

## MINUTES OF THE SEMINAR ON

*The Due Diligence Approach:  
Its Implementation In The Context Of The Application Of Mineral Supply Chains  
From Conflict And High-Risk Areas*

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### ORGANIZERS:

Belgian Ministry of Foreign Affairs  
Egmont Institute (Royal Institute for International Relations )  
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## PART 1 : EXPERTS' PRESENTATIONS

Due diligence is about risks to take or to avoid. The former Prime Minister Jean-Luc Dehaene said that if they would have done due diligence about banks such as Dexia, he would have refused to become its president. Central Africa is a completely different context. It is a context of high risks and conflicts. There are different types of due diligence.

### *The Governance of Mining Sector in Central Africa – Frank De Coninck*

First, we will talk about East Congo and the mining sector as well as the concept of due diligence. It is also important to remind the governments of mining sector in Central Africa.

For the past 120 years, Congo has often been associated with the notion of resource curse. It has been the case for a long time in the country. It was certainly the case during the late 19<sup>th</sup> century and at during the last years of Congo free State. It was also the case during the decennia of Mobutu regime. The problem started again after the former of Mobutu regime during the war of 1996 and 1998.

There are two categories of mining the formal and the informal mining sector. The first one refers to Katanga, Kasai, part of gold production in East Congo and the oil production on the Atlantic Ocean and the East border of the country. The second sector is the particular situation in East Congo. It concerns the problems of the illegal exploitation of the natural resources. The third sort of distinct in mining in Congo is formal industrialized and the artisanal mining which is a very big concern as around two million people depend on it. In east Congo, it is about half a million who depend on it. It has its own problems of operating and industrializing.

The mining sector in Central Africa has various issues. The main problem of the formal mining sector can be summarized as problems of legal security, governance and problems of logistical nature.

Legal security and predictable legal rules are essential for such an industry which deals with heavy and long term investments. It also means a stable State actor and interlocutor with investors. In the absence of such actor and rules, there is an attraction for adventurers and speculators. This is what happened during 96-97, with short view agendas.

Transparency is a crucial issue in order that it yields that the income from the mines goes to formal state budget and not to other actors or informal agendas.

The formal sector in Congo also has to deal with logistical problems and trained staff. There is also a lack of geological surveys and knowledge about the mining capacities. It is one of the reasons why the contracts are so ambiguous because there are big uncertainties about quantities or qualities. The World Bank Program (Promin) should deal with these concerns.

The mining sector represents about 30% of the Gross National Product and it produces only about 10% of the State budget. A better control and governance of the mining sector could produce more financial income than all the bilateral cooperation together. According to economics, good

governance could increase the economic growth by two digits. The potential mining in Congo is enormous but the governance issue reports for instance selling state assets at discount prices which are then resold at market value. There are many conflicts between IMF, WB and Congolese authorities about what should be or not publicized ... The governance of the mining sector is very closely followed by the Congolese and international civil society. The overall international context has significantly changed the last ten or fifteen years. Demand for raw material worldwide is rising. Therefore, the offer has a comparative advantage in the discussion. There are new actors on the market who are less demanding and less interested in Central Africa.

There are also positive developments. Congo accepted the EITI (Extraction industry Transparency initiative). It has not yet achieved the standards of the initiative but it has tried and is continuing to try.

Kinshasa has also signed a matrix about good governance with the WB. It is important as a starting paper to start from.

The capital has played a pro-active role in hosting an IMF sponsored workshop in March 2012 on management of natural resources. There, the Finance Minister who became Prime Minister has emphasized the importance of a strong leadership instead of a resources curse. It also attributed the problems of mining sector to bad management and not to international complot.

There is also the informal and illegal mining in Congo. Most of it has been affected the last twenty years by wars and conflicts. The international opinion wants to see conflicts free of mineral interests. The starting point of these problems is in the wars of 96 and 98. Which all the actors: the belligerents, the rebels, the foreign troops, the government, used the natural resources and the pillage of it as a mean to achieve their military strategy and political ambition. As an ambassador in Rwanda during these years, it was the case from the end of 1996 in both Kivu's. From the very first days of the rebellion of the AFDL of Laurent Kabila and its supporters, stocks of natural resources were confiscated. It went down the first months of 1997 when the Kabila movement negotiated property rights on Katangese mines in return for cash because they needed immediate cash to continue their march on Kinshasa. It negotiated with shady and unknown international representatives of very little known mining companies.

