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# REPORT

on promoting development through responsible business practices, including the role of extractive industries in developing countries  
(2013/2126(INI))

Committee on Development

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## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

**on promoting development through responsible business practices, including the role of extractive industries in developing countries**

**(2013/2126(INI))**

*The European Parliament,*

- having regard to the Addis Ababa Declaration on the Development and Management of Africa's Mineral Resources, adopted by the First African Union Conference of Ministers Responsible for Mineral Resources Development in October 2008,
- having regard to the African Mining Vision adopted by the Heads of State and Government at the February 2009 AU Summit,
- having regard to the Lusaka Declaration of the ICGLR Special Summit to Fight Illegal Exploitation of Natural Resources in the Great Lakes Region of 15 December 2010<sup>1</sup>,
- having regard to the Action Plan for Implementing the African Mining Vision adopted by the second African Union Conference of Ministers responsible for mineral resources development, held in Addis Ababa in December 2011,
- having regard to the 10 principles for integrating the management of human rights risks into state-investor contract negotiations, proposed by the Special Representative of the Secretary-General at the 17th Session of the UN Human Rights Council in May 2011,
- having regard to the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, which offers detailed recommendations to help companies respect human rights and avoid funding conflicts through their supply practices<sup>2</sup>,
- having regard to the EITI international transparency standard, which requires governments to publish details of their revenue from natural resources,
- having regard to the G8 Lough Erne Declaration of June 2013, in which the Heads of State and Government reiterated the importance of transparent and responsible management of natural resources and their supply chain<sup>3</sup>,
- having regard to the G20 final declaration published on 6 September 2013, in which the world's leaders express support for the Extractive Industries Transparency Initiative (EITI),
- having regard to Rule 48 of its Rules of Procedure,

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<sup>1</sup> <http://www.oecd.org/corporate/mne/47143500.pdf>

<sup>2</sup> <http://www.oecd.org/daf/inv/mne/GuidanceEdition2.pdf>

<sup>3</sup> <https://www.gov.uk/government/publications/g8-lough-erne-declaration/g8-lough-erne-declaration-html-version>

- having regard to the report of the Committee on Development (A7-0132/2014),
- A. whereas for many developing countries natural resource extraction accounts for a significant proportion of GDP and often for the bulk of foreign exchange earnings and foreign investment;
- B. whereas Africa has some of the world's largest mineral reserves, and whereas the profits from the mining of Africa's mineral resources should be used to meet the MDGs, eradicate poverty and achieve rapid and broad-based socioeconomic development and growth; whereas, however, African countries still need to develop and implement coherent strategies to turn exploitation of natural resources into a motor for economic development and diversification of their economies;
- C. whereas, if the revenues they generate are managed properly and transparently, natural resources can be significant drivers of economic growth and social development;
- D. whereas disputes over oil, gas, minerals, timber and other natural resources rank second as a source of conflicts worldwide; whereas competition over resources, such as land and water, is on the rise, and exacerbating existing conflicts or triggering new ones; whereas the mismanagement of land and natural resources is compounded by environmental degradation, population growth and climate change;
- E. whereas, paradoxically, countries with rich natural resources often fare worse than other countries (the 'resource curse' phenomenon) and the control, exploitation, trade and taxation of minerals in some cases contribute to armed conflicts (the 'conflict minerals' problem);
- F. whereas the benefits of mining for local populations often fail to materialise or are heavily outweighed by negative social and environmental impacts ; whereas local or national authorities can use more effective governance and greater transparency to enhance the benefits of mining for local populations, thereby also neutralising any negative social and environmental impacts;
- G. whereas environmental and social impact assessments play an important role in protecting the rights of indigenous peoples in mining areas;
- H. whereas in 2008 the World Bank estimated that 90 % of the mineral production of the Democratic Republic of Congo comes from small-scale miners who are not registered and work in remote and insecure areas controlled by armed groups;
- I. whereas small-scale mining provides considerable employment, especially in rural areas; whereas the formalisation of artisanal and small-scale mining (ASM) is needed to stimulate local/national entrepreneurship, improve livelihoods and advance integrated rural social and economic development; whereas, however, the informal nature of artisanal and small-scale mining in Africa makes it easy prey for organised crime and paramilitary organisations and is beset with a number of challenges, such as child labour, which prevent it from reaching its full development potential;
- J. whereas the extractive industries should foster the development of high-technology,

innovative sectors and offer solutions in the areas of resource and energy efficiency, ecodesign, performance enhancement, recycling and the circular economy which can benefit both developing and developed countries;

