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Improving Mining Local Procurement

The case of the Democratic Republic of Congo

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ABOUT THIS REPORT
This report presents the results of a study, conducted between March 2020 and March 2021 on Local Procurement in the Democratic Republic of Congo. The German Federal Institute for Geosciences and Natural Resources (Bundesanstalt für Geowissenschaften und Rohstoffe, BGR) commissioned Kaiser Economic Development Partners (Kaiser EDP) to conduct this study.
The research of this study builds on the work on Local Content, specifically the LION tool, by BGR's sector project "Extractives and Development, which is implemented on behalf of the German Federal Ministry for Economic Cooperation and Development (BMZ). LION and this study have been coordinated and accompanied by Thomas Grupp.
For more information please visit: www.bmz.de/rue/en

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List of acronyms

AEDC	Aboriginal Economic Development Corporation (Canada)
AFD	Agence Française de Développement (France)
ANAPI	Agence Nationale pour la Promotion des Investissements (DRC National Investment Promotion Agency)
APIP	Agence de Promotion des Investissements Privés (Guinea Investment Promotion Agency)
ARSP	Autorité de Régulation de la Sous-traitance dans le Secteur Privé (DRC Regulatory Authority for Subcontracting in the Private Sector)
ASM	Artisanal and Small-Scale Mining
BGR	Bundesanstalt für Geowissenschaften und Rohstoffe (German Federal Institute for Geosciences and Natural Resources)
BNEPI	Bureau National d'Etudes et de Planification Industrielle (DRC National Office of Studies and Industrial Planning)
BSTPG	Bourse de sous-traitance et de partenariat en Guinée (Guinea subcontracting portal)
CAD	Canadian Dollar
CCAB	Canadian Council for Aboriginal Business
CDA	Community Development Agreements
CDF	Congolese Franc
CSO	Civil Society Organisation
CTCPM	Cellule Technique de Coordination et de Planification Minière (Technical Coordination and Mining Planning Unit in DRC)
DFID	UK Department for International Development (now part of Foreign, Commonwealth and Development Office)
DGDA	Direction Générale des Douanes et Accises (DRC Customs and Excise)
DRC	Democratic Republic of Congo
EITI	Extractive Industries Transparency Initiative
EU	European Union
FEC	Fédération des Entreprises du Congo (DRC Federation of Enterprises)
FISEA	Fonds d'investissement et de soutien aux entreprises en Afrique (French Investment and Business Support Fund in Africa)
FPI	Fonds de Promotion de L'Industrie (DRC Industry Promotion Fund)
GDP	Gross Domestic Product
GIZ	Gesellschaft für Internationale Zusammenarbeit (German Corporation for International Cooperation)
IBA	Impact and Benefit Agreement
ICGLR	International Conference on the Great Lakes Region
IDAK	Investissements Durables au Katanga (Katanga Sustainable Investment Consultation Framework)
IFC	International Finance Corporation
IMF	International Monetary Fund
INPP	Institut national de préparation professionnelle (National Vocational Preparedness Institute)
JV	Joint Venture
LION	Local Investment Opportunities for Natural Resource projects
LPM	Mali Local Procurement in Mining project
LPRM	Local Procurement Reporting Mechanism
LSDP	Local Supplier Development Programme

MMSD	Department of the Ministry of Mines and Steel Development (Nigeria)
MSME	Micro, Small and Medium Enterprises
MSV	Mining Shared Value
MT	Metric Tonne
NGO	Non-Governmental Organisation
NOGIC	Nigerian Oil and Gas Industry Content Development
NRGI	Natural Resource Governance Institute
OECD	Organisation for Economic Co-operation and Development
OHADA	Organisation For The Harmonisation Of Business Law In Africa
OPEC	Organisation of the Petroleum Exporting Countries
PNSD	Plan national Stratégique de Développement (DRC Strategic Plan for Economic and Social Development)
PPE	Person Protective Equipment
SEA	Socio-Economic Agreement
SEZ	Special Economic Zone
SME	Small and Medium Enterprise
UK	United Kingdom
UNDP	United Nations Development Programme
US	United States
USAID	United States Agency for International Development
USD	US Dollar
WTO	World Trade Organisation

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Executive summary

The document is primarily intended to form the basis for a local procurement strategy that aims to increase mining local procurement in the DRC.

The potential size of economic activity generated through local procurement activities of DRC mines is significantly large, given the variety of commodities involved, the scale of production, and the expected duration of mine lives. As an example, the BGR LION model estimated that industrial copper mines in DRC procured over $2.5 billion of goods and services in 2019 – excluding capital expenditure and other costs such as labour, other mining commodities, and the potential additional demand from the wider regional market. Indeed, it is estimated that revenue generated from local procurement activities could be larger than what the overall mining sector revenue contributes to the DRC state budget. Unfortunately, several factors currently constrain the full realisation of this potential extra revenue.

Firstly, various legislative and regulatory changes have been made in the DRC – both at the mining sector level and in terms of overall subcontracting law – with the intention of promoting regional local procurement. But there is still scope to create greater clarity and shared understanding regarding the DRC's objectives and hopes for local procurement, as well as areas of potential improvement that have been overlooked. Several additional refinements could potentially increase the associated positive economic impacts of local procurement for the DRC economy and citizens.

For example, the exclusive focus on improving local ownership of subcontractors may limit other potential economic diversification benefits that could be derived from also targeting value adding activities. Institutional issues include a young regulator with capacity limitations and weak coordination between mining sector bodies and the Regulatory Authority for Subcontracting in the Private Sector (ARSP). The institutional coordination for supplier development – and improving the supplier operating environment – also does not appear to be clearly articulated, as this is not the role of a regulator, and requires specialist capacity building compared to overall SME and youth entrepreneurship development efforts.

Furthermore, despite the large potential demand, there appears to be a limited number of local manufacturing and value adding service suppliers. The private sector structure and operating environment also pose significant challenges to the sustainable growth of the local mine supplier base, including the limited manufacturing and technical services base, the limited number of larger-scale companies, high informality, energy access constraints, lack of access to business finance, poor infrastructure and challenging logistics. These all result in a high-cost base, constraints to growth, and challenges in competing with international suppliers.

Some examples of successful local supply and investment to serve the mining market have emerged. This discussion document includes cases from a range of countries, with a particular focus on those that both face similar challenges to DRC and provide useful lessons. Table 1 provides a summary of the lessons from the most relevant countries.

TABLE 1: EXAMPLES OF SUCCESSFUL LOCAL PROCUREMENT IN COMPARATOR COUNTRIES	
Country	**Key lessons for DRC**
Mali	• Local procurement initiatives may take a long time to produce results. • Focus not just on demand interventions, but also supply interventions. • Useful to focus on targeted support for key opportunities that make economic sense in the long term, including consideration of wider markets. • Local businesses and entrepreneurs, as well as mining companies, can play a key role. Collaborative efforts are needed to increase local procurement. • Investors and their home country attitude and support toward development-oriented extractive activity can play a role.
Guinea	• Local procurement plans at the company / project level are a practical tool for planning and monitoring. • Mining projects with infrastructure components provide opportunities for alleviating infrastructure constraints (transport, energy, etc.) on local businesses. This requires consideration at the planning stage. • Firm level assessment by outside consultants can complement insufficient reporting or monitoring of local procurement obligations.
Ghana	• A collaborative approach can be highly beneficial to successfully implement local procurement, but takes ongoing relationship maintenance, and personal commitment from leadership in the relevant organisations. • Product specific support initiatives can help to create sufficient economies of scale and support to boost local suppliers, but need to be regularly revised to reflect technological progress. • Clarity is required on what reporting and planning is expected from the mining industry as a whole (e.g. reporting through a Chamber of Mines), at a mining company level and at a mine project level. • Many levers for supplier development sit outside of mines or ministries of mines, so strong collaboration is required with other support bodies. • Take care to avoid creating perverse incentives for the regulator with fines, levies and fee structures. • Local procurement plans and reporting (with public aggregate reporting) can be a powerful tool to enhance local procurement e.g. creating a publicly available platform to share plans with suppliers and citizens. • Dedicated and suitably qualified monitoring capacity is key to enforcement.
Canada	• Local procurement should include a focus on benefits for impacted communities and those who have traditional ownership over the area of extraction. However, some level of capacity and organisation within the community are required and may be constraining factors. • Technical partnerships and joint ventures (JV) can be an effective mechanism to build local capacities and to help local communities and businesses participate in mining supply, subject to finding international JV partners that understand and can work within local conditions. • Local procurement is part of the overall mining project terms, and should be flexible to allow project-level specificities and a holistic approach with consideration of project economics, infrastructure, etc. along with local procurement. • Local procurement interventions should be coherent and integrated with other national frameworks (industrial development, infrastructure, land use, etc. policies and plans). Multi-level / multi-stakeholder support and coordination is required.

Recommendations for improving mining local procurement in the DRC

The consultant recommendations outlining the ways in which DRC stakeholders could potentially improve local procurement outcomes include:

1. Clarify priorities in terms of local procurement outcomes, and refine definitions to support these outcomes

2. Assess mining supplier capacity and competitiveness

3. Actively develop suppliers by involving mines, businesses and both local and international business development organisations, investment promotion and enabling a more supportive operating environment

4. Develop an agreement between government and mines on local procurement plan submission, including opportunity identification / prioritisation / targeted support, long term approach, self-identified growth targets (e.g. linking to LPRM principles)

5. Build a collaborative approach and platforms for constructive communication between role players around local procurement

6. Review the 1.5 % levy instrument on subcontracts and explore alternative funding instruments for the regulator

7. Updating and extension of LION model to enable effective demand estimation

8. Coordinated information sharing, monitoring and evaluation capacity and systems

1. Introduction and Purpose

In June 2018, BGR Extractives for Development Sector Programme [1] began its work on developing a mining procurement demand model for the Copperbelt region (Zambia and DRC) and commissioned Kaiser Economic Development Partners (www.kaiseredp.com) to support the process. The primary purpose of the model is to be able to quickly determine the value of mining companies' procurement of goods and services – across a number of specific categories – as a basis to identify opportunities for local supply. This model was completed in December 2018 and was launched as the "LION model" (Local Investment Opportunities for Natural Resource projects) in early 2019. The results were updated in 2020 and can be found here.

Following this work, the Ministry of Mines of the DRC, in particular CTCPM, which is the Congolese government's advisory, study and coordination body on mining issues, had discussions with BGR to embed the LION model within the institutional context of the DRC to help identify local supply chain opportunities. CTCPM also requested technical and consultation support towards developing a mining local procurement strategy to address wider local procurement issues, such as definitions, legislation, regulation, institutional capacity in local procurement, supplier development and monitoring and evaluation. This request resulted in BGR initiating this activity in March 2020 to support the DRC local procurement efforts.

The activity involved training CTCPM experts on the LION model, assessing the DRC local procurement context, researching approaches from relevant and comparable international experiences, and presenting some initial recommendations on how local procurement could be increased. This document, which has been prepared by Kaiser Economic Development Partners in partnership with BGR, is the output of this work. Due to COVID-19 restrictions, it has not been possible to convene a workshop on local procurement in the DRC to date.

The following two caveats should be noted about this document:

1. There may be some gaps in the information presented on the DRC context (Section 3). Kaiser EDP has worked closely with CTCPM and a local consultant in DRC to develop as accurate a picture as possible on the situation in DRC; however, there has not been a thorough on-the-ground investigation with in-depth stakeholder interviews and data analysis that would normally accompany a mining local procurement strategy.

2. The options and recommendations presented in this document (Section 5) are the views of the consultants and should be considered as preliminary in nature. Although they have been based on extensive experience in the development of mining local procurement strategies across Africa, an additional process of consultation, testing, validation, and refinement of these recommendations is essential.

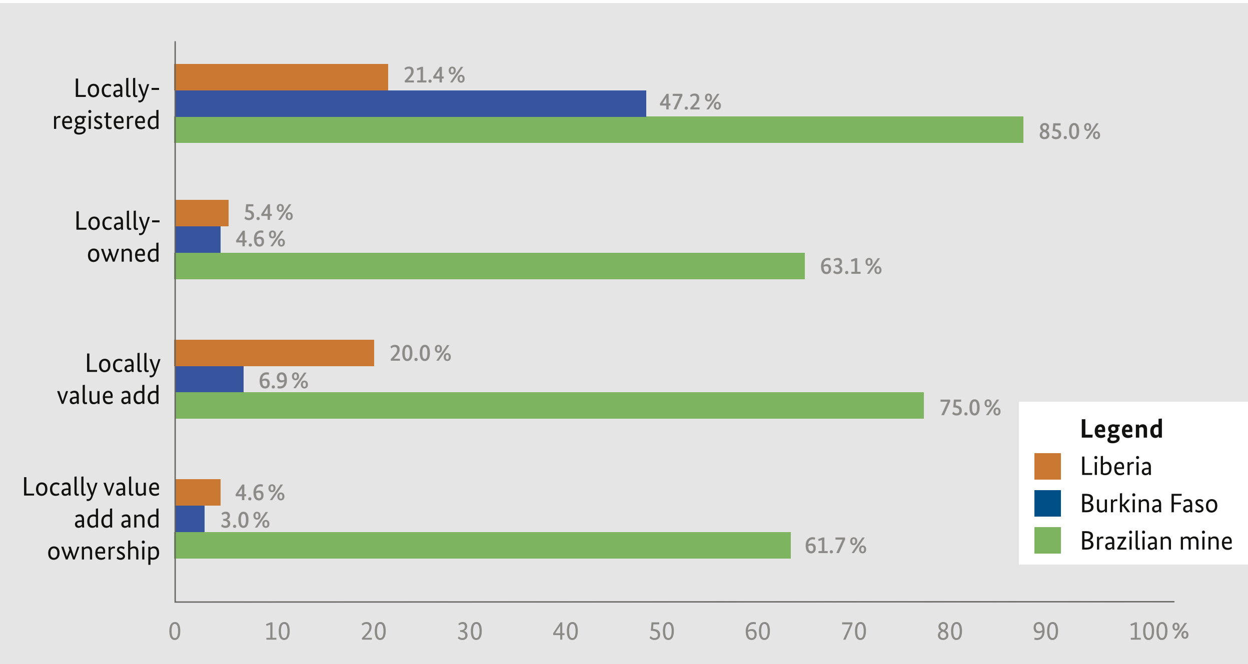
[1] Note that the Extractives and Development Sector Programme operates through BGR headquarters and is separate from the long-term bilateral project between BGR and the government of DRC

2. Importance of mining local procurement

Mining represents a significant part of the economy of DRC, with estimates of around 17 % (EITI, 2019) of GDP and over 90 % of exports. It therefore has the potential to be a significant driver of wider economic development. Based on the LION model, industrial copper-cobalt mines in DRC procured over $2.5 billion of goods and services in 2019 – this excludes other costs such as labour and capital expenditure, as well as other mining commodities, and the potential regional market.

Figure 1 **Comparison of local procurement levels in different countries using different definitions** (Source: Kaiser EDP / World Bank [2014 data])

A note on how definition choices drive local procurement performance:
In Burkina Faso (in 2014), while the amount sourced from locally registered companies was close to 50 %, this did not play out into local ownership or value-add. Brazil has a very different economic context with a much larger domestic market in other sectors and more established and diversified manufacturing and services sectors.