At the second war, half of the country has controlled by various rebel movements supported by Uganda and Rwanda on one hand and on the other, a weak government in Kinshasa supported by Angola and Zimbabwe.

The Peace agreement of 2002 reinserted the formal sovereignty of the State over the all territory. But this couldn't be established in Eastern Congo until these days. This happened in a context where vast electronic and telecommunication industries have heavy demand for the raw materials for their industry.

The rest is strong demand for raw materials, presence of mines and armed groups fighting each other and for the control over the mines. And the "collateral" damage of the Human Rights violation such as sexual violence. Illegal exploitation is not the root cause of Eastern Congo. Conflict mineral and Human Rights violations are more likely consequences of underlying causes. These causes are

conflicts and armed groups. These are expressions of still other underlying causes which refer to general poverty, shrinking economic capacities of the region, demographic explosion, matters of lands distribution, of identity referring to matters of nationalities with Burundi and Rwanda. Illegal exploitation is one of the symptoms of these underlying causes.

These tensions have caused such havoc is due the progressive disappearance, during the 80', of an effective and credible state authority to exercise its functions such as credible justice, police and army. The root problem is the lack of that state authority which refers to SSR problem and the security sector reform. The attempt to classify the sequences of consequences and causes of the conflict is not an academic exercise. As a donor, you are supposed to put your money where there is optimal potential. The question is: With a shrinking budget, should the money be put in the SSR sector or in the due diligence. Belgium is convinced that an effort is necessary on both. Belgium is quite present in the SSR sector in the military reform. We work in police and justice reforms. That is our contribution in the SSR. We also support the OECD with a contribution of 400.000 euro over a three years period.

To end this intervention, we conclude with two remarks. The first one is that the matter of illegal mining is been dealt by three sorts of an approach. There is the legislative approach, the Dodd-Frank Act, an American law, which goes vastly out of America. The EU initiatives are another form of initiative in the area of transparency throughout the supply chain including aspects of due diligence. The third approach of the same problem is the OECD due diligence guidance. It is not normative but a code of conduct. It is a good development. The implementation of this should not only be applied in the OECD countries. There are promising contacts between OECD and non OECD countries.

Another important cooperation we support is between OECD and ICGLR. It is a logistically weak organization but it is the expression of the regional ownership of the problem. It has not yet the capacity. It has the legitimacy because the countries of the region support it but it has not much means and technical capacity. On the other hand, OECD has a large bureaucracy but less legitimacy. A combination of the two is a promising formula. A new forum re-initiated by the EU and the ICGLR will be a political forum to complement the works of the technical groups of the OECD and others.

### *The Implementation of Due Diligence in the Congolese Mining Sector – Evie Francq*

To start with the coverage of the implementation of due diligence, the Treaty sector concerns now the artisanal situated in North and South Kivu and Northern Katanga. A lot of resources have left DRC and a lot of Congolese have found an income from the mining transportation because of security reasons, little other economic opportunity exists. For example, it is hard to invest in agriculture. A lot of minerals flee Eastern DRC and little investment is done inside the country. Therefore, a lot of profits go to neighboring countries. Some of it stays in capital and other provinces or to rebel groups to fund themselves.

We will see the different initiatives and dynamics ongoing

First, the PROMIN project holds a budget of 19 million \$ knowing that the Congolese Ministry of Mines has a budget of 6 million \$. So this money will be invested in the sector in the coming years.

The second initiative is the ICGLR and its mechanism of certification. It stands next to the due diligence and it goes together. All ICGLR countries committed to adopt the OECD framework into their national legislation and it has already been done in DRC. It means that DRC exporters won't be able to give certificate if they are not implementing the due diligence.

Third, there are few initiatives about the private sector accountability through the concept of due diligence. There is the Dodd-Frank Act in which there is a need for mandatory due diligence. There is the ITRI supply chain initiative which represents the team industry. They are expanding and demanding members to comply with the OECD framework. There is the UN group of experts recommendations which is the same than the OECD who has been working together on this topic. In the UN mandate, there can be sanctions against companies that do not comply with the guidelines. There is also the DRC national legislation where all companies working on the territory must comply with the due diligence. Recently, there have been two Chinese contractors that have been suspended after not implementing the guidelines. So it becomes compulsory.

