

The State versus the people?

Governance, Mining and the Transitional Regime in the Democratic Republic of Congo: the Case of Katanga

By Kirsten **Hund** and Didier **Verbruggen**

From fatal to fair transactions in the DRC?

Three years of transitional government in the Democratic Republic of Congo (DRC) has not led to stability and development. On the contrary, the governing elite are busy enriching themselves, while the situation of the population deteriorates. Taking the copper-rich province of Katanga as a case study, this article shows how members of the transitional government, supervised by multinational companies and international donors (including the World Bank) have profited from the Congo's natural wealth at the expense of the population. Bad governance, a rampant lack of capacity and overall corruption have led to the collapse of the formal mining sector, misery, environmental degradation, human rights violations and political instability in what was once the most prosperous part of the DRC.

With elections in sight, now is the time to act. The way the current ruling powers – and candidates to be elected in the new democratic government – manage the countries' wealth will be of crucial importance for its future. The international community, including South Africa, should make good governance of the DRC mining sector one of its prime concerns. To bring about any change, it is essential to enhance capacity, support and guarantee security to Congolese civil society in their efforts to achieve a more just and sustainable exploitation of natural resources in a democratic Congo.



Transparency is key. Politicians, political parties and companies should disclose their mining sector related agreements, contracts and assets. A transparent review of joint venture contracts with state mining companies, as well as the ability to ensure that parties who do not meet their obligations are held legally liable for their actions, will have to play an important role in this process. It is not too late for all those involved – companies, governments, political parties and the international community – to work out a long-term vision and strategy for the extractive industry, with fair and just economic growth as the guiding principle. Congo's mineral wealth should benefit the entire population, rather than a small, elite group.

The International Fatal Transactions campaign¹ is dedicated to transform business activities that fuel bloody conflicts and human rights violations – the so-called “Fatal Transactions” – into “Fair Transactions” that truly contribute to sustainable peace in Africa.

Congo: a history of plunder

Throughout history, valuable minerals have been associated with conflict, banditry and violence. Nevertheless, minerals such as gold, diamonds and coltan, as well as other natural resources like timber and oil, can also contribute positively to the livelihoods of many people all over the world. They can make their environment more beautiful and luxurious, allow for transportation, as well as provide the raw materials for industrial products

such as computers and mobile phones. When managed well, they play an important role in enhancing economic growth and stability.

Unfortunately, the characteristics possessed by these resources also generate the potential for negative impacts on peace, security and sustainable development, notably in Africa. Take the DRC for example. It is one of the world's richest countries in terms of mineral wealth (sometimes called "a geological scandal"). The vast majority of its population does not profit from the country's wealth. More than 70 percent of its people live below the poverty line, with an income of about 80 cents per person per day, thus making the DRC the 167th in a list of 175 countries on the Human Development index.

Since colonial times, the Congo has undergone a long history of plunder, culminating in what is now called "Africa's First World War". Over the past century, colonial powers, Cold War dictators, neighbouring states, private companies, criminal networks and rebel forces have all taken turns in pillaging the country, plunging the DRC in a deep economic, social, political and humanitarian crisis.

Under pressure from the international community, the former belligerents, together with representatives of the unarmed political opposition and civil society organisations, joined a transitional government that has ruled the country since July 2003. The principal objectives of the transition were to re-unify and reconstruct the country, to establish peace, to create an integrated national army and to organise democratic elections. If one makes up the balance sheet of three years of transition, one cannot but conclude that for the most part, it has failed. The east of the DRC is still not under government control and is immersed in conflict. The integration of the army is far from achieved and parallel command structures reflect the persistent loyalty of troops to the rebel movements they belonged to during the war. Elections, were postponed by at least a year and have over the last months been rescheduled numerous times to an always later date. The rainforest is rapidly disappearing; child labour and forced labour are common, especially in the unregulated, artisanal mining sector. Mining in relatively stable areas in the South, threatens both the environment and the livelihoods of communities.

