, but illegal gold mining has allowed the regime to circumvent these sanctions, allowing Maduro to stay in power.¹¹³

This has led the Venezuelan government to exacerbate illegal mining across the region. Venezuela has funded the FARC and helped launder illegally mined gold.¹¹⁴ As the Venezuelan economy continues to worsen and its oil industry collapses, its reliance on illegal gold mining continues¹¹⁵, as does its reliance on TCOs. This is reflected in Maduro's 2016 Arco Minero decree, opening up the Orinoco River to mining.¹¹⁶ Criminal groups use forced child labor to keep costs down, while paying extensive kickbacks to the regime to make the mining worthwhile.¹¹⁷ The Venezuelan National Guard has checkpoints set up every 30 minutes along the river, showing the government's control over the criminal mining.¹¹⁸

Venezuela's behavior has become so substantially inadequate that the CSIS does not believe that neighboring countries can effectively combat criminal mining while Maduro is still in power in Venezuela.¹¹⁹ Even outside Venezuela, the regime funds criminal groups to illegally mine in other countries for the regime's benefit.¹²⁰ Venezuela will also offer safe harbor and transportation to groups when they are removed from other countries, such as the ELN and the FARC.¹²¹ Refugees and migrant testimony reveals just how integrated

112. Moises Rendon et al., *Illegal Mining in Venezuela Death and Devastation in the Amazonas and Orinoco Regions*, CSIS BRIEFS (Apr. 2020), https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/200415_Rendon_IllegalMining_WEB%20FINAL.pdf.

113. Javier Corrales, *Authoritarian Survival: Why Maduro Hasn't Fallen*, 31 J. DEMOCRACY 39, 48 (2020).

114. Global Initiative, *supra* note 12.

115. Venez. Investigative Unit, *Venezuela Security Policy: Illegal Mining and Deforestation*, INSIGHT CRIME (Jul. 5, 2023), <https://insightcrime.org/news/criminal-threats-venezuela-illegal-mining/>.

116. *Venezuelan People and Forests Suffer as Gold Mining Advances*, GLOB. FOREST WATCH (Mar. 25, 2021), <https://www.globalforestwatch.org/blog/commodities/arco-minero-venezuela-gold-mining/>.

117. Bram Ebus, *Digging into the Mining Arc: Introduction*, INFOAMAZONIA (Jan. 15, 2018), <https://arcominero.infoamazonia.org/story>.

118. *Id.*

119. Rendon et al., *supra* note 112.

120. Douglas Farah, *The Maduro Regime's Illicit Activities: A Threat to Democracy in Venezuela and Security in Latin America*, ATLANTIC COUNCIL (Aug. 2020), <https://www.atlanticcouncil.org/wp-content/uploads/2020/08/The-Maduro-Regime-Illicit-Activities-A-Threat-to-Democracy-in-Venezuela-and-Security-in-Latin-America-Final.pdf>.

121. *Id.*

the state and the TCOs are in Venezuela.¹²² Ultimately, the Venezuelan government itself has become a state sponsor of international criminal mining, profiting off of the humanitarian disaster it is creating.

D. STATE ACTORS OUTSIDE OF SOUTH AMERICA

Other countries have taken steps to address criminal mining and other forms of international organized crime. These efforts vary in success, but their successes (and failures) provide for guidance when shifting towards solutions. These other efforts include international organizations, regulations on related commodities, and demand side regulations in import countries.

In 2000, the United Nations adopted the United Nations Convention against Transnational Organized Crime (UNTOC).¹²³ While a laudable step, the UNTOC is terminally vague to the point of being unenforceable.¹²⁴ The UNTOC allowed for criminalization of many aspects of organized crime; a bulk of prosecutions were still brought within bilateral and multilateral frameworks.¹²⁵ Additionally, while developed countries continue to work together, the gap between developed and developing countries has widened.¹²⁶ As a result, the UNTOC has the highest prosecutions in the U.S. and China, and no discernable impact on prosecutions in the developing world.¹²⁷ Additionally, geopolitical shifts have mitigated the political will to further develop the law against TCOs.¹²⁸ The UNTOC was ratified in 2000, but by the end of 2001, counter terrorism was pushed to the top of the international agenda.¹²⁹ The additional implementation of the UN Convention against Corruption also sapped

122. Bram Ebus & Thomas Martinelli, *Venezuela's Gold Heist: The Symbiotic Relationship Between the State, Criminal Networks, and Resource Extraction*, 41 BULL. OF LATIN AM. RSCH. 105, 105 (Jan. 2022).