Across the OECD guidelines, the concept of due diligence is more a standard that refers to a certain number of care than a proper norms. It is a dynamic process for individuals and entities. As known, the States are the usual defenders of Human Rights but lately, there is question mark about the responsibility of companies and their influence on Human Rights. At UN level, in 2008, an expert on the issue, named John Robby, used in the assembly the concept of due diligence the scope and the concept of corporate responsibility and the respect of Human Rights. The supply chain of due diligence is upon based on this idea. So you can have Human Rights and due diligence. Lately, UNICEF has launched a guide that gives guidance to companies about child labor and due diligence. Here it is more linked to due diligence in relation with conflict funding. All this work has been transferred to the UN principal of Human Rights that has three pillars, the State obligation to protect the corporate responsibility to respect justice. They have been translated in a frame work on minerals and supply chain. In it, it includes Human Rights and risk management, due diligence in general ...

About the relation with EU policies, the European Commission in 2011 launched its new CSR communication which explains their agenda of actions until 2014. It says that it expects the respect of the European companies for corporate responsibility to respect Human Rights. Their focus is based on sectorial approaches and it looks into the negative impacts for enterprises also through their supply chain.

Now, we will go deeper in the EU guidance where we worked for the OECD to assist companies in the upstream part of the supply chain (from the mine to the smelter level) in implementing the guidance. IPIS worked with voluntary enterprises with three important cycles, questionnaires on how they are implementing the document, there is always a month of field research and then a report presented in the working groups in Paris. This gives a good view on how this document is implemented on the ground. The guidance concerns the big companies but also the small mines.

The OECD guidance is composed of five steps. The first one asks companies to establish strong company management systems which include five elements. Three of them are to develop supply chain policy and to structure the internal policy management and to know where the company is in the supply chain. The second step is to identify risks within the supply chain. The third one foresees reactions toward certain suppliers. The fourth one is an independent audit. And the fifth one is a public report on the findings.

First, in DRC, companies don't know what CSR is. So we ask them to give ideal principles. For example, a company mining mineral resources made a code of conduct such as no weapons, no child labor in the mine... Then, the structural internal management supports due diligence. Inside the company, someone is appointed responsible in following the respect and implementation of due diligence. Some training can also be done in the company. Then, knowing the supply chain is the third step. Some companies don't know what comes before or after them, especially artisanal miners. In addition, a few informations must be collected: the mine of origin, the transportation route, how it was mined. These informations must be given to the next company. There is two ways to know where the minerals come from: the first is traceability by tagging materials or the OECD chain of custody.

Second is the identification of risks by comparing the ideal principles and the reality in DRC. You try to see all the events that can occur in the process, e.a. no child labor in mines but there is in DRC so it is a risk.

Third step is the risk management. A strategy needs to be planned how to address these risks in the supply chain. It depends on severity and the scope of the risk. There are three kinds of reactions. Either, you continue to source the mines, either you suspend trade for six months or you can disengage. In the first two reactions, you have to manage risk mitigation to lower them. It can be compared with a fire escape strategy in a building. For example, when a mine is operated by an armed group, you disengage because there is no way to mitigate this risk. But if there are children in the mine, you can suspend activities while doing risk mitigation by analyzing the reason of the presence of the children. Is it because there is no other place for them to be or there is no school around? You can look at local initiatives that are already working and see how they can be supported whatever it is a big or a small enterprise. Another example is the case of state agents collecting illegal taxes. Then, you have to look deeper why these agents do that. There are some problems in the state. It could be that they have been asked by their boss to do so or because they have not been paid yet. In this case, you could inform the head of service. But it is not expected that companies will solve the corruption problem in DRC.

The fourth step, the independent audit has to take place at the smelter level. But it starts with the supplier of the smelter to the field. The fifth step, which is the most important one, is public reporting.

Achievements and challenges ahead:

The guidance has been in the process of implementing for the past ten months.

We can see that legislation makes things happen. In the downstream level, Dot Frank has played a role of catalyst for various initiatives. It made things go faster. Many companies participated in the OECD project because there is no specific definition of what due diligence is. The US legislation is using the OECD guidance as a framework. In the upstream level, we have noticed difference between the first cycle of reporting and after. At the beginning, it was hard to get engaged with companies because they saw the OECD guidance as a western document imposed upon them. From the moment, DRC made this process mandatory, they became more interested.

