

*Strategy paper*

# MAKING A DIFFERENCE IN MINERAL-RICH AREAS OF THE DEMOCRATIC REPUBLIC OF THE CONGO



## A MULTI-STAKEHOLDER DIALOGUE MARCH - SEPTEMBER 2014

*On the initiative of*



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*Strategy paper*

# **MAKING A DIFFERENCE IN MINERAL-RICH AREAS OF THE DEMOCRATIC REPUBLIC OF THE CONGO**

*Improving lives  
through a multi-stakeholder dialogue  
and strategic planning of a socially  
responsible economy,  
the creation of local content and  
the development of a middle class,  
all based on good mining governance.*



# FOREWORD BY THE AMBASSADOR OF SWITZERLAND



*Jacques F. Gremaud,  
Ambassador of Switzerland in  
the Democratic Republic of  
the Congo*

It was a privilege for the Embassy of Switzerland to work alongside Congolese key stakeholders in the mining sector for much of 2014 in order to find answers to the problems of extreme poverty amongst the people living in mineral rich areas of the Democratic Republic of the Congo.

This strategy paper reflects the intense work of collective - at times contradictory - reflection done so far by this very diverse group, aiming to assess how best to cooperate so that the mineral wealth of the country may have a positive and concrete impact on the human security of the people living in these regions.

The discussions which took place in Lubumbashi, in the Province of Katanga, were a unique experience for all participants. Unique in the sense that personalities with a priori conflicting interests agreed to “play the game” for the sake of constructive dialogue.

I hope that this strategy paper will be a source of inspiration for all those who share the ambition that is now embodied through the *Réseau Mines Pro Population* which grew out of this series of exchanges.

My Embassy remains convinced that the momentum triggered by the *Réseau Mines Pro Population*, carried out in harmony with other, more formal and institutional efforts, will yield tangible effects on the daily lives of large numbers of people living in mining areas.

A handwritten signature in black ink, appearing to read 'J. Gremaud'.



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# EXECUTIVE SUMMARY

## How to improve the lives of people in mineral-rich areas?

In February 2014, the Embassy of Switzerland, through its Human Security Program, launched a multi-stakeholder dialogue in the mining sector. Organized in two workshops (March and September 2014), the theme of this dialogue was “How to improve the the lives of people in mineral-rich areas”. This reflection brought together major players in the mining sector: artisanal miners, important corporate operators, civil society as well as public authorities from five provinces, including representatives of the Central Government. The approach utilized was that of “the Governmental Learning Spiral”<sup>1</sup>.

The tenets of this approach are that each participant represents a legitimate perspective as well as a potential solution, while at the same time having a stake as an actor in the governance issue under scrutiny.

At the end of these discussions, three major ideas emerged: strategic planning for a socially responsible economy, local content creation and the development of a middle class, and good mining governance. Out of these three themes, 41 recommendations were identified and the *Réseau Mines Pro Population* was created.

Improving the well-being of populations requires the strategic planning of a socially responsible economy. This should be part of a national development plan as well as of a national mining plan aiming to harmonize the development of the nation. In order to achieve such strategic planning, it is necessary to identify the needs of both the mining sector and local communities. Then, from an economic point of view, measures need to be taken that enable local operators to capture financial flows or develop alternative economic activities.

From a social standpoint, participants recommend the development of human resources and the strengthening of social security mechanisms for that purpose. The strategic planning of a socially responsible economy applies at the same time to the national level and to all social strata.

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<sup>1</sup> R. Blindenbacher, B. Nashat, “Governmental Learning Spiral” or meeting the complex challenges of governance”, in D. Cohn Bendit, S. Hessel, G. Corm, *Governance in revolution(s): Chronicles of Governance*, Paris, Ed. Charles Leopold Mayer/Institute for Research and Debate on Governance (IRG), May 2012, pp. 359-369

Creating local content and developing a middle class can best be achieved by subcontracting, job creation and building the capacities of local communities (financial, managerial, scientific...). The principle is that of increasing the engagement of people living in mineral-rich areas in the economy, enabling them to benefit to as large an extent as possible. In the context of the mining sector, local communities would produce goods and services for the value chain, i.e. all activities related to mining. It may also mean meeting the needs of the communities with the help of Government subsidies, the establishment of cooperatives or a locally based banking system.

