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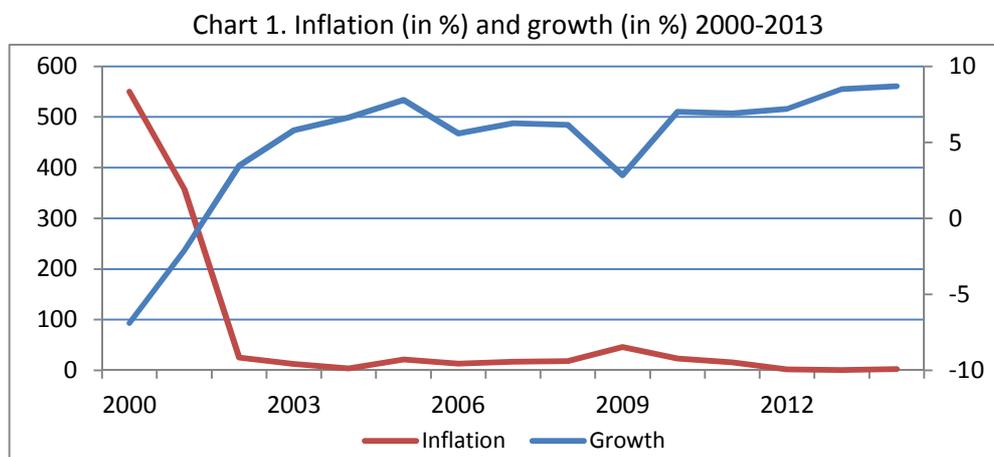
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## Democratic Republic of Congo (DRC): Mineral Policy

**Keywords:** copper, cobalt, diamonds, gold, tin, growth, EITI, artisanal mining, conflict minerals

### General Information on Democratic Republic of Congo

The Democratic Republic of Congo (DRC) has taken its new name in 1997 after the demise of the reign of president Mobutu who governed autocratically for over two decades. The last years of Mobutu's were characterized by hyperinflation and negative economic growth. Laurent Kabila, spokesman of the rebellion that set aside president Mobutu, became the new president, but the licensing of his (Rwandan) military chief of staff in 1998 sparked off a devastating war, commonly called the 'first international African war' (1998-2003). After the murder of Laurent Kabila in 2001, his son Joseph took over power and negotiated - under the aegis of the international community - a peace agreement in 2003. This also marked the start of a macro-economic recovery through opening up to the international community. Chart 1 shows the growth rate of the economy as well as the control of inflation after 2001. Since 2003 (after introduction of the new Mining Code in 2002) there has been consistent growth (between 5 and 9 percent per annum except for the year 2009, due to falling world prices and export quantities of copper and cobalt, the main export goods) (Banque Centrale du Congo, 2013).



Source: Author's composition based on IMF, DRC art. IV reviews

Undoubtedly growth rates (the 7<sup>th</sup> highest in the world) were triggered by booming mineral production, which spectacularly recovered through reforms led by the World Bank. Better control of the money press and international monitoring by the Bretton Woods institutions brought down inflation under two digit figures. The steady increase of exports has sustained a stable free exchange rate for more than a decade now, which is a postcolonial record. However, absolute levels of production are still very low by international standards (700 dollar PPP per capita, ranked 228 in the world). Formal employment is estimated to have risen from about 10 % in 2001 to some 28 % in 2014 (Marysse, 2015). This means that about two thirds of the active population have to fend for themselves

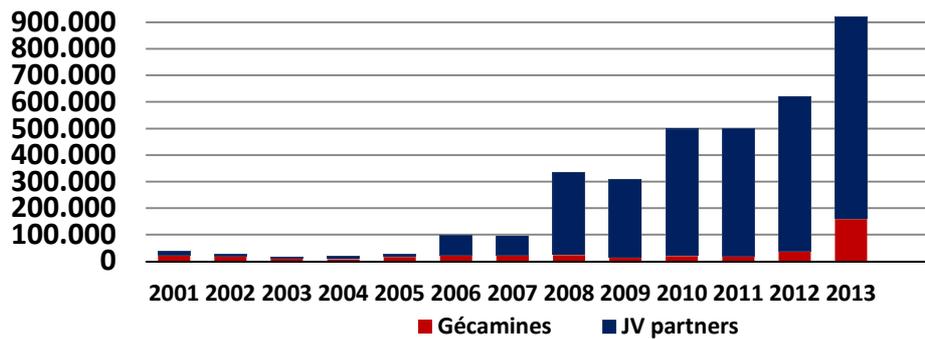
in the informal economy. A due account of this informal economy may change income figures, but cannot conceal huge poverty and below standard functioning of the economy, even in comparison with less endowed economies in Sub Sahara Africa. Most observers agree that neo patrimonial politics and deeply rooted corruption (DRC is ranked last but one in the Transparency International corruption index) are main reasons for this low performance.

