

Sida's Helpdesk for Environment and Climate Change

Sida's Helpdesk for Democracy and Human Rights

# Democratic Republic of the Congo – Mining sector overview and mapping

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## Executive summary

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The Embassy of Sweden in Kinshasa assigned Sida's Helpdesk for Environment and Climate Change and Sida's Helpdesk for Democracy and Human rights (referred to as the Helpdesks) to undertake the joint assignment to map the mining sector in DRC.

The purpose of the study was to provide information for enhanced understanding of the functioning of the mining sector in the DRC and to get an overview of the challenges and opportunities facing the sector in terms of environment, inclusive economic development and human rights, including decent work and social dialogue.

The assignment has been undertaken as a desk study, complemented by semi-structured interviews. The study provides a snapshot of the major issues that Sweden should consider when deciding on development interventions that underpin its new country strategy rather than a comprehensive analysis of the state of the mining sector in DRC. Considering the complexity of the Congolese mining sector in terms of its local, national, and international supply chains and the impact of these on the societal dynamics within the country, this report can be considered as a first step in providing a more informed analysis for targeted support within the sector.

The DRC is exceptionally well endowed with natural resources, including subsoils highly valued for their mineral content. Specifically, the DRC contains rich deposits of minerals such as copper, cobalt, gold, diamonds, cassiterite (tin), coltan (tantalum) and wolframite (tungsten). The Artisanal and Small-scale Miners (ASM) can be found in all these value chains. The minerals are important to the DRC from various perspectives and constitute an important basis for economic development and export earnings as well as household incomes and job creation, particularly in ASM. However, if not well managed, the mining sector can at the same time cause large negative environmental and social impacts on miners and communities living nearby or downstream of mining activities.

With the revisions made to the new Mining Code in 2018, the potential for local development has shifted in a positive direction with communities being more involved in managing the royalties from mining profit to invest locally. However, the capacity at local level to utilise these funds for local development is currently weak with implementation not matching legislative progress. The ongoing efforts of formalisation of the ASM provides opportunities and challenges, including better-regulated activities and improved occupational health, safety and security, while reducing environmental impacts, smuggling, and other social ills. Conversely though, these efforts tend to be piecemeal vis-à-vis the scale of the challenge at hand, with many artisanal miners having negative perceptions of formalisation and pointing to decreased revenues. Incentive structures are important for formalisation, and although due diligence is necessary to prevent illicit trade and human rights abuses, it is important that it does not curtail the economic interests of artisanal miners. Promoting the due diligence agenda should also bring tangible rewards to the artisanal miners, and not only serve the needs of the downstream actors in the global north.

Much progress has been made on monitoring of due diligence as a way to promote accountability, including the new EU Conflict Minerals Regulation coming into force in 2021. Yet, there is a need for monitoring of implementation of due diligence frameworks to ensure compliance. This is even more relevant owing to the levels of poor governance that continues to be a challenge in DRC amidst an absence of implementation of the laws governing the mining sector.

Considering the above , there are a few issues for the Embassy to consider when operationalising its new strategy for DRC. The promotion of human rights should be addressed in tandem with the responsible sourcing agenda, for instance by supporting the ASM's formalisation efforts. Specific focus should be put on long-term, process oriented and incentives-based support to empower groups to take a more participatory role in the activities of cooperatives. This should also include supporting ongoing initiatives in relation to the role of women in ASM focusing on the functioning of cooperatives. The eradication of child labour linked to responsible sourcing and the development of alternative livelihoods has been a continuing priority for a number of donors and human rights organisations, and this should continue to be the case.

The Embassy should enter into dialogue with other donors/international partners to identify ongoing initiatives that would benefit from adding an environmental component (e.g., environmental inspection, reducing pollution, managing environmental impacts) or integrate environmental and climate change aspect (e.g., related to community development or economic empowerment initiatives). By capitalising on data collection and environmental monitoring related to impacts from mining on health and the environment, significant knowledge uptake and use of this information would address an important gap in environmental governance in the country. Additionally, increasing transparency and accountability in the mining sector is a prerequisite for improving good governance of supply chains, including regulating the relationship between LSM and ASM and efforts to strengthen the capacity of communities to manage funds coming through the *entité décentralisé*.

## Acronyms

<b>3T</b>	Tin, Tantalum, Tungsten
<b>3TG</b>	Tin, Tantalum, Tungsten and gold
<b>ACE</b>	Agence Congolaise de l'Environnement (Congolese Environment Agency)
<b>ARECOMS</b>	Autorité de Régulation et du Contrôle des Marchés des Substances minérales stratégiques (Regulatory and Markets Control Authority for Strategic Mineral Substances)
<b>ASF</b>	Avocats Sans Frontière
<b>ASM</b>	Artisanal and Small-scale Mining
<b>ASGM</b>	Artisanal and Small-scale Gold Mining
<b>CAMI</b>	Cadastre Minier (Congolese Mining Registry)
<b>CEACR</b>	Committee of Experts of the Application of Conventions and Recommendations
<b>CEEC</b>	Centre d'Évaluation, d'Expertise et de Certification (Centre for Evaluation, Expertise and Certification)
<b>CISTEMA</b>	Inter-ministerial commission, monitoring child labour in artisanal mines
<b>COMIAKOL</b>	Artisanal Mining Cooperative of Kolwezi
<b>CPP</b>	Provincial Mining Activities Steering Committees
<b>CPS</b>	Provincial Mining Activities Monitoring Committees
<b>CTCPM</b>	Cellule Technique de Coordination et de Planification Minière (Technical support to mining coordination and planning)
<b>DDP</b>	Due diligence programs
<b>DRC</b>	Democratic Republic of Congo
<b>EIA</b>	Environmental Impact Assessment
<b>ESIA</b>	Environmental and Social Impact Assessment
<b>EITI</b>	Extractive Industries Transparency Initiative
<b>EMP</b>	Environmental Management Plan
<b>ESMP</b>	Environmental and Social Management Plan
<b>FARDC</b>	Forces Armées de la République Démocratique du Congo (Armed Forces of the Democratic Republic of the Congo)
<b>FECOMIKAT</b>	Federation of Mining Cooperatives of Katanga
<b>FNPSS</b>	National Social Service Agency Fund
<b>GANVE</b>	Groupe d'Action Non-Violence Evangélique (Evangelical Non-Violence Action Group)
<b>GÉCOMSKI</b>	General of the Mining Cooperatives of South Kivu
<b>ICMM</b>	International Council on Mining and Metals
<b>IIED</b>	International Institute for Environment and Development
<b>ILO</b>	International Labour Organisation
<b>IPIS</b>	International Peace Information Service

<b>iTSCi</b>	International Tin Supply Chain Initiative
<b>LSM</b>	Large-Scale Mining
<b>NDC</b>	Nationally Determined Contribution
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>RENAFEM</b>	National Network of Women in Mining
<b>RCM</b>	Regional Certification Mechanism
<b>RINR</b>	Regional Initiative on Natural Resources
<b>OHCHR</b>	United Nations Office of the High Commissioner for Human Rights
<b>SAEMAPE</b>	Service d'Assistance et d'Encadrement des Mines Artisanales et de Petite Échelle (Artisanal and Small-Scale Mining Service)
<b>SAESSCAM</b>	the Service d'Assistance et d'Encadrement du Small Scale Mining
<b>SCD</b>	Systemic Country Diagnostic
<b>WASH</b>	Water, Sanitation and Hygiene
<b>WB</b>	World Bank
<b>ZEA</b>	Zone d'Exploitation Artisanale (Artisanal Mining Zone)

# Definitions

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## Environment

- **Environment** The concept has a wide coverage including natural resources, biodiversity and ecosystem functions and services, land use and encompasses aspects related to climate change, resource depletion, environmental degradation and pollution. Climate change is included when *environment* is mentioned, even if it is not always explicitly expressed.
- **Climate change** is a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods (UNFCCC, Article 1)
- **Environmental integration** (or environmental mainstreaming) refers to the systematic integration of environment into all domains. It is understood as a “strategy to make environment an integral dimension of the organisation’s design, implementation, monitoring and evaluation of development policies and programmes”<sup>1</sup>. Sida’s view on environmental integration includes measures to identify and i) reduce negative impacts, ii) enhance opportunities and iii) reduce/manage environmental impacts on the sustainability of the contribution.
- A **crosscutting issue** is an issue that is linked with, or related to, other concerns. Although sometimes seemingly unrelated, the crosscutting issue can be affected by, or influence the outcomes of, interventions in a different area or sector. The underlying perspective is that different parts of a system are interconnected. Environment is treated as a crosscutting issue that permeates sectors, projects, and activities, rather than being the main focus of the activities.
- **Direct environmental impacts:** impacts that derive directly from the organisation and its staff, and direct activities, e.g. travels, electricity consumption, procurement (e.g. office supplies, catering, cleaning supplies, etc.), waste, etc.
- **Indirect environmental impacts:** refer to impacts associated with the programs/projects, for instance support to capacity development, infrastructure development, natural resource management, advocacy or other types of development cooperation.

## Mining

- **ASM:** For the purposes of this report, the OECD Due Diligence Guidelines defines ASM as:
  
  
  
  
  
  
  
  
  
  
- **Artisanal mining zone:** Known in DRC as a Zone d’exploitation artisanal or ZEA, areas designated by the government where artisanal miners are permitted to work.

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<sup>1</sup> OECD DAC (2014)

- **Downstream actors:** Those in the latter part of the supply chain, beyond the producing country, such as jewellers and consumers.
  - **Due diligence:** Review and analysis of the supply chain for risks.
  - **Formalisation:** Process of decriminalising, organising, and/or regulating operations by artisanal and small-scale miners. This can include adherence to legal and regulatory frameworks and increasing legal access to minerals. Miners can seek and be provided information about geological data, organise into flexible and dynamic organisations, and access capital, equipment, and technical assistance.
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- **Traceability:** Ability to verifiably track a material and its transactions from its point of origin (mine pit) through the supply chain.
  - **Upstream actors:** Those in the early part of the supply chain, including miners, traders, exporters, and refiners.

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# 1. Introduction

The Embassy of Sweden in Kinshasa (hereinafter referred to as the Embassy) has assigned Sida's Helpdesk for Environment and Climate Change and Sida's Helpdesk for Democracy and Human rights (referred to as the Helpdesks) to undertake a joint assignment: "Democratic Republic of Congo – Mining sector overview and mapping".

The study will be used to support the Embassy in its operationalisation of the new Swedish cooperation strategy with DRC, aimed at identifying a potential focus and role for Sweden and potential implementing partners for Swedish development cooperation in the mining sector in the DRC.

## 1.1 Structure of the report

Chapter 1 provides information about the assignment including the objectives, the methodology, and delimitations. Chapter 2 maps out some selected mineral deposits in DRC, and provides a summary of their significance. In Chapter 3, the regulatory and institutional landscape related to mining in DRC, including mining, environmental and labour rights frameworks are introduced. In Chapter 4, various mineral value chain actors are introduced, including regulatory actors, large- and small-scale companies, international development partners, and other types of actors.

The next section, Chapter 5, is a more substantial section aiming to summarise challenges and risks of the mining sector concerning environment, inclusive economic development, social dialogue, human rights including gender, governance and institutional capacity in a country affected by ongoing conflict, particularly in the east. Chapter 6 presents some of the opportunities to support the development of a more sustainable mining sector in the DRC. Finally, Chapter 7 summarises the key conclusions and recommendations.

The annexes include information related to the people that have contributed with information (Annex 1). Annex 2 presents a selection of ongoing initiatives that could provide entry points to attain the opportunities (as summarised in chapter 6). Annex 3 presents some selected information about mining companies in eastern DRC.

## 1.2 Objectives

The purpose of the study is to provide a better understanding of the mining sector in DRC and to get an overview of the challenges and opportunities facing the sector in terms of environment, inclusive economic development and human rights, including decent work and social dialogue.

The objectives of the study are to map out the mining sector in the DRC, including:

- i. the major mineral deposits, and a description of the value chains of gold and copper/cobalt and also, to a certain extent, 3T.
- ii. the mining governance landscape (including environmental governance)
- iii. key actors, including mining actors, environmental actors, development partners, implementing organisations, and (donor-funded) initiatives.
- iv. a description of key challenges, risks and opportunities related to
  - o environment and climate change (including pollution, environmental health, downstream impacts, etc).
  - o human rights, including gender and labour rights and social dialogue.
  - o economic development and economic inclusion.
  - o prevalent conflict dynamics and their impact on the value chains.

- v. Effectiveness of selected ongoing initiatives (evaluations, etc.)

### **1.3 Methodology**

The one-month assignment was performed as a desk study, complemented by semi-structured interviews in accordance with the questions detailed in the Inception Report (dated 11 March 2021).

The assignment was undertaken through the following steps:

#### **Communication**

Identification of and communication with knowledgeable people (researchers, thematic or regional experts, development partners, development practitioners, actors/stakeholders or similar) who were likely to have access to, or able to provide advice on how to find, information and/or data corresponding to the questions in the Terms of Reference.

#### **Document review**

A literature review has been performed covering the various aspects of the DRC mining sector (see Reference list). The DELVE country profile for DRC (Gerig et al., 2020)<sup>2</sup> was an important document for developing this report.

#### **Inception report and decision on how to proceed**

An inception report was submitted to the Embassy summarising the initial stage of the assignment. After the inception phase, the Embassy decided that the remainder of the study should mainly focus on the gold and cobalt value chains.

### **1.4 Delimitations**

The desk study aimed to identify, select and synthesise existing information related to the mining sector in the DRC. The desk study has not produced any “new” evidence or information. However, the desk study has, through review of existing data and interviews, aimed to bring about new insights into how Sweden can contribute with support in the new results area introduced in the DRC strategy 2021-2025.

A value chain includes exploration, mining, mineral processing, smelting & refining, semi-fabrication and final product manufacturing. The study focused on the first three and mining in particular, but also included regional and global issues (e.g. global demand, conflict-related issues, or similar) as background information or as relevant.

The value chains included in the study are: cobalt and gold and, to a certain extent, copper and 3T (Tin, Tantalum and Tungsten).

