EXTRACTIVE INDUSTRIES - THEIR CONTRIBUTION TO THE CONGO’S DEVELOPMENT

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INTRODUCTION

The mining sector has dominated the Congolese economy and served as its engine of growth. In the mid-1980s, Gécamines had an annual turnover of around $1 billion, a cash flow of approximately $400 million, and production of 450,000 tonnes of copper a year. The annual contribution of the entire mining sector to GDP was eight to twelve per cent. By 2003, Gécamines produced about 10,000 tonnes of copper and its turnover had sunk to some tens of million of dollars.¹

This issues paper considers the importance of the minerals sector to the DRC’s economy; the factors that make the economy vulnerable to external shocks; problems with the management of the minerals sector as outlined in the DRC Senate’s report; other challenges relating to the modes of production inter alia: past and present environmental problems; artisanal miners; issues concerning land acquisition and compensation levels for displaced communities; and preparations for a post-mineral future, ‘l’après-mine’.

RESOURCE CURSE

Studies show that globally mineral and oil dependence is strongly associated with unusually bad conditions for the poor and does not necessarily translate into development.²

- Overall living standards in oil and mineral dependent states are exceptionally low – lower than they should be given their per capita incomes
- Higher levels of mineral dependence are strongly correlated with higher poverty rates

¹ IMC Executive Summary, La Restructuration de la Gecamines, Rapport Preliminaire « Dans les années 1985, la Gécamines réalisait un chiffre d’affaires annuel de l’ordre de 1 milliard de dollars, avec un cash-flow voisin de 400 millions USD (production 450 000 t Cu/an). Aujourd’hui, Gécamines produit de l’ordre de 10 000 t Cu et son chiffre d’affaires est de l’ordre de quelques dizaines de millions. » September 2003
² Michael Ross, Extractive Sectors and the Poor, Oxfam America, October 2001
• Oil and mineral dependent states tend to suffer from exceptional high rates of child mortality
• Mineral dependence is strongly correlated with income inequality.
• Both oil and mineral dependent states are exceptionally vulnerable to economic shocks
• Oil and mineral dependent states tend to suffer from unusually high levels of corruption and have a record of poor governance, excessive military expenditure; many are prone to civil conflict.

There is a strong negative correlation between a country’s level of mineral dependence and its Human Development Index – HDI - ranking: the more that states rely on exporting minerals, the worse their standard of living is likely to be. Extractive industries can provide benefits to the population as a whole if they spur the development of related, non-extractive industries. One way is by promoting linkages with upstream industries that supply goods to the industry. Another is through the development of downstream industries that process and add value to the products. A third way is if the government uses export revenues to promote other, unrelated sectors of the economy. In practice these linkages tend to be weak. Countries become more dependent on mineral exports, the more vulnerable to economic shocks they become. Many of these problems are already features of the DRC’s economy. Can they be overcome?

MINERAL PRODUCTION

Production figures are not easily obtainable in the DRC as highlighted in the Senate report:

*Depuis l’année 2000, il n’existe pas de statistique officielle fiable et exhaustive concernant la production nationale des métaux non-ferreux que seule la province du Katanga exploite et produit de manière industrielle.*

In 2005, officially recorded copper exports from industrial and artisanal sources were 27,925 tonnes of copper metal and 177,310 copper concentrates. Cobalt exports were 17,770 metric tonnes of cobalt and 84,835 metric tonnes of cobalt concentrates. Between 2001 and 2005 an estimated 75 to 90 per cent of concentrates and ores that were imported into China originated in the DRC. The DRC’s copper output during the first eight months of 2008 was 261,212 tonnes, compared with a recorded 97,385 tonnes for the whole of 2007. Total cobalt production in January-August 2008 was 28,126 tonnes, compared with 18,000 tonnes in January-December 2007.

