

Economic Resource Mobilisation in DR Congo, Rwanda, Tanzania and Zambia:

The Case of the Mining sector

FIRST DRAFT

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Economics and politics matter for private business people and the state. Growth, stability, predictability both of business and of states – or the states’ “broadcasting of power” [Herbst 2000: 35] – depend on the mobilisation and appropriation of scarce resources. This is particularly important for developing or underdeveloped countries, as their resources are much more limited than those of industrialised nations. Underdeveloped countries don’t seem to be very successful in general to create wealth. Over the past decades merely a few have managed to cross the threshold toward industrialising countries. A majority of developing countries are relatively stagnant economically, and relatively stable politically, while others tumble from crisis to crisis, which at times turn out so bad that the unravelling of the state is one of the consequences.

Studying the relative stability versus the relative fragility of states we developed the hypothesis that the particular arrangement between economically powerful people and those who hold state power translates into more or less stability of the state. In DRC, Rwanda, Tanzania and Zambia we choose four countries with differences in the state strength to test this hypothesis over time: Tanzania and Zambia have enjoyed political stability over decades, against serious odds: they are located in “bad neighbourhoods” with civil wars next door, streams of refugees, notorious problems in their balance of payments and being far away from developmental progress comparable to some Asian

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countries. But they never turned into ungovernable countries with a high level of violence. Rwanda, while it looked stable for quite some time, unravelled quickly in the early 1990s and culminated into the genocide of 1994, which killed about one million people and made several more million people into refugees or IDPs, and left the country's infrastructure destroyed. Now, 15 years later, the country seems to be on a stable path again. The DR Congo started to unravel slowly since the 1970s, culminating into two wars and being the epitaph of a failed state. Even the peace accord of 2002 and the democratic elections of 2006 have not changed much in the strength of the state until now.

Building on previous research², we attempted to find out about the particular arrangements between those in power and those in big business. The basic assumption is that there is a particular "deal" in place, not necessarily written in the constitution, but true in real life and guiding the decisions of the members of the elite concerning the "rules of the game". We name it "elite bargain" as a working title, bearing in mind that it can be changed, and has been changed, over time. The political and economic elites have to create a common understanding of who does what, how to cooperate, and how to stimulate growth and share revenues – or do the opposite, if that seems more suitable to them.

The four countries we are studying have, like all poor countries, very limited resources to start with. All they produce is either a primary commodity from agriculture or from mining. It is basically used either for internal consumption (food crops) or for the export to international markets (cash crops and mining). This paper investigates the particular kind of elite bargain in the mining sector, which is a major export earner in all four countries under investigation.³ The level of processing differs between the case studies, but the final export product is usually not very high up in the value chain, which also means that the relative income earned – both as profits in business and, if taxed, as revenue for the state – is comparatively small, although it is a large part of the domestic assets and revenues the four countries can build on.

² DiJohn, Jonathan, Golooba Mutebi, Lindemann/Putzel, Hesselbein

³ The coffee sector will be dealt with in a separate paper.

In order to frame the elite bargain theoretically, scholars suggest a variety of concepts. North, Wallis, Webb and Weingast (2007) argue that in “recorded human history” access to resources has been limited in all pre-industrialised stages. While hunter-gatherer societies are excluded in their analysis⁴, they develop the characteristics for the “Limited Access Order” (LAO) in all pre-industrialised economies: rents are created through the limited access of elite member to resources and to functions such as trade, education, warfare et cetera. Only privileged people can form powerful organisations, and only these privileged people have access to violence in the sense that they decide whether or not to use it. The wide majority of the population is excluded, though people might support their leaders. In contrast, “open access orders” (OAO), where resources and functions are widely accessible and which are driven by economic and political competition, only occur in a much later phase of development, when two major developmental problems have been successfully solved: firstly, the consolidation of LAO’s from fragile through basic to mature limited access orders; and secondly the transition from the mature LAO to the open access orders, as they can be seen in developed countries. North, Wallis, Webb and Weingast (2007) indicate roughly the level of development associated with the two distinct orders: a per capita income between 400 and 8000 US\$ characterises the evolution of fragile to basic and then to mature limited access orders, while the second step, the transition to open access orders, occurs at per capita incomes between 8000 US \$ and 35,000 US \$.

This approach to problems of development has several important insights:

Firstly, limited access orders are seen as a solution to a problem, rather than the problem itself. Their big historical progress lies in the fact that they offer a solution to the problem of endless violence and wars. While war has played a major role in state-building of Europe (Tilly 1992) and elsewhere, an end to war means a more secure access to rents and profits and thus provides incentives to end violence. Even a fragile limited access order means that a dominant coalition of groups and individuals is formed – all of them with access to violence. Instead of fighting for their turfs, they decide to agree on

⁴ Hunter-gatherer societies still play a role in the countries we are researching, like the Hazda in Tanzania or the Pygmies in the DR Congo. However, no-one is suggesting that they play a pivotal role in the elite bargain, as they do not command significant economic power.

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certain levels of cooperation and a certain sharing of rents, thus creating the basics of order⁵. They can do that by agreeing on limiting access to land, labour and capital only to members of their coalition, thus excluding and threatening potential rivals. Within their “deal” – usually unwritten – they are able to provide the basics of the enforcement of contracts and the security of property rights. And this level of security is reason enough to support these leaders by the majority of people, as they prefer the relative stability over warfare.

North et al. to a certain extent follow Max Weber’s idea of slowly progressing orders through human history (Weber 1982). In fact, they define development as the movement along the spectrum from limited access orders (in their distinction fragile, basic and mature) to an open access order. But they reject the idea of Weber’s ‘ideal types’ because benchmarks cannot be defined or observed clearly. Instead, the spectrum of LAO’s develops as follows:

In a fragile LAO, the state can barely sustain itself. The state is the organisation with the basic function to create rents for the elite. Each faction of the dominant coalition has access to violence, and when the allocation of rents is not in flow with the military power, factions demand more or fight for more. The institutional structures of such a state are simple and cannot support private elite organisation. Individuals of the elite do not necessarily follow rules, unless a third party from outside enforces them. The state struggles to enforce its own rules, and when the dominant coalition changes, the states’ commitments might not be honoured. They are thus unpredictable *ex ante* (ibid: 12).

Along the path of development a basic LAO might be formed. Here the state is the only durable organisation and can, with certain stability, limit the outbreak of violence. Organisations other than the state are closely related or regulated by the state. While this offers more organisational forms to citizens, an independent organisation is considered a threat to the state, that is, to the dominant elite coalition. However, at this stage a more

⁵ This notion very much reminds of the classic writing of Adam Smith, who claimed that “commerce and manufactures gradually introduced order and good government, and with them, the liberty and security of individuals, among the inhabitants of the country, who had before lived almost in a continual state of war with their neighbours, and of servile dependency upon their superiors. This, though it was last observed, is by far the most important of all their effects. Mr. (David) Hume is the only writer, so far as I know, has hitherto taken notice of it.” (Smith 1776/1974: 509).

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sophisticated organisation and division of labour occurs and enables managing trade, tax collection, education etc. While not every member of the elite is able to use arms as an alternative to stay within the elite consensus, elite is closely connected to specialists of violence. Basic LAOs might have found a negotiated solution to the succession of a leader, but the danger is always around the corner that succession or other disputes between the elite might relapse into violence. However, as the more sophisticated organisation in a basic LAO gains more credibility over time, it can make more credible commitments and is therefore more stable and resilient to shocks than the fragile one (ibid: p.13)

A mature LAO has durable institutional structures inside and outside the state and provides for methods of resolving conflicts within the state and thus within the dominant coalition. It therefore is capable to last through changes within the dominant coalition and can allow a variety of public and private institutions to spread. Violence is contained and its organisation is inside state control. Outside the sophisticated structures of the state, all actors are both economic and political.

As North et al. observe, states can regress as well as progress⁶, and many states stagnate for decades or centuries.

Only once they reached the conditions, states can enter the open access order, where “political competition is necessary to maintain open access in the economy, and economic competition is necessary to maintain open access in the polity.” (ibid: p. 17). The threshold requires three outcomes of the mature OAO: First, the entry into economic, political, religious and educational activities is open to all citizens without restraint; secondly, the state supports organisational forms for all those activities which are open for all citizens, and thirdly the rule of law for all citizens.

The important point in the succession of orders is here that over time elites first intensify their cooperation and limit their (violent) competition, or, that in the beginning political, economic and violent actors cannot be distinguished, while along with development they specialise and trust other specialists. In order to create the open access

⁶ Their example is Germany in the 1920s and 1930, where it regressed from a mature LAO on the doorstep of OAO to become a basic LAO under the Nazis (ibid: 15).

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order, however, a significant change happens: elites find it more and more difficult to sustain permanent rents through limitation of others, and opt for intra-elite competition as the means to secure their part of rents (ibid: p.24). The prerequisites for “open access within the elite” must have been laid in the mature limited access order before: institutions that define elites as citizens and all citizens as equally and impersonally guaranteed under social arrangements.