Much of the transition's failure can be ascribed to bad governance and corruption on behalf of the DRC's current political class. The DRC's history has burdened it with a certain kind of "governmentality" that is the main obstruction in the way of reconstructing the country and adequately addressing the humanitarian crisis it is facing. At all levels of the state apparatus, public office is seen as a means to acquire personal wealth and privileges. For low

rank officials, who are underpaid or not paid at all, petty corruption is a strategy for survival. This excuse however is not valid for corrupt practices on behalf of the country's leaders, who bear a grave responsibility for the situation the next government will inherit.

Large-scale embezzlement of funds earmarked for military purposes has made the national army inefficient and barely operational. Its inadequately paid soldiers often revert to their guns as a means to scrape a living and pose a security threat to the population that they are meant to protect. The ongoing conflict in the East has a strong economic and resource component to it, and is largely brought about by high-rank politicians within the transitional government. One of the major causes for the postponement of the elections has been the reluctance of many ruling politicians to step down from their comfortable positions in the transitional institutions, and to lose access to the wealth produced by the nation.

Throughout the transition, the leaders of the DRC have paid lip service to international donors on the issue of bad governance and corruption. In practice, the key principles of good governance – participation, accountability, transparency – have constantly been disregarded. As a result, the Congolese public opinion perceives anti-corruption measures more as a tool to rule out political adversaries than a genuine effort to serve the interests of the population. Impunity, instead of accountability, seems to be the rule. For example, a Parliamentary enquiry into governance practices at public enterprises led to the dismissal of many high-rank officials and six ministers, but was not scrutinised further in court, which could have held the accused officials accountable.

Another Parliamentary enquiry – that of the so-called Lutundula Commission – that was entrusted with the task of "assessing the validity of agreements of an economic and financial nature concluded during the wars of 1996-97 and 1998", clearly shows that the main political parties have thwarted initiatives aimed at enhancing transparency in the politico-economic management of the country, when such initiatives tended to interfere with their own affairs. So far, more than a year after the Lutundula report was deposited at the Bureau of the Assembly, the report has not officially been made public (although versions do circulate on the Internet), nor has it been scheduled for discussion in Parliament.

The international community is well aware of the problem, but has been acting primarily on the adage "first stability and then good governance". In the May 2005 report on the elections in the DRC, the UN Secretary-General launched a proposal to establish a joint mechanism of Congolese officials and international donors to

support the transparent management of state resources, including those from the mining sector. However, several members of the security council, including China and Russia, have been opposing the initiative. President Joseph Kabila also called the proposal a violation of the DRC's national sovereignty.

Katanga

The mining sector management in Katanga offers an interesting case study for governance issues, as the stakes are exceptionally high. The province harbours by far the greatest potential for resource-based economic growth in the country. Gécamines, Katanga's (and the country's) main mining parastatal, ranked until the mid-eighties among the world's five major copper and cobalt producers, yielding an annual turnover of about US\$1 billion and providing jobs and social services, infrastructure, education and medical care to 33 000 workers and their families. The mining area of Katanga has in recent history not been a war zone, and during the war and the transition, the central government has retained a solid grip on the province and its economy. This implies that the current image of the Katangan mining sector is not distorted by direct conflict, and thus is a fairly good reflection of the ruling elite's mining policy.

Over the last decade Gécamines has been most intensively targeted by reform efforts, for which it has received assistance from the World Bank since 2001. The World Bank's overall strategy in the DRC has been to spur economic growth through private sector activity, mainly by trying to attract foreign investors. Among its main activities were the promulgation of a new mining code, the preparation of a new mining registry, and the restructuring of key companies such as Gécamines.

Gécamines, of all mining parastatals, has thus stood the best chance to recover from the ill state the Mobutu regime has left it in. However, the interaction between the Congolese government and the World Bank has resulted in an anarchistic and opaque privatisation process that has stripped Gécamines of all its assets. Negotiations with mainly Canadian and South African Junior mining companies resulted in a number of joint venture contracts that marked the start of Gécamines' random dismantlement. UN reports on the illegal exploitation of the DRC's natural resources describe how during the war a military-commercial network was established, in which Zimbabwean interests are closely linked with those of the ruling parties. Despite the assistance of the World Bank, the continued privatisation under the transition has not curbed its decline. The company is reportedly bound by more than 160 contracts with private partners and is *de facto* bank-

rupt, unable to pay a regular salary to its 12 400 workers or to repay its ever increasing debt, already at US\$ 1.7 billion in 2003.