### **Need of minerals**

The DRC holds extensive mineral wealth in its subsoil, with over 1100 substances that have been identified, 22 of which are at present economically usable (World Bank, 2008). The country is estimated to hold almost half of the world's cobalt reserves and significant reserves of tantalum, tin, gold and diamonds. In recent years there have been significant foreign private investments in large-scale industrial mining, which has contributed to significant macro-economic growth. According to the latest EITI figures, the mining sector accounted for 64% of state budget (total of US \$ 716,55 million), 99% of total exports, 24% of formal employment, and 13% of GDP in 2012 (EITI, 2014: 21). In 2012 extractive companies in the mining sector declared having paid US \$1.043.117.978 to the Congolese government, while declared government earnings amounted to US \$1.052.659.116 of which 75% went into the national treasury and the rest to other public services (EITI, 2014: 8). In 2012 the DRC produced 85.409 tonnes of cobalt (about 82% of world production), 619.301 tonnes of copper (3,5%), 20.140.000 carats of diamond (22%), 18.981 tonnes of cassiterite (tin ore) (8%), 257 tonnes of coltan (tantalum ore) (38%) and 2.546 kilogrammes of gold (0,1%) (EITI, 2014: 21 and USGS). There are no significant imports of minerals or mineral fuels.

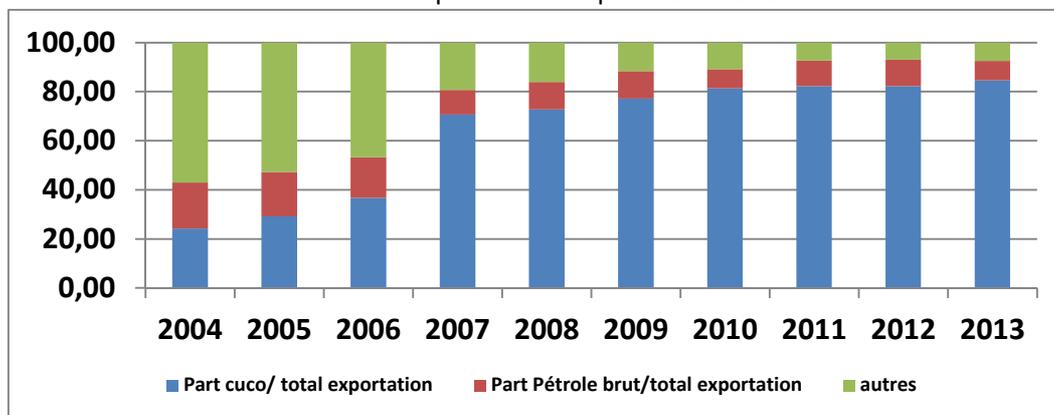
**Industrial, large-scale mining (LSM)** is mainly taking place in Katanga province (copper and cobalt), but is also coming up in North and South Kivu, Maniema and East Province (gold). In Katanga, the national company Gécamines had seen its production dwindling from 500.000 tonnes of copper in the 1970s to some 30.000 in 1990, when the most important mine (Kamoto) collapsed due to lack of maintenance and investment. The new foreign investments (see Chart 2) induced a boost in copper and cobalt production from 2006 onwards, to reach historic record levels in 2014 (more than 1 million tonnes) (Banque Centrale du Congo, 2013). This makes the DRC the first copper exporter in Africa and the first cobalt exporter worldwide. The major companies are Sicominex (20% Gécamines, 80% Chinese companies), KCC (Kamoto Copper Company, 20% Gécamines, 80% other, among which Glencore/XStrata), TFM (Tenke Fungurume Mining, 80% Freeport-McMoRan and Lundin Mining, 20% Gécamines), Frontier (95% ENRC Congo, 5% Congolese state) and MUMI (Mutanda Mining, 60% Glencore, 40% other) (EITI, 2014: 12-14 and 147-8). The spectacular rise in copper and cobalt production has fundamentally altered the composition of exports. In 2004 almost 57% of all exports consisted of diamonds (Chart 3). From 2004 onwards, copper and cobalt have become more prominent both in absolute and relative terms, taking up 85% of all exports in 2013. Of lesser but increasing importance are the exports from the eastern provinces. In 2011 and 2013 Banro Corporation (South Kivu) and Kibali Gold (East Province) respectively have started producing industrial gold, pushing volumes of exported gold to 6.125 kilogrammes, against only 2.546 kilogrammes in 2012 and less than 500 kilogrammes in the period 2006-2011 (Ministry of Mines, 2013). Other international companies (mainly Chinese and South African) are doing exploration and starting up production in other eastern provinces.