It is important to note, however, that many LAOs have adopted “institutional forms” (ibid: 25) from Open Access Orders into their particular behaviour, like elections, stock exchanges etc. These institutional forms do not produce the intended transformation, because the logic of LAOs creates incentives such “that the delivery of government services always depends on whom the recipient is connected to. Personal exchange prevails, and in order to sustain the state, all groups must exhibit “a reciprocal respect for one another’s privilege as part of the system of maintaining their own” (ibid: 27). In this regard, elections can become a means of political control rather than a vehicle for citizen choice, and Central Banks, in spite of their legal independence, do not or cannot act independently from elite interests.

All the succession of orders, so North’s et al. argument, follow an intrinsic logic that cannot be overcome by “political will”. The logic depends on the conditions of rent-creating and rent-sharing within the country itself and depends on the social order in which it is embedded. It is significantly modified, however, but influences from the outside world, such as the world political order, the technology available, or private corporations from an OAO. These influences, however, do not necessarily speed up processes of development from one order to the next. In fact, they can seriously retard the progression within orders or from one to another, as they provide elites with an “exit-option” (Hirschman) that secures their property rights and contract enforcement without the need to change it inside their countries.

The “limited access order” approach provides a theoretical framework for non-industrialised countries, a category into which the four countries of our research fall. In this approach, however, there is initially not a distinction between economic actors, political actors, and the state, as all the dominant elite coalition is able to manage is to

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provide an embryonic state in which all elite exercises political, economical, and military influence.

For clarification and in order to make the particular “deals” more observable, we combine the LAO approach with a simple model, developed by Richard Snyder (Snyder 2006). Snyder argued against the “resource course argument”, which claims that minerals are the reason for wars and instability and which is very fashionable in political and scholarly debates (Hesselbein 2007). Snyder demonstrates that the presence of “lootable wealth” (usually imagined as diamonds, coltan and other minerals, but also timber, ivory etc.) does not necessarily create disorder, but that the institutions of extraction determine the political stability:

“If rulers are able to forge institutions of extraction that give them control of revenue generated by lootable resources, these resources can actually contribute to the maintenance of order by providing the income with which to govern” (ibid: p. 947).

His model constructs two agents: the state and the private extractor. Depending on who controls the “loot”⁷, or what arrangements the actors engage in, four institutional outcomes are possible:

- Private extraction. This means that the access to mineral is unregulated, that rulers are denied their share in the wealth, and that the private extractor probably has to secure his wealth, which makes a warlord mining economy very likely.
- Public extraction. In this case the ruler has a monopoly over mines and can fully control the income from the resources.
- Joint extraction. This means cooperation between the private actor and the state in the extraction. It provides a sharing of income, usually through taxation, and in return protects the extractions site, maybe even through protection rackets.
- No extraction. The ruler cannot really control the extraction, but is strong enough to prevent it.

⁷ This term is admittedly misleading. The “loot” is not defined by the product, but by the organisational, technical and logistical skills of those who “loot”. This can mean thousands of people engaged in extracting minerals, transporting tons of them by plane or lorries, inside and outside the country.

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While a private extractor would prefer private extraction more than joint extraction, none extraction or public extraction (in that order), rulers would prefer public extraction over joint extraction, none extraction and private extraction (also in that order). While rulers would prefer to be the only extractor, this is very difficult to achieve in case of lootable resources, as in many cases it only needs a pick, a shovel, a sieve and sweat to extract, while the ruler finds it extremely challenging to exercise the monopoly of power over the country and the resource sites, even if a protection racket would be all he needed. As for rulers the strategies available are limited, joint extraction is a viable access to mining wealth. Therefore rulers seek to build institutions with private actors who have access to lootable resources. For this purpose, rules can use “sticks” and “carrots” to “persuade” private actors to enter joint extraction.

“Sticks” can mean coercion, which depends on the military and administrative capacity of the ruler, or at least a protection racket. They can also take the form of blocking extraction – no extraction – in order to undermine revenue which might eventually challenge the ruler.

“Carrots” can be the protection of selected businesses, legalisation or legal protection, support for extraction etc.

Once private actors have entered the joint extraction mode, challenges come particularly from the breakdown of this deal, which can happen when shifts in the balance of power occur, like the ruler’s decline of coercive capacity, or when the value of lootable resources faces a decreasing value on international markets. Further facilitators of a breakdown can be the death of a ruler and the following bequeathability problem, or the exclusion of a particular group which can organise around its grievances and challenge the deal.

For our purposes we concentrate on the particular kind of access order and on the particular extraction framework in place to analyse their contribution to a countries’ stability or fragility. While these frameworks basically reflect the domestic part of the deal, it is noteworthy that the deal itself can be significantly influenced by international actors.

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International Financial Actors such as the International Monetary Fund or the World Bank, or donors with political preferences, or a common understanding that property right should be private rather than communal, intervene at certain times in the deal, in particular when rulers/governments require their financial or political assistance. International actors have templates as a condition for their intervention, like the liberalisation in the 1970s, the privatization in the 1990s, or political concepts like good governance. As a consequence, established deals might have to be renegotiated nationally, which either can seriously question the deal in place, or shift balances of power further towards the side of the government or the side of private actors.

One further aspect is the rationale in which international private firms act. While through financial institutions every country is urged to establish a capital friendly law and its enforcement, private capital might or might not flow into a specific country. The logic of international companies, however, follows a slightly different approach. While their presence is supposed to strengthen the linkages to the state through fiscal, backward, sidestream, and downstream linkages, their decisions are often driven by developments outside the country: if prices fall, or if investment into the mining sector is difficult to mobilise because of a financial crisis, or if the investment climate in a country deteriorates significantly they may find it difficult to implement their original investment plan and scale down, or retreat. It is important to acknowledge that mining companies are a heterogeneous group. While responsible private actors may positively impact on the political economy in a given country and contribute to the fiscal and other linkages, less reputable companies may not necessarily contribute to national gross capital formation, investment and the necessary political pressure to change the deal and its enforcement inside the country. Similarly, elite members are a heterogeneous group and while some may decide to influence the deal from a base in-country, others may rely much more on international law and have the option to leave the country, if challenged. In short, a national elite bargain is heavily influenced by international actors the elite cannot control.

Informal to Formal Mineral Production

The informal mining sector is particularly strong developed in all four cases. This is important to demonstrate the limited reach of every particular deal that might be established in each country. By definition, informal production is outside the reach of the state and it does not increase state revenue. In the case of Eastern DRC, informal mining is organised or tapped into by military groups, both “illegally” and in the name of the state, generating significant profits, needs for protection and challenges to the state and the existing/forming elite bargain. In all cases informal mining provides a livelihood for millions of persons, who have no intention or means to challenge the state. It employs a considerable part of the population and generates considerable income. In quantitative research on the informal mining sector, it is generally accepted to count five dependents per income earning artisanal miner. The table below provides an overview of the number of informal miners (artisanal miners ASM), including their dependents as a percentage of the total population:

Country	Number of ASM	ASM and dependents as % of population
DRC	2,000,000	12,000,000 (18.04%)
Rwanda	50,000	300,000 (2.95%)
Tanzania	1,500,000	9,000,000 (22.38%)
Zambia	60,000	360,000 (3.08%)

Source: Hayes, 2008

While informal mining provides a valuable coping mechanism for those outside of the bargain, it can be a great challenge for building an inclusive elite bargain. Even if it is not a challenge per se, the way in which patronage is exercised here may be central to understanding the elite bargain.

The informal mining sector has for a long time dominated political bargaining in the Great Lakes region and East Africa, which has predominantly affected Rwanda and the DRC. Indeed, the rich mineral deposits in Eastern DRC were used to finance both Rwanda's and Uganda's war efforts during the two past Congolese wars.⁸ Today the political and economic strategies have changed and the artisanal mining sector is, while still associated with conflict dynamics, seen as a potential contributor to development (Garrett and Mitchell, 2009).

In Eastern DR Congo, the informal mineral production sector is first of all a coping mechanism for the local population that is deprived of non-violent income opportunities in an insecure environment. The trade (as opposed to production) in minerals on the other hand undergoes gradual formalisation from mine to point of export (Ibid.). The informal part of the trading chain provides an income opportunity for non-state military actors, who challenge the state, as well as for the national army, which is not under the control of the state. In this regard it supports groups who challenge the state itself. The formal part of the trading chain at the point of export provides a fiscal contribution, which serves to strengthen the state (Ibid.). However, no visible action is currently undertaken to formalise the trade further and include it in the bargain.

Implementing reform processes to engage stakeholders in the trade may be a promising way to formalize production and trade, a large portion of which can best be described as a shadow economy. Shadow economy actors include those who profit from insecurity and informalization, but whose objective is not necessarily to cause or sustain insecurity and who may have an interest in stability and development, so long as they regard stability and development as compatible with their profit motive (Goodhand, 2004). Incentivizing the shadow economy to transfer their activities to the formal economy would help provide a local basis for formalizing the 'coping economy' and contribute to both bottom-up and top-down reform of governance structures and opportunities for those structures to strengthen.