However, countries have made very different strategic choices around how they approach mining local procurement in their contexts and have achieved very different results. DRC similarly has made some strategic choices already and stakeholders may still need to reach consensus on the essence of what mining local procurement should achieve for the country. The box below provides an example of different local procurement levels against different definitions of local procurement.

In DRC, there are many locally owned subcontractors providing trading services, and some locally-owned service providers. International experience shows that countries can successfully capitalise on extractive industry investment to support development of local supply industries and diversification of the economy (see Section 4 for some examples). DRC has some examples of local supply (e.g., steel products, energy services, logistics) and recent investments in manufacturing (e.g. grinding media, sulphuric acid), however, based on the project team's experience in mining countries in Africa, it is likely that less than 10% of mining goods and services are being procured from locally owned value-adding suppliers in DRC.

Mining companies, local businesses, and local communities in DRC can all gain from increased mining local procurement, as shown in Figure 2.

As shown in the following section, the DRC has made some efforts to increase local procurement, but these are not yet achieving their maximum impact. With a systematic approach to increasing mining local procurement, DRC has a significant opportunity to realise these benefits.

Figure 2 **Benefits of increasing mining local procurement to stakeholders in DRC**
(Source: Adapted from Kaiser EDP's assessment developed for the World Bank)

MINING COMPANIES

- → Reduced logistics and stock holding costs
- → Increased security of supply
- → Reduced lead times
- → Customised / dedicated supply
- → Enhanced public perception / social licence to operate

LOCAL BUSINESSES AND ENTREPRENEURS

- → Enterprise growth
- → Improved productivity, technology, HSE
- → Improved ability to compete (local, export)
- → Increased stability/diversity of markets
- → Improved access to capital

COMMUNITIES IN THE VICINITY OF MINES

- → More revenue circulating
- → More economic opportunities
- → Skills upgrading

WIDER ECONOMIC AND SOCIETY BENEFITS

- → Increased employment and skills
- → SME development
- → Wealth creation
- → Increased domestic and foreign investment
- → Exports and foreign exchange
- → Increased government tax revenues
- → Economic diversification / stronger economic base

3. Context of mining local procurement in the DRC

The section below provides an overview of key aspects of the status quo in DRC that, based on the project team's experience, are fundamental to shaping the possibilities and challenges in terms of mining local procurement.

3.1 Policy, legislative, and regulatory context

The sub-sections below address the complex policy legislative and regulatory context in DRC in terms of the overall economy, the mining sector and local procurement.

GENERAL POLICY / LEGISLATIVE CONTEXT

The DRC has two important planning documents that are relevant: **I** National Strategic Economic and Social Development Plan 2019 – 2023, and **II** National Entrepreneurship Development Programme. The National Strategic Plan for Economic and Social Development 2019 – 2023 (PNSD) was approved by the government at the Council of Ministers on 27 December 2020. This plan outlines the various steps or trajectory to be followed by the Democratic Republic of Congo to ascend to the developed country stage. This trajectory includes three steps, namely: first attaining the status of "middle-income country", then that of emerging country, and then that of "Developed Country". A 2018 presentation from the Department of Planning estimated the cost of the five-year strategic plan at more than US$57.58 billion (Government of the Democratic Republic of Congo, 2019.; Bokeli, 2018).

Local procurement in the mining sector is part of a broader drive for local subcontracting embodied in the "2017 Subcontracting Act", which according to its own terms, aims to "promote SMEs". It is thus meant to contribute to the overall objective of developing locally owned SMEs and helping them overcome the significant challenges in the DRC's business environment.

A national SME development strategy has been in place since 2015, as part of structural reforms to make the private sector "the engine of growth." One key specific objective also appears to be supporting manufacturing. These various reforms are implemented including through government programmes supported by international donors. In September 2020, the Ministry of Entrepreneurship and SMEs adopted the Congo National Entrepreneurship Development Programme. This programme advocates systemic intervention on four levels:

I The meta level, which refers to the cultural context in general, including attitudes and behaviours towards entrepreneurship, in order to promote a culture of entrepreneurship, and entrepreneurship as a career option for young people

II The macro level, which relates to the development and implementation of policies and strategies favourable to entrepreneurship, including the emergence of an environment conducive to business development

III The meso level, which includes institutions involved in entrepreneurship education and training, and support services, as well as financial services

VI The micro level, which is to support awareness of entrepreneurial opportunities that can directly stimulate the demand for support services for business creation and development

Various funds have been established to support this effort, in particular for young entrepreneurs.

DRC is a signatory to numerous multilateral and bilateral agreements impacting on trade and investment, which may impact on equal treatment of international suppliers or trade partners with local businesses. DRC ratified the African Continental Free Trade Area, which officially came into force on Friday, January 1, 2021. This foresees the abolition of 90 % customs taxes on goods and services within 15 years. The DRC is also a member of the World Trade Organisation, which can place some limitations on differentiation based on company ownership in regulation (e.g., in terms of Trade-related Investment Measures (World Trade Organisation, 2019)).

In addition to DRC legislation, some regional and international legislation may have an impact on the context. The UK Bribery Act, US Foreign Corrupt Practices Act, Section 1502 of the US Dodd–Frank Wall Street Reform Act (although this may be less enforced than in the past (Woody, 2019)), and the EU Conflict Minerals Regulation place significant corruption-avoidance and supply-chain due diligence obligations on companies. This may also play through to local purchasing patterns e.g. requirements for traceability of ownership or origin of goods; if suppliers cannot provide these records they may not be able to be part of mines supply chains. The International Conference on the Great Lakes Region (ICGLR) operates at the sub-regional level on traceability and the supply of merchantable mining products and has developed a regional certification mechanism for so-called conflict minerals. It has entered into discussions on responsible supply chains (with an emphasis on downstream supply chains to date (OECD, 2010)). The Extractive Industries Transparency Initiative, to which DRC has voluntarily adhered, is also placing increasing emphasis on reporting on economic impact.

MINING LEGISLATION AND REGULATION

In 2002, the DRC adopted a Mining Code that offered generous terms to investors to attract them to the DRC's post-conflict environment. Investment did increase in the following years. By 2015, DRC had become the largest copper producer in Africa and the largest cobalt producer in the world.

However, government revenues and local benefits did not rise to satisfactory or expected levels, and civil society as well as international institutions pointed out several flaws in the 2002 Mining Code. A formal government review of the code began in 2012 including consultations with companies, civil society organisations (CSOs) and other stakeholders. In 2015, the review was suspended, but in May 2017, a new DRC government has resumed it. In January 2018, the Revised Mining Code was approved by the Parliament, promulgated by the president of the Republic on 9 March and published in the Official Gazette on 28 March 2018 (Presidential Cabinet, 2018). In June 2018, implementing measures of the Revised Mining Code were adopted, closing the major legislative procedures of the mining sector reform. The main stated objectives in the Mining Code review (enhance the government's control over the sector, increase the state's revenues, etc.) do not relate directly to Local procurement.

In the Revised Mining Code, the article in subcontracting comes in Chapter V (Industrialisation of mining sector) and just after articles on localisation of mineral processing / transformation. This wider focus on value-adding and building local production capability does not seem to have been carried through to the definitions of local subcontractors. In addition to reducing the tax regime's attractiveness and repealing the 10-year stability clause (which in combination with the fiscal regime appears to have raised concerns for existing investors and hampered new investor interest), the revision reinforced local procurement requirements in the mining legal framework, by confirming that subcontracting activities in the mining sector are subject to the Subcontracting Act (see Section below), which establishes the rules applicable to subcontracting in the private sector. The Subcontracting Act passed in 2017 was meant to apply to the mining sector, and provisions on mining procurement broadly similar to those in the Subcontracting Act had been taken through Ministerial decrees on mining subcontracting in 2013 – 2014. By incorporating this, the Revised Mining Code gives more legal weight, and clearly subjects mining procurement to the enforcement measures of the Subcontracting Act.

However, several provisions related to local procurement can still be found in the mining legislation itself, leading to some complexity and potential confusion. For example, the mining Code's definition of "subcontractor" appears narrower than that of the Subcontracting Act. Mining legislation appears to put fewer restrictions on direct import of equipment and machinery, as the Mining Code provides duties exemptions for the importing of "moveable goods, equipment, machinery and inputs". The 2018 mining regulations mention (article 512) that the mining list request should be accompanied by the justification of need to import in terms of not finding similar goods in the country in equivalent quantity, quality, price, and delivery conditions. Article 547 on exchange control also states that the Central Bank and Congolese Control Agency shall control competitiveness of imported goods relative to local market (but that import will not be conditional upon justifying price and need; these will be controlled ex-post). It is not clear yet based on publicly available information how this is implemented.

The June 2018 mining regulations also include some specific provisions relating to geological / research subcontractors, environmental bureaux, and requirements to include details of subcontractors in certain reports / submissions. This appears to cause some inconsistencies with the Subcontracting Act; for example, the regulations specify that:

- Titleholders can subcontract research / feasibility and must respect the Subcontracting law, but at the same time, foreign geological bureaux must register a local entity or else partner with local bureaux.
- Foreign environmental bureaux do not have to have a permanent local representation.

Given limitations to DRC infrastructure, mining operators generally participate in local development, and funding of local infrastructure and facilities such as roads, hospitals and schools. While the tax provisions received most of the focus, the Revised Mining Code contains many innovations in terms of transparency,

TABLE 2: EXCERPT OF 2018 REVISION OF MINING CODE (NON-OFFICIAL TRANSLATION)

	Comments
TITLE III: MINING RIGHTS **CHAPTER V: INDUSTRIALISATION OF THE MINING SECTOR** Article 108: The subcontracting activities determined in article 1, point 48 of this Code are carried out in accordance with law N° 17/001 of February 08, 2017 determining the rules applicable to sub-contracting in the private sector. **I**	• **I** Refers to the "Subcontracting Act" for rules applicable to mining subcontractors
TITLE IX: ON THE CUSTOMS AND TAX REGIME AND NON-TAX REVENUES APPLICABLE TO MINING ACTIVITIES **CHAPTER I: GENERAL PROVISIONS** Article 219: Targeted taxpayers shall also enjoy the benefit of the entire tax, customs, and non-tax revenue regime, provided for in this Code: a. Subcontractors in accordance with law N° 17/001 of 08 February 2017 determining the rules applicable to sub-contracting in the private sector. **II**	• **II** Extends the preferential mining customs and tax regime to subcontractors aligned with "Subcontracting Act"

citizen participation, and also revenue sharing with subnational governments, contribution to community development projects, and a Mining Fund for future generations. Some of these provisions could be relevant for local procurement, but further regulations were necessary to clarify them and pave the way for implementation.

The gap between the new laws and their implementation may be accentuated by the need to develop province-level capacity with the increase in the number of provinces effective 2015 (from 11 to 26).

SPECIFIC REGULATIONS ON LOCAL PROCUREMENT

Whereas the Subcontracting Act is the main reference today, there were previous regulatory texts attempting to "localise" subcontracting in the mining sector.

The first initiatives to regulate local procurement in the DRC mining sector included the Ministerial "Decree N°0144 / CAB.MIN / MINES / 01 / 2013 of 17 April 2013 relating to subcontracting of direct, ancillary and auxiliary activities of mining companies". The decree permitted mining companies to subcontract their ancillary and auxiliary activities and part of their direct (core mining) activities, only to "Congolese companies" in good legal and tax standing. "Congolese companies" are defined as those with headquarters in DRC, a majority of their share capital in the hands of Congolese natural or legal persons, governance bodies with a majority Congolese individuals, and large majority of Congolese nationals among their staff.

Following this Decree, a Joint Decree by the Ministry of Mines and the Ministry of Industry and SMEs was made in February 2014 (Joint Decree n°0027 / CAB.MIN / MINES / 01 / 2014 of 11 February 2014) relating to the "supply and procurement services to mining companies in DRC". The Joint Decree gave priority to "Congolese SMEs" for procurement of mines, specifically targeting the supply of goods and consumables such as lime and related products and cement produced by local industries and SME, and authorised import only in the case that the demand by the mining companies in DRC exceeds local production capacity. The Joint Decree further established that DRC competition laws applied, and that companies eligible to provide services and supplies are only those in good legal standing.

Whereas local procurement requirements were already imposed in the mining sector, the Subcontracting Act (Law N°17 / 001 of 8 February 2017 determining the rules applicable to sub-contracting in the private sector), promulgated in March 2018, and its implementation decree (Joint Decree by the Prime Minister and the Minister of SME N°18 / 019 of 24 May 2018 relating to implementation of the Law N°17 / 001) reinforce and broaden the requirements to all sectors.

The Subcontracting Act (see Appendix A for key selected extracts), which application to mining companies is expressly reaffirmed in the Revised Mining Code of 2018, notably provides that:

- Activities can only be subcontracted to "companies with Congolese capital promoted by Congolese nationals", defined as in the 2013 Ministerial Decree, as companies headquartered in DRC, with a majority of their share capital held by Congolese natural or legal persons, governance bodies with a majority of Congolese nationals, and staff essentially made up of Congolese nationals; (see also definitions section)
- An exception is made for the case of proven unavailability or inaccessibility of expertise, in which case it can be done by a foreign company for less than 6 months, beyond which the foreign company must register locally;
- Tender must be done for subcontracts exceeding 100 million Congolese francs CDF (~50k USD at today's rates);
- Companies may not subcontract more than 40 % of the value of a contract;
- Subcontractors are to be paid a 30 % advance and the balance within 30 days of contract completion (with a possible extension for specificity of the contract);
- Companies established in DRC must disclose annually their turnover with subcontractors and the list of those, and put in place a policy of training to enable Congolese nationals to acquire the technical know-how and the qualifications necessary to accomplish certain activities;

- Sanctions include monetary penalties (up to 150 million CDF – about $75k), nullity of the subcontracting contract, and an administrative measure of temporary closure;

- The Ministry of SME monitors subcontracting at the national level, through a structure to be put in place; provincial and local authorities also have a role in control of the Law;

- A 12-month transitional period was provided for companies to comply with the new Law.

To monitor the Subcontracting Act, the Subcontracting Regulatory Authority (ARSP) was created in October 2019, with a mission to:

- Identify and approve companies eligible for subcontracting according to their fields of activity

- Enforce the rules governing subcontracting

- Promote small and medium-sized enterprises with a majority Congolese capital

- Bring Congolese companies from the informal sector to the formal sector

- Ensure compliance with the conditions required in the conclusion of subcontracts

- Design, ensure the implementation and monitoring-evaluation of the national policy as well as sectoral policies of local content

The intention of the Subcontracting Act is to require mining companies to work only with locally registered Congolese-majority-owned suppliers of services, and potentially also goods. However, many potential shortcomings can be raised about the framework:

- The slightly different definition of subcontracting compared to the Revised Mining Code, leaving some questions open to confusion or interpretation. For example whether the procurement of goods (vs. services) is included, and whether the hiring of primary contractors is subject to the rules (i.e., are primary contractors required to be "Congolese companies"; if so, is a mining company limited to subcontracting 40% of its activity).

- Enforcement is divided across the SME Ministry, and various provincial and local authorities, with limited details. The recently appointed Head of the Authority has stated that implementation will be gradual but will ultimately cover all private companies; but the means allocated to the Authority to monitor the proper application of the Subcontracting Act are uncertain.

