

DIGGING AND DEMOCRACY : THE DRC APORY.

A case study of the Canadian “legal haven” comparative advantage

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Regarding western countries as well as countries situated in Africa, Eastern Europe or South America, modern political thinking as tended to assume a symmetrical relationship between procedural democracy and national sovereignty. This traditional meaning of sovereignty - relying on a transaction between a confined community and its legitimate elected representatives - has widely been contested since the end of the Cold War on the ground of a growing regional and global institutional collaboration. It means that “people” is no longer the unique contributor of the decisions and policies that ultimately concern itself. On the spectrum of internal politics, a fair representation of national will and aspirations is no longer the only requisite of democracy. The very process of global governance widely escape the reach of nation-states and national communities. Intuitively, the binding influence of this governance should be even more obvious on the African continent where many states are commonly described as “weak”, “failed” or “collapsed”.

In this context, are our analyses and theoretical comprehension schemes on African democratization still adapted to this global influence governance ? Are we misframing our diagnostic on democratization as we are focussing on a micro-level of democracy ? Could we track some stringent obstacles to African democracy in the economic, legal and political global integration ? Must we consider these global governance obstacles as a privation of the *means of realization* of collective African rights, i.e. conditions of a possible local democracy ? In conformance with this diagnostic, what must we recommend to improve the situation ?

Tshibwaba Kuditshini places the liberalization of natural resources sector in Congo at the very heart of the globalization process which transforms the Great Lakes region. Referring to De Sousa, he defines “globalization” as the process by which a particularistic entity manages to expand its influence and power beyond its frontiers and consequently, manage to acquire the capacity to designate as “local” a condition which it captures. One type of globalization would be what De Sousa calls the “localized globalism” whereby transnational practices have a binding impact on the local context which is thus restructured in order to meet the outsiders' strategical imperatives. Another form of globalization described by De Sousa would be the “cosmopolitanism” whereby transnationally organized allies use at their advantage the existent normativities of the global governance system in defence of their shared interests.

Adopting a methodological starting point complementary to analyses of the process or the back-and-forward of democracy, this paper will explore the structural constraint operating on the local Congolese context, constraint which will continue to prevent the emergence of a sustainable democracy. We will focus on the impact of one of the most stringent structural global actor, namely the extractive industry sector specifically represented by Canada.

By adopting this hermeneutic point of view, may it be clear that we are not excluding or deresponsabilizing the local political practitioners concerning their role in the establishment of “democrature” in Congo. As Béatrice Hibou and Jean-François Bayard argue, the course of African states is characterised by a “privatization of politics” largely maintained by cronyism and clientelism. This process as been accelerated

by the “structural adjustment” and its correlated economic liberalization associated with the international financial institutions (IFI) loans. Rather, this article will support the thesis according to which this kind of comportment is intrinsically compatible with the structural background within which it takes place ; *they are two complementary aspects of a similar global phenomenon.*

The main explication of the chronic instability of Congo since the end of Mobutu's regime relies on looting and plundering on natural resources. This predation is exerted by different actors of the political and economic transnational spectrum - local, regional as well as global. As Kabila is still waiting for a debt cancellation from the IFI, the weight of the reforms conditional to this debt facilitation is colossal, even if the loans which contemporary Congo have to reimburse had been largely contracted by Mobutu's kleptocratic and illegitimate regime. Notwithstanding the luxurious wealth of natural resources of this “geological scandal”, the financial resources' availability for the purpose of exerting an effective sovereignty on this vast-as-a-continent territory is largely insufficient. This reality remains equal regarding the realisation of an intrinsic development. Howcome ?

Our paper will be divided in three moments :

First, we will propose a geopolitics of the Congolese situation that seriously takes into account the foreign actors implication. We will not limit this outsiders' intrusion analyse to African belligerents, as it is generally the case ; instead, we will replace it in the frame of intense reconfiguration of post-cold war international relations. The notable presence of Western actors, in particular Anglo-Saxon mining operators at crucial moments of the Congolese conflict, is definitely contradicting its local or regional privative characterization. Kabila's ascension to the administrative capital Kinshasa has been intimately correlated to negotiations and cession of mining concessions to western extractive companies ; about fifteen of them were Canadian. The inter-Congolese dialogue, which gave place to the signature of Pretoria's Global and Inclusive Agreement in 2002, marked a diplomatic recognition of the war's end. This Agreement has immediately been followed by the adoption of a new mining code excessively advantageous for the industry. It dismembers public training structures of national mining activities that stand as the country's economic lung insofar. Concerning those contracts which have been signed during the war, the expectations related to the mining contracts' review commissions, that this inter-Congolese dialogue foresaw, remain disappointed. Its opacity and political international tractations are systematically hindering the independence and the sovereign character of the process. Meanwhile the Congolese people get stucked in a humanitarian catastrophe perspective, the president Kabila go beyond with the implementation of his “cinq chantiers” of development within which number of corporate multinational actors remain involved.