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3 Résumé commission sénatoriale sur le recensement des entreprises minières et les revenus fiscaux miniers (hereinafter: DRC Senate study)
4 World Bank *Growth with Governance* 2008
5 Cited by Global Witness, *Digging in Corruption* p. 13
6 World Bank, Democratic Republic of the Congo: Economic Report (Spring 2009)
According to World Bank projections it is highly probable that DRC can attain a production level of 400,000 - 600,000 metric tonnes of copper. In addition, significant expansion can occur in the production of cobalt, diamonds, gold, cassiterite and coltan. The World Bank’s various growth trajectories for the sector, based on conservative assumptions in respect of international commodities prices, are summarized in the table below. The Senate report highlights the inescapable fact that despite its extraordinary mineral wealth, the DRC has not been able to meet the needs of the majority of its population:

“Malgré les prescriptions combien engageantes du Code minier, le secteur minier reposant pourtant sur des ressources minérales immenses et variées n’a pas encore, du fait de la mauvaise gouvernance, contribué un tant soit peu, à trouver les réponses aux cris des populations congolaises vouées à vivre dans des conditions infrahumaines. »

Growth Scenarios 2008-2012

<table>
<thead>
<tr>
<th>Scenarios</th>
<th>2008-2012</th>
<th>2013-2017</th>
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<tbody>
<tr>
<td><strong>Base Case Scenario</strong></td>
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<tr>
<td>Gross production value, US$ million</td>
<td>1,932</td>
<td>2,676</td>
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<td>Government fiscal receipts, US$ million</td>
<td>186</td>
<td>388</td>
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<td><strong>Medium Growth Scenario</strong></td>
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<tr>
<td>Gross production value, US$ million</td>
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<td>3,792</td>
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<td>Government fiscal receipts, US$ million</td>
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<td>689</td>
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<tr>
<td><strong>Speculative Growth Scenario</strong></td>
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<tr>
<td>Gross production value, US$ million</td>
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<td>5,056</td>
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<tr>
<td>Government fiscal receipts, US$ million</td>
<td>246</td>
<td>734</td>
</tr>
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</table>

**DRC’s Vulnerability to External Shocks**

The global economic downturn had a profound effect on economic activity in the DRC’s mining sector. In April 2008, the price of copper on the London Metal Exchange Ltd (LME) reached an all time high of $4.08 per pound and averaged $3.61 per pound for the first nine months of the year. In October 2008, as the impact of the global financial crisis began to be felt, copper prices plummeted, the LME price falling below $1.70 per pound.

Data from the first six months of 2009 showed that Chinese demand kept copper prices high even though globally usage decreased by four per cent in the first quarter of 2009, as compared to the first quarter of 2008. Had it not been for a very high apparent usage in China, and the decision of the Chinese government to buy for its strategic stockpiles, the

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7 Source: World Bank
decline in copper prices would have been much greater.\(^9\) By November 2008, 41 of the 75 processing companies in Katanga had abruptly halted production and the remainder had reduced their output.\(^10\) An estimated 300,000 mining jobs were lost in Katanga as companies mothballed their operations or scaled back production.\(^11\) While some mining operators have resumed their activities it is on a reduced level.

In response to a sharp decline in key commodity export prices and a deterioration in the country’s terms of trade during the fourth quarter of 2008, the DRC received emergency financial support, including US$200 million from the IMF’s Exogenous Shock Facility (RAC-ESF). Growth during the first half of 2009 was low due to a slowdown in mining and construction activities. Inflation peaked in April at an annualized rate of 100 percent and the exchange rate depreciated by 45 percent over the same period.

**TAX GAP - LACK OF CONTROLS**

According to the World Bank the gap between the taxes the government should be receiving from the sector and what it actually receives is estimated conservatively at US$150 million per annum. The reasons for the tax gap are many, including fraudulent practices on the part of companies and government services and tax assessment and collection agencies\(^12\), under valuation of mineral product\(^13\), clandestine exports and smuggling. These findings are confirmed by the Senate study:

*L’ensemble des services d’administration publique fiscaux, douaniers et de control est absolument incapable de fournir les données nécessaires et prévues dans leurs responsabilités ; ils ne communiquent pas entre eux ce qui éventuellement fausses les données et empêchent de percevoir les impôts et taxes minière de manière systématique et régulière.*\(^14\)