- Specific requirements or processes to prove unavailability or inaccessibility of local expertise (thus allowing the hiring of a foreign supplier) are not clearly defined in the law or in the regulation.

- Given that many mining companies expect to have difficulty finding local expertise in the highly technical mining subsectors, the very exception permitting the registration of foreign suppliers could provide a lasting loophole as it is not clear how that exception would be gradually reduced.

- Issues such as payment terms and recourse may create a dissonance with company policies on payment terms and performance requirements / guarantees.

The above constraints have hindered the implementation of the subcontracting law. Similar to the 2013 and 2014 decrees, the subcontracting law was not implemented as expected, even beyond the legislated 12-month transitional period due to numerous constraints. First, accompanying regulations were only adopted in May 2018, one year and three months after the law was introduced. Moreover, the shortcomings of the law itself and operational constraints have significantly undermined the applicability of the law. The legal and institutional shortcomings particularly concerned Articles 6, 21 and 31 relating to the exclusivity of subcontracting to Congolese companies, the control and transitional period of 12 months, as well as Article 12 which sets clear obligation for buyers (in this case mining companies) to build Congolese subcontractors capacities.

However, apart from the shortcomings of the legal framework, technical and operational constraints have as well undermined the application of the law as the low willingness of many mining companies to implement the law. Hence, these constraints have made the application of the law subject to negotiations between the Federation of Enterprises – supported by the European Union and other foreign investors' home countries – and the government. Article 18 of the decree establishing and organising the Private Sector Subcontracting Regulatory Authority (ARSP) was one of the points of difference between the two parties; it provided for a 5 % levy on each subcontracting market for the benefit of the ARSP. Finally, these negotiations resulted in a memorandum of understanding revising the scope of the law on subcontracting, the downward revision of the levy allocated to the Private Subcontracting Regulatory Authority to 1.5 %, and other revisions (Government of the Democratic Republic of Congo, 2020).

These compromises led to the government issuing three ministerial decrees in January 2021:

I Ministerial decree No.01 / CAB / MIN / CMPMEA/2021 of 06 January 2021 defines the modalities of the forced recovery of resources due to the Private Sector Outsourcing Regulatory Authority (Government of the Democratic Republic of Congo, 2021a)

II Ministerial Order No.02 / CAB / MIN / CMPMEA / 2021 of the 6 January 2021 setting out the conditions and procedures for identifying and registering companies eligible for the exercise of subcontracting activities in the private sector (Government of the Democratic Republic of Congo, 2021b)

III Ministerial Order No. 03 / CAB / MIN / CMPMEA / 2021 of 06 January 2021 setting out the management procedures for derogations from the provisions of Article 6 of the Private Sector Subcontract Act (Government of the Democratic Republic of Congo, 2021c)

The shortcomings in the regulatory framework justified the adoption of the series of decrees on enforcement measures including the decree on derogations from the application of Article 6 relating to the exclusivity of subcontracting to Congolese and Congolese-owned companies; however, the decree seems to have introduced elements of discretion in that derogation process.

To the project team's knowledge, there is not a clear and transparent process to assess locally available capacity to supply to mining companies. Only recently has Ministerial Order No.02 / CAB / MIN / CMPMEA / 2021 of the 6 January 2021 set out conditions and processes for the identification and registering with the ARSP. Although a registry is available on the ARSP's website, the law of Subcontracting focuses only on "Congolese" control of capital, and so information on capacity is not available. Systematic studies and assessments of the subcontracting sector are therefore needed to quantify and qualify both demand and supply, but also to identify the gap in capacity and financial capacity of local businesses with the aim of achieving the development of specific strategies (or sub-strategies) by category of services or goods required.

POTENTIAL IMPLICATIONS OF THE REGULATORY CONTEXT

Overall, the local procurement framework in DRC does not appear to fully integrate with a broader industrial policy to increase the capacity, availability, or accessibility of Congolese actors and facilitate their inclusion and advancement in global mining value chains (Radley, 2020).

With the subcontracting definition focused on registration and capital ownership (vs. value addition), some foreign suppliers were already planning to use local agents and distributors. Some commentators have also pointed out the risk of creation of shell companies whose beneficiaries would be Congolese intermediaries with no particular competence other than political connectedness (which would also create issues in terms of international provisions relating to limitations of doing business with politically exposed persons).

The levy to support the Private Sector Subcontracting Regulatory Authority (ARSP) may create some perverse incentives for both buyers and the regulatory authority. The overall emphasis on MSMEs may miss the opportunities for larger-scale investments and partnerships that can contribute to meaningful diversification and competitiveness of the DRC economy. The application of the subcontracting law and regulations requires effective enforcement from an appropriate institutional framework.

Prior to the establishment of the Private Sector Subcontracting Regulatory Authority, there was no regulator despite the publication of the law of Subcontracting since February 2017. Indeed, section 21 of the Act entrusts a mission of control to national, provincial and local authorities; but that framework was neither strategic nor sound in facilitating the implementation of a highly technical and advanced legislation, strategic for the development of the DRC. That framework did not function as intended, as it involved many people and suffered from a lack of coordination.

The Regulatory Authority is supposed to oversee implementation of the Law. The regulator is young, as it was not created until December 2018. Its mission is to enforce the law in the strictest way. However, its deployment has slowed down somewhat with the handover of power that took place at the helm of the country in January 2019.

More widely, technical and operational constraints have compounded the legal and institutional constraints. Most Congolese SMEs do not have the technical, logistical or financial capacity to meet the capacity and quality requirements of mining companies. No concrete action has been taken by the government to develop competitive Congolese subcontractors, instil the culture of entrepreneurship or facilitate the access of Congolese SMEs to the very delicate financial market in the DRC. Finally, the ambition to develop Congolese subcontractors needs to address the DRC's challenging business climate. The institutional coordination for this supplier development and supplier operating environment does not appear to be clearly articulated, is not the role of the regulator, and will be quite specialist compared to overall SME and youth entrepreneurship development efforts.

Note: There are some inconsistencies between the Mining Code and Subcontracting Law (for example which law takes precedence over requirements for different types of suppliers) that would need further investigation to understand fully.

3.2 Definitions relevant to local procurement

The most relevant definitions are as follows:

Subcontracting [in terms of the Subcontracting Act]: Activity or operation carried out by a *subcontractor, on behalf of a main company*, and which contributes to the performance of the main activity of that company, or to the performance of one or more services from a business contract of the main company. The Subcontracting Act further states that subcontracting is as "a service contract, consensual, onerous and written." In civil law, a service contract is an agreement entered into by the contractor and the contractor's client to perform an agreed service, in return for remuneration. Commercial law which is common to OHADA countries does not define a "service contract".

Subcontractor or Subcontracting Company [in terms of the Subcontracting Act]: Natural or legal person whose activity, on a regular, temporary or occasional basis, is linked, by a contract or an agreement, to the performance of the main activity or the performance of a business contract of a main company.

Subcontractor [in terms of the Revised Mining Code]: Any legal person formed under Congolese law with Congolese capital procuring equipment or carrying out work and / or provision of services necessary on behalf of the holder in the context of its mining activities related to its mining title. This particularly includes the construction of industrial, administrative, socio-cultural and other infrastructure, necessary for the project as well as any other services directly related to the mining project.

Company with Congolese capital promoted by Congolese nationals [in terms of the Subcontractor Act implementation Decree], previously referred to as just "Congolese company" [in terms of the Ministerial Decree 2013]: a company, which meets the following criteria:

1. The registered office is located in the Democratic Republic of Congo;
2. The majority of the share capital is held by natural or legal persons of Congolese nationality;
3. The management bodies are mainly administered by Congolese natural persons;

4. The staff is mainly made up of individuals of Congolese nationality,
   - Elements of that definition are generally easily observable in the business law (i.e. OHADA: registered office, share capital, management bodies will be in the company's articles of incorporation and filed with the trade registry according to OHADA requirements)
   - Congolese national: as per the provisions of Law N° 16 / 008 of 15 July 2016 amending and completing Law N°87-010 of 1st August 1987 relating to Family Code

Small and medium-sized enterprise [in terms of the August 2009 SME Charter]: Any economic unit owned by one or more individuals or corporations that have the following characteristics:

- Number of permanent jobs from 1 to 200 people;
- Tax-free sales between US$ 1 and 400,000;
- Accounting according to the accounting system in force in the DRC;
- Investment value for the company's operations of $350,000 or less;
- A mode of management that is concentrated or open to decentralisation.

In this category fall for example: micro-business or very small business, small business and medium-sized business that can be considered as individual or member companies.

Small and medium-sized enterprise [in terms of the Subcontractor Act implementation Decree]: Any economic entity considered as such by the tax, customs and other administrations such as the General Directorate of Taxes, the Office for the Promotion of Congolese Small and Medium Enterprises, the Agency for investment promotion, the Directorate General of Customs and Excise, the Industry Promotion Fund.

Implications of these definitions:
The analysis of the definitions above has some implications for mining local procurement:

- Whilst in practice the subcontracting definitions in both the Subcontracting Law and the Mining Code appear to be interpreted to include inputs and goods, this is somewhat ambiguous as the language refers to provision of equipment, works and services. The choice of subcontractor rather than supplier may have implications for second and third tier suppliers to mines.
- While not explicitly stated, the emphasis seems to be on supporting SMEs rather than large local companies.

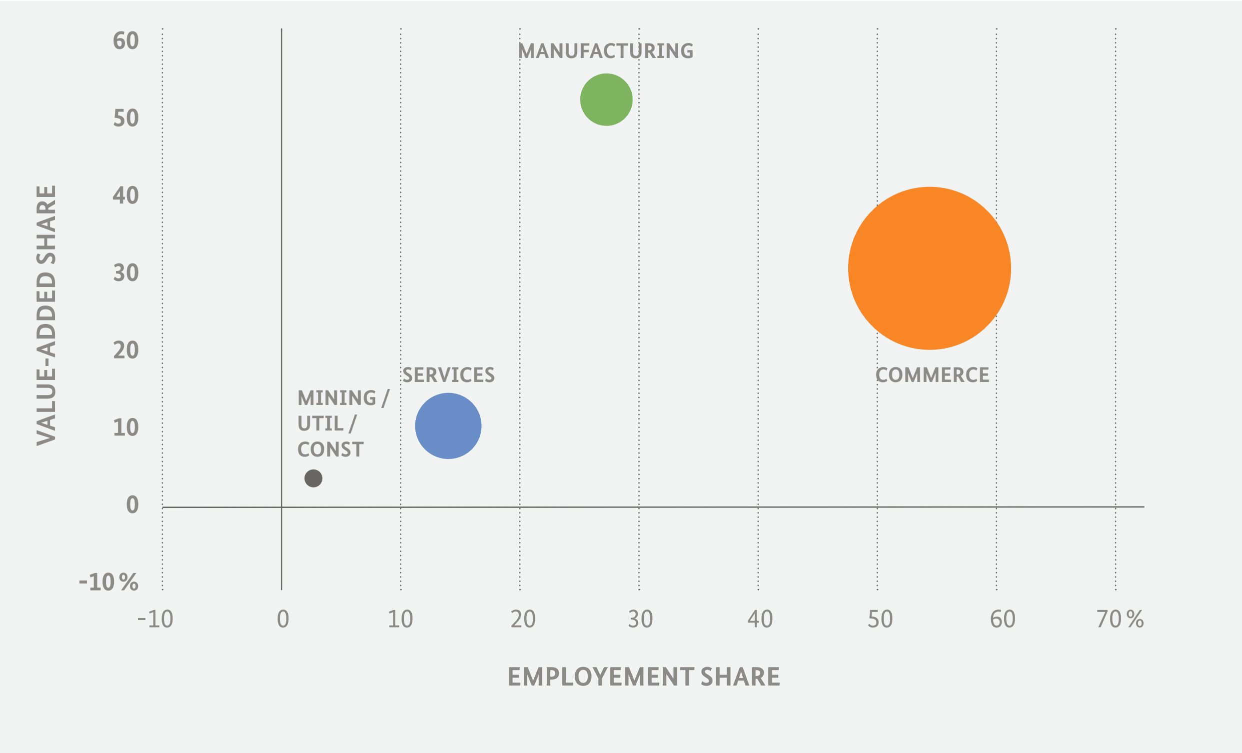
It is not clear if Congolese capital mentioned in the Mining Code is also majority capital as per the Subcontracting Law or 100 % Congolese capital.

3.3 Economic context

Primary sector activities (agriculture and extractives) account for about 43 % of DRC's GDP, the remainder comprises of services (35 %) and industrial (22 %) sectors (Central Bank of Congo, 2015). However, industry in the DRC is predominantly composed of agro-processing activities (70 % of industry) and lacks other higher-value-added manufacturing activities (Shara & Redqueen, 2019). Agriculture, and agroprocessing, is also the main employer – 70 % of all actively employed people are in the agriculture sector – although much of it is informal employment. Informality is also ubiquitous in the rest of the economy – nearly 90 % of employed individuals work informally. Overall, the informal economy represents 53 % of GDP (INS, 2014).

The high level of informality makes it difficult for the majority of businesses or individuals to access mining procurement, given the typical requirements in terms of mining procurement to have a registered business, quality, health and safety systems, submission of formal quotations, etc. (although exceptions do sometimes exist for some community-based procurement). Over three quarters of the non-farm, formal businesses operate in commerce (essentially some form of retail). The relatively high share of firms in the commercial sector may be an adaptation to a risky and difficult business climate. Entry and exit are comparatively low cost in commerce, which allows firms to exit easily if business conditions turn negative (Aterido, 2017).

Figure 3 **Sectoral composition of firms, 2012**
(Source: Aterido, 2017)



The private sector in the DRC consists largely of micro and small businesses. Over 90% of firms employ fewer than 10 workers, and almost half of the firms are less than five years old (Shara & Redqueen, 2019). The relatively high share of firms that are young indicates few problems with entry, but problems with growth (Aterido, 2017). The combination of lack of scale (coupled with lower financial capability) and relatively low experience makes it difficult for these firms to access mining value chains – which require certainty and consistency in the provision of goods. The scale of mining procurement needs may also be beyond what most small businesses can offer.

Tertiary sectors include retail and wholesale sales, banking, transport and communication components. Micro commerce dominates the retail sector; the banking sector is small in terms of capitalisation, but diverse in terms of ownership; and telecommunications is highly competitive and expanding into electronic banking (US Embassy DRC, 2019). The transport and logistics sector struggles to perform (see Figure 4), largely due to poor infrastructure and excessive bureaucracy. The DRC has also opened up its insurance sector after years of delay.

