

# Ethical perspectives on mining-induced dislocations in Eastern Congo

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**BOSTON COLLEGE**

SCHOOL OF THEOLOGY AND MINISTRY

**ETHICAL PERSPECTIVES ON MINING-INDUCED  
DISLOCATIONS IN EASTERN CONGO**

A Thesis by

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## **ABSTRACT**

### **Ethical Perspectives on Mining-Induced Dislocations in Eastern Congo**

It might be unusual to identify the Democratic Republic of Congo (DRC) as a country where expulsions put at flagrant risk thousands of small farmers to make way for economic projects or natural resources extraction, as is the case in Brazil, Argentina, Chile, India, South Africa, and Zimbabwe. The lack of documentation and data greatly contributes to silencing the victims of dislocations in Eastern Congo. This research, therefore, voices six critical claims by raising the ethical question: how can Christian ethics – in the only African country with the greatest proportion (43.2 million) of baptized Catholics – humanize involuntary displacement and resettlement of communities? While the “resource curse theory” has revealed the challenges of a country riddled with economic constraints, political instability, and mining-induced conflicts, this research proposes the “protological ethics of land” as one approach to dislocations in the era of extractive industries.

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## GENERAL INTRODUCTION

This research deals with the question: how can ethics humanize involuntary displacement and resettlement of communities in making way for natural resources extraction? The Democratic Republic of Congo (DRC), our case study, spans a surface area of 2.3 million square kilometers at the heart of Africa, with 80 million inhabitants. It covers 52% of the African continent's surface water reserve. As the World Bank reports, "with 80 million hectares of arable land and over 1,100 minerals and precious metals, the DRC has the potential to become one of the richest countries on the African continent and a driver of African growth if it can overcome its political instability."<sup>1</sup> These data reflect an estimated US\$ 24 billion potentially unexploited minerals in the DRC,<sup>2</sup> known as a "geologic scandal."

Geological mapping reveals a high density of minerals in Eastern Congo (North and South Kivu) where allegedly 120 armed groups are active, according to Human

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<sup>1</sup> <http://www.worldbank.org/en/country/drc/overview> (accessed May 3, 2018).

<sup>2</sup> Among the minerals are: zinc, tungsten, tin, lead, nickel, manganese, silver, iron, diamond and "strategic minerals" such as copper, gold, lithium, cobalt and coltan (extracted in the DRC and used in the manufacture of telephones, computers, electronic gadgets, and electric cars). This does not include other commodities such as oil, uranium, methane gas, etc. Several studies attempt to demonstrate that chronic instability in the DRC is dependent on the needs of the global industry. It is believed by the media that multinationals fund armed conflicts to freely access raw materials.

Rights Watch's October 2017 *Kivu Security Tracker*.<sup>3</sup> On the national (2018 Mining Law),<sup>4</sup> regional, and international scale, standards have been defined to prevent "conflict minerals." Still, minerals account for more than 80% of the DRC's exports and half of its GDP.

Moreover, "there are an estimated 10 million people, 16% of DRC's population, who either mine directly or are dependent on artisanal mining for their livelihood."<sup>5</sup> Thus, Mazalto, a Canadian expert in the DRC's mineral resources, questions, "why no standard has been set to specify the nature and extent of companies' involvement in local development? In the absence of normative criteria, companies relate selectively to populations, with notable differences."<sup>6</sup>

This framework is fitting to address dislocations of communities aimed at making way for natural resources extraction in Eastern Congo. While I am concerned with the theoretical formulation of mining-induced dislocation, I also look at the literature covering involuntary displacement. As Terminski acknowledges, among the inexhaustible possibilities which are likely to occur, the social scientists "enumerate four causes of involuntary displacements: conflicts, natural disasters, long-term environmental changes, and the consequences of economic development."<sup>7</sup>

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<sup>3</sup> <https://reliefweb.int/sites/reliefweb.int/files/resources/October....pdf> (accessed November 26, 2018).

<sup>4</sup> République Démocratique du Congo, Loi n°18/001 modifiant et complétant la Loi n° 007/2002 du 11 juillet 2002 portant Code minier.

<sup>5</sup> World Bank, "Democratic Republic of Congo Growth with Governance in the Mining Sector," Oil/Gas, Mining and Chemicals Department (Washington, DC: World Bank, 2008), 7.

<sup>6</sup> Marie Mazalto, "La réforme du secteur minier en République Démocratique du Congo: Enjeux de gouvernance et perspectives de reconstruction," *Afrique contemporaine* 3, 227 (2008), 64.

<sup>7</sup> Bogumil Terminski, "Mining-Induced Displacement and Resettlement: Social Problem and Human Rights Issue (A Global Perspective)," <http://indr.org/wp-content/uploads/2013/04/B.-Terminski-Mining-Induced-Displacement-and-Resettlement.pdf> (accessed September 3, 2018), 4-5.

Terminski therefore considers mining-induced displacement and resettlement (MIDR) as a sub-category of development-induced displacement and resettlement (DIDR). I prefer to use interchangeably both concepts of “mining-induced dislocation” (MID) and “mining-induced displacement and resettlement” as a situational reality of eviction (or expulsion) of communities to make way either for natural resources’ extraction or for economic projects mostly developed by the multinationals.

The scope of this research focuses on mining extraction, that is, “the human endeavor to access the natural resources that are not on the surface of the earth,”<sup>8</sup> which is likely associated with “the forcing of thousands of people to abandon their current places of residence.”<sup>9</sup> Supporting this position, Amnesty International reported that, during 2011-2013 in Luisha City, 80 km away from Lubumbashi (South-East Congo), nearly 300 families were expelled from their land when Congo International Mining Corporation (CIMCO), a Chinese company, was yielded mining exploitation rights.<sup>10</sup>

I therefore devote exclusive attention to mining-induced dislocation because, on a wider scale,

mining-induced displacement constitutes a major social problem and a challenge for human rights. As pointed out by Theodore E. Downing only in India mining development displaced more than 2.55 million people between 1950 and 1990. It is therefore of great importance to conduct its profound analysis as well as inspire broad public debate. According to the WBED report (published in 1994), the thermal projects including

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<sup>8</sup> Thomas Resane, “The mining-induced displacement and resettlement: The church as a leaven and ecclesiology in context’s response,” *HTS Theologiese Studies/Theological Studies* 71 (3), Art. #2967, 8 pages. [http:// dx.doi.org/10.4102/hts.v71i3.2967](http://dx.doi.org/10.4102/hts.v71i3.2967) (accessed September 3, 2018), 1.

<sup>9</sup> Terminski, “Mining-Induced Displacement and Resettlement: Social Problem and Human Rights Issue (A Global Perspective),” 3.

<sup>10</sup> See Amnesty International, “Étude de cas : expulsions forcées à Luisha,” *Pertes et profits : Exploitation minière et droits humains dans la Katanga, en République Démocratique du Congo* (2013), 25.

mining were the cause of about 10,3 percent of the development-induced displacement caused by World Bank-financed projects (active in 1993).<sup>11</sup>

Thomas Resane highlights the unethical role of foreign companies, which have a larger stake and share minerals with the national government, marginalizing the populations where these activities take place. As a consequence, he claims that these populations face strenuous socio-economic imbalances.<sup>12</sup> The concern about mining-induced dislocation in the DRC revolves around socially lasting effects leading to family disruption, the absence of any legal scheme on companies' misconduct in the process of consultation, dislocation-relocation, and compensation.

These reasons provide the basis for my contention that, by declaring all wealth above and beneath the land to be state property, the 1966 Bakajika Land Law laid the ground for mining-induced dislocations because a kleptocratic state owning ancestral lands is likely to sell them to the rich on an unethical basis.

The choice of this particular line of research, hence its relevance, is justified by the global concern raised by economic projects forcing communities to abandon their land. As Terminski reports, "Gold mines in Tarkwa, open-cast copper mines in Papua New Guinea, coal mines in Jharkhand (India), lignite mines in Germany, and diamond mines in Zimbabwe are just a few examples of activities leading to the displacement of large numbers of people worldwide."<sup>13</sup> An intellectual analysis of "physical abandonment of

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<sup>11</sup> Terminski, "Mining-Induced Displacement and Resettlement: Social Problem and Human Rights Issue (A Global Perspective)," 3.

<sup>12</sup> See Thomas Resane, "The mining-induced displacement and resettlement: The church as a leaven and ecclesiology in context's response," 1.

<sup>13</sup> Terminski, "Mining-Induced Displacement and Resettlement: Social Problem and Human Rights Issue (A Global Perspective)," 3.

the existing residence.... the loss of access to material resources such as land, pastures, forests and clean water as well as intangible resources such as socio-economic ties”<sup>14</sup> leads to formulate ethical principles on natural resources extraction and to address human rights violations.

The methodology of this research depends on a critical approach. Critical analysis from the sociological, economic, and human rights perspectives contributes to the formulation of an ethical and theological reflection.

To be successful in this approach, I have outlined my results in three chapters. The first chapter pictures the socio-political context of the DRC and points out the state’s dependency on mineral resources in the postcolonial DRC. As a consequence, natural resources have become a curse for local communities (or indigenous people) occupying mining exploitable concessions. The second chapter, focusing on conflicts induced by involuntary resettlement, suggests that the land tenure framework, which produces adverse effects, be improved so as to bring about restorative and restitutive justice for smallholders. The last chapter searches for a reliable Christian ethics in the era of extractive industries.

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<sup>14</sup> Ibid., 1.

# CHAPTER 1:

## ABUNDANT RESOURCE AS THE CURSE OF DISLOCATIONS

### Introduction

An overview of the Democratic Republic of Congo (DRC) mining resources' mapping reveals portions of the country conceded to mining companies often associated with economic predation. As these longstanding mining contracts are still distrusted, one may question how they do justice to communities' development in a country ranked among the lowest average achievement in human development, according to the United Nations' Human Development Index (HDI).<sup>15</sup>

These features are not exhaustive, but they do provide an overall picture of the DRC. At least, they hint at commodities as a booming sector and, therefore, confirm what some call the "Dutch disease." According to Di John, the "Dutch disease" refers to "the discovery [in the 1970s] of the North Sea oil and its impact on the industrial structure of such economies of the Netherlands [natural gas] and the United Kingdom," that is, "subsequent deindustrialization in output and employment, which took place in these two economies following their resource booms."<sup>16</sup>

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<sup>15</sup> See United Nations Development Programme (UNDP), *Human Development Indices and Indicators: 2018 Statistical Update* (New York: United Nations Development Programme, 2018), 41.

<sup>16</sup> Jonathan Di John, "Is There Really a Resource Curse? A Critical Survey of Theory and Evidence," *Global Governance* 17, 2 (Apr.-June 2011), 168-9.

In 2010, the Congolese Bishops' Conference spoke out about the shortfall caused by non-transparent exploitation of mineral resources, "which could have been used to develop ambitious economic development projects so as to increase national production and therefore improve the living conditions of the population. The exploitation of natural resources struggles to get rid of the predation economy."<sup>17</sup>

This resource curse—a paradox of abundant natural resources countries which tend to achieve poor economic growth, less democracy, and much instability—is morally bankrupt as it accommodates a capitalism-oriented vision of the state which disregards human dignity. Because the context matters in debating dislocations in the DRC, this overview chapter outlines the problem: which theories, paving the way for evictions, are compelling to explain dislocations?

I argue that dislocations are fueled by an unbroken resource curse. The prospect of reversing such a curse should consider the catalytic role of extractive industries driving dislocations, so as to halt a kleptocratic denial to communities of the capability to hold land property.

## **I. Unbroken Resource Curse**

In examining the resource curse, it is worth reviewing briefly the literature on this theory. As Kisekka-Ntale puts it, "the concept was empirically analyzed in a number of studies starting with Auty and Gelb. These studies established the nexus between

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<sup>17</sup> Conférence Épiscopale Nationale du Congo (CENCO), "Faudrait-il encore que le sang coule en R.D. Congo ?" Message du Comité Permanent Extraordinaire de la CENCO pour la réussite du processus électoral (Kinshasa: 24 juin 2010), 5.

resource abundance and poor economic performance indicators such as low per capita income, low quality of life, and general underdevelopment.”<sup>18</sup>

Di John’s approach highlights that, “natural resources, for most poor countries, are deemed to be more of a ‘curse’ than a ‘blessing’.”<sup>19</sup> Commodity becomes paradoxically a curse because “natural resource abundance leads to poor economic performance and growth collapse, high levels of corruption and poor governance, and greater political violence.”<sup>20</sup>

This thought shifts away from the Innis’ 1966 “staple theory,” which claimed that the most influential staple sectors in economic development have been minerals,<sup>21</sup> due to their capacity to overcome traditional resource gaps such as savings, fiscal and foreign exchange constraints – because low income countries usually do not produce machinery or capital goods.<sup>22</sup> From the historical perspective, Di John goes further by claiming that resources featured positively on the economic development of the United States, Australia, Canada, and Brazil.

This assumption stems from an apocalyptic view of the post-World War II economy: abundant natural resources have made things worse for low income countries, since the resource curse revolves around oil or natural resources abundance.<sup>23</sup> The

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<sup>18</sup> Fredrick Kisekka-Ntale, “Contested Power Terrain: The Legislature and Governance of Oil Resources in Uganda,” *Extractive Industries in Africa: Addressing Conflicts and Integrating Sustaining Development*, Elias Omondi Opongo, ed. (Nairobi: Paulines Publications Africa, 2018), 84.

<sup>19</sup> Jonathan Di John, “Is There Really a Resource Curse?” 167.

<sup>20</sup> *Ibid.*, 168.

<sup>21</sup> Roger Hayter & Trevor Barnes, “Innis’ Staple Theory, Exports, and Recession: British Columbia, 1981-86,” *Economic Geography* 66, 2 (1990), 161.

<sup>22</sup> See Di John, “Is There Really a Resource Curse?” 168.

<sup>23</sup> See *ibidem*.

literature, therefore, outlines the resource curse arguments in three variants: economy, governance, and stability.

### **A. Negative Economic Impact**

Focusing on the Dutch disease mechanism, the economic variant of the resource curse claims that a natural resource boom renders the manufacturing and agricultural sectors uncompetitive, because it boosts the exchange rate, increases the general spending in the economy and raises wages, as well as the cost of goods and services.<sup>24</sup> This strand assumes that, not only does the cost of manufacturing and agricultural products go up, but also the imports in these sectors become expensive because of the high exchange rate. Thus, the Dutch disease displays the reality that “natural resources abundance is associated with very poor economic performances and a higher propensity of the country to have its structures experience deep growth collapses at a greater frequency.”<sup>25</sup>

The Congolese export structure tends to confirm the resource curse. For six consecutive years (2010–2016), as mentioned in the Central Bank of Congo’s (BCC) Annual Reports, the exponential role of mining products discloses complete dependency of national income on natural resources: 97.0% of export (2009), 98.3% (2010), 98.6% (2011), 98.7% (2012), 97.7% (2013), 95.5% (2014), 97.5% (2015), and 97.5% (2016).<sup>26</sup> These figures obviously disclose lack of export diversification—which “could help reduce growth

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<sup>24</sup> See Jonathan Di John, “Is There Really a Resource Curse?” <https://www.youtube.com/watch?v=s3BCuiW9rPc> (accessed 02.08.2018).

<sup>25</sup> *Ibidem*.

<sup>26</sup> See Banque Centrale du Congo, Rapport Annuel 2010, 2011, 2012, 2013, 2014, 2016.

volatility”<sup>27</sup> – and present the DRC’s economy as minerals-centered as natural resources constitute the only reliable source of income.

The state budget, whose main source of income is mining products, unsurprisingly followed the same trend: USD 1,826,493.75 (2009), USD 3,504,687.50 (2010), USD 4,216,437.50 (2011), USD 4,130,687.50 (2012), USD 6,434,60 (2013), USD 4,655,625 (2014), USD 7,586.22 (2015), and USD 4,503,181.25 (2016). The 2014 export slump noticeably brought down the state budget, while the export revival the following year had a positive impact on the 2015 budget. Perhaps sustainable growth in the DRC is uncertain when the economy depends upon commodity windfall with the risk of volatility.

The collapse of agriculture is the visible consequence of the mineral’s windfall: 1.8% of export (2009), 1.3% (2010), 1.1% (2011), 1.0% (2012), 1.9% (2013), 4.4% (2014), 2.5% (2015), 2.4% (2016). Good performance is noteworthy in 2014 during the mineral slump. This brief success declines immediately in 2015 owing to high international commodity prices.

There likely exist few investments in agriculture since minerals overcome the state budget’s constraints. Although its large freshwater reserve (3,680,000 km of watershed) offers great opportunities for agriculture, the DRC farms only 10% of its 80 million hectares of arable land.<sup>28</sup> Thus, “the annual growth of agriculture production represents

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<sup>27</sup> International Monetary Fund (IMF), *Democratic Republic of Congo: Selected Issues* (Washington, DC: International Monetary Fund, 2015), 21.