Then, we will see how this cosmopolitan transnational governance is deploying itself relatively to extractive industry stakes. As the elected jurisdiction of three-quarters of mining societies worldwide, it appears that Canada have been a major contributor to the framing of typical regulations implemented in the new generation of mining codes imposed by the IFI. The advantages included in those mining codes are almost exclusively conferred to the industry at the expense of state budgets, economic sovereignty, populations and environment. Furthermore, the “conditionalities” of “good governance” associated with the later era of IFI adjustment and debt reduction facilities fundamentally de-structure national political institutions, in the meantime strengthening “privatization” and “in-formalization” of DRC. As the IFI are promoting the complete public sector withdrawal of economy, the extractive industry is enjoying there abundant public financing and Canadian unsuspected subsidies. The same is true in Canada : extractive industry representatives are even congratulating the Canadian International Development Agency (CIDA) for the benefits she procures them.

Finally, we will see how Canada is promoting a “comparative advantage” on the international financial

scene as it self-constitutes as a legal heaven for extractive industry. We will explore the content of those measures which make them so attractive that 75% of exploration and exploitation mining companies are registered on Toronto Stock Exchange or choose to have their headquarters in Canadian jurisdiction, even if their capital originate from anywhere in the world. Moreover, Canadian administrative and diplomatic delegations have shown in the past that they do not intend to bother in any means the societies on which serious allegations circulate. This *the facto* legal impunity is conversely proportional to the justiciability of critical tenants whom would be “adventurous” enough to question the “all Canadian” apologetic discourse related to extractive industry.

I. Global economy and the geopolitics of DRC : a Canadian case study

Notwithstanding the Mobutu's oligarchic regime heavy drainings, the public mining offices were, until the 1990s, among the rare means of development of the extraverted Congolese economy. Both the Gécamines (Société générale des Carrières et des Mines) and the MIBA (Société minière du Bakwanga) were in this regard very lucrative for the state budget. In the same period of time the IFI were pressing Mobutu to accelerate the political and economic liberalization of Zaire, the western block's traditional allies were progressively defecting the despot. The Canadian foreign aid budget devolved to Congo was divided by 30 between 1989 and 1994. During the precedent decade, over 140 millions \$can had been channelled to Mobutu's regime, an amount on which at least 16 millions \$can would have directly contributed to support this internationally-renowned corrupted government. In 1990, Mobutu announced his will to widen the political game and to open it to multipartism with a National Conference. As the civic and associative democratic claims flourish, Mobutu's power yield on a irreversible path : his reign seems to have reached its end.

The end of expectations

Against this trend of substantive democracy, the AFDL (Alliances des Forces Démocratiques pour la Libération du Congo) lead by Laurent-Désiré Kabila and supported by Rwanda, Uganda and United States, organized a rebellion in the bush, favoured by the regionalization of the Rwandan genocide and its factionalism. As Thomas L. Blanc notes : “in many cases, [political and army's] leaders are paid by businessmen, political notables, local and foreigners, to insure the security of the mines, the concessions, the industrial perimeter of agro-commercial plantations. Their desire for peace follows a conversely proportional relation to their will of personal enrichment and their spirit of lucre envy”¹ (Blanc, 36).

The africanist Jean-François Bayart underlines the instrumental character of the state within African socio-politics by characterising this later has a “belly politics” (*politique du ventre*) ; as his predecessor, the *telos* of Kabila's and his acolytes' political violence remains motivated by the predation on the “national cake” (*gâteau national*)..... Indeed, the administrative structures, services as well as public and bureaucratic functions open rare opportunities of enrichment by cornering of the financial resources of the states budget. The privileged access to land registry, credit lines, treasury, professional positions within trade offices, negotiations with the foreign private capital, importations, etc. offer a rare opportunity of financial

¹ « dans bien des cas, ces dirigeants se font également rétribuer par des hommes d'affaires, des notables politiques, locaux ou étrangers, afin d'assurer la protection de mines, de concession, de périmètres industriels de plantations agro-commerciales. Leur désir de paix est donc en relation inversement proportionnelle à leur volonté d'enrichissement personnel et leur esprit de lucre ».

accumulation in a impoverished general context. In this sense, rebellions and *coup d'état* are sometimes perceived as a better political mean than regular elections.

Consulted by the Commission Lutundula and the Belgian Senate Parliamentary Inquiry on the Great Lakes, the economist Hugues Leclercq described the Zaire institutional implosion in those words : “We have seen a other mode of political managing profiling itself [...] by the intermediary of politico-commercial elites working over dominating sectors and working exclusively within networks. From then on, power was held by a chain of institutions elites were supporting : Central Bank, Gécamines, security institutions”² (Leclercq in De Villers, 51). The Congolese resources of all type - mineral in particular – are so prolix that we assign to the country the predicate of “geological scandal” (see table 1) ; their greed is proportional.

TABLE 1. ESTIMATED GEOLOGICAL RESERVES (AT THE END OF DECEMBER 1995)	
Mineral resources	Estimated quantities (in tonnes)
Copper	75 millions
Lithium	31 millions
Niobium	30 millions
Manganese	7 millions
Zinc	7 millions
Cobalt	4,5 millions
Iron (over 60% Fe)	1 milliard
Cassiterite	450 000
Gold	600
Diamond	206 millions (carats)

Source : Ministry for Mines and Hydrocarbons of the DRC (June 2003), in Kudithshini, Jacques Tshibwabwa, “Global governance and local government in the Congo: the role of the IMF, World Bank, the multinationals and the political elites”, *International Review of Administrative Sciences*, 2008, 74, 202.

