Strategies for FDI in the Mining Industries of DR Congo

Martin Kiende Kasongo*

Abstract

Foreign Direct Investment in the mining sector in Congo can play an important role in development. After the collapse of major mining firms owned by the Congolese state in 1990, a reform of the mining code was introduced, with the support of some international financial institutions, with the view that attracting FDI would provide the resources needed for national development. These measures have helped attract FDI and increase mining exports. However, despite significant growth in production and enormous profits made by multinationals exploiting the mines, government revenue generated by the mining sector is minimal and does not benefit the wider population. There are several reasons behind the mining sector’s limited impact in the development process. The new mining code provides enormous financial and tax benefits for FDI, and there are some difficulties associated with the implementation of this new code by the government. This paper investigates the different strategies which can promote the development of the DR Congo through FDI in the mining sector.

Keywords: FDI (Foreign Direct Investment), Mining Industries, Development, Congo

I. Introduction

The Democratic Republic of Congo (DRC) is a vast country located in Central Africa with abundant natural resources, but over 71 percent of the Congolese people live on less than US$1 per day. According to the Global Report on Human Development in 2010, the Human Development Index (HDI) of the country was 0.239 and the multidimensional poverty index (PMI) was 0.393 percent.

A lack of financial capital, which can enable funding of poverty-reducing programs and initiate development, makes the attraction of Foreign Direct Investment central to Congo’s economic policy, as advocated by international financial institutions and regional organizations.

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Congo needs FDI, especially in the mining sector, as the main lever of economic growth. It can allow the government to generate a substantial amount of income to fund other development sectors and feed the operating budget of the State (Djili, 2007).

Before the nationalization of private enterprises in 1973, Congo enjoyed a high level of FDI and its economy was one of the most prosperous in Africa. However, this nationalization led to a drop in production along with worsening poverty. Corruption, destruction of production tools, falling prices of raw materials, and mismanagement of mining companies by the state caused all mining industries in Congo to virtually cease to function in 1990.¹

Mining production fell to its lowest level in September of that year, resulting in negative consequences for the economy as a whole, including a stigmatization of Congo that exists to this day. Two consequences came about as a result of falling production. These are: (i) problems with the public finances of the DRC, in particular, an inability to mobilize revenue which is still keenly felt due to fractures caused by the collapse of the production ability of mining companies, and; (ii) problems with currency strength due to the surrender of export earnings. In the first half of 1990, in a deep skid, the monetary authorities were helpless and unable to preserve internal purchasing power and external currency value.²

In order to remedy that situation, the World Bank recommended a series of macroeconomic measures for increasing the contribution of the mining industry to the development process; these included liberalization, deregulation and privatization in the hope of attracting FDI and reducing poverty. These measures, aimed at improving the investment climate, have helped increase FDI but not until recently have they had an impact on Congolese development.³

This study uses the descriptive methods that describe FDI in the mining industry in the DRC to make an inventory of investments in mining and describe strategies for FDI in the mining industry.

One technique is a means, a method that allows a researcher to gather information. For this paper we used the documentary technique, which entails consulting documents pertaining to FDI in the mining sector in the DRC, the outcome of the Central Bank of Congo, the IMF, World Bank, the Ministry of Mines, and others related to the economy and mining production.

The first part of this article focuses on FDI with regards to the mining sector in the DRC by analyzing related data from 2000 to 2012. The second section looks at the major obstacles and problems in that field, the third on the analyses of obstacles, fourth on the contribution to national development, and the last section focuses on new strategies with regards to FDI in Congo.

II. Description of the Mining Industry in Congo

1. Description of mining sector in Congo

There is little research and publication on the mining industry in Congo but the industry itself can be defined as all activities involved in the discovery and extraction of metals, minerals and other materials found on or beneath the surface of the Earth (Kaminga, 2005). Mining can be non-metallic (such as gravel and coal) and metallic (such as copper and cobalt).

According to Keit et al. (2005), mining is one of the most important economic activities in many developing countries. Its importance and influence has increased dramatically in recent years. The mining industry has a unique set of characteristics. It is possible to find a large quantity and concentration of metals over a relatively small surface. It is also possible to extract several metals from the same limited pool. This can bring enormous economic benefits. The metals are usually mixed with other elements. The role of the mining industry is to separate the waste, transport the metals, and finally conduct the treatment of metals (Richard, 2005).

Congo is rich in natural resources and 2.3 million km² of its territory contains over 1,100 different minerals. Most of those mineral resources are found in four main areas: Katanga, both Kassaïs, Northeastern Congo and the Kivu-Maniema. The copper belt of Katanga province also contains cobalt, zinc and uranium. Resources identified in this belt are estimated at 70 million metric tons of copper, 5 million metric tons of cobalt (this cobalt reserve is the most important in the world) and 6 million tons of zinc, which represents three percent of the world’s total.

Copper production in Congo last year surpassed Zambian output for the first time since 1988, making it Africa’s biggest producer, according to the CRU Group. Congo produced 846,000 metric tons of the metal in 2012, about 2 percent more than its southern neighbor.

