

## Democratic Republic of Congo (DRC)

The potential for the mining sector to catalyze economic growth in the Democratic Republic of Congo (DRC) is great but significant obstacles to progress remain. The country is abundant in natural resource wealth but poor governance, a lack of infrastructure and recurring security challenges have meant the country has not profited. Yet, the pursuit of sustainable positive change is gathering momentum, and the DRC government and its regional neighbors are taking meaningful steps to progress beyond the impasse.

Government reforms are underway to increase mining and oil production, revenues from which could make significant contributions to the national budget and contribute to much needed human development initiatives. However, these revenues could also instigate political and socioeconomic risks associated with the resource curse.

This country strategy outlines the approach that NRGi will take in the DRC between April 2015 and December 2017<sup>1</sup>. To do this, we first provide a contextual analysis and use the Natural Resource Charter framework to outline key challenges and opportunities that the DRC faces in harnessing extractive resource wealth for development. We then examine NRGi's strategic response, which forms the basis for the organization's two-year operational plan.

### CONTEXT ANALYSIS

#### Political and economic environment

##### *Macroeconomic context*

The DRC is among the poorest countries in the world and is consistently rated the lowest on the UN Human Development Index. Two recent civil wars and state collapse have claimed over 5 million lives and cost billions of dollars in reconstruction efforts. The economy remains extremely fragile, although positive trends are evident on key macroeconomic indicators. The IMF describes the economic growth prospects of the DRC as 'favorable' with economic growth of 7.5 percent forecast for 2015-2018<sup>2</sup>. Growth is expected to be driven by increases in mining output and to some extent, higher production in the agricultural sector.

#### ABOUT THIS DOCUMENT

This country strategy note summarizes an NRGi analysis of country context and reform priorities. It also outlines NRGi's engagement in the Democratic Republic of Congo (DRC), complementing the work of other actors. Developments will naturally affect the assessments and objectives described herein. Updates to this synopsis may be made as events require.

#### CONTENTS

Contextual analysis.....	1
Natural resource governance assessment.....	4
Strategic response.....	14

<sup>1</sup> The strategy may be modified in response to changing circumstances and new

<sup>2</sup> See IMF Financial System Stability Assessment (2014)

The extractive sector is at the core of the economy. Reports from the Extractive Industries Transparency Initiative (EITI) show that a record \$1.4 billion in government revenue was generated from the oil, gas and mining sector in 2011, representing roughly 20 percent of the total budget. Total exports from the DRC were valued at \$12.9 billion in 2014 (all sectors), with copper accounting for 57 percent of this total and cobalt 17 percent.<sup>3</sup> Revenue collection is demanding and there is a significant gap between what the government could collect and what they actually collect. Some studies suggest that revenues should be as much as ten times higher<sup>4</sup>.

There are reasons to be hopeful that the DRC will see a rapid increase in mining revenue over the coming years. This raises questions about the capability of the government to make effective use of these revenues. Mechanisms for sharing extractive sector revenues between the central government and subnational entities in the DRC have not been transparent or consistent, causing or contributing to numerous governance challenges. This has frustrated the clear intent of various revenue sharing efforts to promote development and a degree of fiscal autonomy.

### *Political context*

The country's political economy is complex and political power bases reflect the regional and ethnic fragmentation of the country. Following decades of conflict, internal displacement within the DRC remains high and many communities lack access to basic public services. The population is mostly rural, about one third of the population live in urban centers, half of which in the capital, Kinshasa. The majority of the population are dispersed across the country's vast territory, which matches Western Europe in size but has less than 1 percent of its road network.

The political economy is highly complex. Political power bases reflect the regional and ethnic fragmentation of the country. The ruling coalition derives its support from the eastern provinces, where conflict and tensions have been prevalent. Frequent interference from neighboring countries as well as the smuggling of mineral resources have fueled inter-regional conflicts.

The country's provincial map was redrawn in 2015 to comprise 26 provinces (up from 11), although full implementation of the decentralization process has yet to be completed and debates around revenue sharing have not been settled. Ten of the 11 provinces in the DRC are richly endowed with minerals, only the highly populated capital, Kinshasa, does not have significant mineral production. Katanga province is the richest in the mineral sector, with 93 industrial mining operations.

