



# In the face of reform: What future for ASM in the eastern DRC?



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## ARTICLE INFO

### Article history:

Available online 13 December 2013

### Keywords:

Artisanal mining  
Formalisation  
Viability  
Local development

## ABSTRACT

This article aims to assess, on the basis of empirical evidence from South Kivu, what the future may hold for artisanal mining in the eastern Democratic Republic of Congo (DRC). The eastern Congolese mining sector is undergoing a period of profound change. Industrial exploitation, while still nascent in the Kivu provinces, appears poised to expand with a number of transnational mining companies currently exploring vast concessions. At the same time, there is a range of new initiatives to regulate and formalise the artisanal mining sector, but early evidence shows that they have failed to have a positive impact. We identify a number of factors hindering the effective implementation of these initiatives, namely state capacity and political will, the complex dynamics and power relations in the current system of artisanal mining and trade, the importance of these activities for livelihoods and the lack of alternative livelihoods. We also provide suggestions for future interventions, including initiatives to promote a viable artisanal mining sector which contributes to broader local development.

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## 1. The state of ASM in the eastern Democratic Republic of Congo (DRC)

The DRC's enormous mineral wealth has long been heralded as a 'geological scandal', and includes important deposits of copper, cobalt, tin, tantalum, gold and diamonds [1]. Eager to capitalise on this wealth, the Belgian colonial administration rapidly established and developed large-scale mining (LSM) during the first half of the twentieth century. Yet the productive capacity of LSM was too slow and eventually decline following independence and the nationalisation of the colonial mining companies under Mobutu. A combination of economic mismanagement, deteriorating infrastructure and external shocks (including the two Shaba wars, the closure of export routes to Angola, and price fluctuations on the world market) led to a rapid drop in industrial production from the 1970s onwards, falling close to zero by the mid-1990s.

During the same period, artisanal and small-scale mining (ASM) activity soared following its legalisation in 1983 when Mobutu liberalised the sector to allow Congolese citizens to directly exploit and trade in minerals as a way to 'feed for themselves' during a time of economic hardship. Then, during the two Congo wars (1996–2003), armed groups took control of a number of mining areas as a means to raise revenue to finance their operations (a legacy that has lasted to this day). They also negotiated contracts with mining companies – as did the Kabila government – selling off vast concessions at well below the market price (many of which have since been revoked following governmental review).

In more recent years, the Congolese government has sought to reverse the historical decline of LSM by attracting foreign investments to develop new industrial mining projects. The IMF and the World Bank have provided significant financial and technical support in pursuit of this goal. Furthermore, the current Kabila government is viewed by many as keen to replace

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ASM with LSM projects, due to the ease with which revenues can be controlled and extracted from industrial mining companies in comparison to millions of independent artisanal miners [2,3]. In Katanga, industrial production of copper and cobalt is again at unprecedented levels [4,5]. Yet firmly establishing industrial mining in the Kivu provinces of the eastern DRC will be a long process given the security and logistical challenges, and one whose trajectory is far from clear. In 2011, 42 companies held research permits in South Kivu to engage in exploration, yet currently there is only one industrial mining operation (in production since November 2011), the Twangiza gold mine, owned by the Canada-based multinational Banro [2,6]. This one gold mine aside, all mineral production in the Kivu provinces occurs through ASM.

Official gold exports from South Kivu peaked at 1911 kg in 2002, plummeting to just 23 kg in 2011. Yet since almost all gold production in South Kivu is mined, traded and exported without being officially registered [7], the official figures only tell part of the story. A World Bank study showed annual gold production in Orientale, Ituri, North-Kivu and South Kivu of 12,000 kg in 2008 [8], the same year that official gold exports from South Kivu were recorded as just 65 kg. Before the effects of the de facto embargo in the region took hold, which we will discuss later, official figures for South Kivu from 2008 recorded cassiterite exports at 6004 tonnes and coltan exports at 440 tonnes. The most recent audit report from the Extractive Industries Transparency Initiative for the year 2010 highlighted that in 2008 and 2009 the mineral trade from the Kivu provinces contributed \$17,252,208 to the state budget [9]. Given the vast amount of minerals smuggled out of the Kivu provinces with no contribution to the state budget, the real value of minerals produced in the region is, while difficult to quantify, significantly higher.