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<sup>2</sup> DELVE is a global online data platform on Artisanal and Small-scale Mining (ASM). <https://delvedatabase.org/>

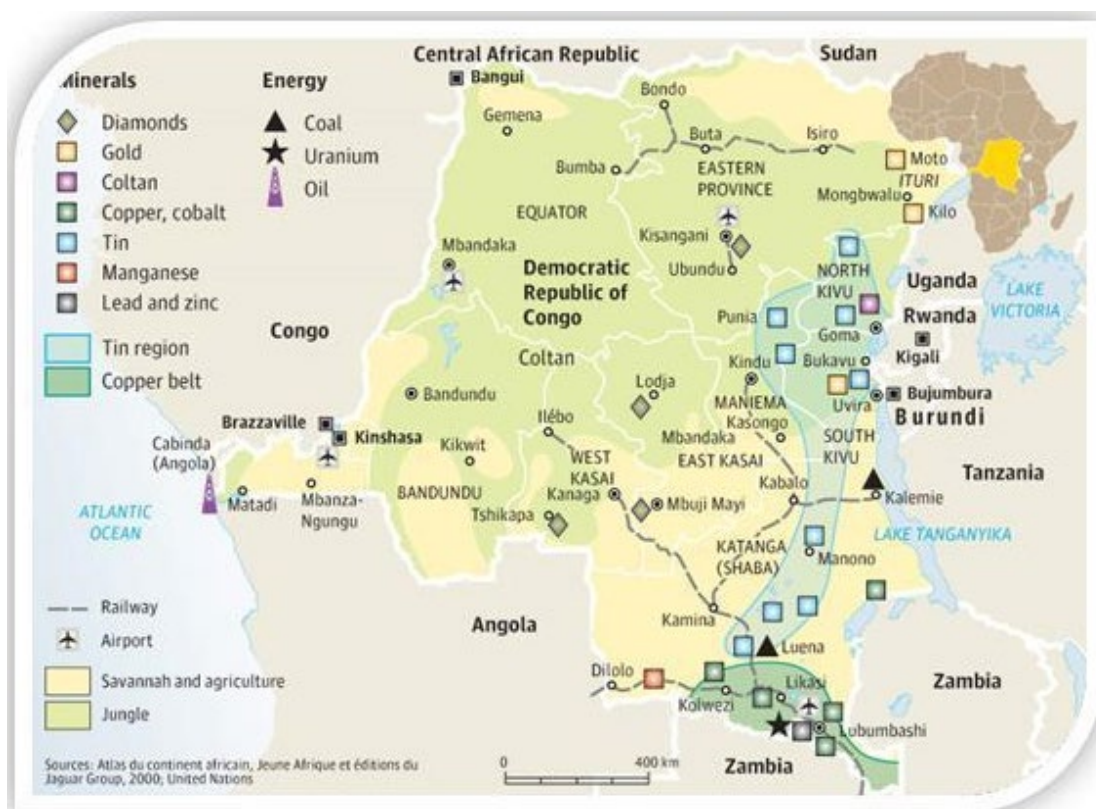
## 2. Mineral mapping

The DRC is exceptionally well endowed with natural resources, including soils highly valued for their mineral content. Specifically, the DRC contains rich deposits of minerals such as copper, cobalt, gold, diamonds, cassiterite (tin), coltan (tantalum) and wolframite (tungsten).<sup>3</sup> The Artisanal and Small-scale Miners (ASM) can be found in all these value chains (see Table 1).

The mineral deposits in the country can be divided into three major areas (see Figure 1):

- Eastern DRC: Tin, Tantalum and Tungsten (3T) and Gold
- Southern DRC: Cobalt and Copper (also to a certain part 3T, in the vicinity of eastern DRC)
- Central DRC: Diamonds

Figure 1. Map of mineral deposits in DRC



Source: *Atlas du continent africain, Jeune Afrique et éditions du Jaguar Group (2000), United Nations*

### 2.1 Significance of value chains

The untapped mineral reserves in the DRC are of global importance, which (in 2011) have been estimated to be worth USD 24 trillion.<sup>4</sup> The minerals are important to the DRC from various perspectives, and constitute an important basis for economic development and export earnings as well as household incomes and job creation, particularly in ASM. The DRC Chamber of Mines estimates that there are some 375,000 formal mining jobs in the country, while the ASM sector is estimated to provide

<sup>3</sup> CIA World Factbook

<sup>4</sup> UNEP, 2011

as many as two million jobs. With an average of four to five dependents for each digger, as many as 8 to 10 million people could depend on this activity for their livelihoods, or about 14-16% of the total population.<sup>5</sup>

Artisanal miners produce about 90% of minerals in DRC<sup>6</sup> mostly consisting of diamond, gold, copper and cobalt<sup>7</sup>, and to a lesser extent 3T minerals. Gold and 3T minerals are classified as “conflict minerals”.<sup>8</sup> The global demand for cobalt in particular, as well as the 3T minerals, which are used in modern batteries and electric vehicles and a part of global efforts to mitigate climate change, is steadily increasing. In terms of cobalt, it is estimated that the demand will soon exceed supply, which may have implications at the local level in the DRC.

**Table 1. Key minerals summary**

Mineral	Geography/Region	# Miners	Production (2017)	Exportation (2017)	Revenue generated	
Gold	Haut-Uélé, Ituri, North and South Kivu, Maniema, and Tanganyika	274,000 <sup>1</sup>	302.23kg <sup>2</sup>	230 kg <sup>2</sup>	USD 8.2 million <sup>2</sup>	
3Ts	Cassiterite	North and South Kivu, Maniema, and the former Katanga	94,900 <sup>1</sup>	19 tons <sup>2</sup>	21.5 tons <sup>2</sup>	USD 87 million <sup>2</sup>
	Coltan	North and South Kivu, Tanganyika, Haut-Lomami, and Maniema	25,682 <sup>1</sup>	2,174 tons <sup>2</sup>	1,358 tons <sup>2</sup>	USD 34 million <sup>2</sup>
	Wolframite	North and South Kivu, Maniema, and Tanganyika	7,651 <sup>1</sup>	251 tons <sup>2</sup>	197 tons <sup>2</sup>	USD 1.9 million <sup>2</sup>
Copper and Cobalt	Haut-Katanga and Lualaba	150,000 – 200,000 <sup>3</sup>	ASM Monthly Estimate 2019 of raw ore Cu Ore: 10,000 tons Co Ore: 24,800 tons <sup>3</sup>	12,300 tons <sup>3</sup>	Not stated	
Diamond	Former Kasai Oriental, Kasai Central, North and South Kivu, Maniema, and former Katanga	700,000 – 1 million <sup>4</sup>	15.4 million carats <sup>2</sup>	14.6 million carats <sup>2</sup>	USD 147 million <sup>2</sup>	
Tourmaline	North and South Kivu, and Tanganyika	1,960 <sup>1</sup>	Unknown	Unknown	Unknown	

Source: DELVE Country Profile DRC, 2020 (referring to: 1) IPIS Webmap 2020; 2) CTCPM 2018; 3) BGR 2019; and 4) World Bank 2008).

<sup>5</sup> Samndong and Nhantumbo, 2015

<sup>6</sup> Samndong and Nhantumbo, 2015

<sup>7</sup> DELVE, 2020

<sup>8</sup> BGR, 2019

## Box 1: Background on Key Minerals

### Copper and cobalt

The DRC has a significant role in the global market as the fifth largest supplier of copper and the largest cobalt supplier in the world. Copper and cobalt are the largest export commodities in the country. Estimates indicate that copper represents 53% of the country's export earnings.<sup>9</sup> Hence, copper and cobalt are of great economic significance to the country with the country being heavily dependent on, and sensitive to, global market prices.

Copper and cobalt are mined both through industrial, large-scale mining (LSM) and artisanal and small-scale mining (ASM). Due to the higher market price for cobalt, which constitutes a key mineral in the global electrification efforts, there has been an increase in artisanal production and large migratory movements to the DRC copper belt (since 2015). However, when market prices go down there is a migration from cobalt ASM to other mineral value chains. It is estimated that the ASM labour force in copper/cobalt is 150 000 – 200 000. Additionally, the artisanal copper-cobalt mining is poorly regulated.<sup>10</sup>

### Gold

Gold is less important to DRC from an export earning perspective (see Table 1). However, the high price per weight for gold attracts a high number of ASM, and smuggling is much easier than for other minerals due to the high informality in the sector. In eastern DRC, gold is the most important mineral with around 80% of the artisanal miners working in gold mines (2013-2015).<sup>11</sup> These miners lack formal safeguards and protections owing to the largely fluid and informal setting. Since the gold price increased (35% to 45% since 2018), the number of illegal gold digger sites are estimated to have nearly doubled in the east and northeast parts of the DRC.<sup>12</sup> Given the high price/kg, gold tends to be easy to smuggle.

### 3T

The 3T (cassiterite (tin), coltan (tantalum) and wolframite (tungsten), provide more export earnings to DRC than gold (but likely less than copper and cobalt). DRC supplies around 30% of the global tantalum, but is only a minor global supplier of tungsten and tin. However, the 3T minerals are important as mining and benefits resulting from it are associated with civil unrest and human rights violations in the eastern provinces of DRC.<sup>13</sup> The research knowledge and regulatory framework for ASM 3T mining appear to be relatively more developed compared to ASM for gold and copper/cobalt, with ongoing certification schemes, due diligence and traceability leading to an increased formalisation within the sector (see also chapter 5.2).

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<sup>9</sup> World Bank Group, 2018

<sup>10</sup> BGR, 2019

<sup>11</sup> IPIS, 2015

<sup>12</sup> BGR, 2019

<sup>13</sup> DELVE report; SGU and USGS websites

### 3. The mining governance landscape in DRC

This chapter presents a general description of the key institutions and how they are governed related to large and small-scale mining and the abovementioned value chains, including the mining code, environmental protection, (environmental) health, labour rights, etc.

#### 3.1 Mining institutions

In 2018, the 2002 Mining Code was amended by Law No. 18-001 of 9 March 2018 (the New Mining Code). The new Mining Code (2018) and the Revised Decree (new legislation) officially aim at rebalancing the mining revenues in favour of the state. In the new Mining Code, there is a Covenant to comply with the social responsibility undertakings given to local communities, which entails a transfer of funds from mining royalties from national to regional and local levels (see information about the *entité décentralisée*, chapter 6).<sup>14</sup>

Underground minerals belong exclusively to the state, but private actors can be authorised by the state to engage in mining activities, provided that specific objectives of eligibility, priority and capacity criteria set forth in the Mining Code are met. The Ministry of Mines, Ministry of Environment and Ministry of Finance, together with provincial governments, are mandated to enforce the Mining Code.

The types of mining permits available in the DRC are exploration permits, exploitation permits (including and small-scale mines) and tailing exploitation permits. Specific legislation regarding artisanal mining also exists.

According to the New Mining Code, ASM is legal when mining takes place in a specifically allocated geographic zone (*Zone d'Exploitation Artisanale – ZEA*), all miners are registered, have a permit (*carte d'exploitant artisanal*) and are members of a cooperative. In addition, the cooperative should be able to prove that it is registered and has been assigned to the ZEA, has paid all taxes and levies related to registration, and also pays the annual flat rate tax of 10% of the turnover and the operational fee of the competent mining authorities.<sup>15</sup> The ZEA license for artisanal mining is provided by the Artisanal and Small-Scale Mining Service (SAEMAPE).

It is not known how large a share of all artisanal miners that is registered, but it can be assumed that most ASM activities are illegal or at least informal. In the copper belt, there are 92 ZEAs, located in less developed areas in terms of infrastructure. The provincial government of Lualaba is working to develop 12 new ZEAs.

#### 3.2 Environmental institutions

In 2011, the Ministry of Environment enacted the New Environmental Protection Law (Law n° 11/009 on 9 July 2011). The Environment Protection Law (2011) promotes mainstreaming of environmental and sustainable development issues into all policies and plans, and includes an obligation to adopt and implement national measures for climate change mitigation and adaptation and disaster management.<sup>16</sup> The law outlines the principles for environmental protection and governance. This law

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<sup>14</sup> 50% of mining royalties are transferred to the national level, 25% to provincial and 15% to local entities (local communities). The remaining 10% are transferred to a fund for the future (Source: Werner Claessens, personal communication).

<sup>15</sup> BGR, 2019; and Code Minier, 2018

<sup>16</sup> Nachmany et al., 2015

calls for the inclusion of environmental and social considerations in decision making and promotes sustainable development and public participation. Article 21 obliges the conduct of an Environmental and Social Impact Assessment (ESIA) for certain projects (including mining).<sup>17</sup>

The provision of an environmental certificate is linked to the approval of an ESIA and its associated Environmental and Social Management Plan (ESMP) and is given for the entire project period.

The proponent (often a mining company) is responsible for the ESIA study and recruits, after approval from the Ministry of Environment, a consulting firm to conduct the study. The ESIA and ESMP shall be published on the websites of the Ministry of Mines and the proponent.<sup>18</sup>

The authority for ESIA is the Congolese Environment Agency (ACE), under the Ministry of Environment. Upon receiving the ESIA, the ACE establishes a panel of experts to review the report. The panel approves, rejects or asks for amendments. In case the ESIA is approved, the proponent needs to submit a more elaborate ESMP, which is again reviewed by the ACE. When reviewing the ESMP, ACE needs to get advice from the National Social Service Agency Fund (FNPS). Only when both the ESIA and the ESMP are approved, will the ACE grant the environmental certificate to the project.

When an ESIA is rejected, the proponent needs to re-do the study. In case the ACE requests amendments, the proponent has 30 days to integrate these amendments into the ESIA report. If this time is surpassed, the study will be considered as rejected. The opposite applies as well; when a proponent does not get a response from the ACE within three months, the study is considered as accepted and an environmental certificate acquired. This means that the environmental authority responsible to review the ESIA must have adequate capacity (skills, systems and resources) to perform this duty in time. After the review, the ACE issues an environmental certificate, certifying that the project and the operations comply with environmental and social safeguards apply.

The proponent is responsible for implementing the measures in the ESMP, to monitor sub-contractors in order to avoid, reduce and to compensate for adverse environmental impacts, and to monitor the environmental situation and the effectiveness of the proposed mitigation measures.

An *in situ* environmental audit is carried out by the ACE in collaboration with the Directorate in charge of environmental protection<sup>19</sup> in order to verify compliance with environmental and social protection obligations. For an approved operating permit ACE is responsible for monitoring that the recommendations and mitigation measures from the ESIA and ESMP are implemented within six months of the approval date by the Mining Registry (CAMI), the ACE and the social service fund, FNPS. The companies are legally obliged to engage with communities under the mining permit.

In case of non-compliance, the ACE can suspend a project and demand compliance from the proponent within a certain period of time. If the proponent does not respond within the given period, the agency cancels the environmental certificate of the project. In case the mitigation measures agreed upon prove to be ineffective or non-suitable, the proponent must make the necessary adaptations.