<sup>28</sup> See Agence Nationale pour la Promotion des Investissements (ANAPI), *Investir dans le secteur agricole en République Démocratique du Congo: Cahier sectoriel* (Kinshasa: ANAPI, 2016), 10.

only 2% unlike the 3.2% of population growth.”<sup>29</sup> The logic of this structure predicts that deindustrialization is the inevitable change that occurs as a result of commodity boom.<sup>30</sup>

Besides, the growth collapses mainly occur in Sub-Saharan economies because of the absence of policies to deal with commodity booms. Following the logic of the Dutch disease, “a natural resource windfall... can lead to a decline in income via a market mechanism, notably an appreciation of the real exchange rate.”<sup>31</sup> Obviously, “deepening this pattern... can impede the development of the manufacturing sector by consuming all available financial resources and contributing to real exchange appreciation (the so-called Dutch disease).”<sup>32</sup>

This danger is permanent while the increasingly value minerals as of 2017 – 2018 is occurring. Copper’s value swung from USD 5,824 to USD 7,014.50 per ton, an increase of 20.4%. Likewise, cobalt’s value increased from USD 47,523.75 to USD 84,988.96 per ton, an increase of 79%. There was a similar swing for gold, from USD 1,231.15 to USD 1,328.53 per fine troy ounce, an increase of nearly 8%; lastly, a barrel of oil jumped from USD 52.67 to \$65.18, an increase of 23.8%.<sup>33</sup> The boom paradoxically brings about an upsetting rise in the rate of inflation as well as a decrease of purchasing power. It should, therefore, be of concern for the DRC economy to depend greatly upon natural resources.

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<sup>29</sup> Ibidem.

<sup>30</sup> See Jonathan Di John, “Is There Really a Resource Curse?”, 169. For deindustrialization in the DRC, see the rubric “Structure des exportations” in Banque Centrale du Congo, Rapport annuel 2010, 2011, 2012, 2013, 2014, 2016.

<sup>31</sup> Fernanda Brollo et al., “The Political Resource Curse,” *NBR Working Paper Series* 15705 (2010), 1.

<sup>32</sup> Andrea Goldstein, Nicolas Pinaud & Helmut Reisen, “The Rise of China and India: What’s in it for Africa?” *Policy Insights* 19 (May 2006), 2.

<sup>33</sup> See RDC, *Compte-rendu de la 9ème réunion extraordinaire du Conseil des Ministres* (Kinshasa: 20 mars 2018), 6. The figures are mentioned in the report as of March 20, 2018.

My sense is that the nonpayment of taxes prevailing in the DRC is also a consequence of the Dutch disease, owing to a commodity's ability to overcome fiscal constraints. Still, the Tax Authority evokes an upward trend in tax collection since 2003.<sup>34</sup> The tax base remains quite undiversified and relies essentially on commodity and trade. The underperformances result partly from the commodity boom which, in the post-colonial period, amplified citizens' expectations from a welfare state and exacerbated their negligence, even their antagonism, vis-à-vis taxes.

As a matter of fact, the well-known value-added tax (VAT) has been adopted in the DRC only in 2010.<sup>35</sup> Many taxes are illegal or unknown, especially in the informal economy, due to the government's inability to efficiently promote fiscal civic-mindedness. Perhaps the lack of minimum living within everyone's reach or counterpart—infrastructures, healthcare system, clean water, and electricity—sociologically supports the mistrust of taxes. For Yabili, in the DRC, taxation has no social and cultural roots (it lacks an image, a justification, and a counterpart) before concluding that the independence in 1960 disposed of taxation policies then perceived as social constraints.<sup>36</sup>

Cabral Libii, a presidential candidate for the 2018 election in Cameroon, pointed out, during a public speech on September 10, 2018 in Lyon, that people do not possess certification attesting ownership of their land, although they have been occupying those

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<sup>34</sup> See <http://www.dgi.gouv.cd/statistiques/evolution-des-recettes.html> (accessed March 30, 2018).

<sup>35</sup> See RDC, Ordonnance-loi n°10/001 du 20 août 2010 portant institution de la Taxe sur la Valeur Ajoutée.

<sup>36</sup> See Marcel Yabili, *50.000 taxes. Fiscalité réglementaire en République Démocratique du Congo* (Lubumbashi: Éditions Marcel Yabili, 2016), 51.

lands for years. These lands are called “national domain.” Land tenure should be given free of charge to those with customary properties. Such policy is an economic decision because it takes someone out of poverty.

Actually, owning land endows one to apply for a banking loan to exploit that land and reimburse one’s loan. One can equally mortgage his/her land to acquire a share in agribusiness companies’ equity and, therefore, import machinery. The lack of access to land becomes a hindrance to the development of agribusiness and reinforces the economic effects of the resource curse. Thus, any exploitation of natural resources by the state on private property would give to the owner the right to a fair remuneration. However, how do economic achievements intersect with governance in a resource abundant country?

## **B. Governance Deficit**

The second strand of the resource curse deals with questions of governance, which embody the rentier state and rent-seeking models.<sup>37</sup> Rents are considered as “the ‘excess incomes,’ or the ‘proportion of earnings in excess of the minimum amount needed to attract a worker to accept a particular job or a firm to enter a particular industry.’”<sup>38</sup>

This approach draws attention to natural resource-abundant countries’ tendency to experience higher levels of corruption and lower levels of governance than comparable countries lacking those minerals.<sup>39</sup> As Obi upholds, the resource curse theory feeds certain

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<sup>37</sup> See Di John, “Is There Really a Resource Curse? A Critical Survey of Theory and Evidence,” 170.

<sup>38</sup> *Ibid.*, 171.

<sup>39</sup> Jonathan Di John, “Is There really a Resource Curse?”  
<https://www.youtube.com/watch?v=s3BCuiW9rPc> (accessed 02/08/2018).

perspectives on the nature of the DRC built upon abundant resource determinism that is subversive of development and democratic governance.<sup>40</sup>

A scientific tool, for the time being, to gauge African governance is the Ibrahim Index of African Governance (IIAG), an annual Index Report which monitors countries' governance performance. The 2017 IIAG Index Report considers governance as "the provision of the political, social and economic public goods and services that every citizen has the right to expect from their state, and that a state has the responsibility to deliver to its citizens."<sup>41</sup>

For the years 2007-2016, overall governance (safety and rule of law, participation and human rights, sustainable economic opportunity, and human development), the DRC is ranked 48<sup>th</sup> out of 54 countries and registers increasing improvement. Yet this score cannot mask a bouncing back in personal safety<sup>42</sup> as well as warning signs concerning the rule of law.<sup>43</sup> Moreover, the average score across Africa mirrors slowing deterioration.<sup>44</sup> No reason can justify, for example, that no financial resources have been allocated to protection of "the Citizen's Rights and Freedoms," one amidst the sections of the state's expenditure budget.<sup>45</sup>

It might be said that the trend of accountability in the DRC is improving with regard to access to public information and public-sector accountability and

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<sup>40</sup> See Cyril Obi, "Oil as the 'Curse' of Conflict in Africa: Peering through the Smoke and Mirrors," *Conflict and Security in Africa*, ed. Rita Abrahamsen (Woodbridge & Rochester, NY: James Currey and Boydell & Brewer, 2013), 67.

<sup>41</sup> Mo Ibrahim Foundation, *2017 Ibrahim Index of African Governance: Index Report (2017)*, 9. Available at <http://mo.ibrahim.foundation/iiag/downloads/> (accessed May 11, 2018).

<sup>42</sup> See *ibid.*, 26.

<sup>43</sup> See *ibid.*, 32.

<sup>44</sup> See *ibid.*, 16-19.

<sup>45</sup> See Banque Centrale du Congo, Annual Report (2012), 109.

transparency,<sup>46</sup> whereas the African average score exhibits no improvement. To a greater extent, “progress in accountability is held back by a large deterioration in corruption and bureaucracy and to a lesser extent in accountability of public officials.”<sup>47</sup> The DRC (which ranked 161<sup>st</sup> out of 180 countries in the 2017 Transparency International Corruption Perception Index) is no exception with 21-22/100 stationary score transparency since 2012.

However, the country is not doing much to advance the agenda of the 2018 African Union: “Fighting Corruption in the Continent.” Unfortunately, the stereotypical labelling of conflicts in the DRC around natural resources shadows further data given by investigative reports on the illicit trade in natural resource and corruption involving state elites and rebel militias,<sup>48</sup> hence impairing the country’s stability.

### **C. Political Instability**

The very question about the resource curse is: “suppose new oil is discovered in a country, or more funds are transferred to a locality from a higher level of government. Are these windfalls of resources unambiguously beneficial to society?”<sup>49</sup> The negative answer sourced from the Dutch disease does not exhaust a “growing literature [that

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<sup>46</sup> Mo Ibrahim Foundation, *2017 Ibrahim Index of African Governance: Index Report*, 34.

<sup>47</sup> *Ibid.*, 35.

<sup>48</sup> See Collier quoted by Cyril Obi, “Oil as the ‘Curse’ of Conflict in Africa: Peering through the Smoke and Mirrors,” *Conflict and Security in Africa*, ed. Rita Abrahamsen (Woodbridge & Rochester, NY: James Currey and Boydell & Brewer: 2013), 66.

<sup>49</sup> Fernanda Brolo et al., “The Political Resource Curse,” *American Economic Review* 2013, 103 (5), 1759.

points to] further adverse effects through the political process and the interaction among interest groups, leading for instance to increased rent-seeking or even to civil war.”<sup>50</sup>

It is established that resource-abundant economies are more exposed to political violence and vulnerable to civil war.<sup>51</sup> In effect, the resource curse explores “the connection between the paradox of resource abundance, conflict and poor economic growth... looking at a range of possible causes: social, political, geographic and economic.”<sup>52</sup> Lujala credits this position with the distinction “between resource abundance as a ‘motivation and means’ (incentive) for ‘rebel uprisings’ (armed conflict), and as a causal link to ‘poor policy choices and a weak state.’”<sup>53</sup>

The 2017 IIAG corroborates mounting concerns about the DRC national security bouncing back since 2007 due to violence by non-state actors and to domestic armed conflicts.<sup>54</sup> It is believed that, in eastern Congo, conflicts benefit armed groups which illegally extract mineral resources. Peace and security experts have persistently reiterated the need for an immediate end to illegal exploitation of minerals in the Great Lakes region—DRC, Rwanda, and Burundi—arguing that it was fueling activities of armed groups operating in the DRC.<sup>55</sup>

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<sup>50</sup> Ibidem.

<sup>51</sup> Jonathan Di John, “Is There really a Resource Curse?”  
<https://www.youtube.com/watch?v=s3BCuiW9rPc> (accessed 02/08/2018).

<sup>52</sup> Collier quoted by Cyril Obi, Ibid., 66.

<sup>53</sup> Lujala quoted by Cyril Obi, Ibidem.

<sup>54</sup> See *ibid.*, 38-40.

<sup>55</sup> See “Armed Groups Surviving on Illegal Mining-Experts,” *Africa News Service*, (27 June 2012). *General OneFile*  
[http://link.galegroup.com/apps/doc/A294544712/ITOF?u=mclin\\_m\\_bostcoll&sid=ITOF&xid=84b562dd](http://link.galegroup.com/apps/doc/A294544712/ITOF?u=mclin_m_bostcoll&sid=ITOF&xid=84b562dd) (accessed May 14, 2018).

The Bishops' Conference of Congo's Statement, *J'ai vu la misère de mon peuple: Trop c'est trop!* speaks out against the negative impact of the resource curse on political stability in strong terms, "Natural resources that make the DRC a 'geological scandal' are both a blessing, that is, an important economic asset for the country's growth and a misfortune, that is to say, a permanent source of greed, conflict, corruption or even an international mafia in which some Congolese are accomplices."<sup>56</sup>

It follows that armed groups cannot be neutralized in eastern Congo unless their permanent source of funding – illegal exploitation of minerals – is finally cut off.<sup>57</sup> Efforts are sought from all member states of the Great Lakes region to deliver a regional certification which would cleanse minerals to enable them access to international markets.<sup>58</sup> It should be noted that the Kimberley Process Certification Scheme (KPCS)<sup>59</sup> as well as the Extractive Industries Transparency Initiative (EITI)<sup>60</sup> champion minerals certification on a global scale. The rise of such challenges definitely shadows the role of extractive industries which channel dislocations.

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<sup>56</sup> Conférence Épiscopale Nationale du Congo (CENCO), *"J'ai vu la misère de mon peuple: Trop c'est trop!"* (Kinshasa, 15 février 2003), 5.

<sup>57</sup> "Armed Groups Surviving on Illegal Mining-Experts," *Africa News Service*, (27 June 2012).

<sup>58</sup> See *ibidem*.

<sup>59</sup> "The Kimberley Process Certification Scheme (KPCS) has been operational since 2003, and now covers virtually all countries with diamond producing, trading and polishing activities. It has been endorsed by several United Nations General Assembly and Security Council resolutions, and compliance with its requirements has been used by the Security Council as a benchmark for the lifting of diamond sanctions imposed on countries such as Liberia and Côte d'Ivoire." See UNCTD, *World Investment Report 2007: Transnational Corporations, Extractive Industries and Development* (New York & Geneva: United Nations, 2007), 181.

<sup>60</sup> "The multi-stakeholder Extractive Industries Transparency Initiative (EITI) was first launched by the then British Prime Minister Tony Blair at the World Summit on Sustainable Development at Johannesburg in 2002. It was the outcome of lobbying by NGOs and the civil society campaign, *Publish What You Pay*. The international anti-corruption movement, Transparency International, also played an important role." See UNCTAD, *World Investment Report 2007*, 180.

## II. Catalytic Role of Extractive Industries

The aforementioned context of dislocations reveals the DRC as a country “endowed with extractive industries such as oil, mining, and timber that are very capital-intensive.”<sup>61</sup> Actually, there exists no definition of extractive industries which is undebatable. They are considered in the global economy as “processes that involve the extraction of raw materials from the earth to be used by consumers [or] any operations that remove metals, mineral, and aggregates from the earth. Examples of extractive processes include oil and gas extraction, mining, dredging and quarrying.”<sup>62</sup>

Reference to “raw materials from the earth” does not make a clear distinction between renewable and non-renewable resources. The UN Conference on Trade and Development (UNCTAD) considers extractive industries as “primary activities involved in the extraction of non-renewable resources,” meaning that “they do not include such industries as agriculture, forestry and fisheries”<sup>63</sup> aimed at extracting renewable resources. This description surprisingly adopts an enumerative approach to industries and purposely avoids using the concept “minerals” which expands what is meant by “non-renewable resources.”

UNCTAD actually privileges an economic definition of minerals, “those that can be marketed for productive purposes,” that is, “energy minerals (oil, gas, coal and uranium), metallic minerals, and non-metallic minerals (industrial and construction

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<sup>61</sup> Andrea Goldstein, Nicolas Pinaud & Helmut Reisen, “The Rise of China and India: What’s in it for Africa?” *Policy Insights* 19 (May 2006), 2.

<sup>62</sup> See WebFinance, “Extractive Industry,” [www.businessdictionary.com/definition/extractive-industry.html](http://www.businessdictionary.com/definition/extractive-industry.html) (accessed May 6, 2018).

<sup>63</sup> UNCTAD, *World Investment Report 2007*, 84.

minerals and precious stones).<sup>64</sup> An additional characteristic of extractive industries surfaces from this depiction, that is, resources extraction focuses exclusively on marketable or tradable minerals, tradability being “measured as the sum of a sector’s exports and imports over the gross output.”<sup>65</sup>

This strand has been articulated before by Spencer. He considers that minerals extractive industries are concerned not only with the extraction of minerals at mines, quarries, pits, or wells, but also with the crushing, screening, washing, concentration, and other primary preparation of minerals which is usually carried on at such operations.<sup>66</sup> Thus, Spencer classifies extractive industries’ activities into four categories: fuel production, metal mining and ore dressing, stone quarrying and processing, and the production of minor nonmetals.

Notwithstanding many achievements of extractive industries in the world, Sassen overall argues that,

the exceptionally high profit-making capacity of many of the leading service industries is embedded in a complex combination of new trends. Among the most significant over the past twenty years are technologies that make possible the hypermobility of capital at a global scale; market deregulation, which maximizes the implementation of that hypermobility; and financial inventions such as securitization, which liquefy hitherto illiquid capital and allow it to circulate faster, hence generating additional profits (or loss).<sup>67</sup>

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<sup>64</sup> Ibidem.

<sup>65</sup> Rudolfs Bems, *Aggregate Investment Expenditures on Tradable and Nontradable Goods* (New York: International Monetary Fund, 2008), 7.

<sup>66</sup> See Vivian Eberle Spencer, *Production, Employment, and Productivity in the Mineral Extractive Industries, 1880-1938* (Philadelphia, PA: Work Projects Administration, National Research Project, 1940), 6.

<sup>67</sup> Saskia Sassen, *Expulsions: Brutality and Complexity in the Global Economy* (Cambridge, MA: Harvard University Press, 2014), 25.