- K. whereas the Africa Mining Vision offers a framework for integrating the sector more coherently and firmly into the continent's economy and society;
- L. whereas human rights abuses are common within the extractive industry and include child labour, sexual violence, the disappearance of people, violation of the right to a clean environment, loss of land and livelihoods without negotiation and without adequate compensation, forced resettlement and the destruction of ritually or culturally significant sites;
- M. whereas forced labour, and the denial of trade union and collective bargaining rights remain major concerns; whereas likewise the often extremely poor or absent health and safety standards are a huge cause for concern, especially in small-scale mines, which often operate in very precarious conditions;
- N. whereas the responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate, as recalled in the *Guiding Principles on Business and Human Rights* prepared by the UN Secretary-General's Special Representative on the issue of human rights and transnational corporations and other business enterprises, John Ruggie; whereas there is, however, too little agreement on the concrete implications of this responsibility and progress towards comprehensive respect of it is seriously hampered also by a lack of effective monitoring, reporting, verification and accountability mechanisms;
- O. whereas the proliferation of codes of conduct, standards and certification schemes with different thematic scope in the area of CSR renders assessments, comparisons and verification difficult or impossible; whereas this proliferation has many roots, including insufficient commitment to the pursuit of effectively functioning CSR and the cutting of corners by companies wanting to be perceived as socially and environmentally responsible;
- P. whereas in order to increase efficiency and achieve equity in the field of CSR, a move away from the current 'à la carte' system, in which companies choose codes and standards according to their own preferences, towards common industry-wide standards is of primary importance;
- Q. whereas greenwashing – projecting an image of supposedly positive environmental action in order to deceive the public and draw attention away from practices harmful to the environment – misleads consumers, the general public and regulators regarding environmental performance and undermines the pursuit of responsible business conduct and for these reasons must be combatted; whereas more generally companies using CSR as a marketing tool must ensure that any claims made are accurate;
- R. whereas the implementation of EITI is meant to increase transparency in revenue management, with the aim of reducing the potential for corruption and enabling equitable

benefit-sharing;

- S. whereas although many African countries have in the past two decades carried out economic, trade and investment liberalisation, they have not achieved significant economic diversification, and have on average less diversified economies that are more concentrated, for instance, in low value-added mineral and agricultural exports, both of which are extremely sensitive to external price shocks ; whereas today all efforts should be focused on bringing about greater economic diversification, in other words reducing dependency on the extractive industries or agricultural exports;
- T. whereas the Addis Ababa Declaration on Development and Management of Africa's Mineral Resources urges African countries to ensure that EPAs and overall WTO negotiations do not limit national development policy and that trade liberalisation, which can accentuate the commodity dependence of low-income African countries, does not produce a 'lock-in effect';
- U. whereas since the World Bank-led mining reforms of the 1980s, Latin America is making a new move towards strengthening the role of state institutions, focusing on national priorities and economic development objectives;
- V. whereas export taxes are widely employed, although many regional trade agreements and the Economic Partnership Agreements (EPAs) pursued by the EU forbid their use;
- W. whereas some ACP countries are concerned that EPA restrictions on export taxes can render movement up the value chain more difficult;
- X. whereas corruption and non-transparent contracts are widespread in the mining industry;
- Y. whereas the global nature of modern supply chains means that natural resources that have fuelled some of the world's most brutal conflicts are bought and traded internationally, including by companies operating in the EU;
- Z. whereas although welcome, voluntary efforts by companies to avoid sourcing conflict minerals have not always been effective;
- AA. whereas Section 1502 of the 2010 US Dodd Frank Act requires companies listed with the Securities and Exchange Commission (SEC), including European firms, to carry out due diligence to determine whether their products contain minerals that have funded armed groups in DRC; whereas in an accompanying ruling, the SEC referenced the OECD Guidance as a credible due diligence standard for companies implementing the law;
- AB. whereas efforts to end conflict by preventing the flow of artisanal mining revenue to armed groups have been relatively successful for diamonds, but wider efforts are needed to build a robust legal and institutional framework for artisanal mining, in addition to the International Conference on the Great Lakes Region (ICGLR);

## **Mining and Sustainable Development**

1. Notes with concern that non-sustainable mining can have huge negative environmental

and social impacts, especially in Africa;