Both the extractive sector and the development agenda are highly politicized. Systemic instability is prevalent as power is highly contested. As a result, decisions in the extractive sector tend to favor the frontloading of revenues through bonuses and bundled deals. Policymakers have attempted contract renegotiations in an effort to increase and accelerate government revenues.<sup>5</sup> Rent seeking is common at every level of government with a proliferating cast of actors—within both government and the

3 See Rapport sur la Politique Monétaire en 2014 at: [http://www.bcc.cd/index.php?option=com\\_content&view=article&id=965:activiteindiceeco&catid=53:activites-economiques&Itemid=85](http://www.bcc.cd/index.php?option=com_content&view=article&id=965:activiteindiceeco&catid=53:activites-economiques&Itemid=85)

4 Natural resource revenues have been estimated at reportedly 10.5 percent of revenue in 2012 (2.0 percent of GDP). (African Economic Outlook 2014, p.9). The IMF estimates its contribution at 29 percent non-aid revenue and by far the biggest contributor to the budget (IMF 2014, p.35).

5 Rents to Riches, the Political Economy of Natural Resource-Led Development, World Bank, 2012, p.145

private sector—competing for power and resources.<sup>6</sup> Rent seeking and politicization also characterize the development agenda. The country’s high dependence on external support has led to a system of “governance by substitution”:<sup>7</sup> the UN provides a safety net to the government; Western donors, NGOs and churches provide social services to the population; and China and the private sector are relied on to build road infrastructure.

### *Extractive Sector*

The DRC has one of the richest and most diverse mineral endowments in the world, boasting extensive deposits of copper, cobalt, and coltan, as well as diamonds, gold, silver, tin, iron ore, zinc and oil.

The country is estimated to have surpassed Zambia in 2013 to become the largest African producer of copper<sup>8</sup>, producing 846,000 tons and accounting for over four percent of global copper production. However, falling copper prices amid declining global demand may impact copper production in the near term.<sup>9</sup> Almost half of the world’s cobalt reserves are in the DRC, and in 2012 the country accounted for 55 percent of global production. The latest statistics indicate that 325 mining companies are active in Katanga province, of which ten are traded on international stock exchanges.

The DRC’s diamond sector, dominated by artisanal and small-scale miners, accounts for roughly 16 percent of the world’s total production of diamonds (gemstones and industrial), though exports have shrunk under unpopular government policies.

With the opening of three new mines, gold production in DRC has increased markedly in recent years. Eastern DRC is a major producer of the so-called “3Ts”, coltan, tin and tungsten. With gold, the 3Ts constitute the major “conflict minerals” that are now subject to disclosure requirements under Dodd-Frank Section 1502. Passage of the Dodd-Frank disclosure rules initially led to a decrease in official production figures for the 3Ts and created a two-tier market, with minerals that avoided traceable programs selling for 30-60 percent less.<sup>10</sup> Production of the 3Ts is expected to rise as tracing programs increase in scope and efficiency.<sup>11</sup>

The DRC has untapped potential in the oil sector and the government hopes to increase production levels in the near term. Yet the possibility of oil reserves in Eastern DRC risks exacerbating deep-rooted tensions and conflict in the region.

6 Jason Stearns, *Dancing in the Glory of Monsters*, p.xxi

7 International Crisis Group, DRC

8 See: 'Congo Trumps Zambia as Top African Copper Miner, CRU Says' at <http://www.bloomberg.com/news/articles/2014-02-26/congo-trumps-zambia-as-top-african-copper-miner-cru-says>

9 See: 'Big dip forecast in DRC copper production' at <http://www.biznews.com/mining/2014/07/20/big-dip-forecast-drc-copper-production/>

10 See: The Impact of Dodd-Frank and Conflict Minerals Reforms on Eastern Congo’s Conflict, The Enough Project, 2014: <http://www.enoughproject.org/files/Enough%20Project%20-%20The%20Impact%20of%20Dodd-Frank%20and%20Conflict%20Minerals%20Reforms%20on%20Eastern%20Congo's%20Conflict%2010June2014.pdf>