⁸ Various interviews with Ministry of Natural Resources staff, October – December 2008

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Rwanda has developed strategies and has attempted to organise, formalise and professionalise the largely informal mining sector and thus to include it in the bargain. This is part of Rwanda's initiative to align its domestic mineral sector development strategy with the larger development strategy of diversifying its economy. It focuses on service provision in the regional economies, its domestic mining sector and the mining sector of Eastern DRC. It also focuses on value-addition to its domestic production and exports from Eastern DRC.

A successful international intervention with the aim to formalize, professionalize and develop the mining economy state administration is the World Bank financed Sustainable Management of Mineral Resources Project (SMMRP) in Uganda, which started in 2005. In the framework of the project Uganda has undertaken a series of investments into its mining sector that has begun to turn the sector from a marginal to a valuable contributor to GDP, particularly for foreign exchange (Mitchell and Garrett, 2009). Further to the successes of the SMMRP in Uganda, the World Bank has granted an International Development Association (IDA) credit of \$50m to the Government of Tanzania to have them implement an SMMRP there. The project's objective is "to strengthen the government's capacity to manage the mineral sector to improve the socio-economic impacts of large and small-scale mining and enhance private local and foreign investment" through initiatives in supporting transparency and promoting international good practice in ensuring mining sector development (World Bank, 2009).

This international intervention may complement well some of the government's domestic resource mobilization strategies, such as its support to Savings and Credit Cooperative Societies (SACCOS). SACCOS can perform a valuable role for small producers by providing insurance against negative income shocks and have stood the test of time as effective microfinance institutions, offering members a convenient place for their savings and an access point for loans (Andrew, 2006). This access to finance allows miners to witness the direct impact of their investment in the community creating the proper incentive to contribute and not avoid taxation as is frequently the case with state taxation.

ASM also features in Tanzania's Poverty Reduction Strategy Paper, where the government pledges to develop ASM technologies, to develop a system to ensure safe and sustainable ASM, to train a minimum of 90% of registered ASM workers in safety awareness by 2010 through safety awareness campaigns and monitoring visits (Hayes, 2008). As in the DRC, ASM in Tanzania is at the one hand a poverty driven coping mechanism, and on the other hand a comparatively more lucrative profession than e.g. agriculture.⁹ A USAID-sponsored study in Tanzania confirmed that ASM miners earned on average six times more than the average wage from agricultural labour (Phillips, Semboja and Shukla, 2001). There are some efforts by a firms to add value, by establish school/workshops for cutting and polishing gemstones to produce Tanzanian jewellery, however, these projects are very much in their infancy and find it difficult to compete with established cutting and polishing centres, such as India and Germany.

These positive examples lead us to suggest that mineral resources will be central to mineral rich African countries' development, both because they sustain the livelihood of millions and because they are often the principal source of revenue for the state to finance security, social services and infrastructure, and the principal source for investment in agriculture and other productive activities (compare Hesselbein, 2007). However, where weak institutions find it difficult to assert themselves vis-à-vis entrenched interests, the full development potential of natural resources will not be realized so long as security around natural resource deposits is negotiated locally (Garrett, Sergiou and Vlassenroot, 2009) or a transformation is attempted by applying international economic sticks and carrots in the form of sanctions or similar (Goodhand, 2004).¹⁰ While these practices can offer some positive outcomes, in all likelihood the state will be weakened further – continuing a negative feedback loop of governance weakness (Garrett and Mitchell, 2009).

⁹ Interview with Tanzanian Government official, Mwanza, January 2009

¹⁰ A war economy includes the production, mobilisation and allocation of economic resources to sustain a conflict and economic strategies of war aimed at the deliberate disempowerment of specific groups. A shadow economy comprises actors who profit from war, but whose objective is not necessarily to wage war, and who may have an interest in peace, so long as they regard peace as compatible with their profit motive. A coping economy comprises population groups whose economic decisions are motivated by the imperative to cope or survive, rather than to profit.

Whether transformation can be successful depends on whether particular elites are included or excluded in the bargain, and whether they feel as losers and are able to violently challenge the bargain. Those who have benefited from an absence of regulation, from the militarization of informal mining, and from the opportunities of unauthorized rent-seeking, may become spoilers and try to prevent change or find new ways around it (Garrett, Sergiou and Vlassenroot, 2009). Others, all the way through from miner to local official to exporter, who have had to cope with or suffered from the informality of mining and the trade in minerals, simply because the formal systems have become deteriorated and toothless that they inhibit rather than facilitate mining and trade, may be supportive of the transformation (Sunman and Bates, 2007). It is not a priori clear which side can mobilise more people, who, however, have not much choice or much to say about entering or staying out of the bargain.

Particularly in areas where the monopoly of violence remains contested there is still a long way to go for the state to be able to co-opt and transform informal production arrangements. While some headway towards formalization has been made in selective cases, the informal sector will continue to influence the elite bargain, and in itself will continue to be influenced or instrumentalised by domestic and international actors.

Case Studies

DR Congo

In order to strike a new elite bargain after independence, when the old deal between the Belgian state and international mining companies collapsed and many Belgians left the DRC, Mobutu initially united stakeholders. He centralised and controlled the army and “africanised” the economy, including the mining sector. Soon after nationalisation, he reversed his politics and invited foreign capital back in. After only nine years of state-building from 1965 to 1974, Congo slowly started to fall apart (Hesselbein 2007: 29). While the Mobutu regime exercised considerable patronage over enterprises, the free fall of export earnings and government revenue supported the centrifugal movements of stakeholders. Several armed uprisings were only defeated with the help of France and Belgium, and as infrastructure fell apart, the economy was

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gradually informalised. An influx of a million refugees from neighbouring Rwanda - many of them escaping the genocide in 1994 – and a large number of defeated Hutu government officials and soldiers destabilised the DRC (Melvern 2000). The latter crossed the border armed and stated their intent to fight Rwanda from Congolese soil, which culminated in two wars, which were officially ended in 2002.

Today armed groups, with the FDLR (Forces Democratiques de Liberation du Rwanda) most prominent among them, continue to challenge the Congolese and Rwandan state. The Congolese army meanwhile has no unified chain of command and is not under parliamentary control. It has itself become a source of insecurity. This insecurity complex means that a significant number of people remain internally displaced, while insecurity also has a retarding effect on all economic activity, including the mining sector in Eastern DRC, as it deters investment and often makes it impossible for companies to access their concessions to undertake exploration. Other areas like Katanga, the traditional heart of copper mining, are peaceful by now. While mining has always been the economic backbone of the DRC, it has undergone an informalisation process from industrial mining in the 1960s and 1970s to artisanal mining by now, with reindustrialisation progressing only slowly and limited to Katanga and Ituri provinces.

Following the official end of the two Congo wars (1996-2002) the international financial institutions promoted the role of the state in the mining sector as that of regulator, rather than an operator. This role was enshrined in the *Mining Code*, which regulates the mining sector today that was adopted in July 2002 and written with the help of the World Bank. The *Mining Code* aims to ensure the development of the DR Congo's mineral resources largely through the private sector, by laying the foundations for a stable investment climate, securing property rights (security of title) and providing certainty of process (Garrett, 2009).

This new policy giving primacy to attracting private, rather than public investment constituted an important paradigm shift that was later confirmed by the newly elected Kabila Government in 2006 (World Bank, 2008). The inception of the Mining Code in 2002 made it possible for private sector companies to hold mineral rights for exploration and exploitation without a partnership with a parastatal enterprise. With

increasing global base metals and minerals demand, investor interest in Katanga quickly increased, with UNCTAD suggests that total FDI capital stocks in DR Congo almost doubled from US\$ 792 million in 2006 to US\$ 1,51 billion in 2007, with much of this investment directed at the copper sector in Katanga (UNCTAD, 2008).

Despite these high investment levels, there remains a notable absence of the state , both in terms of tax collection and in terms of a development vision for the mining sector in the DRC. Current strategy development efforts under the guidance of the government's strategic planning unit, COPIREP and supported by the international community in the framework of the World Bank's PROMINES projects have yet to result in an elaborated national strategy, carried by the national government (Mitchell and Garrett, 2009). Such a strategy in support of statutory law could provide a preamble to an inclusive elite bargain formation process that could extend the reach of the bureaucratic state and form the basis for domestic resource mobilisation processes. However, while some institutional players – most notably the Governor of Katanga - are aware of the need to increase visible development benefits from the mining sector, the formation of an inclusive national elite bargain is far from certain or being in place.