For the participants of the two workshops, good governance in the mining sector includes the determination of a framework within which actors in the mining sector develop; good governance is the superstructure around which both local development and the strategic planning process revolves. Decentralization is a counterpart to this approach, enabling “Decentralized Territorial Entities” to have at their disposal the resources necessary to implement public policy. It is equally necessary to take into account both the needs of miners and those of the mining industry, making the establishment of small-scale mining areas unavoidable. Certain imperatives emerge, including the restoration of quality state authorities in mineral-rich areas that are plagued by conflict linked to armed groups, and the development of these areas in a national mining plan which, in itself, needs to be part of a nationwide development plan. Good mining governance comes in some cases through legislative reform, and in others through enforcing Positive Law.

The *Réseau Mines Pro Population* that emerges from this multi-stakeholder dialogue process offers an original approach that bases itself on the dialogue between different stakeholders. It brings together change agents, all of whom are driven by the demanding aspiration to improve the lives of the populations living in mineral-rich areas: by planning a socially responsible economy, the creation of local content, and the development of a middle class, and all the above on the basis of good mining governance.

**H**ow to improve the lives of people living in mineral-rich regions? It is around this seemingly simple question, which nonetheless reflects a complex reality, that the Embassy of Switzerland in the Democratic Republic of Congo, through its Human Security Program, brought together leading change agents with diverse profiles (small-scale miners, key corporate mining operators, civil society, NGOs, local, provincial and national public authorities) coming from the most important mining regions of the DRC.

This initiative comes in a period in which the mining sector has everyone's attention. A common feature of mineral-rich areas around which this multi-stakeholder dialogue was formulated is this paradox: In 2010, the sector contributed only by 9% to the Government budget and yet accounted for 50% of exports and 12% of GDP. To address this imbalance, the Government's 2012 - 2016 Action Plan<sup>1</sup> provides for the revival of the mining sector in particular to support growth and employment. The contribution of the mining sector to the Congolese economy has recorded a dented evolution in the span of 2002-2014 (see figure 1). In addition, the Mining Code of 2002 is at the heart of discussions between the Congolese Government, mining operators and civil society which should lead to a revision of the Mining Code<sup>2</sup>.

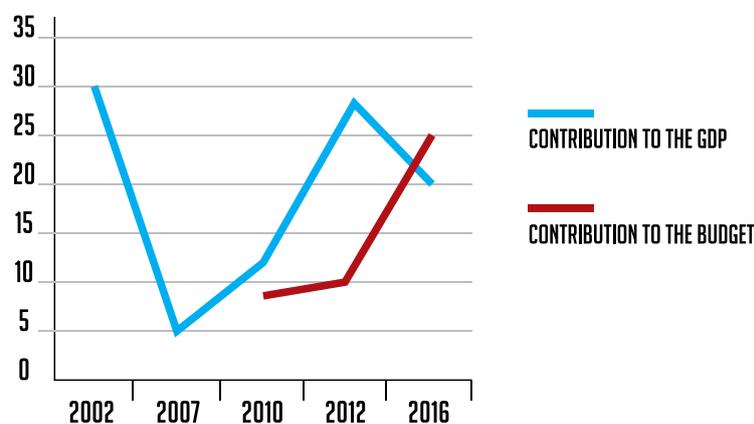


Figure 1 Contribution of the mining sector to GDP and the growth of the DRC

Behind these economic and financial issues are hidden the men and women whose existence is directly touched by mineral exploitation. Numerous reports and studies have looked into the effects of this exploitation on the population. The bitter conclusion is the following: despite improvements due to plans for sustainable

<sup>1</sup> Government of DRC, *Government Action Plan 2012-2016*, Journal Officiel, May 2012, pp. 25-26.

<sup>2</sup> OPTIMUM MAGAZINE, "Abide by the rules of the game", interview of Me Marcel Malengo Baelaebe, n° 12, 2013, pp. 23-25. More on the subject: Ph.-A. Sondji Debbie Kating, "proposed revisions to the mining code of the DRC: incitement to deterrence", Brussels, Egmont -The Royal Institute for International Relations, January 2014



development, mineral-rich regions are marked by poverty, misery and an impoverished population. Drugs, alcohol, violence, prostitution and crime of all kinds constitute a large part of the daily life of people living in mineral-rich regions<sup>3</sup>.