For these reasons, extractive industries in the DRC often conflict with the interests of communities who accuse them of abuses, including brutal expropriation of their ancestral lands.

In Jacques Nzumbu's paper on strategic minerals published by Inkota-Germany, "the diagnosis is clear: cars pollute the environment and occupy too much space in the cities. After all, electric cars produce less harmful greenhouse gases than cars with internal combustion engines."<sup>68</sup>

It follows, according to this claim, that the transition to green energy makes the production and supply chains fueled by extractive industries even more ravenous for strategic minerals sought in manufacturing the five electric battery technologies available worldwide—Lithium Cobalt Oxide (LCO), Lithium nickel manganese cobalt (NMC), Lithium nickel cobalt aluminum (NCA), Lithium-iron phosphate (LFP), and Lithium manganese oxide (LMO)—for electric vehicles, electronics devices, and advanced weaponry. Since the DRC allegedly is rich in these five strategic minerals, it therefore attracts electric vehicles manufacturers and giants of electronics and weaponry.

This means, on the one hand, that the extractive industries play a catalyzing role in the dislocations of the communities, since they are meant to supply a globally growing demand. On the other hand, it appears difficult to end armed conflicts in eastern Congo as long as the global demand for strategic minerals remains high, since conflicts in mining zones enable cheaper exploitation and fraudulent export. On the local scale, a kleptocratic

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<sup>68</sup> See: <https://webshop.inkota.de/node/1548> (Accessed 2 October, 2018). Jacques Nzumbu, S.J., is a specialist in Mining Governance conducting research at the Jesuit "Centre Arrupe pour la Recherche et la Formation" (CARF) in Lubumbashi, DRC.

denial of capabilities to communities does not provide any reliable solution to dislocations.

### **III. Kleptocratic Denial of Capabilities**

While we are concerned with the theoretic attempt to link the resource curse to dislocations in the DRC, a guiding question shapes our reflection in this section: how does disowning land (kleptocracy) intersect with capabilities in the understanding of dislocations?

#### **A. Capability to Hold Property**

Mining-induced dislocations in the DRC as a political/economic threat cannot be grasped without an approach to comparative quality-of-life assessment and to theorizing about basic distributive justice, which Amartya Sen, an Indian economist and philosopher, and Martha Nussbaum, an American philosopher, insist are linked to human “capabilities.”<sup>69</sup>

While the capabilities approach considers “*each person as an end*,” asking not just about the total or average well-being but about the opportunities available to each person,” it resolutely addresses “*choice or freedom*,” holding that [what] the crucial good

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<sup>69</sup> Martha Nussbaum, *Creating Capabilities: The Human Development Approach* (Cambridge, MA: Belknap/Harvard University Press, 2011), 18.

societies should be promoting for their people is a set of opportunities, or substantial freedoms.”<sup>70</sup> What matters is the entrenchment of social injustice and inequalities.

Taking up Sen, Nussbaum articulates human development in ten capabilities: life; bodily health; bodily integrity; senses, imagination, and thought; emotions; practical reason; affiliation; other species (concern for and relation to animals, plants, and other creatures); play (ability to laugh, to play, and to enjoy recreations); and control over one’s political and material environment.

Ecclesially, lack of political control is denounced by the Bishops’ Conference of Congo. They voice social concerns and call upon the government to defend people’s interests, to promote development, and to create conditions for peace, security, property, and justice.<sup>71</sup> Thus, although Nussbaum’s list does not make any distinctions based upon priorities, neither does she understand the capabilities to be achieved exclusively or selectively, realizing full human development entails a cumulative achievement of these capabilities.

According to the Human Development Index, “human development is about human freedoms. It is about building human capabilities – not just for a few, not even for most, but for everyone.”<sup>72</sup> Yet it limits itself to a set of three capabilities – the ability to lead a long and healthy life, measured by life expectancy at birth; the ability to acquire knowledge, measured by mean years of schooling and expected years of schooling; and

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<sup>70</sup> Ibidem.

<sup>71</sup> See Conférence Épiscopale Nationale du Congo (CENCO), “Soyez vigilants. La paix dans la justice et la vérité,” Message du Comité Permanent de la Conférence Épiscopale Nationale du Congo (Kinshasa, 12 février 2009), 3.

<sup>72</sup> United Nations Development Programme (UNDP), *Human Development Indices and Indicators: 2018 Statistical Update*, 1.

the ability to achieve a decent standard of living, measured by gross national income per capita<sup>73</sup> – which exclude the right to land.

Notwithstanding the other nine unmet capabilities in the DRC, Nussbaum's tenth capability – control over material environment – is ethically bankrupt in the discussion at hand. Such a control extends to the ability “to hold property (both land and movable goods), and having property rights on an equal basis with others... having the freedom from unwarranted search and seizure.”<sup>74</sup> We have the sense that this attempt at distributive justice is limited because Nussbaum admits to having provided at least a threshold level of the capabilities<sup>75</sup> among an infinite list. Thus, the lack of elaboration on the capability to hold land property has been criticized by Freeman:

The capabilities approach says little or nothing about the standards for deciding who should control the means of production; how widespread the distribution of land and capital should be; limits on accumulation of resources and wealth; the degree to which private or social ownership of natural resources and real capital are each in order; about government's role in the economy and in ensuring full employment; about the kinds of property interests that are legitimate and their extent; permissible and impermissible uses of property; the relationship of distributive justice to the common good and exercise of basic rights and liberties, and so on. Other than questions of distribution of final product needed to reach the threshold of central capabilities, Nussbaum's approach gives little if any guidance in resolving many of the crucial questions about the basic structure of economic life in a democratic society.<sup>76</sup>

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<sup>73</sup> See *ibidem*.

<sup>74</sup> Nussbaum, *Creating Capabilities: The Human Development Approach*, 34.

<sup>75</sup> See *ibid.*, 32-33.

<sup>76</sup> Samuel Freeman, “Book Review-Frontiers of Justice: The Capabilities Approach versus Contractarianism,” *Texas Law Review* 85, 2 (2006), 409-410.

Whereas the state owns the soil and the subsoil, the capabilities approach sheds no light on three concerns. First, who has to own the land and exert a control over the means of production? Second, what property is legitimate to communities occupying ancestral lands without legally owning them? Finally, what is the role of distributive justice vis-à-vis the communities' fundamental right to property? Failing to answer these questions will likely leave unchallenged the current land-based kleptocracy.

## **B. Kleptocratic Neo-Colonial Machine**

The peculiarity of the Belgian colonization in the DRC rests in its colonial machine of exploitation of the soil (rubber, etc.) and the subsoil (mineral resources) for the benefit of the colonizer.

Philosophers agree that a "kleptocracy is a state that systematically steals from its citizens in order to increase its own wealth and power."<sup>77</sup> As a consequence,

kleptocracies block the mutual benefits that generate economic growth, and in doing so, [they concentrate] power in ruling elites. In a kleptocracy, the government appropriates resources, natural or not, at will. These regimes prey on those who produce and end up harming everyone except themselves and those who help them stay in power. Interestingly, kleptocracies can be democratic and observe traditional civil rights... [The Law] enables kleptocrats by expressly announcing that the state owns natural resources and that they, the government, can use and dispose of those resources at will.<sup>78</sup>

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<sup>77</sup> Fernando R. Tesón, "Revising International Law: A Liberal Account of Natural Resources," *San Diego Law Review* 52, 1123 (2015), 1141-1142.

<sup>78</sup> *Ibid.*, 1142.

The DRC legal framework governing land embraces the 1966 (Bakajika Law), 1971, 1973, and 1980 Laws, which seem outdated as a means to protect communities. A sterling example of appropriation of resources is seen in the management of mining concessions where the contracts “legally” concluded between government and investors rarely meet the expectations of smallholders.

As Walter Fluker, a Martin Luther King Jr. Professor of Ethical Leadership at Boston University, fittingly points out, “the error of many public leaders is that they have failed to acknowledge the presence of masses of disinherited and dispossessed groups within [their] power configurations.”<sup>79</sup>

Similarly, for the francophone Belgian Justice and Peace Commission, while assigning lands to foreign companies or private and wealthy investors, even though such properties are already exploited by local populations living there, the state inevitably violates some of the fundamental rights of rural populations, such as the right to control the land they own and the right to food.<sup>80</sup>

The appropriation of resources by government was legitimated when “the 1966 Bakajika Law<sup>81</sup> granted all wealth above and below the ground to the Congolese state. It thus extinguished all land grants and concessionary power delegated by the colonial state. The law aimed primarily at ensuring that public mineral rights went to the government.”<sup>82</sup> It became quite normalized that citizens cannot benefit from natural

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<sup>79</sup> Walter Earl Fluker, *Ethical Leadership: The Quest for Character, Civility, and Community* (Minneapolis, MN: Fortress Press, 2009), 61.

<sup>80</sup> See [www.justicepaix.be/IMG/pdf/2011\\_Analyse\\_Accaparement\\_des\\_terres\\_en\\_RD Congo.pdf](http://www.justicepaix.be/IMG/pdf/2011_Analyse_Accaparement_des_terres_en_RD Congo.pdf) (Accessed September 23, 2018).

<sup>81</sup> Ordonnance-Law 66-343 promulgated on 7 June 1966.

<sup>82</sup> Emizet François Kisangani & Scott F. Bobb, *Historical Dictionary of the Democratic Republic of the Congo*, 3<sup>rd</sup> ed. (Lanham, MD: Scarecrow Press, 2010), 36.

resources without declaring them to the state administration, which issues a certificate against payment of fees. One may suspect that “the prospect of appropriating their society’s natural resources is a major incentive for politicians seeking power.”<sup>83</sup>

Dislocations of indigenous people by multinationals which the post-colonial theories in Africa call “the neo-colonial machine” are therefore fueled by existing kleptocracies. For many decades, the “neo-colonial machine” has been a flourishing theory in African studies concerned with the experience of colonial domination and subsequent deliverance, postcolonial political domination, and material poverty.<sup>84</sup>

“The neo-colonial machine” is a metaphor for a system of exploitation which extractive industries and transnational companies incarnate; no wonder the neo-colonial machine replaced the colonial powers in the grand scheme of exploiting Africa’s raw material.<sup>85</sup> Gichaara is convinced that “the African social-economic and political crisis is profoundly theological and the African church is unavoidably a significant sight in the ensuing struggle.”<sup>86</sup> Yet the Church tends to be the missing voice and “continues to operate as if there is not a social and ecclesial challenge”<sup>87</sup> from the neo-colonial machine.

For these reasons, the Congolese Bishops’ Conference believes that the political leaders are confined in a logic that is contrary to the ideals of independence. In the Bishops’ opinion, the national project supporting the idea of state sovereignty has been

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<sup>83</sup> Tesón, “Revising International Law: A Liberal Account of Natural Resources,” 1142.

<sup>84</sup> See Jonathan Gichaara, “Issues in African Liberation Theology,” *Black Theology: An International Journal* 3.1 (2005), 75-85.

<sup>85</sup> See *ibid.*, 81.

<sup>86</sup> *Ibid.*, 82.

<sup>87</sup> Nader Michel, “Human/Cultural Rights of Asylum Seekers/Refugees and Labor Migrants,” *Living With(Out) Borders: Catholic Theological Ethics on the Migrations of Peoples*, eds. Agnes M. Brazal & Maria Teresa Davila (Maryknoll, NY: Orbis Books, 2016), 32.

erased by the loss or abandonment of the call to authentic independence from exploitive powers. An explanation for this neo-colonialism and imperialism is the looting of the country's natural resources.<sup>88</sup>

Through these hermeneutic lenses, Africa in general is described as a continent shaken by a form of impoverishment which Engelbert Mveng, S.J., termed “anthropological poverty” – e.g., crimes of the slave trade and misdeeds of colonialism in Africa.<sup>89</sup> A philosophical response to the “neo-colonial machine” is therefore to creatively revive a work ethic that enables Africans to define themselves not as debtors but as children of God who are called to re-humanize the world and make it a better place.<sup>90</sup>

Jean-Marc Éla, a Cameroonian sociologist and theologian, consequently maps the role of ethics vis-à-vis extractive industries while he reminds us that Africans better find ways to manifest a subversive power vis-à-vis financial powers by questioning unfair systems from the point of view of the poor and the oppressed.<sup>91</sup>

From this perspective, minerals as non-renewable resources raise the crucial question of sustainable development in the DRC. It has become common place to quote the 1987 UN World Commission of Environment and Development's definition of this concept as “meeting the needs of the present without compromising the ability of future generations to meet their own needs,”<sup>92</sup> an approach which highlights the commitment to equity with future generations (intergenerational equity). Unfortunately, nothing is

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<sup>88</sup> See Conférence Épiscopale Nationale du Congo (CENCO), “Faudrait-il encore que le sang coule en R.D. Congo ?” 3.

<sup>89</sup> René Heyer, “Annihilation anthropologique et anthropologie de la vie: Une discussion critique des thèses du P. Mveng,” *Théologie africaine et vie* 19, 1 (2011), 133.

<sup>90</sup> See Samuel Kobia quoted by Jonathan Gichaara, “Issues in African Liberation Theology,” 82.

<sup>91</sup> See Jean-Marc Éla, *My Faith as an African* (Eugene, OR: Wipf & Stock, 2009), 152.

<sup>92</sup> See <http://www.un-documents.net/our-common-future.pdf> (accessed 21 October, 2018).

being done in the DRC to prevent abusive exploitation of minerals. What can be recommended?

## **Conclusion**

While it is believed that China invests USD 300 billion in trade with Africa, ten times more than the United States, the presence of multinationals in the DRC exacerbates dislocations of indigenous people in mining areas. Of course, these dislocations are not caused by conflict around the mines alone. They are fueled by inequitable legal procedures of engagement with the impacted communities. Some recommendations should be made.

First, the legal framework should be reformed so as to recognize to communities' property rights over their ancestral lands. In this way, the DRC government should strengthen the rule of law; yet lack of strong leadership and the prevailing impunity constitute serious obstacles which the country will need to overcome.

Second, dislocations and illicit minerals exploitations are channeled by persistent armed conflicts. Lack of political will to overcome such conflicts for two decades remains suspicious and, in many ways, leads to conjecture that some government officials benefit from this conflict situation to appropriate natural resources.

Ultimately, an Intergenerational Equity Fund (IEF) should be established as in Senegal or, at least, protected areas against mining should be defined for safeguarding the interests of future generations.

The nature and impact of the resource curse as well as kleptocracy and political dynamics at play fuel mining-induced conflict, which result in involuntary resettlement of local communities.

## CHAPTER 2:

# INVOLUNTARY RESETTLEMENT IN MINING-INDUCED CONFLICT

### Introduction

While our previous chapter was concerned with identifying theories which are helpful to explain dislocations, the following discussion brings to the fore the question: how is it possible to create conditions for reconciliation between mining companies and the dislocated communities? However, it should be noted from the outset that dislocations are not caused by conflicts—i.e., a clash between communities and mining corporations—around the mines, but by a mishandled legal procedure of engagement which impacts communities. Neither are we concerned here with documented data on dislocations.<sup>93</sup>

As Saskia Sassen puts it, “we are confronting a formidable problem in our global political economy: the emergence of new logics of *expulsion*.”<sup>94</sup> Such logics are embedded in “the eviction of millions of small farmers in poor countries owing to the 220 million hectares of land, or over 540 million acres, acquired by foreign investors and governments since 2006.”<sup>95</sup> Therefore, more than 10 million people are involuntarily displaced and

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<sup>93</sup> Whereas many ground-led researches on mining-induced dislocations in the DRC are documented, they lack comprehensive data. So, my effort to support this research with figures has been unproductive.

<sup>94</sup> Saskia Sassen, *Expulsions: Brutality and Complexity in the Global Economy* (Cambridge, MA: Harvard University Press, 2014), 1 (Emphasis in original).

<sup>95</sup> *Ibid.*, 3.

resettled worldwide to make way for development projects such as mining.<sup>96</sup> This explosive context discloses a global tragedy which especially affects the Global South. We are left with the conviction that “community and company interests frequently overlap and clash, with conflicts taking place not only among factions but also within the lives of individual citizens who themselves may have competing needs.”<sup>97</sup>

Proceeding from the widespread eviction of local communities by mining companies, I argue that mining-induced conflicts are resolvable as long as the land grabs narrative highlights the bankruptcy of state governance, while the land tenure is reformed to recognize land property rights, and alternative justice is envisaged.

To be successful in this enterprise, I have outlined my reflection in three parts. First, the land grabs narrative maps conflicts arising from what communities consider as the grabbing of ancestral land. Second, this reality leads me to propose the improvement of the land tenure framework. Finally, alternative justice is deemed efficient in handling mining-induced conflicts.

## **I. Land Grabs Narrative**

Land grabs are not exclusively limited to Africa. For Borras, the strands of this concept are “control grabbing” which entails a scale of land acquisitions and/or a scale of capital involved, occurring because of and within the dynamics of capital accumulation

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<sup>96</sup> Michael Cernea quoted by Theodore E. Downing, *Avoiding New Poverty: Mining-Induced Displacement and Resettlement* (London: IIED & WBCSD, 2002), 6.