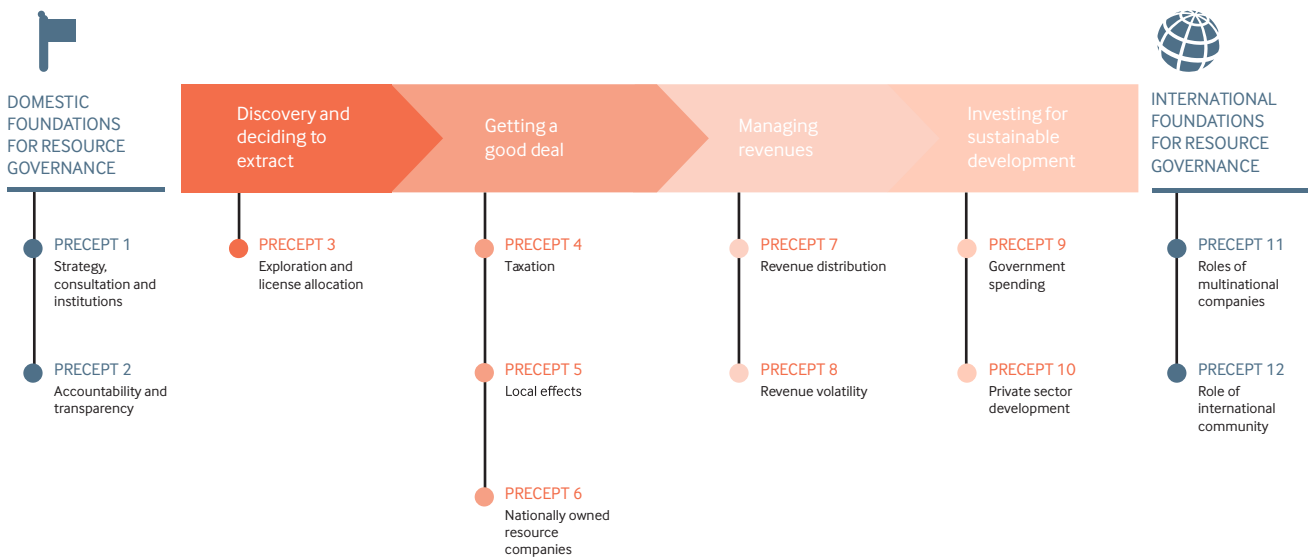
11 <http://mines-industries.com/wp-content/uploads/2014/07/IM-RDC-1er-trim-2014.pdf>

## NATURAL RESOURCE GOVERNANCE ASSESSMENT

The governance environment surrounding extractive resources reflects the general political environment and is generally quite poor. However, there is a unique opportunity for the country to promote transparency and create stability and opportunities for its citizens.

The following analysis attempts to outline the challenges and opportunities for extractive resource governance using the Natural Resource Charter (NRC) framework. The twelve precepts outline the decision-making and governance environment required for effective resource development.

### Overview of the Natural Resource Charter



### Domestic foundations for resource governance

**Precept 1: Strategy making and public participation.** Resource management should secure the greatest benefit for citizens through an inclusive and comprehensive national strategy, clear legal framework and competent institutions.

#### *Strategy making*

The DRC lacks a comprehensive national strategy for the extractive sector, despite numerous reform efforts. The government is revising the 2002 Mining Code in an effort to strengthen the legal framework and increase tax revenues from the expanding mining industry. The revised hydrocarbons code was passed by parliament in 2015, with the hope that the country will benefit more from its expanding oil sector. Other recent or ongoing efforts are directed at improving fiscal, tax, environmental, and social reform. With so many reforms underway simultaneously there is a risk of policy incoherence or inconsistency. Development of a comprehensive strategy to guide reform would thus be beneficial.

#### *Coordination of public involvement*

The government has a positive record in encouraging public participation in sector governance. A consultative and participatory framework has been established for actors involved in the management and exploitation of natural resources of the country. Annual conferences have been organized since 2013 to promote transparency and the

delivery of benefits from the mining and other sectors. At each conference, an action plan is elaborated and recommendations are made to various stakeholders<sup>12</sup>.

Civil society has been active in both the revision of the mining code and the elaboration of the hydrocarbons code. They have been involved in workshops aimed at reform, and early on in the drafting of the mining code, civil society made recommendations that were shared with parliament and members of government. Despite fewer opportunities for civil society participation on the hydrocarbons code, civil society groups have organized public consultations to ensure diverse public opinion is voiced.

There vision processes of the codes has also been open to international input. The IMF, international NGOs, and donors, have provided recommendations to the government with the aim of promoting transparency and accountability.

A draft of the mining code was submitted to the National Assembly for consideration in 2015, but was withdrawn by the government due to opposition from the industry lobby. Given this opposition, it is unclear how quickly the process will proceed.

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**Precept 2: Accountability.** Resource **governance** requires decision makers to be accountable to an informed public.

#### *Transparent government*

The government has made progress on some key accountability practices, however the country scores relatively weak overall on transparency. On the Resource Governance Index (RGI) (which focuses on DRC's mining sector only), DRC's average score on reporting practices is 45 out of 100, ranking 34 out of 58 countries. Transparency at the state-owned enterprise (SOE) level around the allocation of rights and subnational transfers, remains weak. There are no specific laws that guarantee a legal right to information and access to information is limited.