Today, locally negotiated deals remain the dominant results of decision making processes, particularly in the Eastern provinces, where state presence remains significantly underdeveloped. These deals often materialize in parallel with statutory law provisions, as one mining company put it, “in the DRC decision making processes function upside down. First you are asked to sign a contract and then the negotiations start”,¹¹ or, as another mining company mentioned, first you have to pay several hundred thousand dollars to the presidency, before you can negotiate.”¹²

An interesting example of the relationship between the state and the parastatal companies is a Chinese investment over a proposed US\$6 billion, which is currently being refined. The proposed “Chinese deal” would have given Chinese state-owned firms the right to develop Congolese copper and cobalt mines in exchange for building roads, railways, hydroelectric dams, universities, airports and hospitals. The IMF objected to the

¹¹ Interview with mining company, Katanga province, August 2009

¹² Interview with mining company, North Kivu, October 2008.

deal as in its original form, it would have increased the DRC's debt burden as a result of the Congolese state guaranteeing the entire investment (mining and infrastructure). The Congolese government cited it would guarantee the deal with Gecamines concessions, however, it is not necessarily clear whether remaining Gecamines greenfield concessions, contain sufficient copper to guarantee that level of investment. Most Gecamines concessions, where mineralisation is known, have already been converted into joint-ventures with traditional and non-traditional mining companies (Garrett, 2009b). Some of the companies whose contracts were revisited under the recent contract review process (see below) have raised concerns about the government using the contract review process to force existing companies to relinquish some or their entire mineral permits to facilitate granting of these to Chinese companies. This concern is validated by the recent announcement by Katanga Mining, whose contract is being reviewed, to relinquish its Mashamba and Diluluwe permits, which have now been given to the new joint venture company, SICOMINES, created by Gecamines and the Chinese (World Bank, 2008).

While the Chinese deal continues to be negotiated at the national and international levels, private companies and joint-ventures have started to produce, particularly in Katanga province and will significantly contribute to the fiscal linkage over the next decades. However there are two not necessarily compatible deals in place. One concerns reputable international companies, bound by the IFC performance standards and other voluntary principles, and the other concerns less reputable junior mining companies and trading houses (compare Garrett, 2009).

The responsible mining companies, which do not openly (and maybe not at all) engage in bribery, are often harassed by the Congolese administration. They report of frequent inspections, for example, with the latest incident being the "visa scandal" Freeport McMoRan's Tenke Fungurume Mining was implicated in.¹³ TFM's employees were issued fake visa stamps, and the company got caught out in an inspection soon thereafter, which resulted in the arrest of the Director of Katanga's Immigration Service,

¹³ [http://www.mining-journal.com/exploration--and--development/freeport-to-pay-us\\$16-million-to-settle-drc-dispute](http://www.mining-journal.com/exploration--and--development/freeport-to-pay-us$16-million-to-settle-drc-dispute)

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Francois Saidi Hamici, who was detained for having masterminded the scam. TFM settled by agreeing to pay a fine of US\$ 16 million.¹⁴

More irresponsible companies allegedly have an easier life, with significant “facilitation payments” flowing to the administration. A private sector representative suggested that extra-legal payments add up to 15% of revenue (Garrett, 2009b). Significant construction undertaken by people employed in the administration in and around the Katangese provincial capital of Lubumbashi are an indicator of the financial well-being of the administration – though not the state revenue - during the recent minerals price boom.¹⁵

An attempt to improve governance and to avoid future controversies is the *Governance Contract*, adopted by the Government in February 2007. The *Governance Contract* recognizes rule of law as the central pillar of good governance, of which vital elements include respect for property rights and the sanctity of contracts. A contract review process was announced in the same context to revisit the contractual agreements worth billions of dollars the DR Congo had entered into during the war and some of which contained significant irregularities. There were significant issues with the contract review process and a World Bank report suggests that while the Government has examined some of the contracts in a diligent and responsible fashion, the assessment of others was “rushed through” in haste, without in-depth analysis (World Bank, 2008).¹⁶ At the time of writing the government had still not concluded discussions with all companies with a view to correcting the perceived deficiencies.¹⁷ The mining contract review process would have served to uphold the law and strengthen the position of the state, but its drawn out nature has actually undermined the development prospects of the DR

¹⁴ Interview with Provincial Administration representative, August, 2009

¹⁵ Interviews with mining sector representative and private sector representative, August 2009.

¹⁶ One consequence of this “rush to judgment” is that the commission appears to have focused on some of the very large contracts (Tenke Fungurueme, KOV, Kinross-Forrest, Anglo-American, DeBeers, etc.), which have attracted the most attention in the press. However, these and some other contracts are not necessarily divergent from international practice but simply require completion and addition of definitional elements. It should also be noted that in many instances, the contractors are honouring their obligations in terms of work commitments and investments.

¹⁷ <http://www.mining-journal.com/exploration--and--development/congo-rejects-miners-contract-proposals> (accessed May 25, 2009)

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Congo at a crucial time of buoyant mineral prices, by casting doubts over the security of property rights.

The long-drawn out nature and sometimes conflicting progress updates by various government representatives hints at a fragmentation within the senior mining sector administration and suggests the existence of parallel decision making structures that can influence the allocation of – and thus the security of - property rights (Garrett, 2009). The contract review is a demonstration of how institutional frameworks and their respective governance outcomes evolve and are sometimes unpredictable. This unpredictability provides an obstacle to achieving consistency in mobilising the DR Congo’s industrial mining sector for development through growth, particularly in light of an absence of a larger vision for the development of the sector (Garrett, 2009b).

Some companies have moved into production despite the contract review and have also progressed social expenditure. In this regard DFID, USAID, TFM and First Quantum Minerals have in partnership with the provincial Government of Katanga developed the Katanga Extractive Industries Development Initiative (KEIDI), which will on a trial basis be endowed with US\$1.5 million and serve as a means to channel a larger development contribution from the mining sector (Garrett, 2009b). It is hoped that the KEIDI will help to replace the present mechanism, where the Governor of Katanga often presents ad-hoc demands for social investment to the companies. While the latter system has provided some visible results, the ad hoc nature of the requests are unsustainable for companies, which require predictability in their social expenditure budgets.

This discussion of some aspects of the mining sector hints at the absence of a national deal in the DR Congo, in favour of the presence of a number of negotiated deals on the provincial or sub-provincial level, in which the national government sometimes takes part and sometimes doesn’t. This construct is highly fluid and fragile, as participation in the deal does not only depend on what people might want to enter, but massively on the price.

While the state is unable to regulate and control – and tax, some state actors are very well able to harass, destroy, or take “their” share of profits. As one company representative put it, “you cannot buy the Congolese, you can only rent them, and once

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you start renting them, they come back for more and with a higher asking price”. These local arrangements suggest that there is no overall central state control established as yet, and international interventions, such as the introduction of the new mining law, have not been disseminated widely enough to present a real challenge for the locally negotiated deals.

Rwanda

When Rwanda became independent, the colonial power Belgium invented two “ethnicities” and divided the population up into Hutu and Tutsi, before introducing the reign of Hutu over Tutsi. Under the presidents Gregoire Kayabanda and Juvenal Habyarimana the elite started to concentrate around Hutu first from the south, then from the north. Several violent prosecutions on the Tutsi population made tens of thousands of them to flee into neighbouring countries. In 1990 the Rwandan Patriotic Front, organised in neighbouring Uganda, crossed the border to fight for the right to return to Rwanda and for all citizens to play an equal role. The following civil war was ended with the Arusha agreement in 1994, which called for an inclusive government. It was immediately followed by the plane crash of April 6th, 1994, which killed the Rwandan president. This gave the signal for the planned and organised genocide, which killed about 1 million people, mostly Tutsi. About 2 million people fled into neighbouring countries. The victory of the RPF on July 18th found a country in ashes and the population deeply traumatized, homeless, displaced, hungry and without water (Melvern 2000: 222). The new government of national unity started inclusive politics in which the terms Hutu and Tutsi are no longer used (Golooba-Mutebi 2007: 16).

While mining played an initial role after independence, it almost came to a halt later and did not play a significant role in export earnings. Companies were owned by the state, but the state did not even institute business laws, nor was processing of mineral developed. While it is generally assumed that Rwanda does not have significant mining potential, discoveries of cassiterite, tantalum, tungsten and gold in Rwanda date back to the 1930s. Exploration undertaken since 2006 suggests that while the sector is small, there is some potential in gold and cassiterite mining. The post-genocide government

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drafted and discussed a development plan, Vision 2020¹⁸, in which the mining sector is to play a major role.

Rwanda's 'Vision 2020' document presents both a vision for the nation to strive for, and a clear framework designed to advance development programs for the country's social and economic progress. In the medium-term Rwanda aims to achieve significant secondary and tertiary sector growth and become a service-based economy. Understanding this goal helps put into perspective recent GoR actions, such as the mobilization of the domestic mining sector and moves by GoR to improve relationships with neighbouring countries.

In the Rwanda National Innovation and Competitiveness (RNIC) Program, Rwanda's minerals industry stakeholders have set the aim to "generate US\$ 106m in minerals industry export receipts in 2011, and cumulative receipts of US\$387m over 2007-2011 for public sector investments of US\$ 14m, through export revenue generation for the export-focused metals and precious stones sectors, and import substitution for the domestically-focused quarries sector" (MINITERE, 2006) While Rwanda's current domestic production is small compared with that of the Eastern DRC, the country has some potential. The sector has been a major export contributor and job creator for Rwanda, with around \$81 million USD in export revenues recorded in 2008 and an estimated 35,000 mining sector jobs created (OGMR 2008). Despite the global financial crisis, the industry and its secondary economies are expected to remain significant contributors to the growth and increased competitiveness of Rwanda (MINITERE, 2006).