<sup>97</sup> Ronald Heifetz, *Leadership Without Easy Answers* (Cambridge, MA: Harvard University Press, 1994), 22.

strategies, largely in response to the convergence of multiple crises: food, energy/fuel, climate change, financial crisis.<sup>98</sup>

To a large extent, land grabs result from global market drifts where “more than 200 million hectares of land are estimated to have been acquired from 2006 to 2011 by foreign governments and firms”<sup>99</sup> worldwide. It is not surprising, for instance, that “millions of Brazilian smallholders have been expelled from their farmland, which has been taken over by vast soya plantations that produce for export.”<sup>100</sup> Hence, “the eviction of farmers and craftspeople, villages, rural manufacturing districts, and districts of agricultural smallholders similarly degrades the meaning of citizenship for local people.”<sup>101</sup>

The preamble to the Congolese 2002 Mining Law takes a look back to the 1930s to acknowledge that “minerals production volume was larger from 1937 to 1966, unlike the period of 1967 to 1996 under the 1981 Mining Law. Forty-eight mining companies were active from 1937 to 1966, while only thirty-eight companies operated from 1967 to 1996 and 7 companies after 1997.”<sup>102</sup> Such a counter performance mirrors many underlying factors – economic, legal, political, and social<sup>103</sup> – which justify land grabs and expulsions of local communities, hence inducing mining conflicts.

Economically, the mining production fall-off, due to bad control systems from companies and artisanal minors, discloses the lack of professionalism in the Congolese

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<sup>98</sup> Saturnino M. Borras Jr. et al., “Land Grabbing in Latin America and the Caribbean,” *The Journal of Peasant Studies* 39 (2012), 850-851.

<sup>99</sup> Sassen, *Expulsions: Brutality and Complexity in the Global Economy*, 80.

<sup>100</sup> *Ibid.*, 82.

<sup>101</sup> *Ibid.*, 83.

<sup>102</sup> République Démocratique du Congo, Loi n° 007/2002 du 11 juillet 2002 portant code minier.

<sup>103</sup> The following data are from my email interview with the Arrupe Centre for Research and Training (CARF, Lubumbashi, DRC), November 22, 2017.

mining sector. Moreover, the opacity of the mining finance circuit, driven by “corporate greed,”<sup>104</sup> exacerbates the country’s dependency on mining incomes. Hence, it exposes the national economic mineral slump and exogenous shocks.

This empirical explanation discloses low industrialization of the mining sector, problems of certification, traceability, and warranty of the Congolese non-conflict-affected minerals. Thus, the context makes it uncomfortable to question the weakness of both the mining agencies and the financial institutions, as well as the challenge of minerals supply chains.

To better understand mining-induced conflict, one needs to scrutinize the Eastern Congo political context which has been dominated by armed conflicts since 1996. In this zone, a war economy exacerbates violence, facilitates “blood ore,” and land grabs by multinationals. The lack of regional and international cooperation in preventing mining-induced conflicts gives little hope of political stability.

Indeed, the improvement of political leadership could preclude the deals between the financiers and the political leaders, corruption, and politicization of the mining economy. As a consequence, poor management and complacent control over multinationals benefit illicit minerals traders.

This context results in social crisis. The involvement of children and women in the artisanal and small-scale mining and the minerals supply chain raises questions about the companies’ ethical practices and compliance with international standards. There is reason

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<sup>104</sup> John W. de Gruchy, *Reconciliation Restoring Justice* (Minneapolis, MN: Fortress Press, 2002), 191.

to question why the minerals certification and traceability standards are so feebly concerned with women and children labor in mining.

This legal void presumably establishes mining areas in the DRC as an Eldorado where women and children are exposed to violence, prostitution, diseases—HIV/AIDS, cholera, and malaria—sexual abuses, and economic exploitation. The reform of the land tenure should, therefore, be one of the remedies to the impasse.

## **II. Need for Land Tenure Reform**

Based on NGOs' data, two dominant traits characterize mining exploitation in Eastern Congo. They are related to the concessionary land tenure and the overuse of membership contracts.

### **A. The Concessionary Land Tenure Flaws**

Historically, the concessionary land tenure originates in the Bakajika Law:

Promulgated on 7 June 1966 as Ordonnance-Law 66-343, the Bakajika Law granted all wealth above and below the ground to the Congolese state. It thus extinguished all land grants and concessionary power delegated by the colonial state. The law aimed primarily at ensuring that public mineral rights went to the government. Despite this law, the colonial system of land control and alienation continued. The first major change came in 1973, in the form of another "Bakajika Law." All land, including land that was administrated by chiefs, became state property. Customary law, as codified under colonial rule, ceased to be a legitimate source of land rights. Chiefs were also integrated into the state's administrative hierarchy, and attempts were made to shift them to posts outside their home areas, as

was being done with higher-ranking territorial administrators, from the territorial to the provincial level.<sup>105</sup>

Besides these controversies, key factors igniting mining-related conflicts under the concessionary land tenure exacerbate the asymmetry of land laws and lack of prior information to the victims of forced resettlement.

### 1. The Asymmetry of Land-Related Laws

The Dutch Cordaid Foundation's 2015 Report points out the asymmetry of the laws governing mining, land, and agriculture. The lack of proportion facilitates land grabbing by mining companies to the detriment of communities constantly forced to uproot themselves.<sup>106</sup> This report obviously highlights the omnipresence of economic tensions induced by an inharmonious enforcement of three conflicting regulations – land, farming, and mining laws – which govern the land and its mineral substances.

The core causes of economic tension, according to *Centre Arrupe pour la Recherche et la Formation (CARF)*,<sup>107</sup> are corruption and mismanagement of the mining income – following the 1996 and 1998 liberation wars – driven by the inefficiency of tax and royalty policies, which led to the decrease of income from mining to boost the national economy.

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<sup>105</sup> Emizet François Kisangani & Scott F. Bobb, *Historical Dictionary of the Democratic Republic of the Congo*, 3<sup>rd</sup> ed. (Lanham, MD: Scarecrow Press, 2010), 36.

<sup>106</sup> See Cordaid, *Exploitation minière au cœur des zones rurales: quel développement pour les communautés locales? Rapport* (La Haye: Cordaid, 2015), 32.

<sup>107</sup> My email interview with Jacques Nzumbu, S.J., from the Arrupe Centre for Research and Training (CARF, Lubumbashi, DRC), November 22, 2017.

A few reasons explain the social conflict exacerbated by the 2002 Mining Law which determined the primacy of mining rights over land property rights. Concretely, the rights deriving from mining concessions are distinct from those resulting from land concessions, so that the land concessionaire cannot use his/her tenure to claim any property right over the underground mineral substances.<sup>108</sup> This provision conflicts with the well-known principle of property Law according to which, “Accessory [mineral substances] follows the principal [land],” so that the owner of the principal owns the accessory as well. Purposeful separation between accessory and principal is reflective of the government’s resolve to keep control over minerals.

As a consequence, this ambiguity validates the precariousness of land occupation (as giving way to companies to exploit the subsoil can legitimize the expulsion of local communities) and the prohibition of the landowner from possessing the subsoil, especially the mineral substances. Overall, the state is the owner of all the land and may grant perpetual or temporary concession to Congolese physical or juridical persons.

It follows that the concessionary regime grants an unwarranted permission to communities to occupy the land owned by the state, which can concede the same property to mining companies. Given this precariousness, “some argue that because governments grant companies concessions for mining, they should accept responsibility for the resulting impoverishment”<sup>109</sup> of the local communities. Likewise, “Governments might also be indifferent to the plight of the displaced; in this case, mining interests and their

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<sup>108</sup> See République Démocratique du Congo, Loi N° 007/2002 du 11 juillet 2002 portant Code minier, article 3, 3.

<sup>109</sup> Theodore E. Downing, *Avoiding New Poverty*, 16.

financiers are considered willing accomplices to what may be judged by others to be an unethical business transaction.”<sup>110</sup>

The immediate impoverishment results, at first glance, in the loss of “their fields, river, orchards and other cultural infrastructures such as churches, schools, cemeteries, trees, and medicinal plants, etc.”<sup>111</sup> In reality, forced displacement is not possible without expropriation; but in the DRC, this expropriation does not comply with the legal requirements which command that, in case of dislocation of population, the mining company must pay prior redress and compensation, and organize the resettlement of the concerned communities.<sup>112</sup>

This ambiguity induced by law—in the Thomistic understanding of the law as grounded in reason, and promulgated by a legitimate authority for the common good—does not make it possible to conclude whether affected communities should be transferred, consistent with the U.N. Conference on Trade and Development (UNCTAD) policies and procedures, for public purpose, in a non-discriminatory manner, in accordance with due process of law, against a just and prior payment of compensation.<sup>113</sup> There is reason to examine whether involuntary resettlement of local communities (to give way to mining companies) complies with the first criterion.

With regard to “what constitutes ‘public purpose’ or ‘public interest’”<sup>114</sup> as

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<sup>110</sup> See *ibidem*.

<sup>111</sup> Action Contre l’Impunité pour les Droits Humains (ACIDH), *Mémoire à Monsieur le Gouverneur du Katanga* (Lubumbashi: 27 juin 2011), 2.

<sup>112</sup> RDC, Loi n°18/001 modifiant et complétant la Loi n° 007/2002 du 11 juillet 2002 portant Code minier, article 281.

<sup>113</sup> UNCTAD, *Expropriation* (New York & Geneva: United Nations, 2012), 27.

<sup>114</sup> Allahyar Mouri, *The International Law of Expropriation as Reflected in the Work of the Iran-U.S. Claims Tribunal* (Dordrecht, Boston & London: Martinus Nijhoff, 1994), 326.

opposed to private interest, scholars have always felt uncomfortable laying down a comprehensive definition. Lack of a precise definition is “a result of the modern acceptance” according to which states “are granted extensive discretion” in interpreting what they lawfully consider as public purpose.<sup>115</sup> However, its impact on public use reflects whether the land usage has any public purpose distinct from private interest. As a consequence, land restitution applies when such a public purpose cannot be fulfilled.

The question of whether mining activities pursue public or private interest remains debatable. While mining incomes contribute greatly to the State budget, profit-making and repatriation of the revenue, which constitute the multinationals’ business goal, exclude public interest.

As disclosed by CARF, the Congolese economy mostly withstands low processing of mineral resources before export and suffers a lack of information about the value and the supply chains of mining corporations; it equally unveils the deficiency of socially responsible mining investments (SRMI) and the problems of monitoring subcontracts.<sup>116</sup> Besides, mining activities raise concerns about unemployment or poor job creation, violence against children and women involved in mining, going along with deforestation, air pollution, water and land pollution making agriculture unfruitful.<sup>117</sup>

Socially, unsuccessful implementation of corporate social responsibility, poverty, alcoholism, promiscuity, and prostitution in the mining fields constantly call into public interest which the land concession supposedly pursues. More complex are the

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<sup>115</sup> See *ibid.*, 327.

<sup>116</sup> My email interview with the Arrupe Centre for Research and Training (CARF, Lubumbashi, DRC), November 22, 2017.

<sup>117</sup> See *ibidem*.

implications of the lack of the communities' consent to their displacement and relocation.

## 2. Lack of Free Prior and Informed Consent

It might be said, as NGOs denounce, that on map-based decisions, the financiers acquire mining licenses from the government and relocate local communities from their lands without their consent. The failure of the companies to engage in dialogue with the relocatees as an essential condition of displacement and relocation is conducive to abuses. Accordingly, there arises the question of companies deciding "to relocate families... by granting them a short delay to evacuate the houses with the obligation to demolish them against payment of weak compensations."<sup>118</sup>

John Owen and Deanna Kemp describe this pattern this way: "The mining industry has become deeply engaged in a number of complex and contentious social policy debates, including 'business and human rights', 'free prior and informed consent' (FPIC)."<sup>119</sup> Indeed, the absence of consent mirrors a forced displacement and makes transfer unlawful, unlike contractual policies which privilege not only the State regulation, but also negotiation and public debate. Apparently, "the extent to which different stakeholders [government, financiers, etc.] recognize the resettlement or program elements as either 'forced' or 'voluntary' is not disclosed"<sup>120</sup> by law.

As a consequence, *Initiative Bonne Gouvernance et Droits Humains* (IBGDH), a

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<sup>118</sup> Initiative Bonne Gouvernance et Droits Humains (IBGDH), "Kolwezi: les communautés locales face aux géants miniers," *La voix des communautés locales* 1 (2017), 2.

<sup>119</sup> John R. Owen & Deanna Kemp, "Mining-Induced Displacement and Resettlement: A Critical Appraisal," *Journal of Cleaner Production* 87 (2015), 480.

<sup>120</sup> See *ibidem*.

Katanga-based NGO, holds, “local communities are often startled, not sufficiently informed about the relocation plan and the evaluation of their property. In addition, local communities are subject to membership contracts, without any possibility of negotiation or recourse, and the displacement operations are driven by [companies’] intimidations.”<sup>121</sup> In these unequal dynamics between companies and local communities, power abuses occur and should be addressed as human rights violations under article 17 of the 1948 UNDHR which provides, “Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property.”

In contrast, as the communities’ land occupancy results from concession, this tenuousness exacerbates their vulnerability which companies exploit to advance false compensation promises. For instance, “to obtain the consent of Kishiba natives to the mining project, Frontier Company accompanied by Congolese officials promised... the building of modern houses with more space for each family that would agree to relocate to the newly established Kimfumpa village; clean water and electricity supply to the village; building of new primary and secondary schools, hospital and roads that would connect the new village to the company’s facilities, etc.”<sup>122</sup> which the company failed to fulfill.

The FPIC debate, therefore, discloses manifold approaches, the most familiar of which admits the need to obtain the consent of indigenous peoples under some circumstances, as Owen and Kemp contend:

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<sup>121</sup> IBGDH, “Kolwezi: les communautés locales face aux géants miniers,” 2.

<sup>122</sup> ACIDH, Mémorandum à Monsieur le Gouverneur du Katanga, 2.

It is widely presumed that community consent can only be achieved under circumstances of full disclosure and protection of the 'right to know'. Providing information to communities that may not have experienced mining or any major development for that matter, poses a significant challenge. Levels of uncertainty intensify where developers are not in a position to disclose impacts because they are not yet known or have not been modelled.<sup>123</sup>

FPIC derives from the communities' right to know. It should focus primarily on foreseeable risks the community will undergo as a result of displacement and relocation, mining effects on human health, and environmental or social impacts. Concretely, companies claim the difficulty "to understand how consent could ever be regarded as 'informed' when significant impacts that will invariably change the shape and function of community life were not clear at project start-up."<sup>124</sup>

This thought appears realistic, yet it provides an outlet to companies which may equally allege the unforeseeability of risks to disclaim liability – a situation which is not uncommon – for human, social and environmental effects of mining activities, while the precautionary principle compels taking actions in case of doubt or uncertainty. Perhaps the overuse of membership contracts by companies is the primary worry about the Congolese mining-related legal framework.

## **B. The Overuse of Membership Contracts**

The specificity of membership contracts rests on terms and conditions agreed in advance by one of the parties, usually the professional, and proposed for access to the

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<sup>123</sup> John R. Owen & Deanna Kemp, "Mining-Induced Displacement and Resettlement," 486.

<sup>124</sup> See *ibidem*.

economically dependent contractor, the non-professional. Although membership contracts save time and display a real pragmatism, they do not offer the possibility of negotiation. It should be understood that the essential stipulations must have been imposed and are unable to be discussed;<sup>125</sup> so, mining companies and local communities are unable to modify by simple agreement the terms of their relationship.<sup>126</sup>

Further, pre-established terms and conditions prevent the relocatees' appreciation of eventual risks and seriously question the validity of their consent. One may be surprised that for such an important issue (the displacement of local communities) with the apparent approval of the government, companies make use of non-negotiable contracts. This aspect supports the vision of companies' control over mining decisions in DRC, with a significant impact on security in mining areas continuously assaulted by armed groups.

One of the objects of foreign direct investment is contributing to the host country's economic development. This criterion is fulfilled when the project fits into the country's needs and arouses the support of communities for its success. Yet, without negotiation with those communities, how do mining companies balance the pursuit of profit and participation in the country's development within the Congolese legal framework?

Business ethicists uphold that, "rules enacted for businesses to follow are mostly border-bound laws; and these laws remain subject to change as the political and juridical climate into which they have been inserted changes."<sup>127</sup> This is correct as the instability of

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<sup>125</sup> See Brigitte Lefebvre, "Le contrat d'adhésion," *La Revue du Notariat* 105 (2003), 450.

<sup>126</sup> See René Dussault & Louis Borgeat, *Traité de droit administratif*, vol. 2 (Québec: Presses de l'Université Laval, 1986), 162.