The main constraints to private sector development, based on the 2013 World Bank Enterprise Survey in the DRC, are:

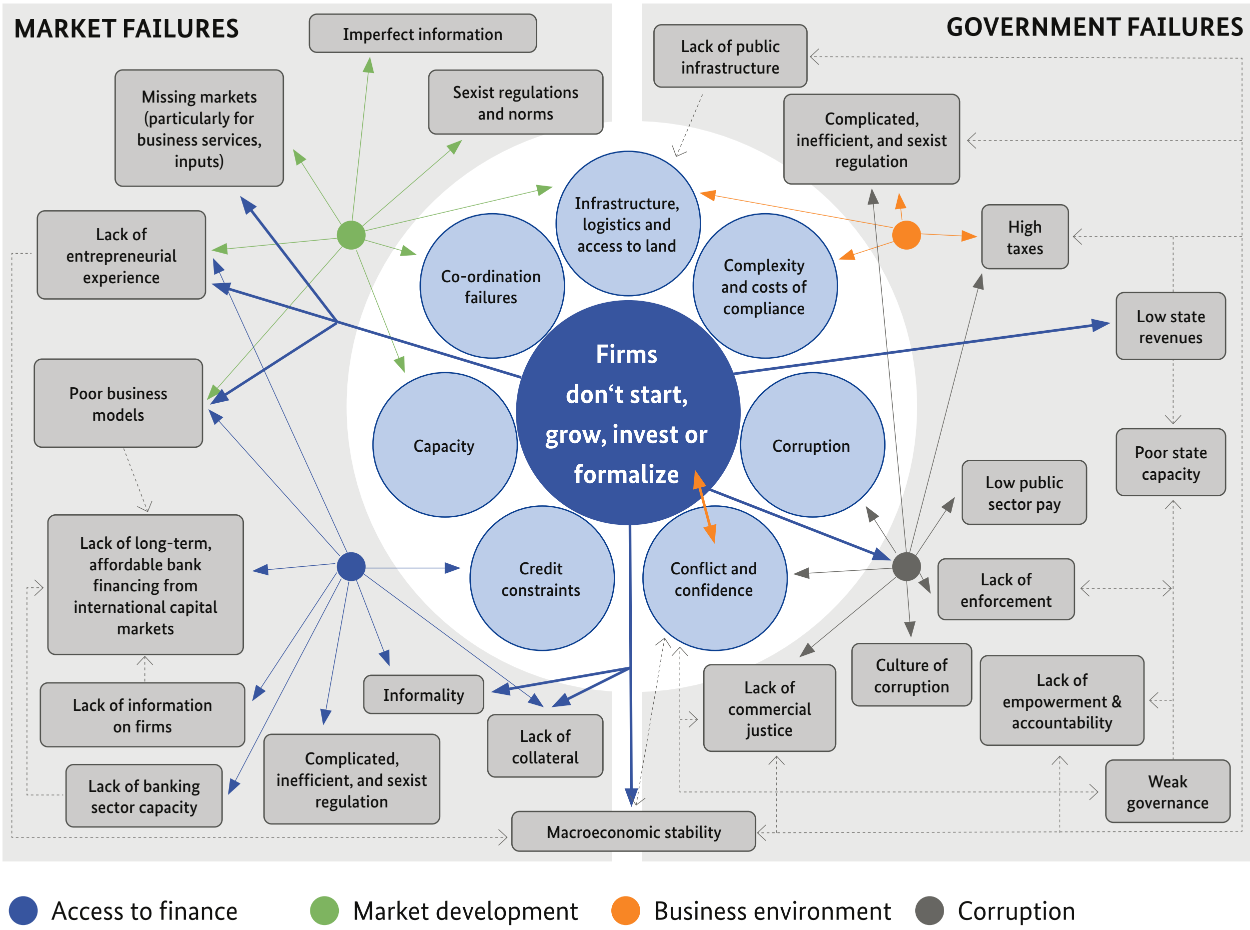
- inconsistent energy availability,
- lack of access to credit and financing,
- political instability,
- high informality,
- corruption,
- deficient administrative services, and
- poor infrastructure for production and transport resulting in a high-cost base.

These constraints are substantial. The World Bank's Doing Business report ranked the DRC 183 out of 190 (World Bank, 2020). Although "starting a business" is relatively easy (rank 54th), getting electricity (177th), getting credit (152nd), protecting minority investors (176th), enforcing contracts (178th), and trading across borders (187th) means that businesses in DRC face considerable constraints. Figure 4 shows how the multiple constraints – in terms of market and government failures – interact and lead to an environment where firms do not start, grow, or formalise. This, in turn, makes it difficult for mines (and other role players) to build any meaningful local supply base that can access the mining value chain.

The manufacturing sector in DRC is quite small relative to agriculture in terms of employment and output share. The manufacturing production base consists of several breweries and bottlers and limited textile production firms (US Embassy DRC, 2019). Based on current estimates, manufacturing output—including food products and beverages, tobacco, textiles, footwear, plastics, wood products and metal product—accounts for about 7 percent of GDP, which is low even by regional standards (The World Bank, 2018a). Most factories are outdated and many have suspended operations for various reasons including high costs of electricity, administrative harassment, lack of spare parts, inputs, and skilled personnel.

Industrial firms also face obstacles to access inputs. Given the low industrial base, firms often need to import inputs, but this generates additional supply chain challenges for SMEs such as currency risk, long lead times and reduced supply chain control. For example, in 2017 inflation rose approximately 47 % while the Congolese Franc depreciated by a third against the dollar, making imports much more costly (Shara & Redqueen, 2019). Regulatory constraints in cross-border trading result in additional – and substantial – burdens on firms. It takes approximately 174 hours in documentary compliance plus a further 336 hours in border compliance to import a container, compared to an OECD average of 3 hours and 9 hours respectively (The World Bank, 2020). Due to difficulties in accessing sulphuric acid, the Kamoto Copper Company – operated by Glencore's Katanga Mining subsidiary in a joint venture with Gécamines – recently commissioned a new acid plant in order to reduce its dependency on imported sulfuric acid, which had held production back.

Figure 4 **Barriers to growth and productivity enhancement of the MSMEs in the DRC**
(Source: World Bank, 2018)



There are few large construction firms operating in the DRC. Firms supplying the mining industry may be classed under 'Commerce', while others could fall under manufacturing. Firms supplying the mines consist of locally owned suppliers, as well as local subsidiaries of multinational or foreign companies, and importers.[2]

The publicly available ARSP subcontractor register of 370 companies cannot be filtered by sector, it is therefore difficult to accurately assess how many of them are actively supplying the mining sector, although many of the companies on the register are based in Lubumbashi which could potentially indicate that they link into copper-cobalt supply chains. Based on the project team's knowledge, examples of local suppliers include:

- Sotrafer SARL, based in Lubumbashi, manufactures TMT steel bars, Oxygen and Acetylene gas since 2008
- Kanu Equipment Congo is an example of a local importer, distributing products from major international brands such as: Bell Equipment; Liebherr; Case IH; and Wirtgen Group
- Epiroc Congo is part of a large mining-supplier group with a global presence, offering mining products (e.g., drilling rigs and tools), services (repairs), and IT (automation)
- Panaco, which has been based in DRC since 1981, specialises in supply and installation of electricity
- Downstream firms include Somika S.A.R.L, established in 2001 in Lubumbashi as a mining and mineral processing company, producing high-grade copper and cobalt products
- The Somika group also contains Mining Energy Services (MES) – providing turn-key energy solutions and Mining Chemical Suppliers (MCS) – supplying industrial chemicals.

Parallel to regulatory and institutional developments, the Chamber of Mines and some mining companies have undertaken initiatives individually to develop local procurement. The project team is aware of some cases where new supply capacity has been developed e.g., grinding media and sulphuric acid in Haut-Katanga province, which seems to have had clear operational reasons over and above supporting the principle of local procurement (e.g. improved turnaround time and reliability of supply).

Spatial economic structure

There are three main economic hubs in the DRC, two of which are linked to mining regions (U.S. Embassies abroad, 2017):

- **Kinshasa and Kongo Central provinces**: Kinshasa, as DRC's vibrant economic hub, has a presence of most foreign companies operating in the DRC, and Congolese businesses tend to have their corporate headquarters in the city.
- **Haut-Katanga and Lualaba provinces**: The Southern economic hub includes Lubumbashi, Congo's second largest city, located near some of the world's largest copper deposits with several domestic and international suppliers located in the vicinity.
- **North Kivu, South Kivu, Ituri, Bas-Uele, Haut-Uele, and Tshopo provinces**: These areas, covering gold mines and the river port city of Kisangani to the west, is the third hub. However, the area faces chronic instability from armed conflict. Despite difficult conditions, the region is home to a number of industrial and artisanal mines extracting, gold, tin, tantalum, and diamonds, as well as an agricultural sector. There are electricity supply companies located in these areas.[3]

Logistical access between these hubs can be slow and costly for suppliers, particularly in comparison to suppliers from close neighbours such as Zambia in the South or Uganda and Rwanda in the East. The distance between Kinshasa and Lubumbashi is over 2,000km, and there are no roads that connect Kinshasa directly to Lubumbashi, Lubumbashi to Kivu or to Bas-Uele, Haut-Uele and Tshopo. Bas-Uele where Kibali operates is very isolated from Kinshasa and other hubs. Furthermore, there are only regular flights between Kinshasa and Lubumbashi, and to a lesser degree between Kinshasa and Goma.

[2] Including firms that seem to play off being local suppliers such as Mbolela Impex advertising that "You may sell via us"

[3] For example SOCODEE, a power and water company (http://www.socodee.com/index.php/a-propos-de-socodee/objectifs)

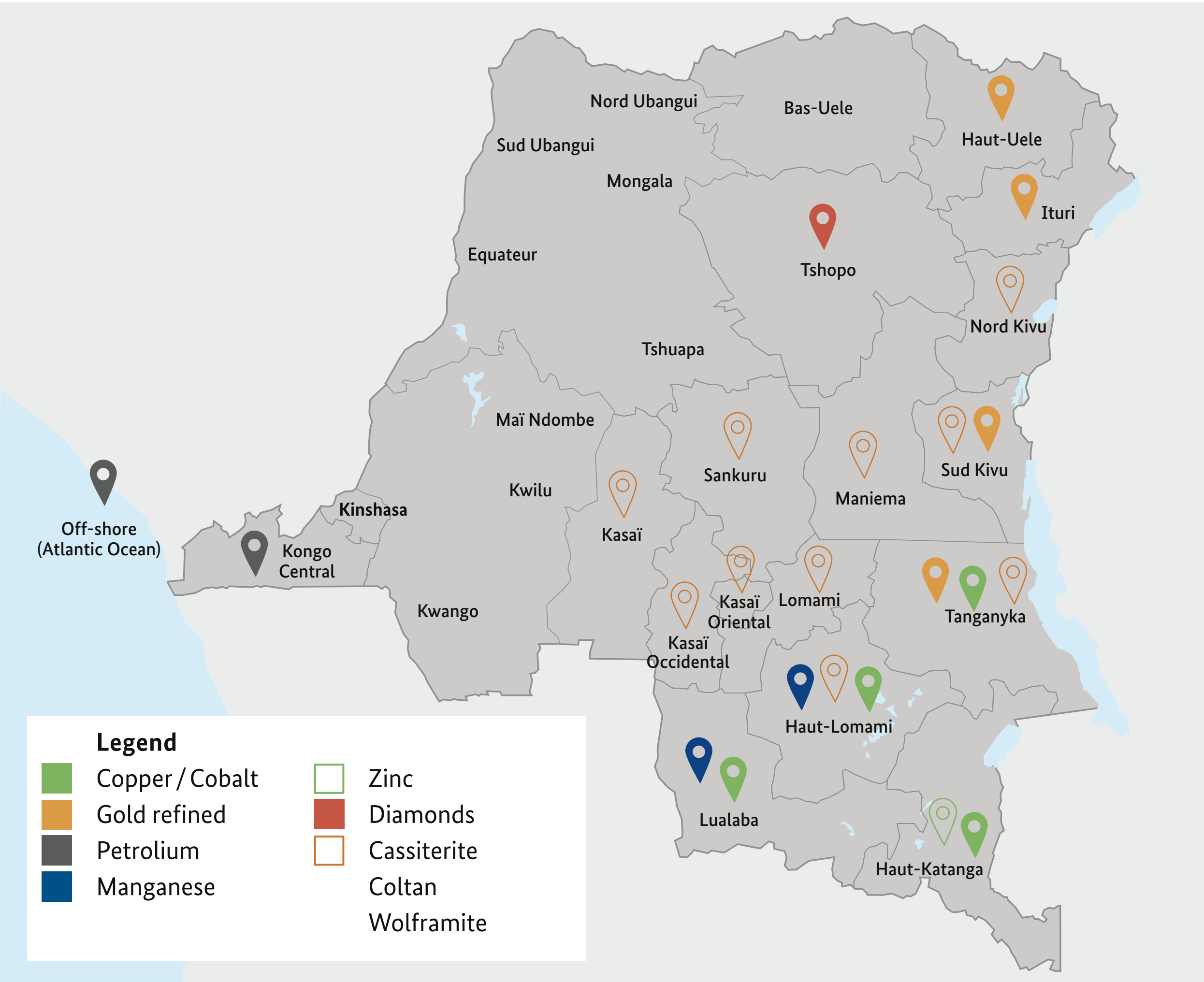
3.4 Mining and procurement demand context

The mining activity and project pipeline create the underlying market for local content in terms of procurement (as well as more widely in terms of employment, infrastructure contributions, ownership etc). The primary driver of the potential for local content is the scale and duration of mining projects. Delays in projects commencing operations, along with mines being put into care and maintenance, result in diminished scale of the market. Short or uncertain mine lives can reduce the likelihood of local businesses or joint ventures investing to upgrade in order to meet mining industry requirements.

Mining has played an important role in the economy of the DRC since the early 1910s. Recently, mining activity constitutes about 17 % of GDP, 11 % of employment and 98 % of all exports (EITI, 2021b). It has been the main driver of overall GDP growth rates since 2009 (real GDP growth averaged 7.8 % between 2009 and 2015 but has slowed since). New investments in the mining sector led to a significant increase in production from 2010 onwards, supported by a stabilisation of the political and security situation which followed the election in 2006 (IMF, 2015). This allowed the revival of commercial and agricultural activities. It also facilitated the deployment of the central administration to the provinces, and the resumption of provision of public services (IMF, 2015). Finally, it created the enabling environment for the private sector to invest.

The DRC holds extensive mineral wealth in its subsoil. Over 1,100 substances have been identified, 22 of which are at present economically usable (The World Bank, 2008). The DRC has some of the largest deposits

Figure 5 Minerals mined by Province
(Source: EITI, 2019)



of non-ferrous metals in the world. It has about 3 % of the global copper reserves and 45 % of global cobalt reserves, 25 % of global diamond reserves, and the 10th highest gold reserves globally (KMPG, 2014).