The joint venture agreements that it has entered into, contain numerous anomalies that are all detrimental to the State and to Gécamines. These agreements are usually negotiated by Gécamines' directors, but President Kabila and members of his entourage frequently interfere. The terms of these contracts, deemed by experts to be in most cases stupendously unfavourable for Gécamines, give serious reasons to believe that the officials involved in the negotiations have received kickbacks as a way of "compensation". Our interviews with several international legal advisors who have partaken in joint venture negotiations, confirm that demands for kickbacks on behalf of high-rank Congolese officials are a recurrent element in such negotiations. Corruption might also explain why the Congolese authorities allow that joint venture contracts are in most cases not properly executed.

At the provincial and local level, institutional controlling mechanisms are absent or inefficient. Public services which are supposed to regulate the mining sector and mineral trade are under-equipped and underpaid (if not unpaid). They take conflicting measures and they are unable to procure reliable export statistics. Their representatives are in some cases paid by Gécamines' private partners themselves, an aberrance which gives way to massive tax and export fraud.

As a consequence of the failure to relaunch the most vital part of Katanga's economy, widespread poverty and unemployment characterise the province. These grim socio-economic conditions risk exacerbating underlying political and ethnic tensions that threaten to lead up to violent conflict in the future. One of the most dangerous and visible consequence of the mismanagement of Gécamines is the phenomenon of artisanal mining. Every day an estimated 50 000 to 70 000 *creuseurs* or informal miners (among them many children), invade numerous mining sites in Katanga to dig for heterogenite, an ore that is exceptionally rich in cobalt. These people work in appalling conditions for little more than US\$1 a day. Most of the ore, which they sell through intermediaries to big trading houses, leaves the country unrefined, and this again deprives the DRC of much needed revenue. (See following Case Study).

Who's responsible?

The main reasons for the dilapidated state of the Katanga mining sector as a whole are bad governance, corruption and institutional failure. The general picture of the mining sector in Katanga drawn by Congolese and international NGOs, journalists and observers, is that it is

stuck in a vicious circle caused by corruption, mismanagement and predatory patrimonialism recalling Mobutu times: mining operations hardly generate revenue needed to fund a properly functioning institutional apparatus and, vice versa. Institutional failure leads to a lack of revenue. The Lutundula report states, for example, that the Congolese State has arbitrarily granted major tax exemptions to several joint ventures for periods of 15 to 30 years.

The political responsibility for this situation lies primarily with Kabila's Katanga clan and its power brokers, who have upheld their near-hegemonic position in the province for almost a decade. Hard evidence of corruption is difficult to find, but there is documented proof that Kabila's PPRD uses Gécamines as a vehicle for party financing. The company's directors and businessmen or companies engaged in joint venture mining operations make regular financial contributions and provide support to the party.

Regarding this situation, the World Bank has a lot to answer for. Throughout the transition, efforts to implement good governance practices related to mining sector management have largely failed due to a lack of political will on behalf of the DRC's ruling elite. In addition to this, the World Bank has not been able (or willing) to cope with the enormous amount of political obstruction which such efforts have met. For five years now, the Bank has been supervising and funding the restructuring of Gécamines, but an analysis of the way Gécamines' giant mining assets were transferred to private companies clearly shows that the Bank cannot be unaware of how the mining reforms that it outlines are implemented in practice. It is about time the Bank evaluates and publishes the present-day World Bank strategy concerning the privatisation of the DRC's mining parastatals. It should formulate and publish a strategic vision on the management of the country's natural resources for the coming 20 years, taking community based and shared economic growth as a guideline, and explaining to what extent the existing partnerships with parastatals are in accordance with this strategy.


The future

Katanga is one case study. But similar (and worse) stories could be told about other Congolese provinces, implicating other members of the transitional government. In short, repeated efforts to improve the situation of the DRC's population after the war, by trying to pave the way for sustained development and shared economic growth have been undermined completely by bad governance practices under the transitional government.