<sup>127</sup> Edmund F. Byrne, "Business Ethics Should Study Illicit Businesses: To Advance Respect for

the Congolese administration, due to unpredictable changes in leadership, cannot guarantee sustainable conflict resolution between communities and companies. Further, the political and judicial climate lays out the groundwork for corruption of community leaders benefitting from some controversial companies.

In this respect, membership contracts leading to abuse of economic power could be perceived as neocolonialist policy. Yet, a top-down solution looks unconvincing since expulsions constitute a multifaceted situation whereby smallholders are pushed out of employment and forced into poverty.<sup>128</sup> Relocation and reorientation of communities being tumultuous,<sup>129</sup> we modestly envisage alternative justice as an appropriate mechanism for handling mining-induced conflict.

### III. Search for Alternative Justice

Alternative justice differs from court justice. It promotes alternative mechanisms of dispute settlement—arbitration, conciliation, mediation, and transaction. However, African societies are also governed by ancestral customs which shape ethical standards. It is important, on the one hand, to notice the ineffectiveness of African traditional patterns to address mining-induced conflicts and, on the other hand, to consider extrajudicial mechanisms as relatively reliable.

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Human Rights," *Journal of Business Ethics* 103 (2011), 498.

<sup>128</sup> Alejandro Portes, "Review of Saskia Sassen's Expulsions," *Trajectories* 27, 3 (2016), 63.

<sup>129</sup> Janvier Kilosho, Nik Stoop & Marijke Verpoorten, "The Social Minefield of Gold Digging in South-Kivu, DRC: The Case of Kamituga," *Analysis and Policy Brief* 10 (2015), 3.

## A. The Ineffectiveness of African Traditional Patterns

Bénézet Bujo claims that, in traditional African ethics, the Palaver praxis—an African mechanism for resolving grievances through dialogue—as a process for discovering and justifying norms is consistent with the legal epistemology. The Court is an intersection where the parties and the assembly are elevated to better understanding of the law. The concept of justice, for example, remains speculative until “*Justice has to be seen to be done,*” as a general principle of Law goes. However, this educational ambition may not be achieved because the jurisdictional mechanism relies on an inaccessible language.

Niagalé Bagayoko and Fahiraman Rodrigue, two African studies scholars, outline a few patterns of conflict resolution from the Sub-Saharan African traditions. For them, more than rituals is at stake while addressing conflict resolution patterns in traditional African ethics. The African traditional mechanisms increasingly interest peace studies because they provide a mixture of approaches.

First, the reality of political mechanisms involving village chiefs, tribal kings, and customary courts is the bulwark of the community’s stability.<sup>130</sup> Restoring order and social balance remains the fundamental concern in the traditional chiefdom approach; it is not concerned with condemning or giving credit, since the judgment is aimed at strengthening the social group.<sup>131</sup>

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<sup>130</sup> See Niagalé Bagayoko & Fahiraman Rodrigue Koné, “Les mécanismes traditionnels de gestion des conflits en Afrique Sub-Saharienne,” *Rapport de recherche FrancoPaix 2* (2017), 18.

<sup>131</sup> See *ibidem*.

While the traditional chiefdoms are at the crossroads of two worlds—the living community and the ancestors—they are also the depository of public morality. As such, they are beyond suspicion and play a prominent mediation role using the Palaver praxis. It has become a commonplace, for example, to acknowledge the moral and political influence of Mogho Naaba, the traditional king of the Mossi, the majority ethnic group in Burkina Faso, both in mobilization for the 2014 revolution and in mediation among military factions, which spared Burkina Faso from a bloodshed.

In fact, traditional leaders have always been involved in land-related dispute settlements. A number of studies in post-apartheid South Africa have consistently reported that, “during colonialism native access to land, administration, representation, and dispute settlement was organized through traditional authorities established for differentiated groups of ‘natives’ based on ‘tribal ethnicity.’”<sup>132</sup> Yet this traditional mechanism lacks a legal basis and does not do justice to international corporations, which are wary of local laws and customs to settle mining-induced disputes. Instead, they resort to international arbitration and courts.

The strength of what Max Weber calls the *traditional authority* consists here in entrusting to the leader a divine legitimacy, which relies on the customs and the belief that his/her power is sacred. While this belief represents a symbolic capital, which can be invested in conflict resolution, it may also constrain the community to blindly commit abuse. In his paper on the 1994 genocide in Rwanda, for example, Yves Tervon claims that

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<sup>132</sup> Sarah Bruchhausen & Camalita Naicher, “Broadening Conceptions of Democracy and Citizenship: The Subaltern Histories of Rural Resistance in Mpondoland and Marikana,” *Land Reform Revisited: Democracy, State Making and Agrarian Transformation in Post-Apartheid South Africa*, Femke Brandt & Grasian Mkodzongi, ed. (Boston: Brill, 2018), 23.

“the formation of militias is an old Rwandan tradition: the hill chiefs constituted small troops to defend their property, but these troops were under the king. There, militias depended on extremist parties.”<sup>133</sup>

Related to political mechanisms activated by the traditional authority is the role of festive celebrations as social appeasement mechanisms. Niagalé and Fahiraman evoke the annual celebration of the yam harvest festival in West African traditions (Baoulé, Agni, Akyé, Abbey, etc.). Although this celebration is not primarily meant for resolving grievances, “it is recommended that prior to the celebration, all intra-family conflicts which occurred throughout the year be resolved. All conflicts that arose in the lineages must be brought before the family leader who resolves them. Non-resolution of such conflicts provokes serious risks for the families and the entire community.”<sup>134</sup>

The assumption here is that festive celebrations are not a conflict resolution platform, yet they bring people together and offer the unique opportunity to extinguish conflicts, to cross borders, and to reach out to others.<sup>135</sup> However, the pattern of reconciliation it offers is volatile and cannot resolve a large-scale conflict involving international economic interests.

Emphasis is often put on religious mechanisms of conflict resolution. As Niagalé and Fahiraman note, sacred rituals always speak of reconciliation and reparation of faults.

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<sup>133</sup> Yves Ternon, “Rwanda 1994: Analyse d’un processus génocidaire,” *Revue d’Histoire de la Shoah* 190, 1 (2009), 44.

<sup>134</sup> Niagalé Bagayoko & Fahiraman Rodrigue Koné, “Les mécanismes traditionnels de gestion des conflits en Afrique Sub-Saharienne,” 34.

<sup>135</sup> From a sociological approach, the Halloween celebration in the United States is a social institution which allows one, especially youngsters, to cross social borders and reach out to the neighbors whose everyday life does not make interaction possible, whereas Thanksgiving and Christmas reinforce those borders.

This sacred dimension stems from the perception of conflict as the source of social and spiritual disorder because, for most communities, it attracts evil spirits and causes death in the clan. Activation of so-called “unconditional peace” mechanisms increases the effectiveness of reconciliation based on the psychological constraints and the fear of a mystical sanction. Niangoran-Bouah, an anthropologist from Ivory Coast, outlines the “unconditional peace” mechanism:

In a conflict, when the weakest feels that his/her antagonist is ready to punch him/her, and if the latter does not want to be beaten, he/she is obliged to pronounce this ritual formula which literally prevents the strongest from striking: “*Ntale ntcha te*” (Abouré) [meaning], “I hold a man’s head.” Whatever his/her anger, the strongest must refrain from hitting, knowing that his/her antagonist is empty-handed. The pronouncement of this formula places oneself under the protection of the ancestors. Striking after one has heard it is an offense to the ancestors.<sup>136</sup>

Overall, African traditional mechanisms lack effectiveness and legitimacy to provide sustainable solution to mining-induced conflicts, due to their inclination to exclusion based on socially hierarchical relations, and social and gender inequalities.<sup>137</sup> Because they are customary, religious, and mystical mechanisms, they cannot satisfy the expelled communities “who hunger and thirst for righteousness” (Mt. 5:6) with a better compensation. Extrajudicial approaches are likely more reliable.

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<sup>136</sup> Georges Niangoran-Bouah quoted by Niagalé Bagayoko & Fahiraman Rodrigue Koné, “Les mécanismes traditionnels de gestion des conflits en Afrique Sub-Saharienne,” 34.

<sup>137</sup> See *ibid.*, 42.

## **B. The Reliability of Extrajudicial Mechanisms**

Pursuant to the 2018 Mining Law, amicable dispute settlement is carried out by all non-judicial procedures, including transaction, compromise, and arbitration.<sup>138</sup> The lawmaker obviously posits the extrajudicial approach as the primordial attempt to settle mining-induced conflicts. We identify them under the banner of restorative justice and restitutive justice, two strands of alternative justice, assuming that they are more effective than African traditional mechanisms.

### **1. Restorative Justice**

At first glance, the best-suited approach toward peace-building between mining companies and local communities could be restorative justice, “a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offense and its implications in the future.”<sup>139</sup> Such justice does not pursue judgment or revenge, but reconciliation and peaceful living between the companies and the victims of land grabbing. Notwithstanding the difficulty of definitely resolving land conflicts, “what about the restitution of land and the honoring of property rights in seeking reconciliation?”<sup>140</sup> In other words, under which concrete mode can justice be done?

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<sup>138</sup> See République Démocratique du Congo, Loi n°18/001 modifiant et complétant la Loi n° 007/2002 du 11 juillet 2002 portant Code minier, article 281.

<sup>139</sup> Tony Marshall quoted by Beth Grothe Nielsen, “Repressive, Restorative and Reflexive Law,” *Victim Policies and Criminal Justice on the Road to Restorative Justice*, eds. E. Fattah & S. Parmentier (Leuven: Leuven University Press, 2001), 159.

<sup>140</sup> de Gruchy, *Reconciliation Restoring Justice*, 13.

In essence, restorative justice is achieved through alternative modes of dispute settlement such as arbitration, conciliation, mediation, and transaction; but the victim might not be conceded integral reparation as in court. To put it more precisely, restorative justice seeks to “find a way forward with which all parties to the conflict can live. This requires a commitment to transformation that extends beyond any one judicial procedure or political initiative, recognizing that the level of transformation required for this to happen takes time.”<sup>141</sup> There should be a way of bringing such commitment to transformation and collaboration between companies and communities through mediation.

Nonetheless, private negotiations being central to alternative justice, risks of subornation, intimidation, and political influences might happen to restorative mechanisms at the expense of local communities. This is not surprising knowing that neither restoration nor restitution is likely to be a widespread outcome of negotiations, given an attitude of ethical indifference from multinationals.<sup>142</sup>

This attitude is displayed, for example, through the grabbing of roughly three quarters of the Katanga Province land (South-East Congo) irrespective of the economic and social effects of such a redistribution.<sup>143</sup> Therefore, how could Katanga become a district of agricultural smallholders while, according to the mining mapping, 80% of arable lands are mining concessions whose exploitation threatens local communities?

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<sup>141</sup> Charles Villa-Vicencio, “Transitional Justice, Restoration, and Prosecution,” Dennis Sullivan & Larry Tift, eds., *Handbook of Restorative Justice: A Global Perspective* (Oxon, UK: Routledge, 2006), 389.

<sup>142</sup> See Byrne, “Business Ethics Should Study Illicit Businesses: To Advance Respect for Human Rights,” 499.

<sup>143</sup> See Province du Katanga, Plan quinquennal de développement 2011–2015 (Unpublished), 18.

To successfully reach restorative justice, I would suggest the scope of “victim-offender mediation/reconciliation and restitution/compensation”<sup>144</sup> as a pragmatic approach. Mediation/reconciliation fits culturally with the African Palaver—African culture of dialogue for conflict resolution—promoting mutual concessions. While the companies should acknowledge unethical practices and allocate a fair compensation to the victims, the local communities ought to renounce retaliation.

Actually, mediation successfully laid out the groundwork for the Ituri Land Commission<sup>145</sup> handling conflicts between companies and communities following three principles. First, mediation/reconciliation is an intervention on the ground, as close as possible to the parties—firms and communities, on completion of conciliation attempts.<sup>146</sup> Such a process evidences that the expulsion conflict cannot be settled in one way, given the complexity of issues at stake. The resolution mechanisms often combine different approaches.

Meanwhile, mediation/(re)conciliation is a prerequisite for certain disputes in court—such as in family or labor conflicts. When mediation/(re)conciliation is deemed valuable before hearings, the judge can also require it. Outside of these hypotheses, alternative justice should not impose prior conciliation. Thus, this duplication can needlessly lengthen the procedure and collapse the economically weakest litigant, local communities.

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<sup>144</sup> Hans Jörg Albrecht, “Restorative Justice: Answers to Questions that Nobody Has Put Forward,” *Victim Policies and Criminal Justice on the Road to Restorative Justice*, E. Fattah & S. Parmentier, eds. (Leuven: Leuven University Press, 2001), 296.

<sup>145</sup> Commission Foncière d’Ituri (CFI) established in 2008.

<sup>146</sup> See Thierry Vircoulon & Florence Liégeois, *Inventer une politique publique dans un État failli: Le défi de la sécurisation des droits fonciers dans l’Est du Congo* (Bruxelles & Paris, IFRI: 2012), 11.

Second, mediation must comply with African customs and promote consultation at the local level; hence, customary authorities and public debate play an important role.<sup>147</sup> For Vircoulon and Liégeois, building consensus among companies and communities is the purpose of mediation. The custom referred to—the “*Barza Intercommunautaire*”—consists in the gathering of the “cultural leaders of the nine major ethnic groups in North Kivu [Eastern Congo] to mediate ethnic-based disputes” and others.<sup>148</sup> Overall, the *Barza Intercommunautaire* prevents the breakout of violence in its sphere.<sup>149</sup>

The recourse to African customs is determinative of conflict resolution because they promote ancestral values—dialogue, togetherness, forgiveness, and solidarity—that shape African ethics. How compelling could African customs be when they are not written, neither do they provide for conflict resolution mechanisms in the contract binding companies to the state as we mentioned earlier? In addition, certain African customs—for instance, informal tax collection for the customary authority and reference to ancestors—are suspicious enough for companies to be wary of customary interference in mining-induced conflict resolution.

Third, Vircoulon and Liégeois believe mediation and court procedures should be complementary as the decision from mediation must be given administrative or judicial

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<sup>147</sup> See *ibidem*.

<sup>148</sup> Phil Clark, “Transitional Justice after Atrocity,” *Routledge Handbook of African Politics*, Nic Cheeseman, David M. Anderson & Andrea Scheibler, eds. (London & New York: Routledge, 2013), 220.

<sup>149</sup> See *ibidem*.

authority<sup>150</sup> – or *exequatur* – to be enforceable. This has often been the procedure; but it gives the impression of exposing a private consensus to the justice sphere.

To be explicit, “if justice is, as Howard Zehr says, properly rooted in a concern for victims’ needs and offenders’ obligations... and if reparation is the vehicle by which offenders meet those obligations, then it follows that reparation would be more effective under certain circumstances.”<sup>151</sup> With regard to companies and communities, those circumstances are marked by a power imbalance between the groups compromising effectiveness. Nevertheless, the communities’ narrative of land grab experience – unfortunately they are not given much space to that end – and the companies’ recognition of their wrongdoings lay the ground for restorative justice.

Moreover, restoration can be achieved under three circumstances: when it is tailored to meet the victims’ needs, when its terms and conditions are chosen by those most directly involved, and when it is offered rather than ordered.<sup>152</sup> Therefore, it should not be the companies’ responsibility to predetermine the terms, the momentum, and the quantum of restoration for displaced communities as happens in Eastern Congo. Still, the communities’ freedom to choose appropriate restoration could also be problematic. The search for restorative responses might provoke much constraint over the companies – financial, material, etc. – which they could not shoulder.

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<sup>150</sup> See *ibidem*

<sup>151</sup> Susan Sharpe, “The Idea of Reparation,” *Handbook of Restorative Justice*, Gerry Johnstone, Daniel Van Ness, eds., (London & New York: Routledge, 2011), 29.

<sup>152</sup> See *ibidem*.

It is worth considering the Peruvian mining conflict management strategies.<sup>153</sup> Of particular note is the advancement of a transformative conflict management capability that addresses underlying conditions for conflict, which include righting past wrongs, arbitration, and establishing conflict resolution institutions like the Peruvian *Oficina General de Gestión Social*.<sup>154</sup>

What finally matters in restorative justice is the type of reparation the victims long for. To be effective, the state as public authority should take action, not to punish companies but to bring them to a greater sense of solidarity with local communities. Hence, restorative justice should shift to what Emile Durkheim terms restitutive justice.

## 2. Restitutive Justice

Emile Durkheim's concept of restitutive justice speaks of solidarity, cooperation, and restoration. Unlike the natural impulse for vengeance against companies, "repressive justice," it advocates for justice led by deterrence and is more humane and tolerant.<sup>155</sup> Restitutive justice is, therefore, characterized by reparation or making amends,<sup>156</sup> in a way that rights the balance upset by the violation.<sup>157</sup>

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<sup>153</sup> See Jan Boon, "The Role of Governments in CSR," *Governance Ecosystems: CSR in the Latin American Mining Sector*, Julia Sagebien & Nicole Marie Lindsay, eds. (New York: Palgrave Macmillan, 2011), 66. CSR here stands for "Corporate Social Responsibility."