2. Situation in the Mining Sector before Privatization

Prior to the early 1990s, the Congolese government was both the main owner and principal shareholder of the mining companies. However, output fell drastically in September 1990 in large part due to the collapse of the main Kamoto underground mine. Later, there was a collapse of a national road in Congo used to transport 56 percent of production output (about 468,000 tons of copper) from the mining areas of Katanga to the Atlantic port of Matadi.

Poor performance led to a decrease in tax revenue in 1991. The relative share of the main mining companies with regard to tax revenue fell from a high of 60 percent before the 1990’s to only 7 percent, on average, between 1991 and 2000. Thus, the reduced activities of GECAMINEs in 1990 would be the main cause for the decline of...
the mass budget in the DRC during the 1990s. Without a consistent source of funding, financing of Congolese government deficits became a chronic problem, causing monetary instability and weakening national sovereignty.5

Table 1: Mining’s Production Output from 1980 to 2001

Figure 1 shows that copper is the most important raw material produced in Congo; however, production dropped from 440,600 tons in 1981 to 4000 tons in 2002. Several factors caused this fall, including mismanagement and the destruction of tools of production.

<table>
<thead>
<tr>
<th>Years</th>
<th>Minerals</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Copper</td>
</tr>
<tr>
<td>1980</td>
<td>471,000</td>
</tr>
<tr>
<td>1981</td>
<td>440,600</td>
</tr>
<tr>
<td>1982</td>
<td>542,600</td>
</tr>
<tr>
<td>1983</td>
<td>525,600</td>
</tr>
<tr>
<td>1984</td>
<td>490,400</td>
</tr>
<tr>
<td>1985</td>
<td>490,000</td>
</tr>
<tr>
<td>1991</td>
<td>222,097</td>
</tr>
<tr>
<td>1992</td>
<td>134,952</td>
</tr>
<tr>
<td>1993</td>
<td>45,909</td>
</tr>
<tr>
<td>1994</td>
<td>29,323</td>
</tr>
<tr>
<td>1995</td>
<td>32,512</td>
</tr>
<tr>
<td>1996</td>
<td>38,882</td>
</tr>
<tr>
<td>1997</td>
<td>36,427</td>
</tr>
<tr>
<td>1998</td>
<td>37,277</td>
</tr>
<tr>
<td>1999</td>
<td>6000</td>
</tr>
<tr>
<td>2000</td>
<td>7000</td>
</tr>
<tr>
<td>2001</td>
<td>4700</td>
</tr>
</tbody>
</table>


The production level of State-owned mining companies did not allow sufficient generation of revenue to cover financial obligations in relation to employees, suppliers, consultants, the exploitation process and community infrastructure projects.

Technically, these companies were insolvent, laden with heavy debts in the short and long term. Due to these debts, the Congolese government incorporated joint ventures and loans into its FDI strategy in order boost mineral production.

Haut Katanga, Gecamines is engaged in the exploration, research, exploitation and production of mineral deposits including copper, cobalt, gold, zinc, among others. One of the largest mining companies in Africa, and the biggest in the Congo.

3. FDI in Mining Sector Contribution in the Development Process

Chile, Argentina, Botswana, Tanzania, South Africa, Australia and Canada are countries with a history of mining. The mining sector contributes to economic development and reducing poverty. Some recent studies of the International Council on Mining and Metals confirmed the ability of this sector to boost economic development.

The case of Ghana illustrates this clearly. The enactment of new mining legislation in the late 1980s encouraged private investment in the sector. Mineral production in Ghana, gold in particular, rapidly gained momentum in the mid 1990s and contributed to the growth of GDP per capita compared to previous years.

However, the ultimate challenge is to translate the State’s increased mineral production and revenue flows into concrete improvements in the population’s well-being. Judicious use of revenues from the mining sector to improve the livelihoods of the people cannot be taken for granted and many countries fail to use such revenues properly.

Despite recent economic growth, the standard of living in Congo remains low. All indices of human development have improved but remain low compared to the average of sub-Saharan Africa. Poverty is still high with an average of 45% in the capital and 70% in the rest of country.

Figure 1: Human Development Index 2000-2007

![Human Development Index 2000-2007](chart.png)

**Source:** UNDP (2011).

4. Measures to Attract FDI

In 2002, the Congolese government undertook a series of measures to attract more FDI in the mining sector. These measures were supported by international partners including the IMF and World Bank.

Three types of incentives were offered to attract FDI to Congo: tax, financial and regulatory incentives, with the expectation that more FDI would enable the State to mobilize funds from the mining sector towards overall economic development.

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Figure 2: Production of Copper and Cobalt from 2002 to 2009

As the figure illustrates for the case of Congo, and the graph above on the world copper metal prices, since the end of the global financial crisis in 2010 and on the back of high Chinese demand, the world market is experiencing an increase in minerals prices, with the consequence of an influx of new investment in countries endowed with minerals resources to supply world demand. There is a perfect relation between mining price variation and the mining variation production in DR Congo.

![Graph of Copper and Cobalt Production](image)

*Source: Central bank of Congo, 2010.*

In terms of mining production, the policy applied by the Congolese government was aimed at promoting a public/private partnership. The adoption in 2002 of new mining reforms was intended to attract FDI by removing regulations restricting investment, securing property and people, and redefining the role entrusted to the State.