At the ICGLR level, a lot of progress has been made. Very soon, certificates will be issued from pilot mines in DRC and Rwanda. They also plan on expanding the process outside of these two countries. There is a whole system of whistle blowing mechanism. A regional mineral data base has been developed. There is an independent auditor for the mineral chain that has been put in place. There are two pipelines sourcing in Northern Katanga and one the Kivu provinces.

Since 2010, the iTSCi team is ready for operation. About 67% of the worldwide enterprises are members of it. It covers about 350 mine sites where the tagging and bagging started. There is also a system of incident report of what is happening in the mine. There is already about 150 reports in a few months. It goes with another system of local committee where people can talk about the problems they are currently facing. All this initiatives can make it easier the taxation as for these provinces we know where the minerals come from. You can also develop more accurate statistics. They also found fraud and enabled them to send the smuggled mineral back to its country of origin.

Initiatives can not only be brought by the private sector. It is important that government and especially local government get involved. The private sector initiatives always tend to be cost effective and smaller mines risk to be left alone. There is also a big need for capacity building which is often underestimated mainly in the upstream level. In DRC, all needs to be explained on what to do, the companies, the communities, the government.

*Intervening in Congo's Artisanal Mining Sector: Doing the Right Thing? – Prof. Koen Vlassenroot*

We will see a wilder prospect of the issue and a few question marks with specific underlying assumptions. Since the end of 1990's, natural resources and more specifically minerals are in the middle of the violence in DRC and the larger Great Lakes area. A particular focus was on armed actors involvement, including their proxy's in Kivu provinces in Katanga. This relationship was well detailed by the UN expert reports, first published in 2001. Since these reports, the economic incentive of armed groups, rebel movements and external supporters have consistently been put forward as the down factor contributing to protracted nature of the Congolese conflicts as well as at the fragmented military landscape. A special focus also needs to be made on the involvement of the Congolese army in the mining sector.

This prospective on the mineral resources and conflicts has dominant policy responses to the crisis in DRC partly because of the different calls of various advocacy groups which have provided influential view on the link between violence and natural resources. A strong emphasis on natural resources as a key entry point to reduce the level of violence did not directly resulted in clear cut and constructive policy response. The overwhelming focus on conflict and natural resources as a cause of conflict in DRC tends to have produced some perverse consequences that actually prevent some international and local actors to develop these comprehensive solutions.

Newest perspectives have been developed. For instance, there is more attention on land issues and its potential solutions assumed as an underlying factor. It is not only about the conflict dynamics but also about the role of natural resources in this conflict. It is more recognized that the links between violence and mineral extraction are much more complex and that sanctions are not automatically the best answer. It has bad consequences for the people depending on natural resources.

After several years of reflection, mobilization and campaigning, a multi responses policy, at national and international level, and also from the private sector which is also responsive to the cause, has been developed. These responses aim at good governance to regional integration. Many initiatives need to be fully implemented but it is in progress and today they have impacts on the ground for the population. Some focuses are on certification from ICGLR, traceability through the supply chain initiative, main industry citizenship coalition and due diligence of course. There are other initiatives that can be presented such as the PROMIN program. There is also the “centre de negoce” but there is limited progress on the ground. There are initiatives coming from the industries including the Safe Act Mine ...

Finally, the Dodd-Frank Act which is not fully implemented yet but let an official suspension by the President Kabila of trading activities in Northern Kivu and in April 2008 was followed by an official embargo for mineral coming from there. Some studies have pointed the dramatic socio-economic consequences at local level and an increased militarization of the mines from the DRC army took over mines that were previously controlled by rebel groups. There is negative impact from this Act for the other initiatives.

Many evaluations on these initiatives have been published and some of the critics say there is a lack of implementation, a very limited coordination between donors and stakeholders, a lack of local ownership...

Firstly, it has limited impacts on conflict dynamics. Instead we observe even more smuggling activities and a shift in strategy of the different actors. The strong belief that conflict is linked with natural resources doesn't really correspond with the ground. Few studies urge government and companies to clean up Congolese mineral trade as the solution. Many experts agree that the militarization of mineral resources is more a consequence of the weakness of the Congolese State than its cause.



