



ASSESSMENT OF CORRUPTION RISKS IN THE AWARDING OF MINING RIGHTS IN THE DEMOCRATIC REPUBLIC OF THE CONGO

Congolese League Against Corruption (LICOCO)
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The Congolese League Against Corruption (LICOCO) is one of 20 Transparency International Chapters participating in the Mining for Sustainable Development Programme (M4SD).

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ACRONYMS AND ABBREVIATIONS

cAMI	Mining Cadastre	M4SD	Transparency International's global Mining for Sustainable Development Program
CARPO	Central Africa Regional Programme Officer	MIBA	Bakwanga Mining
CEEC	Assessment, Expertise and Certification Centre for mineral substances	NIZA	Netherlands Institute for Southern Africa
CENCO	National Episcopal Conference of the Congo	OKIMO	Kilo Moto Gold Mines Office
CEPAS	Centre for Social Action Studies	ONG	Non-Governmental Organisation
CERN	Episcopal Natural Resources Commission	ONU	United Nations
CM	Mining Code	OSC	Civil Society Organisations
CODESRIA	Council for the Development of Social Science Research in Africa	OSISA	Open Society Initiative for Southern Africa
COPIREP	Public Enterprise Reform Pilot Committee	PAR	Management and Rehabilitation Plan
CTCPM	Mining Coordination and Planning Technical Unit	PE	Operating Permit
DPEM	Directorate for the Protection of the Mining Environment	PEPM	Small Scale Mine Operation Permit
EIE	Environmental Impact Study	PEST	Political, Economic, Social and Technical
EIS	Social Impact Study	PGEP	Project Environmental Management Plan
EITI	Extractive Industries Transparency Initiative	PNUE	United Nations Environment Programme
EMK	KISENGE-MANGANESE Mining Company	PR	Exploration Permit
GECAMINES	Générale des Carrières et des Mines (General Quarries and Mines)	PROMINES	Mining Sector Development Project
GIZ	Gesellschaft für Internationale Zusammenarbeit (Coopération Allemande)	RDC	Democratic Republic of the Congo
IANRA	International Alliance on Natural Resources in Africa	SAESSCAM	Small Scale Mining Assistance and Training Service
ITIE	Initiative for Transparency in the Extractive Industries	SARW	Southern Africa Resources Watch
JORDC	Official Journal of the Democratic Republic of Congo	SODIMICO	Congo Industrial and Mining Development Society
LICOCO	Congolese League Against Corruption	SOMINKI	Kivu Mining Society
MACRA	Mining Awards Corruption Risk Assessment	TI	Transparency International
		UMHK	Union Minière du Haut Katanga (Mining Union of Upper Katanga)
		WWF	World Wide Fund for Nature

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GLOSSARY

Mining rights

Any prerogative to carry out exploration and/or extraction of mineral substances classified as mining in accordance with the provisions of the Mining Code. The Exploration Permit, Operating Permit, Extraction Permit and Small Scale Mine Operating Permit are mining rights.

Map of mineral deposits or cadastral map

An official topographical map indicating the boundaries of all Mine and Quarry Plots currently designated or whose applications are in progress, updated for each province and zone by the Mining Cadastre in accordance with the provisions of Section I Chapter II of the Mining Code.

Environmental Impact Study (EIE)

Preliminary scientific analysis of the foreseeable potential impacts of an activity on the environment, as well as examination of the acceptability of the severity of these impacts and mitigating measures that can protect the integrity of the environment according to the capabilities of the best available technologies at an economically viable cost.

Operation

Any activity wherein a person engages, using an identified deposit, and by means of surface and/or underground works, in the extraction of mineral substances from a deposit or an artificial deposit, and potentially in their processing in order to use or market them.

Tailings Extraction

Any activity wherein a third party, whether a natural or legal person, extracts substances from an artificial deposit in order to potentially process them and use or market them.

Project Environmental Management Plan (PGEP)

Environmental specifications for the project consisting of a programme for implementing and monitoring measures envisaged by the EIA to eliminate, reduce and potentially compensate for the harmful effects of the project on the environment.

Management and Rehabilitation Plan (PAR)

Plan required for operations under a mining or quarrying exploration right, or a Temporary Quarrying Permit, consisting of a commitment by the holder to carry out certain environmental mitigation and rehabilitation measures at the site of their activity, including a commitment by the holder to supply or provide financial assurance to ensure or guarantee the cost of environmental mitigation and rehabilitation.

Mining Titles

Official certificates issued by the Mining Registry in accordance with the provisions of the current Code and establishing mining rights. The Exploration Certificate, Operating Certificate, Tailings Extraction Certificate and Small-Scale Mine Operating Certificate are mining titles

Title Holder

Any person in whose name a mining or quarrying right is awarded and a mining or quarrying title established, in accordance with the provisions of the Mining Code and who undertakes or causes to be undertaken the operations authorised by their mining or quarrying title. However, the leaseholder is assimilated to the titleholder.

Mining Cadastre (CAMI)

Public service responsible for registering applications for awarding of mining and/or quarrying rights; mining and/or quarrying rights thus awarded as well as refusal decisions; cases of withdrawal, cancellation and loss of mining or quarrying rights, transfers and leasing of mining rights; mining securities.

It is also responsible for cadastral review of applications for mining and/or quarrying rights, the extension of mining or quarrying rights to other substances, coordination of technical and environmental review of applications for mining or quarrying rights as well as issuing the Prospecting Certification.

The Mining Cadastre certifies the minimum financial capacity for applicants for mining and quarrying exploration rights. It retains mining and quarrying titles. It regularly updates its registers and maps of mineral deposits according to a specific national cadastre which is open to public consultation. It records renewals of mining and/or quarrying rights in accordance with the provisions of the Code.

It notifies the relevant applicants of mining review notices and issues their mining or quarrying titles by virtue of the rights accorded by the competent authority. It issues notices in cases of classification, declassification and reclassification of prohibited zones. It is authorised to decide on matters of transfer or leasing of mining and quarrying rights and carry out their registration. It deregisters Mining or Quarrying Plots on the cadastral map.

It holds notarial power in matters of authentication of mortgage, lease and transfer documents for mining and quarrying rights.

Directorate of Geology

Responsible for the promotion of the mining sector through basic geological research, compilation and publication of geological information and the publication and popular dissemination of said information. The Directorate of Geology undertakes investigation and study activities as provided for by Article 8 Line 2 of the current Code.

It is exclusively empowered to receive or request the submission of control samples of any sample or batch of samples gathered within the National Territory for analysis or testing by granting approval in accordance with the provisions of the Code.

Directorate of Mines

Responsible for inspection and oversight of mining activities and quarry works with regard to safety, hygiene, work conduct, production, transportation and commercialisation and in social affairs. The Directorate of Mines is responsible for the compilation and publication of statistics and information on the production and commercialisation of the products of mines and quarries.

It is exclusively empowered to oversee and inspect industrial mining operations, small scale mining operations and artisanal operations. It receives and processes approval applications for purchasing agencies.

It issues notices regarding the awarding of mining and quarrying rights, the opening of artisanal operating zones, and the review of applications for approval as a purchasing office for gold, diamonds and other artisanal minerals.

Service Responsible for Protection of the Mining Environment

In coordination with other Government organisations responsible for environmental protection, it exercises the prerogatives conferred upon it by the present Code and by any other regulation concerning environmental protection, in particular the definition and implementation of mining regulations with regard to the conditions of oversight of environmental protection requirements, technical oversight of the PAR in relation to the exploration operations for mineral substances classified as mines and quarries; and the technical review of the EIE and PGEP submissions by applicants for mining rights and/or quarrying operation rights.

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This study identifies the systemic, regulatory and institutional vulnerabilities leading to corruption risks in the awarding of mining rights in the Democratic Republic of the Congo.

1. PREFACE

Transparency International Mining for Sustainable Development Programme

LICOCO RDC is one of the 20 National Chapters of Transparency International participating in the Mining for Sustainable Development Programme (M4SD).

This Program is coordinated by TI Australia.

The M4SD programme complements existing efforts to improve transparency and accountability in the extractive industry by focusing specifically on the first stage of the mining value chain: the stage at which governments issue and grant permits and licences, negotiate contracts and sign agreements.

The first phase of the Programme (2016-2017) consists of identifying the issues involved and evaluating corruption risks in the process and practice of granting permits, licenses and contracts.

This report presents the primary findings of the evaluation of corruption risks in the DRC.

With a better understanding of the nature and causes of corruption risks, LICOCO will develop and implement solutions to address priority corruption risks in Phase 2 of the M4SD programme (2018-2020). LICOCO will work with relevant stakeholders in government, the mining industry, civil society and communities affected by mining operations to promote transparency, accountability and integrity in decisions to award mining titles.

LICOCO's participation in Phase 1 of the M4SD Programme is financed by the BHP BILLITON Foundation. Globally, the M4SD Programme is also financed by the Australian Department for Foreign Affairs and Trade.

Ernest Mpararo
Executive Secretary

2. INTRODUCTION

This corruption risk assessment is conducted as part of Transparency International's Mining for Sustainable Development Programme.

The objective of this study is (i) to identify the systemic, regulatory and institutional vulnerabilities leading to corruption in the awarding of mining rights and related licenses, permits and contracts and (ii) to assess the specific corruption risks created by these vulnerabilities.

This report presents the principal findings of the study as well as the results of the corruption risk assessment.

It is structured in six sections:

- + the first section describes the context of the country;
- + the second section is devoted to the methodology used in the study of corruption risks;
- + the third section is dedicated to the description and analysis of the process of awarding mining rights (permit and contract, practice and context);
- + the fourth section deals with analysis of the research results;
- + the fifth section is devoted to discussion of the results of the risk assessment and
- + the sixth section is dedicated to recommendations.

3. METHODOLOGY

3.1 MACRA Tool

The analysis in this report uses a research methodology contained in the MACRA tool 'Mining Awards Corruption Risk Assessment Tool' (Nest 2016). The MACRA tool was created by an independent expert hired by Transparency International to provide a coherent, clear, reliable methodology for identifying and assessing corruption risks in the 20 countries participating in the M4SD Programme.

The first part of the risk assessment concerns data collection and analysis. The MACRA tool guides users in creating the mapping of the awarding process as prescribed by law and official procedural guides and manuals and industry policy. The tool also guides users in collecting information about practices in the implementation of the awarding process and about relevant contextual factors. Users thus analyse the 3 aspects of mining sector procurement - process, practice and context - to identify vulnerabilities to corruption.

Vulnerabilities are systemic, regulatory, institutional or other weaknesses that create risks of corruption, or opportunities for corrupt conduct to occur or go undetected, undermining the legal, compliant and ethical processes of awarding licences, permits and contracts.

The second part of the tool teaches users to identify and assess the specific corruption risks created by these vulnerabilities. The tool contains a list of 89 common risks related to the 5 different categories of risk factors - corruption risks arise from:

1. Design of the process,
2. Practice of the process,
3. Contextual factors,
4. Accountability mechanisms,
5. Legal and judicial responses to corruption.

Users can adopt or modify common risks, or create new ones that better fit their circumstances. Users thus assess each corruption risk by analysing the evidence of the likelihood of it happening and the potential impact.

The final step is the prioritisation of risks. The priority risks of the Chapter are those that it will seek to mitigate or address. The results of the risk assessment are the preliminary input into this ranking, but other aspects such as the Chapter's capacity to act, the resources required and the possibility of stakeholder collaboration are also important considerations.

The MACRA tool is based on TI's experience in assessing corruption risks in other sectors, such as the National Integrity System and other mechanisms in the mining and extractive sector as well as other indices and resources.

Experts from multilateral institutions, major non-governmental organisations and industry bodies provided valuable input to the development of the MACRA tool.

3.2 Research and data collection methods

For the purposes of this study, a sample was defined and stratified according to the level of importance of the services and sectors. It is composed of 3 strata representing the private sector, the public sector and civil society.

12 (twelve) interviews were conducted with resource persons, structured as follows:

- + 4 interviews with the private sector:
2 mining agents, 1 expert from the Chamber of Mines and 1 representative of a mining company;
- + 4 interviews with the public sector:
1 former agent of the Mining Cadastre, 1 expert from the Directorate for the Protection of the Mining Environment, 1 expert from the Directorate of Mines and 1 Advisor to the Minister of Mines;
- + 4 interviews with Civil Society organisations:
Carter Centre, OSISA/SARW, RWI and ASHADO.

The approach was qualitative and based on a Knowledge Attitudes and Practices (KAP) survey. We conducted open-ended interviews with key individuals identified in advance.

3.3 Review and validation of procedure

A workshop to validate the draft of this report was organised on 14 June 2017 at the CEPAS Centre in Kinshasa and saw the active participation of officials from the Mining Cadastre, the Directorate of Mines, the Directorate for the Protection of the Mining Environment and many representatives of Civil Society, a full list of whom is given in the appendices to this report.

This workshop provided an opportunity to review some of the vulnerabilities and risks of corruption identified in the draft of this report, submitted to the multi-sector participants prior to the workshop. Several recommendations, opinions and considerations were recorded as a result of this work and the most relevant have been integrated into the current version of the report. The most important of these are the following:

3.3.1 Mining Cadastre:

The officials from the Mining Cadastre recommended that **processing and assessment of financial capacity** not be considered a corruption risk or vulnerability since it is not their responsibility to inspect evidence submitted, of whatever kind, by applicants;

On the other hand, they suggested it be taken into account that **manual processing of files** could, to a certain extent, be an encouraging factor in preferential manipulation of files, especially under the principle of “first come, first served”. The order of arrival could be manipulated by a dishonest official.

For the officials of the Cadastre, but also for all of the experts from public authorities, the private sector and Civil Society present at the validation workshop, the first and greatest of the likely risks and vulnerabilities to corruption in the awarding of mining rights is **the deplorable salary conditions of public officials**.

Concerning the **discretionary power of the Ministry of Mines** in the awarding of mining rights, the experts from the Cadastre highlighted a difficulty in the interpretation of the current mining law regarding the role of the Minister of Mines.

Some believe that whether cadastral, technical and environmental assessment of an application for mining rights by the specialist services of the Ministry of Mines is favourable or unfavourable, the decision of the Minister must be in line with the result of said assessment.

Others believe that the mining legislation gives the Minister of Mines the right to make the final decision for or against the cadastral, technical and environmental recommendations of his department.

After analysing the arguments of both sides, we see this as further evidence of **political interference in the process of awarding mining rights**.

3.3.2 Directorate of Mines

In the previous draft of this report, we considered that the Mining Code states that the only condition for access to an exploration permit is to demonstrate the required financial capacity, however the holder of a mining permit cannot start exploration work without prior submission of a **Mitigation and Rehabilitation Plan (PAR)**. We saw this as an additional condition not considered as such by the mining legislation, and therefore a vulnerability. The discussions at the workshop helped us to understand that the submission of a PAR is not an additional condition but a step in the commencement of exploration works.

3.3.3 Directorate for the Protection of the Mining Environment

We were able to confirm, based on the information gathered during this validation workshop, that the working meetings of the **Inter-Ministerial Commission in charge of evaluating environmental plans submitted by applicants are paid for by the latter** in order to speed up the processing of files and even on-site visits for environmental checks.

The experts of the Environmental Protection Directorate are in constant contact with the Environmental Studies Offices in charge of preparing environmental plans on behalf of mining operators, whom they advise in the presentation of these plans, which makes these experts both judge and party.

3.3.4 Civil Society

Political interference in the management of the mining sector remains one of the fundamental factors in corruption in the mining sector. **The capture of the extractive sector by economic and political elites and their access to privilege and the decision-making process** constitutes a real vulnerability and increased risk of corruption.

