

“Mining Communities in the DRC: New Challenges and Opportunities for Sanctions”

New York Tuesday, March 31, 2015 – Wednesday, April 1, 2015

Summary, Tuesday 31, 2015

After a brief welcome by **Michele Auga**, Executive Director, FES, **H.E. Ambassador Gata Mavita wa Lufuta**, Permanent Representative of the Democratic Republic of the Congo to the United Nations, emphasized that the country has had to overcome a period of mismanagement and inappropriate policies in the 1990s, and despite its immense human and natural resources, the DRC is among the least developed countries. Since 2010, the government has put in place an administrative structure including institutions for transparency, management, coordination and capacity, to correct deficiencies in the sector and attract investment. Despite all the progress made on mineral traceability, there is still illegal smuggling, including gold, by armed groups and involving neighboring countries. The issue is complex and requires regional and international cooperation. UN targeted sanctions must be reinforced and solutions will come from increased collaboration with all relevant actors.

Rico Carisch, Partner CCSI, noted that the DRC wars are over, yet security and prosperity are elusive and reserved for a very few political and other elites, and select foreigners. The changed situation requires a change in the mindset of the Security Council. If one could make a case for corruption as a direct cause of international instability and violence, it can easily be done in Eastern DRC. The Security Council and Sanctions Committee, stymied by divisions among their members, must become reinvigorated. The question arises of the role of sanctions particularly for the protection of communities dependent on the natural resources trade.

Panel 1: Are Congolese Institutions Ready for Peace?

Raoul Kitungano, Director of the NGOs and Networks: Justice for All, Asbl; Bukavu, South Kivu, and **Alexis Muhima**, Counsel and Executive Director of the Observatory of Congolese Civil Society for Peace Minerals, Goma, North Kivu, DRC, converged on the view that many good mechanisms in place were hampered by corruption and a lack of collaboration among Congolese government agencies.

Mr. Kitungano presented detailed and very technical data on how the new Congolese institutions implement their work, as evidenced by the comparatively large quantity of Cassiterite being exported with the help of the national and regional traceability system, whereas other minerals seemed virtually untouched in N. Kivu and Maniema. Challenges for civil society are significant throughout the

country. In addition to corruption and a lack of governance, human rights and respect for environmental standards are problems. Under the circumstances, how can one ensure minerals are not related to conflict or trafficking networks? How can one ensure that revenues from natural resources become sources of prosperity and peace for the populations and the development of the state?

Mr. Muhima observed that illegal trafficking is difficult to monitor and provides a number of challenges for the government in trying to clean up the mining sector. There are many indications of money laundering networks and other deficiencies in the gold trade, including the involvement of neighboring countries. In North Kivu there is no legal comptoir for gold - an enterprise legally authorized to export gold. This left the question of how the trade in gold can ever be legalized? Taxes on gold are higher in the DRC compared to neighboring countries, which leads producers to smuggle to neighboring countries to benefit from more favorable levies. He called on the UN to support the DRC in finalizing the process of reform of the security and justice services and capacity building, and assist the DRC in guaranteeing the recovery and increased control of Congolese due diligence.

During the discussion **Prof. Ntumba Luaba**, Executive Secretary, ICGLR, expressed the hope that civil society would be part of a meeting in Kinshasa in April to fight against fraud in the minerals sector and to harmonize customs issues, and also hoped there would be a Rwanda summit regarding security in the DRC. He wondered if the title 'Are Congolese institutions ready for peace' meant that among the Congolese networks there are some that do not favor peace because conflict allows them to take advantage of the exploitation of natural resources. He also asked for clarification of Mr. Muhima's assertion concerning the dilution of monitoring mechanisms because of political influences, for which clarification was given.

Ambassador Gata Mavita wa Lufuta said that as with any country that has experienced war, it takes some time to get back on the right track. Some things can be done at the level of the DRC, but others have to be done with neighboring states. It's good to denounce things to the authorities but the country is a shared precious asset and we must all fight to protect it, he said. Regarding the security situation, he said that the army is still in the building process. Along with revising the mining code, the state is working to restore its authority, including police and legal services.

Gerard Nayuburundi, Regional Coordinator, ICGLR, said the ICGLR was still struggling to get its monitoring tools on the ground and would start to audit exporting companies before the end of April. Not having databases to track mineral flows from member states and beyond the region remained a challenge. ICGLR was engaging with buyers of gold from the region at a special conference in Dubai. ICGLR hoped to soon launch a pilot phase for tracking gold in Walungu.

