

# Natural Resource Sector Reform in the DRC



## Report of the APPG roundtable meeting, December 6, 2006

The All Party Parliamentary Group on the Great Lakes Region of Africa convened a meeting on December 6, 2006 to discuss the agenda for reform of the natural resource sector in the Democratic Republic of Congo (DRC). One of the principle aims of the meeting was to contribute to the work of the United Nations Group of Experts by discussing suggestions for action raised in the course of their work so far and by making further proposals within a round-table forum. A wide cross-section of business, government, and NGO representatives took part, including participants from the DRC, UK and Belgian governments, mining, assaying, and security companies, governance consultants and experts, NGOs from the environmental, development, and human rights sectors, and UK parliamentarians. A full list is attached at the end of this document.

Key points where there seemed to be general agreement included:

- **The critical importance of natural resource sector reform**, given its direct connection to the overall stability of the state and to the predatory behaviour of armed groups. Governance in the DRC is a strategic rather than merely economic issue, and one of particular importance with the expansion of extractive activity as stability returns.
- **The growing issue of otherwise legal armed groups** – for example elements of the FARDC – engaged in illegitimate activities related to natural resources.
- **The importance of political will**, from both international and DRC actors.
- **The need for a wide-ranging approach** covering UK and international as well as DRC measures. (For example, enforcement of UK bribery legislation).
- **The role of insecurity** as an underlying factor in problems in the natural resource sector
- **Positive feedback for the efforts of the Group of Experts**, and a concern that its work be properly followed up.

### UN Sanctions

- *There was widespread support among the whole range of participants for the idea of imposing targeted sanctions on individuals and companies in breach of relevant DRC legislation. With proper procedural safeguards (such as a mechanism to appeal inclusion on*

the sanctions list) and improved implementation by UN members governments, sanctions could be an effective measure that would support existing national legislation.

### **Group of Experts**

- *There was a widespread view that the work of the UN Group of Experts should be followed up.* Industry representatives expressed concern that there would be no action once the Group's report was completed. There were high expectations and pressure was mounting for concrete proposals for action. One mining company suggested that the report should be presented to industry so they can give feedback on its contents. In this way the dialogue could continue; though of course the question arises as to how and in what forum this can be extended beyond the end of the Group of Experts' mandate.

### **Other proposals for action**

- *There is a need to develop, in consultation with all stakeholders, a systematic and wide-ranging programme of practical measures to improve natural resource governance in the DRC.* During the meeting the following proposals were raised. While no attempt was made to establish how far they were the subject of general consensus, and the need for further consultation with Congolese partners especially is clear, they cover many of the basic elements of an eventual framework for action. A number of areas were not considered due to time constraints, notably traceability initiatives, the OECD Guidelines, and artisanal miners.

### ***Reform of DRC regulatory structures***

1. A programme of resources and assistance to improve the overall *capacity* of the relevant DRC institutions, including the Cadastre Minier and Mining and Forestry ministries. More generally, coordinated support for the reform of the justice and security sectors should be an urgent priority.

2. Structural changes to improve the *independence* of oversight and decision-making mechanisms, including the cadastre, inter-ministerial commissions, and mining inspectorate. One notable suggestion was an **independent expert advisory board** (possibly with international membership, or in the form of a contracted international body) with a remit to consider future tender decisions and partnership agreements and make recommendations. A second was that existing national structures be adapted to create an independent oversight body (a point raised by Lutundula among others). Further consideration should be given to the form such structural changes could take.

**3.** The Congolese parliament should consider the creation of a permanent commission on natural resources.

**4.** Co-opt a reputable international NGO to work with the relevant Congolese ministries to review exploitation contracts and monitor implementation and impact (as in Cambodia).

#### ***Customs and Excise***

**5.** Reform of Customs and Excise, including contracting an outside agency to manage and reform the customs service over a period of several years, with a trial period to test political will. This approach would also seek to work in partnership with business to ensure compliance as part of a multi-agency approach.