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<sup>17</sup> NCEA website on DRC

<sup>18</sup> NCEA website on DRC

<sup>19</sup> It is a bit unclear which organisation "the Directorate" is, but as we understand it, it could be the 'Directorate of Human Settlement and Environmental Protection' under the Ministry of Environment, or the 'Department of Environment' at the Ministry of Mines.



The mining industry itself is also involved in the mining and environmental governance, as large transnational corporations often follow the OECD Due Diligence Guidelines for mining operations. Smaller, often national or Chinese mining companies (the “interim” companies mentioned in chapter 4.2) are referred to as not implementing due diligence with as much prudence.

Related to artisanal mining zones (ZEA) the New Mining Code states that the mining cooperative or the artisanal operator of mines shall, as far as possible and relevant, respect the standards in terms of safety, hygiene, water use and environmental protection, which apply to its operation in accordance with the regulations in force.<sup>20</sup>

### **3.3 Labour rights frameworks**

The labour law in DRC was enacted in 2002 and is applicable to all employers and employees operating in the country. It effectively sets out decisions and decrees concerning health and safety at work, discriminatory practices, gross misconduct and contracting.<sup>21</sup> The ASM sector is a major provider of employment but there are a number of challenges related to work environment and labour rights that appear not to be respected according to the legal framework or are conspicuous by their absence, particularly related to ASGM. Although the Mining Code stipulates that only Congolese nationals can work in the sector, the government lags behind on taking the appropriate steps to implement the provisions of its labour legislation.

The establishment of cooperatives was a necessary step in the effort to formalise the ASM sector with the aim of providing artisanal miners with greater levels of protection, economic participation, autonomy and independence and the possibility to lobby the government as a collective. Yet, the current legislation governing cooperatives and its implementation is problematic, as it is outdated and not adapted to the realities faced by miners. Becoming a member is cumbersome, takes a long time and is a costly procedure.<sup>22</sup> It is important to note that the different ASM actors tend to have different status, with the miners (*creuseurs*) having less voice and influence than other actors such as the management of the cooperatives. This is particularly important when working with cooperatives, as there is a risk for elite capture.

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<sup>20</sup> Cabinet du Président de la République, 2018 (our own translation from French).

<sup>21</sup> Democratic Republic of Congo, Labour Code, 2002

<sup>22</sup> de Haan & Geenan, 2016

## 4. Value chain actors

### 4.1 Government/regulatory actors

The Mining Code assigns responsibility for the supervision of artisanal mining to several Congolese administrative departments. At the top of this structure is the Ministry of Mines, which is responsible at national level for the application of the various regulations relating to the sector (see Table 2). This is followed by various specialised services, including: the Provincial Division of Mines, the Mining Registry (CAMI), the Artisanal and Small-Scale Mining Service Service d'Assistance et d'Encadrement du Small Scale Mining (SAEMAPE), the Technical Unit for the Coordination and Planning of Mining Activities (CTCPM), the Centre of Evaluation, Expertise and Certification (CEEC), the Geology Directorate, the Directorate of Mines, and the Department in charge of the Protection of the Environment. There is little evidence to show that the Ministry of Labour and Social Welfare has been directly engaged in the mining sector, but according to Amnesty International, the government will launch a new national strategy to address the issue of children working in artisanal mining.<sup>23</sup>

**Table 2. Mining regulation actors in the DRC**

Regulation and oversight	Actor
Mining regulation and oversight	Ministry of Mines
	Mining Administration, including Provincial Mining Divisions, which has a mandate for handling the daily management of ASM including licences.
	Mining Registry (CAMI)
	Artisanal and Small-Scale Mining Service (Service d'Assistance et d'Encadrement du Small Scale Mining, SAEMAPE), providing technical support to miners and cooperatives.
	Technical support to mining coordination and planning (CTCPM). Collects ASM data for statistics and also develops technical solutions for increased productivity and safety.
	Centre of Evaluation, Expertise and Certification (Centre d'Evaluation, d'Expertise et de Certification des substances minérales précieuses et semi-précieuses, CEEC), that certifies diamonds before export.
	Regulatory and Control Authority for Strategic Mineral Substances markets (ARECOMS)
	Geology Directorate
Environmental regulation and oversight	Ministry of Environment
	Congolese Environmental Agency (ACE)
	Directorate for environmental protection at mining sites
Health information	National Health Information System (does not include data for mining areas)

Source: DELVE Country Profile DRC, and Avocat Sans Frontière (personal communication)

### 4.2 Mining companies and artisanal miners

One respondent referred to the mining companies as belonging to three different “worlds”: i) the industrial mining companies, using due diligence requirements; ii) the ASM; and iii) the “intermediary” mining companies, not paying much attention to environmental regulation, occupational health or security.<sup>24</sup> The ASM can be further divided into the regulated and the unregulated ASM, where the regulated ASM is subject to rules and inspections, and the unregulated, which constitutes an estimated

<sup>23</sup> Amnesty International: ‘Government must deliver on pledge to end child mining labour by 2025’ <https://www.amnesty.org/en/latest/news/2017/09/democratic-republic-of-congo-government-must-deliver-on-pledge-to-end-child-mining-labour-by-2025/> accessed 9 April 2021

<sup>24</sup> Personal communication with Werner Claessens, GIZ.

90% of the ASM community in the country, usually consisting of unskilled miners working under poor, often dangerous, conditions. Artisanal mining is legal as long as it respects the framework for artisanal mineral exploitation and trade set out in the Congolese Mining Code.

### **Industrial mining companies**

There are many mining companies in the DRC, particularly within copper and cobalt. In eastern DRC, most activities are undertaken by ASM but there are some large mining companies. Some of them<sup>25</sup> are active in community development projects and deals with the commercial and reputational risks of having thousands of artisanal and small-scale miners on their concessions<sup>26</sup>. Despite these encouraging initiatives, there are continued and common conflicts between LSM and ASM (see Annex 3).

### **ASM actors**

There are a number of actors within the ASM sector:

- Landowners often hold the mining licenses, but step back from operational issues related to the mine.
- Pit owners are entrusted with the management of the mine by the landowners, and are responsible for miners' rations and costs.
- *Creuseurs*/miners can be divided into the following categories:
  - Diggers
  - Mineral crushers
  - Washers/processing, including women and children (boys and girls)
  - Transporters, which is a role usually delegated to children.
- Traders /pre-financing mechanism:
  - Local traders
  - Trading houses (*comptoirs*)
- There is a large number of authorities in the local ASGM supply chain at provincial and local level.
- Local unions and cooperatives have engaged in improving the sustainability of the ASM sector in DRC, but question marks remain about their effectiveness and that they often do not fulfil international standards.

## **4.3 National and international development partners**

A previous study<sup>27</sup> identified a range of international development partners engaged in the mining sector in the DRC. There are a number of bilateral donors (e.g. Belgium, GIZ, Netherlands, Sida and USAID) as well as multilateral partners (e.g. African Development Bank, EU, UNICEF and UNDP). Some of their initiatives are listed in Table 3 and described further in Annex 2.

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<sup>25</sup> For instance Mongbwalu Gold Mine; Kibali Gold Mine; and Alphamin (tin mine).

<sup>26</sup> E-mail communication with Anders Arvidsson (23 March 2021)

<sup>27</sup> Sida's Helpdesk for Environment and Climate Change, 2020

**Table 3. Selected ongoing initiatives**

Actor/initiative	Mineral value chain	Key features
GIZ	Cobalt	<ul style="list-style-type: none"> <li>• Support to the establishment and expansion of local production chains in mining to ensure improved economic development that creates job opportunities.</li> <li>• Includes i.a. support to formalisation, vocational training.</li> <li>• Project ending, but plans to expand the project to biodiversity and conservation</li> </ul>
USAID	Gold	<ul style="list-style-type: none"> <li>• Commercially viable, conflict-free gold project: responsible sourcing, led by market actors and benefitting disadvantages ASGM</li> </ul>
African Development Bank (AfDB)	Cobalt	<ul style="list-style-type: none"> <li>• Alternative welfare for children and youth, socio-economic reconversion of parents and families to agricultural sector. Vocational training, equipment, capacity development, etc.</li> </ul>
Avocats Sans Frontières (ASF)	Gold	<ul style="list-style-type: none"> <li>• Strengthening access to justice (participation, justice mechanisms conflict resolution)</li> <li>• Documentation and resolution of human rights violations (in collaboration with IPIS and Ulula)</li> </ul>
EITI DRC	All	<ul style="list-style-type: none"> <li>• Transparency in the extractive sector.</li> </ul>
Global Witness	All	<ul style="list-style-type: none"> <li>• Transparency, governance and anti-corruption, responsible minerals, etc.</li> </ul>
IMPACT	Gold	<ul style="list-style-type: none"> <li>• <u>Just Gold</u>: Traceability and responsible sourcing. Just gold has three components: i) a traceability and due diligence system; ii) an incentive-based approach to encourage legal trade; and iii) responsible gold with accompanying data.</li> <li>• A test to include ASGM in a <u>landscape approach</u> (integrated economic development based on participatory land use planning) in Uganda (GEF-project). A pilot in DRC is possible, and could be a useful model for the EU's new horizontal due diligence policy in practice, creating the underlying conditions for scale.</li> </ul>
	Gold/cobalt	
International Peace Information Service (IPIS)	Gold	<ul style="list-style-type: none"> <li>• Kufatilia Incident Tracking System for Artisanal Mining (in collaboration with Ulula). Incidents related to Annex II of the OECD Guide to the Responsible Procurement of Minerals.</li> <li>• Conflict mapping for conflict analysis and the promotion of peace. IPIS uses maps to visualise conflict actors and their areas of influence, conflict drivers such as natural resources or key territories, conflict events and severity, and contextual information.</li> </ul>
PACT	3T	<ul style="list-style-type: none"> <li>• Sustainable Mine Site Validation Project (with USAID): transparency and traceability</li> </ul>
	Tin	<ul style="list-style-type: none"> <li>• ASM, child labour, improve status of women</li> <li>• Human rights</li> <li>• Formalization</li> </ul>
WWF Extractive Programme	General	<ul style="list-style-type: none"> <li>• Green Economy,</li> <li>• Policy, enabling environment; collaboration with responsible mining companies; capacity building for fair bargaining</li> <li>• Monitoring of law enforcement and standard implementation in the extractive areas</li> </ul>
Regional Initiative against the Illegal Exploitation of Natural Resources (RINR)	Trans-national initiative	<ul style="list-style-type: none"> <li>• An African, trans-national initiative to reduce the illegal exploitation and i.a. the illicit trade of conflict minerals. The DRC is a party to RINR.</li> </ul>

- |  |  |   |
|--|--|---|
|  |  | <ul style="list-style-type: none"><li>• Certification, harmonisation of legislation, information and data, ASM formalisation, transparency and a whistleblowing function.</li></ul> |
|--|--|---|

#### 4.4 Non-governmental organisations and movements

The ASM cooperatives are important actors but being a member requires an artisanal mining card, which either few miners have (or they do not have access to the papers necessary to get one). The mining card is considered expensive and an imposition by the government agencies in their efforts to formalise the sector.

The Associations or Comités des Creuseurs are perceived to more actively defend the interests of miners. The following is a list of cooperatives and networks that have been identified for the purpose of the desk study:

- Chambre des Mines.
- RENAFEM (National Network of Women in Mining): national mining network to enhance gender equality in the mining sector, protecting women’s rights, and promoting their best interests.
- CISTEMA (inter-ministerial commission, monitoring child labour in artisanal mines).
- GÉCOMSKI, General of the Mining Cooperatives of South Kivu (lobbying, training).
- FECOMIKAT, Federation of Mining Cooperatives of Katanga.
- CPS, Provincial Mining Activities Monitoring Committees / Provincial Mining Activities Steering Committees (CPP). Multi-stakeholder committees for due diligence in the 3T sector.
- COMIAKOL, Artisanal Mining Cooperative of Kolwezi. Model artisanal mine.

In addition, there are a range of conflict actors in DR Congo, including rebel movements, armed militias, security companies, the FARDC (as well as rogue elements of the Congolese army, FARDC), that are involved or has influence over the mining sector, particularly in eastern DRC.

## 5. Challenges and risks linked to ASM

With the increasing global demand for batteries and electrification related to new technology, environmental and social problems have been steadily pushed to countries where the resources are to be found. This includes fragile states and countries with weak institutional capacity, such as the DRC. Although the global north ends up reducing their emissions set out in the Paris Agreement, there is an absence of responsibility from the demand side of downstream actors in the international community that results in more pressure being put on the most vulnerable groups in the form of continuing human rights abuses, poor health and labour conditions. Therefore, the challenges listed in this chapter risk being amplified by global climate change mitigation efforts.

### 5.1 Environment (including climate change) and health

Mining activities are associated with a number of environmental risks and challenges, such as natural resource depletion, pollution and soil erosion. When there is a lack of social and environmental safeguards, the environmental impacts can lead to a number of grave social and human rights challenges.

#### Land use changes and natural resource depletion

Both non-renewable (e.g. the mineral deposits) and renewable resources are depleted due to mining activities. When new areas are being established for mining purposes (both large- and small scale), it is commonly associated with land-use changes which, in DRC, often are linked to deforestation, resulting in affected ecosystems, loss of habitat and loss of biodiversity.

Land-use changes can have large local impacts, with reduced access for local communities to land, forests and other vital natural resources and ecosystem services. Additionally, land and property rights are violated, and with the lack of formal harmonisation between customary law and national law and insufficient state oversight, conflicts can arise over land-grabbing. The Congolese rainforest is of great local as well as global importance. From a global perspective, it stores carbon and slows down global climate change. At national and local level, it is also an important provider of a number of ecosystem services, including climate regulation, water purification, land stabilisation, and it helps regulate one of the world's largest river basins, the Congo.

Mining activities – without adequate environmental and social safeguards – continue to threaten the globally important DRC's forests and biodiversity, given the overlap between the mineral resources and tropical forests and protected areas. If mineral exploitation continues to expand as expected, it could significantly affect biodiversity and forest cover, and by extension, affect global climate change.

If not managed in a sustainable way, mining activities can also indirectly contribute to illegal logging and poaching, as new areas are “opened”. In all, resource depletion can have long-term, even irreversible, impacts on the ecosystems and livelihoods.

#### Pollution

Mining is in general associated with large amounts of waste. Mining waste can result in serious environmental pollution, with release of acidic and metal-rich leachates to surrounding waters with potentially grave health risks. Contamination of groundwater and surface water e.g. from riverine tailings disposal and acid mine drainage, can also limit water availability. Air pollution is another serious health problem, with metals in mine dust in combination with other particles causing respiratory

diseases. The Ministry of Health, and the growing Congolese middle class, are increasingly worried about mining pollution<sup>28</sup>.