In 2006 Rwanda's Investment and Export Promotions Agency (RIEPA) approved about US\$ 55 million worth of mining projects.¹⁹ The first fruits of Rwanda's domestic sector development strategy can best be seen in the wolfram (tungsten/wolframite) sector. It is difficult to compare historical data, so not too much should be read into the significant positive trend shown in table 2 below, which depicts a wolfram production increase of 3,341% since the inception of privatization in 2005. It is clear from our

¹⁸ Republic of Rwanda, Ministry of Finance and Economic Planning (July 2000): Rwanda Vision 2020. Kigali.

¹⁹ <http://allafrica.com/stories/200805270740.html>

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research that a number of new private sector led ventures, such as Wolfram Bergbau, Pyramid International, Rwanda Allied Partners and Africa Primary Tungsten have generated production increases through investment in upgrading mining facilities.

Table 2: Rwanda domestic production of Wolframite: 1989, 1996, 2005, 2007

	1989	1996	2005	2007
Wolframite (tones)	184	22	87	2,988

Source: REDEMI production statistics 1989 – 2007 / Ministry of Natural Resources Production Statistics 2007. As quoted in Freedman (2007). Note: REDEMI production includes output at 8 concessions plus a small amount purchased by independent buyers from smaller, artisanal managed concessions.

The increase in output is a positive testimony to Rwanda’s hard work, making its mining sector attractive to foreign investors. It is now trying to create the necessary incentives for companies to move from exploration to exploitation and increase output, but there remain different levels of investment, production, performance and social commitment among investors. Therefore, if the full benefit of relying on private investors to help with fiscal receipts and social development is to be realized, intelligent regulation coupled with the right incentive structures will have to be considered priority areas (Garrett and Mitchell, 2009).

The government has put a relatively successful development strategy in place, which builds macro dynamics, such as political stability and predictability, as well as a willingness to continually improve and seeks to facilitate investment and conducting business, through measures, such as a one stop shop to pay taxes, which the firms are happy to pay, as they value a well-functioning and cooperative relationship with the government, which in turn is pro-business. One company suggested that “Kagame runs the country like a good CEO would do, this appeals to us”. This is mirrored in the establishment of facilitating measures in the mining sector’s micromanagement structure:

The establishment of the Rwanda Investment and Export Promotion Agency (RIEPA)

RIEPA facilitates and assists the strengthening of the supporting industry institutions of the mining sector by solidifying the legal and regulatory framework, developing the Kigali Mining Campus, improve distribution channels, developing Rwanda's national brand and promoting opportunities in the Rwandan minerals sector. Mining CEOs have stated that 'RIEPA is implementing its objectives successfully. Examples of incentives are tax exemptions to upgrade production and processing capacities and the voidance of import tax for mining machinery.'²⁰ The Association of Comptoirs in Goma sees RIEPA as a model that should be implemented in the DRC where, for example, tax breaks should occur when investing significantly into the mining sector.²¹ All mining company representatives interviewed in Rwanda praised this "one stop shop" government agency. Some expressed surprise that unlike in other countries, bribes were not asked for.

The establishment of the Rwanda Geology and Mines Authority (OGMR)

The OGMR focuses on the administration, regulation, support and promotion of the growth of the mining sector, as well as the coordination of the activities of all the various other parties involved in the execution of minerals industry activities (MINITERE, 2006). The OGMR has a key role to play as the central coordinator for the industry, liaising with other government bodies involved in the minerals sector to facilitate a coordinated and effective approach towards sector development.

The new mining law

The new mining law is at parity with international standards and ensures predictability in the application of the law for investors. This law removes some of the direct regulatory obstacles such as the issuance of renewable four-year exploitation licenses, which deterred serious investors, as opposed to 30+-year exploitation licenses found in other countries. The four-year rule attracted companies that were interested in

²⁰ Interview with mining CEO, Kigali, October 2008

²¹ Interview with Federation of Goma based Traders, Goma, October 2008.

short-term profiteering, as opposed to responsible, long-term investors (Garrett and Mitchell, 2009). The government's intention to direct the country's development is clearly recognizable, as the majority of contracts signed so far are performance-based, which reserve the government the right to review contracts if the company does not perform as agreed.²²

In Rwanda the government is strong enough to impose rules. They are observed, and companies can profit best when they cooperate. While the deal is still limited in terms of participants, there is no systematic exclusion of a particular group. At least the mining sector agreement is not an argument for those who want to violently challenge the government (FDLR).²³ Some tensions between former enemies are still visible, but seem to be kept in check and/or dissenters are increasingly co-opted by the visible development process occurring inside the country, which is still dependent on the delivery of more energy.

Tanzania

Tanzanian anti-colonial opposition gained strength and unity during the end of British colonial rule and formed the founding party TANU (Tanganyika African National Union) and later CCM (Chama Cha Mapinduzi, Party of the Revolution), which still governs the country today, although multi-party elections were introduced in 1992. Under the leadership of Julius Nyerere the party built up a loyal military and integrated all parts of society (military, trade unions, business associations, women, youth etc). From 1967 the approach of self-reliance (ujamaa) instituted cooperatives for food and cash-crops, marketing boards for export crops and founded a number of parastatal companies. While the state had a quasi-monopoly on most economic activity, the IMF-interventions from 1985, when Nyerere stepped back and was followed by Ali Hassan Mwinyi, brought liberalisation and privatization of most industries. However, business actors still receive licences and contracts through the state, which translates into a very close business – CCM party relationship (Lindemann-Putzel 2009).

²² Interviews with mining sector stakeholders, Kigali, October 2008 – January 2009

²³ WHO ARE THE FDLR AND WHY THE FDLR? ><http://www.fdlr.org><

Today the Tanzanian economy depends on agriculture, which accounts for more than 40% of GDP, provides 85% of exports and employs 80% of the population (Hayes, 2008). While Tanzania has a number of minerals (gold, diamonds, tanzanite and other gemstones), mining played a marginal role for most of the time. Mines used to be co-owned by the state and international companies, and their share of the national account decreased from 2.9 % in 1966 to 1.2 % in 1991 (Hofmeier 1993: 186). In 2006, the country was the world's only producer of tanzanite. It also played a significant role in the global production of gold, accounting for nearly 2% of the world's gold output (third largest African producer behind South Africa and Ghana) with exports worth \$2.5billion over the past 5 years (CCT, BAWATA, TECH, 2008). The mining sector in Tanzania contributed 2.3% of GDP in 2008 and the government expects this to rise to 10% by 2025 (ESRF, 2002)). Although Tanzania's vast endowments form a base for economic resource mobilisation, the private sector is signalling that the government is not doing enough to exploit the potential (Government of Tanzania 2004).

Particularly in the industrial gold mining sector, the IFI driven privatisation process, resulted in a reconfiguration of extraction frameworks from a public-private to a private extraction framework. International mining companies, such as AngloGold Ashanti and Barrick Gold have established a prominent presence, with AngloGoldAshanti's Geita mine near Mwanza becoming one of the most prominent private investments on the African continent. In a move to shore up private investment in June 2009 the government cut VAT to 18% from 20% and exemptions on fuel for mining firms and Income tax on firms listed on Dar es Salaam Stock Exchange (DSE) was reduced to 25 per cent (East African Business Week, 2009).

The private mining sector is achieving record turnovers, yet it still contributes little to fiscal revenue, which is partly due to mining companies - in line with international practice - are first recouping their substantial upfront investments. This has resulted in a loss of revenue for the state of approximately US\$ 400million over the past seven years (Curtis and Lussu 2008). The Geita gold mine, run by AngloGold Ashanti is a point in case. It has produced an estimated 308,000 tonnes of gold in 2006, yet with corporation tax only being paid from 2011 onwards, it has contributed little fiscal revenue. With corporation tax a large share of the fiscal linkage and the fiscal linkage

being one of the main drivers of development, the state's rent agreements with the private elite(s) can be regarded as undermining the state's share in economic resource mobilisation. Coupled with limited non-fiscal linkages, such as local supply chains and processing industries, the limited fiscal impact of the sector has translated into a negative image of mining companies amongst the population on the national level, which may prove a destabilizing factor in the long-term.