Ongoing legal reforms aim to ensure transparency and traceability of all resources generated by extraction and the strengthening of accountability in the management of concession contracts. The DRC has made significant strides on contract transparency, though there is room for improvement. A decree signed in 2011 requires the government to publish all mining, oil and forestry contracts. However, the government only began disclosing agreements in June 2012, and several controversial contracts remain secret, including the contract of the country's state-owned miner, Générale des Carrières et des Mines (Gecamines). To date, 135 mining contracts have been published. Yet a recent Carter Center report showed that, with respect to the 17 projects it examined, 62 contracts, amendments and appendixes had yet to be published.<sup>13</sup>

Transparency is further limited with the concealment of environmental and social impact studies, despite the government having a responsibility to publish these studies.

Debates over decentralization and revenue sharing between the central and provincial governments continue to affect prospects for transparency and EITI implementation. Decentralization was intended to grant greater powers to the provinces but has not yet been fully implemented. There are concerns that the districts destined to become provinces do not have the capacity to fulfill the responsibilities required. Similarly,

<sup>12</sup> For example: <http://www.congomines.org/wp-content/uploads/2013/11/DRC-2013-Matrice-daction-actualis%C3%A9e.pdf>

<sup>13</sup> See <http://www.cartercenter.org/news/pr/drc-020215.html>

there is only one local EITI antenna in Katanga but its influence is minimal. Provincial budgets are drafted based on the law rather than on practice. The discrepancy between official budget and actual execution makes monitoring by parliament and citizens particularly difficult.

Civil society organizations have played an important role in ensuring the publication of EITI reports and improving public understanding of the sector. However, there is a risk that the government does not consider EITI as a high priority. The Direction Générale des Impôts (DGI) and Direction des Recettes du Katanga (DRKAT) have both been pinpointed in the latest EITI report for not communicating or justifying some declarations on time. In contrast, well-established international companies tend to be more engaged although the standard has not been fully appropriated by all companies.

### Discovery and deciding to extract

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**Precept 3: Exploration and license allocation.** Government should aim to reduce geological uncertainty under a transparent licensing regime that allocates rights efficiently

#### *Geological information*

Geological information management in the DRC is reasonable, but there are areas for improvement. The government, represented by the Cadastreminier (CAMI), manages geological information and publishes mining licenses through Flexicastre.<sup>14</sup> The CAMI publishes maps and information about the licenses that are allocated including the type of license, date of allocation, and names of parties but there is no petroleum registry. The information is partially available in the public domain and all intellectual property rights are held by CAMI (i.e. not openly licensed data). The Flexicadastre system allows users to look at the maps online, but not download them. Information is missing from Flexicadastre that would comply with the new EITI standard, such as the type of substance being exploited or explored.

#### *License allocation*

Exploration permits in the DRC are allocated on a first-come, first-served basis. The government has not been vigilant in ensuring that licensees are competent and that sufficient investment is made to develop resources. A lack of strong and inadequately enforced working provisions has led to companies holding land for speculative purposes. At the same time, companies are not adequately assessed for their financial and technical competence. These failures prevent the sector from developing to its full potential.

The 2002 Mining Code established procedures to obtain licenses (first come, first served)<sup>15</sup>, but SOEs still hold many of the most lucrative titles and have signed numerous joint-venture contracts under opaque circumstances. Failure to publish details of the sale of a 25 percent stake in Comide to a British Virgin Islands company<sup>16</sup> resulted in the suspension of a three-year loan program from the IMF.<sup>17</sup> In addition, the president continues to play a major role in awarding mining contracts and authorizing joint-venture agreements. Civil society has made important demands

14 See <http://portals.flexicadastre.com/drc/en/>

15 The law includes an exceptional procedure by which the minister can, "if the public interest so requires", call for a competitive tender in the case of a deposit of considerable known value that has been studied, documented or worked on by the State (Article 33). This decision needs to be confirmed by the president and we understand (per RGI peer reviewer comments) that this procedure has very rarely been used.

16 2013 African Progress Panel: Equity in Extractives

17 <http://www.bloomberg.com/news/2012-12-03/imf-halts-congo-loans-over-failure-to-publish-mine-contract-2-.html>, last accessed 24 March 2013

to improve the awarding process in the revision of the mining code. In early drafts of the revised code, the approach was changed to make competitive tenders no longer an exceptional procedure, but a procedure that should apply as a matter of course if particular conditions are met.

The government has been accused of systematically undervaluing state assets, resulting in significant losses. An African Progress Report analyzed five mining deals in the DRC and each involved systematic undervaluation of state-owned mining assets and sale to offshore companies, all linked to the same company, Fleurette. The five deals together are estimated to have cost the DRC at least \$1.36 billion, an amount equal to almost twice the country's combined annual budget for health and education in 2012.