2. Stresses that the global commodity price boom, fuelled by demand from emerging economies, offers a great opportunity for resource-rich developing countries, especially in Africa, to raise revenue and channel it into development, in the interest of their peoples; supports national policies aiming at this; points out that legislative and regulatory reforms are often crucial and stresses that the necessary policy space should not be restricted by trade and investment agreements;
3. Stresses that in addition to generating government revenue which can be used for development, extractive industries should contribute to development through linkages to the local economy, for example through employment and training of local people, purchase of local goods and services, local processing of extracted materials and participation in efforts to develop local industries that use processed or non-processed materials as inputs or can benefit from the presence of the extractive companies in other ways; urges the Member States of the African Union to systematically implement its African Mining Vision; is convinced that in these ways progress towards fulfilment of the Millennium Development Goals can be greatly accelerated; to this end, stresses the need to foster sustainable development principles based on environmentally and socially responsible mining;
4. Calls on developing countries to upgrade their regional cooperation, developing and adopting common environmental, social, health and safety standards and norms for the mining sector, including for ASM;
5. Emphasises the need for regional and international approaches to curbing the illegal exploitation of natural resources; encourages developing countries to take steps to formalise the artisanal and small-scale mining sector in order to improve livelihoods, secure living wages and integrate the ASM sector into the rural and national economy, while providing accessible financial and technical support to this end and assuring a legal regime that gives ASM rights-holders sufficient land and security of tenure; calls on the EU to help developing countries raise capacity locally to run tracking and certification schemes before enforcing bans on transporting non-compliant minerals;
6. Draws attention to the EU's efforts to support further institutional development and capacity building within host governments so as to establish the necessary institutional and legal framework to manage and allocate revenues from extractive industries (EI) in a transparent and effective manner; draws attention, further, to the partnerships developed between the EU and the African Development Bank; in particular, urges the EU to prioritise assistance for the development of legislation and taxation policy so as to maximise the local and national benefits of EI development, resulting in the creation of local employment, living wages for employees and their families and increased linkages between small and medium-sized enterprises and the supply chain associated with EI development;
7. Stresses, in line with the principle of ownership, that local communities should participate in the planning and development of natural resources projects, which should be evaluated in terms of local supply chains and employment of the local community;

8. Considers it essential to recognise and secure the traditional rights and cultures of indigenous people in EI development and to ensure their prior and informed participation;
9. Stresses the need to ensure that victims of breaches of social or environmental legislation by multinational companies have effective access to justice;
10. Stresses that, in a context where domestic regulation in developing countries is often inadequate to protect human rights from corporate infractions, the UN Protect, Respect and Remedy Framework offers a comprehensive and useful set of principles for companies' respect for and protection of human rights;
11. Calls for the effective implementation of the African Charter on Human Rights, which includes provisions regarding the disposal of wealth and natural resources and principles for adequate compensation;
12. Calls on developing countries to ratify human rights conventions and instruments relevant to the mineral sector and then implement them, *inter alia* by empowering public human rights institutions to monitor enforcement of human rights standards with respect to mining, and by developing tools and methodologies for mainstreaming health and human rights issues into impact assessment procedures;
13. Notes with concern that according to John Ruggie, the UN Special Rapporteur on Human Rights, about two-thirds of corporate human rights abuses come from the oil, gas and mining sectors; stresses that EU Member States and the international community have a duty under international and European human rights law to ensure that those companies operating within their jurisdiction are not causing or contributing to human rights abuses, directly or indirectly, through their business activities;
14. Expresses concern about working conditions in small-scale mining, where many jobs are precarious, far from conforming with international and national labour standards, and where accident rates are estimated to be six or seven times higher than in larger operations; calls on the governments of developing countries and mining companies to implement fundamental labour standards as set out in ILO Conventions to ensure decent and safe work for all mine workers, including the Safety and Health in Mines Convention;
15. Calls on EU Member States to increase their assistance to combat child labour in mining and to support the ILO's undertakings to provide educational opportunities and alternative income-generating prospects to remove children from mining activities;
16. Welcomes the fact that international finance institutions have developed methods to ensure that mineral investors carry out Environmental Impact Assessment (EIAs) and Social Impact Assessment (SIAs); notes, however, that building capacity in developing countries to enforce these requirements remains a challenge, in view of financial and human resource constraints; calls, therefore, on the EU to upgrade its technical assistance so as to enable developing countries to institute the practice of systematic assessment of health, social and environmental risks, with provisions for effective public participation;
17. Emphasises the role played by the World Bank Group in developing responsible business

practices; draws attention to the need to improve the way knowledge about the establishment of institutions which place greater emphasis on integrity is shared and applied and to make information and resources available to ordinary people, so that their governments are forced to be more effective and to take greater account of their needs;