Secondly, it tends to reduce the strategy of armed groups by cutting the links between them and the mining sites to prevent them of funding their own development. This should reduce their military capacity and the level of violence. This argument ignores a few elements of the local conditions. First, the mineral resources are not always the main source of income to these armed groups and it varies from one to another. Different ranges of activities have been developed going from simple extortion and taxation to forced labor in agriculture, trading activities ... Second, because of different intervention, armed groups start to diversify their economic activities rather than reducing them.

Thirdly, from the recent renewal of violence in Kivu's, it should be focused that strategies are not only about gaining control over economic resources but is also about protection, justice, citizenship ... these issues need to be recognized to stop the violence.

Fourthly, a missing element is proper assessment of incentives of strategies of the different actors involved. A distinction has to be made between activities related to production, mobilization, allocation of the incomes sustaining wars and activities that are conducted outside of the State regulated framework but that are not funding officially military strategies. These two different economies are two incentive systems with their own particularities that need to be taken into account when developing responses policies.

Related to this, further studies need to be made on the particular mechanisms of trade at the lower levels of the commodity chain as well as the social political dynamics that governs artisanal mining site in Eastern DRC. We should go further in the governance and power structure, including the links between the mine actors and security forces. In this point of view, there are different interests here are at play and it attracts a great variety of actors, including armed actors. It highlights more the weak position of officials that created parallel structures with the involvement of armed actors than the presence itself of armed forces. Therefore, it is important to develop strategies that promote new governance framework but also that change patterns of local control. So far the different initiatives didn't have enough effects on these controlling exploitations and trading activities. For instance, the so called "Big Mountain" has adapted their strategies to save their stakes. They are fully aware of the OECD guidelines and different initiatives but they continue their business as usual. One of the strategies is to concentrate on gold which is much easier to smuggle than other ores. Changing these controlling mechanisms is no a technical issue. It is very political and thus very controversial. But it is the only way to change the governance context of the mining sector in DRC. It will never happen when only focusing on the mining sector and that is probably one of the main challenges. Traceability and certification are very good strategies but extremely difficult to implement in a fragile governance context.

Finally, working conditions in mining areas are hardly addressed by current initiatives. Even if these conditions are very precarious for many people in artisanal mining sector, they are the only livelihood available. Moreover, the artisanal mining became the main motor of the local economy on which hundreds of thousands of people rely.

On the question : “Are we doing the right thing?”, the answer is yes and no. It is important that the international community invests in promoting a transparent resources economy in DRC. In order to be effective, the strategies need some revisions.

First, coordination and collaboration need to be further developed. There are far too many initiatives today.

Second, the focus shouldn't be put on cutting the links between armed forces and resources but on promoting a transparent and accountable governance framework. This includes a legal framework with the so-called “cadastre minier” but also clear roles and accountability from government. Armed groups have easy access to resources because of the absence of the legal framework. As well, the Congolese army and the political elite are involved in the exploitation of the resources directly or indirectly. Changing these conditions implies not to concentrate only on the mining sector. It is very political and it requires the collaboration of all the Congolese stakeholders. It is not the role of the industry to reduce the level of violence.

Third, the specific conditions of artisanal miners should be taken much more seriously than today.

Last, the mining sector should not be dealt as a cause of war and violence taken but as an opportunity for peace and development.

## PART 2: QUESTIONS AND ANSWERS

About the cost of the initiative, information from BGR (geological service) shows that only three base line audits have been done so far. One audit cost 30.000 \$ for one mine site but to be certified, you need two audits. There is about one thousand mining sites to do which would bring the cost up to 60 million \$. Certification is not due diligence but it is part of it.

- Remarks from Global witness:

*There is a growing consensus around the OECD standards. There were brought with a wide broad of stakeholders groups mainly because of the Dot Frank US legislation which motivated many companies to come to the table. The document that resulted from it has a strong support and it could be used for other sectors than the mineral sector. The initiatives are commonly polarized between the mineral and the non mineral conflict and it can be a puzzle to understand. It is important to take a step back and we all agree that it needs better coordination not least from donors who are funding development projects and particularly in artisanal mining sector. It is important to look at the role that natural resources and minerals play in the conflict is not an integral part. The main part is getting money from it but also from other activities. Addressing mineral issue about resources in DRC conflict context is not the exclusion of others approaches. When addressing mineral issue, you also have to address the SSR questions or others mentioned earlier. It is a conflict that requires a multiple approach.*

*Over all the years of conflict, how much money did the donors put into it to try to stop it? Did it work? It is time to have a market based approach. Perhaps by looking at the role of the companies in supporting and financing these groups, we can have an impact that we don't have yet.*

