

Background on conflict materials and human rights violations in raw material extraction and trade in the DR Congo"

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Introduction

The DRC has massive endowment in natural resources, including minerals, oil, water, forestry and agricultural land. The DRC is a world leading producer of cobalt, and it also produces large amounts of copper, coltan (columbite-tantalite), Gold, silver and petroleum. The exploitation of these resources is accompanied by serious human rights abuses. Human right abuses are happening not just in a situation of conflict like in the east of the country where Coltan and Gold are produced under violent conflict but also in other parts of the country, for example in Katanga where Copper and Cobalt are being extracted. The DRC fits the textbook case of the economics of resource driven Conflicts.

These human rights abuses are happening under pressure to supply the world of critical metal that it needs for its technological advancement. Some key minerals are Coltan, Gold, Copper and Cobalt.

The origin of human rights abuse and Resource Extraction in the DRC

Many reports wrongly suggest that conflict minerals in the DRC started in the 90s with the invasion of the DRC by its neighbouring countries. The recent conflict minerals of the 1990s, which continues today is a symptom of an old conflict minerals which started with colonization. Therefore, we cannot look at issues of human rights and natural resources in the DRC without some knowledge of the country's history, which is tale of centuries of plunder by mostly foreign powers.

Every once in a while a precious underappreciated metal rises to prominence. There is always trouble in the DRC when a metal rise to prominence, which has led to serious human rights abuses in its extraction and commercialisation. Before colonization, hundreds of years Arab traders raided the territory for slaves.

- In 1885, Colonization, in the second half of the nineteenth century King Leopold of Belgium stripped the forests for ivory and rubber.
- In the early twentieth century Leopold handed his private kingdom over to the Belgian state and the colony was ransacked for its mineral wealth especially copper and uranium, with very little of the proceeds returning to the Congolese people.
- In the 1990s Coltan became a key metal to be used in technological advancement. The rising commodity prices and the discovery of highly valued commodities such Coltan in the context of a global economic boom contributed to fuelling conflict

resourcesThe war of 1996 which continues today coincided with the high value of minerals . There are no industrial production of Coltan in the DRC. It means all the production is done by hands by Congolese people.

- Since 2014, cobalt has rose to prominence. For Cobalt, we find industrial and artisanal production happening side by side. It is in the artisanal mining where we find human rights abuses where sometime you have children and pregnant women working in very unsafe conditions. Since 2014, Cobalt has risen to prominence and there are already competition among westrn companies to access and control the provision of Colbat. —will cobalt create a new opportunity for war and human right abuse. The competition between China and the west is also complicating matters . The goal is to lead the world in advanced technologies, like artificial intelligence, autonomous vehicles, electric cars, green technologies and biotechnology. And China agrees — they want to export higher value-added goods, especially those with a high innovation content. Interests are much more aligned than either country wants to admit.

Human Rights abuses in Raw Material exploitation in the DRC

While the direct effects of wars has been devastating and have attract the public's attention, there are more salient effects on the health, social and psychological wellbeing of the people from the conditions that prevail in the artisanal mining of the 3Ts . The 3Ts are fuelling and sustaining the conditions of violence in the east of the DRC. There are stories of deaths from collapse of the mines, diseases, violence, water pollution , dislocation of families , child labour

Even industrial extraction of Gold is not producing development for the DRC. Mining is not having a notable impact in the lives of Congolese. Congolese people are instead recipients of mining negative impacts –displacement, social and environmental impact (crack houses, water, soil and air pollution and vegetation destruction), underpaid workers working under bad health and safety conditions. We are also witnessing an increase in social inequalities and wide spread socio-economic deprivation. These human rights abuses are at the core of disputes and confrontations between communities and companies.

Some of the key human rights abuses:

- Poor pay for artisanal miners: artisanal miners are exploited intermediaries who buy their produce cheaply
- Land degradation (uncovered pits, veld fires destroys pastures for livestock and wild animals, Deforestation and loss of bio-diversity, Over-extraction and possible extinction of certain species—trees
- Environment: with illegalities, social vices, and practices inimical to the safety and health of the operators as well as to adjoining communities and environment.

- Social challenges (Child labour, school dropouts and teen pregnancies, prostitution, drunkenness, and murder, culture of conflict, hiding place for fugitives, pollution of water/river impoundment / pits in rivers river bed
- Perpetuation of poverty: Miners themselves are caught in a poverty trap from which it is very difficult to escape.
- Health issues: Malaria, spread of sexually transmitted diseases, no protective clothing
- Economic (increase in price for basic commodities, agriculture suffers, cropping land degraded, loss of live stock in pit
- Space for crime, especially Gender Based Violence (GBV) linked with ASGM sector, is a major problem that must be addressed urgently.

The problem of the State

The link between natural resources and human rights in the DRC is the existence of a weak state that is unable to quell human rights abuses both from industries and in artisanal activities. A weak state that is unable to protect its resources and its people. So, the combination of a weak state and abundance of natural resources creates opportunities for both external and internal agents to take advantage of the power vacuum to exploit natural resources by abusing poor Congolese.

Because of poverty, Congolese cannot distinguish between good and bad condition of work. Congolese people live on the day to day basis are ready to be exploited and abused as long as they can find food for that day.

What is disturbing that Congolese themselves, politicians and officials of the Congolese army are involved in exploitation of the minerals and are abusing their own people.