The Senate report estimates that the DRC failed to recoup about $361 million in mining income last year because of mismanagement. Other studies reveal a growing discrepancy between the DRC’s official diamond export figures as recorded by the government’s Diamond and Precious Metals Evaluation Centre (Centre d’évaluation,d’expertise et de certification des substances minérales précieuses et semi-précieuses, CEEC) and those submitted to the Kimberley Process. The discrepancy between the two official tallies grew from a negligible 150,000 carats in 2005 (when an independent diamond valuer was monitoring diamond

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\(^10\) Franz Wild ‘Congo Says 41 Processing Companies Close After Metal Price Drop’ 14 November 2008 Bloomberg

\(^11\) Franz Wild ‘Katanga Mining Workers Facing Dismissal Protest at Copper Mine’ 17 April 2009, Bloomberg

\(^12\) DRC Senate report : *Il est surprenant de constater des différences flagrantes entre les montants de la redevance minière calculés et payés par les opérateurs et consignés sur les formulaires des statistiques des exportations et sur celui des statistiques des impôts et taxes payés.*

\(^13\) DRC Senate Report : *Il arrive fréquemment que les quantités inscrites sur procès verbal de constat de chargement des substances soient en fait réduites de 10 fois soit 33,93tonnes = 3393kg*

\(^14\) DRC Senate study
production) to a significant 2.4 million carats in 2007 (after the valuer’s contract had been terminated).  

**NEGLIGENCE OF ENVIRONMENT**

The Congolese Constitution provides for the right to a healthy environment and states that everyone has a duty to protect it. Article 54 of the Constitution also requires economic actors to pay compensation and undertake remediation if pollution or environmental damage occurs as a result of their activities. Enabling environmental legislation, though drafted, has yet to be approved.

The key legislation is the Mining Code (Law No 007/2002 of July 11 2002). The Code sets out in detail the way in which mining projects of any type may be undertaken. The Mining Code is supported by the Mining Regulations (Decree No 028/2003 of March 2003) which implement the provisions of the Code. The Mining Code provides a legal framework to regulate the environmental practices of mining companies in the DRC. The Mining Code requires mining companies to submit environmental impact assessments (Etude d’Impact Environnemental, EIE) and environmental management plans (Plan de Gestion Environnementale du Projet, PGEP) but these rules are easily circumvented and the documents are not usually available to the public, even though local communities are supposed to be consulted.

Article 83 of the Mining Code clearly states that mineral processing plants must comply with the environmental protection regulations. The Directorate for the Protection of the Mining Environment (DPEM) within the Ministry of Mines is responsible for all aspects relating to protection of the environment. The Directorate ensures the implementation of and compliance with the relevant regulations by all mining developments. According to the World Bank, “Mine inspection services (through the Directorate of Mines) in the provinces are wholly inadequate to perform their mandated function of monitoring production, health, safety and environmental protection issues at industrial and artisanal mining sites.”

In the main mineral producing regions (principally Katanga) the environmental legacy of past mining operations is severe. The legacy includes improperly closed mining operations and facilities, soil pollution, eroding tailings impoundments, and other remnants of past mining exploitation. Audits and records do not exist of past and current environmental liabilities making it impossible to determine who is responsible for

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16 *Toute personne a droit à un environnement sain et propice à son épanouissement intégral. Elle a le devoir de le défendre.* Article 53 Congolese Constitution (2006)

17 Code Minier article 69F and Règlement Minier article 451

18 **Article 83 : Des usines de traitement ou de transformation.** L’implantation et le fonctionnement d’une usine de traitement ou de transformation des substances minérales sont soumis à la réglementation en matière de protection de l’environnement prevue par le présent Code et par la législation particulière sur l’environnement.

19 World Bank, *Growth with Governance in the Mining Sector*, May 2008
pollution flows. Few government services or companies have the ability to prepare let alone properly assess environmental impact studies and management plans. Community consultation procedures are not clear and, in any event, not really effectively carried out by companies on a consistent basis. There is a need for environmental baseline studies, and risk assessments of abandoned or older mine sites and installations to be carried out. International community support will be required for a remediation programme to tackle the worst problems of pollution and disrepair. Areas of weakness in the 2002 Mining Code also need to be rectified, particularly as regards public access to environmental and social impact assessments and environmental management plans. The DRC should adopt procedures to ensure meaningful community consultations with extractive industry companies.