*Back to SSR, we need more coordination. In DRC context where the national armed forces have so much benefits from the illegal mining, would SSR work? For example, if your taxes go to security reforms and then the companies money goes to these groups which are the targets of these security reforms.*

*About the impact on the ground, it is too early to say what impact companies due diligence have in Eastern DRC because there is practically no diligence that has been done. A very few companies are actually doing due diligence. We must not confuse impact that has political changes, political trends, military changes on the ground or other supply chain dynamics which might be linked to US law with the impact of companies that are doing due diligence.*

- Question about the audit mechanisms of the OECD system from EPLO

*It is hard to see the effects on a specific initiative because no single intervention would have various relationships on the conflict dynamics, especially with notion such as governance.*

*How the independent audit works? Is there any success story?*

There has been a lot of discussion in Paris about it. The audit is supposed to take place at smelter level. It is a decision not to overload companies in the all supply chain with audits. There are smelters that have been audited by the initiative but there is only one smelter from Eastern DRC that has been audited. The others are not sourcing from the region. This is a progress that will be ongoing in the coming months. It is not foreseen in the guidance who will conduct these audits. Some industries attempted because they want to have the ownership on these audits but it is not fully accepted by other parties. So it will take some time to see how all this will go.

- Question to IPIS about the link between certification and due diligence from Justice & Peace Commission

Certification can be a part of due diligence as in tracing minerals under step one. You could also only buy certified minerals so you could identify the origin of minerals or with higher standards. Currently, the ICCJLR certification mechanism is based on the CTC program. In the CTC system, there are several standards. There are fifty indicators but they started with only a few and progressively it will be brought to higher level.

There is still things to do about due diligence once this certification is done. Buying certified minerals doesn't certify there is no problem. In DRC, you can't exclude that there are state agents doing corruption.

Due diligence is mandatory for exporters and they have to prove that they have been doing due diligence by collecting information, giving data about the risk management. If they don't complete all those steps, they will never be able to give certificate.

- Question about helping outcomes for artisanal miners to IPIS from 11.11.11

*Is it realistic to expect some concrete outcomes from certification and traceability mechanisms for the artisanal miners in a context where irregular armed forces are to stay to impose their military and political control in the region?*

We visited mines in Katanga and Rwanda and it is in progress. Conditions have drastically improved because of companies involvement in implementing due diligence. In North Katanga, it is safer area but there is risk of military intervention. It is also possible in the Kivu's but it will be more difficult. The territory is very big and there are a lot of mines, some clean and some not. It is more a question of identifying the clean mines and securing them. It is exactly what the third pipeline is aiming at. Starting at a small scale will expand. Artisanal miners prefer to be legal and they will be attracted to go to this kind of mines.

- Question on the need and feasibility of certification to IPIS

*About the artisanal diamond mining, you quickly get into the chemical process and its regulation. An easy thing to do for a diamond trader is to have a couple of people with licenses who he buys diamond from and a hole bunch of people that do not have licenses. And they pretend it comes from the licensed ones. It is very easy to circumvent the entire regulation. About the responsible in issue authority, companies or government, it is five times as complex than the Kimberley process. How can you exercise more due diligence on the veracity of the certificates themselves? How can you monitor and trust the traders?*

You won't get a certificate if you do due diligence but you won't be able to issue certificate if you don't do due diligence. There needs a strong body that can supervise the implementation of due diligence by the companies. Up to now, in the Northern Kivu's, it is easy to find which company implement it. A difference between the diamond mineral and the others is that it doesn't need legal document to mine. They need "une carte de creuseur" but you can buy diamond from mines that doesn't have this card. So it is not a requirement in itself in the guidance. The guidance aims at encouraging the companies to support the formulization of mining. There is a little risk that it becomes just a check list but the companies that have been suspended were listed by the UN group of experts. At the moment, there are several organizations such as IPIS looking at how they are implementing it. The DRC government has asked explicitly the UN group of experts for assistance on how to implement this guidance. And that refers to the need of capacity building.