PART ONE

Mapping the mining rights awards process in the DRC context

4. CONTEXT

4.1 Importance of the mining sector in the DRC economy

The DRC has been described as a “geological scandal”. Its subsoil is rich with an extraordinary mineral diversity. These resources can be classified into those that have been mined and those yet to be mined.¹

- + Minerals mined include copper, cobalt, zinc, manganese, lead, silver, gold, cadmium, rhenium, platinum, germanium, tin, wolfram, columbite-tantalite, monazite, diamond, lithium, beryl, tungsten and pyrochlore (niobium and chrome);
- + Unmined minerals include: iron, bauxite, nickel, phosphates and many others.

SOME OF THE DRC'S MINERAL RESERVES²

Mineral	Global Reserves	DRC Reserves
Copper	1.6 billion tonnes	160 million tonnes (10% of global reserves)
Cobalt	4.4 million tonnes	2.14 million tonnes (48.6% of global reserves)
Columbite-Tantalite	-	70 to 80% of global reserves
Diamond	-	35% of global reserves

With all of these mineral resources, the DRC is considered one of the most important mineral extraction centres in the world. Its untapped mineral reserves are estimated at 24,000 billion dollars (US).⁴

The DRC remains one of the most dynamic African economies thanks to a booming mining sector. Since 2010, real economic growth has been high, averaging around 7.7% between 2010 and 2014 and reaching a record 9.0% in 2014. The DRC's growth is three percentage points above the average for sub-Saharan Africa (SSA). Mineral production and related investments are the primary drivers of growth, though economic activity is increasing in other sectors such as agriculture. Between 2010 and 2014, copper production doubled to 1 million tonnes. Copper and cobalt account for more than 80% of goods exports.⁵

4.2 Governance of the mining sector

4.2.1 Legal framework applicable to the Congolese mining sector

Mining activities in the DRC are regulated by Law No. 007/2002 of 11 July 2002 establishing the Mining Code and Decree No. 038/2003 of 26 March 2003 containing the related implementation measures. In addition to the Mining Code and the Mining Regulations which set out the implementation measures, other legal and regulatory texts contain provisions relating to the mining sector.⁶

With regard to the taxation and customs regime, it is important to note that the 2002 Mining Code established a specific tax and customs regime for the mining sector. In addition to being unique and

applicable to all operators in the mining sector, the tax and customs regime provided for by the Mining Code is exhaustive and exclusive.

It should be noted that in accordance with Article 340 of the Mining Code, the activities of some mining rights holders are still governed by the Mining Conventions, provided for by Ordinance-Law n°81-013 of 2 April 1981 concerning general legislation on mines and hydrocarbons.

The scope of the Mining Code covers prospecting, exploration, extraction, processing, transport and marketing of mineral substances classified as mine or quarry products, as well as the artisanal use of mineral substances and their commercialisation.

4.2.2 Actors involved in governance of the DRC mining sector

Political institutions and specialised public organisations constitute the regulatory bodies of the mining sector, whose distribution of responsibilities is established by the Mining Code in Articles 8 to 16. In addition to the institutions defined by the Mining Code, Parliament has the authority to control public mining companies and governance of the mining sector by the government.

According to the Mining Code, the political and technical actors in the mining sector are:

- + **President of the Republic:** The prerogatives of the President of the Republic are provided for by Article 9 of the Mining Code and primarily concern the enactment of Mining Regulations, the classification, declassification, reclassification and reservation of mineral substances and zones.
- + **Minister of Mines:** The prerogatives of the Minister of Mines are provided for by Article 10 of the Mining Code and primarily concern the awarding, extension, withdrawal, and revocation of mining and quarrying rights, authorisations for the export of minerals in their raw state, approval of purchasing offices for artisanal mining products, the reservation of deposits to be put out to tender, and the establishment of prohibited zones.
- + **Provincial Governor:** The prerogatives of the Provincial Governor are provided for in Article 11 of the Mining Code and primarily concern the issue of traders' cards for artisanal mining products.
- + **Mining Cadastre:** The powers of the Mining Cadastre are provided for by Article 12 of the Mining Code. It is primarily responsible for registering applications for the awarding, withdrawal, cancellation and revocation of mining and quarrying rights, mining transfers, leases and securities; cadastral review; certification of the minimum financial capacity of applicants for mining and quarrying rights; safekeeping of mining and quarrying titles; and the regular maintenance of its registers and maps of mineral deposits in accordance with a specific national cadastre that is open to public consultation.
- + **Head of Provincial Mining Division:** The prerogatives of the Head of the Provincial Mining Division are provided for in Article 11 of the Mining Code and primarily concern the issuing of artisanal mining cards and the awarding of exploration rights for quarry products and the operation of permanent or temporary quarries for construction materials for everyday use.
- + **Directorate of Mines:** The powers of the Directorate of Mines are provided for by Article 14 of the Mining Code. It is primarily responsible for inspection and oversight of mining activities and quarry works with regard to safety, hygiene, work conduct, production, transportation and commercialisation and in social affairs. The powers of the Directorate of Mines are provided for by Article 14 of the Mining Code. It is primarily responsible for the inspection and control of mining and quarrying activities in terms of safety, hygiene, work conduct, production, transport, marketing and social matters. It is also responsible for the compilation and publication of statistics and information on the production and commercialisation of mining and quarrying products. The Directorate of Mines is exclusively empowered to oversee and inspect industrial, small-scale and artisanal mining operations.
- + **Directorate of Geology:** The powers of the Directorate of Geology are provided for by Article 13 of the Mining Code. It is responsible for the promotion of the mining sector through fundamental geological research, compilation and publication of geological information and the publication and popular dissemination of said information. It is exclusively empowered

to receive or request the submission of control samples of any sample or batch of samples gathered within the National Territory for analysis or testing by granting approval in accordance with the provisions of the Code.

- + **Service in charge of Protection of the Mining Environment:** The prerogatives of this Service are provided for by Article 15 of the Mining Code and primarily concern the definition and implementation of mining regulations in terms of environmental protection, technical review of the PAR in relation to exploration operations for mineral substances classified as mines and quarries, and technical review of the Environmental Impact Study (EIS) and the Project Environmental Management Plan (PGE) submitted by applicants for mining and/or quarrying rights.
- + **Congolese Parliament (National Assembly and Senate):** According to Article 100 of the Constitution of 18 February 2006, Parliament has the power to pass laws and control the government, public enterprises and public institutions and services. It is in this capacity that the Prime Minister, the Minister of Mines and the directors of public mining companies can be questioned in Parliament. It was on the basis of this constitutional provision that the Senate carried out an enquiry into the mining sector in 2009⁷ which revealed the state of poor governance in the sector.⁸ In addition, the process of revising the 2002 Mining Code is blocked in the National Assembly.

4.3 Process of awarding mining rights in the DRC

Reform of the mining sector in the DRC began with the promulgation in 2002 of new legislation in the form of the Mining Code and Regulations, which introduced a conceptual basis for a transparent mining access mechanism with specific procedures for the consideration of old mining titles and the granting of new mining rights.

According to this new legislation, no one may undertake or conduct an activity governed by the mining legislation in force in the DRC without first having obtained a mining title under the conditions set out in the mining legislation. – (CM, Art. 5). Mining titles are authorisations relating to the exploration

and extraction of mineral substances that confer property rights.

Prospecting for mineral substances is carried out freely throughout the DRC, subject to a certificate issued by the Mining Registry. It does not grant the right to mine and does not guarantee the subsequent acquisition of the prospected areas, with the exception of protected zones.

Mining rights regulated by the mining code include the exploration permit (PR), the operating permit (PE), the small-scale mining permit (PEPM) and the tailings extraction permit (PER), which are certified by the exploration certificate, the operating certificate, the small-scale mining certificate and the tailings extraction certificate.

This new regulation provides for only two methods for granting new mining rights, namely, (i) application for a new mining right through the ordinary procedure via the Mining Cadastre and (ii) participation in a tender for certain deposits of mineral substances classified as mines and quarries.

However, given the context outlined below, we can conclude that there is currently another possibility for accessing the mining sector in the DRC, namely (iii) partnership with companies in the Government portfolio that already have mining concessions.

4.3.1 Ordinary application for new mining rights via the Mining Cadastre.

The procedure for granting mining and/or quarrying rights by application is underpinned by the following fundamental principles:

1) The principles of transparency, objectivity, efficiency and rapidity in the process of receiving, reviewing, deciding on and notifying mining or quarrying rights as well as in the issuing of related titles, notably through the imposition of deadlines at all levels, the mechanism of automatic granting of rights upon expiry of the decision-making deadlines, the mechanism of registration by judicial means or the reasoning of any refusal.

Thus, in the event of a favourable opinion and in the absence of a decision within the time limit set for each type of mining or quarrying right, the right applied for is deemed to be awarded and the Cadastre must carry out the registration of the right. In the absence of

registration, the applicant may obtain registration by legal proceedings.

In the event of an unfavourable opinion, the competent authority must make its reasoned refusal decision within the time limit prescribed for each type of mining or quarrying right applied for.

2) The principle of priority review: Under the “first come, first served” principle, mining or quarrying rights are granted to the first applicant who meets the conditions of eligibility for the right applied for.

Once declared admissible, applications for mining or quarrying rights are subject to cadastral review, followed, where appropriate, by technical and environmental review.

This option concerns only the Exploration Permit. In effect, according to Article 12 of the Mining Code, CAMI is responsible for the registration and cadastral review of applications for the awarding of mining and/or quarrying rights.

At the end of this process, it issues favourable or unfavourable cadastral notices and transmits the file to the Minister of Mines for the awarding or refusal of mining or quarrying rights, as the case may be, by means of an Order. On the basis of the Ministerial Order granting the rights, CAMI registers the rights thus granted and delivers the titles to the applicants, after payment of the Surface Rights.

4.3.2 Participating in the tendering process for certain deposits of mineral substances classified as mines and quarries

In accordance with Articles 33 of the Mining Code and 44 of the Mining Regulations, deposits that are known, studied, documented or potentially worked by the State or its services, must be reserved by the Minister of Mines, upon the proposal of the Authority or service concerned or on their own initiative and confirmed by the Head of State, to be submitted for tender.

This procedure has never been implemented since, according to the directors of the Mining Cadastre, there are no known, studied and documented deposits in the state's mining domain that could be put out for tender.

4.3.3 Partnership with companies in the Government portfolio or others who already hold mining concessions

The 2002 Mining Code provides for the existence of joint enterprises duly established between the State and private operators constituting commercial companies and governed by the legislation on commercial companies.

This mechanism for the creation of joint enterprises may concern Exploration Permits held by local private and public companies and on which there are mineral indications or deposits likely to be developed with a view to the discovery of an economically exploitable deposit.

It may also apply to Operating Licences excluding those which are already the object of a partnership.

The route provided by the Mining Code for such a partnership is the option contract or the transfer of titles.

4.4 Scope of study

To better define the scope of our research, it is necessary to understand the mechanisms that currently govern the awarding of mining rights in the DRC. To do this, we need to go back to the period when the mining sector was still regulated by specific legislation and was the exclusive monopoly of the state, which it exercised through large parastatal industrial groups.

Following independence, several state-owned mining and production companies succeeded the Union Minière du Haut Katanga (UMHK) of the colonial era, especially following nationalisation in 1967, the most important of which are:

- + General Quarries and Mines, GECAMINES,
- + KILOMOTO Office of Mines (OKIMO),
- + BAKWANGA Mining Company (MIBA),
- + Kivu Mining and Industrial Society (SOMINKI)
- + KISENGE-MANGANESE Mining Enterprise (EMK) and
- + Congo Industrial and Mining Development Society (SODIMICO).

While they held exploration permits on documented concessions and significant industrial capital, disastrous management of each of these industrial entities led these state-owned enterprises to widespread bankruptcy.

This situation, as well as changes in the regulatory environment of the sector from the 1990s onwards, allowed these state-owned companies to enter into partnerships with private companies to pursue exploration and operation of the concessions for which they held mining licences.

In 2008, public companies held 416 mining licences (107 exploration licences and 208 exploitation licences), of which only 33 were under a partnership agreement with the private sector.

In theory, Congolese state-owned companies are subject to the same rules as other mining companies. They have to comply with the 2002 Mining Code and, since their transformation, also with the applicable commercial and bankruptcy laws. In practice, however, Gécamines and the other state-owned companies have an ambivalent status in the mining sector throughout the value chain, sometimes taking over the role of the state, sometimes operating as ordinary mining companies. Because of this ambivalent status, they become a parallel system of governance that is difficult to control and hold to account.⁹

In 2011, the mining cadastre (CAMI) recorded 2,250 active exploration permits (PR) (the oldest of which were issued in 1996), 398 operating permits (PE), 84 small-scale mining permits (PEPM) and 18 tailings extraction permits (PER), 12 of which are principally held by Gécamines.

Given the context outlined above in which the granting of rights or access to the mining domain in the DRC takes place, our scope of study will be limited to mining exploration and operation and will not take into account small-scale mining and tailings extraction. Secondly, it will focus only on the two main issues currently applicable to accessing the mining sector in the DRC, as the tendering process has never been implemented.

These are:

1. Requesting mining titles via the Mining Cadastre;
2. Partnership with companies in the Government portfolio.

4.4.1 Requesting mining titles via the Mining Cadastre

This process prevailed from the installation of the Mining Registry in 2003 until a few years ago when a moratorium was decreed, suspending the granting of new mining rights for a considerable period.

During this period the Cadastre continued to act as the sole provider of technical and environmental reviews and to carry out its notarial activities in the context of the authentication of option, transfer, leasing and mortgage proceedings.

A recent decree by the Minister of Mines has put an end to this moratorium and the Mining Cadastre has resumed the review of new applications for mining rights.

We will therefore examine the entire process, which begins with an application addressed to CAMI using the appropriate form, subject to the payment of filing fees and annual surface rights per square metre, until the Minister of Mines issues an order awarding or not awarding the mining right.

4.4.2 Partnership with companies in the Government portfolio

This mechanism of access to mining rights is of interest to us in the context of this study because although the conclusion of partnerships between Companies of the Government Portfolio and private companies are qualified as contracts between the parties, and although companies of the government portfolio have become commercial companies following reforms that have not yet been completed, the government remains the sole shareholder in these companies. Mining rights held by companies in the Government portfolio should therefore be considered as Government mining assets for the purposes of this study.

However, the monopolies held by state-owned companies under the previous regime meant that large tracts of land remained in the possession of state-owned companies, although some had not paid rent on the plots for years, which would otherwise result in the immediate forfeiture of the mining title. As a result, the state mining enterprises have become a de facto parallel mining office and the criteria and procedures on which they base the transfer of mining titles to investment partners, are not clearly defined. As such, any holder of a mining right can transfer it to investors through concessions or lease contracts, as can Gécamines. The difference here is that public assets are involved, and their transfer must therefore be subject to the special rules for state divestiture of public assets, which provide for a tendering process so that the country can make the best use of the terms of the deal.¹⁰

5. DESCRIPTION AND ANALYSIS OF THE LEGAL AND PRACTICAL PROCESS OF AWARDING MINING RIGHTS

The legal and regulatory framework for the mining sector has put in place transparent, objective, efficient and rapid mechanisms for the reception, investigation, decision and notification of the granting of mining rights and the issuing of related titles.

Applications for mining rights are subject to a cadastral, technical and environmental review, the content of which is specified by the legal and regulatory framework.

The 2002 DRC Mining Code organises access to mining exploration, mining, small-scale mining and tailings extraction.