There are few inspections and Ministry of Mines officials often turn a blind eye to non-compliance with the Mining Code environmental obligations. Junior officials in the Ministry of Mines, on the basis of a three-week environmental training course, are responsible for enforcing the environmental regulations throughout the entire country. The DPEM approves the environmental assessments and management plans and audits implementation. In Katanga, the Directorate of Mines has only 30 staff to cover a vast province with many operations. Moreover, the Directorate does not have logistical support, laboratories or vehicles to carry out its functions.

In theory the Cadastre Foncier (Land Registry) and the Service Urbain de l’Urbanisme et Habitat (Town Planning and Housing Department) control and regulate urban land concessions but they have little authority and political ‘patrons’ wield most of the power. During the copper and cobalt boom, a rash of small-scale smelters and processing plants opened in various locations around Likasi, Kolwezi and Lubumbashi with a seeming complete disregard for the impact on public health and safety or the stipulations of the Mining Code. Most of the processing operations in Katanga do not comply with requirements for environmental impact assessments or management plans. Although the export of mineral commodities in a raw or unprocessed state is illegal under the Mining Code, Chinese and other traders have special exemptions allowing them to purchase copper and cobalt ore from artisanal miners. Many traders only do a minimal level of processing, washing or crushing, before exporting the minerals.

UNEQUAL DISTRIBUTION OF THE BENEFITS

The artisanal and small-scale mining sector is the most important segment of the mining sector, not only because it produces the highest volume of mineral commodities, but also because of the people dependent on artisanal mining. Yet the needs of artisanal miners have been woefully neglected. There are an estimated 10 million people, 16 percent of

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20 Code Minier, Chapitre II : Des Obligations Relatives aux Operations en vertu de Titre Minier ou de Carrières
21 World Bank May 2008 p. 23
22 RAID, ‘Chinese Mining Companies in Katanga’ September 2009. In 2005, for example, two Chinese companies, Huachin and Congo Loyal Will Mining, were given permission to buy heterogeneite from artisanal sources. Since 2008, most companies do a minimal amount of processing.
DRC’s population, who either mine directly or are dependent on artisanal mining for their livelihoods. Artisanal miners at present produce 60 to 90 percent of the DRC’s minerals. Artisans are present in the production of virtually all mineral commodities: gold in Ituri province, diamonds in the two Kasais, copper and cobalt in Katanga, and cassiterite/coltan in the Kivus. As was noted in the Lutundula report the stated objective of opening up mining areas to artisanal mining has not been achieved. Most artisanal miners live in the most abject conditions. In Mbuyi Mbaï about 10,000 people including children are involved in digging for diamonds. In 2006, journalists noted a major discrepancy between the value of MIBA’s declared output which was between $6 million and $8 million a month and the true value of the illegal diamond exports estimated to be in the region of $30 million a month. In 2006 the DRC’s official exports of diamonds totalled 30.2 million carats, valued officially at $679 million. Artisanal and small scale (semi-industrial) alluvial mines accounted for about 90 per cent of the total, while exports from the state diamond mining company MIBA fell to only 2.2 million carats. Despite investment in new machinery for the company, official exports from MIBA fell by nearly two thirds in 2006.

In Katanga, the growing number of mining companies undertaking industrial-scale mining in large concessions directly affects artisanal and small-scale mining. Artisanal mining remains one of the most important economic activities in and around Kolwezi. In terms of numbers it is still the most prevalent mining activity in the area. Artisanal mining has grown following the decline of Gecamines. But it is no longer possible to consider it ‘a ‘social calming’ strategy. The struggle for mining resources has already created tension between artisanal miners and formal mining companies in places like Kolwezi, and this has the potential to increase as the formal mine moves into production. Many of the artisanal miners are demobilized soldiers and young people who know no other means of livelihood other than artisanal mining and combat. Artisanal miners are exceedingly vulnerable as they have been and continue to be victims of forced displacement, ill-treatment, harassment, extortion, violence and human rights abuses.

LAND ACQUISITION

According to the 1973 Land Law the State is the single sole owner of the soil and subsoil of which it has exclusive, inalienable and imprescriptible ownership. This law brought all land back into the State domain (article 53). However the promised presidential ordinance, which was supposed to deal with indigenous or traditional communities’ land, has never materialised.