- Question about another aspect of sustainability

*If you look at the list of participants of the OECD meetings early May, it is more a western gathering. We already mentioned a problem of ownership. To what extent is there a transfer of knowledge? How are the Congolese participants participating? Is there level of technical knowledge on all these matters?*

Evvy Frank : Indeed, there is a problem that the meetings are taking place in Paris but there are representatives in Paris. In terms of improvement of capacity on the field, we give workshop and we see a clear progress. We give a questionnaire to participants to be filled about what they have been doing. First, we see the increase of questionnaires filled. We see an increase in quantity but also in quality. We have received quite a few mineral supply chain policies very good. Their technical capacity is growing.

The official definition of due diligence in the guidance is an ongoing and proactive and reactive process to which companies can ensure they respect Human Rights and do not contribute to conflicts. The aim is not only the conflict. With illegal mining, forced labor is linked to it and that is a Human Rights violation. So that also needs to be addressed.

Professor Koen Vlassenroot: There is a difference with local ownership as in this case, it is implementing something that has been imposed by outside. There is also a question on what is a clear mine? Of course there is definition. If we talk about transparency, governance framework, accountable government framework than I think there is no clear mine in DRC. We have to take into account the current governance context. The debate is not about are we focusing on a minerals or

something else. Resource is a dominant perspective of the conflict in DRC. It is reducing strategies of armed actors to search for wealth. It is worrying. It is surprising to hear that we can't judge these initiatives to which extent they have been contributing at reducing the conflict if it is exactly their aim. So resources are an important issue in DRC but we tend to reduce the conflict to one single factor and it would be a mistake. There are little initiatives dealing with local actions such as the right to land besides some mediation. Nobody is taking the roots of the conflict seriously. This is not about changing life of Congolese but it is giving a clear image to the industry.

Frank Koning : From a diplomatic point of view, the aim and objectives of the different formal policies from UN or EU is how to work in that direction in DRC. You can only accompany what is been done by the various actors. We can't establish peace ourselves. The instruments with have in terms of cooperation and budgetary tools, we can work with the security reform because we think it is the root cause. The lack of a proper army and predictable justice is a real problem. If the State was present then the problem of illegal exploitation would be solved. Another instrument is to try up the income of the armed group and due diligence goes into that direction. Is that possible knowing that the armed groups don't only depend on mineral resources? Only a part of all this is connected with the root cause which is indeed land issue, nationality issue, migration and relation with neighbors... Of course, due diligence won't solve these problems. Due diligence is a symptom and not the cause. It is an instrument on how addressing a problem of consumers outside of DRC. It is only addressing problem of Eastern Congo. We still have to work on that but you have to have a clear idea of the cause and consequence.

- Remarks on the EU position from the European External Action Service

*The question is what are the objectives of what we are doing? With these initiatives, it is to respond our consumers desire to buy products with a certain standard. It is clear that the US Dot Frank raised the bar on the international diplomatic sector. Avoiding conflict by these initiatives is not the goal. EU is supporting the due diligence initiatives but that doesn't tackle the real cause of the problem. We all agree that we need a more comprehensive approach of the problem of natural resources in DRC.*

*The ICJLR is a conference of the Great Lakes region countries. Governments of eleven countries have agreed on a regional initiative on natural resources. End of 2011, it made a statement at head of state summit where an action plan has been adopted. It is up to national administration to implement this plan and possibly lead to certification. Certification is not abstract. It is a paper that certifies that resources a conflict free. But beyond this, there is a very complex action plan in place. It goes from inspection of the mining site to collection of data... when talking about certification of ICJLR, we also talk about the responsibility of the regional administrations. Supporting the initiatives with all its scope is an important step for the EU.*

- Question about transparency and capacity building to IPIS

*Legislation makes things happen as we have seen with the Dodd-Frank Act and resulting due diligence. How could we foresee the negative side of the actions (embargo...)? About capacity building, what is the role of the local civil society?*

About capacity building, civil society will be playing a big role especially in the field. In North Kivu, an organization which groups civil society corporative of “negociants et comptoirs” does capacity building inside the country. At the downstream level, it requires effort from governments to explain what is really expected from companies.

About the Dodd-Frank Act and the lessons we can learn, the big problem is not the act in itself but the fact that there is the mandatory due diligence for companies but it doesn't explain what it really is. It took more than two years to explain the expectations from the companies. Companies have taken the safe side, as they didn't know exactly, they just pulled out. Due diligence is about making trade possible while time is not right yet for certification and while waiting for other thing such as the security reform to happen.