Currently, the most important minerals for the DRC are:

- Cobalt – DRC is the largest producer in the world (about 100,000 metric tons in 2019 (Statista, 2021)) which is more than 70 % of the total global production
- Copper – 1,300,000 metric tons (4th largest producer at 6.5 % of global output in 2019 [Flanagan, 2020])
- Diamonds – 12m carats of industrial diamonds (3rd largest producer at 21 % in 2019 (Olson, 2020)) and 3m carats of gem (i.e., jewellery) diamonds (3.2 % of global output (Olson, 2020))
- Gold – 44 metric tons industrial production in in 2018, along with 15 tons of informal ASM gold production per year (20th largest producer) (Goldhub, 2020)

DRC also produced the following minerals in smaller quantities in 2018 (Reichi, 2018):

- Iron – 10,800 metric tons (less than 0.1 % of global production)
- Tin – 8,950 metric tons (about 3 % of global production)
- Manganese – 7,440 metric tons (about 0.4 % of global production)
- Zinc – 1,047 metric tons (less than 0.1 % of global production)
- Tantalum – 644 metric tons (largest global producer at 36 % share)

IMPACT OF COVID-19

The full impact of Covid-19 has not yet been clear until April 2021. However, it did the supply of essential inputs in 2020. The medium-term impact on commodity prices remains to be seen. (Baffes & Nagle, 2020). Companies have also responded with their own measures:

- Katanga Mining Limited demobilised non-essential work activities towards the end of Q1 2020, which will impact the timing of the commissioning of various major capital expenditures
- Chemaf shut its Usoke copper-cobalt processing plant
- Ivanhoe suspended operations at its Kipushi copper mine project

Miners faced further difficulties as restrictions of movements in countries through which Congo transports its metals may cause force majeure declarations. For example, Zambia has ordered all returning residents and foreigners to undergo a 14-day quarantine period in a government facility at their own expense (III de la Paz, 2020). These orders affect the transport of metals from Congo as truck drivers are forced to undergo quarantine upon arrival in Zambia.

The end of pandemic restrictions facilitated a return to normal operations at mine sites. Some mines had confined workers on site at the start of the pandemic lockdown, a practice that drew criticism from civil society actors. In July, the labour minister gave companies one month to end this practice (McKay, 2020).

The pandemic appears to have affected DRC's mining sector less severely than originally anticipated. Copper production defied pandemic-related forecasts of a drop in production, with demand boosted by China's economic recovery. According to the DRC central bank, mining companies produced 1,041,445 tons of copper and 51,235 tons of cobalt between January and August 2020, both higher volumes than recorded for the same period in 2019. Copper production was up by over 13 percent (Central Bank of Congo, 2020).

- Niobium – 607 metric tons (about 0.7 % of global production) Note: this is not sold as niobium but included in the tantalum concentrates

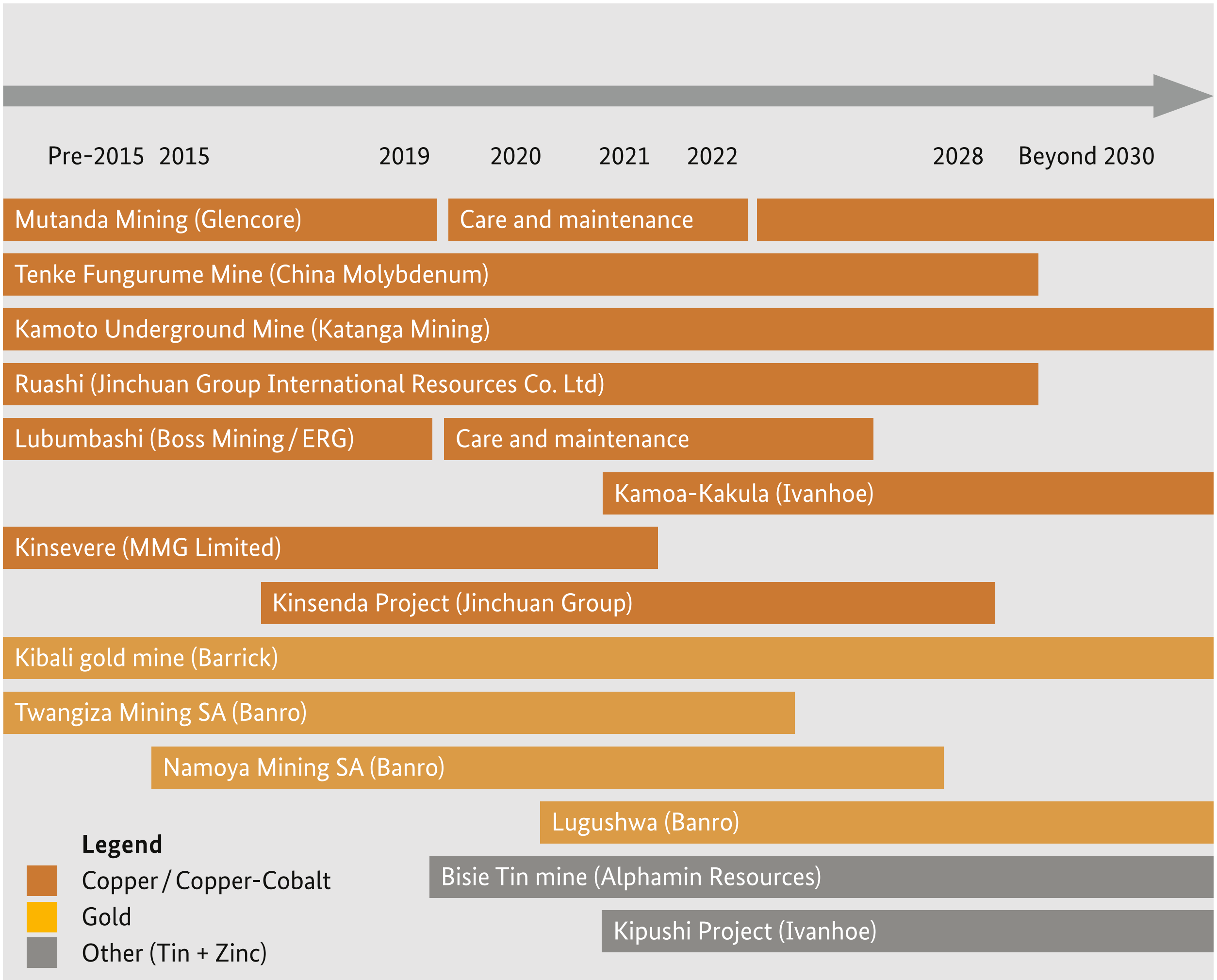
- Tungsten – 160 metric tons (about 0.2 % of global production)

Figure 5 shows the type of mineral mined in each province. Note this also includes artisanal and small-scale mining (ASM) activities.

The BGR LION model shows a total operational procurement spend estimate for DRC copper-cobalt industrial mines of about USD 4.5 billion for 2019 (note that in time there is a possibility to extend the model to other commodities, in particular gold). The categories with the highest procurement demand in the mining industry are Electricity, Spare parts and OPEX equipment, Fuel and Lubricants for mining and Sulphur / Sulphuric acid. For more information, the LION model can be accessed here.

Figure 6 **Project pipeline for major mines within DRC**
(Source: Kaiser EDP analysis, 2020)

The major mines in operation, and those which are expected to start soon, are shown below (based on 2020 information):



3.5 Current levels of local procurement

A list of registered subcontractors is available online on the ARSP website, but information is not included on current local supply levels or growth in local procurement. The ministerial decree No. 02 / CAB / MIN / CMPMEA / 2021 of 06 January 2021 introduced the conditions and procedures for identifying and registering companies and introduced the maintenance of the register (Government of the Democratic Republic of Congo, 2021b). There are a total of 370 companies listed [4], which can be assumed to be locally owned companies based on the requirements for registration, however not all these companies are necessarily supplying to the mining sector.

The original requirement in the Law of Subcontracting to list all tenders on the ARSP was not implemented; in fact, it was removed by the regulatory revision following the government-private sector negotiations on the Law. This disaggregated information, and any information on the value of contracts and who has been awarded the contracts, is therefore not publicly available. However, it is understood that the mines are providing information to ARSP on a confidential basis.

Based on the project team's research and consultations, there has been no systematic follow-up and evaluation of the subcontracting law with respect to the provisions of mining regulations or the evaluation of the effectiveness of the provisions of the Private Sector Subcontracting Act as implemented in the mining sector (although there have been wider assessments from a legal perspective). If such assessments have taken place, they have not been made public. Based on the project team's experience in mining countries in Africa, it is likely that less than 10 % of mining goods and services are being procured from locally owned value-adding suppliers in DRC. However, ad hoc evaluation sessions are organised as part of a tripartite dialogue platform. It is in this context that the Katanga Sustainable Investment Consultation Framework (IDAK) and the Federation of Congo Enterprises co-organised a workshop to develop the 2020 – 2021 CSR and Local Content Commissions of the Chamber of Mines of the Federation of Congo Enterprises (Chamber of Mines DRC, 2020). The development of these plans went through an evaluation of the implementation of the local content provisions combining the provisions of the mining code and the subcontracting law. At the end of the workshop, stakeholders adopted an action plan. Overall, there have been virtually no studies or evaluations to measure the effectiveness of the provisions of mining legislation inherent in local content.

[4] As of March 15th 2021

4. Lessons learned from international experiences

The focus of this section is on international lessons from countries facing similar challenges to the DRC context presented in Section 3, as well as some aspirational examples. The points below provide a summary of DRC characteristics that have been used to assess comparators:

- **Nature of local procurement regulation and focus of definitions**
  Revised Mining Code and Subcontracting Law, with some potential clarity and alignment issues
- **Institutional context**
  Complex institutional environment, low history of enforcement / inconsistent enforcement, new regulatory and enforcement capability
- **Relationship between govt. & mining industry, implementation of local procurement**
  History of adversarial relationships between government and mining industry / lack of a strong partnership approach
- **Private sector operating environment, level of development of supplier base, risk and uncertainty**
  Very challenging private sector operating environment, high risk and uncertainty, conflict, gaps in infrastructure, limited manufacturing capabilities
- **Spatial patterns**
  Significant distances and infrastructure / logistics obstacles between supply capabilities in Kinshasa and the mining hubs, although some capabilities in the Lubumbashi hub
- **Mining and mineral profile and scale, industrial and ASM**
  Large scale of mining and massive mineral potential, diversity of minerals, high levels of artisanal and small-scale mining

Appendix B provides an assessment of a range of countries against these contextual considerations. The project team has focused on the following countries, which share some characteristics and provide lessons for DRC:

TABLE 3: SUMMARY OF COMPARABILITY OF BENCHMARK COUNTRIES WITH DRC CHARACTERISTICS

Country	
Mali	Some local legislation in place, but not well defined. Infrastructure constraints and high conflict levels. Shares Barrick (ex-Randgold) with DRC as an important investor.
Guinea	Low local capability / difficult operational environment, significant mining activities, some spatial challenges, lessons from recent local procurement efforts
Ghana	Moderately good operating environment, lessons to learn from significant efforts around local procurement and development of suppliers in specific product groupings
Canada	Strong institutions and supplier base, remoteness of northern mines. Require cooperation with First Nations. Some Canadian investors in DRC (e.g. Barrick, Banro, Ivanhoe)

For a wider benchmarking assessment, in particular of local procurement regulations and legislation across a broad range of countries, see the work of the GIZ (Warner, 2016) and Columbia Centre on Sustainable Development (CCSI, 2021). Additional international lessons are also available through the Extractives-led Local Economic Diversification Community of Practice (ELLED Framework, 2021; Tordo, 2021).

4.1 Mali

Significant investment occurred in gold mining in Mali beginning in the 1990s and throughout the 2000s; and in 2006, the mining sector accounted for 14 % of GDP and 72 % of total exports. However, a World Bank study on mining local procurement ("Mali LPM study") conducted in 2008 – 2009 (unpublished) found that despite almost two decades of activity, the majority of mining inputs were imported, with limited development of a local supply base.

The LPM study reported a lack of awareness among the business community about the mining sector, its procurement needs and requirements. It determined information-sharing, access to finance and technical support as key factors to increasing local procurement. Key outputs of the Mali LPM study included mapping the gold mining supply chain, identifying and prioritising key products and services opportunities, and raising awareness about them. Basic scoping and economic rationale were done for the high opportunity products and services, which included cement, hydrated lime, steel and basic steel structures, Personal Protective Equipment (PPE), basic plastic products, mining and drilling contracting, food products and training. Consideration of wider markets (for example, construction for cement, agriculture for quicklime, household consumption for food products, etc.) was a central element in that work.

Although the main support initiatives promoted by the study were not implemented and local procurement regulations remained weak and unenforced, the Mali LPM study was successful in raising awareness and disseminating information on opportunities. As a result, some progress was slowly achieved. Seven years after the study, a senior Mali mining official described the situation at one of Mali's largest mines[5] as such:

- The mine is now using cement produced locally for backfilling
- A lime plant is almost completed and will supply its products to the mine, and another lime project is ongoing
- Uniforms are made and supplied locally at a larger scale with better quality, but still from Chinese fabrics (despite the large production of cotton in Mali).
- Meat, eggs, chicken, vegetable are now produced locally
- Spare parts are mostly supplied from Bamako by a foreign procurement firm, still with a large import content
- Energy opportunities remain untapped despite a huge growth in demand and existing potential.

More recently, the B2Gold mining company, which produced about a quarter of industrial gold in Mali in 2020, reported "60 % of procurement done within Mali", including quicklime and 20 % of food targeted for local procurement.[6]

Specifically, local businesses have seized on some of the opportunities identified by the LPM study. Local suppliers have emerged or strengthened in several subsectors, including in core services such as mining contracting, fuel delivery, etc. The quicklime example is a significant local procurement success due to its nature and size, and is a direct outcome of the LPM study, as the two entrepreneurs were introduced to the opportunity at the LPM final workshop. One of the lime projects received in 2020 an €8.9 million funding package from the World Bank Group.

Although government has remained publicly supportive of local procurement, there were no hard requirements; local procurement obligations on operators were weak and not actively enforced. It is also notable that all this has occurred while Mali has faced a severe political and security crisis since 2012. The 2019 mining code reform in Mali is introducing a stronger local procurement framework through new regulations in 2020 (see Table 4), among other changes aiming to make the country benefit more from its mining sector.

The results to date were only made possible with the collaboration of mining companies, including sharing information on quality and quantity requirements,

[5] Visit at Loulo mine (owned by Randgold, now Barrick Gold) by Mali Mining Minister, 2016

[6] B2Gold presentation at MineAfrica, PDAC 2021

and actively supporting Malian SMEs. Several mining companies in Mali have engaged in developing local procurement in a more strategic way, as part of their sustainable development commitment. As an example, B2Gold with the support of Global Affairs Canada established programme Afeck, a 4-year 7 million CAD programme to enhance vocational training, develop local labour and business capacity around its mine. The programme trained locals around the mine in construction trades, and the mining company awarded them the resettlement site construction contract.

Another element of the context in Mali is the beginning of automation of mines, with Syama underground mine being highly automated.

TABLE 4: ASSESSMENT OF MINING LOCAL CONTENT REGULATIONS IN MALI

Local procurement provisions in the 2019 Mali Mining Code:

- A local content committee, to "contribute to designing and implementing a national policy accompanied by a strategy to develop and promote local procurement and employment in the mining sector". Details of the committee to be precised in regulations.
- Titleholders are required to give preference to "Malian businesses" for contracts, goods and services, at similar conditions of quality, price and quantity (this is the only local content provision that existed in the previous mining Code).
- Titleholders are required to develop, in consultation with the local content committee, a "national procurement plan" and an SME training plan. The national procurement plan to be approved by Mines administration. "After the plan's approval', the State will give authorisation to import necessary materials and equipment for mine construction and operation. "
- Titleholders are required to submit an annual report on the plan implementation. Format to be precised by regulation. Mines department can request an independent audit report.