Panel 2: Women and Mining Communities

Caspar Sonesson, moderator, stated that UNDP had organized its practice around supporting countries in the mining and oil and gas sectors, particularly the link with poverty reduction, environmental sustainability, conflict prevention, and women's empowerment. In the DRC, UNDP has worked with UNICEF and FAO on an integrated approach to address livelihood opportunities for miners and others in the community, strengthening agricultural production, social and health services in the mining community, access to credit and small business services, and strengthen the capacity of civil society organizations.

Hortence Migabo, Project Manager for Dynamique Femme et Mines, Bukavu, South Kivu, DRC, spoke about the lack of security in every sense for women because of the still widely practiced and customary discrimination against women as second class citizens, allowed only to work in the lowest level jobs; often exploited by their employers and forced into prostitution by economic hardship and lack of other opportunities in order to supplement their income and support their children. Women lack economic and political power and continue to pay a heavy price for the conflict that is not settled in some parts of the South Kivu. Women and girls in mines are undereducated and their work is undervalued. Many girls suffer from rape, forced marriage, and prostitution. Women who work directly or indirectly in mines do not control their income and face abuses by men. She recommended to the Congolese government to set up a legal framework that integrates protocols against the illegal exploitation of natural resources, integrates the gender dimension and takes into account resolution 1325.

Angone Mabolia, Regional Expert, Natural Resources, GIZ Burundi, said that GIZ's contribution to the ICGLR had been in the form of gender guidelines based on decisions at the Kampala summit in 2011, on the need to strengthen the link between mining and regional and national initiatives to mainstream gender in the minerals sector. Among the findings were that more education and technical expertise are needed to advance on the mining chain. Mining is also capital intensive and cultural resistance to women in artisanal mining could be circumvented by prioritizing their financial inclusion.

Ambassador Gata Mavita wa Lufuta observed that the situation of women as described by Ms. Migabo was more somber than he would have expected given that the education policy was consistent throughout the country. Her recommendations regarding the inclusion of gender aspects in the mining code should properly be presented to the government in the country, where the parliament is reviewing the mining code. He questioned her description of a trade in children and said that mining is less a matter of discrimination against women and more a matter of the physical demands of the work.

Mr. Carisch confirmed that the picture presented by Ms. Migabo about the situation of women and children in mining communities was accurate from his own research.

In fact, many women were coming to the conclusion that there were so many downsides to mining that they considered it safer and sounder to turn to farming. Mining produced irregular and unpredictable income, owed partly to male miners being undisciplined and the income from farming sustains the family throughout the year.

Mr. Kitungano also confirmed that debts are sometimes repaid by giving a child to whom the person is indebted and that human trafficking was also taking place.

Ms. Migabo noted that by giving women access to more education and training they could qualify for management jobs that do not require physical strength, such as the job of geologist.

Prof. Luaba inquired about possible actions that may have been taken in response to the challenges discussed, for example, filing a lawsuit or pressing charges regarding human trafficking. He suggested to Ms. Migabo to collaborate with Angone Mabolia (GIZ) and Gerard Nayuburundi (ICGLR) to have a dialogue at all levels, to get the attention of the Ministries. Perhaps she could contact the Institute of Professional Training. The African Development Bank had asked to work with the gender dimension and has a fund for this purpose.

Ms. Migabo in response to comments and questions replied that in the mining environment, there were no laws, only practices. Many actions had been taken to call perpetrators to account, but in one case there was an arrest followed by release. Her organization did not have a lot of resources, but tried to promote new laws against gender bias and make people aware.

To another question regarding how the UN could play a role in supporting the government and civil society in terms of natural resources and for the prevention of sexual and gender based violence, Ms. Migabo remarked that UN agencies tended to work more with state institutions than with civil society and that there was a tendency not to give funds to grassroot organizations.

Mr. Kitungano noted that uncontrolled entities in the country, and authorities in the country, were demanding whatever payment they wanted. The first approach should be one of mutual solidarity – a methodological approach for strengthening women’s financial autonomy. Promotion of literacy education is important as is the need for rapprochement with a special branch of police for women and children, in charge of gender only. There is great distance between the places where crimes are committed and the places where the courts are located.

Mr. Nayuburundi said that the ICGLR secretariat’s new structure has given more focus on the fight against gender based and social violence. He pointed out that there is another regional office in the Kampala center specialized in training and capacity building. Now that it is established, the hope is that it will look at member states of the ICGLR.