Beyond its productive capacity and economic value, ASM is one of the most important livelihoods in the DRC. Drawing on available data, the World Bank has estimated the number of people in the DRC directly or indirectly dependent on ASM for their livelihood at between 8 and 10 million, or 14–16% of the total population [10]. Available estimates for the number of artisanal miners in the Kivu provinces, taken from 2007 and 2010 respectively, put the figure between 200,000 and 350,000 [11,12]. Using the World Bank's methodology of allowing five dependents per artisanal miner, we can project that approximately one to 1.75 million people are dependent on ASM for their livelihood in the Kivu provinces, or 9–17% of the total population. Factoring in secondary economies and supply chains, the number of people directly and indirectly dependent on ASM grows greater still. Concerns for mining communities in the area have been raised on a regular basis in relation to human rights, child labour, environmental pollution, health issues and working conditions [12], reflecting research findings on the living and working conditions for mining communities across Africa [13,14].

## 2. The future of ASM in the eastern DRC: regulation and formalisation

Three principal legal documents govern the Congolese mining sector today: the Mining Code (2002), the Mining Regulations (2003) and the Investment Code (2002). ASM is legalised and therefore to a certain extent protected by these documents. Of perhaps most significance to the practice of ASM, the Mining Code established the requirement for artisanal miners to work in officially recognised artisanal exploitation zones (ZEAs). Within these zones, artisanal miners must apply for a 'carte d'exploitant artisanal', an official authorisation to mine, which must be renewed each year. They also need to comply with the regulations on security, hygiene, water use and environmental protection specified in the Mining Regulations.<sup>1</sup>

The second Congo war (1998–2003), which ended at around the same time as the introduction of the above legislation, proved equally influential in shaping the direction and course of ASM in the eastern DRC. During the war, forces from Rwanda and Uganda along with numerous Congolese militia groups established control of the production and trade in minerals throughout the Kivu provinces. The resultant relationship between armed groups' control of mineral exploitation and the continuation of conflict achieved global attention reaching as high as the United Nations Security Council [15]. More, recently numerous critiques have been made of the assumed links between armed groups and mining, based on the fact that "it presumed a [...] very partial analysis of the causes and dynamics of conflict in the DRC: namely that because armed actors use money deriving from natural resources, they are fighting about natural resources" [16]. In reality, the root causes of the conflict may be found in long-standing grievances, political, economic and social marginalisation and state failure; and only a minority of Congolese conflicts are over natural resources.<sup>2</sup> Moreover, minerals are not the only source of financing for armed groups, but just "one dimension of a wide repertoire of military economic practices" [18]. Armed groups also rely on taxation of citizens, revenues collected at roadblocks or trade in cigarettes and drugs, charcoal, timber and bananas [19,20]. So cutting them off from this source of revenues is unlikely to stop the violence. Nevertheless, this narrow focus on 'conflict minerals' has given birth to numerous initiatives aimed at preventing armed groups from generating mineral revenue. Most of these initiatives are based on the concepts of due diligence, certification, and traceability [21–24].<sup>3</sup>

Due diligence requires companies to develop and implement internal systems and procedures to determine the precise origin of minerals being purchased from known conflict areas. This procedure has gained momentum over recent years, most significantly from section 1502 of the Dodd–Frank Act, U.S. legislation passed in July 2010 demanding due diligence from American companies sourcing minerals from the DRC [19,25]. In February 2012, the Congolese government adopted OECD due diligence guidelines into law. Certification and traceability respond to the demands of due diligence by making it possible for

<sup>1</sup> Mining Code, T. 4, Ch. 1, Art. 111 and 112.

<sup>2</sup> Autesserre [17] notes that only 8% of Congolese conflicts are estimated to be over natural resources.

<sup>3</sup> The referenced reports provide good and critical overviews of national and international initiatives.

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