#### ***Contracts and concessions***

**6.** Promote greater transparency in the natural resource sector. The possibility of making the material terms of contracts public should be considered, as should the publication of all payment and production figures (including taxes and royalties), beyond the requirements of the EITI. As a minimum, the implementation of EITI should be made a greater priority. Publication should be in a form accessible to local communities, and these communities should have a proper voice in plans that affect them. Information regarding future plans should be made available in good time.

**7.** Extension of the moratorium on new forestry concessions until an adequate control regime is put in place.

**8.** The review of clearly inequitable contracts, subject to a fair mechanism being devised. There was strong concern from a number of companies about the potential for abuse and unfairness if contracts entered into in compliance with the mining code were subject to review, and a view that it would be better to draw a line under all past contracts. The Chair suggested four principles that might address these concerns: (1) any review should be made according to judicial standards; (2) that there be an impartial international element to validate such a decision; (3) there be a judicial right of appeal for the company concerned and (4) that any review should only disturb manifestly corrupt or unfair contracts.

**9.** The Congolese parliament should debate the report of the Lutundula commission.

### *International measures*

- 10.** Address the developed world's poor record in anti-corruption legislation. In the UK consideration should be given to making the financial regulator (i.e. the FSA) the initial enforcement body, as in the US. The UK and other states should devote more resources to police their own laws; just one effective prosecution would send an important message.
- 11.** Donor countries should improve accountability for their own donations. Initiatives like EUSEC's monitoring of payments to FARDC soldiers were one model of what could be done.
- 12.** All DRC donor initiatives should be conducted under the auspices of a donor platform to ensure a common stand on governance and other issues.
- 13.** Both sticks and carrots should be provided in order to bring about change. DFID gave the example of the Forest Law and Governance and Trade Initiative which links recent EU legislation banning the import of illegally logged timber with the entry of timber producing countries into voluntary partnerships with the EU.

### *Management of extractive operations*

- 14.** Find ways of making the Voluntary Principles and other similar mechanisms a requirement of operations in the DRC. Use listings and financing requirements (possibly through the OECD) to compel companies to comply with initiatives such as the Extractive Industries Transparency Initiative (EITI) and the Voluntary Principles, as most mining businesses are cash hungry and source their finances from OECD based financial institutions.
- 15.** The scope of DRC oversight bodies should be expanded to include the social impact of extractive industries.
- 16.** A percentage of state taxes from extractive industries should be hypothecated, i.e. put into a trust fund to be used by NGOs and local community representatives for the benefit of the population. The expertise of the International Labour Organisation should also be drawn upon to improve the social impact of business operations.
- 17.** DRC civil society should be supported in their efforts to monitor extractive activities.

*Security-related issues*

**18.** Insecurity is widely seen as a central underlying cause of the problems associated with the natural resource sector. The international community should make meaningful security sector reform and especially DDR a matter of priority, with a coordinated and funded effort.

**19.** Human rights law and humanitarian training should be given to security providers, where this is not already the case. Donors should do this in the context of security sector reform for the state forces and companies should play the lead for the private sector.

## **Participants**

Lord Andrew Phillips – Chair

Rico Carisch – Member, UN Group of Experts

Eugenie Tshiela – Ambassador of the Democratic Republic of Congo to the UK

Caty Clement – International Crisis Group

Tim Read – First Quantum

Christophe Asselineau – Simmonds & Simmonds (with First Quantum)

Ben Cattaneo – Control Risks

Chris Melville – Control Risks

Jasper Harrison – ArmorGroup

Alex Stewart – Alex Stewart Assayers

Jana Zikmundova – Embassy of Belgium

Cath Long – Rainforest Foundation

Ben Shepherd – Foreign and Commonwealth Office

Dan Kravets – Phelps Dodge

Daniele Barberis – Phelps Dodge

Simon Gilbert – De Beers

Didier Verbruggen – IPIS

Anneke van Woudenberg – Human Rights Watch

Nick Bates – Department for International Development

Sharon Harvey – Department for International Development

Hazel Rogers – Deputy Coordinator, APPG on the Great Lakes Region of Africa

Santiago Porto – Council for Responsible Jewellery Practices

David Hesketh – Crown Agents

Paul Adams – Kroll

Salil Tripathi – International Alert

Andrew Parsons – ICMM

Judy Mallaber MP

Benedetta Lacey – Amnesty International

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