It also emphasized protection for investors against corruption and harassment by government administrative bodies and taxation services. The development of mining resources has been entrusted to private investors, who benefit from incentives and have secured their investments through commitments from donors such as the World Bank, International Monetary Fund, and the Congolese State (2002).

In addition, the new mining code has established a customs procedure, fiscal and financial, to all operators in the mining sector and all industrial and small-scale miners without distinction resulting from the nature or duration of the mining title. This is a customs regime and fiscal incentives adapted to the realities of mining, taking into account the specificities and peculiarities of this industry and organizing appropriate taxation to the phases of development of a mining project.

Congo has also adopted a series of measures designed to protect FDI firms from future attempts at exploitation by the Congolese government. The tax regime can only change by a decision of parliament. In addition, the government provides total exemption for all investment fees and taxes on imports for machinery, tools and hardware. FDI investors are entitled to a full exemption from the export tax law. This means that they enjoy the freedom to transfer their profits out of the country and are exempt from the
exchange control levy for the repatriation of revenue from their accounts. The fiscal regime detailed in the 2002 mining code has generally been regarded as competitive and has succeeded in attracting investment, despite the high risk of investing in the country.

5. Application of New Reforms

However, the application of these reforms has encountered difficulties because they do not always take into account Congolese national specifics. They have led to the concession of most of the mineral wealth and shareholdings held by the Congolese State to private investors through the signing of unbalanced joint venture contracts.

From 2000 to 2012, metal prices almost tripled. Mining companies were engaged in fierce competition for new mines to meet growing global demand despite insecurity and instability in Congo. Taking advantage of financial incentives, customs benefits, the revision of the mining code, the weakness of the State, war, economic and political instability, over 170 FDI deals have been made in Congo so far.

Figure 3: Foreign Direct Investment in DRC 1991-2009 (% of GDP)

As can be seen, the opening to foreign investment raised some interest as from 1996, which then decreased with the first Congo War and again with the beginning of the second. The adoption of the Mining Code in 2002 with the support of the World Bank, which was intended to promote an attractive climate for private investment, has been a major factor in increasing FDI in that sector.

In addition, most of the mining companies established in Congo are not typically recognized as major multinational corporations at the international level. They sign contracts with the Congolese government in order to speculate on international financial markets. The amount allocated for investment is not significant. They are willing to take risks in a country where the investment climate has been deemed unsuitable, in contrast to large multinationals, who were more cautious.
Table 2: Profit Participation of the Congolese State in Joint Ventures

Figure 4 shows that despite the enormous financial and tax benefits granted by the Congolese government to foreign companies, its share in these enterprises has remained very low. In about 38.46 percent of the contracts, the state has a 20 percent profit participation level.\(^7\)

<table>
<thead>
<tr>
<th>Share of Congolese Govt.</th>
<th>20</th>
<th>25</th>
<th>30</th>
<th>35</th>
<th>40</th>
<th>45</th>
</tr>
</thead>
<tbody>
<tr>
<td>% of Contracts</td>
<td>38.46</td>
<td>17.9</td>
<td>7.69</td>
<td>5.13</td>
<td>15.38</td>
<td>15.50</td>
</tr>
</tbody>
</table>


Table 3: Repartition FDI in Terms of Countries of Origin

Most of the FDI installed in the Democratic Republic of Congo came from tax haven/"fiscal paradise" countries at 23.89 percent. Bermuda is leading with 15.49 percent of investments. Another important aspect to note is that U.S. and Canadian investment has risen significantly. In addition, in order to feed its huge demand for raw materials, Chinese investment is steadily increasing.

<table>
<thead>
<tr>
<th>Countries</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bermuda</td>
<td>15.49</td>
</tr>
<tr>
<td>Ile vierge</td>
<td>7</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>1.4</td>
</tr>
<tr>
<td>USA</td>
<td>14</td>
</tr>
<tr>
<td>Canada</td>
<td>12.6</td>
</tr>
<tr>
<td>China</td>
<td>11.26</td>
</tr>
<tr>
<td>Belgium</td>
<td>12.33</td>
</tr>
<tr>
<td>South Africa</td>
<td>5.63</td>
</tr>
<tr>
<td>Australia</td>
<td>2.82</td>
</tr>
<tr>
<td>India</td>
<td>1.4</td>
</tr>
<tr>
<td>UK</td>
<td>2.82</td>
</tr>
<tr>
<td>Zimbabwe</td>
<td>4.2</td>
</tr>
<tr>
<td>Japan</td>
<td>2.82</td>
</tr>
<tr>
<td>Russia</td>
<td>2.81</td>
</tr>
<tr>
<td>Others</td>
<td>3.2</td>
</tr>
</tbody>
</table>


By 2009, the situation had seemingly changed. Political stability prevailed, and the end of the war, along with the resumption of economic growth, had attracted more companies. Big international firms such as France’s AVIRA, South Africa’s DeBeers, Red back, and Rand gold, Gold Ashant and AREN signed major contracts. The giant Anglo Saxon (see comment) invested millions of dollars in gold mining in the Kivu and Orientale Province, despite insecurity in these territories.\(^8\)

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Table 4: Evolution of Main Mining Production from 2000 to 2010

Analysis of this table shows that the production of copper, cobalt, and diamonds from 2000 to 2010 had a positive growth trend. Over the past decade, the mining sector has expanded considerably, mainly due to the growth of FDI and higher mineral prices. Mining production expanded greatly. Copper production rose from 30,821 tonnes in 2000, to 421,755 tonnes in 2010.