18. Calls on authorities to ban mineral exploration and exploitation in national parks and World Heritage Sites and on companies to make a commitment not to engage in such exploration and exploitation;
19. Believes that the mining industry could and should make valuable contributions to climate change mitigation through technology transfer and responsible investment; stresses, in particular, that large-scale mining companies can potentially provide the know-how for emission mitigation in the small and medium-sized mining sector; reiterates its call on the EU to seek agreements on climate financing, technology transfer and capacity building and to upgrade its assistance to developing countries for CO<sub>2</sub> emission reduction;
20. Emphasises the need for strong European legislation on disclosure of non-financial information by certain large companies, including the obligation for companies to conduct risk-based due diligence, taking into account their whole supply chain;

### **The Role of the Private Sector**

21. Calls for the effective implementation of the ILO Declaration on Fundamental Principles and Rights at Work, the OECD Guidelines for Multinational Enterprises (MNEs), the UN Global Compact (UNGC) and the UN Guiding Principles on Business and Human Rights (UNGP) through common industry-wide mechanisms;
22. Calls on the EEAS and Commission to ensure that EU trade officers based in EU delegations are given regular training on CSR issues;
23. Calls on the Commission to actively promote responsible business conduct among EU companies operating abroad, ensuring strict compliance with all legal obligations, in particular with international standards and rules in the field of human rights, labour and the environment;
24. Stresses that the thematic scope of different CSR implementation schemes is often selective, a comment which also applies to social and environmental issues; considers such a fragmented approach to be detrimental to an assessment of the overall sustainable performance of a company; considers that while those general frameworks have developed a common understanding and language for CSR principles, they should also form the basis for common industry-wide international standards on what constitutes responsible business practices;
25. Stresses equally that CSR initiatives should not be considered a substitute for a government's responsibility towards its citizens in providing basic infrastructure and other public goods, but should instead complement it;

## **International Trade and Investment Regimes**

26. Calls on the EU to use its trade and investment relations with key partner countries (e.g. US, China, Japan, Brazil and India) to foster a dialogue on CSR; urges also the EU to conduct sustainability impact assessments of proposed trade agreements before entering the negotiation phase; calls for investment treaties to foster positive CSR practices and reporting;
27. Notes that the current international trade and investment regime constrains the ability of developing countries to use the full range of instruments that were formerly exploited by now developed countries as part of their industrialisation strategies; stresses that trade agreements should respect developing countries' need to diversify their economies and upgrade their technologies;
28. Recognises the importance of foreign direct investment for industrial growth while noting that overly generous terms for foreign direct investment (FDI) in mining offered by developing countries in the 1980s and 1990s, combined with domestic mismanagement, corruption, lack of accountability and poor regulations, prevented them from gaining a fair share of profits from the exploitation of their natural resources badly needed for their social and economic development;
29. Shares the concerns of the UN Special Representative on Business and Human Rights that current methods of protecting investor rights in contracts and international agreements constrain the ability of states to protect human rights; stresses the need to balance investor rights with obligations in terms of sustainable human development;
30. Urges the EU and its Member States to implement the 10 principles of the UN Special Representative on Business and Human Rights that aim to integrate the management of human rights risks into state-investor contract negotiations, so as to ensure that stabilisation clauses do not compromise protection of and respect for human rights; calls on the EU to support capacity building in developing countries for negotiation and implementation of human rights and sustainable development clauses in investment agreements;
31. Stresses that performance requirements which aim, for example, to increase linkages between foreign investors and local manufacturers are a hallmark of industrial policy; stresses that investment agreements should enable the use of local content and technology transfer requirements, to encourage foreign firms to establish upstream and downstream linkages and contribute towards the host country's economic development;
32. Encourages African countries to make progress in their regional integration efforts so as to remove some of the intra-African barriers to mineral-based industrialisation;
33. Stresses that export taxes are permitted under the WTO regime and can be part of policy strategies aiming to develop domestic manufacturing or processing industries;