Canada and its mining interests in DRC

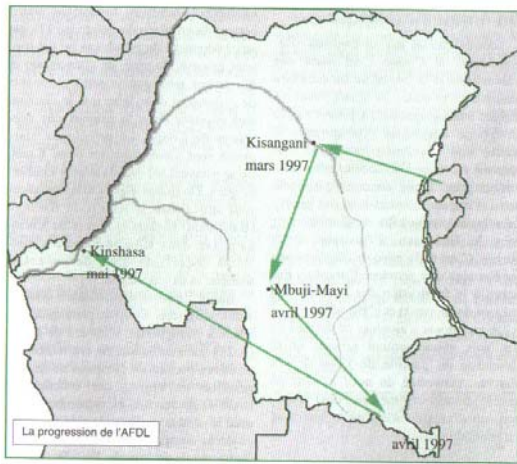
The coincidence between the long AFDL long walk to Kinshasa, the Richie concessions' mapping, the signature of contracts with foreign mining companies and the flux of illegal mineral trade (see table 2) is troubling. The “local” geopolitics is failing to threat in a consequent manner a second concentric circle related to economic and political international great powers. As they conquest the capital, Western companies have financed and furnished a logistical help to the new emulator of their interests and its regional allies.

Even before he had an official access to power, Kabila had concluded one-sided contracts (*contrats léonins*) with numerous foreign societies. In exchange, he received from them a logistic and financial support. The companies that were then present are mainly Anglo-Saxon ; many of them were Canadian. In this regard,

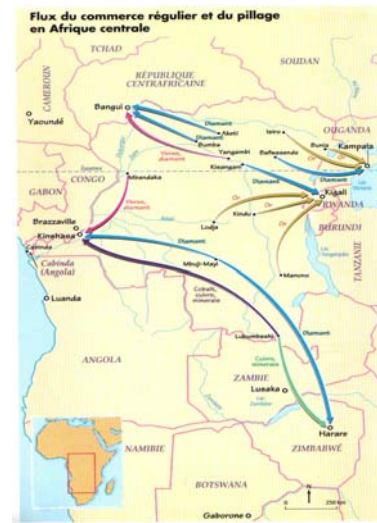
² « On a vu se mettre en place un autre mode de gestion politique [...] par le biais d'élite politico-commerciale avec des filières dominantes travaillant uniquement à travers des réseaux. Dès lors, le pouvoir appartenait à une chaîne d'institutions soutenues par des élites : Banque centrale, Gécamines, institutions de sécurité ».

different documents are pinpointing Anvil, AMFI, Heritage Oil, Barrick Gold, Banro Corporation, First Quantum Minerals, etc. In 1998, Kabila's authority is threatened on some of the parts of Congolese territory. Trying to renegotiate those excessively disadvantageous contracts, some of these societies will change side and renegotiate with whatever actor present on the ground, their only criteria being their capability to secure their propriety – rebels, local or foreign army, mercenaries, etc. Those multinational companies have credibly contributed to the perpetuity of the instability in the Great Lakes region, if not directly or indirectly to the conflict. Many Parliamentary Commissions or public inquiries held in United States, Belgium, England, Spain, Uganda, DRC underlined their implication. Close to fifteen years late, the Congolese tragedy is still actual, especially in the eastern part of the country. Its number of victims had reached the multimillion. Its is currently the first “African Great World War” within which a vertiginous number of actors have been or are still involved : half a dozen of neighbours' official armies ; thousands of businessmen from all around the world ; Anglo-Saxon, Chinese, European mining companies ; mercenaries ; arms traffickers ; security societies ; a colossal contingent of United Nations peace keeping forces ; and so on.

TABLE 2. CONQUEST OF KINSHASA



Source : ÉROS, Marie-France et François MISSER, *Géopolitique du Congo (RDC)*, Bruxelles, Éditions Complexe, 2006.



Source : BRAECKMAN, Colette, *Les Nouveaux Prédateurs. Politique des puissances en Afrique centrale*, Paris, Librairie Arthème Fayard, 2003, rééd. Buxelles, Aden, 2009.

These serious allegations concerning the role of Canadian mining companies in the Great Lakes region are related by numerous credible and public documents published around the world : Reports of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo ; articles of known and respected journalists as Colette Braeckman, Dominic Johnson or Wayne Madsen, ... ; documents of international NGOs like Human Rights Watch, Amnesty International, Global Witness, ... Among Congolese interlocutors, The United Nations Development Program worker Mbaya J. Kankwenda as well as the ancient Zaire ambassador in Israel, Honoré Ngbanda Nzambo, associate the Canadian corporations to the economic predation occurring during the war era.