<table>
<thead>
<tr>
<th>Year</th>
<th>Copper (1000c)</th>
<th>Cobalt (1000c)</th>
<th>Zinc</th>
<th>Diamond Industrial (1000c)</th>
<th>Diamond Artisanal (1000c)</th>
<th>Gold kg²</th>
<th>Barrel of oil</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>30,821</td>
<td>3738</td>
<td>214</td>
<td>4,640</td>
<td>11,355</td>
<td>1,451</td>
<td>8459</td>
</tr>
<tr>
<td>2001</td>
<td>37,845</td>
<td>11,637</td>
<td>1,014</td>
<td>6,355</td>
<td>16,171</td>
<td>1,512</td>
<td>9,380</td>
</tr>
<tr>
<td>2002</td>
<td>27,359</td>
<td>11,965</td>
<td>828</td>
<td>6,327</td>
<td>16,176</td>
<td>2,154</td>
<td>8,425</td>
</tr>
<tr>
<td>2003</td>
<td>16,359</td>
<td>7,929</td>
<td>4,886</td>
<td>7,840</td>
<td>19,141</td>
<td>819</td>
<td>9,242</td>
</tr>
<tr>
<td>2004</td>
<td>19,019</td>
<td>10,247</td>
<td>1,505</td>
<td>7,856</td>
<td>21,660</td>
<td>1202</td>
<td>10,118,587</td>
</tr>
<tr>
<td>2005</td>
<td>28,462</td>
<td>16,242</td>
<td>1,510</td>
<td>5,760</td>
<td>29,447</td>
<td>2,244</td>
<td>92,162,49</td>
</tr>
<tr>
<td>2006</td>
<td>97,360</td>
<td>1,5384</td>
<td>3,378</td>
<td>2,914</td>
<td>26,034</td>
<td>254</td>
<td>9,008,848</td>
</tr>
<tr>
<td>2007</td>
<td>94,053</td>
<td>1,7319</td>
<td>3,380</td>
<td>1,047</td>
<td>27,223</td>
<td>122</td>
<td>8,816,314</td>
</tr>
<tr>
<td>2008</td>
<td>33,5066</td>
<td>4,2461</td>
<td>1,546</td>
<td>807</td>
<td>20,146</td>
<td>150</td>
<td>8,365,254</td>
</tr>
<tr>
<td>2009</td>
<td>30,9181</td>
<td>5,6258</td>
<td>1,963</td>
<td>1,277</td>
<td>16,998</td>
<td>220</td>
<td>9,382,311</td>
</tr>
<tr>
<td>2010</td>
<td>42,1755</td>
<td>9,5176</td>
<td>1,194</td>
<td>0</td>
<td>22,711</td>
<td>390</td>
<td>7,864,006</td>
</tr>
</tbody>
</table>


Reported cobalt production increased from 3,738 tonnes in 2000 to 95,176 in 2010. While it marks a positive improvement major fraud occurred. Reported production is often far less than actual production. In addition, companies sometimes intentionally fail to acknowledge the presence of smaller quantities of rare minerals such as those found in the ore they mine.

Table 5: Evolution Exports of Mining on Total Exports from 2000 to 2010

Figure 7 provides sufficient evidence that mining products are the leading exports, which unfortunately do not contribute sufficiently to the Congolese budget because of various privileges granted to entrepreneurs in this industry.

<table>
<thead>
<tr>
<th>Year</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>millions USD</td>
<td>-</td>
<td>829.5</td>
<td>1098.1</td>
<td>1328.4</td>
<td>1840.2</td>
<td>1885.7</td>
<td>2537.6</td>
<td>5312.5</td>
<td>6623.9</td>
<td>4240.1</td>
</tr>
<tr>
<td>by % of exports</td>
<td>-</td>
<td>92.3</td>
<td>97</td>
<td>96.4</td>
<td>96</td>
<td>78.5</td>
<td>93.8</td>
<td>86.4</td>
<td>96.4</td>
<td>97</td>
</tr>
</tbody>
</table>


According to the head of the EU delegation in Congo, in 2010 the Congolese government apparently collected less than US$200 million from the mining sector, while oil earnings exceeded US$400 million. The mining sector still suffers from serious dysfunctions and especially from governmental mismanagement. As a result, the country does not have any reliable data about the number of mining operations and their production, or even data on exported commodities.9

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Table 6: Distribution of Export Revenue from Goods Produced (in Thousands USD)

This table shows that revenues from mineral exports are the primary source of the export earnings of the Democratic Republic of Congo. Revenues increased significantly during the year 2003 (13,283,371 dollars), but in 2009, they have dropped back to 4,240,090 dollars. Revenue from agricultural products is second, while the other sectors remain far behind the revenue obtained through mineral production.