<sup>154</sup> See *ibidem*.

<sup>155</sup> Charles Quist-Adade, *From the Local to the Global: Theories and Key Issues in Global Justice* (Rotterdam, Boston & Taipei: Sense, 2017), 120.

<sup>156</sup> See Mary K. Stohr & Anthony Walsh, *Corrections: The Essentials* (Los Angeles, London & New Delhi: Sage, 2012), 7.

<sup>157</sup> See Emile Durkheim, *The Division of Labor in Society* (New York: Free Press, 2014), xvii.

Reference to deterrence should not be confusing. Deterrence is consistent with the opinion that “restitutive responses... offer a balance between calming moral outrage on the one hand, and exciting the emotions of empathy and sympathy on the other hand,”<sup>158</sup> two qualities often missing in the companies’ relationship to communities. Indeed, empathy and sympathy are constitutive of symbolic reparation designed for stemming tumultuous relationships. Under this approach, as Morrison upholds, sanctions are oriented toward restitution rather than repression.<sup>159</sup> It emphasizes “seeking justice through restitution to at least partially compensate a person for a loss.”<sup>160</sup>

There is a clear connection, therefore, between restitution and reparation. If “restitution typically means the return of wrongly appropriated property...,” then compensation suggests “a financial payment that makes up for property that cannot be returned or repaired.”<sup>161</sup> Arguably, this is what Frontier company endeavored in Sakania (South-East Congo), while launching mining exploitation in exchange of which less than \$ 250 compensation per hectare were granted to over 600 smallholders ousted from their farmlands.<sup>162</sup> Nonetheless, it would be appropriate to develop a compensation scheme nationwide for the loss of income from fishing, farming, and agriculture.<sup>163</sup>

According to Johnstone and Van Ness, compensation sets in motion material or symbolic reparation. Material reparation offers “something concrete to repair a specific

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<sup>158</sup> Stohr & Walsh, *Corrections: The Essentials*, 7.

<sup>159</sup> See Ken Morrison, *Marx, Durkheim, Weber: Formations of Modern Social Thought* (London, Thousand Oaks & New Delhi: Sage, 2006), 174.

<sup>160</sup> Charles H. Powers, *Making Sense of Social Theory: A Practical Introduction* (Lanham, MD: Rowman & Littlefield, 2010), 104.

<sup>161</sup> Sharpe, “The Idea of Reparation,” *Handbook of Restorative Justice*, 27.

<sup>162</sup> See ACIDH, *Mémorandum à Monsieur le Gouverneur du Katanga*, 3

<sup>163</sup> See *ibid.*, 4.

harm or to compensate for the damage or loss associated with harm. Material reparation may reduce the extent of the harm done... This type of reparation often takes the form of goods (e.g., the return of stolen property)."<sup>164</sup> Land restitution to smallholders is the ideal which companies are not prepared for, inasmuch as economic deals remain paramount. In addition, those companies are subsidiaries of multinationals supported by the Congolese government, sometimes to the detriment of national interests. Therefore, it is unwise to coerce them, unless forced by law, to restitute the land.

Beyond expulsions, the debate on compensation for the Global South, which has been impoverished through colonialism or the global economy, remains valid in connection with Global North's immigration policies. Concretely, are "priority rules for determining who should be granted entry"<sup>165</sup> to a country that caused economic harm to another constitutive of symbolic reparation? Without endorsing this assumption, David Hollenbach argues that "a rich country that has contributed to causing the economic deprivation of a poor country has a special duty to admit economic migrants from that poor country."<sup>166</sup> To be ethical, if such were accurate, this approach should not use immigration policies, or even development aid, to symbolically perform cheap reparation.

Apology is often overlooked, yet it is a meaningful form of reparation. For Sharpe, "apology is the primary form of reparation, but there are other forms as well."<sup>167</sup> It is a question of whether apology is a form of justice. In essence, apology supposes that the

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<sup>164</sup> Sharpe, "The Idea of Reparation," *Handbook of Restorative Justice*, 27.

<sup>165</sup> David Hollenbach, "Migration as a Challenge for Theological Ethics," *Political Theology* 12, 2 (2011), 811.

<sup>166</sup> See *ibidem*.

<sup>167</sup> Sharpe, "The Idea of Reparation," *Handbook of Restorative Justice*, 28.

oppressor transcends harm as he or she does not want to stay in constant opposition to the victim. Therefore, apology goes beyond the law in order to promote peacebuilding. However, what is the moral value of apologies from an institution or corporation, which is a legal construction, since the forgivable harm is not considered as a personal and burdensome liability of the leader, distinct from the corporation's liability?

## **Conclusion**

This discussion unveiled the limits of a one-way approach to a multifaceted problem, mining-induced conflicts resulting in the involuntary resettlement of communities. This complexity is intensified by the Congolese government being both judge and party, while arbitrating conflicts provoked by mining concessions it grants to multinationals without protective measures for local communities. It would, therefore, be pretentious to propose a definite solution.

There are likewise many unanswered questions requiring further reflection. For instance, is mining the foremost reason for expulsions or does it hide complex truths, such as the loss of state regulation monopoly in Eastern Congo, the rise of economic dictatorship, etc.? Similarly, the violation of property rights by foreign companies raises questions such as the meaning of citizenship and ancestral lands for local communities.

These questions probably disclose the limitations of restorative justice and restitutive justice in handling disputes. They certainly appear to broaden the agenda of reconciliation theology in order to advance an interdisciplinary approach to forced expulsions. Indeed, the merit of alternative justice is to generate emotional appeasement

by ensuring speed, confidential, and fraternal arrangements. It enables moral agents to safeguard friendship by abstaining from legal proceedings which often compromise the bonds. Moreover, alternative justice encompasses a financial advantage as the dispute settlement is often free of charge or affordable. It spares the agents from compulsorily dependence on lawyers who speak on their behalf. Finally, the quantum of compensation is more negotiable than in Court.

Meanwhile, the evaluation of the resource curse in the DRC has exposed the ethical flaws resulting in land grabs. Beyond a commodity boom with the risk of political instability and economic volatility (first chapter), it was necessary to look deeply into the legal procedure of engagement, which impacts communities and fuels mining-induced conflicts. The resolution mechanisms at hand are likely ineffective to guarantee peace and reconciliation between mining companies and local communities (second chapter). Therefore, the search for ethical foundations more respectful of communities' rights and interests, in the era of extractive industries, is essential to peacebuilding.

## CHAPTER 3: WHICH CHRISTIAN ETHICS IN THE ERA OF EXTRACTIVE INDUSTRIES?

### Introduction

This chapter attempts to map the role of Christian ethics vis-à-vis extractive industries. As influential actors in the global economy, extractive industries are “any processes that involve the extraction of raw materials from the earth to be used by consumers [or] any operations that remove metals, mineral, and aggregates from the earth. Examples of extractive processes include oil and gas extraction, mining, dredging and quarrying.”<sup>168</sup>

Extractive industries in Eastern Congo are alleged to collude in controversial practices such as expulsions of communities. According to the World Bank, “the number of persons involuntarily displaced and resettled by infrastructural development projects during the last 10 years is between 90 and 100 million.”<sup>169</sup> It follows, as Pope Francis puts it, that “pressure is being put on [communities] to abandon their homelands to make room

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<sup>168</sup> See [www.businessdictionary.com/definition/extractive-industry.html](http://www.businessdictionary.com/definition/extractive-industry.html) (accessed May 6, 2018).

<sup>169</sup> Michael M. Cernea & Christopher McDowell, “Reconstructing Resettlers’ and Refugees’ Livelihoods,” *Risks and Reconstruction: Experiences of Resettlers and Refugees*, Michael M. Cernea & Christopher McDowell, eds. (Washington, DC: The World Bank, 2000), 2.

for agricultural or mining projects which are undertaken without regard for the degradation of nature and culture.”<sup>170</sup>

The encounter with reality creates an ethical demand. In 2008, the International Conference of the Great Lakes Region (ICGLR) initiative, consistent with the 2009 African Mining Vision, adopted six tools to control illegal exploitation of minerals: (1) regional certification, especially for coltan; (2) harmonization with national legislations; (3) regional database on mineral flows; (4) formalization of supply chain management; (5) compliance with the Extractive Industries Transparency Initiative (EITI) for evaluation and traceability, and (6) whistle-blowing that aims at reporting wrongdoing. Thus, the ICGLR provided a robust approach which, unfortunately, is lacking enforcement, follow-up, and coercion.

Following this strategy, the ICGLR ratified the US 2012 Dodd-Frank Wall Street Reform and Consumer Protection Act Section 1502.<sup>171</sup> In 2011, US Department of State endorsed the Organization for Economic Cooperation and Development (OECD) Due Diligence.<sup>172</sup> The Guidance articulated a five-step framework to address mining which fuels conflict in Eastern Congo.<sup>173</sup> Accordingly, as Hormats and Otero report, companies should: (1) establish strong company management systems; (2) identify and assess risk in

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<sup>170</sup> Francis, *Laudato Sí*, (Rome: Vatican Press, 2015), # 146.

<sup>171</sup> Pursuant to this Act, US oil, gas and mining companies registered with the Security Exchange Commission to disclose their payments to foreign governments. It specially orders US companies to prove that the origin of minerals from DRC or neighboring countries is “free from conflict.”

<sup>172</sup> The OECD “Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected Areas” provides recommendations to help companies protect human rights and prevent mining-induced conflicts.

<sup>173</sup> See Robert D. Hormats & María Otero’s “Statement Concerning Implementation of Section 1502 of the Dodd-Frank Legislation Concerning Conflict Minerals Due Diligence,” <https://www.state.gov/documents/organization/168851.pdf> (accessed May 3, 2018).

the supply chain; (3) design and implement a strategy to respond to identified risks; (4) carry out independent third-party audit of supply-chain due diligence at identified points in the supply chain; and (5) report on supply-chain due diligence. The slowdown of the US commitment to advance these ethical standards—which should prevent dislocations—reflects fluctuating African policy by each administration at the White House.

The contextual element was missing in the ICGLR’s approach. Indeed, the peculiarity of mining-induced dislocations in the DRC—the only African country with the greatest proportion (43.2 million) of baptized Catholics<sup>174</sup>—rests on their inhumane character. Considering the resource curse (first chapter) and the experience of a state riddled with mining-induced conflicts (second chapter), the ethical question therefore becomes: how can Christian ethics humanize mining-related dislocations?

It is generally agreed that extractive industries, steeped in the capitalistic machinery, create more poor people with new social and economic expectations in the Global South. I argue that Christian ethics should engage with what I provisionally call the “*protological ethics of land*.”<sup>175</sup> To grasp the meaning of this concept, it suffices to recall both philosophical and theological thoughts.

The philosophical concept of “ethics of a proto-logical atomism” suggests a theory of language steeped in the nature of concepts or logical ideas (logical idea-ism),<sup>176</sup> a

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<sup>174</sup> See Holy See Press Office, *The Pontifical Yearbook 2017 and the Annuario Statisticum Ecclesiae* 2015, 170406e (2017), 2.

<sup>175</sup> The Greek word *πρῶτος* meaning the first, the most important.

<sup>176</sup> See Julius Kovesi, “Principia Ethica’ Re-Examined: The Ethics of a Proto-Logical Atomism,” *Philosophy* 59, 228 (1984), 163.

thought which departs from our topic. Among theologians, there is a consensus that “Christian ethics in light of eschatology would be incomplete without some comments on the nature and relation of creation ethics and kingdom ethics. These two are sometimes referred to as protological ethics and eschatological ethics, respectively.”<sup>177</sup> Bringing an African contextual element to this debate, Bénézet Bujo’s “protological foundational act” establishes the presence of one’s ancestors and considers the ethical rules drawn up by the ancestors.<sup>178</sup>

Because the concept *protology* broadly refers to the origins or God’s initial purpose of salvation for humanity, without specific connection with land protection, we prefer to overlook these dichotomies and endorse Bénézet Bujo’s position by proposing what I undertake to call the “*protological ethics of land*.” That means a consciousness of the important values of preserving land, in the spirit of African traditions and consistent with the evolving social context, so that corporations abide by the cultural sensitivities and the moral standards drawn up by the ancestors.<sup>179</sup>

The “protological ethics of land” is not culturally imperialistic in its principles. It hallows cultural values and brings critical claims on three paradigms: the non-transferability of ancestral land, the recognition of an emerging right to land, and the ethics of corporate citizenship as a way of reframing business and society relations.<sup>180</sup>

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<sup>177</sup> Guenther Haas, “The Significance of Eschatology for Christian Ethics,” *Looking into the Future: Evangelical Studies in Eschatology*, David W. Baker, ed. (Grand Rapids, MI: Baker Academic, 2001), 335.

<sup>178</sup> Bénézet Bujo, *Foundations of an African Ethic: Beyond the Universal Claims of Western Morality* (New York: Crossroad, 2001), 35.

<sup>179</sup> See *ibidem*.

<sup>180</sup> See Dirk Matten et al., “Behind the Mask: Revealing the True Face of Corporate Citizenship,” *Journal of Business Ethics* 45, 1/2 (2003), 109.

## I. Non-Transferability of Ancestral Land

The paradigm of non-transferability of ancestral land is concerned with the safeguarding of inheritance, embedded in both biblical ethics and African culture. This approach transcends verbatim interpretation of the biblical narrative, goes beyond God's command ethics, and opens doors to the moral responsibility of extractive industries.

### A. Biblical Ethics: Naboth's Vineyard Grab

Biblical ethics patterns a way of engaging with the Bible by applying biblical principles and examining biblical narratives in contexts dealing with ethical questions.<sup>181</sup> McQuilkin in no way endorses the mere imposition of ethical systems on biblical texts.<sup>182</sup> Rather, reconstructing biblical narratives from one's own perspective and experience is a redemptive enterprise, because healing begins when one is able to tell his or her story.

Naboth's vineyard grab (1 Kgs 21:1-29) "fits the 'master narrative' of land dispossession that has become dominant in popular historical understanding"<sup>183</sup> of indigenous communities. This narrative discloses "how the Bible shares visions of mined products glorifying God, and how they illustrate attitudes to ownership, land and justice."<sup>184</sup> It is a powerful analogy for the dispossession experienced by many African

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<sup>181</sup> See Robertson McQuilkin & Paul Copan, *An Introduction to Biblical Ethics: Walking in the Way of Wisdom* (Downers Grove, IL: IVP Academic, 2014), 14.

<sup>182</sup> See *ibid.*, 23.

<sup>183</sup> Michelle Hay, "Buying Naboth's Vineyard: The Challenges of Land Transfer Under the 1936 Native Trust and Land Act," *African Studies* 71, 3 (2012), 362.

<sup>184</sup> Malcolm Brow et al., "Christian Ethics and Extractive Industries: Theological reflections," *Extractive Industries*, The Church of England, ed. (London: National Investing Bodies of the Church of England and the Ethical Investment Advisory Group, 2017), 21.

communities,<sup>185</sup> insofar as it “represents Africans as Naboth, who in the Old Testament was an ordinary man ploughing land passed down to him by his father. King Ahab, here representing [extractive industries], is a powerful figure who covets Naboth’s fertile vineyard and wants the land for himself.”<sup>186</sup>

In this narrative, what Hay terms “the challenges of ancestral land transfer” brings to the fore a fundamental ethical principle regarding extractive industries: ancestral land is an “inalienable right.” Baretz acknowledges this right in eloquent terms, “Ahab’s greed and Jezebel’s abuse of power are outrageously co-opted to trample the most inalienable of rights.”<sup>187</sup> The inalienability originates in the Mosaic Law pursuant to which “no heritage can pass from one tribe to another, but all the Israelite tribes will retain their own ancestral heritage” (Nm 36:9).

Reporting the discussion to Jezebel, Ahab purposely misquotes Naboth by saying, “I will not give my vineyard to you,” and slyly removes the reference to Israelite Law, “The Lord forbid that I should give up to you what I have inherited from my fathers” (1 Kgs 21:3).<sup>188</sup> Thus, Christian ethics should go beyond the divine command ethics on land ownership (Naboth) to highlight the “moral responsibility” of extractive industries (Ahab) as well as their allies (Jezebel) involved in expulsions, inasmuch as “morality includes a shared responsibility for evils committed by others from which one may oneself profit.”<sup>189</sup>

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<sup>185</sup> See Michelle Hay, “Buying Naboth’s Vineyard: The Challenges of Land Transfer Under the 1936 Native Trust and Land Act,” 362.

<sup>186</sup> See *ibidem*.

<sup>187</sup> Julie Baretz, *The Bible on Location: Off the Beaten Path in Ancient and Modern Israel* (Philadelphia: Jewish Publication Society, 2015), 224.

<sup>188</sup> See *ibid.*, 227.

<sup>189</sup> Brow et al., “Christian Ethics and Extractive Industries: Theological reflections,” 29.