There is no regular environmental monitoring or data collection by authorities. Instead, agencies rely on universities and activist organisations to collect data.<sup>29</sup> One example is the ongoing research in (former) Katanga, which aims to highlight the importance of the impact of pollution on local populations as well as on miners. For instance, men working as miners have larger risks of having a child with birth defects/malformation.<sup>30</sup> The research also provides evidence that people, in particular children, living by an artisanal cobalt mine have significantly higher levels of cobalt in their urine and blood than people living in a nearby control area. The long-term morbidity of high levels of heavy metals can be severe, including changes to the DNA, birth defects, neurodevelopmental impairment, respiratory disorders, heart and kidney disease, and cancer.<sup>31</sup>

Artisanal gold mining is associated with use of mercury, which can have adverse health effects (including kidney effect and respiratory failure). Although a lot of attention is given to address risks with mercury contamination in artisanal gold mining, this is probably not the main health issue and most artisanal miners are not exposed to it.<sup>32</sup> Mercury is, however, a good entry point to improve environmental health of artisanal miners, but “focus should be broader in scope than just mercury as the *key public health problems* for the ASGM community include: dust, hygiene (WASH), and poor working conditions”.<sup>33</sup>

The researchers conclude that dust exposure (rather than, for example, contamination of drinking water) was the dominant pathway for the excessive intake of cobalt. Dust, for example from badly covered transportation of extracted materials, is likely a major source of air pollution and explains the exposure to children.<sup>34</sup> Water pollution is also a problem, with villagers having to walk long distances to get water as their local source is no longer fit for household use; the children get skin rashes, vegetable gardens are spoiled, and their poultry is decimated due to the toxic water.<sup>35</sup>

In addition to the abovementioned local impacts of pollution there are some global impacts as well. At the global level, the mercury emissions are of key importance as mercury in the ASGM is one of the major sources of mercury pollution at global level. There are also contributions to global climate change from GHG emissions from mining vehicles, although the Helpdesks assess that the local pollution from the mining activities is a more acute problem.

### **Environmental and occupational health risks**

When not managed properly, mining can contribute to soil erosion, landslides, dam bursts and flooding, collapsed tunnels, etc. Particularly the non-regulated ASM sector is associated with grave occupational health risks, where improper working methods, poorly designed pit slopes and vertical shafts are dangerous and can collapse. Tunnels often lack ventilation shafts, which can cause suffocation; improperly secured tunnels can collapse and block the only passage out; water can infiltrate and cause

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<sup>28</sup> Dr. Benoit Nemery, personal communication 23 March 2021.

<sup>29</sup> <https://deskeco.com/2021/03/11/rdc-la-societe-mini%C3%A9re-somika-menace-les-vies-des-populations-du-katanga-enquete>

<sup>30</sup> Van Brusselen et al., 2020

<sup>31</sup> Banza Lubaba Nkulu et al., 2018, quote p.501

<sup>32</sup> Dr. Benoit Nemery, personal communication 23 March 2021.

<sup>33</sup> Dr. Benoit Nemery, personal communication 23 March 2021.

<sup>34</sup> Dr. Benoit Nemery, personal communication 23 March 2021.

<sup>35</sup> <https://deskeco.com/2021/03/11/rdc-la-societe-mini%C3%A9re-somika-menace-les-vies-des-populations-du-katanga-enquete>

collapse, and so on. In addition, mining sites are not properly closed but holes are left when the informal/illegal ASM moves on to the next site<sup>36</sup>, which can cause accidents and barrier effects.

### **Issues related to scope of mining operations (including LSM and ASM)**

Many of the transnational mining companies are said to use the OECD due diligence that live up to or go beyond national legislation and safeguards, to control reputational risks. The new EU Conflict Minerals Regulation (effective January 2021) aims to tackle human rights abuses and to prevent the exploitation of local communities by ensuring that multinational corporations follow the OECD guidelines. However, not all large-scale mining companies comply to national legislation or international good practice. Occasionally also LSMs (in particular “intermediary” companies, often stated to be Chinese or Congolese companies) are criticised for neglecting environmental procedures. In similar cases, companies can turn a blind eye to transparency and accountability issues in the supply chain, particularly regarding pricing in the sale of minerals and respect for national and international human rights frameworks.

In sum, it can be concluded that mining activities are associated with potentially severe negative environmental impacts, many of which can be reduced or mitigated through good environmental governance and management practices. This also refers to regulated ASM activities. The regulated ASM in artisanal zones (ZEA) have to live up to certain environmental and occupational health standards and ensure that miners’ rights are not violated, particularly concerning child labour. Yet, the unregulated ASM is associated with severe occupational health problems. The non-existent environmental monitoring, weak inspection procedures and a general lack of good governance, do not promote good environmental outcomes and makes it difficult for companies with an ambition to comply with or go beyond national legislation.

Environmental impacts from ASM are poorly understood, according to the German Geological Survey, as studies often focus on the formal mining industry. It is clear that ASM is associated with dumping of waste without any consideration. Harmful effects, particularly from washing of ores in rivers, should be further investigated. Environmental management measures and mitigation strategies should be developed; reclamation of mining sites, reforestation, and backfilling of artisanal open pits and tunnels as required by the Mining Code should be enforced.<sup>37</sup>

## **5.2 Inclusive economic development**

### **Fiscal revenues and economic policy**

Historically, the mineral sector has been an important source of fiscal income in DRC. The mining sector will likely continue to be important for the economic development in the country. While copper appears to provide most export earnings, the global demand for cobalt and 3T is increasing rapidly, as these minerals constitute important inputs to the global response to climate change and the transformation to low-carbon economies.

However, the link between economic growth and poverty is weak in the DRC. According to the World Bank (2018), the strong macroeconomic performance of DRC has “failed to translate into significant reduction in poverty and inequality”. The policies that have been implemented were primarily aimed at

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<sup>36</sup> Werner Claessens, GIZ, personal communication 24 March 2021.

<sup>37</sup> BGR, 2019



stabilising the economy, rather than making growth inclusive. The government has failed to make the needed investments to share the returns of the economic growth with the people living in poverty.<sup>38</sup>

It is estimated that only a minor share of the extracted minerals (e.g. 10% of the copper and cobalt) are reported and exported officially.<sup>39</sup> Hence, significant amounts are lost to the treasury. While the New Mining Code aims to increase state revenues through taxes, responsible sourcing initiatives aim to increase transparency of the monetary flows, to make the trade less prone to corruption and thereby reduce the financial losses to the treasury.

### Due diligence and responsible sourcing

Responsible sourcing of minerals is often linked to supply chain due diligence (i.e. acting with reasonable care and investigating an issue before making a decision). Traceability, transparency and accountability are common principles of responsible sourcing.

Responsible sourcing of 3TG is supported by various legislations, such as the US Dodd Frank Act, and EU regulation 2017/821 (which entered into force on 1 January 2021). The EU regulation aims to “*ensure /.../ responsible sourcing standards set by the OECD*”<sup>40</sup>, break the link between conflict and the illegal exploitation of minerals, and help put an end to the exploitation and abuse of local communities, including mine workers, and support local development.”<sup>41</sup> In DRC, the Government has legislated the 5-step OECD Minerals Guidance and all companies have to submit their risk mitigation reports, which are published annually.<sup>42</sup> However, in contrast to the OECD Guidance for multilateral corporations, the OECD Minerals Guidance does not explicitly call for remedy in grievance cases and it is also not clear how this is currently being followed up.

In terms of the 6-step Guidelines for Multinational Enterprises, accountability has been mostly conducted via the OECD National Contact Points<sup>43</sup>, which has been a relatively ad hoc process to date. OECD DAC countries are obliged to report annually to the OECD’s Responsible Business Conduct Working Group on how their companies are adhering to the OECD Guidelines, but this information is seemingly only made public every four years and is not disaggregated.

Responsible sourcing initiatives have had positive impacts through reducing the level of interference by armed actors at mining sites. **Armed interference**<sup>44</sup> is **decreasing over time in areas with more scrutiny**, i.e. **where responsible sourcing initiatives are being implemented**, while it seems to continue undisturbed in more remote areas.<sup>45</sup> Despite progress in tracing minerals, some (both state and non-state) armed groups are still involved in trafficking minerals, especially gold, with adhering illicit financial flows.

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<sup>38</sup> WB, 2018

<sup>39</sup> Global Witness, 2017

<sup>40</sup> OECD, 2016

<sup>41</sup> EU Website “The regulation explained” (accessed 1 April 2021): <https://ec.europa.eu/trade/policy/in-focus/conflict-minerals-regulation/regulation-explained/#regulation-what>

<sup>42</sup> Joanne Lebert, IMPACT, personal communication

<sup>43</sup> <https://www.oecdwatch.org/>

<sup>44</sup> Armed interference: this term is used to describe all cases where a non-state armed group, an army unit or an armed criminal network make (illegal) profits from mineral exploitation or trade, through their physical presence in mining zones, or through more indirect interferences (IPIS, 2019)

<sup>45</sup> IPIS, 2019

## Jobs and income

In DRC, the large-scale mining sector (LSM) employs less than 400,000 people, while the ASM is estimated to employ around 2 million people; with around 275,000 artisanal gold miners and likely over 150,000 artisanal copper/cobalt miners. The number of people active in ASM are rough estimations, with more detailed breakdown of the numbers in Figure 1. 40% of the ASM are estimated to be women. In the former Katanga Province, approximately 60% of Congolese households rely upon artisanal mining for their livelihoods, both directly and indirectly for supplementary income. Hence, **from a job and livelihood opportunity perspective, the ASM sector has advantages over LSM.**

The added value of the ASM sector remains almost entirely in the local communities in the form of income in the hands of artisanal miners and other actors involved in ASM and the sector is a stimulus for trade and subsidiary business development around mines.<sup>46</sup> On the other hand, the working conditions, particularly in the unregulated ASM sector, are often poor (see Chapter 5.1 for occupational health, and Chapter 5.3 for labour rights).

Investments and revenues in the ASM sector are often shared according to hierarchical roles.<sup>47</sup> Many sources state that the miners (the *creuseurs*), **particularly women (and children), are those with least power and voice.** Many miners, over a third of gold miners, are paid in minerals instead of cash. The cashing of the gold is often done at low (unfair) prices and is linked to smuggling.

It is difficult to make a reliable and decent living as an artisanal miner. In the copper belt, 40% of the miners state that they earn less than the minimum wage, 28% earn between the fixed minimum wage limits (between USD 4.2 and 10/day), but a few earn as much as USD 50/day.<sup>48</sup> In many cases, **mining activities are often a complement to livelihoods within agriculture.**

According to IIED, the few alternative livelihood programmes in the DRC have had limited success. As investments in community enterprise seldom generate results in the short term, the tendency to design short-term community development initiatives instead of providing long-term support to communities, have seldom been successful.<sup>49</sup>

## Formalisation

Supported by the new Mining Code, many initiatives are supporting formalisation efforts of the informal ASM sector, hoping that will promote occupational health, safety, security, reduce environmental impacts, smuggling, and other social ills. Formalisation efforts mainly focus on titling, registration and traceability.<sup>50</sup>

As a part of the formalisation process, the miners must organise into cooperatives. The cooperatives can help empower the miners in relation to traders and government and may increase their revenue share. However, many artisanal miners in the eastern DRC feel that the formalisation is forced upon them. The cooperatives are often subject to elite capture and despite opposite intentions the miners continue to be exploited economically by the local elites.<sup>51</sup> The artisanal miners hence often have negative perceptions of the increasing regulation of the ASM sector and responsible sourcing efforts, as

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<sup>46</sup> DELVE, 2020

<sup>47</sup> DELVE, 2020

<sup>48</sup> BGR, 2019

<sup>49</sup> Samdong and Nhantumbo, 2015.

<sup>50</sup> de Haan and Geenen, 2016

<sup>51</sup> de Haan and Geenen, 2016

it has decreased their revenues. The use of cooperatives as a way to organise artisanal miners are often perceived as vehicles that exploit miners and may even fuel already existing tensions.

In recent years, formalisation of the ASM gold sector in Africa's Great Lakes region has been the focus of international attention, and in the DRC in particular. Responsible sourcing from artisanal mining can be in direct competition with illicit trade. However, most basic standards for formalising the ASGM sector are neither providing any incentives, nor are they attainable in the short or even medium term, for the majority of artisanal miners.<sup>52</sup>

When supporting formalisation of the ASGM, downstream actors and donors must ensure that proposed solutions are adapted to all ASM contexts, including the complex situation in eastern DRC. Otherwise, it is a risk that the due diligence agenda mostly serves the needs of the downstream actors instead of bringing tangible rewards to the artisanal gold miners.<sup>53</sup>

Industrial corporations are increasingly expected to support the formalisation of the ASM. For extraction of cobalt a trend of "corporate outsourcing of responsibility" is seen, which encompasses a shift in responsibility and extraction risks away from corporations and onto miners themselves.<sup>54</sup>

There are links between LSM and ASM, although most appear to be involuntary. One link is, of course, that LSM and ASM work in the same area, as their activities depend on where the mineral deposits are situated. As mentioned above (chapter 3.1) the registered ASM are allowed to mine in special zones, and for example in Katanga, these zones are situated in less developed areas in terms of infrastructure.

Unregulated artisanal miners mine anywhere they can, sometimes at LSM sites, and sometimes in their waste piles. Industrial mining companies are often reluctant to have ASM on their mining sites as it is often associated with accidents and could lead to access restrictions and a resulting negative reputational impact. Additionally, the issue of 'cohabilitation' will have to be addressed.<sup>55</sup>

The abovementioned problems are confirmed by a director of a medium sized gold mine who investigated the opportunities to engage artisanal miners in a traceability scheme, to support more environmentally friendly artisanal mining, as well as income generation and taxation. However, after careful consideration, the initiative was shelved as they assessed the reputational risks to be too large.<sup>56</sup>

## **5.3 Social dialogue, human rights, gender and labour rights**

### **Labour rights and human rights**

The ILO defines social dialogue to "include all types of negotiation, consultation or simply exchange of information between, or among, representatives of governments, employers and workers, on issues of common interest relating to economic and social policy" and often involves "a tripartite process, with the government as an official party to the dialogue" and "can be informal or institutionalised".<sup>57</sup> The ILO Committee of Experts of the Application of Conventions and Recommendations (CEACR) has been asking the government of DRC since 2011 to fulfil its obligations to ensure that provisions laid out in the

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<sup>52</sup> IMPACT, 2021

<sup>53</sup> IMPACT, 2021

<sup>54</sup> Calvao et al., 2021

<sup>55</sup> BGG, 2019

<sup>56</sup> Referred to in e-mail by Anders Arvidsson, Sida (23 March 2021)

<sup>57</sup> Guide: Promoting a National Tripartite Social Dialogue (draft 2011) <https://www.ilo.org/ifpdial/areas-of-work/social-dialogue/lang-en/index.htm> accessed 9 April 2021.