## Getting a good deal

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**Precept 4: Taxation.** Tax regimes and contractual terms should enable the government to realize the full value of its resources consistent with attracting necessary investment, and should be robust to changing circumstances.

### *Mining*

The current mining code of 2002 was adopted in a post conflict context. Its goal was to attract private sector investors following the war. Since then, reforms have aimed to ensure the code generates significantly greater revenues for the state budget rather than benefiting the private sector. The reforms also seek to balance improved fiscal terms with legislated stability for the private sector: a revised royalty regime that also respects the existing code's ten-year stabilization.

The private sector has sought to preserve their current concessions in the mining code and have rejected the proposed reforms. The draft law raises the royalty on copper and cobalt to 3.5 percent (from 2 percent) and establishes a new 5 percent royalty for "strategic metals." In addition, there are concerns that the mining code will not adequately address challenges from environmental degradation, corporate social responsibility, environmental management, and health and safety regulations.

### *Administration*

The efficiency of the tax system is very low. Tax administration costs substantial amounts compared to the amount collected as taxes, and coordination at different levels is poor. The country has a complex tax system with more than 40 different fees, and also empowers a number of agencies across different jurisdictions to collect them. As a result tax mobilization is low and mired with corruption. The tax system is further complicated by the imposition of a number of separate charges at provincial level, partly out of provincial frustration with a broken revenue-sharing system. Furthermore, weak control of borders and partial territorial coverage of tax collection agencies has led to resource smuggling. This problem is particularly acute in the DRC where highly organized illegal groups "export" a sizable part of the production.<sup>18</sup>

Tax administration is also characterized by red tape, inconsistency, and incentives for abusive behavior by authorities. For example, for the technical inspection of vehicles, the Tenke Fungurume Mining (TFM) project has seen a multitude of agents from four different ministries, each with their own interpretation of the tasks. Tax inspectors are paid a percentage of the penalties they inflict, so there is an incentive to inflate penalties.

18 Rents to Riches, the Political Economy of Natural Resource-Led Development, World Bank, 2012, p.140.



**Precept 5: Local effects.** Opportunities for local benefits should be pursued, and the environmental and social costs of resource projects should be accounted for, mitigated and offset.

Several important models are in place to ensure communities benefit from resource extraction, but they are not ideal. The Social Community Fund (Fonds Social Communautaire (FSC)) creates a fund, on the basis of contractual obligations, for the development of local communities. This requires the company to put money in local community development following the initial sales of copper or cobalt. In addition, TFM contributes up to 0.3 percent of its net revenues to a social fund, which is used for infrastructure and social services development. This percentage is not calculated on profit but on net income, so communities can receive a sum even if the company has not made a profit. By October 2013, more than \$14 million has been contributed to the fund. Projects carried out by Social Community Fund have improved the availability of infrastructure in Fungurume, Tenke and their surroundings.

However, studies have raised several concerns about the implementation of these models. In particular, the lack of community participation in the process and their ownership of projects; the inaccessibility of community infrastructure; and weak absorption capacities of the established funds.

Despite concerns associated with its implementation, the TFM model offers great opportunities for the development of local communities affected by mining activities and should be replicated both in other mining projects, and in the oil and forestry sectors. One opportunity to do this is within the revised mining and hydrocarbons codes and related regulations, where the concept could be included in the country's legal framework. Another opportunity would be for companies and communities to learn from these lessons and adapt the TFM model irrespective of the outcome of the code revisions. In any event certain improvements should be made to the model to encourage greater transparency in the process of planning and fund allocation, as well as the reduction of discretionary power.

Contract monitoring is an important means of ensuring that local communities benefit from contract requirements intended for their benefit. Research conducted by civil society organizations on the TFM and Anvil Mining contracts has raised concerns that a number of contracts signed by the government may have community support obligations but there is no follow up from the government to ensure companies comply.

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**Precept 6: Nationally-owned resource companies.** Nationally owned resource companies should be accountable, with well-defined mandates and seek to be commercial efficient in the long-term.

Structural reforms aimed at improving transparency and the governance of SOEs in the mining sector have been introduced, but progress remains slow. There are several state-owned enterprises (SOEs) each with their own geographical focus. The largest is Gécamines, which produces copper and cobalt in the Katanga province. Gécamines publishes very little information on its operations, subsidiaries, or revenues. Its financial statements are audited but difficult to find and are not regularly reviewed by parliament. In general, the only source of publicly available information on SOEs revenue is the state budget.



