Concept Note
Mining Sector Review: D R Congo
“Mining: Growth with Governance”

Background

Mining has been the backbone (or poumon to use Mobutu’s term) of the Congolese economy since colonial times. In fact, the country is commonly called a “geological scandal”, possessing valuable mineral reserves of copper, cobalt, gold, diamonds, coltan, coal, petroleum, and other commodities. At present, approximately US$ 2 billion is being generated by exploitation of minerals on an industrial, quasi-industrial and artisanal scale.

Industrial production of minerals is a fraction of the levels achieved during the 1980s and 1990s, the decline occasioned by mismanagement and political interference of the various state owned enterprises. For instance, Gecamines, the flagship state copper/cobalt producer, cannot meet operating expenses given its scaled down production much less begin to address the issue of over USD 2 billion of debt it carries on its books. Yet, re-starting large scale industrial production of minerals and increasing effective government oversight of the mining sector offers the country the best hopes of kick-starting the economy. This will not be an easy task given the security situation in many parts of the country and the severe lack of infrastructure, particularly transport and power. In addition, there are numerous and credible allegations of fraud, corruption, massive clandestine exports of minerals, trading of minerals for arms, and foreign interference in key producing areas in respect of current and planned mining operations. During the transitional government a number of foreign companies have taken up investments in DRC in industrial or quasi-industrial exploitation. Many of these operations currently or will take place on concessions previously controlled by state owned enterprises. This is the case for: 1) Gecamines which has signed numerous “partenariats” with various companies; 2) MIBA, the state diamond producer, which has been cited in the Lutundula parliamentary commission as having ceded valuable diamond rich concessions to foreign companies of dubious reputation; and 3) Okimo, the state gold producing company in the northeast of the country which has contracts with various companies, including Anglogold-Ashanti. Some of the agreements with companies, particularly for grassroots exploration, would appear to be above board. But, the “fairness” of other contracts as well as the manner in which they were negotiated have been severely criticized by national and international observers.
The majority of current minerals production is done by artisans and small scale miners. The number of these miners is conservatively estimated at 100,000+ and they operate in virtually all of the mineral producing areas of the country. There are significant issues of occupational health and safety, lack of environmental protection, child labor, human rights abuses, exploitation of workers, and indentured servitude. It is alleged that much of the artisanal production, especially in the east of the country, is controlled by foreign states and revenues are used to support various political factions and war-lords. The government has so far proved unable to exert its hegemony over these producing areas. Even in areas where the central government does have control, in Katanga, for instance, there is little effective government oversight of production.

The Bank has been active in the minerals sector in DRC since the peace agreements. Through IDF and other grants, the Bank provided technical assistance to prepare the new mining code and the accompanying regulations which were passed in 2002. This code is excellent and provides a good basis for the State to exercise its legitimate responsibility to regulate the sector in a clear and consistent manner. However, implementation of the new mining code has been problematic and there serious deficiencies of capacity of the Ministry of Mines and other government agencies to effectively enforce and administer the legislation. Additionally, rent seeking by public officials is also cited as a particular problem. Additionally, the Bank through other projects is providing funding for restructuring of Gecamines, establishment of the mining cadastre office, and other support activities for the sector.

Rationale for Study

There are a number of reasons why a study of the mining sector in DRC is opportune. First, there is a need for a thorough baseline study of the sector which will focus on all of the commodities and regions involved. Many other studies (principally by NGOs) focus on particular commodities or regions, without describing the sector as a whole. Second, the new government will require a baseline study and roadmap of future policies and strategies in respect of the sector. The study will also provide information for Bank management to better respond to the requirements of the new government. In this respect the Study will provide intellectual underpinnings for possible future Bank lending work in the mining sector directly or to other sector operations (e.g., transport) which may support development of mining. Other donors have indicated that they would appreciate the strategic views of the Bank on this important sector that the study could provide. Thirdly, the sector is an important source of growth for the economy in the medium and longer terms and has considerable regional development implications as well. The study will help the government better assess the potential for sector growth, its impacts and linkages with other economic sectors (infrastructure, private sector development, and others). Fourth, the study will address and identify the very significant poverty alleviation dimensions involved with the sector, particularly in the artisanal and small scale mining sector. Fifth, the study will provide a good tie-in with, and reinforcement of, on-going efforts to implement the Extractive Industries Transparency Initiative (EITI). Finally, and perhaps most importantly, the study will provide a platform for continued dialogue between senior Bank sector specialists and the government, private sector
companies and civil society. This is important given the high profile of the sector and as momentum builds with the investment projects currently in the pipeline.