123. G.A. Res. 55/25, U.N. Convention Against Transnational Organized Crime (Nov. 15, 2000) [hereinafter UNTOC].

124. Walter Kemp, *Time for a Global Strategy Against Organized Crime*, GLOB. INITIATIVE AGAINST ORGANIZED CRIME (Jan. 23, 2024), <https://globalinitiative.net/analysis/global-strategy-against-organized-crime/>.

125. Ian Tennent, *Fulfilling the Promise of Palermo? A Political History of the UN Convention Against Transnational Organized Crime*, 2 J. OF ILLICIT ECONOMIES AND DEV. 53,62 (2021).

126. *Id.* at 63.

127. *Id.* at 64.

128. *Id.* at 65.

129. *Id.* at 65.

political will to deal with organized crime in the aggregate.¹³⁰ So while the UNTOC was impressive in 2000, 24 years later, it has not lived up to its promise to be an effective mechanism against organized crime.

Internationally, gold is not the only fungible commodity that has been criminally mined. The most famous and prominent form of illegal mining is likely conflict diamonds.¹³¹ In response to these blood diamonds, the Kimberley Process (KPCS) was created to limit the proliferation of blood diamonds.¹³² As opposed to being a bottom-up mechanism by states, the Process was first initiated by the United Nations in January of 2001.¹³³ While agreement with the Kimberley Process is voluntary, 54 states have joined so far, which cover 99.8 of all rough diamonds mined.¹³⁴ The KPCS differs from other international agreements in numerous ways. Civil society has an active role in the enforcement of the Process.¹³⁵ This gives many victims of conflict diamonds an active role in preventing these harms from being recreated upon others.¹³⁶ The KPCS is also entirely voluntary, and no legally binding action can be taken by the committee.¹³⁷

Despite this, the KPCS has been remarkably successful. By 2009, in just 6 years, the KPCS had reduced conflict diamonds from 15% to .04%.¹³⁸ Additionally, the KPCS had remarkable instances of self-policing by member states.¹³⁹ Israel expelled one of its diamond exchange members following an illegal importation of diamonds from Zimbabwe which was banned at the time¹⁴⁰ and the DRC voluntarily cut off trade due to an inability to meet with KPCS protocols.¹⁴¹ That being said, the KPCS is not perfect. Since the KPCS is entirely voluntary, any state actor that chooses not to participate in the Process is not bound. This has led to a conflict with, ironically enough,

130. *Id.* at 66.

131. Audrie Howard, Note, *Blood Diamond: The Successes and Failures of the Kimberley Process Certification Scheme in Angola, Sierra Leone and Zimbabwe*, 15 WASH. U. GLOB. STUD. L. REV. 137, 137 (2016).

132. *Id.*

133. *Id.* at 145.

134. *Id.*

135. Eli G. Burton, Comment, *Reverse the Curse: Creating a Framework to Mitigate the Resource Curse and Promote Human Rights in Mineral Extraction Industries in Africa*, 28 EMORY INT'L L. REV. 425, 432 (2014).

136. *Id.* at 468.

137. *Id.* at 434.

138. *Id.* at 433.

139. *Id.* at 434.

140. *Id.*

141. *Id.*

Venezuela.¹⁴² The Venezuelan government would pay TCOs to use child labor to mine diamonds, then smuggle them across the border and launder the diamonds before selling them to prop up the regime.¹⁴³ Sounds familiar. Even smugglers interviewed by TIME magazine admitted that the KPCS was failing to enforce Venezuela's behavior.¹⁴⁴ The striking similarities between Venezuela's behavior towards diamonds and gold, and the KPCS inability to mitigate this behavior is telling when it comes to approaching state regulation.

Finally, it is important to note that demand side importers bear some accountability when it comes to importing illegally mined gold. Gold is exported in large quantities to repeat players, specifically the U.S., Canada, and Switzerland.¹⁴⁵ While it is true that it is difficult to trace gold once it is smelted,¹⁴⁶ the gold has to go through dealers and be sold by someone to importer nations.¹⁴⁷ While Switzerland has begun to deal with its storied history of money laundering, its internal audits are positive to the point of being unbelievable.¹⁴⁸ There are different economic mechanisms that are required when examining importer countries, so they will not be present in the analysis below, but it is worth noting that ending criminal mining is not only on the exporting and producing countries. Countries that import gold, especially those with a history of money laundering,¹⁴⁹ also need to examine and adjust their standards and practices. Criminals need people to buy their gold, and so long as Switzerland and the U.S. are buying it, they are complicit in all of the atrocities that the TCOs have committed.