This is further accentuated by mining companies' modest community spending that is often regarded as small in comparison to their turnovers. AGA has spent around US\$700,000 a year, while Barrick has spent around US\$3-5m across all of its mines in Tanzania (Curtis and Lissu, 2008). As part of a mining contract review, that was led by a taskforce comprised of state officials, mining experts and civil society representatives mining companies AngloGold, Barrick and Resolute agreed to pay annual levies equivalent to US\$ 200,000 directly to local governments in the areas where their mines were located to be used for community projects. An additional \$125,000 annually would be paid to an "empowerment fund" to finance national development projects (Kimani, 2009). However, often these community investments have been done without any linkage to other sectors such as infrastructure, agriculture, manufacturing and energy, which can undermine the sustainable development effect of social investments

The development potential of the mining sector through a framework of effective elite bargain(s) should not be underestimated. The actors are reasonably capacitated, except for the trade unions, which remain relatively weak (e.g. TAMICO Tanzanian Mine and Construction Workers Union), as they suffer from distrust between mine workers and the union leadership.²⁴ Another important political player is the Woman's Miners Association, which is seen as seen as relative influential in Tanzania's mining sector. Their aim of empowering woman in mining is now at such a level that women are increasingly employed at all levels in the mining sector, within the ASM sector, the owners being increasingly woman.²⁵

²⁴ Interview with Private Bank, Dar es Salaam, , 07/01/2009

²⁵ Interview with mining consultant, Dar es Salaam 07/01/2009

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In Tanzania, foreign companies have contributed to the formalization of small-scale miners by entering into formal business relationships with them. For example, at the Tembo Mine in the Geita district, an LSM company entered into an agreement with a small-scale miner to participate fully in mining, ore processing and marketing of products (Dreschlaer, 2002). These arrangements are laudable development initiatives, but can also be easily targeted by gold laundering activities, which try to export gold from rebel held mining areas in Eastern DRC.

This discussion suggests that there is a national deal in place, but it remains fragile and has to grapple with the legacies of liberalization. At the same time, there are visible and sometimes successful multi-stakeholder driven attempts to formalize the informal mining sector, which could go a long way to stabilize the national deal.

Zambia

Zambia's founding party, the United National Independence Party (UNIP), born in the anti-colonial struggle, managed to unify about 70 different ethnic groups and ruled the country from independence in 1964 until 1991. President Kenneth Kaunda was highly regarded in Africa and in Zambia and transformed Zambia into a one-party state. In spite of several attempts to mobilise regional or ethnic dissent, UNIP managed to establish a system in which all regions and ethnic groups had their say. Since the early 1970s UNIP established state-control over most enterprises and nationalised the copper-mines in 1972. Copper has always been the backbone of the Zambian economy and has provided up to 93 % of export earnings (Meyns, 1993). The highly centralised elite bargain around Kaunda and UNIP was successfully challenged in 1991, when Frederic Chiluba and his Movement for Multiparty Democracy (MMD) won the elections. While several Structural Adjustment Programmes (SAP) had failed to change economic parameters in Zambia, Chiluba started to liberalise the economy and to privatize state owned assets (DiJohn, 2008). It took several years, however, until copper mines were sold, and some of them were sold back and forth between state and companies. Today the formal copper mining is undertaken by foreign companies.

Zambia has experienced major shifts in its elite bargain in the mining sector. From 1931 to 1969 two companies, the Roan Selection Trust and the Anglo-American Corporation, owned the mines which transformed the Copperbelt province of Zambia into the industrial heart and made Zambia a middle-income country with one of the highest GDPs in Africa. By 1968 Kenneth Kaunda criticised the companies for not investing enough into new technology, while the companies criticised the royalty system which allegedly did not incentivise investment. A year later the government announced the nationalisation of all mines, and the constitution was amended in that regard by a referendum. All rights of ownership of minerals as well as the exclusive prospecting and mining licences reverted to the state (Fraser & Lungu 2007:7). In the first step, the two companies were forced to give 51% of their shares to the state, and were in a second step combined to the Zambia Consolidated Copper Mines (ZCCM) in 1982.

ZCCM as the principal foreign exchange earner and contributing two-thirds of central government revenue got deeply embedded not only with the government, but with the population of the Copperbelt. Schools and hospitals, housing, food, electricity etc. were provided as well as incomes and pensions. Workers organised in the powerful Mineworkers Union of Zambia (MUZ), an organisation with a voice that backed the Kaunda government.

World copper prices, while at a historic height since independence, collapsed in 1974 and again in 1979. Zambia entered the debt crisis, and between 1974 and 1994 per capita income declined by 50% (ibid: 8). The government used its earning from ZCCM for all sorts of expenditures, but not enough for investment in mining technology. After nationalisation no new mines were opened, and production of copper collapsed from 750,000 tonnes (1973) to 257,000 (2000)²⁶.

The elite bargain within the centralised state-owned mining company was seriously challenged by the late 1980 for several reasons: firstly, the country was heavily indebted and tried several own approaches to establish structural adjustment, which were not satisfactory to the IMF, but provoked riots at home. Secondly, donors withdrew their support of aid collectively (Chamber of Mines, 2005), which caused further riots. And

²⁶ Chamber of Mines of Zambia (2005): Survey of the Zambian Mining Industry 1995-2004. Lusaka.

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thirdly, the Mineworkers Union eventually withdrew support from Kaunda and changed their preferences to Frederick Chiluba, whose Movement for Multiparty Democracy (MMD) was elected in 1991.

Chiluba was raised in the Copperbelt region and became chairman of the Zambia Congress of Trade Unions. His MMD did not only promote multi-party democracy, but also a number of economic reforms that were heavily promoted by the IMF and the World Bank, but also seriously supported by the Mineworkers Union. So in 1991 the peaceful transition from a “socialist” economy to a “free-market economy²⁷” saw the privatisation of the copper mines and thus a severe change in the elite bargain.

While the change in ownership took years to materialise, the ZCCM was initially sold to seven different companies from India, South Africa, China, Canada and the US. Three of them pulled out of the bargain when copper prices were too low for their liking, and the mines were later sold to companies residing in Switzerland and in India/United Kingdom. International companies now undertake all formal copper mining in Zambia. The government transformed ZCCM into ZCCM Investment Holding Inc. (ZCCM-IH), which is a holding company owned by the state (treasury) and private equity holders²⁸. They managed the selling and re-selling of the privatized mines.

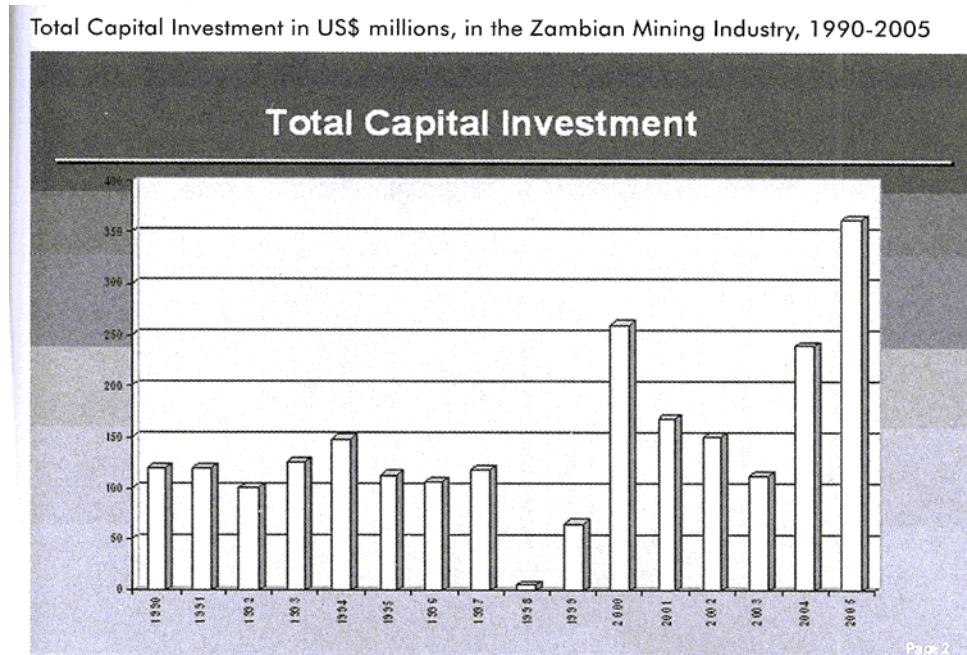
This new bargain has supporters and critics in Zambia. On the positive side, new money was invested and has re-invigorated the industry and production. Since 1998 about 1.4 billion USD have been invested (Fraser & Lungu 2007: 19).

Table 3 shows the total capital investment in the Zambian Mining Industry 1990 – 2005, as quoted in Fraser/Lungu 2007:71:

Table 3:

²⁷ While these terms are commonly used to describe the Zambian economy, they actually both refer to an economic system much more developed than rural subsistence Zambia plus some copper mines.

²⁸ Zambia Review 2008, 9th edition: Mining Industry, p. 37.



Source: Chamber of Mines 2006

New investment was reflected in higher production and in the opening of new mines, and in new profits, in particular when copper prices on the London Metal Exchange were high again. However, criticism did not only start when prices came down, as in the period when we researched the Zambian elite bargain. Mass redundancies were put in place by late 2008, but critics long before complained about the following points:

They see the deals as one-sided, as the new companies are exempt from all liabilities of the former ZCCM including pensions, paying most taxes, and some national laws, for example on pollution. Many contracts, called “Development Agreement”, are still secret, and a “stability period” was granted in which the agreement cannot be changed. Many observers say that the state is unable to regulate adequately and cannot even prevent illegal operations or impunity. While the IMF and the World Bank have pushed the Investment Act (1995) and the Mines and Minerals Development Act (1995), state institutions seem to have “privatized without a plan”²⁹. This means that regulatory influence on employment, health, minimum wages or linkages to local business are

²⁹ Interview Lusaka, November 2008.