<table>
<thead>
<tr>
<th>YEARS</th>
<th>Mining and oil</th>
<th>Agricultural Products</th>
<th>Industrial Products</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>773,016</td>
<td>323,371</td>
<td>1,283</td>
<td>806,636</td>
</tr>
<tr>
<td>2001</td>
<td>812,453</td>
<td>554,851</td>
<td>1,246,9</td>
<td>880,407</td>
</tr>
<tr>
<td>2002</td>
<td>1,097,760</td>
<td>232,821</td>
<td>1,111,6</td>
<td>1,132,159</td>
</tr>
<tr>
<td>2003</td>
<td>13,283,371</td>
<td>351,444</td>
<td>1,056,4</td>
<td>13,785,80</td>
</tr>
<tr>
<td>2004</td>
<td>1,840,187</td>
<td>544,391</td>
<td>2,256,5</td>
<td>19,171,91</td>
</tr>
<tr>
<td>2005</td>
<td>2,318,661</td>
<td>581,611</td>
<td>2,594,5</td>
<td>24,127,67</td>
</tr>
<tr>
<td>2006</td>
<td>2,570,335</td>
<td>979,781</td>
<td>3,042,9</td>
<td>26,987,43</td>
</tr>
<tr>
<td>2007</td>
<td>5,924,772</td>
<td>1,642,78</td>
<td>5,888,4</td>
<td>61,479,34</td>
</tr>
<tr>
<td>2008</td>
<td>6,623,860</td>
<td>1,784,49</td>
<td>6,747,2</td>
<td>68,697,81</td>
</tr>
<tr>
<td>2009</td>
<td>4,240,090</td>
<td>772,86</td>
<td>5,365,6</td>
<td>43,710,33</td>
</tr>
</tbody>
</table>

*Source: Central Bank of Congo, Report, 2010.*

Figure 4: Distribution of GDP by Sector in 2009.


III. Obstacles and Constraints for The Development of Mining Activities

1. Infrastructures Constraints

The lack of infrastructure is a major constraint for the development of mining activities in Congo. Largely landlocked, it must depend on neighboring countries for the
import of heavy industrial equipment and export of mining products. The poor state of roads and railways (which sometimes do not even exist at all) in mining areas significantly increases the cost of production.

Limited power also poses major problems. A number of plants in Katanga and elsewhere are old and cannot produce the amount of electricity required for the growing industry. In response to this situation, the government is developing plans to restructure and/or privatize public railways and electricity companies.

Another problem is the lack of a regulatory framework for the management of major infrastructure by private interests.

Bas Congo province (Matadi), located 2000 km from Kinshasa, supplies these companies with electricity. Also, before 1980, ores were transported mainly along the road from Katanga to the Atlantic Ocean through the port of Matadi. However, currently this route is not practical as most of the road has been destroyed. Therefore the transportation of mining materials is often very expensive and results in reduced profits. In addition, from Katanga, the main mining province, to the ocean by Matadi, the transportation of ore can take more than two months.

This lack of adequate infrastructure prevents and limits investment not only in the province of Katanga, but throughout the DRC. For the export of minerals, the shortest route should be used, however, Angola, which is en route to the Atlantic Ocean, requires the payment of heavy taxes. Currently, ores are transported to the ocean through Tanzania and South Africa. The road is in good condition and safe, but very expensive. This puts the DRC at a competitive disadvantage in the international market.

2. Perceptions of Investing in Congo

Some investors have become reluctant to put money into Congo due to current policies, even though they believe the country offers significant investment potential. However, foreign investors may play a central role in the development of Congo through the mining sector. For most of those investors, Congo can be an attractive opportunity, but some conditions should first exist such as having a world-standard regulatory environment, highly competitive taxation, a stable mining regime, and low political risk and uncertainty.

3. Political Instability

According to the World Bank, for more than 80% of investors political instability is one of the most important concerns. Almost 40% of investors would not pursue any investment in Congo and another 40% would be strongly deterred due to the political environment, according to the 2012 Fraser Index.

According to the Faraster index 2012, Congo has the worst administrative and regulatory uncertainty of all the countries in the index. The uncertainty is influenced by a gap in legislation relating to small-scale mining permits, environmental protection, community consultations, and problems in terms of law implementation. According to some investors, Congo is closely followed by Guinea and South Africa in having the most negative administrative and regulatory uncertainty.
4. Obstacles Related to the Cost of Doing Business

In terms of the index of doing business, which captures some important dimensions of the regulatory environment applied to local firms and also considers the lack of infrastructure, institutional weaknesses and the highlighting institution, out of 186 countries Congo ranked 181 as the most difficult country to carry out business.

Table 7: Ease of Doing Business Indicators 2012 for Congo and Other Mining Countries