Nevertheless, those allegations remain largely ignored by media and Canadians for whom the Congolese conflict is an onto-logic “forgotten war”. In a book entitled *Noir Canada. Pillage, corruption et criminalité en Afrique* [*Gloomy Canada. Plundering, corruption and criminality in Africa*], Alain Deneault, William Sacher and

myself have collected, synthesized and analysed these informations and the support these corporations benefit on behalf of the Canadian government in the light of the great geopolitics that fit the gravity of the stake. For doing so, the three authors and our publisher Écosociété are facing two trials in defamation instituted by Barrick Gold and Banro Corporation for a total amount of 11 millions \$can. [see : <http://slapp.ecosociete.org>]. Nevertheless, the only positive affirmation of the book rest on the call for the constitution of independent investigations, namely *to shed light on those allegations* of the Canadian companies abuses : pollution, environmental destruction, bribery, brutal expropriations, economic crimes, partnership with warlords, ...

At the end of 1996, breaking with its diplomatic habits of discretion, the Canadian UN ambassador Robert Fowler pressed the international community to attribute to Canada the leadership of a multilateral military force of intervention in the East of DRC. The resolution setting up the United Nations Mission in DR Congo (MONUC) was finally adopted only in 1999 since the United States objected before to any multilateral intervention. As soon as the new Congolese mining code was adopted in 2002, the Canadian foreign aid to Congo felt from 125 millions \$can to 38 millions \$can ; during the same period of time, the Canadian exports to Congo reached 40 , *i.e.* four times more than in the past decade, of which an important part is related to the mining sector. In 2006, CIDA has contributed to a program of support to electoral process of approximatively 10 millions \$can. Joseph Kabila, the son of the former rebel with whom numerous corporations had signed one-sided contracts, was officially elected. Most observers underlined important irregularities, but Canada prefers to present those elections as a complete success.

International recognition of peace, in exchange of a new mining code

After Laurent-Désiré Kabila's death in January 2001, his son Joseph appears to be the designated successor. In his first public declarations, Joseph Kabila announced his will to break off radically with his father's politics : he announced his intention to reform, in a close future, the monetary system and liberalize markets ; he promised to adopt new regulations in regard to natural resources. As the war was still on its course, three new codes, a mining code, a forestry code and an investment code, were drawn up under the auspice of the World Bank and the International Monetary Found.

On December 17th 2002, the all-sided belligerents signed the Global and Inclusive Agreement of Pretoria which marked the first step to an international recognition of the end of the war and the advent of a relative peace in the Great Lakes region. This agreement foresees the establishment of a government composed of a plethora coalition of different factions representatives. The responsibility to adopt and implement the World Bank's parachuted mining code felt to this unelected government of transition of the National Assembly. According to the Bakajika law of 1966, the soil and the sub-soil belong to the Congolese state but the new code abrogated it by liberalizing the mining sector and privatizing the sub-soil. In virtue of this new code dispositions, the Gécamines, the principal mining state organ of Congo, saw close to 2 800 km² of its concessions as well as 37 000 km² of its exploration zones privatized. Only 1500 km² are left to the public office which was some years before one of the most important societies of its kind in the world. In a recent study, the Belgian researcher Yan Gorus estimated that 85% of Katanga's territory has been ceased to private mining interests ; the land registry office is less generous and approximated this proportion to 53%. Since 2005 until recently, the Canadian attorney Paul Fortin was occupying the function of General Manager of the Gécamines.

The code foresee that only 4% of the exploitation capital goes back to the state as royalty : it is about half of its neighbours' rate which is already low. Furthermore, the payment of royalties' monitoring exceed the

state capacities. An audit commission evaluated in 2008 that close to 1,5 billions \$us were escaping the public treasury in the last eighteen months. “ The corporations benefiting from the code's advantages are not monitored [...] ; they may respect or not the engagements they contracted”³ (*Le Potentiel*, April 23rd 2008). Besides, most of the western companies'subsidiaries operating in Congo are accommodated in tax havens.

The establishment of a reviewing mechanism on all the contracts concluded during the war was part of the solution recommended by Pretoria's Agreement for the purpose of a sustainable peace. It will give place to Lutundula Commission whose report mentioned many Canadian corporations. Different mining contracts revisiting rounds will also occurred : among the last concerned was the Kingamyambo Musonoi Tailings project. The Congolese government have been pressured by the Canadian ambassador in DRC, backed up by Hilary Clinton, to reorientate his cancellation decision of the contract involving Vancouver's First Quantum Minerals (FQM).

Some months ago, the World Bank President Robert Zoellick exerted his influence on the DRC's authorities to maintain the Kingamyambo Musonoi Tailings, concluded between the Congolese state, FQM and the World Bank's organ working with the private sector, the IFC. Since 2005, the World Bank is a 7,5% stakeholder of the project as it has invested 5,9 millions \$. The sovereign conclusions of the Congolese revisiting commission on mining contracts was perfectly clear about the issue : cancellation. The potential of this mining project is one of the most lucrative in the world. In the meantime, IFM was winning his long road struggle against the famous “Chinese contract” concluded in 2007. This agreement foresaw a 9 billions \$us investment of which 3 billions \$us were intend to the mining sector ; it bypassed the Bretton Woods institutions and its conditionalities. Since the Congolese state had to give its guaranty on the investment, the IMF considered the Chinese contract too risky for the debt burden ; the IMF threatened DRC to abandon its new three-yearly agreement and the debt relief the country is waiting for since 2003. Today, as the DRC government has strip FQM's exploitation's permit, the Canadian corporation sues the state for 4 billions \$, *i.e.* half the amount of the Congolese public debt.