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basically absent³⁰. The employment dropped from 45,000 to 22,000 between 1995 and 2000, and employees were outsourced and transformed into “working poor”, while previous employees are no longer entitled to their pensions (Frazer/Lungu: 21).

While the absence of industrial policy by the Zambian state is criticised by some, the most striking government decision can be seen in the level of royalties from mining. The law demands a royalty of 3 %, but in reality mining companies pay 0.6%. While the policy of low royalties was initially pressed by the IMF, the Permanent Secretary of the Ministry of Mines reported the pressures from the companies:

“The companies wanted to drive certain taxes down. And this is how we came up with very low mineral royalties. Today I think we are the lowest in the whole of Africa at 0.6 % of gross turnover for mineral royalties. This is how, over the period, we have pegged the company tax at 25% for the mining sector, compared to manufacturing companies which are at 35%. And then on imports of capital equipment, these things are brought in duty free if they are brought in for mining operations and for exploration work in mining. Not only that we have made many items tax deductible and the interest that you pay on loans is also tax deductible. So the whole package is very, very attractive.” (Fraser/Lungu 2007: 11)

Table 4 (Source: Fraser/Lungu 2007: 70) gives an overview over the particular deals between government and companies, at least those whose contracts entered the public domain:

³⁰ Mbita Chintundya Chitala, co-founder of the MMD and Deputy Finance Minister in Chiluba’s first cabinet, makes very sharp comments in his book: Immediately after the elections the IMF informed the government what to do (abolish economic planning, reduce government, sack civil service and privatize the mines). While he claims that MMDs initial thought was that the previous state-owned companies could form the basis for an indigenous bourgeoisie, “privatization ... has been a hell of a depressing experience where Zambia lost a great deal. ... the focus of privatization shifted from the ideal of using privatization as national economic tool to empower the indigenous middle class to a laissez-faire policy of transferring the state sector to transnational corporations and comprador elements in the country.” (p.69) Chitala, Mbita Chintundya: Not Yet Democracy. The transition of the twin process of political and economic reform in Zambia (1991-2001). Lusaka.

Incentives Given to the Various Mining Companies in their Respective Development Agreements

Name of company / year of agreement	Royalty Tax Rate	Provision for Capital Investment Deductions	Corporate Tax Rate	Provision of Carry-Over Losses	Customs Duty	VAT	Foreign Currency Retention	Withholding Tax	Stability Period
Konkola Copper Mines 2000	0.6	100%	25%	Can Carry forward Losses	Exempt (Excise duty on power (0%))	Refund on Net input VAT (0%)	100%	On Dividends (0%)	20 years
Mopani Copper Mines 2000	0.6	100%	25%	Can Carry forward Losses	Exempt (Excise duty on power (0%))	Refund on Net input VAT (0%)	100%	On Dividends (0%). After stability period (10%)	20 years
NFC (Africa Ltd) 1998	*	100%	35%	Can Carry forward Losses	As above including no customs duties on personal effects	Refund on Net input VAT (0%)	100%	0%	15 years
Chambishi Metals 1998	2.0	100%	35%	Can Carry forward Losses	Exempt on Machinery and Equipment. Excise duty on power (10%)	Refund on Net input VAT (0%)	100%	0%	15 years

* The NFCA Development Agreement states that the company will pay royalties at the 'rate prevailing'. This is not further clarified, but might imply the company has no concession in this area and pays at the rate in the Mining Act: 3%, or at the rate paid by most other companies: 0.6%
Source: Various Development Agreements

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While this deal is certainly attractive for companies, both the IMF and the country officials were convinced that Zambia does not get a sufficient share of mining revenues. A modified approach was introduced in April 2008: the new mining regime would increase royalties to 3.0 % from 0.6%, corporate mining income would be taxed at 30 % instead of 25%, and a windfall tax on mining would be introduced when copper prices at the London Metal Exchange rose above 2.50 USD per lb. This was supposed to increase state revenue to 21% of GDP by 2008 -2010, from currently 18.7% and create the fiscal space for development spending on infrastructure and human resources (IMF, 2008).

However, prices began to drop in fall 2008 soon after legislation was made. Companies and the government started to quarrel again: while the new tax regime was expected to raise about 145 Million US \$ in additional revenue (or 10.5 % of the budget or 3% of the GDP or about 43% of external financing of the budget), the Zambia revenue authority was only able to collect less than half the amount. Only one company paid, and the others complained in London and Toronto about the new Zambian tax regime and threatened to sue the government, arguing that their "development agreement" and international law protected them from the tax rise (Chitengi and Muluzi, 2008: 20). In March 2009 the Zambian parliament scrapped the windfall tax "to reduce pressure on

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foreign mining companies hit by the global financial crisis”, as Mines Minister Maxwell Mwale explained. “Basically what it means is that one tax they did not like because it was eating into their profitability is scrapped and they should have no complaints”³¹. At this time mining contributed to more than 63 % of government revenues.

The particular way in which privatisation was done has significantly weakened the government’s side of the bargain, and it has not created Zambian mining companies that would engage in establishing national rules and regulations. Whether the investment will continue – in particular when copper prices are relatively low – remains to be seen.

There are indications that the centralised patronage under UNIP has given way to a more personalised patronage under Chiluba. He was considered guilty by a UK court in 2007 to have stolen 46 million USD from his country, and Zambian authorities claimed in 2008 that they had recovered assets and money worth nearly 60 million USD stolen during the rule of former President Chiluba³². However, in August 2009 Chiluba was cleared of corruption by a Zambian court, because the 500,000 USD in question could not be traced to government money. Some interlocutors also insisted that traditional chiefs start to play a bigger role in mining than they did under the previous regime. While they have nothing to say or decide within the mining regime by statutory law, it was reported that company representatives had to buy them a motor-vehicle to smoothen business.

Interviews suggested that Chiluba and his people were deeply involved with the companies, while this is not reported about Rupiah Banda, since November 2008 President of Zambia. Some actually mentioned that the institutions in Zambia are well in place and no-one has to go through the presidency.

Politics in Zambia have changed. The founding party UNIP was substituted through the MMD. Several interviewees, former UNIP-members, said that they had to become MMD-members in order to continue to play a role in public life. What is remarkable, however, is the peaceful transition from one regime to the next. The state has been strong enough to close deals, although the new deal significantly increased the

³¹ Reuters, 28.03.2009: Zambia parliament approves scrapping windfall tax.

³² BBC: “Zambia seizes “Chiluba millions”, 09.05.2008.

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weight of mining companies, who rely much more on international events and pressures than domestic ones.

While revenues for mining were and are envisaged for developmental purposes, the Zambian state – and Zambian entrepreneurs – are still far away from a quickly developing state. While political stability largely prevailed, economic stagnation did as well. The government’s plan for the future is called “Vision 2030” (Republic of Zambia, 2006), listing future developmental progress and aims, but it has hardly been discussed and is not the daily agenda for anyone we interviewed. “The tripling of the price of copper is a key element in the presumed acceleration of Zambia’s growth” (point 3.29), a stunning underlying assumption. The document acknowledges that average annual growth in pre-market reform times 1965 to 1992 was 1.7%, whereas post-market reform growth (1993-2001) was 1.6 %. Basic metals have remained stagnant or declined. In order to achieve the ambitious vision for 2030, however, average annual growth rates of 10 % are necessary and it is questionable whether and how questionable whether and how Zambia can achieve these.

Conclusion

All four country studies investigate how elites – the state and private actors - mobilise resources and operate in the logic of a limited access order. While all countries adopted the institutional forms of multiparty-elections, for example, or “market economies” or stock exchanges, this did not change the basic logic of a limited access order. The particular way in which the elite bargain was struck, however, explains the significant variance in terms of the fragility or stability of each country.

The access orders, both to political and economic influence, are limited first of all because of the huge subsistence and informal sector. This part of the economy, while contributing significantly to incomes and livelihoods of people, is not part of the formal bargain and is not taxed or regulated. In this regard, Snyder’s notion of an entirely private extraction holds.

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There are different efforts, however, to incorporate the informal sector. In the DRC the informal sector, in particular in the Kivu provinces, is “taxed” by private, often armed actors in the context of ongoing violence. This violence presents difficulties for operators in the informal mining sector, but also poses a threat to the state and has so far prohibited formal mining activities. In Eastern DRC no single actor is strong enough to impose a deal on others or on state representatives. Neither the national army, nor the ex-Rwandan militia, nor the several “rebels” opposing one of them or both, nor the provincial or central state authority can strike a lasting bargain. Many actors remain able to violently challenge whatever agreement has been made locally.

The situation in Eastern DRC is strikingly different from the Rwandan state’s engagement to formalize its own artisanal mining sector and enter a bargain. Apart from the fact that this informal sector does not challenge the state, the government reaches out to miners with a number of extension services and tries to organise and support miners in cooperatives. This can be regarded as an attempt to establish a joint institution of extraction.