As previously stated, the scope of this research will only consider exploration and mining.

This corruption risk assessment will also not consider procedures for renewal, total or partial conversion of the Exploration Permit or its extension to substances other than those for which it was awarded.

5.1 Requesting mining titles via the mining cadastre

This process concerns both the exploration licence and the operating licence.

Access to mineral exploration is free for any eligible person, whereas the granting of a Mining Permit is, by law, subject to only one condition: demonstration of minimum financial capacity.

The Exploration Permit is a real, fixed, exclusive, transferable and assignable right in accordance with the provisions of the present code.¹¹

An application must be made to the Mining Cadastre for the renewal or partial or total transformation of the Exploration Permit.

The extension of the Exploration Permit to substances other than those for which it is awarded also requires an application to the Mining Cadastre.

Only holders of an Exploration Permit who can prove, following exploration works, the existence of an economically viable deposit and demonstrate a sufficient financial capacity to carry out the development, construction and operation of the mine can commence mining operations.

They must also present a plan for the rehabilitation of the site upon its closure.

The applicant for an Exploitation Permit submits at the same time as his application to the Mining Registry: (i) an Environmental Impact Study (EIE) and (ii) a Project Environmental Management Plan (PGEP).

Thus, in Figures 1, 2, 3 and 4 in the appendices, we have mapped the process of granting an Exploration Permit and an Operating Permit, both as it should happen in theory and as it does in reality.

Using the legal process map and the map of actual practice in awarding exploration and operating permits by means of application to the Mining Cadastre, we have identified the following vulnerabilities (Fig. 5 and 6):

5.1.1 Vulnerabilities in the awarding of Exploration and Operating Permits

The severe lack of means to motivate the staff and the functioning of the Mining Cadastre, the Directorate of Mines and the Directorate for the Protection of the Mining Environment.

In the absence of a salary level commensurate with the level of expertise and the scope of work incumbent on the agents and experts of the Mining Cadastre and the Mining Administration, their vulnerability to the temptation of corruption and exposure to undue favours to facilitate the awarding of mining rights are undeniable, resulting in non-transparent and discretionary treatment in the management of the access phases of the mining sector.

The dependency of certain institutions, created by the Mining Code for its administration, on advances of funds from applicants to resolve their cases or on being paid by applicants to travel to site inspections.

During the validation workshop held in Kinshasa on 14 June 2017, an expert from the Directorate for the

Protection of the Mining Environment explained that the Permanent Inter-ministerial Committee which assesses Environmental Plans for Exploration and Operating Permits can only hold its meetings to evaluate these plans if the applicant pays for them, due to the lack of resources available to government institutions. The site visits of the experts of these organisations must be supported by the title holders of the areas to be inspected.

The limits of declaratory systems with a posteriori verification for structures with almost no operating resources.

The declarative system under which the DRC's mining sector operates requires the mining administration to have adequate means to ensure the verification of declarations made by mining operators. In the absence of these means, verification becomes a service sold by administrative officials without any objective basis.

There is an inability of the state services to carry out their tasks, in whole or in part. This inability is attributed to a lack of capacity (staff, training and logistical support) to monitor and evaluate the work done in the concessions covered by the operating permits (PWC).

The extent of the discretionary rights of the Minister of Mines in awarding, refusing to award, renewing and refusing to renew mining rights.

The Mining Code gives broad discretionary powers to the Minister of Mines to award mining titles. Discretionary powers are often quite broad and opaque, and this increases the risk of arbitrary decisions, especially if they are not accompanied by accountability mechanisms.

Manual processing of certain phases of cadastral review of applications for mining rights.

Close attention must be paid to basic cadastral information concerning the chronological sequence of applications in order to ensure that the first come, first served principle is respected. In practice, it is noted that during the processing of applications for mining permits and titles, depending on the offers made by the mining companies to the agents, several manipulations can occur to distort the "first come, first served" principle. Mining Cadastre officials also receive instructions from their superiors on how to proceed with certain files.

5.2 Partnership with companies in the government portfolio

This process only applies to the operating licence held by the companies in the Government portfolio.

FIGURE 1. MAP OF THE OFFICIAL PATHWAY FOR AWARDING RIGHTS UNDER A PRIVATE LAW PARTNERSHIP CONTRACT

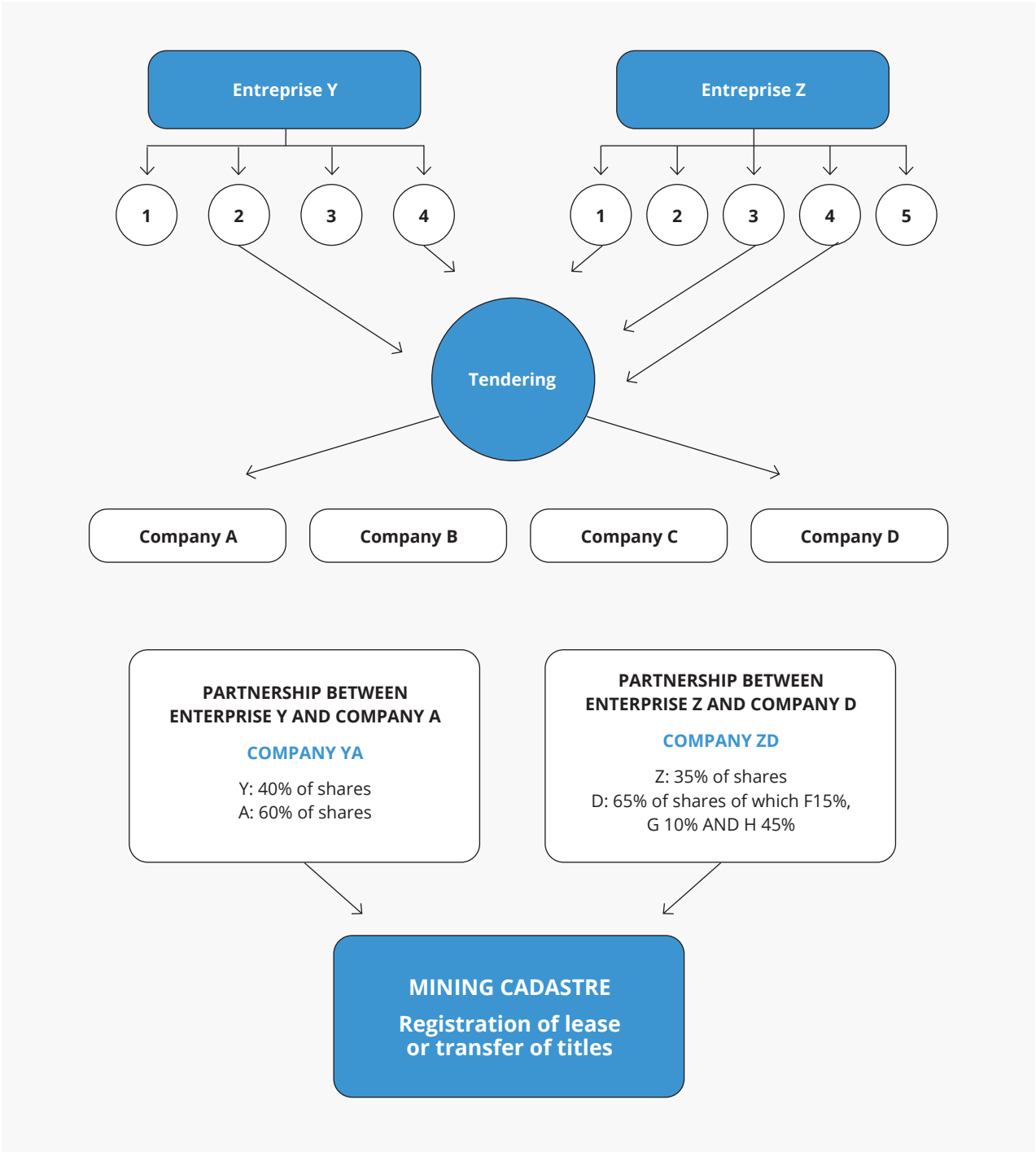
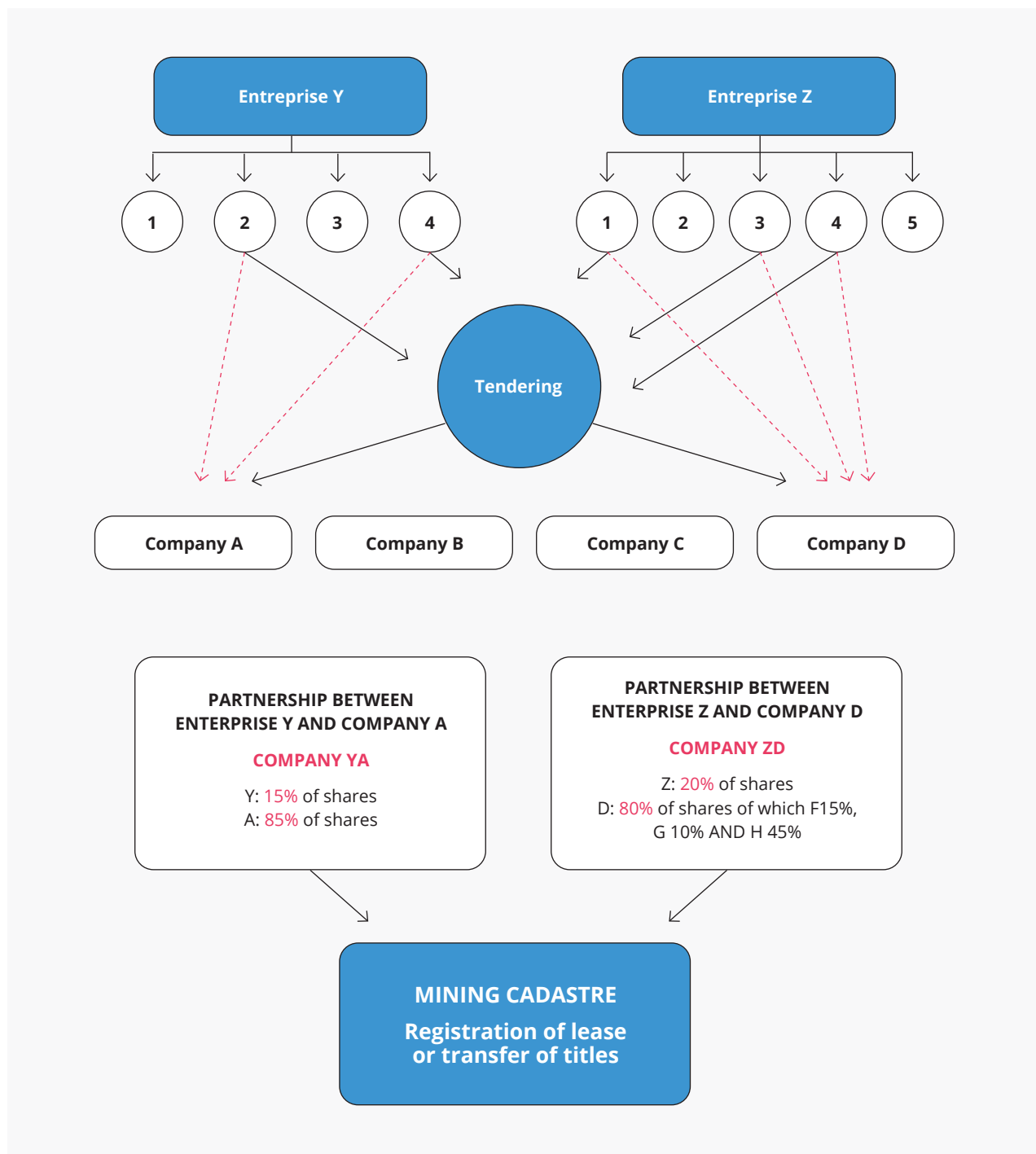


FIGURE 2. MAP OF THE PRACTICAL PATHWAY FOR AWARDING RIGHTS UNDER A PRIVATE LAW PARTNERSHIP CONTRACT



In theory, Congolese state-owned companies are subject to the same rules as other mining companies. They have to comply with the 2002 Mining Code and, since their transformation, also with the applicable commercial and bankruptcy laws. In practice, however, Gécamines and the other state-owned companies have an ambivalent status in the mining sector throughout the value chain, sometimes taking over the role of the state, sometimes operating as ordinary mining companies.

Because of this ambivalent status, they become a parallel system of governance that is difficult to control and hold to account.¹²

The 2002 Mining Code clearly sets out the procedures to be followed in the management of titles and permits. However, the state-owned companies that still hold most of the mining titles for commercially viable and profitable deposits sign many joint venture agreements under particularly opaque conditions, thus weakening the competition provisions of the Mining Code. (Revenue Watch Institute).

5.2.1 Vulnerability in the signing of partnership contracts

1. Almost all contracts and partnership agreements signed between Public State Enterprises and international private companies have never been based on a call for tenders, even though the mines are documented.

Analysis of mining contracts has revealed that, overall, considerable advantages are granted to concessionary companies to the detriment of the Congolese Government. The State assumes numerous burdens and makes many sacrifices, as demonstrated in the consultants' analyses. In fact, the multiple exemption regime means that the State does not make any real profit from these contracts because these exaggerated exemptions deprive the State of the means to implement its policy.

2. The non-publication of the conditions of negotiation of mining contracts does not allow for a broad analysis of the transaction. It restricts the ease of more effective monitoring of contract implementation.

In 2011, the government signed a decree requiring that any contract for the transfer, sale or lease of the state's natural resources be made public within 60 days of its execution. Despite efforts, this commitment is not fully met.



Almost none of contracts and partnership agreements signed between Public State Enterprises and international private companies have been based on a call for tenders.

5.3 Mapping the context in which mining rights are awarded

A common risk management approach for building contextual knowledge is to conduct an analysis of political, economic, social and technological factors, also known as a 'PEST analysis'. The purpose of a PEST analysis is to help identify 'events' that could give rise to corruption.

Through the analysis of political, economic, social and technical factors (PEST tool), we examine the environment in which mining rights (Exploration Permits and Operating Permits) are awarded in the DRC and analyse the impacts of these factors on the environment surrounding the awarding of these rights.

This analysis revealed vulnerabilities related to the political, economic, social and technical context that influences the procedures for accessing the DRC's mining sector. (See Appendices Figure 9 and 10).

5.3.1 The primary vulnerabilities reported by the PEST analysis are as follows:

From the political point of view

3. The recurrent interference of political authorities, security services and private interests of government officials in mining activities and the involvement of high-level political actors in the negotiation of mining contracts have been documented in this study and in previous studies and reports.

From the economic point of view

4. State-owned mining companies in the DRC are still important in the governance of the mining sector. They possess known and documented deposits. Their transformation into commercial companies was designed to enable them to compete with private companies following the liberalisation of the sector. However, this transformation has not succeeded in containing the dominance of foreign companies in the Congolese mining sector.

From the social point of view

5. Officials of the Mining Cadastre and the mining administration have serious difficulties in living on their salaries, which on average hover around one hundred dollars a month. This salary is far below the salary scale of the mining companies.

From the technical point of view

6. The DRC does not yet have an up-to-date geodesic network and the topographic maps lack consistency. Documents on the geological potential of the DRC are almost non-existent. The available information is outdated, scattered and there is no database centralising all the available information. As a result, there are very few well-documented deposits.

In the following worksheet, we have documented all the identified vulnerabilities and corresponding risks in the process of granting exploration and operating permits, public and private partnerships and the context analysis.