II. The cosmopolitanism of mining interests

The collapse of Zaire is a product of the end of the Cold War. The international system's evolution has been decisive on the deliquescent state of Congo. International foreign aid have almost been stopped since the 1990s. Mobutu and Laurent-Désiré Kabila were absolutely reluctant to the economic liberalization. Not Joseph Kabila. As soon as he gave the green light to the reforms and privatization demanded by the IFIs, the international aid flux in Congo start again on a large scale.

The re-framing of the mining codes around the world is a global phenomenon impulsed by the Bretton Woods institutions. In the meantime, extraterritorial Canadian mining investments are exploding. This concordance is not fortuitous : 75 % of extractive industry corporations – whose funds result from everywhere in the world – are located in Canada or registered on Canadian Stock Exchanges. Indeed, Canadian jurisdiction offers a “comparative advantage” on the global financial market regarding the extractive industry.

³ Les « entreprises bénéficiaires d'avantages du code ne font l'objet d'aucun contrôle [...] pour vérifier si celles-ci ont respecté ou non les engagements contractés au moment de leur agrément ».

Canada and its mining interests within the IFIs

If the studies on development focusses on the World Bank function in his domain, the organization is also a very important actor of the international financial system. The World Bank plays a intermediary role between the financial system of the North and underdeveloped states : she borrows on the market thanks to the guaranty rich state contributors is according to her ; and, she lends these amounts with an “advantageous” rate to countries and companies of the world in development. As the IMF, the Bank has an imperative interest in the stability of the financial system of the North.

In the context of the global economic crisis, gold is replacing dollar as a safer value. In this sense, mining industry has a central role in stabilizing the system. For example, IMF decided lately to sell a consequent part of its gold reserves to find money to assign to development countries : it is in the instance's interest to support the mining sector so the value of gold follows an upward curve. Besides, the resources at disposition of the International Development Association (IDA) - the World Bank agency which works the most with poor countries – are procured by voluntary contributions from its members. As shareholders of a bank, principal contributors have some expectations of advantageous outputs.

Canada is historically a main contributor of the Bretton Woods organizations. In 2008, it contributed up to the 913 millions \$can to the World Bank's budget. Canada have been : “undoubtedly one of the instigators of the effort to recycle petrodollars in the form of aid” (MARCHÉS TROPICAUX ET MÉDITERRANÉENS, 19), originating the debt crisis of the 1980s. It is also on of the first western country to have promoted and financed the “structural adjustments” which have been devastating in many regards, including for the stability of the African institutions. The implementation of the reforms related to the new generation of mining code follows up the adjustment's period “conditionnalités”. The extractive industry corporations joined the process : the World Bank consulted 80 companies before framing the “ideal code”. A responsible of Natural Resources Canada, Denis Lagacé, claimed that Canada was the only non-African actor participating to this work.

Generally, it is hoped that the state will not, or not much, be part of the projects thus leaving the place to foreign expertise and technologies. The globalization phenomenon of mining sector reform and its correlative adoption of new regulatory frames is presented to the mining states as an opportunity to generate funds to inject into development : the mean of development will rest on taxation. The typical code establishes ideal legal, financial and political conditions for the investor but they are absolutely below the expectations of the host-country. The sector deregulation is indeed opening the space to an almost complete absence of royalties, consequent tax holidays and a *laissez-faire* regarding the human and environmental consequences of the exploration or exploitation activities.

Furthermore, Canadian projects are often managed from tax havens and other offshore jurisdictions. That means that their activities are substantially not contributing to the budget or any state. According to the Lutundula Commission, it would have been the case for most of the Canadian corporations active in Congo : Kinross business partnership was registered in the British Virgin Islands ; the Montreal-based Emaxon was managed from Panama ; Lundin Group's subsidiaries are located in Cayman Islands. Within the IFIs, Canada shares its office with Ireland and a collection of British dependences and notorious Caribbean tax havens : Antigua & Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, St. Kitts & Nevis, St. Lucia and St. Vincent & the Grenadines. Many of those micro-states have been identified in the Gafi, the OECD or the Financial Stability Forum as uncooperative jurisdictions in the context of financial criminality litigations inquiries. The financial transactions which take place in these offshore repairs are preserved by by banking's secret. They are denounced by numerous international

judges because they serve tax evasion and whitening the money of crimes.

Mining code : an “ideal-type”

The typical mining codes guarantee colossal financial advantages. The corporation is sometimes completely tax-exonerated on a time table corresponding to the duration of the exploitation. On what is supposed to be paid by the company, important sums escape to treasury thanks to a deficient monitoring. This reality is partially caused by the institutional decline correlated with the IFIs reforms. To calculate the royalties and tax payments that must be integrated to the contract, the host-state have to grant his confidence to the investor's evaluation of the expected benefits since they are generally inexperienced with the highly technical financial speculation which characterized the extractive industry.

