



## LAWYERS' DIALOGUE ON BUSINESS INVOLVEMENT IN HUMAN RIGHTS VIOLATIONS AND VICTIMS' ACCESS TO JUSTICE IN THE DEMOCRATIC REPUBLIC OF CONGO

Grand Karavia Hotel, Lubumbashi, 22 August 2010

### I. Background Note

#### 1. Brief Context

Business entities play a central role in the world economy. In the Democratic Republic of Congo (DRC) their influence has expanded into several sectors of social and public life to the extent that their activities have an undeniable impact on the enjoyment and exercise of human rights. While business entities have the ability to promote economic development and enhance the enjoyment of human rights, they can - and often do - have the propensity to perpetrate, aid and abet serious violations of international law. In the Congo, corporate violations have tended to be overshadowed by the atrocious violent conflicts that engulfed the country in aftermath of the collapse of the government of President Mobutu Sese Seko to the present day.

Numerous reliable reports from the DRC Parliament,<sup>1</sup> NGOs,<sup>2</sup> independent researchers,<sup>3</sup> and international organisations<sup>4</sup> as well as international adjudicatory bodies<sup>5</sup> have comprehensively established the extent to which the activities and complicity of formal and informal business entities and players from the DRC, the Great Lakes, African and international arena have contributed to the fuelling of armed conflicts, the exacerbation of gross human rights violations in war-torn zones and the ability of DRC military and police forces, government agencies and non-state actors, including local and foreign rebel groups, to perpetrate systematic abuses of human rights. The UN Report of the Panel of Experts on the Illegal Exploitation of

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<sup>1</sup> The Lutundula Report, named after the then Chairperson of the Economic and Financial Committee of the DRC National Assembly has been one of the most famous in that regard. See Assemblée Nationale, Commission spéciale chargée de l'examen de la validité des conventions à caractère économique et financier conclues pendant les guerres de 1996-1997 et de 1998. Rapport des travaux. I<sup>ère</sup> Partie. Fait à Kinshasa, le 26 juin 2005. Available at <<http://www.freewebs.com/congo-kinshasa/>> [Last visited 22 December 2009].

<sup>2</sup> See Global Witness, Under-Mining Peace – The Explosive Trade in Cassiterite in Eastern DRC, June 2005; Human Rights Watch, “D.R. Congo: U.N. Must Address Corporate Role in War”, 27 October 2003, available at <http://hrw.org/english/docs/2003/10/27/congo6483.htm> [Last visited 27 December 2009]; Human Rights Watch, “The Price for Oil: Corporate responsibility and Human Rights Violations in Nigeria’s Oil Producing Communities”, available at <http://hrw.org/reports/1999/nigeria/index.htm> [Last visited 27 December 2009]; Human Rights Watch “D. R. Congo: End Illegal Exploitation of Ressource”, 2006, available at <http://hrw.org/english/docs/2006/02/20/congo12692.htm> [Last visited 27 December 2009]; Human Rights Watch « The Curse of Gold Democratic Republic of Congo » (2005).

<sup>3</sup> D Barouski, ‘Blood Minerals in the Kivu Provinces of the Democratic Republic of Congo’ Global Policy 2007. Available at <<http://www.globalpolicy.org/security/issues/congo/2007/0601bloodmin.htm>> (accessed on 22 December 2009).

<sup>4</sup> See Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo, Ibid

<sup>5</sup> See Communication 227/99, *DRC v. Burundi, Rwanda and Uganda* 20th Activity Report at para 87; ICJ, Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), 19 december 2005.

Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo, in particular, systematically demonstrates how market-based economic activities – both licit and illicit – have sustained and benefited from political instability, armed conflict and human rights violations in the DRC.

Furthermore, business entities have sometimes taken advantage of weaknesses in the DRC state apparatus and corruption in the public sector to directly perpetrate, aid and abet human rights violations. The violations often attributed to business entities include destruction of life, the right to physical integrity, the right to healthy and safe environment, access to land, cultural rights and, in many cases, labour rights. Regardless of the political system in power, most corporate human rights have often been perpetrated through brutal use of force backed by public officials who have often benefited from corporate activities.<sup>6</sup> Beyond the illegal exploitation and plundering of natural resources that has featured in an informal economy based on barter, smuggling and fraudulent trade in commodities, the management and running of business activities have considerably contributed to the commission of numerous gross human rights violations countrywide.

