

The mining sector in the Democratic Republic of Congo: Problems and prospects

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It would not seem too cynical to suggest that one of the principal driving forces behind the international community's concern about, and commitment to, a successful outcome to the process of political consolidation in the Democratic Republic of Congo (DRC) was its interest in securing the formation of a legitimate government that could act as a signatory to mining contracts. The previous situation, in which the authorities in Kinshasa and the various rebel groups exercising *de facto* sovereignty over much of the mineral-rich territory of the east, might have provided an environment conducive to the looting of resources but not to long-term investment in this African treasure house.

Now, with the elections over, and President Kabila firmly placed in power, the situation has changed. The imagined military threat once posed by his defeated chief rival appears to have faded, and even in the troubled east the recalcitrant General Nkunda is slowly

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being brought into line. This is not to say that there will not be further alarms and outbreaks of violence, but in the current situation it is difficult to anticipate a threat large enough to threaten the current political dispensation.

Nevertheless, as the major international mining companies will be aware, any calculation of the contractual risks and opportunities in the DRC's potentially rich mining sector requires an understanding of the country's legal and administrative framework, its political culture, and the timeframe within which a new government may expect to form an effective legal administrative framework over the whole national territory.

The civil war affected different parts of the country in various ways, including its impact upon mineral extraction. In the east, control over mineral resources (principally gold, diamonds and coltan) played a major part in the war economy, and also attracted the intervention of neighbouring states. This dynamic did not disappear under the transitional government. Katanga and Kasai (copper, cobalt and diamonds) were spared from the most violent predators, but still fell foul of politically connected speculators. It will take time to bring local mining operators under control, linked as many of them still are to international networks. Conflict between industrial mining concerns and the army of artisanal miners who support as much as 20 per cent of the population will be a hazard throughout the mining sector. This is probably an issue that has been overlooked by many, yet it could well prove the thorniest of all the problems facing the sector.

In terms of the Peace Accords of 2003, a parliamentary commission was appointed to investigate the mining contracts awarded to international companies between 1996 and 2003. The Lutundula Commission's work was systematically obstructed within and outside the DRC, and its report was successfully delayed to make a parliamentary discussion of its findings impossible. The commission found that several contracts were either illegal or of dubious developmental benefit, and recommended their termination or renegotiation. It also urged that legal action be taken against a number of prominent political or corporate figures and recommended that all negotiations for new mining concessions be frozen pending the completion of its work, which it wanted to extend to mining contracts concluded since the beginning of the transitional government in June 2003. The recommendation of a moratorium on new contracts was simply ignored by President Kabila, and Gecamines assets were largely negotiated away. Nevertheless, it may be taken as a positive sign that Lutundula himself appeared on the pro-Kabila platform during the election, signifying perhaps that this particular bone of political contention has been buried.

Disagreements over mining contracts and concessions certainly will continue to cause problems. The new Mining Code and Registry are supposed to address some of these concerns, but await implementation. Much depends, however, on the ability and political will of government to achieve stability and to implement the legal and business frameworks required. The idea of a politically neutral legal system is a novelty for the DRC.

Full implementation of the code, especially by smaller players, will take some time. All, Congolese and foreigners alike, suffer the consequences of a non-functional, and hitherto highly politicised, judicial system which has indulged in selective application of a complex legal code. Though there have been no expropriatory actions recently, official channels often do not provide rapid recourse in the event of property seizure that has been carried out by Congolese security forces, supported by questionable court judgments. Foreign enterprises do enjoy a measure of advantage in this respect over their Congolese counterparts, because of the influence of foreign diplomatic missions, and the potential for larger firms to generate tax revenues and jobs.

Legislation regarding the mining sector notwithstanding, the issue of land rights remains politically fraught, and the ability of the central state to enforce its will in this regard will probably be affected by local balances of power for some time, imparting a measure of expediency to the execution of policy. Rights to, and the allocation of, such rights have played a central part in the politics of the country's most troubled provinces. The extension of the authority of the central state will be the business of several years, not months.

The question of who in the DRC will benefit from the country's minerals has become increasingly politically charged. This has become a major issue among internal and external NGOs and advocacy groups, and has potentially important consequences for those international investors careful of their reputations.

The DRC has never really experienced a period in which the rule of law has been paramount in a disinterested sense. The rules of the economic game have always consisted of one set of unaccountable, short-lived and arbitrary laws succeeding one another, or existing in contradiction, and applied capriciously and selectively, while presenting themselves as immutable, eternal and incontrovertible truths. For most Congolese, the 'illegal' informal economy has been the only means of survival for many, and legality has been synonymous with state-organised theft.

If a strong government now emerges, the dynamics of the squabble over mineral concessions will change, in that there will be more incentive to create a reliable revenue flow for the state, rather than for the individuals comprising the government. Corruption and judicial maladministration will not disappear, but if the mining majors make common cause, instead of allowing their competitive instincts to allow for a policy of divide and rule, certain fundamentals could change favourably, making for a more predictable business environment. Such a trend would obviously be favoured by the IFIs and by the major donors and backers of the peace agreement. That the new DRC administration will need massive revenues from the mining sector if it is to fulfil expectations in terms of even modest service provision is not in doubt. Here exists a possible synergy of internal and external interests.