Regional dimension of Conflict Minerals and Human Rights Violations in the DRC

When the war of 1998, which that was driven by neighbouring countries, Rwanda and Uganda, failed to achieve its key objective to overthrow President Laurent Kabila, it turned into conflict minerals with focus on the exploitation of the 3Ts and gold. It coincided with the increase in price of the 3 Ts which are found in the Est part of the DRC. The war became commercial. Because of economic interests, the war has continued despite consistent efforts at national, regional, and international levels to negotiate peace. There are neighbouring countries directly and indirectly are involved in the exploitation of the DRC minerals and they have no observation for human rights. What is important for them is access and not the people.

All the armed groups relied on Congolese labour to extract the minerals. The market was there and expanding even the multitude of militias turned to the extraction of mineral. The population already impoverished could not sit and see minerals being extracted without taking advantage. This conflict minerals has been a cause of concern because it perpetuate massive abuses of human rights that occur along the mineral value chain.

Intersection between Human Rights and Extractive Industries

There are two arguments-- the moral and legal arguments.

The moral argument is a simple one. It is premised on the understanding that the owners of the resources must be the primary beneficiaries. When this does not happen, it sets in a condition for human rights abuses. When multinational companies think their investment is far more important, they are prepared to undermine rights of people.

The legal argument suggests when extractive activities happen with no regard to national legislations, international laws, norms and standards of transparency and accountability it is bound to abuse human rights. This normally happens in weak states or in situations where the state is almost inexistent like in the case of the DRC.

There are international, regional and national legal instruments that determine how natural resources should be exploited and how benefits should be shared. At the international level, the UN through its resolution 1803 set the principle for the Permanent Sovereignty, which recognises the existence of states sovereignty over their resources. While it affords states wide discretion to dispose of their resources as they see fit, it also prescribes the context within which states must act. It requires states to exercise this sovereignty in the interest of the people. It states "The rights of the people and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and well-being of the people of the state concerned". In the case of the DRC, with weak state, corrupt politicians, multinational companies capture the state and impose their will as they wish. It is subordination of the Congolese state to multinational interest which is at the core of human rights abuses.

The permanent sovereignty doctrine can also be found in the Charter of Economic Rights and Duties of States, passed by the UN General Assembly in 1974 as a centre piece of what came to be called the "New International Order". There are other international principles that support the respect for human rights in the extraction of resources. These include the International Covenant on Economic, Social, and Cultural Rights (ECOSOC). It stipulates that the "the misuse of a nation's resources is a violation of human rights, and it obliges states to respect, protect, and fulfil the rights it sets forth." At the African level, the African Charter on Human and Peoples' Rights adopted in 1986 (to which DRC is a signatory) stipulates in Article 21 that "All people shall dispose freely of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it. In case of spoliation the dispossessed people shall have the right to lawful recovery of its property as well as to an adequate compensation..."

There is also the African Mining Vision. In 2009, the Head of State and Government adopted the African Mining Vision (AMV). The AMV emphasizes the need to place mining in the structural transformation of national economies and societies; the primacy given to national democratic sovereignty and control over the exploitation of country's resources, and determination of the nature of their use; the recognition of the rights of constituencies and their participation in the formulation of mining and broader development policy; and the commitment to building national institutions for the effective realisation of these principles. At the national levels, countries' legislations prescribe how mineral ought to be extracted. The Congolese constitution recognise states sovereignty over their resources which they govern on behalf of all citizens. This principle point to one important conclusion-- the interest of commercial contracts signed by mining companies cannot override the interest of the owners of the resources. If this happens, it is within the within the people's right to take their government and companies to court to ensure that the contradiction is addressed.

From international to regional and national laws, it emerges that the concept of human rights can be looked at from two perspectives. First, as a human entitlement given or allowed by law (national or international); second as customary rights recognised by traditional cultures and common law. Whatever source of these human rights may be, one cardinal point common in both is that they are all meant to uphold the dignity of people and facilitate human development. It is for this reason that Extractive companies, both domestic and international, are required and expected to put in place and implement policies and practices that respect human rights. Equally, governments are equally expected to put in place laws and mechanism to protect human rights and ensure that these are enforced. Unfortunately, most Africans are exploited and dispossessed of their resources by unscrupulous domestic and external investors.

It is clear in the context where laws and principles exist that human rights abuses by mining companies are a consequence of African weak states lacking in capacity to enforce their own legislations and regulations. Since the state has been given the power to manage these resources in the interest of the people by national legislations and international regulations, failing to do so exposes its weaknesses. While the occurrence of violation of human rights does of course concern corporate actors, it is a cross cutting issue and concerns regulatory frameworks, the capacity to monitor and enforce, and therefore institutional capacity, issues of participation and policy choices.

For mining companies the problem has always been that they put profit first, as opposed to serving the welfare of employees, their families and the communities around the areas they operate in. The behaviour of most mining companies is premised on the manner they secured the business. If a company corrupted its way to secure the mining rights, there is high possibility that it will also flout with human rights, environmental and social responsibilities. It also true that such a company will not treat accordingly its employees; it also true the company will find no harm in engaging in corrupt practices including tax evasion and illicit financial flows. This is why the intersection between Human rights and extractive industries must be looked at holistically.

In the DRC, Multinational companies regard welfare of communities as an unnecessary cost, which can be ignore because the state which should impose sanction is inexistent. It is clear that respect for human rights by companies is an important part of their social licence to operate, but the scope of the obligations imposed on them by international human rights law is limited and contentious with the growth of global power and reach of corporations; also, domestic regulation is often quite inadequate to protect human rights from corporate infractions. The issue of human rights violations is therefore not something at the margin or to be “added on” when impacts are considered– or an issue that concerns above all or only mining companies and their CSR strategies. It concerns all stakeholders-- states, extractive companies, communities and civil society.

21 June 2018