Government efforts to manage the extractive sector have been frustrated by the actions of SOEs. Gécamines is the beneficiary of mining royalties that would otherwise accrue to the treasury, but continues to divest assets without competitive bidding in disregard of government decree. SOEs claim that a recent change in their status to commercial enterprises (entreprise du portefeuille de l'Etat) enables them to make independent business decisions. World Bank staff advised authorities to closely monitor the sale of assets by SOEs and improve their management by strengthening the capacity and accountability of government representatives on SOEs' board of directors.

Political interference and conflicts of interest are rife within the SOE space. For example, investors with interests in the sector are frequently appointed to senior positions at Gécamines. Also, the company's board is directly appointed by the country's president, who also balances the representation of different elite groups and is subject to little or no oversight by parliament. A panel of experts established by the UN identified such practices as interlinked with asset stripping of the company through partnership agreements, control of procurement and accounting, theft, and use of the corporate facade for other illegal activities.<sup>19</sup>

## Managing the revenues

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**Precept 7: Revenue distribution.** Resource revenues should be invested to achieve optimal and equitable outcomes for both current and future generations.

Weaknesses in budgeting and public financial management systems have hindered the DRC's ability to convert limited revenues into development outcomes. The 2012 Public Expenditure and Financial Accountability (PEFA) Assessment found a number of challenges around the formation of the budget, such as the s<sup>20</sup>pending is unrelated to the national development strategy. Despite strides made since 2008, when no budget documents were public, there is still a long way to go to improve transparency around budget decision-making.<sup>21</sup>

Administrative capacity in the public financial management system is a weak link in the reform process. The government struggles with weak public financial management systems, which in turn increases the risk of significant revenue loss through corruption and waste. Organizational inefficiency of the government, rather than a lack of competency from key agencies, has been suggested as a reason for why there has been such slow progress.<sup>22</sup>

Governance mechanisms to save and invest resource revenues are weak. For example, the 2015 Hydrocarbons Code refers to a fund for future generations and the creation of an entity to manage the fund. Yet it does not state the sources of revenue for the fund or how the fund will be managed.

The DRC's provinces are formally afforded a degree of financial autonomy. Revenue sharing is provided for in the law, but in practice the system is inept. Under the 2002

19 Rents to Riches, the Political Economy of Natural Resource-Led Development, World Bank, 2012, p.91

20 Multilateral Investment Guarantee Agency Country Assistance Strategy for the Period FY 2013-FY2014 (2013): [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2013/05/16/000350881\\_20130516171004/Rendered/INDEX/661580CAS0Box30C0disclosed050160130.txt](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2013/05/16/000350881_20130516171004/Rendered/INDEX/661580CAS0Box30C0disclosed050160130.txt)

21 See Open Budget Index, DRC, 2012: <http://internationalbudget.org/wp-content/uploads/OBI2012-DemRepCongoCS-English.pdf>; IMF (2014), Article IV <http://www.imf.org/external/pubs/ft/scr/2014/cr14301.pdf>

22 IMF (2014), Article IV <http://www.imf.org/external/pubs/ft/scr/2014/cr14301.pdf>

mining code, the treasury keeps 60 percent of the amount of royalties (redevance minière) collected for the central government, 25 percent is paid to an account designated by the provincial administration where the project is located, and the remaining 15 percent is placed in the area where the mining takes place.<sup>23</sup> The split is the same in the draft revision of the code, but the modalities of payment change. It will be essential to facilitate the understanding of the new legislation with local authorities and among citizens, so that they can better track payments.

Despite provisions on revenue sharing, revenue payments by retrocession have been substantially less than they should. Problems in the execution of payments to the provinces has strengthened the incentive to set up parallel tax systems with some provincial authorities calling to levy additional taxes and charges. The collection and sharing of revenue is also hampered by the lack of traceability of payments. 70 percent of funds that should go to the treasury are deposited in commercial banks, which can encourage corruption.

The DRC has sought to utilize “package deals”, notably with the Chinese, as a means of channeling resource revenues into infrastructure development priorities. In 2008, a deal with a Chinese consortium agreed that profits from a copper and cobalt mine would be used to finance infrastructure and mining. One danger associated with this type of arrangement is that government social responsibilities will shift to the private sector. Civil society groups have voiced their concerns on the lack of transparency in the implementation of these types of contract.

Since 2010, the DRC has implemented structural reforms to more effectively use the income generated from natural resources. These reforms include improvements to the budgetary framework and strengthening the control of public finances.<sup>24</sup> Preserving a sound and stable macroeconomic framework is a key priority going forward. Such stability will be mainly dependent on a balanced and credible budget, the revenue of which could help to meet the country’s development needs.

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**Precept 8: Revenue volatility.** Domestic spending of resource revenues should be smoothed to take account of revenue volatility.