## Objectives

This multi-stakeholder dialogue had three major objectives: first, to formulate and implement measures that contribute to better living conditions of the people living in mining areas; second, to offer a framework to share experiences for leading change agents, aiming to gain a common and up-to-date understanding of social issues related to mining; third, to establish a network between the different change agents that would outlive the two workshops.

## Methodology

This multi-stakeholder dialogue was phased in two workshops which were held in Lubumbashi, Katanga province. In addition to the initial formulation of the concept, supervision and funding from the Human Security Program of the Embassy of Switzerland, this initiative benefited from the support of the Carter Center (mining expertise, logistics and operations), Blindenbacher Borer Consulting Ltd. (facilitation of first workshop), the Initiative for a Cohesive Leadership ILC (facilitation second workshop) and from expertise in public affairs by Madimba Kadima-Nzuji (second workshop).

In both workshops, the approach consisted of a dialogue that was both participatory (all participants were invited to share their opinions and experiences) and inclusive (by a broad representation of change agents in mineral-rich areas). The method utilized was that of the “Governmental Learning Spiral”: Each participant representing a valid perspective and a potential solution, and each participant having a stake in the governance issue under scrutiny.

<sup>3</sup> J. Van Puijenbroek, E. Mongo Malolo and J. Bakker, *A golden future in Ituri? What kind of prospect for gold mining in Ituri, DRC?*, IKV Pax Christi, Haki na Amani, 2012, p.53 (with a focus on small-scale miners)

In this case, it was necessary to first of all collect the relevant points of view on the subject matter and to identify the individuals who would best represent the different perspectives. The objective was to bring together individuals with the necessary political and institutional weight to influence public policy and the private sector. In November 2013, a list was established.

The first workshop, held from 13 to March 15, 2014, was divided into four sessions. The first session (information) was used to frame the discussions of the participants on the process and on the situation in the DRC regarding human security, economic development, particularly based on minerals, and human development. Several speakers described the situation in mineral-rich areas both at the international level and in the DRC. During the second session (reflection), participants reflected on the basis of their own experiences and insights in order to identify priority domains for discussion. Five topics were then selected: to local content in mineral-rich areas, local entrepreneurship to build a middle class, decentralization, rule of law, and strategic planning of a sustainable and integrated development. The third and fourth sessions (planning and implementation) allowed participants to meet in small focus groups on the five selected topics, with the objective to develop a work agenda for the next six months before the second workshop.

It should be noted that this interval of six months was intended to allow the creation of networks for informal exchange and to the use of an online platform that had been created for this specific purpose. In reality, there were relatively few exchanges, reflecting a preference for direct exchanges, as well as perhaps an “energy postponement” for a second workshop that was in principle already guaranteed. Only the working group devoted to strategic planning continued their exchanges and adapted a planning tool in view of the second session. It was thus with the aim to strengthen the chances for a rich and substantial exchange that actors representing professional and/or geographical categories that had not been represented previously (representing new points of view) were invited to participate in the second session.

The second workshop, held from 23 to 25 September 2014, still in Lubumbashi (Katanga province), was marked by three highlights. The first highlight was a crisis simulation that allowed the participants - “old” and new ones - to find themselves in roles they were unaccustomed to, and to be required to understand the position of each other, especially in times of crisis. The point was to seek a dynamic of synthesis, shared - even minimally - by all. The second highlight was when the conclusions of the five groups were refined and reduced to three priority topics: good mining governance, the creation of local content and the development of a middle class, and strategic planning of a socially responsible economy. Finally, the third highlight was the restitution of the groups’ reflections in the form of recommendations.



It is important to emphasize that beyond the recommendations - some of which are new whereas others stress needs that had previously been stated in other encounters - the collective sense of the potential impact of a 'multi-stakeholder network' that marked the spirits and that will probably be the central issue for a continuation of the dynamic.