## **Benefitting from Revenues**

34. Urges the EU to assist developing countries in negotiating investment agreements that will

yield sustainable social benefits and improved socioeconomic conditions; points out that in pressing developing country governments to minimise their taxes and royalties, mining companies are effectively weakening the fiscal capacity of the state, while, in contrast, ‘tariff escalation’ applied by the EU on finished goods makes it more difficult for developing countries producing raw materials to process and manufacture value-added products for export;

35. Stresses the need to negotiate and implement tax treaties with developing countries to ensure that multinational enterprises pay their fair share of taxes; calls, more broadly, on the EU to enhance support for assisting developing countries in tax reforms and strengthening tax administrations, so as to enable adequate capture, management and sharing of mineral revenue, and to work to put in place trade agreements which remove tariff escalation on selected finished goods that could hinder the processing and manufacture of mineral-based value-added products, thereby hampering the strategy of economic diversification of developing countries;
36. Stresses that illicit capital flows from Africa are linked to the secrecy around mining contracts and tax regimes; considers, therefore, that the fight against tax evasion and tax havens should remain a top priority;
37. Is concerned about the way concessions can be granted to mining companies and the problems this can cause, including expropriation, deprivation of people’s livelihoods and problems concerning user rights and land rights; urges authorities to demarcate ‘no-go areas’ for concessions in areas that are environmentally protected by law or that have a high concentration of artisanal miners, and to do this before granting concessions so as to avoid unnecessary unrest and problems with local communities and mining companies; calls as well on authorities to create capacity to organise consultations with local communities, properly assess the concession request, monitor the site and assess the impact of the mining before granting concessions; calls on authorities to ensure that artisanal mining concessions are formalised and duly recognised by states, including in cases where states are moving towards industrial mining;
38. Welcomes the recent revision of the Transparency and Accounting Directives which introduces reporting obligations on payments to governments for the extractive and logging industries; urges the Member States to implement these directives rapidly; calls for the revenue data collected to be available in as open and accessible a format as possible;
39. Calls on authorities to ensure that mining licences and other assets are sold or granted through open and transparent bidding processes; calls on authorities to publish contracts, including annexes, maps and all financial details, as a means of preventing corruption; calls on authorities and the companies concerned to produce a full list of shareholders of all mining companies, particularly for any new deals, and a full list of those benefiting systematically from these deals, as a means of preventing corruption; calls on authorities and companies to ensure all payments to government are published in a widely accessible manner; calls on the EU to require extractive companies listed in Europe to publish any contracts concluded;
40. Calls on authorities to investigate serious allegations of corruption in the mining sector

and to prosecute, freeze funds or refuse to allow transactions to proceed where appropriate; calls for assessments of corruption risks to include looking at the process of asset confiscation, and the resale of confiscated assets, the involvement of individuals or companies as intermediaries in ‘flipping concessions’ (particularly where these intermediaries have known relationships with the governing authorities), the sale of assets at under value, and the sale of assets without tender (particularly where the assets are of key economic importance or where tenders are otherwise the norm); calls on authorities to ensure that the end-buyers of these assets are held accountable for the intermediaries they have partnered with;

## **Breaking the Link between Armed Conflict and Mineral Exploitation**

41. Notes with concern that the exploitation of high-value natural resources, including oil, gas, minerals and timber, is a major source of conflicts around the world; believes that for conflict prevention strategies to be successful they must address: the poor engagement of communities in the EI development process; the inadequate benefit sharing; the negative economic, social and environmental impacts; the mismanagement of funds; corruption; the role of armies and rebel movements; the inadequate institutional and legal frameworks for governing the development of EI; and the lack of attention to natural resource issues in peace agreements;
42. Embraces the Africa Mining Vision according to which an environmentally and socially responsible, transparent and inclusive mining sector, which provides lasting benefits to communities, is essential for addressing the adverse impacts of the mining sector and avoiding conflicts induced by mineral exploitation; calls in this context for transparent and participatory governance processes, at all levels, to assess the environmental and social impacts of mining;
43. Emphasises that conflict minerals represent a major challenge in terms of human rights; stresses that good governance, including sound environmental management practices and control and respect for social standards are essential to combat the problem of conflict minerals;
44. Points out that most initiatives launched internationally against conflict minerals aim to encourage responsible conduct by industries that buy the minerals, through certification systems for smelters; calls for the inclusion of relevant human rights aspects in all certification programmes in line with international standards such as those established within the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas;
45. Stresses that for current business initiatives on conflict minerals to be effective in breaking the link between armed conflict and mineral exploitation, and to ensure that they comply with international standards set by the OECD, European legislation should be introduced to regulate these initiatives and companies operating in the EU which use and trade covered natural resources; calls, therefore, on the Commission to bring forward binding legislation on conflict minerals;
46. Stresses that an EU regulation requiring companies using and trading minerals and other

natural resources sourced from conflict-affected and high-risk areas to carry out due diligence in accordance with the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas is needed to complement the revisions of the EU Transparency and Accounting Directives on disclosure of financial and non-financial information of large companies as well as the Dodd Frank Act's conflict mineral provisions; in particular, believes that such legislation should:

