



**REPUBLIQUE DEMOCRATIQUE DU CONGO**

**MISSION PERMANENTE AUPRES DE L'OFFICE DES  
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**CONFERENCE**

***Impact of Illegal Economic Activities in Conflict Areas on  
Human Rights***

***Case study: “The Democratic Republic of the Congo”***

**STATEMENT**

**BY**

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**AMBASSADOR AND PERMANENT REPRESENTATIVE**

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*Check against delivery*

Mr. President,

Allow me at the outset, to express my gratitude to the United Nations University for Peace and the Permanent Mission of the Republic of Azerbaijan for inviting us to this Conference on *“The Impact of Illegal Economic Activities in Conflict Areas on Human Rights”*. It is an honor for me to be part of this important event and bring to the forefront of our discussions the experience of my country, the Democratic Republic of Congo (DRC). I will focus my presentation on the *Natural wealth of DRC and the failure to achieve development, preventing measures and the efforts to address the gap and the adoption of the New Mining Code*.

#### *A. Natural wealth of DRC and the failure to achieve development*

The increasing use of renewable energy technology is driving major demand for minerals such as copper and cobalt, a key ingredient in electric batteries. This could be a golden opportunity for the Democratic Republic of Congo, where the majority of the population lives in poverty. The DRC has an abundance of natural wealth, including a multitude of minerals such as diamonds, gold, copper, cobalt, cassiterite (tin ore) and coltan, as well as timber, coffee and oil. However, these vast resources have scarcely benefited the Congolese people. Instead, they have contributed to decades of conflict, numerous serious human rights abuses and violations of international humanitarian law.

Natural resources thus gradually became a driving force behind the war in my country. For instance,“ In 2002, the UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth came to the conclusion that all coltan mines in the east of the DRC were benefiting either a rebel group or foreign armies. “Ample evidence indicates that neighboring countries were financing their military expenditure with the profits from natural resource exploitation in the DRC.

In a light of the foregoing, a large part of the gold produced in the DRC's Ituri region “was exported through some neighboring countries, then re-exported as if it had been produced domestically. Foreign companies rarely controlled the source of the minerals, and sometimes paid the armed groups directly: “In a number of cases, foreign or multinational companies were directly involved in negotiations with perpetrators of serious human rights abuses, paying armed groups or providing them with facilities or logistics in order to exploit natural resources.” Trafficking of natural resources in the DRC, particularly during the conflict, was closely intertwined with other criminal networks, in particular those involved in arms trafficking. “Connections with these networks enabled the perpetrators of human rights abuses in the DRC to smuggle natural resources out of the country without

any difficulty, using the profits to purchase arms and commit yet further human rights abuses.”

The trade in diamonds is understood to have a key role in funding conflict even though, one of the most valuable resource my country possess is its large reserve of diamonds. Blood diamonds fuel conflict, civil wars and human rights abuses. They have been responsible for funding recent conflicts in Africa which resulted in the death and displacement of millions of people. During these conflicts, profits from the illegal trade in diamonds, worth billions of dollars, were used by warlords and rebels to buy arms.

### *B. Preventing measures and addressing the gap*

In the DRC context, the gap between the universal acceptance of Guiding Principles or other relevant preventing measures and the accountability for human rights violations by business enterprises is at its widest. Of course, States have a duty under international law to ensure protection for human rights and to prevent abuses by non-state actors, including businesses. In the past decade, the obligation for business companies to respect human rights has been increasingly recognized, as evidenced by the UN's "Protect, Respect and Remedy" Framework and the UN Guiding Principles on business and human rights. In addition to their responsibility to respect human rights, companies must be careful not to commit or be materially involved in illegal or criminal acts that result in human rights abuses abroad.

#### *1) UN sanctions, the Kimberly Process and the Guiding Principles*

Despite a set of preventing measures put in place there are still several examples of these human rights violations by corporate companies in my country. In response, the U.N. has drafted several resolutions and imposed sanctions in order to try and curtail the illegal trade, in one hand. In another hand, an international governmental certification scheme, known as the Kimberley Process, was set up to prevent the trade in conflict diamonds.

- **The Kimberly Process and other relevant measures**

Departing from some premises, namely the substantial amount of natural resources by which the region is endowed, that did not produce the socio-economic wellbeing of its populations, due to disastrous effects of armed conflicts; also the key problem of the missing linkage between the supply chain and the formal economy, the ICGLR member States pushed The Regional Initiative against the illegal exploitation of natural Resources, through the development of a comprehensive approach to the

predatory use of natural resources, aimed at breaking the link between mineral revenues and the financing of rebel armed groups.

In addition, the Initiative put into practice six specific tools in order to curb the illegal exploitation of natural resources in the region: a regional certification mechanism, implying the tracking of the chain of custody of four selected natural resources, namely cassiterite, wolframite, coltan and gold; the harmonization of national legislations, by translating to national legislation the provisions of the Protocol among ICGLR member States; The Regional Data base on mineral flows, foreseeing the establishment of a regional database on the production and trade with selected commodities in the Great Lakes Region; The Formalization, by encouraging the transformation of artisanal mining, to increase transparency and help reduce fraud; The Extractive Industries Transparency Initiative peer learning mechanism, and the extension of the initiative to cover small scale mining; Finally a Whistle-blowing mechanism, aiming at capitalizing on the knowledge of individuals witnessing or participating in illicit mineral activities.