Elections are expected soon, but cannot be expected to make any miracles happen. Either – and this is a very like-

ly scenario – the ruling elite (or most of it) will be voted back into power and will thus be endowed with more legitimacy than it has enjoyed before, or a new political class will emerge, which will have a difficult time trying to eradicate deeply-rooted patterns of corruption and patrimonialism.

Moreover, any newly elected government will be burdened by the inheritance of the war and the transition, and will be facing enormous challenges. Conflict in North Katanga, the Kivus and Ituri is likely to persist and may even spread to other areas. Major security sector reform efforts will need to be undertaken to create a functional and disciplined army. The Congolese population, of which the greater part is immersed in a grim humanitarian crisis, might lose its patience if elections do not quickly lead up to a tangible improvement of socio-economic conditions. As we have seen, the mining sector could have played an important role in improving those conditions during the transition, but (mainly due to mismanagement) it has failed to do so. Any new government will need to bring about a radical change of resource management practices. Even under the best conditions, it will still take several years before the mining sector is able to generate substantial revenue and employment.

Provided the next government has the political will to finally aim at shared economic growth kick-started by the mining sector, it will find the sector burdened by numerous disadvantageous joint venture contracts that constitute the legacy of the past. In the meantime, the international community should make good governance of the DRC mining sector one of its prime concerns, so that the population of the DRC will be able to reap the riches of their soil, eventually. 

Kirsten Hund is Senior Programme Officer, Economic Justice Programme, NiZA, and Coordinator of Fatal Transactions. Didier Verbruggen is Researcher, International Peace Information Service (IPIS).

This article is a summary of the full report "The State versus the People" published by the Netherlands Institute for Southern Africa (NiZA, Amsterdam) and the International Peace Information Service (IPIS, Antwerp). The full report can be downloaded at www.niza.nl or www.fataltransactions.org

1 Fatal Transactions is carried out by six European NGOs; Netherlands Institute for Southern Africa (NiZA, The Netherlands), Medico International (Germany), Novib (Oxfam Netherlands), 11.11.11 (Belgium) and Intermon Oxfam (Spain). Associate members are: IPIS (Belgium), BICC (Germany) and Pax Christi (The Netherlands). Southern partner organisations of the FT members actively take part in the campaign. www.fataltransactiond.org

Case Study

This piece demonstrates how the DRC population is under a new kind of qualified slavery, due to lack of proper organisation of the industry by the Congolese government. Private mining enterprises do not respect the rights of miners and this situation has paved way for the operation of illegal organisations and unfortunately, the population, the State (government) and even legal private businesses are all losers.

The curse of natural resources

Instead of natural resources being a means towards a prosperous country – where citizens have a good livelihood – the Congolese natural wealth has turned to be a source of suffering for its people. This is a new phenomenon, since the advent of slavery, the Belgium colonization, the Mobutu dictatorship and the civil war.

The DRC abounds with great reserves of diamonds, manganese, tin, copper, cobalt and many other minerals. However, the majority of its population lives on less than one US\$ per day and many are dying of famine. Statistics published by international institutions relegate Congo among the poorest, with the least developed basic infrastructure. Its people do not have access to public health, education, or justice, roads, habitat, and other services.

Exploitation of the workers

Human resources are exploited and abused in the DRC and it should be the government's responsibility to manage the administration of economic operations in the country, and manage the mineral and financial resources and revenues and protect its citizens against any abuse and exploitation. Unfortunately, this is not happening in the DRC. The Executive is focused on corruption and embezzling of public funds, while the population tries to manage themselves in a "survival of the fittest" fashion.