III. ANALYSIS

With the understanding of the situations within relevant

142. *Id.* at 437.

143. Girish Gupta, *Not Just Out of Africa: South America's "Blood Diamonds" Network*, TIME (Aug. 20, 2012), <https://world.time.com/2012/08/20/not-just-out-of-africa-south-americas-blood-diamonds-network/>.

144. *Id.*

145. Global Initiative, *supra* note 12, at 17.

146. Dixon & Schouwstra, *supra* note 51, at 133–36.

147. Global Initiative, *supra* note 12, at 17.

148. Joras Ferwerda & Peter Reuter, P. *Learning from Money Laundering National Risk Assessments: The Case of Italy and Switzerland*, 25 EUR. J. CRIM. POL'Y RSCH. 5, 16 (2019).

149. David Muhlemann & Stefan Mbiyavanga, *Natural Resources and Money Laundering: Commodity and Precious Metals Deals from the Perspective of Swiss Money Laundering Law*, OECD GLOB. ANTI-CORRUPTION & INTEGRITY F. 6 (2018), https://edoc.unibas.ch/63419/1/20180409093335_5acb174fdd733.pdf.

countries towards criminal gold mining, it is time to make policy recommendations. The recommendations are going to be necessarily broad, as at a certain level, states need to tailor their responses based on state capacity and political will, but there are goals and frameworks that should be followed and practiced. These recommendations will look at the coordination of efforts, the interaction with states, and shifting focus to those most affected by criminal mining.

A. STATES NEED TO COOPERATE WITH EACH OTHER

The Kimberley Process was successful because states worked together.¹⁵⁰ Right now, affected states are moving on their own against TCOs. When Peru cracks down on crime, the criminals shift to Colombia, when Colombia is able to retaliate, they move back to Peru. Absent a coordinated effort, TCOs are able to dodge borders and evade state responses to their action. While the states may temporarily lower their own instances of criminal mining,¹⁵¹ so long as they are working independently, TCOs will be able to circumvent, creating an ebb and flow to criminal mining. By working together in a coordinated effort, states can mimic the success of the Kimberley Process, and drive TCOs and criminal mining out of the market entirely.

Coordination also allows for the financiers of criminal enterprises to be targeted. While it is worthwhile to shut down mines and arrest soldiers, ultimately, it is the financiers that need to be removed from the market to enact real change.¹⁵² Often, these financiers are not in the country where the illegal mining is taking place. Cutting off the capital investments will limit the new mines that can be created, making destroying infrastructure even more impactful. Right now, countries are playing an expensive and violent game of whack-a-mole. Going after the coffers of the TCOs will allow state actors to shut down these organizations permanently.

B. STATES NEED TO TREAT VENEZUELA AS AN ANTAGONISTIC FORCE

States need to have a plan to deal with Venezuela. This does not need to be full on regime change as some authors have suggested,¹⁵³ but states need to understand that Venezuela is not interested in

150. Howard, *supra* note 131, at 146.

151. See OAS Peru, *supra* note 66, at 29.

152. Global Initiative, *supra* note 12, at 60.

153. Farah, *supra* note 120, at 8; Rendon, *supra* note 112.

dismantling its criminal mining enterprise. Fundamentally, the criminal mining business has been incredibly lucrative for Maduro's regime.¹⁵⁴ The experiences of the Kimberley Process are prophetic here: Venezuela was actively using its participation in the system to undermine the enforcement overall.¹⁵⁵ For this reason, it is incredibly disheartening that Brazil invited Venezuela to join its ATCO system of processing gold.¹⁵⁶ This database is meant to create the necessary data to allow forensic geologists to actually determine the origin of gold¹⁵⁷ and if it is legal or not. If Venezuela is allowed to submit its own samples and access the database, all available evidence indicates that the Maduro regime will use this access to circumvent the regulations.

The difficulty for the current system is that it assumes, like the Kimberley Process did, that Venezuela is interested in creating a set of legal regimes and frameworks that provide a basis of law for all states.¹⁵⁸ As of right now for Venezuela, the political and economic benefits of mining outweigh the costs,¹⁵⁹ especially as other countries, such as Peru and Colombia, disproportionately bear the harm of this illegal mining.¹⁶⁰ This means that Venezuela's interests and incentives are radically different from other states: Venezuela does not want the mining to stop.¹⁶¹ So, if countries actually want to make significant changes towards the rampant illegal mining, these countries need to change how they perceive and treat Venezuela. Just as Venezuela sabotaged the Kimberley Process, state actors should be suspicious of Maduro's regime and prevent opportunities for sabotage. States do not need to go so far as regime change in Venezuela, but treating Maduro's regime as a rogue and hostile actor will be necessary for combatting criminal mining.