Chart 2. Copper production 2001-2013 (in tonnes)



Source: Marysse and Tshimanga, 2014

Chart 3. Composition of exports 2004-2013



Source: Author's composition based on data from Banque Centrale du Congo

**Artisanal and small-scale mining activities (ASM)** are widespread over Katanga, North and South Kivu, East Province, Maniema and Kasai. They occupy an estimated 500.000 to 2 million miners, while an estimated 8 to 10 million people, or 14 to 16% of the total population, indirectly rely on ASM for their livelihoods (World Bank, 2008). ASM is particularly important in the eastern Kivu provinces, a region that is recovering from violent conflict in the late 1990s-early 2000s, hence the labelling of the region's tantalum, tin and tungsten (3Ts) and gold as 'conflict minerals' (see reports by UN, Global Witness, Enough Project, International Peace Information Service and others). Available estimates for the number of artisanal miners in the Kivu provinces, taken from 2007 and 2010 respectively, put the figure between 200,000 and 350,000 (D'Souza, 2007; Pact, 2010). As the sector is largely 'informal', official production and export figures for artisanal production are not reliable, especially not for gold with its high value per unit. Production of artisanally-mined gold in South Kivu and East Province was estimated to be 12.000 kilograms in 2008 (World Bank, 2008), the same year that official gold exports from South Kivu were recorded as just 65 kilograms (Geenen and Radley, 2013). Before the effects of the de facto embargo in the region took hold (a result of international legislation around 'conflict minerals', see below), official figures for South Kivu from 2008 recorded cassiterite exports at 6,004 tonnes and coltan exports at 440 tonnes. Minerals smuggling still costs the government significant revenue. According to the UN Group of Experts, the loss in tax revenue in 2013 amounted to between US \$7,7 million and 8,2 million for gold alone (UN, 2014).

### Regulatory framework

A new Mining Code (Law n° 007/2002 of 11 July 2002) and Mining Regulations (decree n°038/2003 of 26 March 2003) replaced Law n°81-013 of 2 April 1981. The Mining Code (MC) differentiates between three modes of production, subject to different tax regimes and permit systems: industrial mining, small-scale mining and artisanal mining. Every individual or company wanting to engage in industrial or small-scale mining can apply for a research permit ('permis de recherches') which is valid for a period of four years or five for non-precious minerals, possibly being renewed up to eight years. If the holder of a research permit finds promising deposits, he may apply for an industrial exploitation permit ('permis d'exploitation'), valid for a period of 30 years (renewable). Deposits that are judged not suited for industrial mining may be covered by a small-scale mining permit ('permis d'exploitation des petites mines'). The customs and fiscal regime applicable to industrial and semi-industrial projects is uniform (MC, T9). According to the World Bank (2008: 19), the regime is "internationally competitive and reflects current best practice" with an expected effective rate of taxation of 46 percent. It includes among others royalties, income tax, customs duties, turnover tax, surface rights and so on (MC, T9, C1-4). In addition to the taxes foreseen in the Code, there are numerous fees and payments for services required under the Mining Regulations (MR). An inter-ministerial decree (2007) for example identified 46 of those, required for various administrative authorisations (*idem*). Yet the World Bank (2008: 20) also acknowledges that in practice companies often pay much less and are able to negotiate more favourable tax rates and exemptions with the government. Mazalto (2009) also points to clauses in the Mining Regulations that allow companies to apply more liberal fiscal regimes (MR, T20, C1, Art.510 and 543).