- a. create a legally binding obligation for all upstream companies operating in the EU that use and trade natural resources sourced from conflict-affected and high-risk areas and all downstream companies that act as the first placer on the European market to undertake supply chain due diligence to identify and mitigate the risk of conflict financing and human rights abuse;
  - b. be based on the relevant international instruments, including the International Bill of Human Rights, further elaborated by international human rights treaties and standards (such as UN Guiding Principles for Business and Human Rights and the Protect, Respect, and Remedy Framework), International Labour Organisation (ILO) core treaties, International Humanitarian and Criminal Law, and the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas;
  - c. apply to all segments of the supply chain and to all natural resources, without exception, produced in any conflict-affected or high-risk area;
  - d. be founded on a risk-based approach, requiring companies to assess actual and potential adverse impacts arising from their operations, and to mitigate the identified risks;
  - e. include an obligation for regular independent audits and public disclosure of company due diligence efforts;
  - f. define requirements for company risk assessments and for a management framework;
  - g. include a sanctions mechanism for cases of noncompliance with the risk-based supply chain due diligence obligations;
  - h. be comparable with the obligations under the Dodd Frank Act, so that when fulfilling EU obligations on responsible sourcing companies automatically fulfil the obligations under US legislation;
47. Stresses that EU due diligence legislation should be part of a wider and complementary approach that addresses the root causes of conflict and fragility, and be complemented by development aid programmes, which should target issues of governance and security sector reform and should aim to build the capacity of local authorities and local communities to manage their natural resources sustainably and for the benefit of their local population;
48. Calls on the EU to support capacity building in mineral-rich developing countries and to establish conflict-free sourcing programmes;

49. Urges developing countries to enforce domestic due diligence law and include OECD due diligence as a requirement in the national Mining Code;
50. Urges the EEAS to foster a dialogue with key partner countries (e.g. China, Japan, Brazil, India and South Africa) on the importance of trade policies that respect the principle of 'duty to protect' in general, and the UN guiding principles and OECD framework in particular;
51. Calls on Member States to provide guidance for European companies on strategies for mitigating risks when operating in high-risk and conflict areas, with a view to helping these companies continue their operations in such areas when this is also in the interest of the local population;
52. Instructs its President to forward this resolution to the Council and the Commission.

## EXPLANATORY STATEMENT

Countries with a long history in mineral import, such as the United States, Japan and European countries, are experiencing growing competition over access to and security of supply of strategic mineral resources. For developing countries, this situation offers the opportunity to capitalise on their natural resource endowments.

While the world's unprecedented demand for minerals and other natural resources represents a unique chance to enable mining to contribute to sustainable development, it also poses major challenges for developing countries. The exploitation of high-value natural resources, including of oil, gas, minerals and timber, is a major source of conflicts around the world, especially in a context where increasing competition over diminishing renewable resources, such as land and water, is on the rise. This is being further aggravated by environmental degradation, population growth and climate change. The mismanagement of land and natural resources is contributing to new conflicts and obstructing the peaceful resolution of existing ones.

On general ground, to ensure that mining becomes a successful factor of developing countries' development process, your rapporteur believes that an encompassing strategy is needed that tackles among others the following challenges: how to address the root causes of conflict minerals; how best to manage the environmental, social and human rights impacts of mining, how to better support and integrate artisanal and small-scale mining. Other key issues to tackle are: the nature and status of corporate social responsibility initiatives; the question of capturing, managing and sharing of mineral revenues; the optimisation of mineral-based linkages and the implications of international trade and investments rules for mineral-based industrialisation.

### **Mining and sustainable development**

While the resource productivity in EU countries is increasing, developing countries struggle to cope with the environmental impacts of rising extractions, thereby shifting the environmental burden of resource use to them. In this sense, mining can be detrimental to the achievement of Millennium Development Goals. In practise, many of the environmental problems associated with mining stem from the contamination of, and competition for, surface and groundwater, which can undermine agricultural and/or fishing communities' livings. Mining can also trigger deforestation, soil erosion, land degradation, air pollution and ecosystem disruption, while being a major contributor to global warming.