Labour Clauses (Public Contracts) Convention, 1949 (which it is a signatory to), are taken. However, the DRC government has still not included any reference to labour clauses in its legislation governing the organisation, implementation and award of public contracts. Although there are a number of other issues that contribute to the slow process of formalisation of the ASM sector, this continued lack of enforcement of the abovementioned convention by the state makes it difficult to have a nationwide standard for formalisation and prohibits that most contracts between LSM companies and artisanal miners are implemented without this legal protection for artisanal miners. Additionally, artisanal miners are essentially migratory and go where they can get the best prices for what they mine, creating challenges for longer term formalisation. At the same time, the informality of artisanal mining can also act as a conflict mitigator in terms of its solidarity between miners of myriad ethnic backgrounds and who endure the same risks and threats together as part of a “collective occupational identity”.<sup>58</sup>

Despite certain advances in the formalisation sector, particularly in cobalt and 3T mining, protection for workers according to Congolese labour law is largely lacking. In the area of cobalt mining, registering the large and informal labour of artisanal miners is a priority to ensure that sales of cobalt supplies meet international standards and due diligence before going on the international market. At the same time, and because of fluctuating market prices, artisanal and small-scale miners prefer a more open market where traders can compete for higher prices. In Kasilombe mine in Kolwezi, there are mostly unregistered *creuseurs* engaged in a transnational supply chain despite the formalisation of responsible mining by large corporate concessions in the area.<sup>59</sup>

According to the Mining Code, LSM companies are compelled to invest revenue into community development projects and miners have to be members of a cooperative. LSM companies can subcontract cooperatives. Because of sub-contracting, miners can charge higher prices as a result, considering that they are protected within a formal agreement and this is often seen to be a good and stable economic opportunity for some. However, the issue of so-called ‘wageless’ labour is a constant challenge, as some LSM companies subcontract artisanal miners but avoid paying them a fixed salary and ensuring that their basic human rights are protected.

In terms of the links between LSM and ASM, particularly with the revision of the mining Code in 2018, security and working conditions for *creuseurs* remain uncertain. The law clearly states that artisanal miners can only work in ZEAs with the ASM being restricted to registered ZEAs organised by cooperatives. However, only 14% knew about ZEAs. In some cases, regions are covered by *permis d’exploitation*, which precludes artisanal miners from working in formally legal conditions, as most miners do not have this permit. Big LSM companies, although engaging in subcontracting artisanal miners on their concessions, often have sites guarded by police, private security companies or the FARDC. Safe access and security are at a minimum and bribes and extortion are commonplace. One of the most significant challenges is the fluctuating personal needs of the *creuseurs* in tandem with international market prices and the fact that many of them do not have the correct papers or identification to work within a formal framework. Additionally, LSM companies are keen to reap the reputational rewards of formalisation, but use the flexibility of ASM miners to outsource responsibility for price fluctuations while also avoiding committing to the costs of secure waged labour.<sup>60</sup> For instance, in southern Katanga, recent layoffs in copper mines in 2016 (after market prices gone down) seem to

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<sup>58</sup> de Haan & Geenan, 2016

<sup>59</sup> Calvao et al, 2021

<sup>60</sup> Calvao et al., 2021

have pushed around 15,000 people into ASM around Kolwezi.<sup>61</sup> Conversely, in terms of the effect of mining on individuals' lives, 46% of survey respondents in an IPIS baseline study stated that formalisation had improved their lives, regardless of whether or not a person was in a due diligence site or not and that “the perception of the effect of mining on a person’s life was not influenced by the presence or absence of due diligence programmes”.<sup>62</sup>

ASM miners are often at the mercy of LSM companies when entering into contracts to dig on concessions located where there already exists a *permis d’exploitation* as well as in ZEAs. Instead, and in a move to enter into contracts with fixed incomes, LSM companies focus more on safety issues and provide free Personal Protective Equipment to miners that, although welcome, is largely perceived to be a symbolic gesture.<sup>63</sup> Even if the legal framework for artisanal mining labour is overall relatively well structured, it involves a number of health and safety risks including access to sanitary facilities, accidents, pollution and the prevalence of mercury on gold sites.<sup>64</sup> Miners often have to put up with dangerous and extreme conditions, including a lack of basic safety measures and equipment and lack of ventilation, with children being especially vulnerable to exploitation.<sup>65</sup>

### Child labour

From a human rights perspective, although states do not have to regulate activities of companies operating within their jurisdiction, they are obliged to protect against human rights abuses by third parties, including companies.<sup>66</sup> The widespread use of child labour in ASM, with children being mainly used as ‘transporters’ is a case in point, and they are often most vulnerable to abuses. According to ILO guidelines, child labour is defined as, “the work performed by children who are under the minimum age legally specified for that kind of work, or work which, because of its detrimental nature or conditions, is considered unacceptable for children and is prohibited”.<sup>67</sup> According to the IPIS baseline study conducted in eastern DRC, child labour is far more prevalent in gold mines than in for other minerals.<sup>68</sup> With the high levels of insecurity that children already face in conflict areas, this finding shows the particularly vulnerable position that children occupy in the ASM supply chain and are “engaged in the worst forms of child labour”.<sup>69</sup>

### Gender equality

Gender equality continues to be a significant obstacle for development, keeping in mind that women represent circa 40% of the workforce in the ASM sector. Women in the ASM sector lack specific safeguards and labour rights protections. Addressing gender equality in complex settings can often be a challenging process, and the situation is complicated further in DRC by the informality of the ASM sector. The ASM population mainly consists of men, but mining is also central to the livelihoods of many women. Since 2008, women have moved from 20% to 40% participation in the ASM labour force<sup>70</sup> with 25% to 50% among the women in the labour force engaged on gold sites in the Great Lakes region<sup>71</sup>

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<sup>61</sup> World Bank, 2018

<sup>62</sup> IPIS/ULULA, Assessing the impact of Due Diligence programmes in eastern DRC: A baseline Study, IPIS report, April 2019. cit, p. 31

<sup>63</sup> Calvao et al, 2021

<sup>64</sup> Gerig et al, 2020

<sup>65</sup> BGR, 2019

<sup>66</sup> United Nations Office of the High Commissioner for Human Rights: Guiding Principles on Business and Human Rights – Implementing the United Nations “Protect, Respect and Remedy Framework”, 2011.

<sup>67</sup> ILO report, Hard to see, harder to count: survey guidelines to estimate forced labour of children and adults, 2012 op. cit. p. 16

<sup>68</sup> IPIS baseline study, 2019

<sup>69</sup> Bureau of International Labor Affairs:

<sup>70</sup> Gerig et al 2020; and WB, 2017

<sup>71</sup> Hinton, 2016

where roles mostly involve washing and selling the minerals, but they rarely have any decision-making power. In most cases, only men are allowed to work in the pits or as traders (*négociants*), with women largely restricted to more menial jobs that often pay less. Other barriers include confusion over mining laws in communities and cultural perceptions of women as harbingers of bad luck in the mines. Consequently, women are unable to build up a sustainable living and often have difficulty securing better work across the supply chain.<sup>72</sup> Additionally, they face high levels of insecurity in the east, where the presence of armed groups has become synonymous with ASM, particularly in North Kivu and Ituri. However, even in mining towns that are not in conflict areas, women face risks of sexual predation and sexual violence.

Workers in ASM are migratory populations with low levels of education, motivated by poverty and lack of employment opportunities elsewhere. In general, women migrate to unfamiliar mining areas more often than men, with these women often being the sole income source in the family due to loss of husbands or male relatives or to loss in traditional income opportunities.<sup>73</sup> In eastern DRC, there have been benefits from formalised 3TG supply chains, but more change will be needed. For example, more targeted support for women's organisations in the mines would give more agency to women and allow them to advocate for their property rights and defining the types of privileges and entitlements vis-à-vis mineral assets.<sup>74</sup>

## 5.4 Conflict issues

According to the DELVE report, around two thirds of ASM areas are free from armed interference and one third being negatively affected by armed interference, resulting in a higher percentage of illicit trade and smuggling by militias as well as elements of the FARDC.

Of the four recognised conflict minerals — tin, tungsten, tantalum (3T), and gold — gold was and is still considered the most significant in terms of conflict financing and revenue lost by African governments as a result of contraband export.<sup>75</sup> According to the UN, warring armed groups in eastern DRC demand a large amount of taxes, bribes or other payments for these extracted minerals. A majority of these minerals are smuggled into neighbouring countries, and are associated with money laundering etc. The link between revenue generation from minerals and the purchase of weapons and exploitation of people is strong and has been well documented.<sup>76</sup> The frequency of armed interference at mining sites is highest in North Kivu, South Kivu and Ituri with mining sites often guarded by armed groups or police that demand bribes from artisanal miners for access and extortion occurs even in the case where miners have the requisite permits.<sup>77</sup>

During the war that ended in 2003, and in subsequent years, the subject of mining was intimately associated with armed groups, particularly in eastern DRC. With the revision of the Mining Code in 2018 and increased efforts at formalisation, the mining and trading of minerals - as well as the legal ramifications adhering of the global market from a corporate social responsibility perspective, is now front and centre of the political transition. With the election of the new government in Kinshasa, President Tshisekedi is making an effort to ensure that state institutions are more fair and accountable

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<sup>72</sup> World Bank, 2015

<sup>73</sup> World Bank, 2018

<sup>74</sup> Byemba, 2020

<sup>75</sup> IMPACT Just Gold, 2021, referring to UNCTAD, 2020

<sup>76</sup> <https://www.sourcingnetwork.org/minerals>

<sup>77</sup> Calvao et al, 2021

in the management of the mining sector with an emphasis on greater wealth allocation. Even though the government does not have full control over the country's resources, the President has indicated that the government is ready to give artisanals more protection and licenses. Yet, the power struggle between the President and the Kabila majority in parliament is reflected in tensions on the ground. Katanga (pro-Kabila) miners and those coming in from Kasai (who are perceived to be pro-Tshisekedi) have clashed regularly over access to mines often resulting in high levels of violence reflecting the political struggle in Kinshasa.<sup>78</sup> In 2019, the FARDC expelled 10,000 artisanal miners from two mining sites. Differing levels of violence with ASM miners often expelled from large LSM concessions. If better livelihoods are provided, then there is lesser violence. Some LSM companies allow access for artisanals to low grade deposits for livelihoods but these are often low quality, hence artisanal miners seek out better opportunities elsewhere. There is often a high degree of migration dependent on fluctuating market prices, that also creates conflict with miners in other regions e.g. Kasai miners moving into concessions in Katanga often resulting in high instances of criminal violence.<sup>79</sup>

## 5.5 Governance

Overall, governance of the mining sector in DR Congo remains one of the most significant challenges to improving levels of environmental protection and transparency and accountability in the supply chain, as well as the well-being and rights of miners. As in many other countries, coordination across ministries is often not clear, creating risk for overlapping mandates. For example, the Ministry of Environment, is responsible for environmental monitoring and the prevention of pollution to air, water and soil, the ACE is responsible for reviewing ESIA's and EMPS and providing environmental mining permits, while the 'Directorate' is charged with environmental rehabilitation in mining areas. It appears that the Ministry of Mines Environmental Department has a similar mandate.<sup>80</sup>

One of the consequences of opaque and cumbersome coordination in DR Congo has been weak law enforcement, with the FARDC often contributing to an increasingly unpredictable security situation, particularly in North Kivu and Ituri. Additionally, rogue elements of the FARDC and police are actively engaged in extortion and taking bribes around sites, making environmental legislation hard to enforce. Environmental agencies seem hesitant to enforce laws given current socio-political and economic interests and concerns and there is a gap between legislation and its deployment in practice. There is a governance lacuna in how best to address enforcement of *de jure* legislation, with top-down approaches and limited consultations creating legislation that is not always focused on addressing local-level challenges.<sup>81</sup>

Despite many efforts, including the publication of several contracts and Extractive Industries Transparency Initiative (EITI) compliance, opacities remain in the management of the value chain of extractive industries, ranging from contract adjudication to monitoring operations, collection, and management of revenues. Additionally, elite capture leads to corruption at all levels, which takes a heavy toll on public service capacity to deliver key services.<sup>82</sup> This is even the case with the elite capture of cooperatives, where officials do often not act in the interests of miners and are instead prone to corruptive practices. According to Global Witness, up to USD 10 billion worth of copper and cobalt is

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<sup>78</sup> ICG report, 2020

<sup>79</sup> ICG report, 2020

<sup>80</sup> Samdong et al., 2015 referring to Seyler et al., 2010.

<sup>81</sup> Samdong et al., 2015

<sup>82</sup> World Bank, 2018

extracted from Congolese soil annually for export. Furthermore, Global Witness has revealed that over USD 750 million of mining revenues paid by companies to state bodies in the DRC 2013-2015, was lost to the treasury.<sup>83</sup> There is also a nearly unprecedented opportunity for companies to engage proactively and continuously in dedicated supply chain due diligence – or for corrupt networks to make millions in a country of scarce regulation and oversight.<sup>84</sup> In a number of interviews conducted for this study, interlocutors indicated the extreme difficulty of working with governance structures in DR Congo compared to other African countries i.e. Ivory Coast, where there are similar challenges for formalisation. According to the World Bank (2018), the current governance environment lacks transparency, gives little access to information, permits wide administrative discretion, and creates regulatory uncertainty amidst an overall weakness of accountability mechanisms.

## 5.6 Institutional capacity

The institutional capacity varies between different organisations and governance levels, as the DRC is decentralised and the institutional capacity varies significantly between provinces.

The technical capacity of the Ministry of Mines is reportedly satisfactory<sup>85</sup> and it also has a significant budget to administer. However, the institutional capacity of the Ministry of Environment and the Congolese Environmental Agency (ACE) is weaker. Although the Mining Code states that environmental inspections shall be done, they do not appear to be commonplace (and are largely unheard of in eastern DRC)<sup>86</sup>. In the copper belt, there is no (known) environmental monitoring by any authority.