<table>
<thead>
<tr>
<th>Country</th>
<th>Ease of doing business</th>
<th>Construction permits</th>
<th>Getting electricity</th>
<th>Registering property</th>
<th>Protecting investors</th>
<th>Paying taxes</th>
<th>Trading across borders</th>
<th>Enforcing contracts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chile</td>
<td>37</td>
<td>84</td>
<td>40</td>
<td>55</td>
<td>32</td>
<td>36</td>
<td>48</td>
<td>70</td>
</tr>
<tr>
<td>South Africa</td>
<td>39</td>
<td>39</td>
<td>150</td>
<td>79</td>
<td>10</td>
<td>32</td>
<td>115</td>
<td>82</td>
</tr>
<tr>
<td>Peru</td>
<td>43</td>
<td>86</td>
<td>77</td>
<td>19</td>
<td>13</td>
<td>85</td>
<td>60</td>
<td>115</td>
</tr>
<tr>
<td>Ghana</td>
<td>64</td>
<td>162</td>
<td>63</td>
<td>45</td>
<td>49</td>
<td>89</td>
<td>99</td>
<td>48</td>
</tr>
<tr>
<td>Zambia</td>
<td>94</td>
<td>151</td>
<td>151</td>
<td>96</td>
<td>82</td>
<td>47</td>
<td>156</td>
<td>89</td>
</tr>
<tr>
<td>Tanzania</td>
<td>134</td>
<td>174</td>
<td>96</td>
<td>137</td>
<td>100</td>
<td>133</td>
<td>122</td>
<td>36</td>
</tr>
<tr>
<td>Guinea</td>
<td>178</td>
<td>152</td>
<td>88</td>
<td>151</td>
<td>177</td>
<td>183</td>
<td>133</td>
<td>131</td>
</tr>
<tr>
<td>DRC</td>
<td>181</td>
<td>81</td>
<td>140</td>
<td>106</td>
<td>158</td>
<td>171</td>
<td>170</td>
<td>173</td>
</tr>
</tbody>
</table>


According to the Doing Business report 2012, between 2010 and 2012 overall 43 procedures are necessary to ensure a contract’s enforcement, and on average, 610 days to complete. Concerning cross-border trade, Congo distinguishes between the length of time necessary to import and export, 44 and 63 days respectively, and the high cost per
container: US$ 3,155 for exports and US $3,435 for imports. The cost of customs broker fees, port-related charges, inland transport costs, administrative fees for customs inspections and clearances are also included.

5. Corruption

Corruption has had a negative impact on mining sector investment in Congo. According to the Mo Ibrahim index, which includes a total of 52 African countries, Congo ranked 41st for transparency, corruption in the public sector, and accountability transparency. It was among the worst-performing countries.

![Figure 6: Corruption Proportion Index](source)

**Figure 6: Corruption Proportion Index**

Source: Fraser Index, 2012.

IV. Analysis of Major Obstacles and Problems

1. Main Reasons for Underperformance in the Mining Sector

Despite measures taken to engage the mining sector in development, albeit under pressure from international financial institutions, FDI mining participation in economic growth remains low. The growth rate of GDP per capita is also low—below $130 per person. In addition, the population of provinces with rich reserves do not benefit from such mining exploitation.

There are several reasons to explain this lack of performance. Most of these contracts were poorly negotiated and signed in haste, especially during the period of civil war. In addition, many were signed during transition periods by elected politicians trying to find money to secure their own futures. Although exports of raw materials
have brought huge profits, the financial and tax advantages listed above do not allow the Congolese State to benefit. These conditions are largely unfavorable to the DR Congo.

2. Financial Problems (See Comment)

The following are some of the financial problems in the sector and include differences between the amount of tax due and the amounts collected and reported, illegal exports, particularly to the East, incomplete and inaccurate financial information about income/activities.

- Allegations of fraud and falsification of documents within public services responsible for the identification, collection, and recording the publication of information on tax revenues;
- Lack of capacity within the government to measure and verify, so independently estimate the tonnage and grade of mineral exports;
- Lack of independent audits of mining exports and taxes paid to the State and collected

3. Technical Inability of Congolese Experts

Besides the technical inability to judge the real value of mining sites, there is an acute shortage of legal experts and technicians employed by the Congolese government. People close to government without experience or mining know-how are delegated to meet international mining experts in contract discussions.

DR Congo goes into discussions without sufficient information about the actual value of the mines while international firms are much more informed and have all of the technical information needed. Many Congolese leaders are characterized by incompetence and a lack of commitment to public interest. While indiscipline and mismanagement characterize the Congolese State, the people responsible for these discretions are not clearly known. Important contracts are negotiated by the relatives of ministers in secret and without the involvement of the administration. Customs officers at the borders agree to smuggle huge quantities of raw materials for export.

4. No Added Value of Mining Exports and Administration Weakness

In addition, firms often export raw minerals without any added value, depriving the country of revenue that it could have earned. Raw materials are rarely transformed into intermediate or finished products of higher value. The weakness of Congo’s metallurgic processing industry explains the low value added from mining.

The weakness, and often absence, of central government influence means justice and security do not exist. Some rebel groups and militias still control mineral-rich portions of Congo that were given FDI for exploitation.

These companies are unable to operate freely and some pay militias for security. In addition, the limited presence of the State encourages the emergence of criminal networks composed of politicians, military and businessmen. Together they operate private companies which are deeply involved in corruption, falsification and under-assessment
of bills, along with the diversion of government revenues and smuggling.

The lack of border control is an important fact to emphasize; in fact, controls exercised in the DRC are an unfortunate result of corruption and lack of technical equipment. As a result, some international airlines operate without licenses and without customs control in mining areas, which facilitates customs fraud.

**V. Contribution of FDI in Infrastructure and Capacity Improvement**

1. **Infrastructure Improvement**

   Mining companies have contributed to the establishment of large construction infrastructure projects that would otherwise have been impossible to fund by other partners. The development of a transport network can play a significant economic role and provide stability in a country like Congo with limited communication routes.