The ICGLR connected its activities with other relevant actors in the areas of mutual interest. So is the case of OECD with the Due diligence on Responsible Supply Chains of Minerals from Conflict-Affected Areas, with the objective of preventing the extraction and trade in minerals from conflict areas; the GIZ, of Germany and through it the European Union, providing technical advice and support for the ICGLR; ITRI, an organization representing major tin producers; the Partnership Africa Canada, a non-governmental organization which undertakes research and policy dialogue on the promotion of peace and development in Africa.

My Government has also agreed to follow these Processes in hopes of preventing the export of illegal minerals. However, the efforts are not enough to stop the trafficking of diamonds. Several steps must be taken to strengthen the Kimberley Process. Government policies within the Country are also changing with the late reform of the mining legislation aiming at stabilizing the economy and ending the poverty and instability in the country.

- **UN sanctions**

The U.N. Security Council has adopted several resolutions imposing sanctions in order to try and curtail the illegal trade. In the countries where sanctions have been imposed, it was argued that they must remain in place, and if possible refined, as a preventive and protective role. In a Presidential Statement adopted in June 2013 the Security Council emphasized the importance of improving the work of and strengthening the contributions made by sanctions committees and the expert's groups and panels established by the Council in dealing with the impact of the illegal exploitation of natural resources on conflicts in the countries under consideration.

The Council also expressed its readiness to consider imposing targeted and graduated measures in context of country-specific resolutions against individuals and entities involved in the persistent illegal exploitation of natural resources that play a role in triggering, financing or prolonging conflict when appropriate to the situation on the ground.

- **Guiding principles on business and human rights**

Among the decisions taken by the international community to prevent the illegal exploitation of natural resources in conflict zones, it is worth to mention Guiding principles on business and human rights. Indeed, my country recognizes the universal acceptance of the framework as a platform for action and accountability against which the conduct of both States and companies can be assessed. It is also undeniable that the Guiding Principles framework clarifies the State duty to protect against business related human rights abuse, the responsibility of companies to respect human rights, and the need to strengthen access to appropriate and effective remedies for victims of business-related human rights abuse. But yet, the Guiding principles remain to be only a voluntary framework and are based on good will of the UN Member States and business community.

That is the reason why my Government policy within the Country is changing with the late reform of the mining legislation aiming at stabilizing the economy and ending the poverty and instability in the country.

2) *Amending the Mining Code*

**On 9 March 2018, the Democratic Republic of Congo enacted Law No. 18/001 amending its Mining Code of 2002. The 2002 code sought, above all, to liberalise the country's mining sector and reduce applicable taxation in order to attract foreign investment and make the industry more competitive internationally. The hope was that this would stimulate the economy of this war-torn country and help the fight against poverty. However, despite an increase in mining activity, the code failed to deliver the economic, social and environmental benefits that the government had expected. For this reason, in 2012 the government initiated a revision of the 2002 code. The 2018 code is the result of that revision and includes important changes on all three fronts.**

**The new code seeks to give the local population a greater role in the country's mining industry. For example, mining activities are brought within the scope of DRC's law on subcontracting in the private sector, meaning that they can be subcontracted only to companies whose capital is held predominantly by Congolese citizens (Art. 108); at least 10% of the capital of mining companies must**

be held by Congolese citizens (Art. 71); and only Congolese citizens are permitted to conduct artisanal mining operations (Art. 26).

New criminal offences have also been introduced to help achieve the aims underlying the revised code. They include the pillaging of natural mineral resources, punishable by imprisonment and a fine of between USD 250,000 and USD 500,000; the infringement of human rights, punishable by a fine of USD 10,000 per day for the duration of the infringement or by a fine three times the value of the products traded; and the undermining of transparency and traceability in the mining industry, punishable by a fine of between USD 100,000 and USD 1,000,000.

One of the government's concerns in revising the Mining Code was to increase state revenue from mining activities. The new code increases the rates of royalties payable by holders of mining concessions. According to Article 241 of the revised law, the rate for iron and ferrous metals rises from 0.5% to 1%, and the rate for non-ferrous metals from 2% to 3.5%. Further, a new category of "strategic substances" has been created, to which a rate of 10% applies. Minerals defined as "strategic" include those from which the government wishes to derive maximum return while demand is high and before reserves run out. It is possible that they will include cobalt, of which DRC is the world's top producing country.

Furthermore, under the new code, the royalties are calculated on the basis of the gross commercial value of the product and become due when the product leaves the site of extraction. Under the 2002 code, they were calculated on the basis of the net value of sales after deduction of transport, product control, insurance and marketing costs and became due when the product was sold.

Other amendments of a financial nature include the obligation for exporters of minerals to repatriate to their DRC bank account a larger proportion of their export income than was the case under the old code.

On the social and environmental fronts, DRC has introduced reforms that increase state control over mining activities and recognise the needs of the Congolese people. It has extended the scope of the code to the storage and transportation, as well as the exploration, extraction and processing, of minerals. It has also increased the state's stake in the capital of mining companies from 5% to 10% (Art. 71) and requires that 0.3% of turnover be allocated to local development needs (Art. 285). Significantly, the new code plays down the references to private enterprise when defining the state's role as promoter and regulator of the development of the mining sector (Art. 8).

## **Conclusion**

The Democratic Republic of the Congo is now going beyond post-conflict; with the election of President Félix Antoine Tshisekedi and the first peaceful transfer of power in the country since independence, almost 60 years ago. The country has thus begun a decisive turning point, as the President is committed to building a modern, peaceful and democratic State. Time has come to make sure that the immense wealth of our country benefits the Congolese people; that a new era of accountability and the end of impunity permits the full enjoyment of freedom in the country and in the region. We really hope that the end of armed and terrorist groups and external interferences will allow our country to fully determine its future, in peace, freedom and security after so many decades of conflict.