Coupled with the failure to organise the mining sector to guarantee decent employment in conformity with the national laws and international standards – which guarantee social security, hygiene and safety in the workplace – the government has tended to take a short-cut, by pushing the population towards "artisanal" extraction of the natural resources, where people just extract resources without any contracts or training. A good example is the population of the forest belt, which has demolished trees, and that of the mining zones who dig various ores, without following any regulation or standard procedures. This might give the wrong impression that all people therefore are benefiting from the natural resources in the DRC. In fact, this is not true. On the contrary, it has worsened the situation of the majority of the Congolese citizens. Be it in the diamond mines of Tshikapa, Mbuji Mayi or Kisangani or in the gold mines of Ituri, Maniema, Kalemie and Mitwaba or the copper and cobalt mines of Lubumbashi, Likasi and Kolwezi, the population has been reduced to slavery. This situation has become worrisome and there is need for the international community to pay attention to it. There is no record of statistics to evaluate the number of people involved in this kind of forced work. But, observations indicate that miners and transporters of the diamonds, gold, copper and/or cobalt – hundreds of thousands of people – work there as "artisanal miners."

Artisanal or Miners Without Rights?

Nobody knows how many "artisanal miners" are in the various mines, but estimates put the figure for Tshikapa and surrounding mines at 100 000; Mbuji Mayi and neighbouring mines at 200 000; Kisangani-Isiro and Mongwalu at more than 50 000; Kamituga in Kivu and Maniema at 50 000; Kalemie and Mitwaba around 10 000; Lubumbashi (Lopoto-Likasi in Kolwezi), around 150 000 people, adding up to at least half a million people.

During and after the war (1996-2003), many mining enterprises were opened almost everywhere in the DRC. Many of these however, do not have contracts for their workers. They "employ" artisanal day labourers or "independent workers" who just work on a daily basis, with no time-bound contracts.

Workers without contracts of employment

Since the so called "independent worker" has no contract of employment, this implies that they legally do not exist in the mining companies' records. As such, they cannot be syndicated, because the trade unions are affiliated to the companies and the law fixes the procedures of the negotiations for work conditions with the employer. Such workers can not claim any protection from the government, because as far as the government is concerned, they do not exist. Because of this, there is no protection from the labour laws or from the government. It is therefore not uncommon to find most of these workers working in appalling conditions: digging with their hands, carrying tons of ore on their bare shoulders to load it in trucks. There are often no toilet facilities nor safety in such places of work. Workers are exposed to potential risks of accidents and diseases related to the extraction of heavy metals, or the handling of ores that contain uranium or ions which, in the long term, cause cancers and pulmonary diseases. In Western Kasai, the estimated figure of deaths by accident is three people per day, while in eastern Kasai it is around 10 people per day, largely because of the confrontation between the mine police and the DRC army which keeps the concession of the mining company of Bakwanga (MIBA), a diamond extraction venture in Mbuji Mayi.

Since the workers are not recorded or known, they are automatically replaced in the event of death or of disease, without any compensation for their families. In some cases, companies pay recruiting agents, as in the case of the Chemaf Company in Lubumbashi which recruits its workers through the "Baobab tree" agent. In some cases, the "artisanal miners" are forced to move far from their families for long months in search of less competitive mining ventures. With limited means of survival, they are often at the mercy of the agents, who buy the valuable stones they mine in exchange for food. For example, in March 2006, in the province of Kasai-Eastern, in the territory of Katanda (in Bena Tshitolo), a trader incited "artisanal miners" to kill the chief of the place, with the intention of him taking total control of the diamond operations of the region.

Organized crimes

The precariousness of life in the bush and the dependence on agents, many artisanal miners flock around the mining company of Bakwanga (MIBA), which is established in the urban area. In order to deal with their ever growing numbers, the Congolese government has created an armed brigade of mines,

which patrols with the industrial guard of the company, the interior of the compound as well as the elements of the State Armed Forces (FARDC) which covers the external side of the concession. The mining brigade is authorised to shoot at any artisanal miners who return to the concession of the MIBA, with the intention to steal any minerals. Reliable sources indicate that a minimum of three people are shot dead every day on the company grounds.

The “Suicidal Ones” of Mbuji Mayi

In resistance to this armed repression, the “artisanal miners” have created “suicidal groups.” These are armed groups constituted by civilians and deserters from the national military army or police. In other cases, the “suicidal groups” are made up of soldiers and police officers, still enrolled in the national forces, who use their days of rest to work with civilians to attack their colleagues in the mining brigade, for extra cash. These suicidal ones are also financed by traders (or groups of mainly Lebanese), who then purchase from the suicidal groups the diamonds obtained from MIBA and resell them for much higher benefits.