The country’s capacity to cope with highly volatile extractive revenues (as well as aid flows) has been limited. Government revenues in general have been volatile due to reliance on the extractive sector. Few explicit plans are in place to manage the volatility in resource revenues. However, as part of the technical assistance provided by the IMF under the Mineral Natural Resource Wealth- Tropical Trust Fund (MNRW-TTF), there are plans to ‘insulate expenditure plans from unanticipated volatility in resource revenues’. This work has also supported the formation of a medium-term fiscal strategy (2012-2016) and a budgetary forecasting model. It is hoped these will have an impact on resource sector allocation and help improve the overall credibility and comprehensiveness of the annual budget.

23 Article 242, 2002 Mining Act.

24 Observed improvements include increases in the quality of external audits, the rating of the public financial management system, business climate scores, and improved coverage of controlled public expenditure

## Investing for sustainable development

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**Precept 9: Government spending.** The government should use revenues as an opportunity to increase the efficiency of public spending at the national and sub-national levels.

Significant sums of money from the mining and oil sector are expected to accumulate and the effective spending of these revenues has the potential to significantly enhance development. However, the DRC at present lacks long- and medium-term spending frameworks. Furthermore, systematic means for managing spending are not yet fully computerized.

**Precept 10: Private sector development.** The government should facilitate private sector investments to diversify the economy and to engage in the extractive industry.

The DRC government is generally seen as pro-investment and steps have been taken to clarify its investment framework. The country has a legacy of generous tax exemptions used as a means of encouraging investment, but current reform efforts are seeking to reduce these and provide a clear, non-discretionary legal framework. With the adoption of new mining and hydrocarbons codes, the confidence of the international community to invest in the DRC should increase. In addition, the government has made assurances that private sector development and investments will catalyze economic diversification to multiply revenue sources.

To date, the DRC has not adequately explored options for leveraging mining investments to encourage the development of a local private sector. Local mining companies, in Katanga province in particular, have failed to benefit substantially from the decade-long mining boom. A government edict on mandatory subcontracting which was intended to encourage mining companies to outsource a portion of their activities to local businesses has not met the expectations of local businesses. Furthermore, the government does not systematically request companies' assurances to contribute to the hiring and training of local workers, or to the sustainable development of the areas where the companies plan to invest. Outsourcing activities related to the exploitation of natural resources is seen as a key lever for the emergence of a middle class in the DRC, the creation of which has the potential to create jobs and contribute to national wealth.

In response to the failure to increase local content, the Federation des Entreprises Congolais (FEC) Katanga took the initiative in 2014 to organize the first roundtable meeting on mining outsourcing. Recommendations stemming from the meeting included a subcontracting database, a need to identify the capacity of local businesses, and incentives to attract businesses in the informal sector.

Partnerships between the private sector, donors and local governments provide opportunities for private sector development. The Katanga Extractive Industries Development Initiative (KEIDI) and the IDAK (Investissement Durable au Katanga) are examples of this. KEIDI is a UK Department for International Development (DFID) and government of Katanga project to support Katanga's economic and social development objectives through a public-private partnership with mining companies. IDAK was set up in 2011 by the German Agency for International Cooperation (GIZ) as a platform for dialogue around corporate social responsibility issues between the regional government, mining companies and civil society.

The economy relies on the extractive sector to contribute up to 74 percent of the national budget and the IMF have warned that the economy is vulnerable to the volatility of mining commodity prices on international markets. Amid a focus on promoting foreign and large-scale investment, there is a risk that other sectors are neglected. For instance, artisanal exploitation is not sufficiently supported and more than 2 million artisanal miners live in deplorable conditions.

### International foundations for resource governance

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**Precept 1 1: Roles for international companies.** Companies should commit to the highest environmental, social and human rights standards, and to sustainable development.

Companies engage with government and civil society through multi-stakeholder groups, yet engagement is tainted with a level of mistrust. Corporate social responsibility (CSR) is often conflated with community development strategies, as local communities and government officials often expect extractive companies to be responsible for building infrastructure and providing other social services. This expectation partly stems from the role Gecamines previously played in providing these services. ACIDH's report on Anvil Mining revealed confusion between voluntary CSR and contractual obligations on social activities.

In the wake of the adoption of the mining code and the promulgation of the hydrocarbons code, the DRC government would be wise to develop regulations for both sectors that clearly define any company obligations to support local community development.

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**Precept 1 2: Role of the international community.** Governments and international organizations should promote an upward harmonization of standards to support sustainable development.