Accompanying provisions in the 2020 Mali Mining Regulations:

- The local content committee is headed by the Ministry of mines or his representative, and includes representatives from Ministries of Finance, Homeland, Employment, Industry, Transports, and a representative each from the Chamber of mines, Association of SME, of mining subcontractors, of mining suppliers, of quarries, and the Association of municipalities. The committee meets quarterly to review procurement plans submitted by titleholders.
- The mining procurement plan should respect the following minimum thresholds (by value of procurement) for Malian companies:

Development phase	Operation phase		
	Years 1 to 5	Years 6 to 10	Years 11 and beyond
15 %	20 %	25 %	30 %

A "Malian business" is defined as one that: has its registered headquarters in Mali, has majority of its capital owned by Malian nationals, pays at least 50 % of salaries to Malian nationals.
The annual report on the plan implementation should be submitted by March 31st of the following year.

KEY LESSONS FOR DRC

- Local procurement initiatives may take a long time to produce results
- It is important to focus not just on demand interventions, but also supply interventions, which can be supported by business, mining companies, donors and government
- It may be useful to focus on targeted support for key opportunities that make economic sense in the long term, including with consideration of wider markets
- In terms of stakeholders, local businesses and entrepreneurs, as well as mining companies, can play a key role. Collaborative efforts are needed at some point to increase local procurement.
- Investors and their home country attitude and support toward development-oriented extractive activity can play a role.
- Potential lessons around changes in procurement demand patterns for automated mines (relevant to DRC given examples of automation such as Kibali).

4.2 Guinea

Minerals account for one fifth of Guinea's GDP and more than 90 % of its exports. The country is believed to possess a quarter of global bauxite reserves and some of the world's highest-grade undeveloped iron ore deposits. However, since achieving independence in 1958, Guinea has experienced challenges harnessing its rich endowment of resources to support sustained economic development.

From the beginning, agreements with foreign investors in the mining sector (many of which are still in effect for established bauxite mines, e.g., CBG, GAC, and Rusal), had a clear spirit of economic contribution, but generally no quotas, and little clarity or uniformity in local content reporting obligations. In addition, the local content provisions in these conventions have not received strong enforcement and focus from the authorities throughout the years.

Local procurement in Guinea is more closely associated with the involvement of the Anglo-Australian company Rio Tinto in the Simandou project in the 2000s.[7] In 2008, Rio Tinto, in conjunction with the IFC, developed a Local Supplier Development Programme ("LSDP") to support local procurement through helping to build a strong and sustainable local supply chain, with the objective that benefits from mining flow to the local economy. The programme focused on improving the business environment and building the capacity of Guineans to supply to the mining sector. The LSDP achieved some notable results, including 900 Guinean suppliers registered in Rio Tinto's approved suppliers database, and business training provided to over 2,000 participants from SMEs. In 2015, a "Local Content Policy for the Simandou integrated mining and infrastructure project" was established, through a collaborative effort involving the Simandou Project Partners, relevant Guinean Ministries and with the support of development partners including the World Bank, African Development Bank, IMF, UNDP, USAID and European Union.

Indeed, the Simandou project, due to its large size and infrastructure component, led to a comprehensive economic planning process. Called the "Southern Guinea Growth Corridor", this process included extensive baseline analyses, the identification of broader economic prospects and an initial evaluation of commercial opportunities and priority investments in infrastructure around the mining project. Developed in collaboration with donors and the private sector, the Corridor's goal was to help unlock broad-based economic activity across complementary industries: agriculture, services, and trade – generally more labour-intensive than mining, more prone to be high in local content and often sustainable beyond the life of the mine.

In parallel, Guinea's successful transition to democratic rule in 2010 ushered in an era of reforms in the mining sector, to end historical regulatory instability and align it with best practices of mineral resources stewardship. In these reforms, local content / local procurement has been at the forefront of policymakers' agenda, as reflected in the local content provisions of the new 2011 Mining Code (amended in 2013). Since then, the Government of Guinea, with the support of donors including the World Bank Group, has been trying to create an ecosystem conducive to the development of local procurement. To this effect, a Domestic Value Addition Policy has been adopted, a mining-specific domestic value addition policy and associated implementation framework have been developed (March 2017) and a unit in charge of community relations and Local Content ("SRCCL") was created within the Ministry of Mines and Geology. The authors completed a confidential detailed assessment of local content policies and practices by mining companies in 2017 and a Bourse de Soustraitance et de Partenariat[8] was set up to serve primarily the mining supply chain and to support mining firms in finding local suppliers.

The assessment of mining companies' local content policies and practices was an evaluation of the main mining companies on their local procurement (and employment), conducted by outside consultants and addressing:

- whether local procurement policies, strategies, and plans are in place
- the quality of the companies' local procurement procedures and practices compared with best practices

[7] The Simandou Mountain Range in Guinea possesses the world's last known substantial tier-one iron ore deposit. The exploratory work of Rio Tinto in the mid-1990s revealed the extent of the resource, and when the price of iron ore soared between 2005 and 2015, Rio and other competitors showed considerable interest in Simandou. Rio Tinto completed the study phase in 2013 and negotiated a $13.5 B investment framework with the government. Following a collapse in iron ore price, however, Rio signed a deal to sell its stake to its Chinese partner Chinalco in 2016.

[8] See http://www.sous-traitancegn.org/

- the actual local procurement results against Mining Code requirements or relevant mining company policy targets

The assessment led to a ranking of mining companies from best to worse performers, and the commitment by each company to a customised action plan. An overall assessment of the sector against the Mining Code requirements was also prepared.

It is important to note that all these initiatives have occurred in the context of an unprecedented boom in investments in the bauxite sector (with total reaching $6.5 B over 2017 – 2020). Bauxite production rose rapidly with Guinea becoming the world's 3rd largest producer (with an expected 64 million tons in 2020, up from 30.8 million in 2016 and 19.4 million in 2015). Authorities are keen to capitalise on this development for greater benefits to the economy.

<table>
<tr><th colspan="6">TABLE 5: ASSESSMENT OF MINING LOCAL CONTENT REGULATIONS IN GUINEA</th></tr>
<tr><th colspan="5">Mining Code of 2011 (Revised) (Law L/2011/006/CNT of 9 September 2011, as amended by Law L/2013/No. 053/CNT of 8 April 2013) – Procurement (article 107):</th><th>Implementation by mining companies [anonymised companies]</th></tr>
<tr><td colspan="5">Preference for Guinean enterprises for all contracts provided they offer comparable prices, quantities, qualities and delivery schedules.</td><td>All companies indicate giving this preference but verifying its diligent and systematic application remains very difficult. For some companies, part of the procurement is not controlled by the local entity.</td></tr>
<tr><td colspan="5">Minimum thresholds of SMEs, SMIs and enterprises owned or controlled by Guineans for the supply of goods and services to mining companies (quotas) set for each phase of mining activity, by contract value:</td><td rowspan="4">[Company X] is the only company that appears to formally monitor the application of this provision. It also appears in the plans of [Company Y] (which is not yet in an implementation stage). The majority of companies do not collect data on which suppliers are owned or controlled by Guineans, and measuring total purchases of goods and services is not easy (definition question).</td></tr>
<tr><th>Exploration</th><th>Development</th><th colspan="3">Operating periods</th></tr>
<tr><td></td><td></td><td>Years 1 to 5</td><td>Years 6 to 10</td><td>Years 11 and beyond</td></tr>
<tr><td>10 %</td><td>20 %</td><td>15 %</td><td>25 %</td><td>30 %</td></tr>
<tr><td colspan="5">Implementation of a plan to support Guinean-owned or controlled SME, SMI, and enterprises.</td><td>No formal support plan, but several companies report support actions towards SMEs, SMIs and enterprises owned or controlled by Guineans. Also included in the plans of [Company Z].</td></tr>
<tr><td colspan="5">Annual report to be submitted to Ministry on the use of SMEs, SMIs and businesses owned or controlled by Guineans, detailing the progress, and activities towards creating or strengthening Guinean capacities. The report will be made public.</td><td>Not aware of any submission of these reports as of now.</td></tr>
</table>

KEY LESSONS FOR DRC

- Local procurement policy or plan at the company / project level is a practical tool for planning and monitoring
- Mining projects with infrastructure components provide opportunities for alleviating infrastructure constraints (transport, energy, etc.) on local businesses. This requires consideration at the planning stage.
- Firm level assessment by outside consultants can complement insufficient reporting or monitoring of local procurement obligations
- An annual assessment of local procurement performance can be valuable to develop a baseline and assess progress, but can be difficult to sustain without significant resources

4.3 Ghana

Whilst Ghana is often considered one of the more successful mining local procurement efforts in Africa, it has not been without its challenges.

Ghana has a long history of industrial mining (in particular gold mining), as well as oil and gas more recently. Support for mining education began as early as the 1950s, with development of the Tarkwa School of Mining (now the University of Mines and Technology). Ghana began formally to make mining local employment and local procurement efforts from 1986, when local content was included in the mining law (and the Minerals and Mining Law of 2006), as well as in oil and gas. As the desired results were not achieved, more concerted efforts have been made since 2010, with the development of a mining local content policy, and regulations which were also published in 2012 to give effect to the law and policy, clarify reporting obligations, local procurement plan obligations, and penalties for non-compliance.

Over time, a collaborative effort within the mining industry, and between the Chamber of Mines and the Minerals Commission evolved. For example, a supplier managers forum was established, mostly driven by large-scale gold mining companies. This collaborative effort enabled the Minerals Commission to have more realistic requirements that the mining industry feels can be achieved (as opposed to in the local content regulations for the oil and gas sector, which targeted 90 percent full local participation within 10 years) (Amoako-Tuffour, 2015). There has also been increased recognition of the need to coordinate and promote cross-departmental integration, e.g., improved delivery on power, infrastructure, investment promotion, etc. A process was also undertaken to explore how the African Mining Vision would integrate into a Ghana Country Mining vision (also including local content).

However, stakeholder interactions have demonstrated that collaboration came under pressure when the Chamber of Mines felt the Minerals Commission was beginning to take more unilateral action around designating products, and a tension was created between compliance by mines and the revenue generation for the Minerals Commission through fines for non-compliance.

In terms of results, it was estimated in 2015, that the mining industry achieved about 73 % of planned local purchases, but that there was still further scope for local manufacture and value add.

- There have been significant efforts to understand spend overall and per product / service
- In particular, there has been a collaborative effort between the Chamber of Mines, the Minerals Commission and others to identify priority product opportunities for local procurement (initially 27, shortlisted to 8, with an additional 11 added in 2015, and other items added more recently, including various services; the regulation allows for annual changes to the list to account for changing conditions). The current priority products are listed on the website of the Minerals Commission Ghana (http://www.mincom.gov.gh/local-content).
- The Chamber of Mines made efforts to create a local content portal to share information on mines' performance against the targets they set in their local procurement plans (Ghana Chamber of Mines, 2017)
- The reporting framework helped to provide comparable information on spend and employment
- There have also been industry and support entity efforts to understand the local supplier base
- The Chamber of Mines has also been encouraging suppliers to meet with mining companies to understand specifications, and organising sessions to share information e.g., electrical cables standards harmonisation in 2016 (including Ghana Standards Authority)
- The Supplier Managers Forum in the Chamber of Mines, meeting quarterly and escalating issues to ExCo as required, also helped to share information

TABLE 6: ASSESSMENT OF MINING LOCAL CONTENT REGULATIONS IN GHANA
Ghana regulatory provisions
Regulation LI 2173 requiring mines to submit individual 5-year local procurement plans, and mid-term and annual progress reports; mines initially did not submit individually but this has improved. The Minerals Commission also initially had slow response time, but has improved, and gives consolidated feedback via the Chamber of Mines (e.g., within 2 weeks). The Minerals Commission has a committee, which reviews submissions and gives feedback to mining companies.
Items on the local procurement list could not be removed from the mining under the current regulations until sufficient capacity exists locally in terms of scale, quality/specs and price.

KEY LESSONS FOR DRC

- A collaborative approach can be highly beneficial to successfully implement local procurement, but takes ongoing relationship maintenance, and personal commitment from leadership in the relevant organisations
- Product specific support initiatives can help to create sufficient economies of scale and support to boost local suppliers but need to be regularly revised to reflect technological progress and changing market conditions and local capabilities.
- Clarity is required on what is expected from the mining industry as a whole, at a mining company level and at a mine project level
- Many of the levers for supplier development sit outside of mines or ministries of mines, so strong collaboration is required with other support bodies
- Take care to avoid creating perverse incentives with fines, levies and fee structures
- Local procurement plans and reporting (with public aggregate reporting) can be a powerful tool to enhance local procurement
- Dedicated and suitably qualified monitoring capacity is key to enforcement

4.4 Canada

An OECD member and ranked 16th worldwide in Human Development Index, Canada is one of the largest mining countries in the world, producing more than 60 minerals from about 250 mines. Canada's mining industry is a leading global producer of potash and is also ranked among the top five producers in 17 minerals and metals, including cobalt, diamonds, gold, nickel, platinum and uranium. In 2019, the mining sector accounted for 19 % of the country's exports, 5 % of GDP and 4 % of employment; however, mining plays a much larger role in certain areas, particularly the remote Northern Canada – the country's vast northernmost region politically encompassing three territories: Yukon, Northwest Territories, and Nunavut.

In Canada, mining regulation falls under provincial jurisdiction, and as such there are separate mining rights legislation for each of the 13 Canadian jurisdictions except Nunavut. Many companies active within Canada have sizeable operations abroad, as the country is home to half of the world's publicly listed mining and mineral exploration companies. In 2019, a total of 1,290 Canadian mining and exploration companies had mining assets valued at $263.2 billion, with their mining assets abroad, in 96 foreign countries, accounting for two thirds of that value (Government of Canada. 2021).

THE COUNTRY LEVEL: IBA

At the overall level however, the country has implemented the "Impact and Benefit Agreement" (IBA) framework, a form of community development agreements (CDAs), as an instrument to protect fundamental Indigenous rights in the extraction of natural resources on traditional Indigenous territory. IBAs work as formal (generally legally binding) contracts that set out the respective obligations and terms of engagement between an Indigenous community and the Canadian government / mining company within an extractives project. Significant Supreme Court of Canada decisions and associated events since the early 1970s, have paved the way to the legal duty of federal and provincial governments to consult Aboriginal Peoples when government decisions – such as the granting of permits or licenses relating to mining activity – may infringe on Aboriginal and treaty rights.

A mechanism for ensuring Indigenous peoples' participation in decision making and opportunities, Impact and Benefit Agreements (IBAs) came to be used to take a holistic approach to mining development. While there is no standard model for IBAs, they are developed in negotiation with community leaders and typically contain provisions for Indigenous business development – including set-aside contracts and joint ventures – among other provisions like employment and training, social and cultural considerations, environmental monitoring and funding arrangements. Government, mines, and community organisations actively promote opportunities for Indigenous businesses, including thinking about sustainability beyond mine life (Government of Canada, 2012). Organisations have also been established to help represent indigenous groupings, for example Pauktuutit, a national representative organisation of Inuit women in Canada (Pauktuutit Inuit Women of Canada, n.d.).

