

Firms Linked to Conflict Minerals May Face Prosecution

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Prosecutors being urged to use pillage charge to curb illicit trade in natural resources.

New proposals to pursue those who benefit from the illegal exploitation of minerals have been broadly welcomed by activists - although some argue this would impoverish communities dependent on the trade.

Under new measures put forward by lawyers and human rights activists, companies who profit from the trade in so-called conflict minerals in countries such as the Democratic Republic of Congo, DRC, could face war crimes prosecution.

The possibility of using a neglected body of jurisprudence to curb the illegal exploitation of natural resources was raised at a recent conference in The Hague, held under the auspices of the Open Society Institute's Justice Initiative, in coordination with the Dutch and Canadian governments.

The conference saw the launch of a document described as a manual for war crimes prosecutors by its author, former International Criminal Tribunal for the former Yugoslavia, ICTY, prosecutor James Stewart.

The publication sets out the relevant judicial definitions and precedents which would enable national courts to prosecute individuals from corporations involved in the illicit trade in natural resources. Critics say funds derived from such transactions have been fuelling ongoing violence and rape in countries like the DRC, where an estimated five million people have been killed in the past ten years alone.

Among the most prized resources mined in the DRC is coltan, a material used in virtually every mobile phone, remote control and MP3 player. Some 80 per cent of the world supply of coltan is to be found in the DRC and is heavily exploited by militia.

"The idea is to put the tools in the hands of the national prosecutors and encourage them to apply them," Stewart said. "The court process would then proceed in the typical way: investigation, gathering and assessing of evidence, arrest and the prosecution."

International Criminal Court, ICC, prosecutor Luis Moreno-Ocampo, who in 2008 famously charged Omar al-Bashir, the president of Sudan with genocide and war crimes charges, welcomed the proposals, saying, "It won't be easy and we need time, but we have to do it in order to stop the spread of criminal actions around the world."

He said that he had long been speaking out "about the role that corporations play in the global network of conflicts".

If national prosecutors did start prosecuting pillage as a war crime, this would mark an important breakthrough in efforts to curb resource plunder in conflict zones.

The United Nations estimates that over 40 per cent of civil wars over the past 60 years have involved natural resources and almost one in three UN peacekeeping missions worldwide deal with conflicts sustained by revenues derived from natural resources.

For such crimes to be successfully prosecuted, national courts would need to take the initiative. ICC member states, through the principle of complementarity, can adopt the Hague court's war crimes statutes to prosecute the crime of pillage.

Law professor Larissa van den Herik, of the University of Leiden and one of the Hague conference organisers, told Radio Netherlands Worldwide that "in an ideal world, the ICC can play a very important role as a model court. It has pillage charges, for instance in the case against former Congolese militiamen Germain Katanga and Matthieu Ngudjolo Chui.

"These cases might set precedents on how to apply pillage in current day conflicts. ... Hopefully domestic courts follow suit, and they will also take pillage seriously. They will carry the greatest burden of cases."

Stewart said that it was now up to individual governments to enforce the pillage charge. "We want the countries to put up their hands and say this is our problem, our responsibility, and bring accountability where it is due," he said, adding that other methods also needed to be used such as sanctions and money laundering legislation.

Five years ago, the UN Security Council extended a set of targeted sanctions to prosecute companies and individuals involved in financing illegal armed groups in the DRC through the illicit trade in natural

resources.

However, currently only 30 individuals and entities have been placed on the targeted list of sanctions. Recently, in October 2010, a British court declined an application for a judicial review of the government's decision not to list United Kingdom companies trading in Congolese conflict minerals for targeted UN sanctions.

"We need to create and maintain a shift from total impunity towards accountability," Stewart added. "This is a potentially historic change."

Many activists believe prosecuting the pillage of natural resources as a war crime would be an effective means of channelling funds away from militias in conflict zones, but some argue that this may result in already impoverished local communities losing jobs and income.

Leah Chishugi, a Rwandan genocide survivor, whose charity Everything is a Benefit works with women in eastern DRC, was supportive of Stewart's proposals, noting rebel groups harshly exploit those who illegally mine minerals and other natural resources.

"The rebels come to the village, kill the men and rape the women," she said. "Then they take the young boys - some only five years old, some younger - and train them as slaves to work in the mines. And in the mines, they are being poisoned by the exposure to chemicals - they wear no protective equipment, no masks, their skin is peeling off, their lungs are burning and the majority do not survive their tenth birthday."

"If we don't do anything about it now, it will just continue," she added.

Blanka Geszti of the campaign group Global Witness described the prospect of pillage being prosecuted as a war crime as "an important step forward".

She added that "a criminal charge would be crucial as it would send the message to companies benefiting from conflict that they don't have impunity when they contribute to grave human rights abuses, even if they're far down the supply chain".

However, some argue that prosecuting businessmen for war crimes if the materials they bought - directly or through an intermediary - were initially procured illegally by armed militia groups could actually have a negative effect in places like DRC.

Speaking at the Hague conference, Dominic Johnson, a journalist and a member of the eastern DRC NGO the Pole Institute, warned that the proposal could deter businesses from operating and even investing in DRC.

He levelled similar objections at United States president Barack Obama's recent 2010 Dodd Frank Act, which obliges US companies to not only disclose on their websites, but also actively investigate, instances where their goods may have been manufactured with conflict minerals.

Johnson also criticised an initiative implemented in September 2010 by DRC's president Joseph Kabila to indefinitely suspend mining in three key provinces in eastern DRC which are rich in gold, coltan and cassiterite, and largely controlled by rebels.

The Pole Institute's director of research, Aloys Tegera, highlighted the fact that in North Kivu profits from mining products "represent two-thirds of the official revenues" of the entire area.

The effect of the mining suspension "is comparable to a sufferer of a respiratory illness from whom the oxygen mask is suddenly snatched away", he said.

But others believe that prosecuting the pillage of natural resources would actually benefit investment and trade in the long term.

Calling Kabila's ban on mining "an economic disaster" for local communities and the long term development potential of the DRC, Nick Donovan, head of campaigns at the Aegis Trust, says that "the pillage proposal is nothing like that".

Instead, the proposals' potential deterrent effect "will make it more difficult and expensive for armed groups to exploit mineral resources illegally, and at the same time make it easier for the legitimate resource owners to sell the resources through legitimate channels.

"The revenues and the taxes can build up resources needed for education, social welfare, national security, and so on."

He adds, however, that in practice, "we are still a long way" from implementing the proposals and that much depends on the DRC's own decisions on how to move forward.

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Location: Democratic Republic of Congo

Topic: Conflict

Focus: ICC - International Criminal Court

Source URL: <https://iwpr.net/global-voices/firms-linked-conflict-minerals-may-face-prosecution>