## B. Beyond the Divine Command Ethics

The divine command ethics is only one approach in biblical ethics. As Lúcas Chan points out, “contemporary Christian ethicists suggest four separate and yet related tasks in using scripture in ethics, namely, the *exegetical*, *hermeneutical*, *methodological*, and *theological* tasks.”<sup>190</sup> While it is believed that the Bible is also a source of moral problems, scripture provide resources for solving moral issues.<sup>191</sup> Yet the turn to scripture alone may appear to be a withdrawal from social complexities into individual searching of the Scriptures for guidance.<sup>192</sup>

My reference to the divine command ethics, relying on Chan’s approach,<sup>193</sup> is based on two convictions. First, the theme of land grab can be found in Scripture. Second, the dimensions of Naboth’s resistance to vineyard grab I have introduced above, motivated by his obedience to God— “The Lord forbid that I should give up to you what I have inherited from my fathers” (1 Kgs 21:3)— are key points for relating the non-transferability of ancestral land and the divine command ethics.

The divine command ethics—which is often looked upon as the fourteenth century’s creation—is committed to the belief that obligations are derived from God’s pronouncements so that wrong actions are identical in content with forbidden actions and

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<sup>190</sup> Lúcas Chan, *Biblical Ethics in the 21<sup>st</sup> Century: Developments, Emerging Consensus, and Future Directions* (New York and Mahwah, N.J.: Paulist Press, 2013), 30 (emphasis mine).

<sup>191</sup> *Ibid.*, 31.

<sup>192</sup> William C. Spohn, *What Are They Saying About Scripture and Ethics?* (New York and Mahwah, N.J.: Paulist Press, 1995), 21-22.

<sup>193</sup> See Chan, *Biblical Ethics in the 21<sup>st</sup> Century: Developments, Emerging Consensus, and Future Directions*, 107.

obligatory actions equate in content with actions which are commended by God.<sup>194</sup> In other words, “the class of wrong actions is co-extensive with that of forbidden actions, obligatory actions with commanded actions.”<sup>195</sup> Therefore, performance of some obligations is compatible with divine commands, as long as God is taken to command all moral truths.<sup>196</sup> However, the role of the judgment of the moral agent remains unclear because, as Shaw puts it, the divine command theory holds “simply that obligations depend upon [God’s] commands.”<sup>197</sup>

The account of Naboth’s vineyard exemplifies, at least in the African context, how extractive industries can pervert the relationship between the people and their land,<sup>198</sup> as an African saying goes, “nothing is more precious on earth than land.” Land embodies both the ancestors’ domain and their graves, with most Africans buried on their own land. So, it establishes the cosmic union between the living and the dead, and the present and past generations. Land also provides human subsistence and advances clan union. Donations to missionaries and corporations prevailed in precolonial and colonial Africa as a land acquisition system. However, the idea that land can be bought and sold is one of the markers in the transition from a pre-modern to a modern African society.<sup>199</sup>

Naboth’s experience places the assumptions about the value of ancestral land as non-transactable within the cultural context.<sup>200</sup> His response, “The Lord forbid that I

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<sup>194</sup> See Joseph Shaw, “Divine Commands at the Foundations of Morality,” *Canadian Journal of Philosophy* 32, 3 (2002): 419.

<sup>195</sup> See *ibid.*, 420.

<sup>196</sup> See *ibidem.*

<sup>197</sup> See *ibid.*, 421.

<sup>198</sup> Brow et al., “Christian Ethics and Extractive Industries: Theological reflections,” 27.

<sup>199</sup> See *ibidem.*

<sup>200</sup> See *ibidem.*

should give up to you what I have inherited from my fathers,” displays how cultural foundations may clash, while he stands for a different culture in which it might be said that the land does not so much belong to us as that we belong to the land.<sup>201</sup> To be explicit, “in cases of cultural conflict over the way things might be valued and transacted, the text suggests that God, at the very least, does not hallow the assumptions of business valuation and exchange.”<sup>202</sup>

Many biblical laws are shown to have obvious Greek cultural influence, as Gmirkin acknowledges, such as the careful legal management of inheritances to guarantee that ancestral lands remained within the kinship group or tribe—i.e. the Greek lawmaker, Solon (ca. 640–558 B.C.), acknowledged that “equality of land-property” affected to greater extent the political community and, for this reason, he introduced such rules as maximum-limit in land acquisition or prohibition of selling the family lot<sup>203</sup>—or the Platonic and Aristotelian notion of equal land allotment and land inviolability as a cure for poverty.<sup>204</sup>

*The first claim* is that ethicists have to adequately consider the role of cultural values or “national cultural dimensions”<sup>205</sup> in the global economy. Hence, they can promote extractive industries’ obligation to invest in African cultures in a way that facilitates mutual adjustment and participation of multinationals in the communities’ integral

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<sup>201</sup> See *ibidem*.

<sup>202</sup> *Ibidem*.

<sup>203</sup> David Asheri, “Laws of Inheritance, Distribution of Land and Political Constitutions in Ancient Greece,” *Historia: Zeitschrift für Alte Geschichte* 12, 1 (1963), 1.

<sup>204</sup> See Russell E. Gmirkin, *Plato and the Creation of the Hebrew Bible* (New York: Routledge, 2017), 145.

<sup>205</sup> See Pramila Rao, “The Role of National Culture on ‘Best’ Practices in India: A Multiple Case Study Approach,” *Journal of Indian Business Research* 5, 2 (2013), 124.

development. As an example of mutual adjustment respectful of local cultures, “Chinese giant Haier... rather than telling farmers that they should not clean vegetables in washing machines because the soil clogs up the machines, they are modifying the product to accommodate the [local] need.”<sup>206</sup> We are left with the conviction that at the heart of extractive industries are the predominating factors of a new technological revolution and a cultural crisis precipitated by technologically induced change in the structure of the economy.<sup>207</sup>

*The second claim* is that Christian ethics at the crossroads of extractive industries in the DRC should elevate the communities’ ethical conduct—which derives from a relational network that is anthropocentric, cosmic, and theocentric<sup>208</sup>—above purely material concerns. In this way, indigenous peoples could actively defend ancestral values related to land and participate in remedies for expulsions through the African Palaver<sup>209</sup>—the way African communities solve problems through public dialogue.

*The third claim*<sup>210</sup> relies on the evidence that Christian ethics has to broaden its agenda so as to promote the “protological ethics of land” in corporations’ practices through advocacy, seminars, publications, preaching, and teaching.

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<sup>206</sup> Emerald Group Publishing, “Multinationals Must Learn Local Lessons: Policy of ‘One Global Strategy’ Is Inadequate for Emerging Markets,” *Strategic Direction* 28, 10 (2012), 28.

<sup>207</sup> See Robert Fogel quoted by Walter E. Fluker, *Ethical Leadership: The Quest for Character, Civility, and Community* (Minneapolis, MN: Fortress Press, 2009), 58.

<sup>208</sup> See Bénézet Bujo, *Foundations of an African Ethic: Beyond the Universal Claims of Western Morality* (New York: Crossroad, 2001), 3-4.

<sup>209</sup> See *ibid.*, 34-35.

<sup>210</sup> Our first claim was the respect for local cultures in interacting with the global economy; and the second claim related to capacity building of communities so that they may actively defend their ancestral values attached to land.

Finally, Naboth's vineyard grabbing does not exhaust the limits of mere legality to guarantee morality,<sup>211</sup> but reveals how the "transcultural impact of mining must be approached with cultural sensitivity and awareness of the Biblical precedents."<sup>212</sup> Yet the belief in God's commands, subject to different interpretations, cannot suffice to support non-transferability of ancestral land without considering the eventual moral responsibility of extractive industries.

### **C. Toward Moral Responsibility of Extractive Industries**

The ethical obligations of extractive industries have often appeared to be defined as corporate social responsibility (CSR), which considers that "in a global economy, businesses are often playing a greater role beyond job and wealth creation and CSR is business' contribution to sustainable development. Consequently, corporate behavior must not only ensure returns to shareholders, wages to employees, and products and services to consumers, but they must respond to societal and environmental concerns and values."<sup>213</sup> This concept suggests distributive justice whereby the indigenous people who contributed to the success of the company and endured its damaging effects must partake in any profit generated by the company.

The DRC faces challenges in trying to curb multinationals' abuses. Such a struggle discloses the insoluble limitations of the CSR's agenda, an absence of extractive industries'

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<sup>211</sup> See Malcolm Brow et al., "Christian Ethics and Extractive Industries: Theological reflections," 28.

<sup>212</sup> *Ibid.*, 29.

<sup>213</sup> Mary Robinson, "Corporate Social Responsibility in a Global Economy," *Corporate Social Responsibility in a Global Economy: Partners for Progress*, OECD, ed. (Paris: OECD, 2001), 13.

vision to improve the country's socio-economic and environmental order as well as their inability to impact the country's transformation process aimed at eradicating a past colonial system of economic exploitation.<sup>214</sup> There is reason, therefore, to supplement CSR with the principle of moral responsibility.

With twists and turns, moral responsibility overall "provides the moral justification for singling an individual out for condemnation or commendation, praise or blame, reward or punishment."<sup>215</sup> This position, as Waller acknowledges, stems from the belief that one could have done otherwise or could have exercised greater control over his/her action. Nonetheless, "whatever the conditions required for moral responsibility, [the action should meet] those conditions that make punishment (and reward, blame, and praise) fair and just."<sup>216</sup> In the absence of appropriate standards protecting the indigenous people, what makes expulsions blamable in the DRC?

One may consider consultations with communities, their free, prior, and informed consent as well as prior and just compensation being essential conditions for moral responsibility. Actually, "the commercial world is full of opportunities to profit legally from others' dodgy practices, and extractive industries are no exception. They may, perhaps, be able to move in on a site after unhelpful elements in the population have been cowed or removed by factional groups with which the company itself has no link whatsoever."<sup>217</sup>

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<sup>214</sup> See David Fig, "Manufacturing Amnesia: Corporate Social Responsibility in South Africa," *International Affairs* 81, 3 (2005), 599.

<sup>215</sup> Bruce Waller, *Against Moral Responsibility* (Cambridge, MA: MIT Press, 2011), 2.

<sup>216</sup> *Ibidem*.

<sup>217</sup> Brow et al., "Christian Ethics and Extractive Industries: Theological reflections," 28.

There exists a complex chain of responsibility which does not make it possible to determine the moral agent to blame or punish. Such a complexity, in the time of expulsions, points out the significant role which Christian ethics could adopt, establishing “the sort of moral responsibility that is desert-entailing (sic), the kind that makes blaming and punishing as well as praising and rewarding justified”<sup>218</sup> for extractive industries. Kenneth Himes relativizes, however, the idea of collective moral responsibility: while “the idea of collective causal responsibility is understandable... It is appropriate to seek out particular individuals within a group to be held culpable for wrongdoing.”<sup>219</sup>

The moral responsibility for expulsions of indigenous people is confused between the DRC government and companies. Either the government is held responsible for misdeeds committed by mining companies or the latter have to assume their own wrongdoing. This “complicity of silent acquiescence in social injustice”<sup>220</sup> elucidates the connection between expulsions and social sin, which Kenneth Himes characterizes as “ills such as racism, sexism, and imperialism which have a systemic quality about them. That is, the disvalue involved is embedded in a pattern of societal organization and cultural understanding.”<sup>221</sup>

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<sup>218</sup> Waller, *Against Moral Responsibility*, 2.

<sup>219</sup> Kenneth R. Himes, “Social Sin and the Role of the Individual,” *The Annual of the Society of Christian Ethics* 6 (1986), 207.

<sup>220</sup> Peter J. Henriot, “Social Sin: The Recovery of a Christian Tradition,” *Method in Ministry: Theological Reflection and Christian Ministry*, James D. Whitehead & Evelyn Easton Whitehead, eds. (New York: Seabury, 1980), 128–29 quoted by Kristin E. Heyer, “Social Sin and Immigration: Good Fences Make Bad Neighbors,” *Theological Studies* 71 (2010), 413–414.

<sup>221</sup> Himes, “Social Sin and the Role of the Individual,” 184.

In this context, social sin reaches the third and fourth levels<sup>222</sup> where unjust situations such as expulsions become the new normal, and nothing can be done against them, as well as unfair decisions which intensify injustices and dehumanization in society. Still, the lack of recognition of the emerging right to land is one of the factors which exacerbate dislocations.

## II. Recognition of an Emerging Right to Land

A twofold approach toward striving for indigenous people's human rights consists, on the one hand, in considering expulsions ethically as social aggression and, on the other hand, in supporting the emerging right to land as a mechanism for protecting the communities' land.

### A. Expulsions as Social Aggression in Catholic Social Teaching

Land grabs exemplify what Pope Francis terms "the rise in new forms of social aggression."<sup>223</sup> Addressing this violence, he considers that

it is essential to show special care for indigenous communities and their cultural traditions (who) should be the principal dialogue partners,

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<sup>222</sup> It is important to clarify the four levels of social sin according to Gregory Baum [Gregory Baum, *Religion and Alienation: A Theological Reading of Sociology* (New York: Paulist Press, 1975), 200-202]. "First level: social sin is made up of unjust and dehumanizing trends that are built into various societal institutions. The destructive trends corrupt the individuals and dehumanize them. Second level: Social sin refers to cultural and religious symbols that legitimate and reinforce unjust social institutions. Third level: Social sin refers to false consciousness that institutions have created and perpetuated. Fourth level: Social sin refers to collective decisions generated by distorted consciousness, which exacerbate injustices in society as well as intensify the power of dehumanizing trends." Eleazar S. Fernandez, *Reimagining the Human: Theological Anthropology in Response to Systemic Evil* (Danvers, MA: Chalice Press, 2004), 66-67.

<sup>223</sup> Francis, *Laudato Sí* (Rome: Vatican Press, 2015), #46.

especially when large projects affecting their land are proposed. For them, land is not a commodity but rather a gift from God and from their ancestors who rest there, a sacred space with which they need to interact if they are to maintain their identity and values. When they remain on their land, they themselves care for it best.<sup>224</sup>

*The fourth claim*<sup>225</sup> is that Christian ethics should trigger an approach to extractive industries abiding by the four principles charted in *Laudato Si*. First, special care should be given to indigenous communities as key private partners. Second, the land is a divine gift (Gen. 1:29), not an economic good. This approach leads to “the distinction between what should be treated as a given and what ought to be malleable by human endeavor,” which “needs to be approached with alertness to the wisdom that resides in religious traditions.”<sup>226</sup>

Third, the sanctification of ancestral land should be promoted because uprooting indigenous communities from their native land disrupts their physical, existential, and spiritual relationship with the land; moreover, their special rural life is put at flagrant risk of decline and even of extinction.<sup>227</sup> Fourth, the indigenous people’s land implies stewardship. By virtue of their dwelling on the land, human beings could till and keep it best (Gn. 2:15).<sup>228</sup> In many ways, there exist no more legitimate custodians of extractive industries than local communities. Perhaps this thought motivated the granting of

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<sup>224</sup> Ibid., # 146.

<sup>225</sup> The first claim pointed out the respect for local cultures in interacting with the global economy; and the second claim related to capacity building of communities so that they may actively defend their ancestral values attached to land; the third highlighted the promotion of “protological ethics of land” in corporations’ practices through advocacy, seminars, publications, preaching, and teaching.

<sup>226</sup> Brow et al., “Christian Ethics and Extractive Industries: Theological reflections,” 29.

<sup>227</sup> Francis, “Address to the Participants in the World Meeting of Popular Movements” (Rome, October 28, 2014), #2-3. This speech was published on the Vatican website, [www.vatican.va](http://www.vatican.va)

<sup>228</sup> See *ibid.*, #2.

perpetual concessionary tenure on ancestral lands to indigenous communities by the Congolese state in the 1970s.

Pope Francis' position seems not new. The Post-Synodal Apostolic Exhortation, *Africae Munus*, of Benedict XVI already pointed out "the hidden magnitude of the different types of poverty produced by deficiencies in public administration" as the cause of "millions of migrants, displaced persons... searching for a homeland and a peaceful country in Africa or elsewhere."<sup>229</sup>

Despite the claim that "the Church will continue to make her voice heard and to campaign for the defense of all people," this Exhortation devotes no attention to dislocations in Africa as a special category among forced migrations. Likewise, in *Laborem Exercens*, John Paul II mentions "at least a few words" on emigrant workers portrayed as "an age-old phenomenon which nevertheless continues to be repeated and is still today very widespread."<sup>230</sup>

However, the innovation of Pope Francis is absolutely his special consideration for indigenous people as the victims of expulsions while he also proclaims the sacred character of ancestral land. It is believed that this conviction originates from his personal life as a descendant of immigrants and from his experience as a bishop pastorally close to the poor and immigrants. Christian ethics may, therefore, broaden its agenda so as to incorporate compassion for communities as well as acceptance of their ancestral values, whereas extractive industries attempt to channel a multiculturalism that is, in effect, quite

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<sup>229</sup> Benedict XVI, *Africae Munus: Post-Synodal Apostolic Exhortation* (Rome: Libreria Editrice Vaticana, 2011), #84.

