



global witness

Agenda for Reform in the Natural Resources sector of the Democratic Republic of Congo

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The Congolese constitution states that:

*“All Congolese have the right to enjoy the nation’s wealth.
The State has a duty to redistribute it equitably and to guarantee the right to
development.”*

This basic constitutional right of the Congolese people - to fairly benefit from the natural wealth of the country – should be the priority for Congo’s new government and for its returning President, Joseph Kabila. The Democratic Republic of Congo (DRC) is currently the least developed country in the world, according to the United Nations, with one in every five children dying before their fifth birthday. Some parts of the country that are richest in natural resources are also the most deprived, lacking basic health and education services.

As the DRC’s new parliamentarians and government leaders begin their terms of office, they should demonstrate a commitment to upholding Congolese law as it applies to natural resources. The DRC’s weak justice sector, combined with poor law enforcement, is a major reason why potential gains from the resource sector do not materialise. There are few deterrents or consequences for those looking for personal enrichment at the expense of the state and people.

Aspects of the trade in minerals, oil and timber should be open for all to see so that officials can be held accountable for their role in managing the country’s resources. The authorities have recently taken encouraging steps, including the publication of dozens of mining contracts and an endorsement of measures designed to prevent armed groups profiting from the minerals trade. A key measure to improve the transparency of the resources sector should be the proper accounting by the government of all financial and in-kind payments made in relation to resource agreements, including signature bonuses and taxes. All of this information should be made publicly available.

This document sets out proposals for reforms in the DRC’s natural resource sector, covering the three key industries: mining, hydrocarbons and logging. Through their implementation the new government would show a clear commitment to ensuring the Congolese people benefit from the country’s natural wealth.

TRANSPARENCY IN THE MINING AND HYDROCARBONS SECTOR

During the last Presidential term, DRC authorities sold off mining assets to opaque offshore-registered companies. In particular, state mining companies Gécamines and Sodimico sold stakes in four major mining sites without making the information public.

There are several major concerns over the deals, notably:

- They were done in secret and not disclosed publicly;
- Certain assets were sold for far less than most reported commercial estimates of their value.
- The companies that benefited from these deals were based in offshore tax havens and could thus keep their real owners secret;
- The state mining companies conducting the sales and the relevant Government bodies publish virtually nothing in terms of financial statements. This means it is impossible to trace what has happened to the sums officially received from the sales.

In such circumstances, there is an evident concern about the risk of embezzlement and significant losses of revenue to the country.

DRC authorities must not engage in secret deals with opaque companies. As a fundamental principle, transparency provides ordinary citizens with the ability to see exactly how the natural resource wealth in their country is being managed and, in turn, can help build public confidence in the government's actions.

In addition, the 2002 Mining Code is due to be revised in the coming year and the hydrocarbons law is scheduled to be passed in parliament. Both laws must ensure that natural resources are used as much as possible to help the country develop, while also preventing potential harm to the population from the trade and exploitation of these resources. Legal measures should include strong guarantees of transparency and accountability. In particular the public needs data on production and sales, along with contract terms, to verify that the sector is being managed properly and that the state is receiving the revenues it is owed.

Recommendations

At all stages of its management of natural resources, from setting legislation to allocating rights, the government must act in a transparent and rule-bound way. The newly installed government of the DRC should:

- Establish open and competitive biddings as the norm for natural resource allocation
- Publish valuations, carried out by independent auditors, of natural resource assets to be sold by the state
- Publish all natural resource contracts, as required by a May 2011 decree.
- Make known the ultimate, or "beneficial", owners of the companies investing.
- Implement 'competency of buyer' rules whereby individuals and companies are blocked from investing if they cannot demonstrate an ability to carry out the work properly
- Block individuals and companies from investing if they have histories of tax evasion, human rights abuses, corruption or other criminal behaviour
- Establish mining and hydrocarbons codes that provide a clear legal basis for the points listed above and for the publication of revenue information in accordance with the Extractive Industries Transparency Initiative.

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ESTABLISHING A CONFLICT-FREE MINERALS TRADE IN THE KIVUS

In parts of eastern DRC armed groups and members of the Congolese army continue to profit from the area's vast natural resource wealth through illegal involvement in mining and trading of minerals.