- Remarks about the objectives of the issue from Global witness

*On the objectives issue, as it is written in the OECD guidance, it is also about addressing the link between natural resources and conflict. It is also about how the expectations are communicated. It is an approach that in one hand can reduce financing parties and on the other hand, concerns the issue of transparency. A big part of due diligence is disclosure all along the supply chain. It asks companies to publicly disclose what they are doing. It is also about capacity building and education. There are a lot of changes happening as the private sector, the provincial government authorities and local NGO's that become more familiar with this guidance and its meaning.*

*We hear good progress from people about due diligence. It is a slow process but the potential of having other benefits such as more disclosure and openness is real. Even indirectly, there is more attention on mining sector. A lot of US companies talk about artisanal mining in DRC. There is a potential for more investment.*

### PART 3 : CONCLUDING REMARKS (by Jérôme Chaplier)

It is a lot of coordination even to understand the concept of due diligence. We take a step back and put the topic in the global context of the business and Human Rights agenda. ECCJ has a strong focus on legislation and the role of policy makers to make that happen. It is good to question the role of European business to respect Human Rights and the role of the EU states and members who have a duty to protect these rights.

First, in the international context, there is a common sense of emergency. There was a conference in Copenhagen in May 2012 with the private sector, decision makers, states and all agreed there was a momentum on the implementation of these guiding principles. They move to why Human Rights are involved with business to how should business promote them? The discussion about due diligence is a way to move to the question of how to make this happen.

Second is the meaning of stakeholder's engagement and partnerships. Opportunities are essential to make sure to focus on the impacts.

Third, another issue raised is the access to justice. How access to justice is linked to due diligence? At the moment, there are no judicial mechanisms that sufficiently guarantee access for remedy for victims of abuses of European companies. There is a manager gap in the existing framework and it undermines the EU and member states efforts. The link with due diligence is that there is still many obstacles for victims and one of them is the uncertainty about the standard about which the company should be judged regarding its Human Rights violation. Could the due diligence process be a standard for compliance that clarifies the duty of companies but also the rights of the victims? For example, could penalties be reduced in case of Human Rights abuse if a company has conducted some due diligence process?

Fourth, the approach is a mix of both mandatory and non-mandatory. We should go further on the binding side of the process. About due diligence, on a functional concept, it is a process, a practical step for companies to address their impacts and social obligations. It also comes from a law, security and anti-corruption law. In US, due diligence is a way for companies to show compliance with legal provisions and respect for established principle of the law. There is increasingly more economic and policy arguments for companies to conduct due diligence. But there is still no argument or incentives for companies. The EU member states should regulate due diligence because there is a need for predictable legal rules. By that way, we would limit uncertainties for victims of Human Rights violation, for the businesses themselves. They need to clarify what is expected from them. Consumers want to assess companies' behavior. They want to know if their money is not used to feed conflicts. Investors also definitely want more certainties. When the states are supporting business or purchasing, they prefer to have more certainties. There are still many gaps in the framework about the responsibilities of European companies. This already exists with The Dodd-Frank Act is an anticorruption and environmental law. The Commission will soon enforce legislation on the import of timber in the EU by not allowing any of it in EU if the trader hasn't done any due diligence. Of course, the impact of illegal timber and of mining in DRC is different. But it is a good opportunity to go



further for the EU instruments. Without transparency it will be impossible to implement any strong improvement. There are some laws developing into this direction with the financial transparency report for example. Another opportunity is the fact that the Commission has committed to identify the priorities to implement the UN guiding principles. They are seen as the more comprehensive framework on business and Human Rights. The member states are supposed to come with an action plan on how to implement them. So far, none has done it yet.

How should be good diligence legislation? First, it should improve the situation of the people. The risk is that the transparency and financial legislation is more a general basement of a company. Any due diligence system should be based on an international standard. There is a situation where voluntary standard such as the OECD guidance intersects with the regulatory measures such as the Dodd-Frank Act. It is a good example of enforcement of due diligence. We should not confuse between due diligence and certification. The second can be part of the first but certification doesn't release a company from its responsibility.

With the capacity building workshop, there is an ideal world. The Congolese miners would like to see the gap between this ideal world and the reality reduced. There is an opportunity in the international agenda to contribute to peace and poverty reduction. It is not only the role of the EU, the member states or the European business. But they all have a role to play and due diligence is one of the instruments. In the international context, due diligence is not an option for states and companies. Now it became an obligation.