For instance, a trader could contact an officer of the mines brigade responsible for monitoring a mining operation, and ask to enter into a transaction with him. The transaction can be done in three different ways (potentially costing three different prices). The first possibility would be for the officer to be engaged to cover the trader’s group when it enters the mining area to collect mineral rich ores. The second option is considered when the officer himself will not be on duty on the day the trader’s group comes, he may give them details on the team monitoring, so the traders team will know who will be guarding which entrance at what time. The third option is considered if the officer would not be on duty, but assigns officials to accompany the trader’s men to the place and allows them to walk into the mining area and collect ore. In all these cases, the trader’s team (usually 100 to 150 people) take with them weapons, to assure themselves that the officer will not turn round and attack them. If the protective officer in question were changed at the last minute, and other police officers are not aware of the arranged deal, the “suicidal team” will proceed and seek to take even the least possible minimum of gravel, at any cost. This is the major reason for the confrontations between the “suicidals” and police officers of the mining brigade, which often happen at night, and some times even during the day. Deaths resulting from these are often not counted or recorded, because the “suicidal ones” clandestinely bury their colleagues fallen “in the battle front.”

Katanga on the way of Kasai

In Katanga, the phenomenon of the “artisanal miners” is worsened by the bankruptcy of Gecamines, a public company which, with the support of the World Bank, 10 500 workers retrenched in August 2002. Gecamines was one of the State companies which supported life in this province. Almost all people in the province depended on it for hospitals, schools, roads, hydroelectric power source, drinking water, etc. Under the pressure from the international community, the DRC “privatised” the extraction activities of the mining sector, abandoning the social responsibility roles this sector had played. The privatisation was

designed to benefit foreign interests, especially of those companies that had links with the old colonial system, or those that had succeeded in establishing their roots in Congo during the disorder caused by the war between 1996 and 2003.

Conclusion

Hundreds of thousands of unemployed people are engaged in a dangerous trade for the Congolese companies and for themselves. They waste the natural resources and sell-off the production. They are being exploited in a new form of slavery disguised as “independent”, “artisanal miner”, “traders”, and other considered politically correct terms. The reality is that they are in slavery. It is a confused situation in which everybody, (except foreign interests) in the country is the loser.

The mining industry loses ...

On the one hand, the companies refuse to deal with the loss of profit to “artisanal miners”, whom they see as a danger to the industry, through their extractive activities. From an economic point view, large international mining companies may find it more beneficial to work and invest in a healthy and safe environment. They need to minimise the costs and benefit from the flourishing prices on the international markets.

The population loses ...

On the other hand, the “artisanal miners” do not feel secure. They work so much for almost nothing, due to lack of access to lucrative markets. The traders who buy ore from them pay them next to nothing. They risk their lives to accidents and fatal diseases. They are never protected; neither in the workplace, nor by the law system.

The Congolese state loses...

In the final analysis, it is the Congolese State which loses most. It loses its current population through illiteracy, poverty and death all of which are entangled the citizenry in a vicious cycle. The state loses its natural resources, because “artisanal miners” are forced to sell these resources for next to nothing, often to foreign networks that do not reinvest in the country. The state also loses its financial resources, because all the “artisanal miners” do not pay any tax to the government. It loses on potential investments, because crime and lawlessness in the extractive industries scare investors away. International credibility and prestige are also lost as the country is labelled amongst the worst corrupt in the world.

The Congolese State should act urgently to organise the proper functioning of the extractive industry in the country and ensure safe and productive employment for its citizens. This should be done in collaboration with trade unions, NGOs and companies operating in this sector. The process should be guided by international norms and standards of the United Nations laws relating to human rights in the business. The Congolese State should give urgent attention to the rights of its workers and the majority of its people who are in the midst of so much riches, yet are living in squalor.

Box compiled by Hubert Masoka Tshiswaka, Director of a Human Rights Organisation in DRC.