The majority of Canada's Indigenous communities live within 200 kilometres of a producing mine or exploration property, and many have been able to secure local procurement commitments through IBAs. One of the common business organisations for Indigenous groups are Aboriginal Economic Development Corporations (AEDCs). Ranging in size from 5 to more than 100 employees, an AEDC is the economic and business development arm of an Indigenous government and controls, invests in, or manages subsidiary businesses for the benefit of the community members who are its shareholders. Some examples include Nupqu Economic Development Corporation in Cranbrook, BC, and the Nunatsiavut Group of Companies in Nain, Newfoundland (Odendaal & Dolo, 2018).

Similarly, joint ventures (JVs) between mining companies and Indigenous groups, developed as part of IBAs, support participation in the mining supply chain and capacity development in the impacted communities, by leveraging the expertise and resources of the mining company. As an example, the English River First Nation and Peter Ballantyne Cree Nation acquired 30 % of JNE Welding, a company that manufactures steel vessels for mining companies.

A 2016 research by Mining Shared Value (MSV) and the Canadian Council for Aboriginal Business (CCAB) found an estimated 222 Aboriginal businesses supplying the extractive industry in Canada, providing exploration, drilling, camp and environmental monitoring services, etc. Eight of the 11 mining operations taking part in the research used frameworks or models to conceptualise their Aboriginal engagement, and seven had an active Aboriginal supplier directory to guide contracting. Hard targets for procurement contracts were not common; companies relied instead on 'set-asides' or sole-sourcing agreements for Aboriginal suppliers agreed upon in IBAs or other contractual arrangements (Darychuk & Travers, 2018).

The business case for procuring goods and services from Aboriginal suppliers was framed in terms of both obtaining a social license to operate and building a reliable, efficient supply chain for operations – including flexibility, closeness, familiarity with harsh weather conditions, etc.

Several constraints remain however: Indigenous companies often lack the organisational capacity to plan, grow their businesses and secure financing (as banks are also often reluctant to fund AEDCs or other Indigenous businesses, or recognise assets located on a reserve), and coordination with mining company procurement was also mentioned.

THE PROVINCE LEVEL: SEA IN THE NORTHWEST TERRITORIES

Canada's North has become a mining powerhouse of its own, estimated to have doubled its output and employment in the last decade, despite challenges such as remoteness and lack of infrastructure. In the region, mines often have to provide large infrastructure such as transportation (airstrips, temporary or year-round roads to the site, marine shipping or rail access, etc), power generation and telecommunications infrastructure (at least part of the investment in broadband). Mines also have to provide training and skills development for the labour force, and more basic infrastructure like housing, fresh water, health care, and recreational facilities.

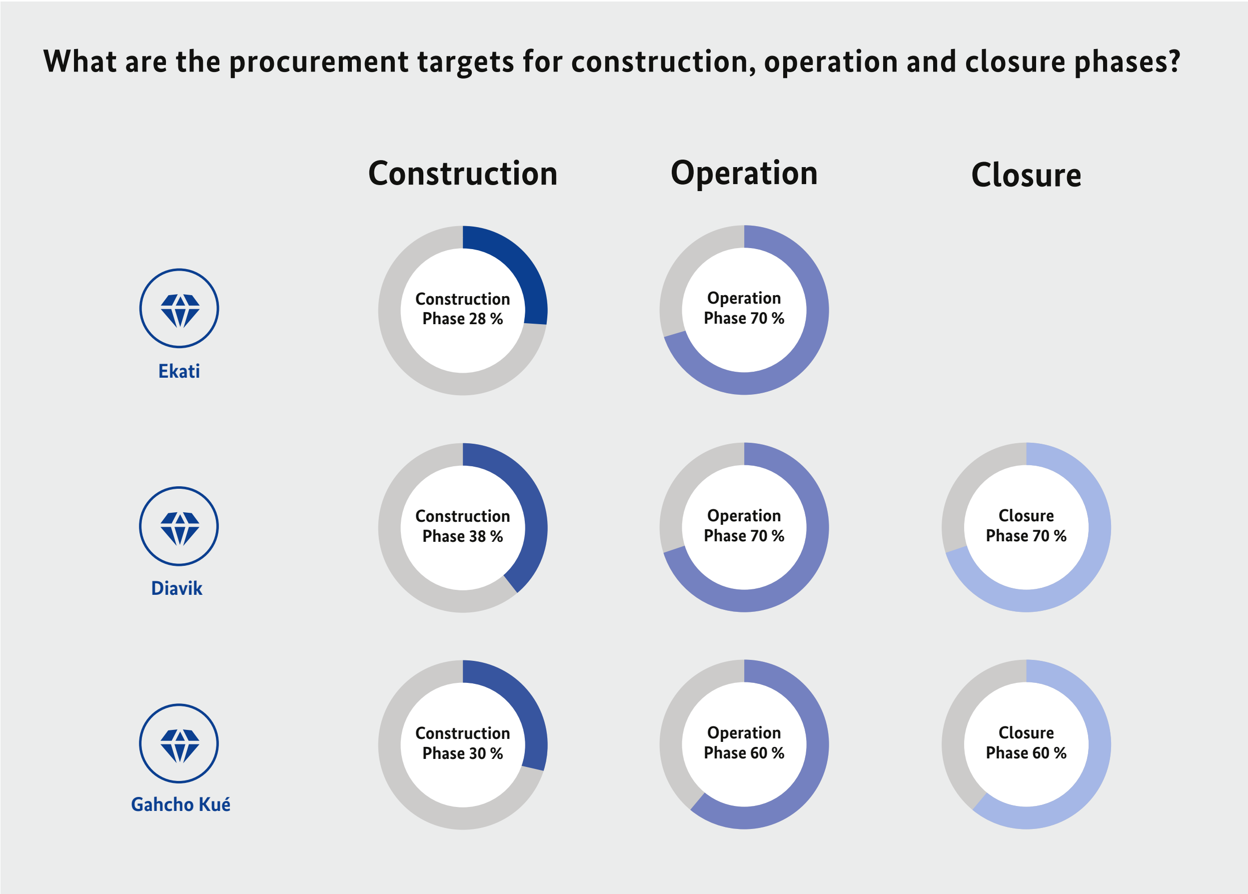
History showed that those challenges can be overcome when the mineral resources are abundant, as Canada's Northwest Territories province (NWT) for example has long been home to two world-class diamond mines – Ekati, opened in 1996, and Diavik, opened in 2001.

Recently, new and innovative technologies and techniques, such as those allowing the remote operation of equipment, are helping exploration and mining companies overcome some of the geographic barriers. To decrease costs, some companies have turned to renewable energy sources – wind and solar. Mines have also partnered to invest – the three diamond mines in the Northwest Territories used satellite communications for years until they collectively supported the telecom utility Northwestel's installation of towers to link them to the telecommunications network in the South.

Because infrastructure such as transportation, energy, and communications can meet the needs of both mining operations and the communities in which mines operate, and as mining projects add additional jobs, support local businesses, hence provide social benefits as well as revenues to governments, they can benefit from government financial support of necessary infrastructure investments for mining. Some investments occur through public-private partnerships, but the arrangements must be carefully defined and implemented so that all parties clearly understand the allocation of risks, costs, and benefits. Overall, diamond mining is a foundation for Canada's NWT economy. Mining contributed 27 % of the territory's GDP in 2019, with three operating diamond mines: Diavik, Gahcho Kué and Ekati, making the NWT the world's third largest diamond producer by value.

The Government of the NWT (GNWT) requires a follow-up programme called a Socio-Economic Agreement (SEA) be instituted, as part of the regulatory reviews and approvals process for any major resource development project that has a significant impact on the territory's lands, resources and people (Government of Northwest Territories, 2019).

Figure 7 **Procurement targets for Ekati, Diavik and Gahcho Kué**
(Source: Government of Northwest Territories, 2019)



SEAs formalise commitments and reflect predictions made by a company during its regulatory review, while providing NWT residents a clear picture of impacts and benefits that will accrue to them, their community or region, and to the NWT overall. Commitments made in an SEA are comprehensive and normally include business opportunities; as well as employment; training programmes; cultural well-being and traditional economy opportunities; community, family, and individual well-being; net effects on government; and sustainable development. SEAs thus set out for each project, among other things, targets for local procurement of goods and services from NWT Residents and Businesses including, in large part the Indigenous sector. Three SEAs were active in the NWT in 2019, for the three operating diamond mines.

Statistics tell a clear success story: the procurement commitment to spending in the NWT is resulting in a significant contribution to its economy, especially for Indigenous-owned enterprises. Between 1996 and 2019, roughly 70% of the value of NWT mine procurement has been with Northern and NWT Indigenous businesses – totalling more than $23.2 billion. Of that, NWT mines contributed over $7.1 billion to Northern Indigenous enterprises.

In 2019 alone, NWT diamond mines spent $813 million directly on local businesses, of which $369.45 million on Northern Indigenous procurement. Mines local spend on transportation was estimated at $252 million; and on construction, at $283 million; while induced spend on real estate and trade were respectively $402 million and $164 million. With procurement targets set out in SEAs and projects backed by significant buying power, the NWT's mining industry has stimulated the evolution and growth of a strong, Indigenous and made-in-the NWT service sector. Thanks in part to opportunities offered through SEAs, Indigenous enterprises have multiplied and grown, and are increasingly playing pivotal roles in almost every business and industry sector in NWT.

The main success factor is commitment by mining company, written in the SEA, then approved and monitored by government. In short, a well-designed Local Content plan, which is well implemented and well monitored.

This example illustrates the tradition of transparency and open dialogue between Canadian mining companies and jurisdictions. This culture carries over to Canadian global operations, as, for example, four Canadian companies have integrated in their reporting in 2019 the Mining Local Procurement Reporting Mechanism (LPRM), an international reporting standard developed by Mining Shared Value. The LPRM gives a set of disclosures for companies to provide information on key elements, such as local procurement policies, spending in host countries, and supplier development programmes.

KEY LESSONS FOR DRC

- Local procurement should include a focus on benefits for impacted communities and those who have traditional ownership over the area of extraction. However, some level of capacity and organisation within the community are required and may be constraining factors.
- Joint ventures between mining companies and local suppliers including community-based suppliers/organisations can be an effective mechanism to build local capacities and to help local communities and businesses participate in the mining supply chain.
- Local procurement is part of the overall mining project terms and should be flexible to allow project-level specificities and a holistic approach with consideration of project economics, infrastructure, etc. along with local procurement.
- Local procurement interventions should be coherent and integrated with other national frameworks (industrial development, infrastructure, land use, etc. policies and plans). Multi-level / multi-stakeholder support and coordination is required.

4.5 Consolidated implications of the country cases

Success in local procurement is not necessarily related to strict local content regulation. Many other factors can have a stronger impact, including collaboration, monitoring capacity or supplier development. The points below drawn from across the benchmarks may be particularly relevant to the DRC context and beyond:

- Local procurement plans at the company / project level are a practical tool for planning and monitoring
- Focus not just on demand interventions, but also supply interventions
- Useful to focus on targeted support for key opportunities that make economic sense in the long term, including consideration of wider markets
- Local businesses and entrepreneurs, as well as mining companies, can play a key role.
- A collaborative approach can be highly beneficial to successfully implement local procurement, but takes ongoing relationship maintenance, and personal commitment from leadership in the relevant organisations
- Take care to avoid creating perverse incentives for the regulator with fines, levies and fee structures
- Technical partnerships and joint ventures can be an effective mechanism to build local capacities and to help local communities and businesses participate in mining supply, subject to finding international JV partners that understand and can work within local conditions
- Local procurement interventions should be coherent and integrated with other national frameworks (industrial development, infrastructure, land use, etc. policies and plans). Multi-level / multi-stakeholder support and coordination is required.
- Mining projects with infrastructure components provide opportunities for alleviating infrastructure constraints (transport, energy, etc.) on local businesses. This requires consideration at the planning stage.

5. Recommendations to strengthen local procurement

Based on the technical analysis and consultations, the consulting team has identified potential areas where DRC stakeholders could improve local procurement outcomes:

TABLE 7: AREAS OF POTENTIAL IMPROVEMENT OF LOCAL PROCUREMENT OUTCOMES	
Recommendation in the DRC	**Considerations and options**
1. Clarify priorities in terms of local procurement outcomes, and refine definitions to support these outcomes	• Whether to extend the subcontractor definition beyond local ownership to have a category for value addition • Whether to clarify the inclusion of manufactured goods and inputs • Whether to have a definition for both subcontractor and suppliers • Whether to have any definition for "local-local" suppliers / (local-local is a term used by some mining companies to refer to in the vicinity of the mine) suppliers from impacted communities
2. Local mining supplier capacity and competitiveness assessment against mines requirements and needs	• Industry led or government led • Overall or for specific high priority products or services • Systematic studies of mines priorities for local supply, relevant supply capacity and constraints to address mines needs and grow
3. Active supplier development, investment promotion and enabling a more supportive operating environment	• Focus on wholly-owned local companies or joint ventures that can bring financing and technology agreements • Formal or informal partnership approach with mining companies, business development / supplier development service providers, international supplier partners, local industry groupings etc. • Integrate mine suppliers into Special Economic Zone programmes
4. Develop an agreement between government and mines on local procurement plan submission, including opportunity identification/ prioritisation/targeted support, long term approach, self-identified growth targets	• Decide if plan submission will be for each mining company or mine site • Agree how often submission of plans and performance updates needs to take place e.g., annual • Report to a template or based on specifics of each company • Agree whether or not the Chamber of Mines plays a role in the planning and evaluation processes

TABLE 7: AREAS OF POTENTIAL IMPROVEMENT OF LOCAL PROCUREMENT OUTCOMES	
5. Build a collaborative approach and platforms for constructive communication between role players around local procurement	• Collectively agree the best neutral facilitation and problem-solving platforms • Collectively decide if a local procurement compact between government, mining industry suppliers and support organisations will be possible • Identify leaders across the role players to champion local procurement and informally promote local procurement within their everyday interactions
6. Review the 1.5% levy instrument for ARSP and explore alternative funding instruments for the regulator	• Benchmark / regional exchange how other regulators have dealt with funding instruments, and the disincentives /perverse incentives that levies or fines may cause
7. Updating and extension of LION model to enable effective demand estimation	• Mechanism for annual updating of cash costs and production • 4 to 5 year reviews of cost split assumptions • Extension to other key commodities, including gold
8. Coordinated information sharing, monitoring and evaluation capacity and systems	• Create a mechanism for better coordination and information sharing between the mining role players and the local subcontracting role players. (Ministry of Mines, CTCPM, ARSP, possibly also EITI)

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Appendix 1: Extract of the Subcontracting Act

(Unofficial translation)

An Act determining the rules applicable to subcontracting in the private sector – Selected extracts

TITLE I: GENERAL PROVISIONS

Chapter I: Purpose and scope

Section 2: Scope

Article 2:

Subcontracting concerns all sectors of activity, except for legal provisions governing certain sectors of activity or certain professions.

It pertains to ancillary, auxiliary activities or part of the core activity.

[...]

Chapter II. Definitions

Article 3

[...]

8. subcontractor or subcontracting company: natural or legal person whose activity, on a regular, temporary or occasional basis, is linked, by a contract or an agreement, to the performance of the main activity or the performance of a business contract of a main company;

9. subcontracting: activity or operation carried out by a company called subcontractor, on behalf of a company called main company, and which contributes to the performance of the main activity of that company, or to the performance of one or more services from a business contract of the main company;

[...]