A drastic drop of environmental and social restrictions distinguish the new generation of mining codes : among other privileges, they guarantee to the company an open access to water notwithstanding the ecological disorders, the sanitary problems and the harvests decrease its massive use generates inevitably in the surroundings of the mining sites. Those consequences are integrated in the host-country legislation instead of in the investors contracts.

Parallel to code implementation, the correlated IFIs' exigence of “good governance” covers a wide spectrum of categories : civil liberty defence, rule of law, fight against corruption, “government efficiency” and “institutional confidence”. A very specific mode of administrative and political interactions echoes the latter : in particular, “good governance” in mining states corresponds to a precise manner to manage key economic sector. Ad hoc state's organs are charged to prepare the country in function of the foreign interests : some structures supervise the expropriation of miners whose artisanal activity became illegal after the privatization of the subsoil ; a Ministry of Mining working on behalf of the extractive sector within which the ministry have a great discretionary power ; etc. In DRC, the World Bank injected 120 millions \$us in the ex nihilo creation of the COPIREP (Comité de pilotage de la réforme des institutions publiques de la République démocratique du Congo) whose mandate is to supervise the privatizations of the different public organs.

On an average of 114 exigences correlated to IFI's aid, about 82 concern “governance”. In the outcome of the mining reforms initiated during the 1990s in different countries of the world, an average of three-quarter of mining assets escaped durably to the states. In Africa in general and in Congo in particular, Erik Kennes specifies in his article « Le secteur minier au Congo : « déconnexion » et descente aux enfers » [“Mining sector in Congo : “deconnection” and descent to hell”] that the host-country must be able to offer this frame to the industry within a very short period of time, *i.e.* with the related risks of a bungled process.

Financing the mining sector

Many different financial levers are serving the commercial interests of the mining sector within the IFIs, specifically the International Financial Corporation (IFC) which participates to different projects and the Multilateral Investment Guarantee Agency (MIGA) which insure them. The MIGA provides private investment guarantees for what it considers as non-commercial risks and legal services if needed. Political instability, commercial activities within war zones or under the auspices of despotic regimes, etc. are examples of those non-commercial risks. Even if the some explications of the political originates in this

commercial factor, as it is the case in DRC, the risks are evaluated as idiosyncratic or locally stimulated. As one of the MIGA's administrator, Canada participates in its decision to support or not a project. In 2005, MIGA was according 13,6 millions \$us insurance to a project in DRC, within which the Canadian Anvil was amongst the principal operator. Even if his presence was credibly contributing to the violence in the region. Indeed, at the time it received those millions, serious allegations of war crimes circulated about the corporation's complicity in a massacre committed by armed forces at its Kilwa concession the year before.

The IFC finances and provides advice for private sector ventures and projects in developing countries. It is the wider source of credit of its kind. The commitments concluded under the auspice of this organization approximated the dozen billions \$us annually. Petroleum and extractive industries are amongst its priority fields of financing. In 2004, the IFC attributed to Canada a 3 millions \$can to support investments in the mining domain, in particular for projects' feasibility and pre-foreseeability studies, training, technology transfers, etc.

At the national level, the extractive industry can count on Exportation Development Canada (EDC) to provide financing, insurance and foreign market expertise. It is curiously the twin sister of CIDA : « Established in 1969 [...] this financial organization aimed at promoting Canadian Trade and industry abroad plays a role which cannot be separated from that of CIDA » (MARCHÉS TROPICAUX ET MÉDITERRANÉENS, 12). Recently restructured, a new group of the organization operates for the specific needs of the extractive industry. It is the most important agency of its type in the world. The agency's representative accompany every business travels and commercial missions, as well as EDC is part of every project of the Canadian industry.

EDC does not have any binding obligation to evaluate the social impact before taking part of the projects it supports. This, even if, as MIGA's, there is logical risks that the activities it supports will generate political instability since it exists to insure this kind of consequences. In fact, the Foreign Affairs and International Trade Ministry give EDC a list of countries Canada is condemning for its abuses of human rights ; but Ottawa does not prevent EDC to support mining industry initiatives in those countries.

CIDA's support to the private sector is neither subjected to social monitoring. Some critical experts of Canadian aid expresses their reluctance to this kind of cronyism : “ the *Canadian International Development Agency* (CIDA)'s support to the development of Canadian private investments in the African mining sector [...] can be resumed in those words : it prepares the field. [...] [The companies] have an easy access to the country's geological information thus gaining time and money. They find individuals trained in Canada or by Canadians within governments, having a favourable *a priori* for Canadian companies and Canadian know-how”⁴ (Kazi AOUL et al., 9). Industry Canada and Natural Resources Canada are felicitating CIDA for the “efficiency of its services and programs regarding its facilitating role in opening business opportunities in the mining field”⁵ (RESSOURCES NATURELLES CANADA et INDUSTRIE CANADA, 7).