FIGURE 3. WORKSHEET A: VULNERABILITIES AND RISKS IN THE AWARDING OF EXPLORATION PERMITS/OPERATING PERMITS/PUBLIC-PRIVATE PARTNERSHIP/PEST ANALYSIS

I. Vulnerabilities in the awarding of exploration and research permits Steps 2A and 3A	Risks Step 4
<ol style="list-style-type: none"> 1. The severe lack of means to motivate the staff and the functioning of the Mining Cadastre, the Directorate of Mines and the Directorate for the Protection of the Mining Environment. 2. The dependency of certain institutions, created by the Mining Code for its administration, on advances of funds from applicants to resolve their cases or on being paid by applicants to travel to site inspections. 3. The limits of declaratory systems with a posteriori verification for structures with almost no operating resources. 4. The extent of the discretionary rights of the Minister of Mines in awarding, refusing to award, renewing and refusing to renew mining rights. 5. Manual processing of certain phases of cadastral review of applications for mining rights. 	<p>CP5: What is the risk when the salaries of the staff of the Mining Cadastre and the mining administration are lower than a living wage?</p> <p>PP3 (adapted): What is the risk of “regulatory capture” of Mining Cadastre and Mining Administration staff by mining companies?</p> <p>IR14: What is the risk of inadequate monitoring of licence and permit holders and their obligations?</p> <p>CP22 (modified): What is the risk of political interference in the process of awarding and transferring mining rights?</p> <p>CP31: What is the risk that applications submitted will be deliberately mishandled.</p>
III. Private-public partnership vulnerabilities	Risks
<ol style="list-style-type: none"> 6. Almost all contracts and partnership agreements signed between Public State Enterprises and international private companies have never been based on a call for tenders, even though the mines are documented. 7. The non-publication of the conditions of negotiation of mining contracts does not allow for a broad analysis of the transaction. It restricts the ease of more effective monitoring of contract implementation. 	<p>CP – N1: What is the risk that the real value of the mining asset will be removed from the sale when it is not done in a transparent manner through the auction process?</p> <p>CP19: What is the risk that the terms for contract negotiation, including what is negotiable and what is non-negotiable, will not be made public prior to negotiations?</p>

IV. Pest context vulnerabilities	Risks
1. Political Factors	
<p>8. The recurrent interference of political authorities, security services and private interests of government officials in mining activities and the involvement of high-level political actors in the negotiation of mining contracts have been documented in this study and in previous studies and reports.</p>	<p>CP22: What is the risk of external interference in the licensing and other processes of the cadastre agency?</p>
2. Economic Factor	
<p>9. State-owned mining companies in the DRC are still important in the governance of the mining sector. They possess known and documented deposits. Their conversion to commercial companies was designed to enable them to compete with private companies following the liberalisation of the sector. However, this transformation has not succeeded in containing the dominance of foreign companies in the Congolese mining sector.</p>	<p>FC1: What is the risk that mining laws have been formulated to favour private interests over the public interest, or will be in the event that reform is considered?</p>
3. Social Factor	
<p>10. Officials of the Mining Cadastre and the mining administration have serious difficulties in living on their salaries, which on average hover around one hundred dollars a month. This salary is far below the salary scale of the mining companies.</p>	<p>CP5: What is the risk when the salaries of the staff of the Mining Cadastre and the mining administration are lower than a living wage.</p>
4. Technological Factor	
<p>11. The DRC does not yet have an up-to-date geodetic network and the topographic maps lack homogeneity. Documents on the geological potential of the DRC are almost non-existent. The available information is outdated, scattered and there is no database centralising all the available information. As a result, there are very few well-documented deposits.</p>	<p>CP26: What is the risk of award decisions being based on unclear or imprecise information?</p>

The next step is to match the vulnerabilities found in the awarding system, as well as those relating to the context in which the awarding of rights takes place, with relevant risks. Here we must see to what corruption risks these vulnerabilities may lead.

PART TWO

Identification, assessment, estimation and prioritisation of corruption risks

6. IDENTIFICATION OF CORRUPTION RISKS

FIGURE 4. WORKSHEET C: ASSESSMENT OF RISKS

1. What is the risk when the salaries of the staff of the Mining Cadastre and the mining administration are lower than a living wage?

Code: CP5

Low salaries may be an incentive to demand bribes, speed money or gifts, especially if salaries of their private sector mining counterparts are far higher. Importantly, mining companies will be aware of any differences in pay and may target officials' grievances around salary.

Evidence to support assessment of probability

Probability:
Score 5/5

1. Given the arrangements in place for the financing of the mining sector, it would make sense for the Government to ensure that key entities in the sector receive amounts at least in line with the regulatory provisions, to enable them to finance themselves and meet their obligations.

Source: *Report on the financial management arrangements of the Ministry of Mines, PWC, PROMINES, 2013.*

2. Budgets voted for, such as that of CAMI, are not sufficient to cover the needs of the institution.

Source: *Report on the financial management arrangements of the Ministry of Mines, PWC, PROMINES, 2013.*

3. Depriving CAMI of its own resources and making its operation dependent on the small sums irregularly allocated by the Treasury has a negative impact on the fulfilment of the mandates assigned to it.

Source: *Senate, Report of the Commission of Inquiry on the Mining Sector, Kinshasa, 2009, p.116.*

Evidence to support assessment of impact

Impact:
Score 5/5

1. The low salaries of CAMI officials are one of the primary factors that lead them to solicit money from applicants for mining rights or to accept offers of money in the performance of their duties in the process of awarding mining rights, resulting in non-transparent and discretionary processing of applications for mining rights.

Source: *Interview with a mining agent, private sector. Kinshasa, 12 April 2017.*

2. In a situation where the civil servant considers that the state is not fulfilling its obligation, for example to pay them a decent salary on a regular basis, they help themselves

Source: *Resistance to 'good governance' in an African state. Reflections on the Congolese case (DRC) by Pierre JACQUEMOT.*

3. The impact of the low salaries of civil servants is reflected in the exacerbation of corruption factors and the lack of responsibility of State oversight bodies (non-compliance with social and environmental standards, etc.),

Source: *Resistance to 'good governance' in an African state. Reflections on the Congolese case (DRC) by Pierre JACQUEMOT.*

Description of Impact

In the absence of a salary level commensurate with the level of expertise and the scope of work incumbent on the agents and experts of the Mining Cadastre and the Mining Administration, their vulnerability to the temptation of corruption and exposure to undue favours to facilitate the awarding of mining rights are undeniable, resulting in non-transparent and discretionary treatment in the management of the access phases of the mining sector.

Assessment

Probability x Impact = 5x5 Total number : 25

Colour:	Blue	Green	Yellow	Orange	Red
Level of risk:	Very low	Minor	Moderate	Significant	Very high

2. What is the risk of "regulatory capture" of Mining Cadastre and Mining Administration staff by mining companies?

Code: PP3 (adapted)

The dependency of certain institutions, created by the Mining Code for its administration, on advances of funds from applicants to resolve their cases or on being paid by applicants to travel to site inspections constitutes a major corruption risk.

Evidence to support assessment of probability

Probability:
Score 5/5

1. Due to lack of financial means, meetings of the Permanent Committee for the Evaluation of Environmental Plans have to be paid for by applicants for exploration or operating permits.

Source: *Declaration of an expert from the Directorate for the Protection of the Mining Environment during the meeting to validate the RDC report, Validation Workshop, CEPAS, Kinshasa, 14 June 2017.*

2. Some officials of the Directorate for the Protection of the Mining Environment work in a clandestine manner in the Environmental Studies Offices accredited to produce Environmental Plans on behalf of mining operators.

Source: *Interview with a mining agent, private sector. Kinshasa, 12 April 2017.*

3. The environmental experts of the Directorate for the Protection of the Mining Environment are themselves responsible for drawing up Mitigation and Rehabilitation plans on behalf of the mining operators and are therefore both judge and party.

Source: *Declaration by a mining agent.*

Evidence to support assessment of impact**Impact:**

Score 5/5

1. Poor management of economic and physical impacts is also due to the failings of the administrative services (permits are granted despite weak preliminary studies, populations are not informed, no intervention in case of conflict between the local population and the company).

Source: *Strategic, environmental and social assessment of the mining sector in the DRC, SOFRECO, 2014*

2. Most environmental reports are incomplete in terms of environmental data (e.g. data on the quantity and quality of liquid effluents, solid discharges and atmospheric emissions from mining companies).

Source: *Strategic, environmental and social assessment of the mining sector in the DRC, SOFRECO, 2014*

Description of Impact

The independence of the reviews carried out by DPEM officials can sometimes be questioned as the costs of these reviews are covered by the mining companies under review.

Assessment

Probability x Impact = 5x4 Total number : 20

Colour:	Blue	Green	Yellow	Orange	Red
Level of risk:	Very low	Minor	Moderate	Significant	Very high

3. What is the risk of inadequate monitoring of licence and permit holders and their obligations?**Code: IR14**

Monitoring helps to deter corruption and detect wrongdoing early. Responsibility for monitoring, and who is responsible, should be clearly defined; the results should be publicly available; and if companies are allowed to produce their own reports, they should meet international standards and be auditable.

Evidence to support assessment of probability**Probability:**

Score 3/5

1. Due to insufficient financial capacity, large areas of land, which are subject to exploration or operating permits, are not developed. Some permits are held by local and foreign interests for speculation rather than for research or operation.

Source: *Daouda BAYILI, note to the participants in the taxation discussion organised by COREF with the support of Coopération Allemande (GIZ), 2015.*

2. In order to obtain a research permit, each company must provide a minimum certificate of financial standing or evidence of its ability to commit as an investor. However, several mining companies have managed to provide such guarantees without having the necessary means to do so.

Source: *General Assembly on Mining, 5th mining day, Kinshasa, 2008.*

3. In addition, a massive and systematic violation of the law by mining operators is observed. It concerns “one of the typical frauds reported by the Mining Cadastre “ which is the abusive use of the exploration permit when the deposits are known and the operator is in fact extracting. Extraction is often made possible by subcontracting strategies, or even by illegal recourse to artisanal miners.

Source: *Study for the identification of a programme for the improvement of parafiscal and state revenues in the DRC, Karsenty, 2006.*

4. As part of efforts to combat the freezing of mining areas, the conditions for obtaining exploration or operating rights will be strengthened by evidence of technical and financial capacity to carry out the planned work.

Source: *Ministry of Mines vision for the period 2010-2015.*

Evidence to support assessment of impact

Impact:

Score 4/5

1. In 2008, of 4542 exploration permits issued, only twelve were converted to Operating Permits. Concessions change ownership without prior notice to the relevant authorities.

Source: *Vigilance DRC, Mines: freezing of research permits. Vigilencerdc.afrikblog.com. February 2008.*

2. The offices of the Mining Cadastre have been closed for more than 5 years to allow the reorganisation of the land conceded in order to return to the State domain the areas covered by mining rights whose holders did not have the credible financial capacity to develop them.

Source: *Proceedings of the Goma Mining Conference, April 2014.*

3. End the freeze on mining concessions and award titles to operators with the necessary financial and technical capacity.

Source: *Recommendations of the Goma Mining Conference, April 2014.*

4. Clean up the mining sector by applying legal provisions and withdrawing mining titles from holders who have not demonstrated any technical and financial capacity in the field.

Source: *Recommendations of the Goma Mining Conference, April 2014.*

Description of Impact

While the system in the DRC's mining sector is essentially declarative, the lack of means to carry out a posteriori inspections paves the way for the non-accountability of public agents and the discriminatory treatment of mining operators.

Assessment

Probability x Impact = 3x4 Total number : 12

Colour:	Blue	Green	Yellow	Orange	Red
Level of risk:	Very low	Minor	Moderate	Significant	Very high

4. What is the risk of political interference in the process of awarding and transferring mining rights?

Code: CP22 (Modified)

The extent of the discretionary rights of the Minister of Mines in awarding, refusing to award, renewing and refusing to renew mining rights.

Evidence to support assessment of probability

Probability:

Score 5/5

1. The involvement of political authorities in the mining sector and their collusion with mining operators are regularly reported in the media.

Source: *Dialogue*, 2016, n° 4, <http://www.congoforum.be/upldocs/> (Consulted 7 March 2017)

2. Appointments to leadership positions in the Mining Cadastre are made by the government, which appoints executives loyal to it. Regardless of qualifications, declared or undeclared political affiliation is a dominant factor in appointments to leadership positions at CAMI.

Source: Kuediasala, Faustin. 2007. "Congo-Kinshasa: Under the impetus of Copirep, experts examine the new organisation chart of the Mining Cadastre". *Journal Le Potentiel*.

3. There are reports from international organisations that attest to the involvement of political authorities in the management of mining assets in the DRC.

Source: *Final report of the group of experts on illegal extraction of natural resources and other forms of wealth in the Democratic Republic of the Congo (S/2002/1146)*.

4. Political interference is practised by executive political authorities in the process of awarding mining rights in order to protect their own interests or those of their relatives. It often involves pressure on CAMI officials to grant rights to beneficiaries of mining rights even if the required conditions are not met.

Source: *Governance of the mining sector and development issues in the DRC, Doctoral thesis 2010*.

Evidence to support assessment of impact

Impact:

Score 5/5

1. Governance of the mining sector in the DRC needs substantial improvement, particularly in the areas of state ownership of capital, information dissemination, transparency of revenue flows, conflicts of interest and traceability of mining products.

Source: *Good governance in the mining sector as a growth factor, World Bank, 2008*.

2. Since 2010, a number of offshore companies associated with DAN GERTLER, an Israeli businessman and friend of Congolese President Joseph KABILA, have secretly bought shares in several mines from the State, at a cost far below commercial estimates of their value. The mines were sold without an open bidding process and limited details were only published long after the assets were sold.

Source: *Mining contracts and corruption in the DRC: GLENCORE must explain itself, Global Witness 2012*.

3. Extremely profitable contracts are being concluded in the Congo by secretive offshore companies and multinationals; these contracts bring in peanuts to the Congolese Government and we are deeply concerned that the Congolese people are being deprived of billions of dollars.

Source: *Daniel BALINT-KURTI, Janvier 2014G, Global Witness*.

4. In addition, rather than conforming to their legally defined power, inspectors of the mining cadastre are subject to influences from all sides. It thus appears that the mining cadastre does not exercise the full extent of its legally recognized powers to decide such disputes. The highest bidding investors end up triumphing and snatch up the mining titles already allocated. These tensions can be felt on the ground. Local populations are manipulated to the benefit of one or other investor who appears to embody their wishes.

Source: Adolphe KILOMBA SUMAILI : *Legal protection of foreign investors by the new DRC mining code: case of the city of KAMITUGA, 2015.*

Description of Impact

Political interference in the awarding and renewal of mining rights and the transfer and sale of mining assets deprives the Congolese Government of the financial means it sorely needs to ensure the well-being of its population. A series of complex arrangements between the DRC's political elite and multinationals in the change of ownership of mining rights benefits a small number of people at the expense of the rest of the population.

Assessment

Probability x Impact = 5x5 Total number : 25

Colour:	Blue	Green	Yellow	Orange	Red
Level of risk:	Very low	Minor	Moderate	Significant	Very high

5. What is the risk that applications submitted will be deliberately mishandled?

Code: CP31

Manual processing of certain phases of cadastral review of applications for mining rights can lead to attitudes that contradict the principles governing the process of awarding mining rights.

Evidence to support assessment of probability

Probability:
Score 3/5

1. Through the adoption of computerised cadastral systems, mining countries have been able to strengthen their institutional capacity, reduce application processing times and reduce errors (such as overlap between adjacent permits), and thus improve the security of ownership of their holders. These improvements have had the added benefit of improving transparency, reducing corruption and eliminating discretionary aspects in the implementation of legal and regulatory regimes.