The institutions managing forest and conservation interests in the DRC have been under-resourced in terms of numbers, but also with respect to training and office equipment. Access to civil service employment is based on political patronage. Only a small percentage of employees have any educational training beyond secondary school. In addition, low salaries which are paid late or irregularly weakens the motivation of employees and affects the quality of their work. The consequence is a rampant and poor service delivery that affects conservation and environmental protection.<sup>87</sup>

Another major capacity challenge relates to the health sector. There is a significant knowledge gap in the health sector in DRC. Health professionals are trained in tropical diseases and not so much in environmental toxicology and associated health risks. This weakness affects the understanding of the health problems and has negative consequences, not least related to health budget allocations.<sup>88</sup>

In terms of state engagement in the mining sector, the state-controlled corporation Gécamines, that technically owns below-surface resources has had numerous problems and challenges with its accounts and is currently undergoing wholesale re-organisation.<sup>89</sup> More recently, a state subsidiary, Enterprise Generale du Cobalt was created in an effort to control the artisanal supply chain for what it terms the most “strategic minerals” such as cobalt, and to bring increased state oversight with the worsening situation with child labour and working conditions for miners.

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<sup>83</sup> Global Witness, 2017

<sup>84</sup> Callaway, 2018.

<sup>85</sup> Joanne Lebert, IMPACT, Personal communication 30 March 2021.

<sup>86</sup> Joanne Lebert, IMPACT, Personal communication 30 March 2021.

<sup>87</sup> Samdong and Nhantumbo, 2015

<sup>88</sup> Dr. Benoit Nemery, personal communication, 23 March 2021.

<sup>89</sup> ICG report, 2020



## 6. Opportunities

This section highlights some opportunities to support the DRC mining sector into becoming more environmentally sound, inclusive and rights-based. More information about what is already ongoing is listed in Annex 2.

As mentioned above, the ASM sector is important in the DRC as it has high extraction volumes and generates significant levels of employment and household income. However, the ASM sector is also associated with many challenges, such as pollution, child labour and unsafe working conditions, and smuggling (particularly artisanal gold mining), and security challenges. Some actors point to the opportunities that a *formalisation of the ASM* would bring, including better regulated activities and opportunities to include the artisanal sector in responsible sourcing activities. According to the World Bank (WB), increased efforts are needed in traceability, certification, and formalisation. The WB points to successes with formalisation of the 3Ts, where employment has remained steady due to the consistent demand for certified minerals in the eastern part of the country, reaching over 200,000 people in that area alone. The ASM National Strategy offers a framework for the government to address formalisation. The WB also highlights that a *strengthening of the small-scale mining support service, SAEMAPE*, is key for the success of formalisation and for enhancing the impact of ASM on development.<sup>90</sup> A number of donors and other international partners support formalisation efforts in various ways, including IMPACT, GIZ (and BRG), USAID, Pact, ADB, RINR, and Cobalt for Development (see Annex 2 for further details).

Avocats Sans Frontières (ASF) in the DRC agrees that the formalisation of the ASM sector is important and would provide a number of advantages for miners, for the local population and particularly for those most vulnerable. There is a need, however, for the populations to be *informed and aware of their various rights* concerning how the land tenure system and how the cooperatives function. In addition to ASF, also IPIS, Ulula, Pact, and UNICEF supports human rights linked to mining, land rights and child labour, and human rights incident reporting and tracking, etc. (See Annex 2).

According to IMPACT (2021), it is important that work to *challenge drivers of illicit trade* at national, regional, and international levels is done in parallel to developing traceability and due diligence schemes. Examples include tackling high taxes and fees, inconsistent customs and export policies across regions, the role of pre-financing in the gold trade, impunity for a handful of known regional and international traders, and how international trading centres contribute to gold smuggling.<sup>91</sup> IMPACT takes a holistic approach in its support to artisanal miners to encourage legal trade. Other organisations active in this area are, e.g. RINR, USAID, and various responsible sourcing initiatives (listed in Annex 2).

Another important aspect of formalisation of the ASM is linked to *incentives* for the miners. Informal artisanal miners are economic actors that respond to incentives. IMPACT is the front-runner in this type of projects. They will not participate (in any sustainable or long-term way) in initiatives that do not actually benefit them. It has been mentioned previously in this report that access to permits etc does not in itself necessarily provide enough incentives, as the formalisation process is cumbersome, expensive and is likely to reduce their income in the long term due to higher taxes, hierarchical structures and corruption. In a recent evaluation, IMPACT has seen positive results from formalisation efforts in ASGM when working with incentives. The incentives depend on context but are often linked

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<sup>90</sup> World Bank, 2018

<sup>91</sup> IMPACT, 2021

to economic gains, but may also be linked to more predictable income, fair prices, increased security, perhaps also access to services (WASH, markets, etc). IMPACT also works with “*pre-formalisation support*” through long-term, process oriented, bottom-up support to empower artisanal gold miners, build ownership, and build capacity in networks and groups as a way to avoid elite capture of cooperatives.<sup>92</sup>

One of the provisions of the Mining Code is the establishment of the *entité décentralisée* as part of the regulatory system in accordance with the Mining Code. According to the code, LSM companies are obliged to send a small percentage to resident local communities on the land where the mine is located. This stipulation is in line with a percentage of royalties sent to the government (50%), to the provincial government (25%) and the *entité décentralisée* receiving around 15%. The remaining 5% is put into a fund (*fond pour le futur*). In certain cases, the amount allocated to the local community can be upwards of USD25 million for the purposes of building schools, ensuring access to water and bolstering incentives for alternative livelihoods in agriculture etc. However, there is a lack of capacity to absorb funds of this volume at the local level, where the local community is often a town with a ‘mayor’ (despite the absence of local elections in the DRC) or a customary chief. Without significant formal structures for absorption and re-allocation in place to manage these initiatives, there is a risk for a path dependency issue whereby too few people become too powerful over a short period of time. Here, there is an opportunity to support a local level initiative to manage the funds in an efficient, transparent, and democratic way, for instance through supporting the empowerment of local communities to manage, or take part in the management, of mining royalties. The World Bank, UNICEF, African Development Bank and GIZ are involved in this particular area with projects related to community development, alternative livelihoods and capacity building (see Annex 2).

The DRC needs to strengthen its *environmental institutions* to be able to manage the environmental challenges the country is facing, not least from the mining sector. The government is ill-equipped to address environmental challenges or comply with multilateral environmental agreements. Health problems from pollution are likely significant, but not are not given much attention. According to the World Bank (2018), the environmental framework is piecemeal and not well enforced. The decentralisation creates an additional challenge, related to coordination, enforcement, and funding of new entities. The World Bank has identified the following priorities related to environmental governance: (1) strengthening human and technical capacity, including working conditions for staff in remote areas; (2) upgrading infrastructure and equipment, particularly at the provincial level; and (3) allocating resources for climate-related activities, including at the Ministry of Environment.<sup>93</sup> The international partners, with ongoing (or planned) support with environmental components, include GIZ, USAID, Pact, IMPACT, WWF, and RINR (see Annex 2).

There is a great need to improve the *mine-site inspection* capacity in DRC. For instance, the German Geological Survey (BGR) states that supporting the introduction of regular, legally and technically formalised *mine site inspections* of copper-cobalt ASM, would benefit formalisation efforts.<sup>94</sup> Opportunities to include environmental monitoring in these inspections should be investigated. Another

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<sup>92</sup> IMPACT, 2021

<sup>93</sup> World Bank, 2018

<sup>94</sup> BGR, 2019

opportunity is to investigate to what extent mine-site validation activities (under responsible sourcing initiatives) includes environmental monitoring (see Annex 2).

While government authorities are not able to fulfil all duties, other actors may have to step in. *Civil society* can play a bridging role, for instance by recording good practices, disseminating information and generally creating demand for responsible practices. Civil society organisations can also play an important role related to scrutinising ESIA reports and ESMPs, *monitoring their implementation and supporting accountability*. Building oversight capacity is important for the government, not only to ensure that fiscal liabilities of companies are duly collected, but also because a stronger government that can hold companies to account may be perceived with greater legitimacy by its people. Civil society can also ensure that standard setting is respected and adhered to in terms of following due diligence. NGOs could help to *monitor the uptake and enforcement of responsible sourcing* and due diligence, for instance the reporting to OECD and the reporting in the DRC. Strategies and platforms to integrate civil society and increase awareness are gradually emerging, although more can still be done. Numerous international partners and research teams are already providing monitoring services related to natural resource, extractive industries and the mining sector (e.g. EITI, Global Witness and IPIS). NGOs could be identified and engaged related to the different aspects of monitoring in the mining sector, e.g. related to responsible sourcing or due diligence, scrutinising EISA reports and monitor implementation of ESMP, monitor security aspects related to mining operations, etc. There are likely also Congolese NGOs conducting these activities but specific information has been hard to gather.

## 7. Conclusions and issues to consider

In sum, there are a number of challenges in the functioning of the ASM sector in the DRC. Due to the complex political economy of the DRC, particularly in the eastern part of the country where gold mining is undertaken, it is difficult to implement programmes that have good prospects of being effective. At the same time, there are opportunities to provide support to promote a more sustainable and inclusive mining sector through targeted interventions that can be aligned with like-minded actors. Our recommendation is therefore to investigate the opportunities to link the (possible future) Swedish support to already existing programmes that have demonstrated their effectiveness (see e.g. Annex 2).

- **The new Mining Code opens up for local development.** In the area of inclusive economic development, it is clear that the mining sector in DRC is an important source of fiscal income and provides opportunities for economic growth. However, there are currently weak linkages between growth and poverty reduction, and the government has failed to make the needed investments to share the returns of the economic growth with the poorest and most vulnerable. The relatively new Mining Code (2018) opens up opportunities for more equitable income distribution through transferring a part of the mining royalties to state, provincial, and local communities (and to a future fund). This opens up opportunities for local development. However, the capacity at local level to utilise these funds for local development is currently weak. Together with the lax implementation of the legal framework governing the mining sector, there is an acute risk that a large percentage of the artisanal mining workforce will continue to be left behind in the years to come.
- **Formalisation of the ASM provides opportunities and challenges.** The artisanal mining sector engages around 2 million people in DRC, with women accounting for more than 40% of the workforce. From a job and livelihood opportunity perspective, the ASM sector is more interesting to focus on than the LSM. The working conditions (particularly in the unregulated) ASM sector are poor, with little or no focus on the improvement of labour rights by the government and artisanal miners only not directly benefitting from increased due diligence related to supply chains. Although some actors point to the advantages of increased formalisation of the ASM sector in terms of better-regulated activities (from environmental, social, and rights-based perspectives), these tend to be piecemeal vis-à-vis the scale of the challenge at hand.
- **Incentive structures are important for formalising efforts.** The cooperatives can help empower the miners in relation to traders and government, and may increase their revenue share. Most of the ASM income remains in the local communities, triggering subsidiary business development. However, the formalisation efforts are also associated with challenges, including administratively burdensome and expensive procedures and risk for continuous exploitation of miners from local elites. In many cases, artisanal miners feel that formalisation is forced upon them. To more effectively support the formalisation of the ASM sector, there is a need to develop better incentive structures in acknowledging artisanal miners as economic actors in their own right. Promoting the due diligence agenda should also bring tangible rewards to the artisanal miners, and not only serve the needs of the downstream actors in the global north.
- **Monitoring of due diligence as a way to promote accountability.** Human rights abuses, whether they be as a result of child labour exploitation or gender-based violence against women are one of the major challenges facing the DRC government as well as international donors and their development partners. Companies need to be held to account for assessing their supply chains with more rigorous follow-up for any breaches of the OECD Due Diligence guidelines for multinational corporations. Although much progress has been made, not least with the new EU Conflict Minerals Regulation

coming into force this year, increased pressure needs to be put on the DRC government to follow the UN Guiding Principles on Business and Human Rights from 2011, and ensure that LSM companies adhere to them when hiring artisanal labour.

- **Weak institutions and lack of good governance is a challenge.** Governance is an ongoing challenge in the DRC, with weak institutions, poor coordination and often an absence of implementation of the laws governing the mining sector. For instance, environmental institutions are in need of improvement in terms of capacity, knowledge management and being able to adequately conduct monitoring across the country and even more so in the east. Considering the scale of the challenge and the fact that poor governance continues to hamper development throughout the country, the Helpdesks cannot give specific recommendations at this stage on potential interventions. However, a deeper and more concise study focusing on the governance aspect of the mining sector in terms of institutional mandates, coordination, implementation of the legal framework and institutional capacity is worth considering (see more under Areas for Future Studies below)

In terms of ongoing initiatives, Sweden has an opportunity to initiate a dialogue with actors already engaged in the mining (ASM) sector and that have already achieved some tangible results through their programming. The following are some opportunities that could be of relevance for future engagement:

- **Promotion of human rights**, through linking the support to the responsible sourcing agenda, for instance through supporting formalisation efforts of the ASM, with a focus on long-term, process oriented and incentives based support to empower groups to take an active and equal part in the cooperatives and to claim their rights;
- Support ongoing initiatives in relation to the **role of women** in ASM with a focus on the functioning of cooperatives. Here, supporting potential pilot projects to assess cooperatives' policies, procedures and systems for ASM operations should be explored. Such an assessment could encompass adherence to occupational safety and health, human rights, traceability and explicitly account for gender dimensions. The emphasis would be on ensuring greater voice accountability in formal decisions affecting the position of women in ASM and allowing them a more effective platform for income generation and overcoming cultural prejudices.
- **Child labour:** support could be considered for the ongoing UNICEF and Global Battery Alliance (GBA) multi-stakeholder initiative that addresses the acute situation concerning children and their families working in mines in DR Congo and is fully aligned with the government's national development priorities. It is one of few initiatives that cuts across a number of different thematic areas relevant to Sweden such as child rights, alternative livelihood opportunities, healthcare and education, and is centred on the Lualaba and Haut-Katanga mining communities.
- Support focusing on improving **environmental outcomes**, possibly through combined and coordinated (with other initiatives) activities, for instance through providing support to development of (incentive based) skills for improving the environmental and health outcomes from ASM activities; and development of accountability mechanisms. It could also be combined with support to environmental governance related to mining (possibly with a focus on ASM), including mine site inspections (of copper-cobalt ASM) and monitoring of environmental compliance, scrutinising environmental impacts and monitor mitigation efforts.
- Support a **landscape approach to community development** through participatory, environmentally sustainable and holistic land-use planning with benefit-sharing between different actors (e.g. miners, communities), and ensuring that local actors are involved in all aspects of decision making relating to their environment.