Likewise, mining operations also generate adverse social impact that can lead to tension and conflict in mining areas. For instance, displacement and forced eviction and relocation are common features of mining operations. Mining activities compete for space with other land uses such as farming, and can therefore jeopardise local communities' livelihoods, etc.

Since transnational corporations are major players in developing countries, your rapporteur believes that their home countries and their shareholders should take up their social responsibility, especially when they are operating in countries with weaker governance systems and where they lack negotiation capacities. However, it is equally imperative that

developing countries implement the reforms to ensure sustainable mining, as environmental, economic, social, and labour rights inherently require that democratic governance processes, institutions and systems are in place.

### **Role of the private sector**

Currently, there are a wide variety of international CSR initiatives, be it from governments through intergovernmental organisations, be it from the private sector or civil society organisations. However, the concept was never clearly defined and therefore left room for different interpretations and objective. Beside, while there are now hundreds of CSR initiatives, only a few are widely used international frameworks that cover all three dimensions (social, environmental, economic) of sustainable development in CSR. Hence, they are hardly comparable. Such a fragmented approach, that addresses selective aspects of ethical corporate behaviour, contributes to a general lack of transparency about the overall sustainable performance of the company.

Furthermore, while some initiatives represent a big step forward to tackle corruption in the extractive sectors, such as the Extractive Industries Transparency Initiatives (EITI) or to include ethical business practices, such as the International Council on Mining and Metals (ICMM), they did not yet lead to great improvements, since there is no enforcement mechanisms and no established process to react to infringements of standards.

Hence, your rapporteur holds the view that the current proliferation of voluntary approaches and standards at various levels (national, international, generic, sector-specific) inevitably leads to a deficit in effective accountability, monitoring and transparency mechanisms for consumers, investors and policy-makers. Against this background, corporate social responsibility initiatives need to be strengthened in two main ways.

First of all, your rapporteur deems essential to move beyond a voluntary approach and calls for effective implementation of the four overarching inter-governmental CSR initiatives that enjoy, at the international stage, a high level of explicit political backing by governments. These are: the ILO Declaration on Fundamental Principles and Rights at Work, the OECD Guidelines for Multinational Enterprises (MNEs), the UN Global Compact (UNGC) and the UN Guiding Principles on Business and Human Rights (UNGPs). Till now, they represent voluntary approaches that have been instrumental in developing a consensus and a common language of CSR. Ultimately, however, they have so far proven ineffective in terms of significantly contributing to the achievement of global social and environmental objectives, given their lack of enforceability.

### **International trade and investment regimes**

Historically, the space and flexibility of international rules on tariff application, subsidies, export restrictions, performance requirements for foreign firms and intellectual property were exploited by countries implementing national industrial development policies. Yet the current international trade and investment regime has accentuated developing countries' difficulties in advancing their national interest and sustainable development objectives.

As a matter of fact, from the late 1980s, the inauguration of far-reaching economic, trade and

investment liberalisation, initially prompted by conditions imposed by the World Bank and the IMF, were meant to promote the revival of foreign investment in mining industry. Yet such liberalisation has accentuated the structural vulnerabilities of mineral-producing developing countries. In particular, while foreign investment has regenerated and expanded mineral production and exports, its contribution to social and economic development has been contested in many mineral-rich African countries. Today, instead of economic diversification, they have on average less diversified economies that are more concentrated, for instance, in low value-added mineral and agricultural exports, both of which are extremely sensitive to external price shocks.

Another challenge to address refers to study led by the International Finance Corporation (IFC) and the United Nations Special Rapporteur on Business and Human Rights entitled “Stabilisation clauses and Human Rights” (May 2009), that establishes that certain types of those private contracts between investors and host states could constrain the state’s ability to protect human rights. In particular, the study found that extractive sector agreements contained the most constraining clauses that could either make foreign investments exempt from the application of new social and environmental laws, or require the host state to compensate the investor for the costs of its compliance.

In a context where global experience shows that the real transition - from a primary-commodity exporter to a high-technology leader - requires developing dynamic linkages in each stage of the mineral chain, your rapporteur believes that stipulating performance requirements, minimum local content or technology transfer requirements in contracts, licences and investment agreements could help to integrate primary sector into the broader national and regional economy. Accordingly, EU investment treaties should be framed to reflect a fair balance between rights and obligations of investors, while leaving policy space to developing countries to pursue their own development goals.