This report testifies to a profusion of ideas and to the desire of Congolese actors to make of mineral-rich areas in the Democratic Republic of the Congo a better place to live in.

# RECOMMENDATIONS

During the first round of discussion, five themes were selected: the development of local content in mineral-rich areas, local entrepreneurship for the development of a middle class, decentralization, the rule of law and strategic planning for a sustainable and integrated development. However, for the sake of efficiency, participants decided to reduce these five axes in three main subject matters: strategic planning of a socially responsible economy, local content creation and the development of a middle class, and good mining governance.

## Strategic planning for a socially responsible economy

How to use financial flows from the mining sector to ensure a healthy economy and sustainable development? This question shaped much of the discussions on strategic planning for a socially responsible economy. The debates yielded the following key recommendations:

- A national development plan to which provincial and local governments subscribe. This plan needs to be developed after consultations at the provincial and local levels;
- The ability of local operators must be strengthened by capturing financial flows from the mining sector, both at the level of investment and of operations, as well as by developing an alternative economy;
- Human resources based on the strategic planning must be developed and social security mechanisms must be strengthened.

## 41 recommendations

### **Strategic planning for a socially responsible economy**

1. *Establish a national development plan, based on consultations at the local and provincial levels in which the role of mining would be specified;*
2. *Identify opportunities for public-private partnerships in economic utility infrastructure;*
3. *Strengthen Special Economic Zones with dedicated tax incentives;*
4. *Put in place a policy of asymmetric tax incentives to ensure the attractiveness of related or alternative economic activities;*
5. *Foster provincial and local governments, as well as enterprises, to join in the logic of a national development plan;*
6. *Maintain financial flows at a local level;*
7. *Assign provision of some goods and services exclusively to local businesses;*
8. *Establish criteria for qualification of local businesses to the public policy of subcontracting;*
9. *Extend the range of resources available for local enterprises, through the creation of a “mining bank”, establishing conditions for developing a stock market, and fostering the pooling of resources between mining operators (artisanal miners);*
10. *Promote the creation of joint ventures or joint enterprises with foreign or domestic ownership (reference shareholders). Enable access to relevant information to capture funds or create jobs;*
11. *Establish and manage a mapped inventory of needs for goods and services that the mining sector will consume in the medium and long term;*
12. *Establish a mapped inventory of related economic potential in mineral-rich areas (example: tourism, research centers, agriculture, livestock, manufacturing);*
13. *Establish a mapped inventory of other economic opportunities (example: energy, craft industry of luxury goods, art and sport);*
14. *Establish a mapped inventory and anticipate needs of the mining sector in human resources and the development of adequate training;*
15. *Put in place a guarantee fund for the implementation of projects, with the State standing as guarantor of the borrower; guarantee micro-credit loans to banks and support these two measures with mining taxes;*

16. *Implement an enticing policy to attract and retain high potential human capital;*
17. *Rehabilitate technical schools that train in mining and related activities;*
18. *Ensure replacements of foreign personnel by Congolese staff based on criteria of competence, specific and circumstance-based timelines, indicating in particular categories of targeted activities and the required qualifications;*
19. *Foster establishment of mutual health insurance schemes for the artisanal miners, employees of mining companies and their dependents;*
20. *Ensure universal social services and implement direct social actions (quick wins);*
21. *Require mining companies to take international insurance for local staff;*



### ***The creation of local content and developing of a middle class***

22. *Increase job creation in mineral-rich communities through subcontracting, management of environmental risks, investment by Congolese nationals into industrial sub-contracting activities, and stimulate a sector of specialized local actors in consultation with the populations;*
23. *Give statutory force to the imperative of using local subcontracting;*
24. *Build financial, managerial and quality control capacities of stakeholders and promote applied research in universities and colleges for the benefit of the communities;*
25. *Reduce the asymmetry between mining and artisanal activity, including by developing genuine cooperatives;*
26. *Establish a School of mining;*

### **The creation of local content and the development of a middle class**

In order to improve the lives of people in mineral-rich regions, the creation of local content and, thereby, the development of a middle class are essential. Local content represents the local share of persons, goods and services used by mining companies. For the concerned communities, local content means local participation or buy-in to social plans through equity and funding of local projects. Lastly, from an economic point of view, local content can be considered as the local value-added.