C. STATES NEED TO REMEMBER WHO THE VICTIMS ARE

States need to remember that criminal mining is the result of the economic conditions facing ASMs. When Peru and Colombia crack down on ASMs and alienate them, it provides TCOs the opportunity to exploit them. ASMs face the brunt of human trafficking, sexual

154. Farah, *supra* note 120, at 8.

155. Gupta, *supra* note 143.

156. Boadle & Brito, *supra* note 100.

157. *E.g.*, Dixon & Schouwstra, *supra* note 51.

158. Gupta, *supra* note 143.

159. Farah, *supra* note 120, at 7.

160. Global Initiative, *supra* note 12, at 26–27.

161. Farah, *supra* note 120, at 8.

exploitation, and environmental problems stemming from criminal mining.¹⁶² Blaming and criminalizing the victims of these groups will allow for increased exploitation by TCOs. This means that ASMs should be provided with a clear and concise path to formalization, one that is realistic for ASMs to actually participate in. Formalization will allow states to better regulate the practices of ASMs and protect the miners from predatory TCOs, but that process needs to be in cooperation with the ASMs, or else it will repeat what has already happened in Colombia and Peru.¹⁶³ ASMs can commit harmful practices, but being sacrificed to TCOs will not remedy these harmful practices, instead formalizing in a cooperative way will help the state to combat the threats and harms of TCOs.

States need to also give civil society a seat at the table when combatting TCOs. As Ecuador shows, civil society is threatened by TCOs just as much as the state is.¹⁶⁴ The Kimberley Process gave civil society a necessary seat at the table, and allowed the victims of blood diamonds to have a say in their justice.¹⁶⁵ Conversely, the UNTOC did not give civil society an active role in participation and has failed in its widespread goals.¹⁶⁶ Ultimately, illegal gold mining is a societal ill that impacts already vulnerable groups.¹⁶⁷ Part of stamping out illegal gold mining will require providing care and justice for the victims of this mining. In this way, the UNTOC failed to provide tangible policies that assisted victims.¹⁶⁸ Giving civil society an active role will allow for a more successful implementation of any policy because it provides a direct strategy to assist and support the victims of illegal mining. In this way, civil society is an essential component to change in the region. State actors need to model the successful Kimberley protocol, as opposed to the unsuccessful UNTOC when it comes to incorporating civil society into change.

Finally, states need to be comfortable using international frameworks to provide the legal basis for prosecutions. Even though the UNTOC is enforced, the majority of prosecutions exist at the bilateral level, not under international agreements.¹⁶⁹ The UNTOC specifically gives provisions to counter human trafficking,¹⁷⁰ which is

162. Global Initiative, *supra* note 12, at vi.

163. *Id.* at vii.

164. OAS Ecuador, *supra* note 83, at 5.

165. Howard, *supra* note 131, at 146.

166. Office of the High Commissioner of Human Rights, *supra* note 106.

167. Global Initiative, *supra* note 12, at ix.

168. Office of the High Commissioner of Human Rights, *supra* note 106.

169. Tennet, *supra* note 125, at 65.

170. UNTOC, *supra* note 123, at 43.

a specific comorbidity with illegal gold mining.¹⁷¹ The laws and frameworks necessary to counter illegal mining exist on the book, but because the law was so vaguely written, states are unwilling to use it.¹⁷² While states create more robust programs to address the scourge of illegal mining, the imperfect UNTOC can be a stopgap measure. Increased case law and prosecutions will clarify the vagueness of the law, and countries such as the U.S. and China, which regularly pursue prosecutions under the UNTOC,¹⁷³ can provide expertise and experience to assist with prosecutions. The UNTOC is not a perfect law, but in the absence of robust legislation, it can still provide prosecutors with tools to address illegal mining.

IV. CONCLUSION

The situation in South America has grown increasingly dire with regards to TCOs and criminal mining. Ultimately, the damage being caused to the Amazon and the people who call it home is not extraterrestrial in nature, but a result of a series of invidious organizations that are looking to capitalize on a group of economically marginalized and desperate workers. By examining both the current situation of mining, the policies of five countries, and international agreements, there are guiding principles for policies moving forward. When there is extraordinary, or extraterrestrial, attention, prosecutors are able to crack down on illegal mining, but successful prosecutions should not be an out of this world event.

171. Global Initiative, *supra* note 12, at 37.

172. Tennet, *supra* note 125, at 64.

173. *Id.*