   An example of these major infrastructure projects includes Tenke Fungurume Mining, which has built four hydroelectric plants and transmission lines and sells surplus power at low rates. The company also upgrades local roads.

   Another company has built or reconstructed over 500 km of roads and replaced or upgraded over 100 bridges as part of its project development. Rand gold is investing $165 million to develop a 20 MV power station and other stations near Kibal. This infrastructure will provide the local community and mining projects with a supply of energy.

2. **Contribution of FDI in Job Creation**

   However, in terms of employment, FDI firms hire only a limited number of workers and often appeal to subcontractors. These subcontractors favor the creation of small and medium enterprises, allowing the emergence of a new class of Congolese entrepreneurs. Several firms have engaged in activities with the short and medium term objectives of building roads, schools, hospitals, housing and agricultural projects.

   These projects have helped reduce poverty to some extent. While mines donot employ unskilled labor, other sectors related to mining production, such as construction and retail sales, create jobs for thousands of Congolese.

   In terms of formal jobs, the total percentage of mining jobs compared to total employment is approximately one sixth. Due to the unavailability of data on employment provided by the mining industry, an estimate from 2008 suggested there were 50,000 formal workers, including contract and permanent employees (Cuvalier, 2009). The total number of formal sector employees in Congo is about 300,000 employees, so mining sector workers represent around one sixth of the total number of formal employees.

   However, formal employees represent around 1% of Congolese labor, which is estimated at 30 million (World Bank, 2012). Due to a lack of data, it was not possible to estimate the indirect employment generated by the suppliers of mining companies but a recent survey suggested the supply chain benefits are significant. There are, for example,
more activities around the mining companies whose only purpose is to supply them with labor and other utilities. Indirect employment is created when mining sector workers earn money and spend it in the local economy.

In Kivu province, since November 2004, a company has invested $492 million, creating businesses and job opportunities for local people. That firm directly employs 1200 Congolese and another 3100 through contractors.

That company’s contribution to local expenditure or procurement is estimated at about $117, spent on wages, goods and services.

Tenke Fungurume, the largest mining enterprise in Congo, employs a total of 7000 people-3000 through contractors working on the mine, 3000 directly employed by Fungurume, and 1000 contract workers employed on an expansion project. Also in that area, some other related jobs that are linked to Tenka Fungurume’s activities have been created. Other encouraging activities and participation of those companies in the development process can also be noted.

In 2008, MMG Kin severe needed access to the exploitation site where 300 skilled miners were present. The company negotiated a solution with the miners, proposing to either pay them on a month-by-month basis, employ them as part of the company, or sell their stock equipment. Another firm contributed to the creation of hundreds of new jobs and alternative livelihoods for skilled mine workers who had been evacuated from one of its operations by helping them develop local businesses.

Figure 7: Contribution of a Mining Company (Anglo-America) in the Economy

VI. New Strategies for FDI in the Mining Industry

1. Probability of Mining Contract Revision

A strategy is a set of coordinated actions to achieve a goal. For the mining sector to help Congo develop and reduce poverty, there has to be a business and policy environment that attracts the foreign investor. It is important to note that development
seeks to ensure every member of society benefits as much as possible. Although we recorded an inflow of FDI, the mining sector does not appear to promote significant economic growth in Congo. Hence, there is a need to review the current approach. The Congolese government is looking to the review of mining contracts and to a new form of cooperative mining as practiced with China and Korea.

Of the 70 contracts signed, none were found to be viable and the contracts are to be revised. Apart from the enormous financial and tax advantages granted to these companies, several reasons including profit distribution, are given for this revision.

2. Investment Security

Investment decisions are influenced by a range of different factors such as geological potential, and the business and political environment. A stable political environment can help firms looking to make long-run costly investment decisions. Any expected change to policy can slow the rate of investment. The Congolese government must respect its commitments in order to attract the most important major firms in the mining sectors. Once a contract has been signed by a government and is committed throughout the country, even after a change of government the contract must remain valid. Hence, there is a strong need to take negotiations seriously. FDI has strongly opposed such revisions and nationalization on behalf of the continuity of the State. The Congolese government could face international trials and probably lose under international law. Even before a final verdict is reached production would stop and international companies would be reluctant to sign new contracts with the DRC, which would be obliged to compensate these companies for any losses due to the trials.

3. Create Interdependence or Linkages between Mining and other Sectors (Comment)

There is a way to create the multiplicator effect in the economy by creating additional jobs, increasing input into the domestic economy, developing activities that can diversify the economy such as investing in infrastructure (which can reduce transportation costs and make local suppliers competitive), and building an industrial policy to promote linkages with other economic sectors. Creating and supporting a good environment for small businesses by promoting access to financing and lending, entrepreneurship and improving the process for running a business and providing the initiative for investing in domestic businesses and local talent would also help, as would providing fiscal incentives for investment in infrastructure.

This is one of the possibilities for collaboration between the Congolese government and firms-encourage the mining industry through investment in local and public services in partnership with the local or central government.