The question of local content and the development of a middle class gave rise to several recommendations:

- Increase job creation in mineral-rich communities through subcontracting, the management of environmental risks, investment by Congolese nationals in subcontracting activities on an industrial scale, as well as stimulating a sector of specialized local consultants advising the communities;
- Educate all mining stakeholders on the vocation of cooperatives and/or mining associations in order to promote co-responsibility and the shared enjoyment of the returns of collective work.

## Good mining governance

For the participants, good mining governance rests on two components: the rule of law and decentralization. The discussion has brought to the fore different understandings of the term “Rule of Law”: it is perceived as the firm hand that ensures the respect of the law, in view first of all of justice (including distributive justice). It is equally viewed as the coordinating arbitrator that allows for the emergence of initiatives. Decentralization makes it possible to govern closer to the citizens and to optimize public policies. It assumes autonomy for “Decentralized Territorial Entities” (DTEs), particularly their financial autonomy.

Numerous recommendations for good mining governance have been formulated, including the following:

- Strengthen capacities of public institutions involved in the sector at all levels, as well as the tax authority tasked with collecting revenue from the mining sector, and provide a one-stop shop for this purpose.
- Develop a comprehensive and strategic mining plan to better organize the sector and enable the articulation of harmonized local mining plans, a strategic mining plan that builds on a national development plan;
- Improve geological knowledge nationwide, by funding research and in view of competitive tenders on deposits documented by the Government or its services.

### *Good mining governance*

27. *Restore State Authority (Reform of the Security Sector and Justice, DDR,...) and put in place an efficient mining police;*
28. *Develop a national mining plan under a national development plan and implement mining programs in each province in accordance with this plan.*
29. *Enhance the respect of legal texts including the Constitution (article 175 paragraph 2 on retrocession) and the Mining Code;*
30. *Harmonize the legislative and administrative provisions relating to mineral-rich areas;*
31. *Provide civil society with necessary and sufficient resources to ensure the dissemination of legal texts;*
32. *Maintain the standards on human rights and environment, and strengthen the corporate social responsibility;*
33. *Make public the debate on retrocession;*
34. *Ensure compliance from mining operators with all standards of traceability, transparency, reasonable diligence and certification;*
35. *Build capacities of public institutions involved in the sector at all levels (national, provincial, local), as well as the tax authority tasked with collecting revenue from the mining sector both at the national level (miscellaneous taxes) provincial (mining royalties, fees on the area of mining concessions,...), and by providing a one-stop shop for this purpose;*
36. *Make operational the Oversight and Participatory Dialogue Platform, which stands as the framework for consultation between the parties involved in the extractive industries sector, created by the decree of February 19th, 2014;*
37. *Set up small-scale mining zones;*
38. *Enhance the fight against illicit exploitation and trade in natural resources;*
39. *Improve geological knowledge countrywide, by funding research, and by inviting competitive tenders on deposits documented by the Government or its services;*
40. *Create an oversight committee for geologists, alongside civil society, for awareness-raising campaigns on the adverse effects on people`s health and the environment;*
41. *Finalize the review and enactment of laws pending in the Parliament.*

# STRATEGIC PLANNING OF A SOCIALLY RESPONSIBLE ECONOMY

**H**ow to use financial flows from the mining sector to ensure a healthy economy and sustainable development? This question has led much of the discussion on strategic planning for a socially responsible economy.

The first step should be a national development plan which provincial and local governments can build upon. This plan should be developed upon consultations at the provincial and local levels and the role of the mining sector needs to be clearly defined. In addition, several surveys should be made with regard to alternative or mineral-related economic potential in mineral-rich areas, opportunities for public-private partnerships, especially in terms of infrastructure, as well as on the potential needs for human capital.

In the economic field, two main objectives stand out, namely, to strengthen the capacities of local operators:

- in capturing financial flows from the mining sector at the level of investment and operations;
- in developing an alternative economy.