Caspar Sonesson offered the following summary: that there is still work that has to be done around the legal framework issues, mining code, social issues, incorporating the role of women in other parts of the legal framework, enforcing of capacity of mining administration and legislation; the role of law enforcement. More awareness and advocacy are needed, raising awareness of women themselves in the communities; a need for capacity, with civil society organizations and women's organizations playing their role in monitoring, supporting implementation of resolutions on human rights; more capacity and training for women – being able to see more economic opportunities higher up on the chain; training and support for alternative livelihoods, including access to finance, small businesses, and vocation training; partnerships; and collaboration around civil society, the UN, government, the private sector, and small operators.

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Panel 3: Mining Companies and Civil Society¹

Franck Kabwe, Executive Director, Maniema Freedoms, Kindu, Maniema, stated that an important issue related to the illegal exploitation of natural resources was that geological surveys carried out to assess the level of natural resources are done by foreign companies without the participation of civil society stakeholders. Consequently, some contracts are underestimated. Another problem, he said, was that mining rights are hoarded or frozen and contracts are consequently set up with foreign partners. Also, trade in natural resources takes place without government control or the needs of the local communities taken into account. The displacement of local populations by international mining companies operating in the Eastern Congo exacerbated tensions and caused bloodshed. Many foreign companies lack mitigation plans for the environment with resulting deforestation and exploitation of biodiversity.

Matti Lehtonen, Programme Officer, Post Conflict Issues, UNEP remarked that large numbers of miners in the DRC derived their livelihood from artisanal mining. The work was tough and physically hard and it was difficult to accumulate capital and move up the mining chain. Large investment projects often do not provide large-scale employment, and revenues from investments do not trickle down to the community level. The DRC constitutes half of Africa's forests, water, and the highest level of biodiversity and inland fisheries, and the economic worth of these resources are often undervalued. What needs to be done to ensure sustainable development and balancing economic growth with social and environment aspects? Environmental impact assessments are needed but the Environment Ministry is under-resourced. The MONUSCO SRSG recently reported that 98% of the net benefits from natural resources flow to international criminal networks, denying taxes and royalties to the Congolese state. What can the UN do to better exchange information about the volume and value of this trade, and about investigating smuggling routes and cross-border markets? Carrots are sometimes useful but sometimes stronger responses, along with regional cooperation, are needed.

Gerard Nayuburundi, Coordinator of the Technical Unit on Natural Resources, ICGLR, observed that many of the issues discussed are supposed to be addressed within the framework of the ICGLR regional certification mechanism which contains standards established for the relocation of communities, environmental issues, community relationships, and livelihoods. Audit systems are being developed for the entire process from mineral transport up to the point of export. He supported Mr.

¹ 1 During the Panel 3 debate, allegations were made about cyanide contamination of water containment pools within mining operations. The matter is being further examined and as soon as additional information is available and all affected parties have been heard, this summary will be updated and completed.

Kabwe's assertion of a lack of support to local communities by international companies, and also noted that a further problem was that the DRC government has not set aside areas for artisanal miners as it was supposed to, which contributes to tensions between mining companies and artisanal miners. There are also deficiencies in CESCO's ability to improve working conditions for artisanal miners. The ICGLR pact on security, stability and development provided for the participation of civil society in natural resources implementation, including the protocol of the fight against the illegal exploitation of natural resources. The regional civil society forum (a sub-programme of the Democracy and Good Governence Programme) includes a regional coalition of civil society organizations. Civil society organizations – including regional and international – are also represented in the Audit Committee. Gender mainstreaming in the mining sector is another area that requires the cooperation of civil society organizations. The ICGLR would benefit from real-time information from civil society organizations concerning incidents on the ground.

Franck Kabwe noted that social responsibility on the part of mining companies is an obligation, not an act of goodwill. He took exception, he said, to any implication that the DRC lacked competencies and skills that were being sought elsewhere by these companies. Another mining company, AMVIN (Anglovaal Mining Limited) is setting up operations in the DRC without adequate procedures in place. In response to a question regarding how well the EITI (Extractive Industries Transparency Initiative) was functioning (of which the DRC is a member) Franck Kabwe noted that there are often discrepancies between the value of contracts that companies declared, and the value declared by the state.

International companies tend to bring employees in from the outside instead of employing local workers and to import large quantities of food, sometimes because local communities lack the support needed to organize themselves to supply the companies with local produce. Echoing an earlier question from a participant, he requested from Prof. Ntumba Luaba, Executive Secretary, ICGLR to know what coercive instruments exist to ensure that states comply with the with ICGLR mechanisms to which they had committed.