The law also explicitly recognises artisanal mining. It stipulates that the Minister of Mines may demarcate 'artisanal exploitation zones' (AEZ) in areas where "the technological and economic factors are not suited for the site to be industrially exploited" (MC, T4, C1, Art. 109). The AEZ are to be determined and proclaimed by ministerial decree upon advice of the Provincial Mining Division. Sites already covered by industrial mining titles cannot be transformed into AEZ. In turn, companies cannot acquire research permits inside the AEZ boundaries, except for demands by artisanal miners' cooperatives ('groupements') (MR, T9, C2, Art. 234-237). These cooperatives can thus officially work in these zones, and should ideally evolve into small-scale, semi-industrial operations. Individual miners who want to work in an AEZ need to buy a 'carte d'exploitant artisanal' at the Provincial Mining Division (MR, T9, C1, Art. 223-231). The card is an official authorisation to mine and has to be renewed every year. Artisanal miners also need to comply with the regulations on security, hygiene, water use and environmental protection specified in the 'code of conduct for the artisanal miner', published as an annex to the Mining Regulations (MC, T4, C1, Art. 111-112; MR, T18, C2, Art. 416). According to the Code artisanal miners can only sell their production to registered traders ('négociants') holding a 'carte de négociant' issued by the Provincial Governor (MR, T10, C2, Art.242-250). These traders may sell to registered buyers ('acheteurs des produits miniers artisanaux des comptoirs agréés') who are associated to an export office ('comptoir') (MC, T4, C2, Art.120; MR, T10, C4, Art.258-265).

The following public services govern the mining sector at the national level (MC, T1, C2, Art.11-15; MR, T1, C3, Art.7-14): Ministry of Mines, Directorate of Geology ('Direction de Géologie'), Directorate of Mines ('Direction des Mines'), Directorate for the Protection of the Environment ('Direction chargée de la Protection de l'Environnement Minier') and Mining Registry ('Cadastre Minier') (MC, T1, C2, Art. 12). At the provincial level there is a Ministry of Mines too, with its administrative service, the Provincial Mining Division ('Division Provinciale des Mines'). Finally there are a number of technical services: CTCPM ('Cellule Technique de Coordination et de Planification Minière' or Technical Coordination and Planning Unit), CEEC ('Centre d'Evaluation, d'Expertise et de Certification des substances minérales précieuses' or Center for Evaluation, Expertise and Certification) and the Service

for Assistance to Small-Scale Mining or Saesscam ('Service d'Assistance et d'Encadrement du Small-Scale et Artisanal Mining').

The government as well as international donors have taken a series initiatives for reform in the artisanal mining sector, which include legal reforms (adoption of a traceability manual, mining ban, requirement for artisanal miners to form cooperatives) as well as supply chain reforms (certification and traceability, due diligence, Dodd-Frank act and related legislation). Some of these have created a 'de facto embargo' on Congolese exports since 2011, as companies are reluctant to source from the region. At present the government is planning to revise the 2002 Mining Code.

### **International memberships**

The DRC is member of the Bretton Woods Institutions (IMF and World Bank) which, together with the membership of the Club of Paris, are instrumental in the country's debt relief. The HIPC (Highly Indebted Poor Countries) process that started after the reintegration of the DRC as eligible member in 2001 paved the way for renewed ODA from different donors and the setting up of important reforms (macro-economic stability, growth, new Mining Code, reform of public civil service, electronic payment of salaries...) and resulted in a debt cancellation of 95% in 2010. The DRC is also member of UNCTAD and different regional organizations (AU, SADCC, ICGLR...) but its membership of EITI (Extractive Industries Transparency Initiative) is especially worth mentioning. In 2013 the DRC was temporarily suspended from EITI, but in July 2014 the EITI Board declared the DRC compliant with the requirements. OECD plays an important role through its issuance of the 'Due diligence guidelines for multinational companies', which pertain to the DRC's 'conflict minerals'.

### **Concluding statement**

The DRC holds extensive mineral reserves. Its mining sector, which developed during colonial times, came into crisis in the post-independence period, with a complete downfall in industrial production during the economic regress that started in the eighties and the wars (1997-2003). In the meantime artisanal production has become an important source of livelihoods, although it contributes little to official state budgets. In recent years foreign investors have started up again industrial production, which has already resulted in record volumes of copper and cobalt, making the country the first copper exporter in Africa and the first cobalt exporter worldwide. There is also potential for large-scale exploitation of other minerals, including gold and diamonds. The legislative framework is in accordance with international standards, while implementation and good governance still remain a challenge for the relatively weak state administration. Although macro-economic growth figures are impressive, poverty and underdevelopment continue to be significant challenges.

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