4. Some Positive Aspects of the Current Mining Code

With regard to policy, the current mining code also provides some practices and arrangements, however the problem lies in its applicability. The code established some
regulations for mining companies. For example, a company must open a currency account at the Central Bank. The law also provides some regulations for the involvement of mining companies in the sector where they conduct their activities. They must undertake a certain number of social infrastructure projects for the benefit of the population and employees.

The law also provides some social benefits to those who live close to the industrial area; it provides that 40% of profits go to the provinces in order to allow them to engage in development projects. However, the central government has been collecting this revenue and spending it on national defense or other areas without significant investment in development. Provincial governments are left with little funding, and regulations prohibit mining companies from engaging in the export of raw products, so most of the companies end up exporting in the mineral sector without considering added value.

5. Congolese Specificities for New FDI Policies

The export of major minerals cobalt, copper and zinc is significant but their contributions to GDP are low. The mining sector can contribute significantly to development. Thus, these seemingly attractive measures were established under pressure from international financial institutions in order to attract more FDI. Lessons from other Asian countries have sufficiently strengthened the belief that receiving FDI is a decisive factor in development.

In Asia’s case, these companies were based on the production of goods and services. In DRC, FDI has focused mainly on the mining sector, which is non-renewable and takes advantage of the enormous financial advantages granted by the Congolese Mining Code. This partially explains the low contribution of the mining sector in Congolese development.

Therefore, for its development, the new mining code has to take into account the specificities of the DRC. The new code should review tax benefits. The repatriation of a portion of profits, along with investment in other development projects and programs in Congo, should be required of those companies.

In order to encourage FDI to engage in development projects, some benefits should be granted for projects such as infrastructure development. These companies should build schools, hospitals, and centers of technical training for people in areas where they are based.

However, given the fluctuating price of raw materials in world markets, some policies must be put into place for companies in the face of financial difficulties. In terms of infrastructure projects of national interest (road, rail) the State should negotiate contracts with certain companies that exchange the use of raw materials for infrastructure construction in order to avoid debt. In terms of customs fraud, agents must be placed wherever possible and specific measures should be adopted to motivate them. For example, in case of customs fraud, 20% of the value of the goods seized should be given to the informer.

With regard to existing mining contracts, most of them were signed during periods of war and government transition. A new revision is needed. The State should
seek assistance from NGOs and experts for a beneficial qualitative revision of the contracts. Given that the wealth belongs to the Congo, the basis for negotiation should be 50/50.

Furthermore, before any contracts are signed, the State must impose some conditions on the mining companies and seek from them a calendar of activity. If they do not live up to their commitments, the termination of contracts should be automatic. This could be important to deal with situations such as those that have arisen across the province of Katanga, where mining concessions have been granted to companies that often lacked the financial resources to start work.

6. Management of Mining Companies by the Central Government

In order to deal with joint venture mining companies in a positive way, after the revision they should be managed as private enterprises. The influence of the State should be exercised through its participation in management consulting, mining legislation, and regulation by the Ministry of Mines. To ensure clarity, money mining must be isolated from that of other sector activities, mining revenues must be managed by a responsible organization and be used in the construction of roads, railways, social infrastructure and the financing of certain industrial activities related to the development and promotion of agriculture.

Regarding this situation, what policy should be adopted in order to participate more actively in the process of FDI in development? It is important to keep in mind that FDI is not in business for development, but it is mostly concerned with how to make a profit. Governments are supposed to ensure development. It is the responsibility of government to ensure that certain conditions are in place so that FDI can contribute to development goals rather than just generate profits for foreign investors. For mining policy which against FDI it’s must be a part of a development framework. To this effect, as an example, what has been done by Korea like development policy, the creation of an organization composed of experts to develop mining policy to submit to the Ministry of Mines is important. Other policies can be contemplated, for example, the mining policy should include: before the start of the operations, and the signing of a pact agreed with the local community which benefits from these riches.

In order to encourage local production, the mining policy should include the promotion and encouragement of industry substitutions to limit the demand for imported goods. The policy should provide incentives to encourage the mining industries in the process of turning ore into manufactured products.

7. Lesson from Korea

Finally, in terms of mining policies, FDI must promote a targeted approach which could help countries achieve the objectives related to such aspects as employment, technology transfer, exports and cluster development which are in line with their overall development strategies. Effective targeting involves a comprehensive approach to attracting investment that can contribute to development and enhance the competitiveness of local industries.
VII. Conclusion

Congo is more richly endowed with natural resources than most other countries in Africa. These reserves include deposits explored and exploited economically as well as reserves which are still just estimates based on available knowledge. Unlike Botswana, with its vast natural resources that benefit its indigenous population and contribute greatly to its development, the DR Congo has a low level of income.

Congo’s vast resources have been unable to drive economic development. Spurred by international financial institutions such as the World Bank, a reform of the mining code was introduced with an understanding that attracting FDI would provide the resources needed for the development of the Congo. These measures helped to attract FDI, but despite significant growth of production and enormous profits made by multinationals exploiting the mines, government revenues generated by the mining sector are minimal and do not benefit the population.

There are several reasons behind the mining sector’s limited impact on development. For example, the new mining code provides enormous financial and tax benefits for FDI. The Congolese government should renegotiate better contracts for the exploitation of mineral resources with international companies for an effective participation of this sector in the development process.

References

http://www.mine.cd.