Tariffs are the most commonly used trade instrument for supporting industrialisation and to protect infant industry. But tariff reduction has been a centrepiece of trade liberalisation since the 1980s. Likewise, interim EPAs contain narrow lists of sensitive products that are excluded from tariff elimination, while having narrow provisions for protecting infant industry. Such concerns have frequently been expressed by ACP countries and should duly be taken into account. While recognising that industrial tariffs are neither the only, nor the magical tool to promote diversification and technological upgrading, your rapporteur believes that developing countries need them in their arsenal to reflect the path of technological upgrading, and hence, to support diversification and technological improvement.

Likewise, in a context where some ACP countries have expressed concerns about the EPA restrictions on export taxes, you rapporteur takes the view that even though export taxes do not automatically lead to the development of domestic manufacturing or processing industries, they are a legitimate tool for development and economic diversification. Furthermore, a well-designed progressive export tax system could serve as an income stabilisation instrument, capturing windfall gains and moderating the adverse impact of falling prices on producer’s income.

More broadly, strategies are required to introduce remunerative licensing and tax structures to increase revenue flows so as to catalyse wider economic development. Hence, your rapporteur

believes that EU's assistance towards tax governance in developing countries constitutes an important dimension of the encompassing strategy to turn the "resource curse" into a "resource bless" for eradication of poverty.

On top of that, your rapporteur is of the opinion that, in order for benefits to be shared in a fair and equitable way, mining licences and other assets should be sold or granted through open and competitive bidding processes.

### **Conflict minerals**

"Conflicts minerals", or minerals mined in conditions of armed conflicts and human rights abuses represents one important facet of "resources curse" for which regulation is needed. Although the international community enacted various initiatives to improve the international mining sector, such as the Kimberley Process Certification Schemes (KPCS), OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, Dodd-Frank Act, much remains to be done to address conflicts and serious violations of human rights in the mining sector.

While recent efforts to break the links between international supply chains and violent conflict have focused primarily on eastern Democratic Republic of Congo (DRC), action is also required to address the risk of European companies sourcing natural resources from other conflict-affected and high-risk areas.

Existing certification systems on minerals represent a step towards creating more transparent supply chains from mine to smelter and are part of a broader solution to address effectively human rights aspects. However, to scale up such initiatives, the international community and extractive industries need to cooperate further to develop a common and comprehensive approach to conflict minerals which goes beyond the prevention of conflict financing but encompasses also human rights, labour conditions and ecological standards.

To this end, your rapporteur believes that the EU shall adopt legislation requiring European business entities to conduct supply chain due diligence in order to ensure that they do not contribute to conflict financing or human rights abuses in the production and trade in natural resources. In particular, an EU regulation that is global in scope and is based on existing international frameworks would constitute an important step towards securing sustainable and responsible access by these companies to key natural resources. It will also ensure that European companies are subject to the same requirements as those in the Section 1502 of the US Dodd Frank Act, while addressing its shortcomings.

The establishment of a supply chain due diligence obligation for business will not be enough for successfully breaking the link between armed conflict and mineral exploitation. Therefore your rapporteur calls for the development of a wider approach including development programmes supporting e.g. institutional development, formalisation of the mining sector, the prevention of human rights abuses, and the implementation of fundamental labour standards. Only in that way local populations do not have to turn to smuggling activities or rebel groups to secure their primary needs, but instead will it pay off to take part in international initiatives for sustainable sourcing.

## RESULT OF FINAL VOTE IN COMMITTEE

<b>Date adopted</b>	11.2.2014
<b>Result of final vote</b>	+: 20 -: 3 0: 0
<b>Members present for the final vote</b>	Thijs Berman, Ricardo Cortés Lastra, Véronique De Keyser, Nirj Deva, Leonidas Donskis, Charles Goerens, Catherine Grèze, Mikael Gustafsson, Bill Newton Dunn, Jean Roatta, Birgit Schnieber-Jastram, Keith Taylor, Anna Záborská, Iva Zanicchi
<b>Substitute(s) present for the final vote</b>	Philippe Boulland, Emer Costello, Edvard Kožušník, Csaba Öry, Cristian Dan Preda, Judith Sargentini
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Josefa Andrés Barea, Małgorzata Handzlik, Tadeusz Ross