**Methodology and Staffing**

The study will be conducted by senior staff of the Oil, Gas, Mining and Chemicals Department of the Bank. The senior staff will be supported in the field by the resident mission and a short term consultant. Additionally, baseline assessments being conducted by local consultants for the Bank under the auspices of the EITI will be available for the study team. In addition to published and unpublished documents, the study team will conduct numerous interviews with stakeholders in government, private sector companies, academia, and civil society.

Security conditions permitting, a rough draft will be available in December 2006 and a final report in March, 2007. In the interim, the principal findings of the study will be discussed during a multi-stakeholder workshop to be organized after the rough draft is prepared and circulated.

**Contents of Study**

1. **Executive Summary**

2. **Mining as a Source of Growth.** The purpose of this introductory chapter is to present the potential mining sector growth vectors and the attendant socio-economic and financial impacts, both positive and negative. It will be organized in three main sections. First, a basic description and data on sector and its current impact on the economy will be presented (commodities, structure, marketing, players, contribution to GDP, exports, taxes, value added, spin off effects, etc.). Data will be drawn from official from government statistics, unofficial from Global Witness and others, and best guess of Bank staff. Second, it will assess the resource base and potential including, in laymen terms, the geological potential of DRC, mineral deposits, historical and recent developments, comparisons with other mineral producing countries and areas. Finally, the study will develop scenarios of possible mining sector development under low, medium and high growth trajectories: what are the possible economic (financial and fiscal) impacts, investments required, timeframes for development, local community implications. The scenarios are not predictions of the future, rather they are intended to “ bracket” possible outcomes under each of identified trajectories. Messrs. Bocoum and Andrews.

3. **Role of the Artisanal and Small Scale Miners.** There are an estimated 500,000 to 1,000,000+ persons who earn a livelihood in artisanal and/or small scale mining in DRC. With dependents there could be as many as 3-5 million people who depend on this sector. The artisans mine principally gold, diamonds, coltan, and heterogenite (cobalt ore). This is a very particular sub-sector which is of current interest to the Bank as well as other donors due to the poverty dimensions of the
activities as well as links into other unsavory activities such as trafficking in arms, control of various warlords and factional leaders, allegations of child and human rights abuses, etc. The Study will make use of published and unpublished information on this sub-sector, including separate studies underway by teams fielded with Bank funding. It will describe the sub-sector, identify particular problems and constraints, suggest approaches which in other countries have proven useful to help improve artisanal mining, and provide an order of magnitude estimate of the funding requirements to begin to put some order into the sub-sector. Local consultant: Mr. Tshimena.

4. **Large Scale Mining Role of Gecamines and other Parastatals.** The government is undertaking, with Bank assistance, the restructuring of Gecamines. It is envisaged to split the company into: 1) a holding company for residual mineral assets and Gecamines participation in joint-ventures with private companies and, 2) an entity to assume the financial, social and other liabilities (estimated at USD 1.5 billion in debt). Gecamines is by far the largest parastatal, but others exist as well (e.g., MIBA - diamonds, Okimo-gold). This chapter will provide an up-date on the status of the parastatals, plans for future involvement in the mining sector, and suggestions on possible future courses of action. The Study will make use of information sources including the work of consultants to the parastatals and interviews with the management of the companies.

The mining investment agreements and contracts which have been signed by Gecamines and other parastatals with private companies are particularly controversial. The controversies concern principally the processes used to conclude the contracts (e.g., lack of appropriate valuation of assets, lack of competitive bid), their conformance to the Mining Law of 2002, and the terms and conditions of the contracts themselves, which are viewed by many as highly unfavorable to the interests of the State and company concerned. The study will not provide a detailed review of each contract but rather summarize the overall conclusions of the legal and financial reviews of the contracts which the government has undertaken by the Lutundula Commission, expert consultants (Duncan Allen and Ernst and Young), and other reports. The Study will recommend possible options for the Bank to take in respect of advising the government on these contracts and outline the potential consequences of each option. Mr. Andrews.

The chapter will assess the role of the formal private sector. In the past three years numerous private sector companies - large and small, local and foreign – have taken out exploration and/or mining licenses directly or entered into joint ventures with parastatals and other private companies. The chapter will summarize the activities of these companies and identify their potential contribution to sector growth. It will also assess the government’s capacity to monitor and control the exploration and exploitation activities of the companies. The chapter will make recommendations, based on information supplied by the companies, on what should be done in terms of infrastructure and other public
sector investment to help support the private sector. An annex to the study will collect information and provide a brief reference guide to the companies involved, the areas where they are active, what stage of operations (exploration, feasibility, development, exploitation), what commodities, how much they are investing, with whom they are in partnership, and a synopsis of published information on them.