<sup>230</sup> John Paul II, *Laborem Exercens* (Rome: Libreria Editrice Vaticana, 1981), #23.

aggressive. An expression of compassion consists in promoting the consensus on the emerging right to land.

## **B. Consensus on the Right to Land**

Pope Francis considers land, housing, and labor—the Spanish “3T” (*tierra, techo, trabajo* [land, roof, work] well-known by popular movements in Latin America)—as sacred rights whose claim is not unusual.<sup>231</sup> On the global scale, although the “right to land” does not appear in the UNDHR, “the work and the positions taken by the United Nations human rights mechanisms all support a formal recognition of this right.”<sup>232</sup> Melik Özden considers that the 1989 International Labor Organization (ILO) *Convention 169 on the rights of indigenous and tribal peoples* (articles 13 and 17) enshrines the rights of indigenous people to their lands and their territories and their right to participate in the use, management, and conservation of their resources.<sup>233</sup>

Concretely, the ILO (article 17, #2 & 3) highly recommends that “the peoples concerned shall be consulted whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community” (#2). Likewise, it prevents others “from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them” (#3). To be implementable, the ethical standard set by the UN needs social movements to bring the light of Christian ethics into

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<sup>231</sup> See Pope Francis’ Address to the Participants in the World Meeting of Popular Movements, 2.

<sup>232</sup> Melik Özden, *The Right to Land* (Genève: CETIM, 2014), 52.

<sup>233</sup> See *ibidem*.

the business world.<sup>234</sup> Unfortunately, those partners are often lacking in African rural areas where indigenous communities are victims of extractive industries.

The rise of a “self-standing right,” the right to land, whether it is protected as an element of the right to property or whether it is grounded on the special relationship of indigenous people to their lands,<sup>235</sup> would supplement national regulations for the protection of indigenous people against expulsions. The Dutch Cordaid Foundation’s 2015 Report on the DRC pointed out the asymmetry of the laws governing mining, lands, and agriculture as we mentioned in the previous chapter.<sup>236</sup>

This lack of proportion facilitates land grabbing by mining companies to the detriment of indigenous people constantly forced to uproot.<sup>237</sup> The report obviously highlights the omnipresence of economic tensions induced by an unharmonious enforcement of three conflicting regulations governing the land and its mineral substances: land, farming, and mining laws.

What could be the enforceability of the right to land while communities are still facing an attitude of ethical indifference from multinationals?<sup>238</sup> This attitude is exhibited by the grabbing of roughly three quarters of the Katanga Province land (South-East Congo) irrespective of the economic and social effects of such a redistribution.<sup>239</sup>

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<sup>234</sup> An unpublished statement made by Professor Kenneth Himes during a doctoral thesis defense on March 19, 2018 at Boston College.

<sup>235</sup> See Olivier De Schutter, “The Emerging Human Right to Land,” *International Community Law Review* 12 (2010), 306.

<sup>236</sup> See Cordaid, *Exploitation minière au cœur des zones rurales: quel développement pour les communautés locales? Rapport* (La Haye: Cordaid, 2015), 32.

<sup>237</sup> *Ibidem*.

<sup>238</sup> See Edmund F. Byrne, “Business Ethics Should Study Illicit Businesses: To Advance Respect for Human Rights,” *Journal of Business Ethics* 103 (2011), 499.

<sup>239</sup> See Province du Katanga, *Plan quinquennal de développement 2011–2015* (Unpublished), 18.

One may validly question how Katanga could become a district of agricultural smallholders while, according to the mining mapping, 80% of arable lands are mining concessions whose exploitation threatens indigenous people. Therefore, Christian ethics requires the combination of a good governance system and economic management; “both structures should place the human development element at the center of progress.”<sup>240</sup> This goal is reachable only if extractive industries can embrace an ethics of corporate citizenship.

### III. Ethics of Corporate Citizenship

There is internationally a consensus within the legal field that, in addition to: (i) the capital contribution, (ii) the commitment over time, and (iii) the risk inherent to the pursuit of profit, the fourth and the most significant criterion of a foreign investment is its contribution to the development of local communities.<sup>241</sup> The debate on this criterion, as Matten mentions, interested the legal field only in the 1970s, under the label of “corporate social responsibility (CSR).”<sup>242</sup>

The four-part model of CSR proposed by Archie Carroll, a professor emeritus of management from the University of Georgia, was a pyramid beginning with the *economic* responsibility to be profitable; then the *legal* responsibility to abide by the laws of the

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<sup>240</sup> Reginald Moudlin Nalugala, “Extractive Industries and Social Justice in Turkana and Kwale Counties of Kenya,” *Extractive Industries in Africa: Addressing Conflicts and Integrating Sustaining Development*, Elias Omondi Opongo, ed. (Nairobi: Paulines Publications Africa, 2018), 113.

<sup>241</sup> See Sébastien Manciaux, *Investissements étrangers et arbitrage entre États et ressortissants d’autres États: Trente années d’activité du CIRDI* (Paris: Litec, 2004), 63-72.

<sup>242</sup> Matten et al., “Behind the Mask: Revealing the True Face of Corporate Citizenship,” 109-110.

respective society; followed by *ethical* responsibility which obliges corporations to do what is right, just and fair even when business is not compelled to do so by the legal framework; and finally, *philanthropic* responsibility describing activities “desired” by society, such as contributing resources to various kinds of social, educational, recreational, or cultural purposes.<sup>243</sup> This pyramid looks suspicious because it considers the ethical and philanthropic responsibilities as a non-binding commitment of extractive industries rather than a mandatory component of their business’ responsibility similar to the economic and legal responsibilities.<sup>244</sup>

Here is a clear sign that extractive industries in general have “never been completely happy with the language of business ethics. The underlying inference of both the terms ‘business ethics’ and ‘corporate social responsibility’ implies that ‘ethics’ or ‘responsibility’ are concepts which are not present in business, or even worse, which are opposed to business.”<sup>245</sup> This opinion, steeped in multinationals’ strategies, can partly elucidate their lack of sensitivity to the repercussions of mining-induced dislocations. While the same opinion diminishes the effort to moralize business, it also leaves little chance to communities to express their social and environmental concerns.

In the recent decades, critics increasingly belied the concept of CSR, especially those who considered that the “terms used by many proponents [were] in the sense of reminding business of something additional they *should* or even *must* do”<sup>246</sup> to be(come) ethical. Consequently, “corporate citizenship” has deemed it fitting “to highlight the fact

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<sup>243</sup> See *ibid.*, 110.

<sup>244</sup> See *ibidem*.

<sup>245</sup> See *ibid.*, 111.

<sup>246</sup> *Ibidem* (emphasis in original).

that the corporation sees... its rightful place in society, next to other 'citizens,' with whom the corporation forms a community."<sup>247</sup>

In this approach appears a clear connection between natural person (citizens) and corporate person (extractive industries) in terms of rights and responsibilities. While extractive industries as citizens are entitled to comfortable rights (protection, profit transfer, etc.), they also remain liable for many responsibilities (employment and training of the local workforce, tax payment, technology transfer, etc.).

Therefore, *the fifth claim*<sup>248</sup> is the moralization of business. Christian ethics, especially in Africa, should broaden its agenda to spark socially responsible investment by engaging extractive industries' efforts to foster new relationship with communities, specifying the rights and responsibilities.

An example of such corporate engagement is the *Jesuit Committee on Investment Responsibility (JCIR)*, which "advocates for corporate behavior consistent with Catholic social teaching through dialogues with corporations, shareholder resolutions and proxy voting... to expand awareness of socially responsible investment."<sup>249</sup> The JCIR itself partners with the *Interfaith Center on Corporate Responsibility (ICCR)*, a faith-based organization "calling the world's most powerful companies to address their impacts on

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<sup>247</sup> Ibidem.

<sup>248</sup> The first claim pointed out the respect for local cultures in interacting with the global economy; and the second claim related to capacity building of communities so that they may actively defend their ancestral values attached to land; the third highlighted the promotion of "protological ethics of land" in corporations' practices through advocacy, seminars, publications, preaching, and teaching; the fourth claim was an approach to extractive industries abiding by the principles charted in *Laudato Sí*.

<sup>249</sup> <https://www.jesuitseast.org/whatwedo?PAGE=DTN-20140625034611&SUBPAGE=DTN-20140625034136> (accessed November 15, 2018).

the world's most vulnerable communities."<sup>250</sup> The ICCR members particularly harness their collective influence as shareholders in the American Fortune 500 companies to improve corporate decision-making on environmental and social issues.<sup>251</sup>

In the Congolese context, an ethics of corporate citizenship can be advanced, *mutatis mutandis*, through outreach and research, talking points, development of investor guidelines, white papers, benchmarking studies, development of criteria to measure company progress, and identification of barriers to the progress of corporate social responsibility issues.<sup>252</sup> While this approach to moralization of extractive industries might seem ambitious, it also creates awareness of untapped strengths of the Catholic Church in the DRC likely to exert greater ethical impact on mining companies.

In 2007, the Congolese Bishops' Conference (CENCO) established a permanent Commission on Natural Resources (*Commission Épiscopale pour les Ressources Naturelles*, CERN), aimed at "proposing alternatives and actions for the management of [natural] resources that consider human dignity, respect for human rights, and the environmental balance."<sup>253</sup> However, in the DRC, CERN's action before the decision-makers limits itself to advocacy likely to influence laws and policies on natural resources exploitation and

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<sup>250</sup> <https://www.iccr.org/our-approach/what-we-do-how-we-do-it> (accessed November 18, 2018).

<sup>251</sup> See *ibidem*.

<sup>252</sup> See *ibidem*.

<sup>253</sup> <https://cern-cenco.net/index.php/a-propos-de> (accessed November 15, 2018). It is mentioned here that in 2010, CERN provided technical support to the *Conférence Épiscopale Nationale du Congo (CENCO)*–United States Conference of Catholic Bishops (USCCB) partnership in the adoption of the Dodd-Frank Act, which commands US oil, gas, and mining companies registered with the Securities and Exchange Commission to disclose their payments to foreign governments. On a special note, it orders US companies to prove that the origin of minerals from DRC or neighboring countries is "free from conflict."

management, without a targeted effect on the shareholders as well as the multinationals' boards of trustees.

*The final claim,*<sup>254</sup> consistent with Jesuit praxis, suggests therefore that, in the era of extractive industries, ethics voices a renewed commitment to “the creation of a more humane business culture, and economic development initiatives with the poor.”<sup>255</sup> While “the only adequate solution must be a radical one,”<sup>256</sup> Pope Francis believes ethicists' commitment should challenge the transnational interests, unconstrained by national laws and often abetted by corruption, which frequently exploit the natural resources of the poor,<sup>257</sup> especially mining-induced dislocated communities.

## Conclusion

This chapter attempted to sketch an agenda for contextualized Christian ethics in the era of extractive industries purposely labelled the *protological ethics of land*, which brings critical claims on three paradigms. First, it focuses on the *non-transferability of ancestral land* since, in the biblical perspective, land-dwelling symbolizes the common ground of identity and values laid down by the ancestors.

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<sup>254</sup> First, the respect for local cultures in interacting with the global economy; second, the capacity building of communities so that they may actively defend their ancestral values attached to land; third, promotion of the “protological ethics of land” in corporations' practices through advocacy, seminars, publications, preaching, and teaching; fourth, an approach to extractive industries abiding by the principles charted in *Laudato Sí*; fifth, the moralization of business through socially responsible investment by engaging extractive industries' efforts to foster new relationship with communities focusing on the rights and responsibilities.

<sup>255</sup> Society of Jesus, *General Congregation* (GC) 35, D.3, #28.

<sup>256</sup> Society of Jesus, 36 GC, D.1, #29.

<sup>257</sup> See Society of Jesus, 35 GC, D.3, #26.

Second, the *recognition of an emerging right to land*—unrecorded in the category of social and economic rights or the category of rights to development—is a protection mechanism for communities vulnerable to mining-induced displacements.

Third, the *ethics of corporate citizenship* brings to the fore the responsibilities of extractive industries, corporate agents, to contribute to the development of the host country as all moral agents are called to do.

However, to be complete, the above analysis requires in-depth investigations on unanswered questions. For example, how accessible is our ethical language to communities as well as business-oriented multinationals? Moreover, it remains questionable whether there is room for ethical principles in the business world. These questions could, therefore, expand the reflection so as to deepen the ethical debate on mining-induced dislocations.

## GENERAL CONCLUSION

It might seem ambitious to entrust to Christian ethics the prerogatives of resolving conflicts in society, especially mining-induced dislocations, while mining companies operating in the DRC have often overlooked ethical concerns. Dealing with the initial question, “how can ethics humanize involuntary displacement and resettlement of communities in making way for natural resources extraction?” this research needed primarily to outline the problem, in the DRC context of instability, and scrutinize theories—the resource curse, the extractive industries influence, kleptocracy, and the capabilities—that pave the way for evictions or explain mining-induced dislocations.

It is believed that China invests USD300 billion in trade with Africa, ten times more than the United States, with a noteworthy presence of Asian multinationals involved in mining in Eastern Congo. Yet dislocations of communities are not only caused by conflicts around the mines. They are essentially fueled by inequitable legal procedures of engagement with the concerned communities.

Hence, the reform of the legal framework to recognize property rights to communities over their ancestral lands should be part of the solution. Dislocations and illicit mineral exploitations being channeled by persistent armed conflicts, and a lack of political will to overcome allegedly 120 armed groups active in Eastern Congo remain suspicious. In many ways, this situation leads to a conjecture that some government

officials presumably benefit from conflict minerals and exacerbate dislocations to appropriate natural resources.

This discussion brings to the fore the question: “how to create just and equitable conditions for reconciliation between mining companies and the dislocated communities?” We perceive the limits of a one-way approach to this multifaceted problem resulting in the involuntary resettlement of communities. Such a complexity is intensified by the government being, apparently, judge and jury in arbitrating conflicts induced by mining concessions, which benefited multinationals without protective decisions for local communities. It would, therefore, be pretentious to propose any definite solution without politics being involved.

Many unanswered questions requiring further reflection remain valid. For example, is mining the foremost reason for dislocations or does it hide complex truths, such as the loss of a state regulation monopoly in Eastern Congo, the rise of an international economic dictatorship, etc.? The violation of the communities’ right to land by foreign companies raises embarrassing questions such as the meaning of citizenship and the ownership of ancestral lands for local communities. These questions reveal the limitations of restorative justice and restitutive justice in handling land disputes. Moreover, they appear to broaden the agenda of reconciliation theology so as to advance an interdisciplinary approach to forced mining-induced dislocations.

Meanwhile, the evaluation of the resource curse in the DRC has exposed the ethical flaws resulting in land grabs. Beyond a commodity boom with the risk of political instability and economic volatility, there is need to look deeply into the legal framework

which impacts communities and fuels mining-induced conflicts. The resolution mechanisms at hand are likely inefficient to guarantee peace and reconciliation between mining companies and local communities. Thus, the search for ethical foundations more respectful of the communities' rights and interests is crucial to peacebuilding in the DRC which is so riddled with mining-induced conflicts.

Considering this reality, the ultimate search focuses on the role of Christian ethics in humanizing mining-induced dislocations. We sketched an agenda for contextualized Christian ethics in the era of extractive industries labelled the "protological ethics of land," which brings critical claims on three paradigms.

First, the non-transferability of ancestral land since, from the biblical ethics perspective, land-dwelling symbolizes God's promise, the common ground of identity and values laid down by the forefathers. Second, the recognition of an emerging right to land – unrecorded in the bloc of social and economic rights or the category of rights to development – as a protection mechanism for vulnerable communities. Third, the ethics of corporate citizenship highlights the responsibilities of extractive industries, corporate agents, to contribute to the development of the host country with its multiple moral agents.

Therefore, for Christian ethics in the era of extractive industries, this research advances five claims (or recommendations) derived from the above paradigms. First, ethicists have to adequately consider the importance of cultural values in interacting with the global economy. Second, Christian ethics at the crossroads of extractive industries in the DRC should elevate the communities' ethical discourse and conduct above merely

material concerns. In this way, indigenous peoples could actively defend their ancestral values attached to land and participate in remedies to expulsions.

Third, Christian ethics should broaden its agenda so as to promote the “protological ethics of land” in corporations’ practices through advocacy, seminars, publications, preaching, and teaching.

Fourth, Christian ethics should trigger an approach to extractive industries abiding by the four principles charted in *Laudato Si'*: special care to indigenous communities; the land as a divine gift (Gen 1:29), not an economic good; the sanctification of ancestral land because uprooting indigenous communities from their native land disrupts their physical, existential, and spiritual relationship with the land, their special rural life being put at flagrant risk of decline and even extinction; and the indigenous people’s land stewardship.

Fifth, the moralization of business, especially in Africa, by broadening Christian ethics’ agenda to spark socially responsible investments, which engage the extractive industries in new relationships with communities focusing on rights and responsibilities. This effort is strengthened by the establishment of a “Christian Social Movement against Mining-Induced Dislocations.”

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