The regularity and scale with which human rights are violated by business entities in the Congo is aggravated by the appalling absence of adequate and effective systems for imposing legal accountability for human rights violations. Even where some legal instruments provide for some form of accountability for corporations involved in human rights abuses, victims' access to justice has often faced challenges and barriers to having their claims heard, ruling out therefore the likelihood of them obtaining adequate and prompt compensation. Those challenges range from difficulties to access courts due to poverty, illiteracy and distance, political interference with the court's exercise of their jurisdiction when approached, obstacles to information-gathering when building a case, obstacles arising in the law and the legal process when a court hears a case; and challenges facing the enforcement of a settlement or a judgment. These challenges are compounded by the lack of vibrant civil society activism on the subject, ineffective legal aid programmes; and insufficient legal activism by lawyers.

Against this background, the Africa Programme of the International Commission of Jurists (ICJ), in collaboration Open Society for Southern Africa (OSISA) will host, during the Annual General Meeting of the SADC Lawyers Association a Lawyers' Dialogue on Business and Human Rights in the Democratic Republic of Congo. The conference is intended to bring together experts from academia, non-governmental organisations, intergovernmental institutions, governmental officials, business entities and legal practitioners to reflect and discuss on how human rights law can creatively and effectively be used to bring business entities and players to respect human rights standards and to account for their involvement or complicity in violation thereof. In exploring this key question, the following subsidiary questions shall be answered:

- 1) What is the current status of DRC laws regarding business activities in the country?
- 2) How can business entities and actors be held accountable under international and relevant domestic laws?
- 3) How could international criminal law and regional as well as sub-regional legal frameworks be used to punish and prevent corporate involvement in

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<sup>6</sup> See the Report by the Netherlands institute for Southern Africa, *State versus the People : Governance, Mining and the transitional regime in the Democratic Republic of Congo* (2006) 8.

international crimes?

- 4) How effective is the domestic civil liability regime in respect of business involvement and complicity in gross human rights abuses?
- 5) What are the obstacles facing access to justice for victims of business gross human rights abuse in the DRC, and how can they be overcome?

## 2. Goals

The main goals of the Dialogue are two-fold:

Firstly, to raise awareness and build the capacity of legal practitioners in the DRC and SADC sub-region to respond legally to the problem of business complicity in human rights violations.

Secondly, to critique the current legal regime for the accountability of business entities in the DRC, identify deficiencies and make remedial recommendations as a contribution to the development of a suitable legal and policy framework.

## II. AGENDA

8:00 - 8.30 Arrival and Registration of Participants

**Session Chair:** Mr. Otto Saki, Senior Democracy and Governance Advisor, USAID-Zimbabwe

8.30 - 9.00 **Introduction of the Workshop and of the ICJ:** Arnold Tsunga, Director, ICJ Africa Regional Programme

**Welcome Address and Introduction of ASADHO:** Georges Kampiamba, National Vice-President of ASADHO

**Opening Remarks** by Mr. Richard Lukunda, Legal Adviser to the Minister of Justice and Human Rights in Charge of Human Rights

9.00 - 9.30 **A Panoramic Look at the Nature, Extent and Consequences of Corporate Human Rights Violations in the DRC:** Dr Yav Katshung, Law Professor at the University of Lubumbashi & Member of the Lubumbashi Bar Association

9.30 - 10.00 **International Human Rights Obligations and Accountability of Business Entities: Content, Scope and Applicability in the Domestic Arena: The case of the DRC:** Professor Michelo Hansungule, Professor of Law, Centre for Human Rights, University of Pretoria & ICJ Commissioner

10.00 - 10.15 Tea break

**Session Chair:** Hubert Tshiswaka, DRC Country Manager, OSISA

10.15 - 10.45 **Accountability of Corporations for Human Rights Violations in DRC Laws: Options and Obstacles:** Professor Nyabirungu Mwene Songa,

Law Professor at the University of Kinshasa and Member of the Legal Committee of the DR Congo National Assembly

10.45 - 11.15 **Victims' Access to Remedies for Corporate Human Rights Violations in the Democratic Republic of Congo: Options and Obstacles:** Phebe Mavungu Clement, Legal Officer, ICJ Africa Regional Programme

11.15 – 12.30 **DISCUSSION**

12.30 - 13.00 **The Way Forward: For Effective Accountability of Corporations and Victims' Access to Remedies for Corporate Human Rights Violations in the DRC:** Martin Okumu-Masiga, Senior, Legal Officer, ICJ Africa Regional Programme

13.00 - **CLOSING REMARKS, LUNCH & DEPARTURE**