Source: *Promoting transparent access to mineral resources and Mining Cadastres, World Bank, 2015.*

2. Close attention must be paid to basic cadastral information concerning the chronological sequence of applications in order to ensure that the first come, first served principle is respected. The system should have different levels of permission for users to access data.

Source: *Promoting transparent access to mineral resources and Mining Cadastres, World Bank, 2015.*

3. Computerised cadastral tools are management tools to support administrative management by facilitating accurate access to required cadastral information, facilitating the processing of applications, monitoring of deadlines and processes related to cadastral procedures.

Source: *Promoting transparent access to mineral resources and Mining Cadastres, World Bank, 2015.*

Evidence to support assessment of impact**Impact:**

Score 5/5

1. In the absence of computerisation of all phases of the awarding of a mining right, the manual handling of files by Cadastral officials can lead to preferential treatment for an applicant who has filed their application file to the detriment of another who has filed theirs earlier.

Source: Interview with an expert of the Chamber of Mines, private sector. Kinshasa, 18 April 2017.

2. The lack of transparency in the acquisition of mining permits and titles had led to the suspension of the attribution of research permits to allow the technical services to assess the compliance of current research permit holders with their obligations in order to sanction non-compliant holders.

Source: Speech of the Minister of Mines, Mining Conference, Goma 2014.

3. With serious geodetic and cartographic limitations, the DRC Mining Cadastre has difficulty in accurately delineating permits on maps, which often leads to cadastral conflicts.

Source: Promoting transparent access to mineral resources and Mining Cadastres, World Bank, 2015.

Description of Impact

The manual processing of certain phases of cadastral review of applications for mining rights can lead to bias in the first come, first served procedure or in the availability of the desired area.

Assessment

Probability x Impact = 3x5 Total number : 15

Colour:	Blue	Green	Yellow	Orange	Red
Level of risk:	Very low	Minor	Moderate	Significant	Very high

6. What is the risk that the real value of the mining asset will be removed from the sale when it is not done in a transparent manner through the auction process?

Code: CP22 (Modified)

Almost all contracts and partnership agreements signed between Public State Enterprises and international private companies have never been based on a call for tenders, even though the mines are documented.

Evidence to support assessment of probability**Probability:**

Score 4/5

1. Congolese people in Katanga have indicated that they are very concerned about these recent transactions, for three main reasons: the perceived imbalance between the shares allocated to private companies and Gécamines under the contracts, private companies making considerable profits at the expense of Gécamines, and the latter's resources and capacity to generate revenue being seriously affected.

Source: Deep corruption. Fraud, abuse and exploitation in the copper and cobalt mines of Katanga. A report by Global WITNESS 2006.

2. The DRC has some of the richest mineral resources in the world, yet often loses out because state-owned enterprises systematically undervalue assets. Concessions have been sold on terms that turn out to generate large profits for foreign investors, most of whom are registered in offshore centres, resulting in considerable losses for public finances.

Source: AFRICAN PROGRESS PANEL, *Equity and Extractive Industries in Africa. Making Management Work for All*, Africa Progress Report 2013. Page 55.

3. The introduction of new legislation to regulate public-private partnerships and a systematic and periodic review of mining agreements and contracts that are more than 10 years old, with the possibility of terminating them when the signatory parties fail to meet their contractual obligations.

Source: National Assembly, *Special Commission 'Lutundula' charged with examining the validity of economic and financial agreements concluded during the wars of 1996-1997 and 1998*, Kinshasa, 2004.

Evidence to support assessment of impact

Impact:

Score 5/5

1. Analysis of mining contracts has revealed that, overall, considerable advantages are granted to concessionary companies to the detriment of the Congolese Government. The State assumes numerous burdens and makes many sacrifices, as demonstrated in the consultants' analyses. In fact, the multiple exemption regime means that the State does not make any real profit from these contracts because these exaggerated exemptions deprive the State of the means to implement its policy.

Source: Report on the analysis of contracts and partnership agreements signed by the Congolese State and/or the Enterprises of the State Portfolio Group with private investors in the mining and petroleum sector, OSISA and Faculty of Law of the University of Kinshasa, OSISA/SARW, 2016.

2. Most of the partnerships concluded between public enterprises and international private companies have been unbalanced to the disadvantage of the Congolese state. Company delegates and government representatives have not defended the interests of the state.

Source: NIZA, *The State Against the People: Governance, Mineral Extraction and the Transitional Government in the Democratic Republic of the Congo*, Amsterdam, 2006, pp. 47-48.

3. Some former political leaders are currently associates of private companies that have signed partnerships with public mining companies. This is the case of former Ministers of Mines or of the portfolio. This reveals a conflict of interest on the part of these former political leaders.

Source: NIZA, *The State Against the People: Governance, Mineral Extraction and the Transitional Government in the Democratic Republic of the Congo*, Amsterdam, 2006, p. 47.

Description of Impact

The majority of contracts and partnership agreements negotiated and signed between state enterprises and private companies were signed under suspicious conditions, in complete illegality and non-transparency, so that the shares that should have gone to the state were reduced despite the process of revisiting these partnerships carried out by the state in order to rebalance it.

Assessment

Probability x Impact = 4x5 Total number : 20

Colour:	Blue	Green	Yellow	Orange	Red
Level of risk:	Very low	Minor	Moderate	Significant	Very high

7. What is the risk that the terms for contract negotiation, including what is negotiable and what is non-negotiable, will not be made public prior to negotiations? Code: CP19

The publication of the terms of negotiation of mining contracts allows for a broader analysis of the transaction. It facilitates more effective monitoring of contract implementation. Civil society organisations actively monitor compliance with certain contractual obligations.

There is an obligation to disclose contracts in the DRC (see Prime Minister's Decree n° 011/26 of 20 May 2011 concerning the obligation to publish all contracts relating to natural resources: itierdc.org).

Evidence to support assessment of probability

Probability:

Score 4/5

1. No country better illustrates the extent of the costs associated with opaqueness in the trading of concessions than the Democratic Republic of Congo (DRC). The privatisation of the DRC's mining sector has been marked by a pervasive culture of secrecy, informal agreements and allegations of corruption.

Source: AFRICAN PROGRESS PANEL, *Equity and Extractive Industries in Africa. Making Management Work for All*, Africa Progress Report 2013. Page 55.

2. Transparency is generally poor in the extractive sector around the world. Of the 58 countries included in the Natural Resources Governance Index, only 10 make public the majority of their oil, gas and mineral contracts and permits; however, this group is growing with the recent disclosures of Afghanistan, Ghana and Guinea.

Source: Revenue Watch Institute, 2013.

3. Of the 17 projects analysed, 'at least 62 contracts, amendments and appendices have not been published by the Ministry of Mines, in violation of the Congolese government's decree requiring their publication within 60 days of signature.

Source: *Who does not seek, does not find. Transparency of mining projects in the DRC.* Carter Centre, POM and MMKI, January 2015.

Evidence to support assessment of impact

Impact:

Score 5/5

1. The IMF halted a loan programme following the government's failure to release full details of a mining deal involving the sale by the state-owned mining company, Gécamines, of a stake in a large copper concession. The beneficiary was a company registered in the British Virgin Islands.

Following the IMF's decision to terminate three tranches of loans, totalling about \$225 million, the AfDB announced that it would not disburse \$87 million in budget support. The World Bank briefly suspended lending in 2010 due to related issues with concession agreements.

Source: AFRICAN PROGRESS PANEL, *Equity and Extractive Industries in Africa. Making Management Work for All*, Africa Progress Report 2013. Page 56.

2. In the Natural Resource Governance Index compiled by Revenue WATCH in 2013, the DRC had a poor score of 45% on disclosure practices. It was placed 44th out of 58 countries assessed.

Source: <http://www.ressourcegovernance.org/countries/africa/drc/overview>

3. 5 secret contracts concluded between 2010 and 2012, which cost the Congolese state at least \$1.3 billion, have highlighted the dangers posed by the opacity of the mining sector: it is imperative that the revision of the Mining Code improves governance and reduces the risks of corruption and conflict financing.

Source: Global Witness recommendations on the DRC's new mining code, October 2015.

4. Civil society organisations are calling on the DRC to strengthen its mining code to require mining enterprises to publish their environmental impact studies on the website of the Ministry of Mines, as well as the annual activity reports of their various companies.

Source: *Who does not seek, does not find. Transparency of mining projects in the DRC. Centre Carter, POM and MMKI, January 2015.*

Description of Impact

When mining contracts are negotiated opaquely and during troubled times, they are often unbalanced because private interests are favoured over the interests of the nation.

Assessment

Probability x Impact = 5x4 Total number : 20

Colour:	Blue	Green	Yellow	Orange	Red
Level of risk:	Very low	Minor	Moderate	Significant	Very high

8. What is the risk that mining laws have been formulated to favour private interests over the public interest, or will be in the event that reform is considered?

Code: FC1

Already in 2012, the DRC was seriously considering the need to reform its mining code in order to adapt it to new challenges, but above all to remedy the numerous shortcomings and correct the distortions contained in the code.

Evidence to support assessment of probability

Probability:
Score 4/5

1. The current Mining Code is full of flaws. In general, they lead either to concerns about interpretation or to difficulties in reconciling different provisions, which often lead to legal ambiguities that benefit unscrupulous investors.

Source: MBUYU KABWE Tracy, *The movement to revise mining codes in Africa: the example of the DRC, MASTER II International Economic Relations Law Class of 2013/2014.*

2. The MUTAMBA report noted a confusion and proliferation of legal and regulatory texts that benefit entities processing or transforming base metals and which, at all times and even during favourable economic conditions, unduly benefit from the advantages of the Mining Code to the detriment of the public Treasury.

Source: *Senate, Committee of Inquiry on the Mining Sector, Mutamba Dibwe (Committee Chair), 24 September 2009.*

3. The DRC now wishes to benefit from the flow of capital. As the current tax and customs regime is pro-investor, it has decided to tip the balance in its favour by taking a set of measures that would significantly reduce the benefits to investors under the 2002 code.

Source: MBUYU KABWE Tracy, *The movement to revise mining codes in Africa: the example of the DRC, MASTER II International Economic Relations Law Class of 2013/2014.*

Evidence to support assessment of impact**Impact:**

Score 5/5

1. Ten years later, with commodity prices holding up well on the world market and some speaking of a commodity super-cycle, the sector (mainly copper and cobalt) is experiencing a revival in production. However, the budgetary revenue that this recovery is supposed to generate is puzzling because it is perceived to be too low.

Source: Albert SONDJJI, *The proposed revision of the DRC's mining code: from incentive to dissuasion?*, Brussels 2014.

2. The beginning of reform in the Congolese mining sector, and indications of macro-economic recovery in the sector, do not yet reflect the expected benefits, despite an excellent global economic situation.

Source: M., MAZALTO, "From mining sector reform to state reform", *Reform in the Congo (DRC). Expectations and Disillusionment, African Papers*, n°76, MRAC- L'Harmattan, Tervuren-Brussels, 2009, p. 179

3. The Chinese contract contravenes the Code. Its contractual nature deviates from the legal regime of the mining sector. Moreover, this contract enjoys extremely liberal exemption conditions compared to those of other mining operators. The Congolese government grants 'the benefit of all customs and tax advantages provided for in the investment code and the mining code' but also 'total exemption from all taxes, duties, fees and customs duties, whether direct or indirect, payable in the DRC or on import and export.

Source: S., MARYSSE, S., GEENEN, *Chinese contracts in the DRC: red imperialism on the march?*, *Africa of the Great Lakes, Yearbook 2007-2008*, L'Harmattan, Paris, 2008, pp. 304 sq.

4. The revision of this law is intended to remedy the imbalance between the advantages granted by the 2002 Code to investors and those granted to the State, to increase the level of control over management of mining titles and domains as well as over mining enterprises with regard to communities affected by mining projects, and to the taxation, customs and exchange regime, all within the framework of win-win partnerships.

Source: Speech by the Minister of Hydrocarbons at the opening of the review of the Mining Code.

Description of Impact

The way the current mining code has been formulated gives more advantages to mining investors and does not allow a substantial contribution to the state budget despite the exponential growth of mining production.

Assessment

Probability x Impact = 4x4 Total number : 16

Colour:	Blue	Green	Yellow	Orange	Red
Level of risk:	Very low	Minor	Moderate	Significant	Very high

9. What is the risk of award decisions being based on unclear or imprecise information?

Code: CP26

One of the core activities of the Mining Cadastre is to fix and delimit the extent of mining rights, which have no visible physical boundaries. This requires the expert and efficient use of cartographic and geodetic techniques.

Evidence to support assessment of probability

Probability:

Score 4/5

1. Like many of the countries described in this chapter, the Democratic Republic of Congo has serious geodetic and cartographic limitations. The geodetic network has not been updated to allow the use of GPS and the available topographic maps are not consistent.

Source: Gotthard WALSER, Enrique ORTEGA, Alexandra PUGACHEVSKY, *Extractive Industries for Development, Mining Cadastres, Series No. 4, French edition, June 2012, World Bank.*

2. The adoption of a computerised cadastral system strengthens institutional capacity in the administration of mining rights, reduces processing times for applications, reduces errors (such as overlaps between adjacent permits) and improves security of ownership for title holders.

Source: Gotthard WALSER, Enrique ORTEGA, Alexandra PUGACHEVSKY, *Extractive Industries for Development, Mining Cadastres, Series No. 4, French edition, June 2012, World Bank*

3. The FLEXICADASTRE computer system designed and implemented at the central office of the Mining Cadastre since 2007 is not yet fully established in the existing provincial offices of the Mining Cadastre.

Source: PROMINES DRC Report 2015, *World Bank Project for Good Governance in the Mining Sector.*

Evidence to support assessment of impact

Impact:

Score 3/5

1. It is within this framework that the Ministry of Mines has undertaken, following various recommendations, the computerisation of titles to improve efficiency in mining title delivery and management. This computerisation should affect the whole country, connecting all the provincial cadastres in order to avoid overlaps in the management of titles and forest reserves, as well as the issuing of multiple titles for the same site or multiple title holders for the same area.

Source: *Report on taxation discussions organised by GIZ/BGSM, 2014, 2015 and 2017.*

2. Mining and quarrying rights zones and artisanal mining zones are mutually exclusive. When an application for mining and/or quarrying exploration rights concerns an area of which more than 25% encroaches on another valid mining or quarrying site, or is submitted while another application is being processed, the application is rejected. The misinterpretation of this article by mining cadastre officials has led to several conflicts. For example, in Kamituga, in June 2007, there was almost a pitched battle between the supporters of SOMICO and BANRO.

Both companies were fighting over the mining areas left by SOMINKI after its liquidation. The imbroglio created by the regulatory authority in the allocation of titles was the cause. The two companies were fighting over the same titles. Curiously, they all held titles validly issued by the regulatory authority.

Source: Adolphe KILOMBA SUMAILI : *Legal protection of foreign investors by the new DRC mining code: case of the city of KAMITUGA, 2015.*

Description of Impact

Assessment**Probability x Impact = 3x4 Total number : 12**

Colour:	Blue	Green	Yellow	Orange	Red
Level of risk:	Very low	Minor	Moderate	Significant	Very high

PART THREE

Communicating results

7. OVERVIEW OF RESULTS

This analysis has enabled us to identify several major risks that stem from both systemic issues and those related to the implementation of existing legal provisions on the awarding of mining rights.

Although it is established that applications for mining titles must comply with a wide range of legal obligations, which must be strictly respected in order for the applications to be accepted or rejected, our analysis shows that the major risks lie in the processes of awarding, renewing and monitoring the implementation of mining activities, as well as in the forfeiture of mining rights.