- Support **data collection and environmental monitoring** related to impacts from mining on health and environment, support the knowledge uptake and the use of the information. There is, e.g. a need for stronger collaboration between environmental and health sectors; investigate opportunities to support research teams to collect data and help build local capacity for environmental monitoring.
- Promoting **good governance** in the mining sector through supporting increased transparency and accountability is another opportunity. For instance monitoring the implementation of the responsible sourcing and due diligence agenda (i.a. OECD), and/or the “publish what you pay for” agenda supporting transparency of mining revenues, or support initiatives to tackle illicit trade, etc.
- The issue of **‘cohabilitation’ between LSM and ASM** with an emphasis on formal collaboration for sustainable development is a particularly relevant option to explore further. Currently, in mines where this formal collaboration exists, there is evidence of adherence to working conditions in terms of safety and security measures, but less on labour rights and establishing fixed incomes for miners. Support could be given to a pilot project that focuses specifically on one mine where improvements can be made on the implementation of Congolese labour law in ASM contracts by LSM companies. Such a project would be an outlier, considering that there is little evidence to show that the government is taking appropriate steps to follow its own legislation on a countywide basis.
- **Community development** (e.g. support to communities to develop capacity to manage the *entité décentralisé*);

#### Box 2: Areas for future studies

- A study that examines what can be done to help establish environmental governance related to the mining sector. What actors would be important and what roles would they have; are there any actors with similar responsibilities that could play a role? If the environmental governance is not fulfilled by the government, is there any other organisation or institution that steps in?
- As a complement to the above study, an assessment of key mining sector institutions from a rule of law and human rights perspective, including the capacity of public authorities to respect and apply principles of accountability, transparency and the legality of decision-making procedures. For instance, what are the processes for rights-holders when legally claiming services from mining sector public authorities? And how well-equipped are agency staff to implement decisions according to the mandates of their respective public agencies?
- As it currently stands, cooperatives are prone to elite capture and do often not come up to international standards in how they are established, governed and the extent to which they protect the rights of artisanal miners. Additionally, the state is not taking the appropriate steps in implementing ILO guidelines on labour rights with big LSM companies in turn unwilling to include these stipulations in miners’ contracts. A deeper study should be conducted on mapping out the challenges and opportunities related to the application of labour rights and improved working conditions including an analysis on how cooperatives can play a role in this process.

- A study to identify Congolese NGOs that are active in monitoring related to the mining sector, e.g. related to environmental monitoring or related to due diligence or responsible sourcing.

To conclude, this desk study does not provide a comprehensive analysis on the state of the mining sector in the DRC. Rather, it provides a snapshot of the major issues that Sweden should consider when deciding on development interventions that underpin its new country strategy. Considering the complexity of the Congolese mining sector in terms of its local, national and international supply chains and the impact of these on the societal dynamics within the country, it is merely a first step in providing a more informed analysis for targeted support within the sector.

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OECD Watch: <https://www.oecdwatch.org/>

The Responsible Minerals Initiative: <http://www.responsiblemineralsinitiative.org/>

Regional Initiative against the Illegal Exploitation of Natural Resources: <http://icglr-rinr.org/index.php/en/>

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Swedish Geological Survey (SGU): [www.sgu.se](http://www.sgu.se)

Ulula, stakeholder engagement for responsible supply chains: <https://ulula.com/>

United States Geological Survey: <https://www.usgs.gov/>

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## Annex 1: List of interviewees

Sida's Helpdesk for Environment and Climate Change and the Helpdesk for Democracy and Human Rights are grateful to the individuals and organisations listed below for their availability to share their knowledge and experience from the DRC mining sector. We would like to recognise everyone's assistance and time dedicated to participating in interviews and sharing documentation. It has been a valuable learning exercise for the Helpdesks. Any possible mistakes are the authors'. The following people has been interviewed or engaged in meetings:

Organisation	Contact
Bloomberg	Michael Kavanagh, Bloomberg, <a href="mailto:mkavanagh9@bloomberg.net">mkavanagh9@bloomberg.net</a> - Conversation, 17 March 2021
Extractive Industries Transparency Initiative (EITI)	Indra Thévoz, Policy and Country Manager, <a href="mailto:ithevoz@eiti.org">ithevoz@eiti.org</a> - Conversation, 18 March 2021
Geological Survey of Sweden, SGU	Jonathan Hamisi, Geologist, <a href="mailto:Jonathan.Hamisi@sgu.se">Jonathan.Hamisi@sgu.se</a> ; - Video meeting 4 March 2021
UZ Leuven (Academic hospital in Leuven), Belgium.	Dr. Benoit Nemery, Conversation, - Conversation, 23 March 2021
UNAIDS	Susan Kasedde, UNAIDS Country Director, <a href="mailto:kaseddes@unaids.org">kaseddes@unaids.org</a> Raoul Ngoy Mukulumpe (South DRC), <a href="mailto:ngoym@unaids.org">ngoym@unaids.org</a> Natalie Marini Nyamungu, <a href="mailto:marinin@unaids.org">marinin@unaids.org</a> Constance Kamhere, <a href="mailto:kamerhec@unaids.org">kamerhec@unaids.org</a> Jean Mathieu N DALiko Vutulamo, <a href="mailto:ndalikovutulamoj@unaids.org">ndalikovutulamoj@unaids.org</a> Benjamin Tshizubu Mutombo (East DRC) , <a href="mailto:tshizubub@unaids.org">tshizubub@unaids.org</a> Thomas Batuli Itofo-Batombo (Central DRC) , <a href="mailto:batulit@unaids.org">batulit@unaids.org</a> - Video meeting 23 March, 2021
GIZ	Werner Claessens, Project Manager, DRC, <a href="mailto:werner.claessens@giz.de">werner.claessens@giz.de</a> . - E-mail correspondence 19 March, 2021 - Video meeting 24 March 2021.
Avocat Sans Frontière (ASF) in DRC	Federica Riccardi, Country Director ASF DRC, <a href="mailto:friccardi@asf.be">friccardi@asf.be</a> Camille Bulet <a href="mailto:cbulet@asf.be">cbulet@asf.be</a> - E-mail correspondence 23 March 2021. - Video meeting 24 March 2021
Sida	Anders Arvidsson, Power Africa. Email correspondence 23 March 2021
IMPACT	Joanne Lebert, Executive director, <a href="mailto:jlebert@impacttransform.org">jlebert@impacttransform.org</a> . - Video meeting 30 March, 2021. - E-mail correspondence, April 2021

## Annex 2: Selected actors and initiatives

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GIZ<sup>95</sup> is currently implementing a project (2019-21) to support the establishment and expansion of local production chains in mining to ensure improved economic development that creates job opportunities. The project has four components: i) dialogue and participation centering on highlighting and discussing the challenges related to mining through multi-stakeholder dialogues; ii) support to mining cooperatives with implementing and providing evidence of standards in the cobalt mining sector; iii) promotion of local procurement through linking small to medium-size enterprises and mining companies on procurement requirements and assessing future markets; and iv) provision of vocational training on the dynamics of the mining sector and to give participants better access to the labour market. The vocational training also includes environmental education of diggers in the copper belt. The current project phase is ending and GIZ is preparing a new phase with the same objectives but adding a component related to biodiversity/REDD, with FORNAREDD, being added as an output to work together with the government on protection of the tropical forest. USAID<sup>96</sup> provides support to DRC in mining, for instance “**Commercially Viable, Conflict-free Gold Project**”<sup>97</sup>, which seeks to scale-up exports and sales of conflict-free, artisanal gold from eastern DRC by developing market linkages with responsible gold buyers, particularly in North America and Europe. Through these partnerships, the project will deliver a transparent, private-sector co-financed supply chain model for clean artisanal gold which is led by market actors, but will also benefit economically disadvantaged artisanal or small-scale mining communities. Activities will address and remove existing downstream blockages within the artisanal gold supply chain through engagements to support artisanal or small-scale cooperatives, responsible gold wholesale buyers, retailers, insurers, transportation companies and banks.

**Sustainable Mine Site Validation Project (USAID with PACT).**<sup>98</sup> The project uses an innovation approach to refit and strengthen current methods for mine site validation or Qualification and Validation (Q&V) to better address the long-term viability of clean gold and 3T exports sourced from the DRC. Although functional, the current system for Q&V in DRC is overbuilt, expensive, and requires an unnecessarily complex group of stakeholders led by donors. The new Q&V approach will promote rigorous and transparent traceability of minerals which provides ongoing security analysis and monitoring of mine sites, increases the capacity of Ministry of Mines personnel, and strengthens artisanal or small-scale mining cooperatives to reduce issues like child labour and improve the status of women present in artisanal mine sites. The project will also reduce the overall dependence on donors to manage the Q&V system, enabling new conflict free 3T and gold mine sites to be verified quickly, at less cost, and in better alignment with local needs.

**Pact** has worked on a wide range of development issues in the Democratic Republic of Congo, mostly focused on artisanal and small-scale mining communities.<sup>99</sup> Their work in DRC is helping to make this critical livelihood safer, more formalised and productive, and free of human rights abuses. Pact leads field implementation for ITSCI, the International Tin Association’s tin supply chain initiative. ITSCI is the region’s only internationally accepted, operational due diligence mechanism and mineral traceability system for the 3T minerals: tungsten, tin and tantalum. In several DRC provinces as well as in Burundi,

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<sup>95</sup> <https://www.giz.de/en/worldwide/19891.html>

<sup>96</sup> <https://www.usaid.gov/democratic-republic-congo/fact-sheets/usaiddrc-fact-sheet-responsible-minerals-trade>

<sup>97</sup> [https://www.globalcommunities.org/publications/DRC-factsheet\\_2019.pdf](https://www.globalcommunities.org/publications/DRC-factsheet_2019.pdf)

<sup>98</sup> <https://www.pactworld.org/library/sustainable-mine-site-validation-project-profile>

<sup>99</sup> <https://www.pactworld.org/country/democratic-republic-congo>

Rwanda and Uganda, the system monitors minerals from the point of extraction at mines sites to smelters, where minerals are processed for use in electronics and other everyday devices. This allows tens of thousands of miners to earn a dignified living and build a better future for themselves and their families. They have also worked with child-labour: *Breaking the Chain*<sup>100</sup> reviews the complex economic and societal considerations and motivations that drive children to work in the cassiterite, coltan, and wolfram mines in the northern parts of the country's Katanga province, as well as insights from research that will enable implementation of appropriate, realistic interventions for child miners in Congo.

The **WWF Extractive Programme**<sup>101</sup> aims to contribute to the change from the usual business scenarios toward a more sustainable and responsible business model supporting the growth of the conservation benefits of natural resource across the national territory. To succeed in this mission, WWF's extractive industries program focuses its attention on four main areas:

- Policy level and enabling environment for sustainable extractive approaches in DRC
- Collaborative approach with responsible extractive companies for biodiversity net gain impact
- Capacity building of key stakeholders with emphasis on the civil society for fair bargaining and monitoring law enforcement and standard implementation in the extractive areas
- A particular attention is also given to China Investment and its alignment to the public engagement (FOCAC) of the Chinese Government to practice sustainability and link natural resource extraction with infrastructure development

**Avocats Sans Frontières (ASF)**<sup>102</sup> works with transparency in the mining sector, and the rights of communities and people. They are active in three provinces (one in Central DRC and two in East DRC), working with documentation and resolution of human rights violations in the context of natural resource exploitation, especially mining, in Ituri and Haut Uele. In eastern part of the country there is strong pressure on land, and customary use of the land is not recognised by the legal code in DRC. According to ASF, one of the major obstacles to the formalisation of the ASGM sector is the lack of opportunity for artisanal miners, in the form of cooperatives, to acquire secure and exclusive titles to the land. ASF works with advocacy, awareness raising, and direct support related to human rights abuses or conflicts, using the legal system.

ASF has joined the Kufatilia Incident Tracking System for Artisanal Mining, which is an initiative developed by **IPIS**<sup>103</sup> and **Ulula**<sup>104</sup>. Kufatilia is an incident reporting and tracking mechanism related to human rights violations, using telephone. The tracking system allows participating civil society organisations to collect reliable data on incidents related to Annex II of the OECD Guide to the Responsible Procurement of Minerals. The system increases transparency about incidents at mine sites and in mineral supply chains. In March 2021, Kufatilia won the 2021 Stop Slavery Award.<sup>105</sup>

IPIS also collects first-hand information in remote and conflict-affected areas in DRC, as a way to map and analyse conflicts and promotion of peace. In order to better understand conflict dynamics, IPIS uses maps to visualise conflict actors and their areas of influence, conflict drivers such as natural resources

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<sup>100</sup> <https://www.pactworld.org/library/breaking-chain-ending-supply-child-mined-minerals>

<sup>101</sup> [http://www.wwf-congobasin.org/where\\_we\\_work/democratic\\_republic\\_of\\_congo/green\\_economy/](http://www.wwf-congobasin.org/where_we_work/democratic_republic_of_congo/green_economy/)

<sup>102</sup> <https://www.asf.be/action/field-offices/asf-in-the-democratic-republic-of-congo/>

<sup>103</sup> <https://ipisresearch.be/project/kufatilia-incident-reporting-and-monitoring/>

<sup>104</sup> <https://ulula.com/>

<sup>105</sup> <https://ipisresearch.be/kufatilia-wins-the-2021-stop-slavery-award/>

or key territories, conflict events and severity, and contextual information. As such, IPIS maps are an integrated part of the research methodology and are used as a crucial source for analysis by our researchers and its partners.<sup>106</sup>

**IMPACT Just Gold:** IMPACT has been operational in eastern DRC since 2012 when it started to show how how artisanal gold could be traced from mine sites to the market. It has three components i) a traceability and due diligence system; ii) an incentive-based approach to encourage legal trade; and iii) responsible gold with accompanying data. Through the Just Gold project, consumers have been able to buy the first traceable, legal, and conflict-free artisanal gold from DRC. Over 24 kg of gold made its way from participating women and men miners and cooperative members onto the international market over four years, and mainly between 2017-2019. The project first started in the former Orientale Province in 2012 and as of 2015, in Ituri Province, directly supporting a local artisanal mining cooperative to implement traceability and due diligence. It is process-oriented, long-term and contains a significant bottom-up approach, focusing on individuals as economic actors and seeing miners as market players in their own right.<sup>107</sup>

**IMPACT Landscape approaches to land use planning:** A landscape approach focuses on economic and other activities in a given ecosystem and how these could be planned and managed for the mutual benefit of all. It looks at land use planning, stakeholder engagement/local ownership, monitoring of land use and market incentives for products derived from “good land use” etc. The organisation is testing to include mining (ASGM) in the landscape approach in Uganda in the context of a Global Environmental Facility-funded project. IMPACT states that it may also be worth piloting some elements of this for gold and cobalt in DRC to move beyond oversimplified approaches on single supply chains and single commodities. It may allow the organisation to address issues in a more transformational way. According to IMPACT it may also be a useful model for the EU’s new horizontal due diligence policy in practice, creating the underlying conditions for scale.