The extractive industry benefits of an other unexpected financial envelope echoing the NEPAD's creation. After the Kananaskis summit, the ex-prime minister Jean Chrétien attributed 100 millions \$can to the Canadian Investment Fund for Africa. The period of time covered by this capital-risk envelope was supposed to end in 2015 but it already runs out of funds. This risk-capital budget is known to have financed diverse projects on winch some are in DRC : the exploration company Banro Corporation, for

⁴ « L'appui de l'Agence canadienne de développement international (ACDI) au développement des investissements privés canadiens dans le secteur minier en Afrique [...] peut se résumer comme suit : elle prépare le terrain. [...] [Les entreprises] ont ainsi un accès facile à l'information géologique du pays, économisant temps et argent et trouvent, au sein des gouvernements, des individus formés au Canada ou par des Canadiens ayant un a priori favorable aux entreprises et au savoir-faire canadiens ».

⁵ « L'efficacité des services et des programmes [de l'agence] pour ce qui est d'ouvrir des possibilités de faire affaire à l'étranger dans le domaine minier ».

example, received some millions dollars to support its controverted positioning in East Congo.

The multilateral institutions demands of reforms in the mining sector and their development programs' orientations are not only constitutive of the interactions they maintain with the financially supported countries : the implementation of those IFI's conditions are also heavily followed by Paris and London Clubs, foreign investors and bilateral detonators. With most of the rich providers of financial aid to countries of the South, Canada have adopted during the last decade the principles of "aid effectiveness". Since some years, most of OE CD's countries follows the Paris Declaration and consequently, work on a convergence of their development aid program approaches.

Aside them, Canada evolutes in this paradigm it participates to erect. Concerning its aid contribution, Canada considers humanitarian considerations must be subjugated by other strategical imperatives : trade, foreign affairs or national security. Also, the structural content of its aid program is a strict application of IFI's orientations ; there is no room for an original and sovereign definition of distinct guidelines. Finally, Canada chooses to limit his aid "generosity" to a very limited number of countries which receive its financial and technical help. The actual mapping of the the "privileged" aided countries and the mining Canadian interests coincides.

III. An "all Canadian" cosmopolitanism designed for the extractive industry

In DRC as elsewhere in Africa, a substantive democracy would require at *minima* that the population holds the economic means of its development. A self-generated economic development will remain impossible as long as a unilateral development model will be promoted by the IFIs and followed by industrial countries. The privatization of public structures means the loss of autonomous economic levers ; the investments, forestry or mining codes reforms, tax retreat. The local allies of an "international community" that works to better serve its strategic and financial interests are by no means representatives of people's aspirations.

Even internal Canadian jurisdiction is designed to serve as a "legal haven" for global extractive industries. More than 70 % of the world exploration and exploitation mining corporations are registered on the Toronto Stock Exchange (TSX) even if their capital originates from abroad. Canada offers them series of advantages. Its Toronto's Stock Exchange considerably favours speculation and significant tax advantages are accorded to financial investments in the mining field. Besides, the Canadian government have clearly sent the message that it is not in his intention to bother politically or legally the companies operating abroad and on which circulate serious allegations of abuses or crimes. The only actors subjected to trial are those who express their discontent or have a critical discourse on the extractive industry practices.

Promoting investments and financial speculation

Toronto is the world financial centre of capital-risk, which characterize the extractive industry. Notwithstanding the statutory reforms that followed the historical Bre-X fraud, the two central categories of mining "resources" and "reserves" remain qualitatively confused, thus permitting speculative margins. The "resources" are the estimated minerals contained in the sub-soil as the "reserves" are the minerals effectively exploitable, but "resources" and "reserves" are changing categories depending on stock market

prices movements and technical evaluations. They are not tight. The conscientious speculators see in this chiasm the *raison d'être* of the TSX's success. Other jurisdictions, such as Australia or United States, prohibit the divulgation of any informations related to the resources to lessen the options on speculation because the *in situ* resources are invariably superior to the reserves. The companies' obligations regarding informations disclosure to shareholders generally concern financial aspects, thus neglecting environmental, political, social, tax and human rights abuses that are associated to the Canadian industry activities in numerous places in the world. Besides, the financial means of the Ontario Security Commission (OSC), the public organism mandated to monitor the financial transactions on the TSX, are insufficient to follow TSX's operations.

Many Canadians' assets (retirement funds, RRSP, public funds) are invested specifically in extractive companies titles because the government encourages with fiscal instruments the investment in this particular domain. For example, the "flow-through share" transfer on the investors' side the fiscal advantage the company enjoys anyway. In some cases, the tax deduction can reach 115% of the invested amounts ; in Quebec province, 150%.

A selective justice

On the global diplomatic scene, Canada firmly defend the principle of a *voluntary* corporate social responsibility. This principle is integrated in its free-trade agreements such as the one signed with Peru or Columbia, two mining states within which Canadian mining activities are far from reaching a the wide population approbation. It promotes it in regional development banks.

In many circumstances, Canadian diplomacy protected its industry arguing that it was in the Canadian middle class assets it was defending in the meantime. The Association of jurists and Congolese law students of Canada has tried since years to open a criminal procedure against the Montreal's Anvil, relatively to the massacre committed by the Congolese armed forces at Kilwa with its suspected complicity. In vain. In this vein when the UN pressed the Canadian ambassador to take actions against the companies complicit of the Great Lakes conflict, Canada answered the OECD guidelines were only voluntary, not compulsory.