Political interference is one of the major risks affecting the first stage as well as all other stages in the mining value chain. This vulnerability is therefore the basis of multiple risks.

Political interference distorts the entire system as well as the intended objective of transparent and efficient procedures in the process of receiving, investigating, deciding and communicating the awarding of mining rights.

The probability and impact of this risk when negotiating, signing agreements and transferring shares between state-owned enterprises and foreign companies is very high.

The political and security context that has prevailed in the DRC for more than two decades is an aggravating factor in the inappropriate interventionism of political elites in all aspects of the mining sector.

Another political contextual factor to note is the longevity of several senior mining officials in their positions. Despite the large number of governments that have come and gone in more than a decade, the Minister of Mines remains in office.

This is also the case for those in charge of the Mining Cadastre, even though the duration of their tenure is limited by current legislation.

The general working conditions under which the staff of the Mining Cadastre in particular, and the mining administration in general, operate is a major vulnerability that also opens the way to multiple risks of corruption. The scope of their work, low salaries and dilapidated working environment, with few exceptions, make public servants vulnerable to those seeking services.

This vulnerability impacts **monitoring of the obligations** of mining title holders and removes any objectivity by allowing for differential treatment during inspection visits.

The absence of administrative and even judicial oversight of the many irregularities observed in environmental management and in the adversarial relationship between mining companies and local communities testifies to the self-interested weakness of public officials in **verifying the accuracy of Environmental Impact Studies**.

Indeed, given the very limited means at the disposal of the mining administration, most inspections remain theoretical and are therefore a source of corruption risks.

The economic context explains the limited resources allocated to this institution by successive state budgets to support its widespread deployment throughout the country.



Most of the risks identified in the DRC are systemic in nature and part of the general context affecting all of the country's economic sectors.

The insignificant number of exploration permits converted into operating permits within the deadlines and conditions set by mining legislation and the practice of stock market speculation with mining rights can be explained, among other things, by the complacency of the officials of the Mining Cadastre responsible for **preliminary verification of applicants' claims regarding their financial capacity and resources.**

According to civil society organisations, organised systems have been set up to favour the political elite. This is the case in the localities of Bondo and Ebalaka, where mining operators with state-recognised rights have been dismissed in favour of politicians for whom the Mining Registry (CAMI) has drawn up false operating documents.

(http://www.irenees.net/bdf_fiche-analyse-1085_f.html#iref:26).

This fact underpins the serious impact when **the holder of a mining right is not protected by state services against dispossession or invasion of the concession area.**

According to the NGO Les Avocats Verts, mining legislation in the DRC recognises numerous rights of local communities, the implementation of which still faces a number of problems, most of which are linked to the bad faith of mining companies, the interference of the political class, the inefficiency of the services responsible for their development and, above all, the ignorance of their rights by these local communities.

As a result, **the likelihood of awards being made without the free, prior and informed consent of local communities is very high.**

One of the last major risks concerns the governance of Public State Enterprises in the mining sector. Most of these enterprises are not characterised by transparency, accountability, responsibility or fairness. Thus, the likelihood that state enterprises with interests in the mining sector will not be required to publish information on their mining-related activities and investments is also very high.

However, it should be noted that most of the risks identified in the DRC are systemic in nature and are part of a general context affecting all of the country's economic sectors. The recommendations for addressing them are limited insofar as the approach to doing so should be broad-based and multi-sector, taking into account both the structural and cyclical aspects of the risks analysed.

Another limitation that should be highlighted is the lack of resources and often also of expertise of national civil society organisations in the natural resources sector to fulfil their reporting and awareness-raising role.

8. RECOMMENDATIONS

Based on the analysis and prioritisation of risks, we recommend that the following risks be considered priorities:

1. The working conditions of the mining administration constitute a major systemic risk and a contributing factor to corruption risks.

Staff who are underpaid, less motivated and working in unsuitable environments are more likely to sell their services to ensure their survival.

Here too, in terms of action, campaigns to denounce this situation and to fight against corruption, taking into account the global nature of the situation, can be recommended.

2. The interference of political authorities in the awarding, renewal and forfeiture of mining rights.

Actions to address this systemic risk range from advocacy, to reporting, to raising awareness of existing mining legislation.

3. Lack of transparency in the negotiation of mining contracts, the signing of mining agreements, and the transfer of shares to third parties in state-owned enterprises in the mining sector is the basis of massive corruption risks.

Actions to demand greater transparency, accountability and publication of all mining contracts and agreements and their appendices.

Training in negotiating, reading and analysing mining contracts should be organised for the Civil Society Organisations involved.

4. The accuracy of Environmental Impact Studies (EIE) is problematic as they are carried out, in most cases, on behalf of the mining companies by certain officials of the Mining Environment Protection Directorate who hold oversight roles.

9. CONCLUSION

In view of the results of this study, it is important to indicate two areas of the Congolese mining sector that require investigation in order to document the corrupt practices that prevail there. These are the management of mining rights and the monitoring of investments.

The management of mining rights will make it possible to combat the freeze on exploration permits. Some operators do not undertake research work in the field immediately after obtaining exploration permits. Instead, they engage in speculation on the stock market. This illegal delay is not penalised as provided for in the Mining Code, due to the weakness of the administration. This has consequences for the number of companies involved in the operating phase.

With regard to the monitoring of investments for operating permits, there are grey areas in the real amounts invested by operating companies. The exact figure is sometimes not known by the Congolese state. The direct consequence is that capital depreciation is prolonged at the expense of tax payments. Investment monitoring will also involve the transparency of mining contracts signed by the Congolese government. It is true that the contracts are published, but it is urgent that, beyond publication, they are studied and debated publicly to ensure a balance in the sharing of benefits between the parties and compliance in the execution of these contracts.

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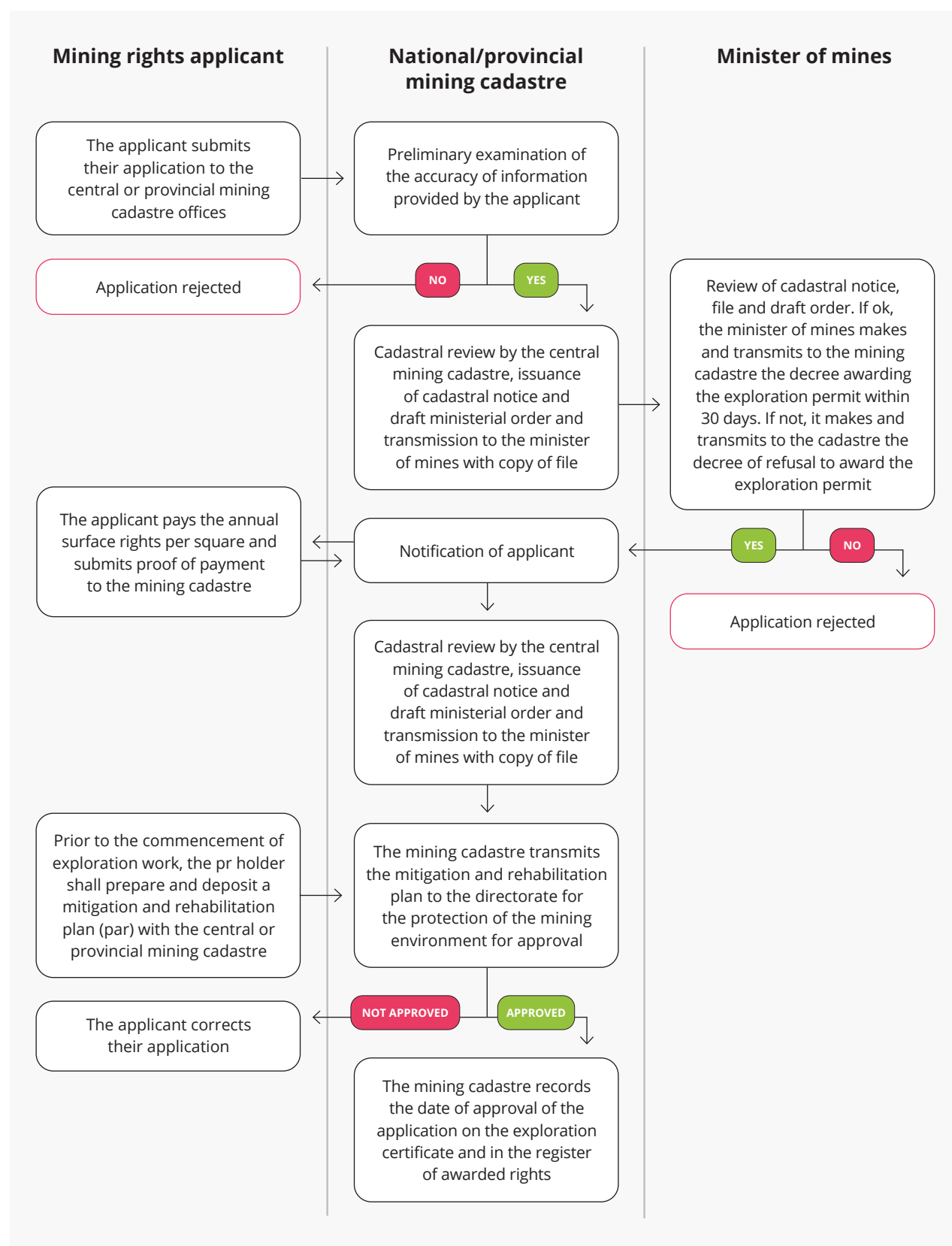
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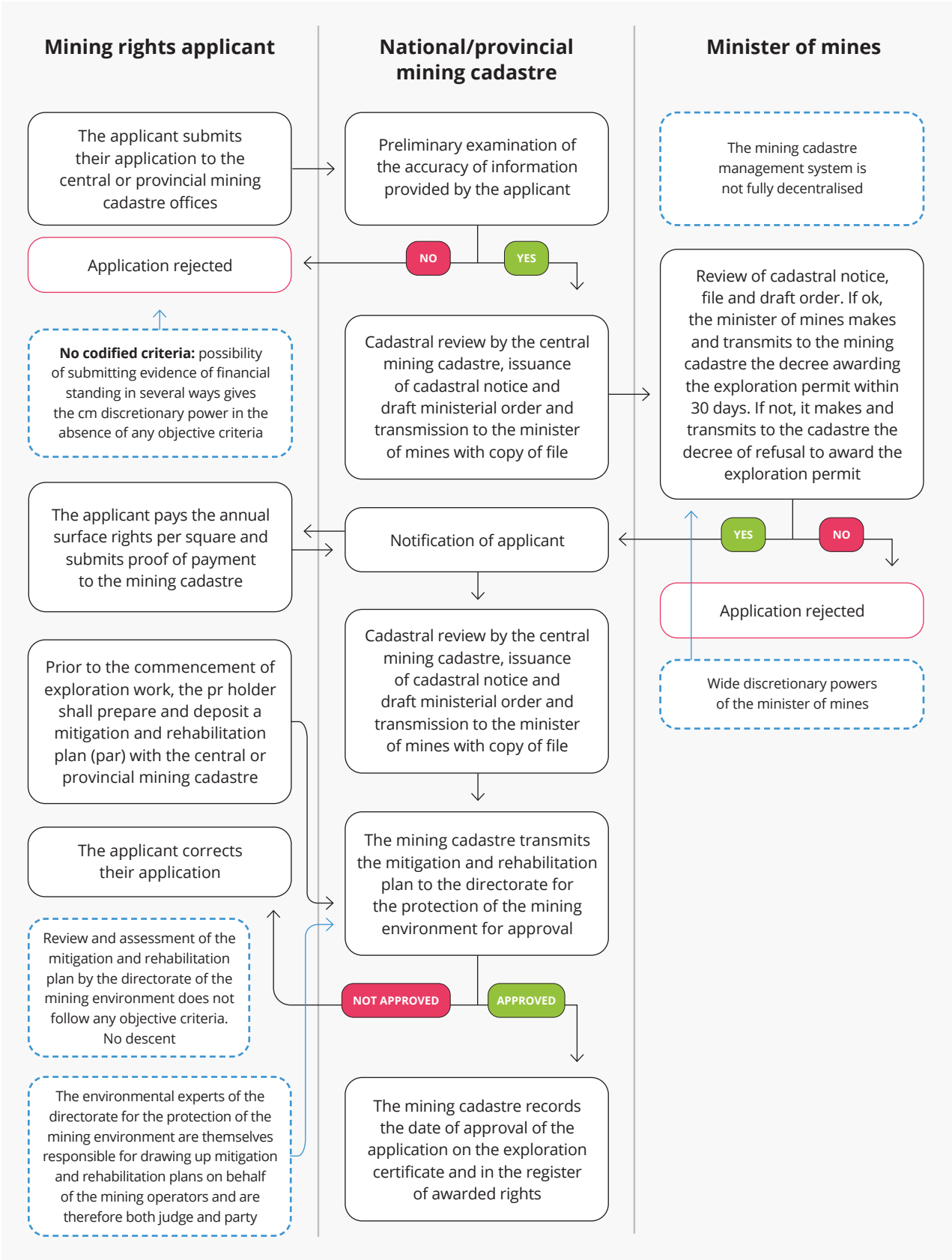
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APPENDICES

FIGURE 5. MAP OF THE OFFICIAL PATHWAY FOR AWARDING EXPLORATION PERMITS



**FIGURE 5. MAP OF THE OFFICIAL PATHWAY
FOR AWARDING EXPLORATION PERMITS**



**FIGURE 6. MAP OF THE OFFICIAL PATHWAY
FOR AWARDING OPERATING PERMITS**

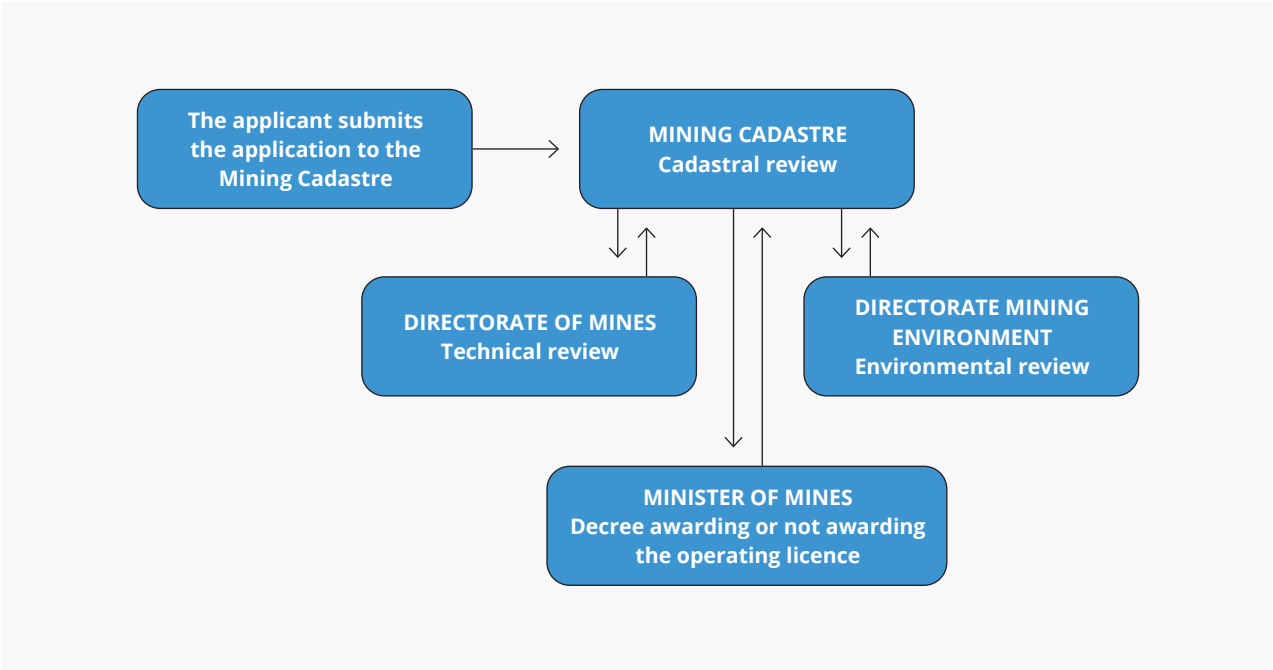


FIGURE 7. WORKSHEET A: VULNERABILITIES AND RISKS IN THE AWARDING OF EXPLORATION PERMITS

Vulnerabilities

The cruel lack of means to motivate staff and to operate the Mining Registry. Although the Mining Code gives the Cadastre legal personality and financial autonomy to collect and manage the costs of filing applications and annual surface rights per square, a subsequent law deprived it of the 50% it was entitled to receive from annual surface rights per square.