Mr. Bocoum.

5. Governance of the Mining Sector. The regulatory and fiscal conditions for mining investments in DRC are reasonably clear and consistent with international practices. This chapter will briefly summarize main points of mine law and fiscal policies and draw out any discrepancies with international practice or legal issues pertaining. Recommendations may be made in this section to improve the quality of the legislation and fiscal conditions pertaining to mining, if any. Mr. Andrews.

However, if the legal and regulatory framework is relatively straightforward there are huge gaps in the government’s capacity to administer the sector. This chapter will examine and discuss the lack of capacity in public institutions to effectively administer the sector along several dimensions: institutional (e.g., central and provincial organizational issues such as overlapping mandates, duplication, lack of clear responsibilities, relations with “shadow” (e.g., warlord) government, logistical support to government agencies, functional (e.g., mine title and cadastre system, mines inspectorate, health and safety, small scale mining department), fiscal (taxation administration and collection), and human and skills gaps (functional and training requirements). In addition, this chapter will examine the “retrocession” of mining taxes from the central to the provincial governments within the context of the “decentralization” policies mandated by the constitution and the new political environment. Some Bank programs are available to remedy these capacity gaps, but these are insufficient given the needs for effective government administration of the sector. The study will recommend specific activities and projects which may be adopted to remedy the capacity constraints as well as provide order of magnitude funding estimates for these projects. Mr. Bocoum and Mr. Tshimena.

As in many other countries, the extractive industries are uniquely susceptible to corruption and non-transparent practices. This is certainly the case with DRC and there are numerous, persistent and credible allegations of corruption and non-transparent dealings. The government has endorsed and is in the process of implementing the Extractive Industries Transparency Initiative (EITI) which is an important step in the right direction. The chapter will detail progress to date, future activities and prospects for the EITI in DRC. The Kimberley Process has had some success in the diamond sector and this is serving as a model for present work on “traceability” of minerals and enhanced controls to census the export of mineral commodities. The chapter will also touch upon other dimensions of “governance”, particularly the roles of government sponsored institutions such as the army and the police which are involved in certain mining activities. The
chapter will provide a frank prognosis for long term success in this respect. Messrs. Bocoum and Andrews.

6. **Involvement of Local Communities.** A critical issue in most countries is to ensure that benefits streams reach local populations. Mining operations, actual or proposed, in Congo will certainly face this issue. Already there have been incidents of unrest in around some mining operations. Related issues pertain to the “social assets” of Gecamines which pose a huge problem in terms of transferring them off of the balance sheet of Gecamines as part of the restructuring exercise. This chapter will take note of the problems as expressed by various sources and suggest ways in which the government may augment its safeguard policies and activities with respect to local communities. Mr. Bocoum.

7. **Physical Bottlenecks to Development of Mining.** Most private sector companies have noted severe deficiencies in terms of basic infrastructure, in particular road/rail transportation and power. The chapter will rely on published and unpublished information, as well as extensive contacts with Bank colleagues, for information relative to the infrastructure constraints. The chapter will make recommendations on what infrastructure investments will be required in order to support, in particular, private sector investments. Messrs. Bocoum and Andrews.

8. **Road Map of Future Actions.** This chapter will summarize the recommendations and findings made in the previous chapters of the study. It will provide a plan of properly sequenced actions which the government, WBG, other donors, companies and civil society may consider over the future months. The action plan will also outline the main orientations of the possible sector investment credit of $30-50 million as presented in the CAS. The actions proposed will be with a view to stimulate growth in the Congolese mining sector with proper governance.

**Information Sources**

The study team will pull together sector information from a variety of sources. These include published reports of NGOs (Global Witness, Human Rights Watch, Catholic Church), United Nations investigations, bi-lateral reports (USAID, DFID, Belgium, France, etc), Gecamines, Okimo and MIBA, private sector information (Anglo-American, BHP, Anvil, First Quantum, others), interviews with key players in government and private sector as well as civil society groups.

**Time Frame**

Because of the elections cycle the study has been delayed in getting started. Nonetheless, it is important that the Bank be in a position to advise the government quickly during the new administration on mining sector policies and strategies. Therefore, the study will be completed in draft form by end-March, 2007. Field missions are scheduled for the last two weeks of January, February, and March. Information meetings will be held with
representatives of civil society, donor community, and private sector during the missions. A briefing will be organized by senior Bank staff for government officials in March to present the results of the study. It is anticipated that though the study will be essentially complete by end-March there will remain additional work through June to finalize the work.