Gerard Nayuburundi noted in this regard that the Regional Certification Manual (page 24) contains a detailed list of responsibilities for mining companies toward the mining communities, including ensuring gender sensitivity and obligations for local employment. Compliance with the certification manual is subject to auditing. A regional survey on implementation for the entire region has recently been endorsed by the regional committee in Nairobi and will soon be launched in Lusaka as a platform for sharing experiences and training for Member States within the framework of EITI.

A State representative noted the importance of the work of the UN Group of Experts on the DRC on the financing of warlords in Eastern Congo. In his view, big companies have a useful role to play in the economic development of the Congolese

state. It is up to the state to define the framework for their operations with the involvement of local civil society organizations. EITI, by bringing together the state, civil society and the private sector at the same table, has helped to change the mindset.

Ambassador Gata Mavita wa Lufuta observed that in the Congolese state, surveys are first conducted before land is provided for agricultural purposes. He was unsure whether this is also the case for the allocation of land for mining purposes. He believed that when contracts were drawn up with mining companies, land for habitation and use by the local communities is first set aside. Mistakes made in this regard, including cases where the rights of the communities are not being respected, where products are being used and wastewater lakes created that resulted in the deaths of people in the community, need to be corrected. It is up to the Congolese state to enforce its contracts with the companies involved.

Panel 4: Going beyond the post-conflict phase of the DRC: a role for preventive and protective UN sanctions

Rico Carisch, Partner, CCSI, observed that as the Congolese state advances in its post-conflict stage, there is a need to devise ways to protect peace and security. There are examples of how sanctions as an important policy tool are being used in Liberia and Côte d'Ivoire in a preventive and protective manner.

Prof. Luaba said that the IGCLR had adopted a global and holistic approach to implementing the Six Instruments. More information was needed about sanctions implementation and enforcement as set out in reports of the UN Group of Experts on the DRC. It would be beneficial, he said, to have more information on enforcement of the travel ban and assets freeze. The Group of Experts should continue its investigations into financial flows that fund illicit activities of criminal networks and elites. Civil society should denounce situations where those subject to individual targeted sanctions are promoted, and support the efforts of the government to increase its control over the territory. The ICCLR intends to collaborate more with Member States, civil society organizations and women's organizations. More effort should be made to ensure that local communities benefit from economic and social dividends. He remarked that while South Africa employs engineers and doctors from the DRC, companies operating in the DRC appear to believe that there are no qualified Congolese.

Ambassador Julio Helder Lucas, Deputy Permanent Representative of Angola to the U.N., observed that the two parts of the title of the Workshop 'Mining Communities in the DRC' and 'New Challenges and Opportunities for Sanctions', should be separated, since, in his view sanctions should be confined to contributing

to peace and security through the targeting of criminal networks and armed groups. He noted that the reports of the UN Group of Experts on the DRC provided definitive evidence of the illegal exploitation of natural resources of the DRC related to the activities of foreign armed groups, including violations of humanitarian and human rights law, and the killing of wildlife and trafficking in wildlife products. Criminal networks were involved in smuggling a variety of minerals to Rwanda and Uganda, from which they were transported and sold on world markets. The demand side was not mentioned except in the case of gold, where the UAE was mentioned as the main destination. He recommended that the ICGLR launch a traceability mechanism for gold mining.

Sanctions must remain in place, he said, and if possible, act as a preventive and protective measure. Security Council press statements emphasized the importance of improving the contribution of Sanctions Committees and Expert Groups regarding the illegal exploitation of natural resources. The immense wealth of the DRC must benefit the Congolese people and end the activities of terrorist groups and external interference in order to see its future in peace, freedom and security.

Rico Carisch noted that the last time Security Council sanctions were used against individuals and companies engaged in the illegal trade in natural resources was 2007. For a number of reasons, there seemed to be an inability in the Security Council to respond to developments in the DRC. Civil society organizations had a great deal of information to offer, the government appeared to be receptive, and the ICGLR was involved and interested in reaching out and interacting with civil society. He wondered whether the Security Council and Sanctions Committee should consider consulting with the ICGLR when targeted sanctions cases were being considered.

Ambassador Lucas noted that the ICGLR was part of the Security Council's efforts with regard to the illegal exploitation of natural resources. Angola, as a member of the Security Council, who holds the Chair on the Working Group on Conflict Prevention in Africa, will organize two sessions, and an informal meeting with members of civil society, on the illegal exploitation of natural resources, in July and August 2015. Angola's help could be counted on, he said, in their position as President of the ICGLR.