The **African Development Bank (AfDB)**<sup>108</sup> “Support Project for Alternative Welfare of Children and Young People Involved in the Cobalt Supply Chain” (PABEA-COBALT) seeks to ensure the social reintegration of about 14,850 children (girls and boys) working in cobalt mines. Given that extreme household poverty is the real cause of this scourge and that improving the living conditions of households is the most effective way of eliminating it, the project will ensure the socio-economic reconversion of the children’s 6,250 parents (all young) to the agricultural sector, which has the greatest potential for economic diversification. The project covers Lualaba and Haut-Katanga Provinces, which hold more than 65% of global cobalt reserves. The PABEA-COBALT aims to create 11,250 direct jobs and thousands of indirect jobs, and increase the availability of locally produced staple foods by 10% to 50%. It will also establish 2 vocational training centres mainly in small-scale agricultural and mining trades, as well as support the rehabilitation/construction/equipment and capacity building of 40 social structures (education, health, and water-sanitation). The project will also reinforce the institutional framework to extend the elimination of child labour to all other categories of mines. The project is currently recruiting consultants, so its success has not yet been evaluated.

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<sup>106</sup> <https://ipisresearch.be/home/conflict-mapping/>

<sup>107</sup> Joanne Lebert, IMPACT, Personal communication 30 March 2021.

<sup>108</sup> <https://www.afdb.org/en/documents/document/democratic-republic-of-congo-support-project-for-alternative-welfare-of-children-and-young-people-involved-in-the-cobalt-supply-chain-pabea-cobalt-appraisal-report-108712>

There are also various non-governmental organisations (NGOs) and initiatives, providing support to transform the mining sector into more transparent and sustainable practices. These actors include (but are not limited to):

**Extractive Industries Transparency International DRC (EITI DRC)**<sup>109</sup> supports transparency in the extractive sector. EITI Reports have covered ten financial years (2007-2017). Revenues collected in the mining sector surpassed that of the oil and gas sector in 2010, when 63% of the USD 875 million came from mining companies. In 2017, the sector generated USD 1,68 billion, accounting for 17,4% of GDP, 55,2% of total government revenues, 99,3% of total exports and a quarter of total employment. The DRC EITI has adopted innovative approaches to beneficial ownership, expanding EITI reporting to the artisanal and small-scale mining sector, and automating online reporting by companies and government entities. EITI reporting has also allowed to shed light on key thematic issues, such as licensing and infrastructure provisions put in place by the SICOMINES project. In 2018, DRC EITI published a standalone report on state-owned enterprises based on a review of the nine SOEs' financial statements, providing information on revenues collected by these entities. The DRC EITI adopted the Board approved measures related to flexible reporting for its upcoming 2018-2020 EITI Report.

**Global Witness**<sup>110</sup> is working with transparency and improved governance regarding natural resources with a special focus on the mining sector, to combat corruption and fraud in the oil, gas and mining industries. They investigate, collect and publishes information for various themes, including natural resource governance, responsible minerals, money laundering and corruption, etc.

Furthermore, there are African, trans-national initiatives relevant to the mining sector, for instance the **Regional Initiative against the Illegal Exploitation of Natural Resources (RINR)** working to reduce the illegal exploitation and i.a. the illicit trade of conflict minerals. DRC is a party to RINR. They work through six tools: <sup>111</sup>

- Regional Certification Mechanism
- Harmonization of National Legislations
- Regional Database
- ASM Formalisation
- EITI
- Whistleblowing Mechanism

**Responsible sourcing.** There are numerous initiatives related to responsible sourcing or formalisation, including the following:

- The Better Sourcing Program (BSP)<sup>112</sup>: BSP is a tech-based solution engaged in upstream supply chains in cooperation with local communities. We facilitate commercial and social development opportunities across global raw materials supply chains.
- European Partnership for Responsible Minerals<sup>113</sup>: is a multi-stakeholder partnership aiming to increase the proportion of responsibly-produced minerals from conflict-affected and high risk

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<sup>109</sup> <https://eiti.org/democratic-republic-of-congo>

<sup>110</sup> [https://www.globalwitness.org/en/all-countries-and-regions/democratic-republic-congo/?gclid=Cj0KCQjwyN-DBhCDARIsAFOELTnyDgHHPvjZSxzZieZTrxCWbbG36VjgCtn3WWXear3vm8V2tTOugzYaAkitEALw\\_wcB](https://www.globalwitness.org/en/all-countries-and-regions/democratic-republic-congo/?gclid=Cj0KCQjwyN-DBhCDARIsAFOELTnyDgHHPvjZSxzZieZTrxCWbbG36VjgCtn3WWXear3vm8V2tTOugzYaAkitEALw_wcB)

<sup>111</sup> <http://icglr-rinr.org/index.php/en/>

<sup>112</sup> <https://bettersourcing.io/>

<sup>113</sup> <https://europeanpartnership-responsibleminerals.eu/cms/view/53241510/about-eprm>



areas and to support the socially responsible extraction of minerals that contributes to local development

- International Tin Supply Chain Initiative (iTSCI)<sup>114</sup> works to achieve avoidance of conflict financing, human rights abuses, or other risks such as bribery in mineral supply chains. Their monitored supply chains allow metal users to source responsibly and avoid total disengagement from high-risk areas, while ensuring that miners continue to benefit from access to market. ITSCI currently focuses on Burundi, Democratic Republic of Congo, Rwanda and Uganda.
- OECD portal for supply chain risk information<sup>115</sup>: Launched in April 2018, the Portal will support implementation of steps one and two of the 5-Step due diligence process. These steps are structured around the actions companies should take to identify the factual circumstances involved in the extraction, transport, handling, trading, processing, smelting, refining and alloying, manufacturing or selling of products that contain minerals originating from conflict-affected and high-risk areas.
- The Responsible Minerals Initiative (RMI)<sup>116</sup>, Founded by members of the Responsible Business Alliance and the Global e-Sustainability Initiative, the RMI offers companies and their suppliers an independent, third-party audit, through a flagship Responsible Minerals Assurance Process that determines which smelters and refiners can be verified as having systems in place to responsibly source minerals in line with current global standards. RMI also offers a Conflict Minerals Reporting Template, which helps companies disclose and communicate about smelters in their supply chains.
- Responsible Minerals Trade Program<sup>117</sup>: USAID's RMT Program is a \$12.5 million program designed to create a pilot conflict-free supply chain, promote civilian control of the minerals sector through regulatory reform, ensure vulnerable populations are protected, and support Great Lakes regional auditing and monitoring of conflict-free minerals (gold, tantalum, tin, and tungsten)
- Cobalt for Development: a cross-industry initiative (BMW Group, BASF SE, Samsung, Volkswagen) initiated to better understand and address challenges for responsible artisanal mining in the region. Since January 2019, the GIZ is commissioned to implement the project together with non-governmental organizations. Cobalt for Development has started training for twelve artisanal mining cooperatives in Kolwezi. The training covers major environmental, social and governance aspects for responsible mining practices. This includes mine site management and legal compliance, human rights, health and safety as well as environmental management. The initiative intends to train more than 1,500 artisanal cobalt miners by mid-2021.
- WWF Extractive Programme: the aim is to contribute to the change from the usual business scenarios toward a more sustainable and responsible business model supporting the growth of the conservation benefits of natural resource across the national territory.<sup>118</sup>
- UNICEF and Global Battery Alliance (GBA) initiative: Launched in 2020, this multi-stakeholder supports the government and civil society-led initiatives to strengthen local social services, including education, healthcare and birth registration. It will also strengthen social workers'

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<sup>114</sup> ITSCI website: <https://www.itsci.org/>

<sup>115</sup> <http://mneguidelines.oecd.org/oecd-portal-for-supply-chain-risk-information.htm>

<sup>116</sup> <http://www.responsiblemineralsinitiative.org/>

<sup>117</sup> [http://www.resolve.org/site-ppa/files/2012/06/RMT\\_DRC\\_FactSheet\\_Nov-15-2012-2.pdf](http://www.resolve.org/site-ppa/files/2012/06/RMT_DRC_FactSheet_Nov-15-2012-2.pdf)

<sup>118</sup> [https://www.wwf-congobasin.org/where\\_we\\_work/democratic\\_republic\\_of\\_congo/green\\_economy/](https://www.wwf-congobasin.org/where_we_work/democratic_republic_of_congo/green_economy/)

capacities to prevent, identify and respond to children who are negatively affected by mining operations and will support better social protection systems in mining communities.

## Annex 3: Example of Gold mining companies

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Information provided by Avocat Sans Frontière (ASF).<sup>119</sup>

Gold is mainly mined small-scale in DRC, but there are a few large-scale gold mines, as listed below.

Currently in Ituri there are no extractive companies mining gold. There is only one company (Mungwalu Gold Mining MGM) which is in the exploration phase. However, there are also cooperatives in the areas allocated to MGM for exploration work, and there is a conflict between the company and the cooperatives (i.e. illegal mining). There is a need to accompany the communities and the artisanal miners to avoid the situation degenerating into violent conflict.

In Haut Uele province the situation is much more complex and requires increased interventions. In this province there are many conflicts between the companies (Kibali and Giro) and the artisanal miners/communities.

Example of current conflicts

- There are conflicts between communities and companies in relation to relocation processes (expropriation, relocation, compensation...);
- There are conflicts between artisanal miners and companies. From the moment the company has an agreement with the state, artisanal mines should no longer be exploited in the conceded areas. In this situation, the miners would have to be compensated, or the company could create jobs to absorb them, or they could sign subcontracting agreements with the company to be able to continue to mine where this is compatible. But most of the time no solution is proposed and we see that artisanal miners stay on the concessions, which can lead to great violence;
- In addition, once they leave the area, the diggers have to go to ZEA, which poses a new problem: there are ZEA but they are not productive and/or, sometimes, they are geographically too far from the diggers' villages.

### Gold Mining Companies in East DRC

**Banro Congo Mining S.A** / Namoya Mining S.A / Lugushwa Mining S.A / Twangiza Mining S.A / Kamituga Mining S.A (Banro). A « Banro property » of approximately 7.461 km<sup>2</sup>.

**Casa Mining** (sold by Arc Minerals to Golden Square Equity Partners which operates with Chun Can Capital but no further information could be found).

**Giro Goldfields** (Amani Gold Limited). The Giro Project is located 35km west of Kibali Mine and demonstrates the same geological setting as Kibali. As further evidence of the significance of this favourable mining environment, Randgold (which merged with Barrick after) signed a JV agreement for the Moku Licence, which borders Giro to the East. The Giro Gold Project comprises of two permits covering 497 km<sup>2</sup> in the Moto Greenstone Belt, DRC. Amani has completed seven diamond core holes for 692m and 200 RC holds for 11,500m in the drilling campaign which commenced in September 2017.

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<sup>119</sup> Personal communication with Federica Riccardi, ASF, 24 March 2021

**KGL Société Minière de l'Ituri** – KGL-Somituri (Kilo goldmines). Kilo Goldmines Ltd. is a junior company in the exploration stage. The Company is engaged in acquisition, exploration and evaluation activities. It holds gold exploration properties in the Democratic Republic of Congo. The Company, through its subsidiary KGL Somituri SARL, holds an interest in the Somituri Project. The Somituri Project consists of six mining licences: Gambi, Boroda, Nane, Imbo, Ngazi and Dhahabau. These mining licences cover an area of approximately 361 square kilometres of the Archean Ngayu greenstone belt in the Oriental Province. The Company, through KGL Isiro SARL, holds more than 10 mineral exploration licences located in the Ngayu Greenstone Belt and the Isiro Greenstone Belt. It has not generated any revenue.

**Kibali Gold Mining** (Barrick, AngloGold Ashanti, SOKIMO). The Kibali gold mine is located in the Haut Uele Province in DRC, approximately 220 kilometres east of the capital of the province, Isiro, 150 kilometres west of the Ugandan border town of Arua and 1,800 kilometres from the Kenyan port of Mombasa. The mine is owned by Kibali Goldmines SA (Kibali) which is a joint venture company effectively owned 45% by each of Barrick (which merged with Randgold) and AngloGold Ashanti, and 10% by Société Minière de Kilo-Moto (SOKIMO). The mine is operated by Barrick.

**Loncor Resources Congo** (Loncor Resources Inc and partnership with Barrick). Loncor Resources Inc. is a Canadian gold exploration company focused on projects on the Ngayu Belt in the DRC. The company is looking to further expand its current resources and exploration targets, while benefitting from a JV partnership with Barrick Gold, with Barrick targeting in excess of seven Tier 1 (+5 million oz) targets across Ngayu. Loncor's team has previously delineated 17 million ounces of gold resources in areas of similar geology in neighbouring countries, plus 13 million ounces of gold resources in the 15 years of operating in the DRC, with the huge Ngayu Belt now the focus. Loncor holds exploration permits covering an area of 3,534 km<sup>2</sup>. Loncor currently holds an attributable inferred gold resource of 2.67million ounces, and 0.6 million ounces of indicated resources. The Imbo Project alone contains 2.5M ozs of inferred gold resources (84.68% attributable to Loncor) at grades similar to ABX's Kibali mine. At the Adumbi deposit within Imbo, Loncor aims to further increase resources significantly through an ongoing drill program, followed by a Scoping Study in early 2021 to reflect the potential value of the high-grade deposit.

**Mongbwalu Gold Mines** (MGI and SOKIMO). Mongbwalu Gold Mines (MGM) is 86.22% owned by MGI and 13.78% owned by Société d'Or de Kilomoto (SOKIMO). Mongbwalu Investment Limited (MGI) is the holding company that owns shares in MGM. MGM has the ambition to develop and operate a gold project in Mongbwalu, Ituri. Its Environmental Impact Assessment and Environmental Management Plan for the project were approved by the Congolese government in March 2012. After an initial transition from exploration to operation, the project was suspended by its then main shareholder, AngloGold Ashanti, in May 2013. More recently, Australian mining company Verctor Resources in partnership with Mongbwalu Gold Mines (MGM) secured a US\$35 million loan from a Dubai-based conglomerate and Madea future materials fund in October 2018. This loan was intended to finance the Adidi-Kanga gold mining project in the north-eastern part of the DRC, in the Ituri province. The exploration permit has a maximum duration of 5 years (3 years with a possibility to renew the exploration contract once for two years) and it seems that the company has been "exploring" for eight years. There are also conflicts between the artisanal miners and the communities. On the ground, people consider that the company is still active in the "exploration phase".

**Société Moku Beverendi** – SMB (Moku Goldmines and Randgold – which merged with Barrick after – but it is impossible to find more information on Barrick's website).



**Sida's Helpdesk for Environment and Climate Change**

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