The DRC has benefited from the support of various international and national stakeholders, but these efforts need to be mapped so that efforts are better coordinated. Discussions with government officials during the NREGI scoping mission revealed concerns regarding donor program alignment with government priorities; insufficient transparency of funding by donors; and donor procedures that do not facilitate project implementation.

The DRC participates in a number of important international initiatives to improve extractive sector governance. Despite the fact that the DRC has made a commitment to adhere to several governance standards such as EITI and the Kimberly Process, much still needs to be done to improve the governance sector. In 2010, to show their commitment to transparency and accountability, the government undertook a systematic process to improve economic governance in close collaboration with the World Bank. A governance matrix is now in place and progress is measured on a bimonthly basis. This exercise aims to strengthen governance and transparency in the extractive industries (forestry, mining, and oil sectors) and improve the business climate. These measures are designed to consolidate the reforms launched under the Heavily Indebted Poor Countries (HIPC) initiative, and restore confidence among private investors and development partners.

Insecurity is still rife in the country, especially in the eastern regions. Given the country's geopolitical position, regional and international community involvement is key to address illegal exportations of minerals out of the country. Efforts to tackle this include the Dodd-Frank Act. Passed by the US Congress in 2010, the Act includes a provision – Section 1502 – aimed at addressing some of the most pressing problems in the DRC's extractive sector. Under the provision, all companies registered with the Securities and Exchange Commission (SEC) that sell products containing cassiterite, columbite-tantalite, gold, or wolframite are required to disclose whether these minerals originated from the DRC or adjoining countries. Companies that sell these products are also required to submit annual reports to the SEC describing the due diligence measures taken to determine the source and custody of such minerals and to provide a description of the products manufactured or contracted to be manufactured that are not conflict-free. An increasing number of mines are now validated as conflict-free and the legislation has shown the potential to make a positive impact. But on the ground the effects of Dodd Frank 1502 have led to a de facto embargo on minerals from the DRC and a subsequent rise in unemployment.

## STRATEGIC RESPONSE

The goal of NRGi's program in the DRC is that citizens benefit from extractive resource wealth. To realize this goal, NRGi will address the challenges and opportunities identified by the contextual analysis and work towards the four main objectives outlined below.

### **Objective 1: The DRC adopts, and effectively implements, a strengthened mining code and hydrocarbons law that promotes effective and accountable management of oil and minerals**

- The new codes bring greater transparency and accountability to the mining and hydrocarbons sectors.
- Support will be given to civil society and parliamentary efforts to ensure greater transparency and accountability measures are included in the draft mining code.
- Coordination with relevant international donors will avoid unnecessary duplication.
- The new mining code will address issues that hamper governance of extractive sector, such as the allocation of rights and beneficial ownership.
- The revised mining and hydrocarbons codes once adopted are effectively implemented, including through appropriate understanding and monitoring by oversight actors such as parliament and civil society.

### **Objective 2: Transparency mechanisms in the DRC, including the Extractive Industries Transparency Initiative (EITI) and contract monitoring, are strengthened to achieve enhanced disclosure and utilization of data for accountability**

- Disclosure practices around priority policy areas are improved.
- All mineral and petroleum contracts are fully disclosed.
- Beneficial ownership of extractive projects is disclosed through EITI.

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- Global efforts will help develop ways to use beneficial ownership data in conjunction with other data.
  - EITI and extractive data contribute to the broader debate about governance of the extractive sector and is used to influence policy decisions.
  - Oversight actors in DRC develop effective systems and capacities for the monitoring of contracts and legal obligations.

**Objective 3: State-owned enterprises in DRC improve their effectiveness and accountability to citizens**

- DRC improves its RGI score with regard to SOE disclosure of information

**Objective 4: Subnational revenue sharing mechanisms are well-designed and prioritizes development objectives**

- Subnational revenue sharing mechanisms are consensual and implemented in a transparent manner.
- Efforts will be promoted to trace revenue transfers and direct payments, verify revenues due, and monitor overall compliance with fiscal and other contract obligations.

**Prioritizing the NRG Strategic Response**

On the basis of the above, NRG envisions prioritizing in the first instance objectives 1 and 2 regarding legal reform and strengthening of transparency mechanisms. This would, for example, be our primary focus during 2015. We envisage working in parallel to develop the opportunities for engagement in objectives 3 and 4 regarding SOEs and subnational revenue sharing, with these areas becoming most significant as the strategy period progresses. Prioritization is based on those objectives where NRG can have the greatest impact in the near term and which objectives require further scoping. The prioritization should not preclude NRG from considering and pursuing opportunities under any objective (or for that matter outside the objectives) as and when they arise, so long as they are in line with the overall goals for NRG's programming in the DRC and we can realistically expect to have an important impact.