Another imperative is to settle the financial flows from the mining sector for the benefit of local entrepreneurship. This requires an inventory of goods and services consumed by mining as well as the provision of financial solutions for local businesses (cooperatives, banks). A fraction of the mining royalty could serve as collateral for bank loans to the local subcontractors or to implement projects with a sustainable impact on the community. In the social field, participants recommend the development of human resources and the strengthening of social services. A policy to attract and retain high potential human capital should be put in place, and policies regarding national and expatriate staff remuneration should be harmonized. Exchange programs, trainings and internships should be promoted.

A mutual health insurance plan should be set up for artisanal miners, employees of mining companies as well as their dependents. These health insurance schemes ought to be accompanied by direct social actions in order to provide quick responses to the numerous challenges faced by these communities. Finally, mining companies should extend the policies and conditions of international insurance to include their local staff, in order to avoid asymmetries in care in the event of accidents requiring specialized attention. The wishful horizon remains, of course, to create viable health conditions within the country.

# THE CREATION OF LOCAL CONTENT AND THE DEVELOPMENT OF A MIDDLE CLASS

- P**articipants provided several definitions for “local content” and each definition reflects a level of interpretation:
- From a business point of view: local content represents “the local share (in quantity or percentage) of persons, goods and services used by companies in the mining sector. In other words, it is the ratio between the local inputs (staff, goods, services) and the foreign inputs needed for mining operations.
  - From the community point of view: local content means the local participation or the level of buy-in to the social plan in the form of shareholding and funding of local projects. This refers to the support of the local community by public authorities or mining companies.
  - From an economic point of view: local content can be considered as local value-added.

Thus, the elements that make up local content are: employing the local workforce, strengthening its capacities (technology transfer) both by the company and its partners, the use of local industries and services, subcontracting, and finally the funding of local development projects. The “local” must therefore be a priority for the company, in coordination with the national level.

Three objectives are pursued with this focus on local content and the development of a middle class:

- Job creation
- Capacity-building
- Reduction of asymmetry between industrial and artisanal mining as well as between mining, agriculture and other fields of activity.

Participants identified one important indicator of the development of local communities: The goal is that these communities would retain living conditions equivalent to those they had prior to the implementation of the mining project or, to the extent possible, that the mining project contributes to the improvement of the living conditions of the communities living in mining areas. Job creation is one of the levers for development. Subcontracting is a means to attain this objective. This requires an inventory of the needs of mining companies and the identification of local businesses that can address them. Participants suggested that the requirement<sup>4</sup> to use local subcontractors in the mining sector should be made into law and extended to all sectors. Moreover, the banking sector should be prompted to support the emergence of value chains by facilitating access to credit (in other words, overcome all the habits and behaviors undermining the relationship of trust that governs the granting of credits). In addition, training for professions related to mining should be developed for members of communities living in mineral-rich areas as primary beneficiaries. Participants also stressed that environmental

<sup>4</sup> Ministerial Order # 0144/CAB. MIN/MINES/01/2013 of April 17, 2013 on subcontracting in Mining.

risk management, the consultation of the population, in addition to their own capacities in terms of sustainable development, and the promotion of civic and democratic practices should be seen in themselves as employment generating activities.

The development of the middle class happens also through easier access to financial resources for the artisanal miners, traders, and others small-scale professional activities. This development must be accompanied by solidarity-based savings and other financial institutions, fuelled in part by mining royalties. Two imperatives seem thus to be essential:

- Educate all mining stakeholders on the vocation of cooperatives to promote co-responsibility and the shared enjoyment of the fruits of collective work. In too many cases, these terms hide considerably asymmetric situations in which collective work at the bottom of the mine does not result in adequate compensation.
- Build management capacities in different socioeconomic categories as well as those of public officials and Government agents. The participants stressed the importance of reconnecting universities with the world of labor, particularly in the mining and agricultural sectors. Similarly, the transfer of skills and technologies to communities in mining areas needs to be assured in order to allow the progressive replacement of expatriate executives within mining companies and their subcontractors.

Mining has an impact on the environment. For the participants, when mining companies submit the findings of a study on environmental impact in order to be granted an operating license, the study should cover both technical and financial aspects to ensure an optimal management of this issue.