The extent of the discretionary rights of the Minister of Mines in awarding, refusing to award, renewing and refusing to renew mining rights.

Manual processing of certain phases of cadastral review of applications for mining rights.

The legal procedure at times leads to a differentiated treatment of applicants as in the assessment of evidence of financial standing, and no prior verification of such evidence of financial standing is made.

The geodetic network is not very precise and lacks digitised maps.

Partial decentralisation of the Mining Cadastre and lack of effective and real-time communication between the few local agencies and the central authority.

While there are already cadastral, technical and environmental instructions issued by the specialised services of the Ministry of Mines, which give favourable or unfavourable opinions, the discretionary power left to the Minister of Mines to accept or reject the dossier is not justified.

Support from the officials of the Directorate of Mines is required before the file can be examined

The Mining Cadastre management system is not fully decentralised.

TABLE 2. OFFICIAL PROCESS FOR AWARDING OPERATING PERMITS

Stages	Operation/procedure	Documents	Payments	Period
1.1 Submission of the application for an Operating Permit.	The applicant collects the appropriate form from the central or provincial CAMI, fills it in, signs it and submits it to the Cadastre together with all supporting documents as well as paying the related costs on deposit.	a. a copy of the valid Exploration Certificate; b. the report on the results of the exploration as to the nature, quality, volume, and geographical location of the identified mineral resource; c. feasibility study for the extraction of the deposit; d. technical supervision plan for the development, construction and operation of the mine; e. Project EIE and PGEP; f. report on consultations with the authorities of local administrative entities and representatives of neighbouring communities; g. plan for the project's contribution to the development of neighbouring communities; h. financing plan with identification of sources.	500 USD	No period legally required
1.2 Admissibility of the application by the Mining Cadastre.	The Cadastre examines whether the application is duly constituted and whether all the attached documents comply with legal requirements	+ If the application is admissible, CAMI issues a receipt to the applicant as proof of submission and enters the application in the special registration book. + If the application is deemed inadmissible, the file is returned to the applicant with an indication of which documents are missing.	Not applicable	Upon submission
1.3 Confirmation of the admissibility of the elements of the application concerning environmental and social aspects of the project.	The Mining Cadastre forwards the following documents to the Directorate for the Protection of the Mining Environment for confirmation of their admissibility and determination of the submission fee for environmental review.	+ Project EIE and PGEP; + Report on consultations with the authorities of local administrative entities and representatives of neighbouring communities; + Plan for the project's contribution to the development of neighbouring communities.	Not applicable	Working day following receipt of file

Stages	Operation/procedure	Documents	Payments	Period
1.4 Verification of the admissibility of the elements of the application concerning environmental and social aspects of the project.	The Directorate for the Protection of the Mining Environment ensures that the submitted EIE and PGEP comply with the Environmental Impact Study guidelines.	EIE and PGEP	500 USD	Within 5 days of receipt
1.5 Cadastral review of Operating Permit.	CAMI carries out cadastral verification of the application and issues a favourable or unfavourable notice, which it transmits to the Minister of Mines together with a draft decree. In the event of a favourable notice, CAMI attaches to the file transmitted to the Minister the result of the confirmation of the admissibility of the environmental and social aspects of the application.	+ Cadastral notice (Favourable or unfavourable); + Draft ministerial decree (favourable or unfavourable); + Admissible outcome of environmental and social aspects of the application (when favourable).	Not applicable	Within 10 days of receipt of application
1.6 Payment of submission fee for environmental review.	Following receipt of the cadastral notice, the applicant pays the submission fee for the environmental review and corrects the environmental and social aspects of the application, if necessary, in accordance with the notice.		500 USD	Not applicable
1.7 Technical review of the application for an Operating Permit.	The Directorate of Mines verifies the award conditions (economically viable deposit, proof of financial resources, approval of EIE and PGEP...).	+ Favourable technical notice + Unfavourable technical notice with explanation	Not applicable	60 days
1.8 Transmission of cadastral and technical notices to the Minister of Mines.		+ Cadastral notice + Technical notice	Not applicable	Within 5 days of receipt of technical notice

Stages	Operation/procedure	Documents	Payments	Period
1.9 Environmental review.	Review of the Environmental Impact Study and Project Environmental Management Plan by the Permanent Evaluation Committee composed of 14 Members drawn from the Ministries of Mines, Environment, Agriculture, Public Works and Land Management, and Public Health.	+ EIE and PGEP + Environmental notice	Not applicable	180 days
1.10 Upon decision by the Minister of Mines.	<ul style="list-style-type: none"> + If the cadastral notice is unfavourable, the Minister makes a decision to reject the application within 15 days of receiving the CAMI file; + If the technical notice is unfavourable but the cadastral notice is positive, the Minister makes the decision of rejection or preliminary and conditional approval within 30 days; + If the technical and cadastral notices are favourable but the environmental notice has not yet been issued, the Minister makes a preliminary and conditional decision within 20 days and postpones the final decision to award or refuse pending the environmental notice; + The Minister makes and transmits the final decision to award or refuse with explanation within 30 days of receipt of the environmental notice. 	<ul style="list-style-type: none"> + Cadastral notice; + Technical notice; + Environmental notice; + Ministerial award or refusal orders. 		

FIGURE 8. WORKSHEET A: VULNERABILITIES AND RISKS IN THE AWARDING OF RIGHTS UNDER A PARTNERSHIP BETWEEN PUBLIC GOVERNMENT ENTERPRISES AND PRIVATE COMPANIES

No	Vulnerabilities
1	Almost all contracts and partnership agreements signed between Public State Enterprises and international private companies have never been based on a call for tenders, even though the mines are documented.
2	Negotiations for the signing of these contracts and agreements are conducted in total opacity and the state representatives in these negotiations are chosen on the basis of political affinity.

FIGURE 9. WORKSHEET B: PEST ANALYSIS

No	I. Political factors
1	<p>Q. Do politicians or officials have private interests in mining?</p> <p>A. Numerous reports, press articles, research studies, etc. point to interference in mining activities by political authorities, security services and the private interests of government officials.</p> <p>Some reports also highlight the involvement of high-level political actors in the negotiation of mining contracts.</p> <p>Evidence supporting response:</p> <ul style="list-style-type: none"> + The State Against the People: Governance, Mineral Extraction and the Transitional Government in the Democratic Republic of the Congo, Dutch Institute for Southern Africa; + Reports by the U.N. group of experts on illegal extraction of natural resources and other forms of wealth in the Democratic Republic of the Congo, from April 2001, May 2002, October 2002 and October 2003.
2	<p>Q. To what extent are property rights protected?</p> <p>A. Despite the legal guarantees concerning property rights provided by mining legislation, there is a problematic overlap between mining, land and forestry rights.</p> <ul style="list-style-type: none"> + There are also conflicts between companies over encroachment on mining areas. + There are illegal occupations of mining concessions by artisanal miners, security forces and armed groups. + Certain political positions are at the root of the refusal to renew certain mining rights. <p>Evidence supporting response:</p> <ul style="list-style-type: none"> + Jean-Philippe MARCOUX and Marie MAZALTO, Comparative analysis of the new Mining Code of the Democratic Republic of Congo, 2004, unpublished; + "BLOOD" ORES: A criminalised economic sector in eastern DR Congo, Pole Institute, November 2010; + In October 2015, the Minister of Mines refused to renew SOMIKIVU's mining permit despite favourable cadastral, technical and environmental notices from the Mining Cadastre and the relevant departments of the Ministry of Mines. The reason given by the Minister was the lack of an updated feasibility study, which the Directorate of Mines was responsible for monitoring and evaluating, even though it had issued a favourable technical notice.

No I. Political factors

3 Q. How stable are mining laws and policies?

A. The Congolese state guarantees the stability of the provisions of the 2002 Mining Code for a period of 10 years and refrains from modifying them in any other way, except in the form provided for by said code.

Rights attached to or deriving from Exploration and Operating Permits awarded and valid at the date of modification are to remain in force and unaffected for a period of 10 years.

Despite this, some provisions, mainly tax provisions, were amended before the 10-year period had expired and without the Code itself having been amended by Parliament.

Evidence supporting response:

- + Mining Code 2002, article 276.
 - + Mining Code review process.
 - + Legal protection of foreign investors by the new DRC mining code: the case of KAMITUGA.
-

4 Q. How effective is the government's response to corruption?

A. The theoretical political will to fight all forms of corruption is at the heart of the government's concerns and is reflected in various legal texts.

However, on the ground, this legal arsenal against the practice of corruption is not being implemented and corruption is now a widespread phenomenon in DRC society.

Evidence supporting response:

- + In a report published this year, Africa Progress Panel analysed five transactions involving the sale of mining permits to foreign companies linked to the Fleurette group. The report found that, on average, the permits were sold at one-sixth of their value, and that the loss of revenue to the Congolese state was \$1.36 billion between 2010 and 2012, double the public budget for health and education in 2012.
 - + <http://afrique.kongotimes.info>: Corruption and governance in the DRC during the Transition (2003-2006).
-

5 Q. Is there transparent access to government information on the field of mining operations?

A. Mining information is published on the website of the Ministry of Mines, its specialised services (CAMI, CTCPM, CEEC, SAESSCAM) and other ministries (e.g. Finance), but is not comprehensive.

The majority of mining contracts between Public State Enterprises (the state being the sole shareholder) and multinational companies were signed without any transparency and later proved to be very unbalanced in favour of the state.

A map of titles granted and in process for the entire country can be found on the Mining Cadastre portal.

Evidence supporting response:

- + Revenue Watch Institute
 - + EITI DRC reports
 - + Websites of the Ministries of Mines and Finances
-

No II. Economic factors

1 Q. Are any major new projects planned?

A. During the decade 2000-2010, the DRC's mining sector has seen an exponential increase in foreign extractive investment, particularly in the Katanga copper region. Other major projects are currently underway, the largest of which is INVANHOE at the KAMOA site.

Congolese subsoil continues to be explored with a view to complete documentation and the location of new deposits. With this in mind, the Mining Cadastre has resumed its activities relating to the issuing of mining titles.

The DRC's natural resource potential is estimated at US\$24 billion in unexploited minerals.

Evidence supporting response:

- + Mining Investments in the Democratic Republic of Congo: Development or Impoverishment of Local Communities? The Carter Center.
 - + DRC Chamber of Mines report 2016
-

2 Q. How important is mining to the economy?

A. Since the colonial era, mining has been the main source of government revenue and the main source of foreign exchange. The government's dependence on the mining sector is very high.

The economic structure of the DRC shows a strong influence from the primary sector, dominated by the agricultural and extractive industries, in the attainment of the gross domestic product. This contribution averaged 38% over the period 2005-2015.

Evidence supporting response:

- + Senate, Analytical study on the contribution of the mining sector to the state budget, Kinshasa, 2013;
 - + SARW, Analysis of the Congolese mining tax system and proposals for reform, Kinshasa, 2015;
 - + GIZ, Working paper. Ten-year projection of the fiscal potential of the DRC's mining sector I (2016-2025), Kinshasa, 2016;
 - + Central Bank of the Congo Annual Report 2007;
 - + Ministry of Finance Annual Report 2010-2011;
 - + African Mining Legislation Atlas (www.a-mla.org)
-

3 Q. How effective is the regulatory regime for mining?

A. With the law of 11 July 2002, the country adopted a new mining code that is intended to encourage investment in the sector as a vehicle for economic and social development, but also to ensure effective protection of the environment and rational management so that present and future generations can enjoy the fruits of the use of these natural resources. This code is accompanied by application measures that provide detailed mechanisms for its implementation. Although effective in theory, its application on the ground shows many shortcomings on the part of all stakeholders.

The process of revising the 2002 code, which began in 2012, has not yet been completed.

Evidence supporting response:

- + Law n° 007-2002 of 11 July 2002 establishing the Mining Code;
 - + Decree n°038/2003 of 26 March 2003 establishing the Mining Regulations;
 - + OSC, Proposed amendments to the draft law modifying and supplementing Law No. 007/2002 of 11 July 2002; Kinshasa, 2015;
 - + Government, Draft law modifying and supplementing Law No. 007/2002 of 11 July 2002; Kinshasa, 2015.
-

No II. Economic factors

4 Q. To what extent is the sector open to newcomers?

A. Ten years after its implementation, the current Mining Code has allowed:

- + The opening up of the mining sector to private capital and increased transparency through simplification of the procedures for awarding mining titles and the first come, first served principle;
- + The establishment of an attractive and comprehensive common law tax regime that has encouraged the arrival of investors in the mining sector and competitiveness of mining companies at the international level;
- + Investors to establish a sustainable business model and guarantee the stability of their rights through its stability clause;
- + The introduction of the notion of social and environmental responsibility of mining operators, who are required to ensure the well-being of local populations and the protection and rehabilitation of the fauna, flora, water and air affected by the mining project;

The Mining Cadastre has just reopened its offices to receive new applications for mining rights after a long suspension in order to clean up the mining sector.

However, the image of the country projected by the sector at all levels in the implementation of the mining law and its regulations, as well as the weakness of the sector's administration, does not allow the attraction of large investments, thus leaving room for predatory mining.

Evidence supporting response:

- + Strategic plan for the development of the mining sector (2016 - 2021) final report r-2, PROMINES DRC;
 - + Interview with CAMI officials
 - + Analysis of environmental and social legislation in the DRC mining sector, World Wide Fund for Nature Central, Africa Regional Programme Office (WWF CARPO).
 - + Legal protection of foreign investors in the new DRC Mining Code: case of the city of KAMITUGA, Mr Adolphe KILOMBA Sumaili.
 - + According to the Fraser Institute, in its 2012 report cited by PC, only 23% of investors are willing to invest in the mining sector in the DRC, and about 15% are completely unwilling.
-

5 Q. What is the level of competence of the officials of the cadastre agency?

A. The directors of the Mining Cadastre have been appointed on the basis of their qualifications in the mining sector. The Director General is a geological engineer and the Deputy Director General is a lawyer. It should be noted that the other senior and mid-level officials have good technical skills.

Evidence supporting response:

- + Mining Cadastre, Structure and duties, mining and quarrying rights, procedures, Kinshasa, 2011.
 - + Interviews with several CAMI officials.
-

6 Q. How important are state-owned enterprises to the sector, compared to private companies?

A. State-owned mining companies in the DRC are still important in the governance of the mining sector. They possess known and documented deposits. Their conversion to commercial companies was designed to enable them to compete with private companies following the liberalisation of the sector. However, this transformation has not succeeded in containing the dominance of foreign companies in the Congolese mining sector.