The country's previous government took several significant steps to address the trade in conflict minerals, including issuing a directive requiring mining and mineral trading companies operating in the DRC to carry out checks on their supply chains in line with international standards. In addition, the restructuring of the Congolese army in North and South Kivu that was introduced alongside the Presidential mining ban created some localised opportunities for conflict-free trading in the Kivus.

These efforts by the Congolese government are extremely encouraging. However, there remains much more to be done, particularly regarding the continued impunity of Congolese army commanders. Information gathered over the past year by Global Witness, the United Nations and others, shows that senior officers drawn from the former CNDP rebel group have consolidated control of both mining and smuggling operations. These ex-CNDP officers include Bosco Ntaganda, who has been indicted by the International Criminal Court. This illicit accumulation of wealth and power by poorly-integrated ex-rebels poses a real threat to the stability of the region and the human rights of the Congolese population. It is also the biggest obstacle to the establishment of a 'clean' minerals trade that benefits the Kivus and the country as a whole.

Recommendations

- Follow through on commitments to remove the Congolese army from mine sites, and ensure members of the army do not use civilian proxies to represent their interests in the minerals sector
- Prosecute members of the Congolese army who are involved in minerals smuggling, in particular senior officials of the former CNDP
- Monitor and enforce implementation of the directive passed in September 2011 obliging companies operating in the DRC to adhere to the OECD due diligence standards
- Work with international donor partners and companies to prioritise the establishment of trade in 'clean' minerals from key mining areas such as Bisie in North Kivu
- Create additional Artisanal Exploitation Zones in the Kivus to provide a legal basis for existing mining operations

MAINTAINING THE CURRENT MORATORIUM ON THE ALLOCATION OF NEW LOGGING CONCESSIONS

The process to review old logging titles in the DRC and bring them into compliance with the Forest Code enacted in 2001 is drawing to a close. The process has resulted in the conversion of around half of the country's logging titles into logging 'concessions', and the cancellation of the remainder. The end of the process might result in some serious pressure to lift the moratorium on the allocation of new logging contracts put into force in 2002 and renewed in 2005.

Global Witness believes that lifting the moratorium would be a serious mistake at the present time. Not only is there evidence that the conversion process was widely flawed but, more broadly, it is clear that industrial-scale logging in the DRC has so far delivered very little in terms of development and employment creation. The

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The trade in timber should be open for all to see.

industry has also created an increasing number of violent conflicts involving logging companies and communities affected by logging.

It is far too early to judge the success of the social agreements (*cahiers de charges*) logging companies are legally required to sign with communities affected by their operations. However, many local communities were not sufficiently prepared for the negotiations, which appear to have been pushed through in order to finalise the conversion process.

Industrial logging's contribution to the national budget remains low, in view of the amount of timber being exported – official figures show just over \$1.2 million was collected from the entire sector, both industrial-scale and artisanal, in the first three months of 2011. There is still no system in place to supervise and control the different stages of operations. The *Direction de Contrôle et Vérification Interne*, responsible for policing logging concessions, does not currently have the field capacity to fulfil its existing role let alone cover new concessions.

Recommendations

Global Witness urges that five essential reform steps be implemented before the government considers lifting the moratorium on allocating new logging contracts:

- a) An independent evaluation of: the process for validating newly signed concession contracts, in particular the Management Plans; how the negotiations for the *cahiers de charges* were conducted; and whether all relevant legal provisions were complied with in the process of granting concessions.
- b) A rigorous participatory land-zoning process based on the identification of customary and actual forest (land) use by local communities, indigenous peoples and other actors.
- c) Harmonisation of policies and regulations of the various sectors affecting forests with an emphasis on forest preservation, pre-emptive forest-use rights and securing land tenure of communities and indigenous peoples.
- d) Immediate signing of regulations on community forestry to ensure communities have the statutory right to manage their own forests.
- e) Publishing of logging titles and concession contracts, including details of ownership of logging companies, with additions such as related social clauses and social agreements, management plans, annual timber-cutting permits and all relevant maps.