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„Illegal trade in natural resources. What can Brussels do?“

I) A destructive business for people and state.

The Democratic Republic of the Congo is one of the most mineral-rich countries in the world. Unlike its direct neighbors in the East (Burundi, Uganda and Rwanda), Eastern Congo is characterized by a huge (minimum: 200 000 workers¹), militarized (by armed groups and the Congolese army) and informal mining sector. This situation has created a vicious circle between illegal trade and widespread violence (2004-2010). Today, even if the war is over, low level conflict lingers on in Eastern Congo, and its consequences resonate strongly in the mining sectors. The economy in that part of the DRC functions along the lines of a war-type economy where the business interests of high ranking officers, the drive for mines by rebel groups and the collaboration between businessmen, politicians and officers remain extremely strong. The result is wide spread use of violence to resolve business disputes.

A confluence of negative indicators suggests that further trouble could be on the horizon. Despite the lucrative business, the miners themselves live in a state of abject poverty and are paid only US \$1-3 per day. Given the absence/ineffectiveness of state authority and law enforcement mining becomes a risky business - not only the risks of mine collapse, but also the violent nature involved in “doing business”. Bad governance exacerbates the situation, as high profit margins of illegal trade forge corruption in local government and administration creating a flourishing parallel economy that is much more profitable than the formal one; this trade has turned into a direct obstacle to state-building. And Green issues are at stake. Given the absence of regulation, informal mining takes place in the national parks (Virunga and Kahuzi Biega); water pollution and destruction of the tropical forest continue unabated posing serious concern for longer term environmental damage.

II Responses to this situation:

- Militarizing the trade (Congolese approach)

President Kabila announced in September a ban on mining exploitation in South and North Kivu and Maniema. The intention is that this temporary suspension will be followed by military operations in order to control some mining sites. Despite apparent good intentions, the militarization of the mining areas cannot be considered as real progress: replacement of armed groups by corrupt officers in the mining areas can certainly not be regarded as progress in good governance (in 2009, the Congolese prime minister himself asked for the demilitarization of the mining sites and nothing happened!).

- Policing the traders (UN approach)

Instead of boycotting the minerals from the DRC, this approach tries to impose smart sanctions against the traders involved in this illegal business through visa bans and assets freezing mainly, against traders who are on the list made by the UN panel of experts on illegal trade of minerals in Eastern Congo.

¹ International Alert report 2009, Etude sur le rôle de l’exploitation des ressources naturelles dans l’alimentation et la perpétuation des crises dans l’Est de la RDC.

But low level of implementation of the sanctions by the neighboring and Asian trading countries (Dubai, Far East) seriously weakens this approach.

- Formalising the trade (pro-development and pro-business approach)

Two important international projects work along this line in Eastern Congo:

- the UN « centres de négoce » in the Kivus;
- the certification schemes by the International Tin Research Institute (ITRI) and the Federal Bureau of Geo-Sciences and Natural Resources of the Federal Republic of Germany (BGR)

The UN project tends towards improving the administrative controls on the mining sites of the exports. It has just entered its implementation phase. The German certification scheme tries to harmonize the customs system in the Great Lakes region and thus helps reduce incentives for contraband. International Conference for the Great Lakes region in charge;

The UN Security Council has also recommended that extracting companies exert due diligence by checking their supply chain to make ensure they don't buy from traders linked to armed groups. The OECD is working on due diligence guidelines for the industry, too.

But all these approaches depend on the good will of the industry and the governments in the region. And most of the present actors in the extraction business have very few incentives to abide by these rules.

- Banning conflict minerals (US approach)

On 21 July 2010, US President Obama signed into law the conflict mineral legislation. Section 1502 of Chapter XV (Miscellaneous Provisions) of the Dodd-Frank Wall Street Reform and Consumer Protection Act requires:

- Annual disclosure of whether conflict minerals, including coltan, cassiterite, wolframite, and gold did originate in the DRC or adjoining countries within 270 days.
- A description of measures taken to exercise due diligence on the source and chain of custody of conflict minerals; of the products manufactured or contracted to be manufactured that are not conflict-free; and the facilities used to process the conflict minerals, the country of origin of the minerals, and the efforts to determine the mine of origin, in case the conflict minerals did originate from the DRC or adjoining countries.
- Production of a map of mineral-rich zones, trade routes, and areas under the control of armed groups in the DRC and adjoining countries within 180 days and to be updated every 180 days. These maps will be based on information from the UN Group of Experts, the Congolese government, the governments of adjoining countries and other UN member states, as well as local and international nongovernmental organizations.

The US law makes due diligence mandatory and can be considered big progress even if, at this stage, it is still unclear what would effectively happen to companies that do not comply with these requirements. USAID is also working on a Strategic Action Plan on Conflict Minerals in Eastern Congo.

III Conflict minerals, an issue of global ethics for Europe

Minerals trade is a highly politicized industry in today's globalised economy. In order to avoid that extractive industries contribute to fuel conflicts it is absolutely vital to promote transparent

governance of the minerals trade. This will require a strong international coordination between states in order to make due diligence compulsory, and between states and the industry, in order to set up efficient certification schemes. Europe should quickly follow the American move and make due diligence compulsory in the EU. In the region, it is essential that international agreements on certification are signed by all the countries involved in the industry. In order to make real progress all donors agencies have to coordinate their efforts. Today the EU, the USA, the World Bank are very active in the DRC in the mining reform sector. They all meet the same difficulties with the Congolese administration and should coordinate their response.

Conflict minerals trade is a rent seeking business that is benefiting many stakeholders in the region: from armed groups, local and international businessmen to the governments of the Great Lakes region. The high rents garnered from this illicit business provide a strong incentive for the actors involved to tolerate such practices and even encourage them. This comes with significant cost to the local population, and at the expense of stability and good governance. The trade must now be reined in, monitored and put under a political reality check to ensure that peace in the Congo will come for all. And be of long duration.

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