Evidence supporting response:

- + Mabi Mulumba, The excesses of predatory management. The case of Zaïre, now Democratic Republic of the Congo, Kinshasa, CEDI, 2002;
 - + COPIREP, Annual Report 2009, Kinshasa, 2010.
-

No III. Social factors

1 Q. How well organised are the affected communities with regard to mining issues?

A. The organisational capacity of local communities to defend their interests is generally very limited (low level of education, lack of knowledge of legislation, insufficient political support).

The Mining Code and Regulations do not provide for specific measures to help local communities organise themselves to defend their interests against industrial mining.

However, freedom of association is guaranteed by the Constitution.

Local populations suffer the pollution caused by industrial mining operations but feel that they do not benefit from the advantages that the presence of these operations could bring them.

Ignorance of mining legislation at the local level, the weak presence of OSCs at operating sites and weak monitoring of the activities of mining companies by state services have a negative impact on the situation of local communities.

Evidence supporting response:

- + Industrial Mines and Local Communities, 2016, American Bar Association Rule of Law Initiative (ABA ROLI);
 - + DRC Mining Code and Regulations;
 - + Strategic environmental and social assessment of the mining sector in the DRC, 2014, SOFRECO/PROMINES;
 - + Law n° 007-2002 of 11 July 2002 establishing the Mining Code;
 - + CERN/CENCO-PAX, Mining giant Kibali. Removing impurities to make gold pure, Kinshasa-Utrecht, 2015;
 - + SARW, FungurumeTenke Development. Surveys on the impacts of mining activities on local communities, Kinshasa, 2014;
 - + CERN/CENCO, Economic and Social Impact of Mining Operations in Walikale, Kinshasa, Publications of the General Secretariat of CENCO, 2013.
-

2 Q. What is the level of public interest in mining operations?

A. Several local Civil Society Organisations have specialised in the natural resources sector in general and the mining sector in particular. The demand for transparency in the sector and its substantial contribution to the sustainable development of the DRC is now the subject of public debate.

Several local Civil Society Organisations have specialised in the natural resources sector in general and the mining sector in particular. The demand for transparency in the sector and its substantial contribution to the sustainable development of the DRC is now the subject of public debate.

In industrial mining areas, the neighbouring populations have high expectations in terms of employment and improved living conditions resulting from the presence of mining companies.

For the more educated public, mining is of interest due to its impact on the national budget.

Evidence supporting response:

- + Report of the independent auditor of the study of the coverage of artisanal mining in the East DRC, EITI/DRC.
 - + According to the report of a study conducted by the World Bank and PactInc in 2012, the workforce in the artisanal and small-scale mining sector varies between 500,000 and two million.
 - + Territorial Division and Natural Resource Governance: The Case of Katanga, Kinshasa, 2015;
 - + SARW, Congolese Gold Network. People, companies and countries profiting from the illegal Congolese gold trade, Johannesburg, 2012.
-

No III. Social factors

3 Q. Are there marginalised groups affected by mining operations?

A. The indigenous Pygmy people have been identified as the most vulnerable group in the DRC's mining development process.

Mining can have serious consequences for indigenous peoples: loss of cultural identity, poorly paid or dangerous jobs, child labour, exploitation of women, introduction of infectious diseases, reduced direct access to local resources, etc.

Evidence supporting response:

- + Strategic environmental and social assessment of the mining sector in the DRC, 2014, SOFRECO/PROMINES.
-

4 Q. Do cadastral officials find it difficult to live on their salary?

A. From its inception until recently, the Mining Cadastre had, among other things, a share of the Annual Surface Rights per square metre as operating revenue, which meant that Cadastre officials received considerable bonuses in addition to their salaries. In 2008, the Government decided to pay these fees into the public treasury and to make CAMI dependent on the State Budget. Like all civil servants in the public administration, the salary level of CAMI officials is very modest.

Officials of the Mining Cadastre and the mining administration have serious difficulties in living on their salaries, which hover around one hundred dollars a month. This salary is far below the salary scale of the mining companies.

The lack of motivation for Mining Administration staff is reflected not only in the low remuneration allocated to them by the state, but also in the administrative burden of acknowledging their ranks.

Evidence supporting response:

- + Strategic plan for the development of the mining sector (2016 - 2021) final report r-2, PROMINES DRC;
 - + Mining Cadastres, World Bank.
 - + Interview with a CAMI official.
-

No IV. Technological factors

1 Q. Is information technology used widely in the management of the awards process?

A. During 2011, CAMI entered its final phase of operation of the FLEXICADASTRE system implemented by the South African firm Spatial Dimension (SD). The level of implementation has reached 100% for 20 of the 24 procedures planned to be automated in FLEXICADASTRE.

CAMI has a relatively well-equipped computerised cadastre at the central level and a working environment with acceptable conditions.

The DRC does not yet have an up-to-date geodetic network and the topographic maps lack consistency.

Evidence supporting response:

- + Mining Cadastre Annual Report 2011.
 - + Interview with CAMI officials.
-

2 Q. Is technical information used to guide award decisions?

A. Mining rights awards are subject to a threefold cadastral, technical and environmental review. The service authorised to carry out technical review is the Mining Division.

Evidence supporting response:

- + 2002 DRC Mining Code.
-

3 Q. Does the country possess important minerals for future technologies?

A. The DRC has significant reserves of products such as Coltan, niobium and uranium, whose use in cutting-edge industry and new-generation technological products is no longer in question.

Evidence supporting response:

- + UNDERSTANDING COLTAN by Didier de Failly s.j.
-

4 Q. Are new geological studies or methods being adopted?

A. Documentation on the geological potential of the DRC is almost non-existent. The available information is outdated and scattered, and there is no database centralising all available information. As a result, there are very few well-documented deposits.

It is in this context that the DRC decided to set up an autonomous National Geological Service dedicated to basic geological research.

Evidence supporting response:

- + Strategic plan for the development of the mining sector (2016 - 2021) final report r-2, PROMINES DRC.
-

5 Q. Are new production techniques being adopted?

A. New copper and gold processing plants use new production techniques but suffer from a glaring energy deficit in the DRC, despite the largest energy base in Africa.

Evidence supporting response:

- + DRC Chamber of Mines Annual Reports;
 - + Strategic plan for the development of the mining sector (2016 - 2021) final report r-2, PROMINES DRC.
-

FIGURE 10. WORKSHEET A: VULNERABILITIES IDENTIFIED THROUGH PEST ANALYSIS

No	Vulnerabilities
1	<p>Political Factor 3:</p> <ul style="list-style-type: none"> + There is evidence of political interference in the awarding, refusal to renew and withdrawal of mining rights; + Negotiations of lease, transfer and partnership contracts for mining areas owned by Public State Enterprises are often carried out in total opacity by political authorities.
2	<p>Economic Factor 2:</p> <ul style="list-style-type: none"> + State-owned mining companies in the DRC are still important in the governance of the mining sector. They possess known and documented deposits. Their transformation into commercial companies was designed to enable them to compete with private companies following the liberalisation of the sector. However, this transformation has not succeeded in containing the dominance of foreign companies in the Congolese mining sector. + The offices of the Mining Registry were closed for a considerable period of time to optimise the management of the mining sector, and their recent reopening will result in additional work, while the salary conditions of civil servants remain precarious. + Lack of logistical resources for services responsible for technical and environmental inspections means that such checks are carried out in a lenient manner.
3	<p>Social Factor: Officials of the Mining Cadastre and the mining administration have serious difficulties in living on their salaries, which on average hover around one hundred dollars a month. This salary is far below the salary scale of the mining companies.</p>
4	<p>Technological Factor: Officials of the Mining Cadastre and the mining administration have serious difficulties in living on their salaries, which on average hover around one hundred dollars a month. This salary is far below the salary scale of the mining companies.</p>

FIGURE 11. WORKSHEET D: RISK MATRIX

Probability	5 Almost Certain	5	10	15	20 2 6 7	25 1 4
	4 Probable	4	8	12	16 8	20
	3 Possible	3	6	9	12 3 9	15 5
	2 Improbable	2	4	6	8	10
	1 Almost impossible	1	2	3	4	5
		1 Insignificant	2 Minor	3 Moderate	4 Major	5 Catastrophic
		Impact				

FIGURE 12. WORKSHEET E: PRIORITISATION OF RISKS

What tells me the risk is URGENT?	What tells me addressing the risk will have an IMPACT?	What tells me addressing it is FEASIBLE?			Is the risk a PRIORITY for action?
Score + Colour	Impact Score + Context	Stakeholder Interest + Resources			
Risk 1: What is the risk when the salaries of the staff of the Mining Cadastre and the mining administration less than a living wage? Probability = 5 Impact = 5 Total score = 25 Colour is RED (Score + colour suggests risk level is very high)	The impact score is 5/5. Therefore addressing the risk will have a significant impact. Contextual factors: The economic situation of the country, the level of the current national budget and other external factors limit the efforts of the state to improve the conditions of public employees.	Stakeholders: The Government, the Ministry of Mines, the TFP of the DRC.	Cost: Relatively high Actions are to be carried out within an overall public service framework.	Time required: Ongoing actions	Yes. Lobbying action
Risk 4: What is the risk of political interference in the process of awarding and transferring mining rights? Probability = 5 Impact = 5 Total score = 25 Colour is RED (Score + colour suggests risk level is very high)	The impact score is 5/5. Therefore addressing the risk will have a significant impact. Contextual factors: International and national pressure is beginning to bear fruit in terms of transparency in the negotiation of mining contracts, the transfer of shares and beneficial ownership.	Stakeholders: There are frameworks for consultation and dialogue bringing together the DRC's technical and financial partners, mining companies, civil society organisations and the State to deal with issues relating to transparency in the sector (EITI, Tax Dialogue, etc.).	Cost: Actions to be carried out in this field are lobbying, awareness-raising and warning actions that do not require a lot of resources.	Time required: Ongoing actions.	Yes. The demand for greater transparency in: <ul style="list-style-type: none"> + mining contract negotiations + beneficial ownership + transactions involving the transfer of mineral rights or shares in joint ventures (State Enterprises and private companies);

What tells me the risk is URGENT?	What tells me addressing the risk will have an IMPACT?	What tells me addressing it is FEASIBLE?			Is the risk a PRIORITY for action?
Score + Colour	Impact Score + Context	Stakeholder Interest + Resources			
<p>Risk 2: What is the risk of “regulatory capture” of Mining Cadastre and Mining Administration staff by mining companies?</p> <p>Probability = 4 Impact = 5 Total score = 20 Colour is RED (Note + colour suggest that the likelihood is almost certain)</p>	<p>The impact score is 5/5. Therefore addressing the risk will have a significant impact.</p> <p>Contextual factors: The organisational audit of the Ministry of Mines resulted in recommendations that are being monitored by a committee set up to do so. A Strategic Development Plan for the mining sector (2016-2021) has been adopted.</p>	<p>Stakeholders: The Government of the DRC, the Technical and Financial Partners of the DRC, local and international NGOs.</p>	<p>Cost: Very high Actions are to be carried out within an overall public service framework.</p>	<p>Time required: Ongoing.</p>	<p>Yes. Advocacy, publicising the Mining Code, the Strategic Plan for the Development of the Mining Sector.</p>
<p>Risk 6: What is the risk that the real value of the mining asset will be removed from the sale when it is not done in a transparent manner through the auction process?</p> <p>Probability = 4 Impact = 5 Total score = 20 Colour is RED (Score + colour suggests risk level is very high)</p>	<p>The impact score is 4/5. Therefore addressing the risk will have a significant impact.</p> <p>Contextual factors: International and national pressure is beginning to bear fruit in terms of transparency in the negotiation of mining contracts, the transfer of shares and beneficial ownership.</p>	<p>Stakeholders: There are frameworks for consultation and dialogue bringing together the DRC’s technical and financial partners, mining companies, civil society organisations and the State to deal with issues relating to transparency in the sector (EITI, Tax Dialogue, etc.).</p>	<p>Cost: Actions to be carried out in this field are lobbying, awareness-raising and warning actions that do not require a lot of resources.</p>	<p>Time required: Ongoing actions.</p>	<p>Yes. Demand for greater transparency in:</p> <ul style="list-style-type: none"> + mining contract negotiations + beneficial ownership + transactions involving the transfer of mineral rights or shares in joint ventures (State Enterprises and private companies).

What tells me the risk is URGENT?	What tells me addressing the risk will have an IMPACT?	What tells me addressing it is FEASIBLE?			Is the risk a PRIORITY for action?
Score + Colour	Impact Score + Context	Stakeholder Interest + Resources			
<p>Risk 7: What is the risk that the terms for contract negotiation, including what is negotiable and what is non-negotiable, will not be made public prior to negotiations?</p> <p>Probability = 4 Impact = 5 Total score = 20</p> <p>Colour is RED</p> <p>(Score + colour suggests risk level is very high)</p>	<p>The impact score is 4/5. Therefore addressing the risk will have a significant impact.</p> <p>Contextual factors: International and national pressure is beginning to bear fruit in terms of transparency in the negotiation of mining contracts, the transfer of shares and beneficial ownership.</p>	<p>Stakeholders: There are frameworks for consultation and dialogue bringing together the DRC's technical and financial partners, mining companies, civil society organisations and the State to deal with issues relating to transparency in the sector (EITI, Tax Dialogue, etc.).</p>	<p>Cost: Actions to be carried out in this field are lobbying, awareness-raising and warning actions that do not require a lot of resources.</p>	<p>Time required: Ongoing actions.</p>	<p>Yes. Demand for greater transparency in:</p> <ul style="list-style-type: none"> + mining contract negotiations + beneficial ownership + transactions involving the transfer of mineral rights or shares in joint ventures (State Enterprises and private companies).
<p>Risk 8: What is the risk that mining laws have been formulated to favour private interests over the public interest, or will be in the event that reform is considered?</p> <p>Probability = 4 Impact = 4 Total score = 16</p> <p>Colour is RED</p> <p>(Score + colour suggests risk level is very high)</p>	<p>The impact score is 4/4. Therefore addressing the risk will have a significant impact.</p>	<p>Stakeholders: The Government of the DRC, the Technical and Financial Partners of the DRC, local and international NGOs</p>	<p>Cost: Very high</p>	<p>Time required: Ongoing.</p>	<p>Yes. Advocacy, publicising the Mining Code, the Strategic Plan for the Development of the Mining Sector.</p>

What tells me the risk is URGENT?	What tells me addressing the risk will have an IMPACT?	What tells me addressing it is FEASIBLE?			Is the risk a PRIORITY for action?
Score + Colour	Impact Score + Context	Stakeholder Interest + Resources			
<p>Risk 5: What is the risk that applications submitted will be deliberately mishandled?</p> <p>Probability = 3 Impact = 5 Total score = 15</p> <p>Colour is RED</p> <p>(Score + colour suggests risk level is very high)</p>	<p>The impact score is 3/5. Therefore addressing the risk will have a significant impact.</p> <p>Contextual factors: The organisational audit of the Ministry of Mines resulted in recommendations that are being monitored by a committee set up to do so. A Strategic Development Plan for the mining sector (2016-2021) has been adopted.</p>	<p>Stakeholders: The Government of the DRC, the Technical and Financial Partners of the DRC, local and international NGOs.</p>	<p>Cost: Very high</p>	<p>Time required: Ongoing.</p>	<p>Yes. Advocacy, publicising the Mining Code, the Strategic Plan for the Development of the Mining Sector.</p>

ENDNOTES

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