Within the last years, eight Aboriginal leaders were condemned to six month prison sentence (jail sentences which were latter reduced or pushed aside) for manifesting against exploitation projects on their territory. The tribunal considered their ancestral rights do not supersede a court order granting a corporation the right to exploit the sub-soil. In Romania, Gabriel Resources intended lawsuits against the state secretary and the environment minister as soon as they quitted their public functions in which they opposed to the biggest open pit mining project in Europe that the Canadian wanted to exploit.

The three authors of Noir Canada and their editing house Écosociété are facing two lawsuits we feel as Strategic Lawsuits Against Public Participation (SLAPP). SLAPPs are a serious threat to freedom of expression and they weaken public debate. They generally take the form of a civil libel action, instigated against an individual or organization taking a stand in the context of a public issue : the eventual success of such an action is derived not so much from winning a case in court but from the process itself, which aims to intimidate the defendant and place such a heavy financial burden on them that they are forced into silence. The resort to SLAPPs are everything but rare in Canada since reputation clearly prevails on the freedom of speech according to many jurists, amongst whose Pierre Trudel. In 2009, some academics form the United States objected to the organization of a Scientific Congress in Canada, fearing they could

be sued by lobbies and even by the government if they were to express a point of view contrary to theirs.

IV. Conclusive remarks

Social sciences theorists are unanimous about the need to reform our theoretic and analytic conceptions of the “nation” as a closed community. The “global governance” post-cold war paradigm continues to be a growing reality, thus restructuring the international relations around other dynamics than those political science has been used to. Within this global governance, lobbies and interests groups are able to negotiate the issue about some stakes in a way that will at first fit their interests and generate stringent constraints ; those interactions are everything but democratic. Nonetheless, they achieved to designate as purely “local” some contexts they are intimately framing, thus realizing what De Sousa identified as “globalization”. In this sense, analysing the only “local” aspects of some conflicts as complex as the one that occurred in Congo is far from being sufficient. We must not forget to take into account the fundamentally structuring effect of the systemic background in which particular African trajectories evolve.

The complete political and legal latitude enjoyed by transnational actors such as Canadian mining companies and IFIs strengthened their own power. But it maintains also the profiteering and plundering compartments of political and military local elites whose behaviour spread inside an institutional informality state of things, which has been accelerated since the 1980s by the IFIs conditionnalities. Sustainable and substantive democracy for Congolese people will not be anything but a phantasm as long as the global actors will be dominant enough to assigned to DRC's problems a purely local explication ; and as long as the stake of economic sovereignty and restitution will not be part of the democratic agenda. In this context, the traditional demarcation lines between “local” and “global” democracy and between “politics” and “economy” are nowadays clearly insufficient to apprehend sovereignty. For example, Ontario's and Quebec's provinces mining regulations are intimately similar to the new mining codes' generation which is spreading around the world ; they obviously served as an inspiring framing model.

Democracy and its requisites (human rights, political liberties, statutory equality, etc.) concerns political practice as well as people and African elites' compartments ; but it also concerns its practical possibility at a global scale. From this structural point of view, the question becomes : how to guarantee globally the conditions of possibility of local democracies in mining countries ?

Regarding western and Canada's implication in DRC conflict, an inquiry commission must be established to shed the light on the numerous allegations already formulated, for example, by the UN experts on the illegal exploitation of natural resources of the Democratic Republic of the Congo. The western countries which are, in the UN words, “complicit” of the bribery of Congo must be object of international public disgrace and commercial sanctions. Amongst all the actors subjected to the international law, IFIs and transnational corporations are in a position to escape their political responsibilities regarding human rights abuses : they are subjected to commercial and private law but most of the states in the world are reluctant to consider them as potentially political actor.

In a comparative studies prepared by Oxford Pro Bono Publico for the Prof. John Ruggie, the UN Secretary-General's Special Representative on Business & Human Rights, the group of jurists underlines the fact that international treaties are applying only to signatory states. That the regulation and the control of its multinationals are meanwhile legally binding is less known : a state which is not regulating its

societies by it domestic law is thus violating his engagements regarding international human rights. In the 13 jurisdictions studied by the group regarding cases of victims of human rights abuses potentially committed by multinationals, none of the legal decisions were in favour of the non-national party. The end of the contention is generally the outcome of an out of court settlement, thus leaving no traces in the jurisdiction : “As a litigation strategy, out of court settlement prevents the development of a settled body of law, which may pave the way for more victims to bring claims against corporations for human rights abuse” (Oxford Probono Publico, iv).

There is also a global need for a universal competence forum which will hear those cases as *criminal* - not civil – contentions. The rare victims who bring actions in justice against corporations are doing so in virtue of the *Alien Tort Claims Act* in United States which is hearing the cases as civil ones. The Criminal International Court competences are too narrow to catch within its net crimes that are not falling within the category of genocides, war crimes and crimes against humanity. Furthermore, it is only addressing to individuals crimes, not corporate ones. “Corporate governance”, “social responsibilities”, “business ethical codes” are all examples of typical formulas intended to escape a binding global legal responsibility.

May it be local or global, an effective rule of law system always accompanies democracy. Democratization in the Great Lakes region as well as a progressive loss of historical democratic victories in developed countries are at stake...

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