Finally, participants stressed the importance of reducing the asymmetry between formal and artisanal mining activities. This should be done through an increased support to miners, a technical redeployment of the “Service d’assistance et d’encadrement du small scale mining” (SAESSCAM) and the establishment of cooperatives according to the Act of 2 February 2002, which defines these as follows:

*“Group of persons with variable capital, with legal personality, and based on the principles of unity, solidarity and mutual assistance and whose main purpose is to collect the savings of their members and to grant them credit.”*

# GOOD MINING GOVERNANCE

For the participants, good mining governance rests on two components: the rule of law and decentralization. The discussion brought to the fore different understandings of the term “Rule of Law”: it is perceived as the firm hand that ensures the respect of the law, in view, first of all, of justice (including distributive justice). It is equally viewed as the coordinating arbitrator that allows for the emergence of initiatives. Decentralization allows to govern closer to the citizens and therefore to optimize public policies. It assumes the autonomy of decentralized entities, including financial autonomy<sup>5</sup>. In the Democratic Republic of the Congo, decentralized entities under the 2006 constitution are the city, the municipality, the sector, and the “chefferie”<sup>6</sup>.



Good mining governance has several objectives:

- Sound management of natural resources;
- Improvement of the living conditions of the populations and their participation in the decision-making process;
- Improvement of the business climate: both state and province to be attractive to the highest possible number of investors. This is to generate growth by ensuring legal and judicial security of investment to increase the standard of living of the population;
- A national and local civil society aware of the rights and obligations related to the mining sector;
- Transparency in the collection, and a fair allocation of, revenues emanating from the mining sector.

Good mining governance is the superstructure around which revolve both local development and strategic planning processes. It allows to ensure the drafting of efficient rules as well as their control by diverse mechanisms.

<sup>5</sup> Article 3 indent 3 of the Constitution of 18 February 2006, here in after “The Constitution of 2006”

<sup>6</sup> Section 3 indent 2 of the Constitution of 2006



It is in this sense that participants advocated first and foremost for restoring state authority. Insecurity in mining areas is a scourge and the police and military presence is insufficient to guarantee the safety of citizens, economic operators and their property. Armed groups, particularly in conflict-prone regions in the east of

the DRC, constitute a near-permanent threat and the response proposed by the Government has so far not been sufficient. The establishment of a mining police with appropriate training and motivation has been mentioned among the possible solutions.

Expediting Security Sector and Justice Reform and implementing the DDR (Disarmament, Demobilization and Reintegration) Program for some elements of local armed groups would thus be priorities in the eyes of the participants. This would mark the Government's commitment to fighting illicit exploitation and trade in natural resources. Similarly, participants reaffirmed the need to prohibit the security forces from participating in any mineral exploitation.

State Authority is not restricted to policing and the protection of people and properties, however, it is also a matter of abiding by and enforcing Positive Law. In the present case, the participants stressed the need to enforce texts relating to the financial autonomy of the Decentralized Territorial Entities (DTEs). Article 175, paragraph 2, of the 2006 Constitution provides for a 40% withholding tax to help fund the provinces. Section 115 of Organic Law # 08/016 of 07 October 2008 on the composition, organization and functioning of the DTEs and their relations with the Government and the Provinces, here after called the "Organic Law of 2008", prescribes that DTEs should receive 40% of the amount allocated to the Province. The lack of financial resources for DTEs hinders real development and the application of public policies. Implementation of retrocession needs to be the subject of public debate and lead to the finalization of laws on decentralization (the Programmatic Act on Decentralization, the Law on the Division of Provinces as well as the one relating to the Organization of Central and Provincial Services of the State).

In regard to mining legislation, two parallel approaches should be conducted according to the participants: the finalization of the revision of the Mining Code of 2002 and the improvement of its implementation. In fact, pending the completion of the ongoing negotiations on the Mining Code, it is necessary to enforce Positive Law. The participants underlined the need to continuously harmonize the various texts in order to avoid any potential legal contradiction, however.

To contribute to the respect of legal texts, civil society should conduct outreach campaigns and to that end be endowed with appropriate public (or private) resources. The mining sector needs a dedicated and determined civil society, capable of mastering the challenges in the mining sector and the needs of people directly affected by mining in particular and of Congolese society in general. The Government needs to promote the training of civil society to enable them to conduct relevant analyses, to influence public policy and to conduct advocacy to the general public and state institutions.