Prof. Luaba remarked that under the ICGLR presidency of Angola, Member States were opening up and exchanging embassies and signing cooperation agreements. The ICGLR wished to stress sustainable development processes beyond sanctions, to promote integrative projects within the region, create employment opportunities, and a regional business chamber of the ICGLR. The aim was to strengthen peace and security, and the natural resources agenda required political and diplomatic support.

Responding to a question as to what measures can be taken against companies violating sanctions, **Rico Carisch** noted that sanctions are meant not as a punitive

measure but rather to modify behavior. In the case of violations by companies, access to assets including bank accounts, and insurance, can be curtailed.

Volker Lehmann wondered whether, given the tendency of some western companies to flout human rights and other regulations and engage in questionable behavior, the Security Council, with its political divisions, was too cumbersome to deal with certain situations. Perhaps what was needed, he said, is an upgraded transparency mechanism.

Samer Anton Ayed Naber, Minister Plenipotentiary, Permanent Mission of Jordan to the UN, stated that as Chair of the Sanctions Committee on the DRC, Jordan believed that there was a role the Security Council could play regarding the use of individual targeted sanctions to prevent sanctions violations in the form of illicit trade by armed groups and others, as established in reports of the UN Group of Experts on the DRC. The Council could also play a role, he added, in helping states to build capacity. Jordan was ready to establish a dialogue inviting the ICGLR Executive Director to address the Sanctions Committee and technical bodies and the World Bank, as a complement to the use of sanctions.

Rico Carisch noted that the ICGLR was almost fully ready to implement regional certification and wondered whether the Security Council could actively endorse a standard for ICGLR certification to be used as the benchmark for implementation.

In response, **Gerard Nayuburundi** remarked that the existing ICGLR mechanism was being expanded to all Member States and there are hopeful signs in that even Member States not within the pilot group, such as Zambia and Tanzania, are willing to participate in OECD due diligence guidelines.

Ambassador Gata Mavita wa Lufuta observed that from the discussions, there was a clear interest for the consolidation of peace in the DRC. The frank and fruitful exchanges during the past few days, he said, showed that much has been accomplished, but a lot remains to be done by all actors, the UN, civil society and companies. He regretted the reports by some participants of fraud committed by some representatives of government agencies, the army, police, transit countries, diggers, buyers, sellers, and companies

One of his recommendations, he said, was that all stakeholders and all sectors of Congolese society participate in the discussions to be held in Kinshasa on 17 and 18 April. He asked that civil society bear in mind that the government is not an enemy, but a partner with whom they must work and have regular dialogue, given that both parties share a mutual goal, the wellbeing of the Congolese people. He recommended that the ICGLR help the countries in the region to harmonize their legislation and that the international community find a way to ensure that international commitments including UN resolutions are respected. Sanctions could be strengthened by declaring an embargo on all minerals coming from neighboring countries that foster criminal activity, and on mining companies and individuals

violating ICGLR rules. Member States of the ICGLR must be required to implement the six instruments adopted by the heads of state.

Volker Lehmann remarked that while he understood the need for sanctions, he also saw circumstances where sanctions do not work, but where other UN mechanisms that try to address the issues are in place. The Human Rights Council in Geneva, for example, was discussing a binding framework for human rights violations. FES is a fruitful example of bringing together grass root activities with the international community including in countries that have a rich extractive industry and where bridges need to be built among various actors.

Lorraine Rickard-Martin, Partner CCSI, remarked that the discussions had brought out that there are many good mechanisms in place but the issue is how to make them work by ensuring compliance. The tools for restoring and maintaining international peace and security are limited. Sanctions have multiple purposes, such as in the cases of Liberia and Côte d'Ivoire where sanctions have a peace-building purpose. Often, individual targeted sanctions are in place but few individuals or entities are designated by the Committee. One possibility could be that companies that violated sanctions could be fined and the funds placed in escrow and used for the economic development of the country. The sanctions tool has much potential but its effectiveness depends on the level of political will.

Michele Auga, Executive Director, FES, noted that FES has a presence in the Great Lakes region, East Africa, in the DRC, and in Cameroon. The Workshop was a kick-off for a bigger program of case studies, she added. FES's purpose was to provide a platform for exchange with experts in NY to assess what is available in terms of tools and mechanism and what new instruments could be developed or current ones built on. Thanking all participants, she noted that FES looked forward to continuing its work with CCSI and that the conference outcome would be made available to participants