Tanzania is making significant inroads into the formalisation of the ASM sector, both through government support to private initiatives and through government supported organisation of savings cooperatives. This contrasts with Zambia, which does not seem to be too worried about formalising the informal sector, despite both countries having a state presence in ASM communities. Neither country entered into institutions of joint extraction and the national bargain does in neither country seem threatened by this form of private extraction.

The more important part of the elite bargain, however, takes part in the formal sector. Here revenue is generated that can either sustain private actors or the coffers of the state, or both. The term “formal sector” already implies that the state in one way or another is on board. The crucial thing then becomes the particular deal that is struck, and how shared extraction divides between the state and private actors.

All four countries underwent a substantial change of this bargain. In the first place, international financial institutions and donors insisted on either a liberalisation of the mining sector or an outright privatisation of state assets, which were introduced at different times, with different means and with different success. This happened in the DRC from the mid 1970s onwards, and it did not generate wealth for the private companies or for the state. What was established was a regime of personal patronage, where private holders of state power and private holders of company power got rich, while country, infrastructure, companies and population became significantly poorer. After the wars 1996 – 2002, under international pressure, a new joint extraction institution was envisaged. Even though this joint extraction framework does not discriminate against Congolese companies, it is so far primarily undertaken with international companies, even though Congolese companies may in the long-run have a greater interest in shaping Congolese laws and property rights, than international companies. While there are plenty of “junior partners” from the DRC, the bulk of mining – and thus generating capital to modernize and generating profits for private companies – happens primarily through international actors, often in joint ventures with former parastatal companies. The private actors often have to rely on international law and its enforcement rather than on Congolese jurisdiction to protect their business.

The envisaged deal is still far from being in place in the Kivu provinces, and only beginning to operate in Katanga. While the state is such a weak player in this bargain, the danger of violent contest is far from over.

In Tanzania and Zambia the change of the deal looks slightly different. Both countries had strong parties in place that centralised the patronage over state-owned companies. When international pressure became stronger to privatise, the governments in power believed in the benefits of privatization – although it is noteworthy that the Tanzanian CCM stayed in power, while the Zambian UNIP lost power to MMD. Part of their belief, though, was the hope that the management of the previously state owned companies would be able to secure the private property right **plus** would be able to mobilise enough investment. This hope was quickly disappointed; as it turned out that the mining sector by now is under substantial control of international mining companies. In

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this regard, the state's stake in the bargain was reduced. This happened in spite of the fact that international mining companies are ready to enter joint ventures with the state, but not every state seems to be determined enough to do that.

Nevertheless, some of the privatizations were success stories, at least for some time, hugely depending on the price of the mineral extracted – a variable, which cannot be influenced by any particular government. So the crisis of copper prices hit Zambia (and the DRC), while Tanzania, more dependent on gold, was not affected. What comes about in such a crisis, however, is the renewed bargain about the particular shares that go to the government vis à vis those that stay with the company. Zambia felt that its revenue from mining was excessively low – so low, in fact, that even the IMF supported a change of the deal in order to increase government revenue. In 2008 a windfall tax was introduced, and one year later it was scrapped, because companies opposed it. The privatisation seems to have replaced the centralised patronage of the Zambian state in favour of personalised patronage, at least during the Chiluba years.

Rwanda has a different story again. It was only years after the RPF victory that the government introduced an idea of industrial policy and consequently built the institutions to facilitate private sector growth, investment and employment. While it encourages gross capital formation nationally, and Rwandan private capital for example invests in the exploitation of methane – gas from Lake Kivu, mining activities are so far largely financed by international companies. But government treats them with incentives not only to invest, but also demands taxes both on the community level and on the national level. According to mining companies, the state does that very effectively and efficiently. From our empirical evidence here the joint institution, or the partnership between companies and the state, is furthest developed within our sample of countries.

We investigated the elite bargain in mining to test the hypothesis that this bargain is determining the stability of the state. We accepted the underlying rationale that in these countries access to this bargain is limited, and influenced by international actors. We

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checked whether the bargain aimed at joint extraction, or whether private actors inside the country are still violently fighting for their idea of private extraction.

While there is no nationwide deal in the DRC, unsurprisingly the country is the most fragile, still being a “failed state” and far from recovering from the breakdown. In North’s et al’s terminology we would characterise the DRC as a fragile LAO where the state can barely sustain itself, and the progress of containing violence is not yet made in the entire country.

Tanzania and Zambia have struck a joint extraction bargain, but in circumstances that don’t necessarily strengthen the state. While both countries are quite distant from the Congolese fragility, they are also quite distant from “durable institutional structures inside and outside the state”. They have not shown a qualitative leap that moves them out of stagnant conditions. Therefore they fall in between the “fragile” and the “basic” limited access order.

The most developmental state in terms of its movement along the characteristics fragile-basic- mature is the Rwandan state. After its victory in 1994 it was able to establish a deal between private actors and the state, which both obey and profit from. It provides a stable and predictable environment for decisions and for property rights and has already achieved some successes. While neither companies nor the state seem to be challenged from the inside, the ex-Rwandan government and its militias are still trying to reverse the outcome of 1994, but the success of this strategy does not seem very likely now, particularly as there seem to be little grievances and no visible exclusion of a particular group, at least in the mining sector, with the majority of the population seemingly co-opted by a visible development process. For that reason we would characterize Rwanda as a basic LAO.

In essence, therefore we suggest that it is possible to say that the particular elite bargain around resource mobilisations seems to be an important factor determining the outcome in terms of state stability or fragility.

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Interview Sources DRC - Kinshasa

No.	Date	Description
1	5.11.2008	Traditional Chief
2	5.11.2008	national government employee
3	6.11.2008	World Bank sector specialist
4	6.11.2008	Bank Manager
5	8.11.2008	Government Representative Mining
6	10.11.2008	DFID country specialist
7	2009	Embassy Representative
8	10.11.2008	Mining Representative
9	10.11.2008	Foreign Technical Assistant
10	10.11.2008	Mining Representative
11	11.11.2008	DFID country specialist
12	11.11.2008	UN representative
13	25.09.2008	Mining Representative
14	25.09.2008	Mining Representative
15		FEC Representative

Sources Katanga

16	6.11.2008	Mining CEO
17		NGO for Mining Companies
18		Mining CEO
19		Mining CEO
20	20.11.2008	Accountancy Firm
21	20.11.2008	NGO Agricultural Expert
22	20.11.2008	Private Milling Company
23		Private Milling Company
24		Farmer
25		Farm Manager
26		Mining CEO
27		Government Katanga, Mining

Interview Sources Rwanda

No.	Date	Function
1	20.10.2008	Think Tank Rwanda
2	20.10.2008	DFID/agricultural country expert
3	20.10.2008	Embassy
4	22.10.2008	Think Tank Rwanda
5	22.10.2008	Think Tank Rwanda
6	21.10.2008	coffee organisation
7	21.10.2008	coffee organisation
8	22.10.2008	Mining CEO
9	22.10.2008	Mining CEO
10	22.10.2008	Mining CEO

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11	22.10.2008	Mining CEO
12	23.10.2008	Rwanda Government Representative
13	24.10.2008	Mining CEO
14	25.10.2008	Rwanda Government Representative
15	23.10.2008	RIEPA representative
16	29.10.2008	Rwanda Government Representative
17	31.10.2008	Rwanda Investment Group
18		Private Enterprise
19		Private Enterprise
20		Private Enterprise
21		Ministry of Energy
22		Economic Advosor
23		Coffee cooperative
24		Embassy
25		Embassy
26		Embassy

Interview Sources Tanzania

No	Date	Function
1	8.12.2008	University Professor
2	10.12.2008	coffee grower
3	10.12.2008	Min of Agriculture
4	11.12.2008	World Bank
5	11.12.2008	World Bank
6	11.12.2008	World Bank
7	12.12.2008	Embassy
8	11.12.2008	Min of Agriculture
9		CCM Representative
10	12.12.2008	Private Enterprise
11		World Bank

Interview Sources Zambia

Number	Date	Function
1	28.11.2008	Min of Finance, TRIPS
2	28.11.2008	COMESA
3	3.11.2008	Coffee organisation
4	3.12.2008	Mining CEO
5	3.12.2008	COMESA, ex Govt. Representative
6	5.12.2008	Min of Finance & National Planning
7		Farmer's Union
8	5.12.2008	Min of Minerals and Agriculrue
9	5.12.2008	Copperbelt Environmental Project
10	5.12.2008	Productivity Centre
11	5.12.2008	Productivity Centre
12		Zambia Export Growers' Association
13		Zambia National Farmers Union

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14	Zambia Agrobusiness Centre
15	Agrobusiness Forum
16	Min of Agriculture and Cooperatives
17	Min of Agriculture and Cooperatives
18	Min of Commerce, Trade and Industry
19	Min of Commerce, Trade and Industry
20	World Intellectual Property Organisation
21	COMESA
22	COMESA

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