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23 The Lutundula Commission, formally the Congolese Special Parliamentary Commission Charged with Examining the Validity of Economic and Financial Agreements Signed during the War (Assemblée Nationale, Commission spéciale chargée de l’examen de la validité des conventions à caractère économique et financier conclues pendant les guerres de 1996-1997 et 1998) of June 2005, recommended that 16 mining contracts be ended or renegotiated and that 28 Congolese and international companies be investigated for violations of Congolese law. The Lutundula report was never debated by the National Assembly and its recommendations were not acted upon.


In Katanga industrial mining is displacing traditional and mixed communities. The customary system of land allocation through traditional leaders is breaking down. *Chefs de Terre* allocate and authorize the use of small parcels of land, and may delegate this authority to *Chefs de Village* for smaller agricultural plots. They informally receive an annual fee from the people to whom land is allocated. For bigger areas *Chefs de Terre* may allocate, but a temporary authorization for use will have to be granted at a higher level. Many of the communities who have been displaced by mining companies do not have any security of tenure and run the risk of secondary displacement as mining exploration activities expand. Frequently the replacement fields are barely adequate for the needs of the community and their access to natural resources, including water, is greatly reduced.

The main legislation pertaining to resettlement in mining areas is the Mining Code (Law No 007/2002 of July 11 2002). The code sets out the ways in which mining projects of any kind (research, exploitation, trading or processing) may be undertaken. The Mining Code is supported by the Mining Regulations (Decree No 038/2003 of March 2003), which implement the provisions of the Code.

The requirements for compensation for are included in the 2003 Mining Code Title XI, Chapter II, Article 281. Valuation procedures and compensation rates are set by the *Department de l’Agriculture* and the *Inspection de l’Agriculture*. In some cases the mining company agrees that the rates for lost or damaged crops should be calculated on the basis of an evaluation of the number of work days needed for a peasant farmer to establish and maintain the crop. But there is no accepted formula for compensating people for the loss of access to natural resources that local people depend on and use in a variety of ways.

**FAILURE TO ADDRESS SOCIAL NEEDS**

There is an increase in disease, criminality and social dislocation - one measure of this is the increasing numbers of abandoned children. The miserable living standards of workers and artisanal miners in Katanga breeds resentment against outsiders and foreigners, which can foment inter-ethnic violence or assaults on foreigners like Chinese workers. The influx of Chinese has driven up the cost of rented accommodation in Katanga, particularly in Lubumbashi, which has forced many local people into the *cités* (shanty towns) where there is no sanitation or access to clean water.

**L’APRÈS-MINE**

The mineral reserves of Katanga should have a productive life of 20-25 years. Even as the DRC addresses how to improve the productivity of its extractive industries and increase their contribution to national development, the sudden fall in the price of minerals and the damaging impact that the collapse had on the economy of Katanga and people’s livelihoods, should be a timely reminder of the importance of taking action now.

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26 Robert Crem, « Est-on conscient qu’est en train de brader 300 milliards de dollars de reserves minieres, par la plus grande escroquerie des temps modernes ? » May, 2006
for l’après-mine: diversification of the economy, the importance of training and the need to open up new labour markets and opportunities for the artisanal miners.

Possible Action Points:

1. Maintain reliable records at national and provincial level of all mining operators
2. Mining companies should publish their tax returns and royalty payments.
3. Urgent measures should be taken to clean up the environmental legacy of Gecamines.
4. There should be zero tolerance of officials involved in embezzlement, fraud and soliciting bribes. They should face prosecution
5. Improve the productivity and access to markets of artisanal miners under fair and secure conditions.
6. Amend land laws to strengthen the rights of traditional and indigenous communities displaced by mining activities and to prevent secondary displacement.
7. Improve the compensation payments to displaced communities who should also be compensated for their loss of access to natural resources
8. Strengthen environmental monitoring and protection; effective action should be taken to punish companies that pollute rivers and streams or fail to control air borne emissions.
9. Undertake a survey of the public health impacts of mineral production and treatment in mining centres, particularly on the health of children.
10. There is a conflict in some mining areas between land available for growing staple foods for the population and huge mining concessions. This problem needs to be studied.