To ensure state authority and compliance with mining laws, participants conclude that capacities of state institutions involved in the mining sector should be built at all decision-making levels: the profitability of the mining sector, as in all economic sectors of the DRC, depends both on infrastructure made available by the state and an adequate administration in terms of skills and knowledge, and endowed with significant financial resources. For the collection of taxes in the mining sector, participants recommended the establishment of a one stop-shop.

The lack of a comprehensive and strategic mining plan was raised by participants. Such a national mining plan would better structure the sector and would particularly help articulate and harmonize local mining planning. The national mining plan would itself need to build on a national development plan. A national mining plan would require certification of reserves, which itself depends on improving the geological knowledge of the entire country, and hence on research funding - the objective being the call for competitive tenders for deposits documented by the Government or its services. Participants returned to the relevance of the concept of “conflict free” goods and concluded that it was penalizing certain areas, without actually addressing the local mechanisms of coercion, extortion and illegal export by criminal and diversified networks, well beyond the few mining products. On issues related to artisanal mining, participants argued for the establishment of artisanal mining zones, for enhancing the protection for miners and the respect for human rights in the context of artisanal mining through appropriate legislation.

The participants deplored the absence of synergy between stakeholders in the mining sector and inadequate consultation with populations affected by mining. As a remedy, they proposed to revitalize the Oversight and Participatory Dialogue Platform<sup>7</sup>. Likewise, they called for the development of synergies between various “users of the ground”, such as mines, agriculture, urban planning, land property issues, etc. to help increase the positive impact on people.

<sup>7</sup> Instituted by Decree No. 14/005 February 19, 2014, the Oversight and Participatory Dialogue Platform in the extractive industries sector is a framework for consultation between the stakeholders involved in the management of mining, oil and gas and forest (see articles 2 and 3 of the Decree)

# CONCLUSION :

## A « RÉSEAU MINES PRO POPULATION » AS A SYNTHESIS AND A PROMISE FOR A DYNAMIC OF MULTI-STAKEHOLDER INTERDEPENDENCE

Aware of their responsibilities, and eager to continue the momentum launched with the Embassy of Switzerland, the dialogue participants proposed to create a population-oriented mining network, the *Réseau Mines Pro Population*.

This network offers an original approach, based on multi-stakeholder dialogue. It bestows a mandate on change agents: to improve the lives of people in mineral-rich areas through the strategic planning of a socially responsible economy, by creating local content and developing a middle class, and all of it based on good mining governance.

Several actions are planned:

- Commitment by the participants to undertake multi-stakeholder consultations prior to planning activities;
- Restitute the findings of the last Lubumbashi dialogue workshop in the respective provinces;
- On the basis of a comparative study and an advocacy paper, lobby the Congolese Law Reform Commission on the overlapping laws regulating the mining sector;
- Support local communities in projects of self-management with sustainable impact;
- Start a discussion on the Ministerial Decree on Congolese subcontracting by tracking provincial oversight committees;
- Collect data on successful Katangese experiences (inventory of subcontractors, IDAK<sup>8</sup> quarterly meetings between public authority, civil society and the private sector) to allow for the information to be shared with, and if applicable, applied in other provinces.

At the end of the September workshop, a fairly clear choice offered itself in the horizon of a generation in the DRC:

- A certain ‘convenient fatalism’ featuring mining, oil and gas economies, which would lead to amplifying current trends in the polarization of wealth and increase inequalities of income, leading to new breaking points, similar to the 1991 and 1993 crises (summarized in “looting”).
- A collective taking charge of mining opportunities, by a wide range of aware and voluntary national actors, in the service of a public policy without appropriation from the top (i.e. by training, and by the organization of associations and various other forms of entrepreneurship), by diversifying the economy beyond mining, and by long term strategic thinking. This so as not only to avoid the ‘mining trap’, but to tame this sector toward serving a greater national cause.

<sup>8</sup> Investissement Durable au Katanga (IDAK)



*Group photo with the Governor of the province of Katanga and participants from the March 2014 workshop*



*Group photo with the Governor of the province of Katanga and participants from the September 2014 workshop*

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