TITLE II: PRINCIPLES AND CONDITIONS FOR EXERCISING SUBCONTRACTING

Chapter 1: Principles

Article 4

Subcontracting is a service contract, consensual, onerous and written. It is proven by any legal means.

Article 6

Subcontracting is reserved for companies with Congolese capital promoted by the Congolese, whatever their legal form, whose head office are located on the national territory.

However, when there is unavailability or inaccessibility of expertise set out in the above paragraph, and provided that proof is provided to the competent authority, the main company may utilise any other company formed under Congolese law; or a foreign company as long as the activity does not exceed six months, otherwise, it shall create a company under Congolese law. The sector minister or the local authority shall be informed beforehand.

Article 10

All subcontracting is subject to either a call for tenders or a single-sourcing contract.

It is done by invitation to tender when the contract price is greater than or equal to one hundred million Congolese francs.

In this case, publication is done by the following means:
1. the written or audio-visual press both national and provincial;
2. websites;
3. posting of invitations to hire a subcontractor at the main company;
4. the transmission of the information to the closest offices of the specialised and specific structures which supervise the commercial, industrial, agricultural and small and medium-sized enterprises activities, for display by the latter as soon as the offers are launched.
It is done by single sourcing when the contract price is less than one hundred million Congolese francs.

Article 11

The subcontracting of more than forty percent of the total value of a contract is prohibited.

Article 12

Any company established on the national territory has the obligation to publish annually the turnover made with the subcontractors as well as the list of those.
It shall implement internally a training policy which should enable Congolese nationals to acquire the technical skills and qualifications necessary for the performance of certain activities.

TITLE III: RIGHTS AND OBLIGATIONS OF THE PARTIES

Article 16

The main company cannot oblige the subcontractor to fully pre-finance the cost of the operation or activity subject to the subcontracting. Before the start of the works, it pays an advance covering at least thirty percent of the subcontract.
At the end of the operation or activity, a provisional acceptance report is signed. It becomes final only after payment by the main company of the balance within thirty days of delivery and receipt of the works.
In the absence of said report, the commissioning or the viability of the works is sufficient to oblige the main company to comply with the provisions of the preceding paragraph.

TITLE IV: ELEMENTS AND CONTROL OF THE SUBCONTRACTING CONTRACT

Section 2: Control of subcontracting

Article 21

The competent national, provincial or local authority, each within its own prerogatives, is responsible for monitoring subcontracting in subcontracting companies.

Article 22

Are void whatever their form, clauses, stipulations and arrangements that violate the provisions of this law.

TITLE V: SOCIAL, TAX, CUSTOMS, COMMERCIAL AND FINANCIAL REGIME

Article 26

Payments made to subcontractors or those made by them to third parties, in remuneration for work performed on the national territory, are preferably made in Congolese banks or other financial institutions.

Article 27

Subcontracting companies subscribe their insurance with insurance companies based in the Democratic Republic of Congo.

TITLE VI: SANCTIONS

Article 28

Shall be punished by a fine of 50,000,000 to 150,000,000 Congolese francs, any main company that subcontracts to a company in violation of article 6 of this law.
In addition, an administrative measure to temporarily close the company shall be taken, as the case may be, by the Ministers having the Economy, Industry and Small and Medium-Sized Enterprises in their attributions, the Governor of the province or the local administrative authority, for a period not exceeding six months.
Any subcontract contract entered into in violation of article 6 of this law is ipso jure null.

TITLE VII: TRANSITIONAL, REPEAL AND FINAL PROVISIONS

Article 31

Within twelve months of the entry into force of this law, foreign companies that have ongoing subcontracts shall incorporate under Congolese law for the purpose of carrying out to completion said contracts.
Within the same period, companies formed under Congolese law that have ongoing subcontracts shall make those comply with the provisions of this law.

Article 32

Are repealed all previous provisions contrary to this law.

DECREE No. 18/019 relating to application measures to Law 17-001 of February 8, 2017 determining the rules applicable to subcontracting in the private sector (DRC Official Gazette, June 1, 2018) – Selected extracts

TITLE I: GENERAL PROVISIONS

Chapter I: Object and scope

Section 3: Definitions

Art. 3.

- In addition to the definitions included in article 3 of the Law, terms which keep the same meaning in this decree, the following definitions apply:
- small and medium-sized enterprise: any economic entity considered as such by the tax, customs and other administrations such as the General Directorate of Taxes, the Office for the Promotion of Congolese Small and Medium Enterprises, the Agency for investment promotion, the Directorate General of Customs and Excise, the Industry Promotion Fund;
- company with Congolese capital promoted by Congolese nationals, that which meets the following criteria:
  1. the registered office is located in the Democratic Republic of Congo;
  2. the majority of the share capital is held by natural or legal persons of Congolese nationality;
  3. the management bodies are mainly administered by Congolese natural persons;
  4. the staff is mainly made up of individuals of Congolese nationality,
- the sectoral minister: it is the provincial minister having in his attributions the sector which subcontracting falls under, while at the national level the monitoring structure shall be placed under the supervision of the Minister of Small and Medium Enterprises,
- the competent authority: this is the national, provincial or local authority responsible for monitoring subcontracting.

TITLE II: CONDITIONS OF EXERCISE

Art. 9.

The annual obligation established in article 12 paragraph 1 of the Law, to publish turnover, is sufficiently fulfilled by the filing of financial statements in accordance with article 269 of the revised Uniform Act relating to the law of commercial companies and of economic interest groups.
However, the list of subcontractors must be communicated to the competent authority in the form and within the time limits it will set.

Art. 7.

The provincial authority sets the advertising procedures established in section 10 of the Law on subcontracting in the private sector.

Art. 10.

The competent authority shall ensure that any company established on the national territory develops internally a training structure specialising in activities for which there is unavailability or inaccessibility of local expertise.

TITLE III: RIGHTS AND OBLIGATIONS OF THE PARTIES

Art. 11.

Article 16 paragraph 2 of the law which provides for a period of 30 days for the payment of the balance by the main company to the subcontractor lays down the principle.
This period can be extended taking into account the specificity of the contract.

TITLE IV: CONTROL OF SUBCONTRACTING

Art. 12.

Control of the implementation of subcontracting in the private sector shall be ensured by a structure whose creation, organisation and operation will be established by a decree of the Prime Minister deliberated in the Council of Ministers on proposal by the Minister in Small and medium-sized enterprises.

TITLE VI: SANCTIONS

Art. 14.

The law provides for sanctions of three types in case of violation of the obligation to subcontract to companies with Congolese capital promoted by Congolese nationals: fines which rates are set, the administrative measure of temporary closure and nullity of the subcontract.
The procedures for applying these sanctions are set by decision of the authority responsible for monitoring subcontracting in the private sector after approval by the Minister of Small and Medium-Sized Enterprises.

TITLE VII: FINAL PROVISIONS

Art. 15.

All previous provisions contrary to this Decree are repealed.

Art. 16.

The Minister responsible for small and medium-sized enterprises is responsible for the implementation of this decree which comes into force on the date of signature.

Appendix 2: Overview of international examples on local procurement

TABLE 8: NATURE OF LOCAL PROCUREMENT REGULATION

Country	• Nature of local procurement regulation
DRC	• Stringent local subcontracting law and regulations in place
Guinea	• Overall and sectoral domestic value add/local content policy and framework, includes reporting and minimum local content obligations that include primary contractors on titleholders • Guinea Republic Mining Code, 2011, Inclusion of some requirements in Mining Code and individual conventions • Local content assessment by Ministry of each mining company • No explicit local procurement targets set by government • Launch of buyer-supplier marketplace (BSTPG), regulation has made it mandatory for mines to post tenders on the marketplace, although it is difficult to check whether all tenders have in fact been posted
Nigeria	• Oil and Gas Industry Content Development (NOGIC) Act, 2010 - Article 106 – Nigerian company means registered in Nigeria under Companies and Allied Matters Act, and > 51 % equity share by Nigerians - Focus to increase the "Nigerian content" meaning "the quantum of composite value added to or created in the Nigerian economy by a systematic development of capacity and capabilities through the deliberate utilisation of Nigerian human, material • resources and services in the Nigerian oil and gas industry." (CCSI, 2021). • Nigerian Minerals and Mining Act - Act vests the control, regulation and ownership of all mineral resources to the Federal Government - The Minerals and Mining Regulations and the National Minerals and Metals Policy also govern the sector.
Ghana	• Set out briefly in the mining legislation, with more detail provided in the general mining regulations. Includes (CCSI, 2021) : - Local employment requirements - Local procurement requirements (with preference to products made in Ghana, but also service agencies located in Ghana) - Training requirements - Monitoring and enforcement mechanisms • Companies must submit annual localisation compliance reports and semi-annual reports on implementation of the procurement plan • Approach: - Local employment and procurement 5-year planning and annual progress reports on performance - Development of local procurement list - Enforcement and high penalties - Different requirements in different sectors e.g., oil and gas • Oil has different regulations: Petroleum Local Content and Local Participation Regulations

Legend

Hard

Medium

Soft

TABLE 8: NATURE OF LOCAL PROCUREMENT REGULATION	
Country	• **Nature of local procurement regulation**
Côte d'Ivoire	• New Mining Code introduced in 2014 - along with several regulations - requirements on procurement, local employment, training and reporting local content - Local Mining Development Committees as structures to support development in affected communities • Investment Code introduced in 2012 • Initiative to develop a local content strategy across procurement, employment and ownership, does not appear to have been finalised.
Mali	• Mining Law 2012; Investment Law 2012; Mining regulations 2012 • There is no legal definition of what local content is, but related local content clauses are found in the mining law, regulations, and model contract (CCSI, 2021). Requirements include - Employment - Procurement - Training • Note: New mining Code announced in 2019 with a different, much stronger, framework
Canada	• No national local content policies, but use 'Impact and Benefit Agreement' (IBA) framework as an instrument to protect fundamental Indigenous rights in the extraction of natural resources on traditional Indigenous territory • Government supports existing suppliers throughout the whole mineral value chain (i.e., from exploration to supply of goods and services). • One of the key priorities is to provide incentives to foster science, technology and innovation locally, which are provided at different levels of government (Ramdoo, 2018) • Various informal / non-government initiatives around reporting e.g., Mining Shared Value's Local Procurement Reporting Mechanism
Kazakhstan	• The Law on Subsoil and Subsoil Use (SSU) of 2010 is the primary mechanism for regulating local content, supported by a series of decrees regulating local content, including - Decree 45/2012 (provides a minimum target for local content in the workforce) - Decrees 367/2009 and 964/2010, (Measurement of Local Content and Unified Calculation Method - Decree 1135/2010 (targets for increasing local procurement of goods and services over time) - Licence holder must ensure that at least 50% of the total number of employees consists of Kazakh nationals • Ascended to WTO in 2015 which will impact local content law and regulation in the coming years (Columbia Center, 2019). • Kazakhstan has begun a five-year transition period to bring its local content laws, policies and contracts into compliance with the new WTO requirements

Legend
- Hard
- Medium
- Soft

TABLE 9: RELATIONSHIP BETWEEN GOVERNMENT & MINES	
Country	**Relationship between government & mines**
DRC	• Relatively litigious relationships
Guinea	• Organised industrial mining industry structure (Chamber) • Proactive approach from some key mining companies
Nigeria	
Ghana	• Have been periods of contestation and collaboration
Côte d'Ivoire	• Some cooperation between government and the chamber of mines, but not well established.
Mali	
Canada	
Kazakhstan	

Legend
Litigious
Neutral
Collaborative

TABLE 10: INSTITUTIONAL CONTEXT	
Country	**Institutional context**
DRC	• Complex and emerging institutional landscape, with overall and mining regulators
Guinea	• Francophone government and legal system, OHADA member • Some controversies and strained relationships (e.g., around Simandou mine) • Oversight by Ministry of Mines, Local Content unit was established within the Ministry through the regulation - Active championing at the Ministerial level, and establishment of a local content development unit • Involvement from APIP/investment promotion which later became a ministry - Bourse/marketplace (BSTPG) has also become a role player in promoting local content
Nigeria	• Nigerian Content Development and Monitoring Board oversees and monitors NOGIC Act • The Mines Inspectorate Department of the Ministry of Mines and Steel Development (MMSD) sets minimum work requirements for licence holders • Roadmap recommends the establishment of an independent “super-regulatory agency” that would merge the Mining Cadastre Office, the Mines Inspectorate Department and the Mines Environmental Compliance Department (Oxford Business Group, n.d.). • Existence of multiple regulations is reducing investor confidence as it raises the costs and risks (Azobu & Jaiyeola, 2019)
Ghana	• Anglophone legal and institutional system • Separate regulator – Minerals Commission, reporting to the Ministry of Lands and Natural Resources • Ministry of Trade and Industry has also been involved to some degree in supplier development • Long history of mining resulting in well-established mining institutions • Ghana Chamber of Mines represents the mines and has supplier affiliates • Ghana Standards Authority has been involved in harmonisation to enable greater local supply • Various donors active in private sector development e.g., IFC, DFID • Impacts: - Ghana achieved about 73 % of planned local purchases in 2015, and a total of 98 % employment of Ghanaian nationals. • Oil managed by Petroleum Commission
Côte d’Ivoire	• Francophone government and legal system, OHADA member • Mining falls under the Ministry of Mining and Energy • Active Chamber of Mines • According to recent World Bank evaluation petroleum and mining resources are managed more transparently. The investment climate in these sectors has improved.

Legend

Complex

Moderate

Clear and high capacity

TABLE 10: INSTITUTIONAL CONTEXT	
Country	**Institutional context**
Mali	• Francophone government and legal system, OHADA member • Required to submit Community Development Plan which is monitored by a Technical Committee • Mali hampered by (The World Bank, 2019): - Insufficient access and management of mineral resources - Lack of governance and transparency of the extractive industries revenues; suboptimal local links reducing the potential economic impact of mining.
Canada	• Provinces have mandate over mining licenses and taxes (with dual mandate from Federal oversight and taxes) • Agreement required from First Nations and Inuit, e.g., ULU Inuit Impact and Benefits Agreement (Canada, 1996) signed between Echo Bay Mines Ltd. and the Kitikmeot Inuit Association • High level of development and strong, capable and stable government.
Kazakhstan	• Kazakhstan's subsoil regulations continue to be a major impediment for the country's mining industry to grow and attract foreign • investment (Koryakovtseva & Novak, 2015). • SSU limits this flexibility by prohibiting work on a modified mining plan prior to receiving approval – adds risk to companies (Castro et al, 2018).

Legend

Complex

Moderate

Clear and high capacity

TABLE 11: LEVEL OF PRIVATE SECTOR DEVELOPMENT

Country	Level of private sector development
DRC	• Underdeveloped private sector
Guinea	• Overall, private sector is relatively undeveloped, informal business, small and micro, and a few corporates, limited industrial activity. • Supplier base relatively underdeveloped – requiring import of skills and equipment (Brightmore, 2019). • Significant operational challenges, including lack of infrastructure: - Ranked 156th out of 190 for getting electricity (The World Bank, 2020) - Poor roads, ports infrastructure - Government focusing on developing 'growth corridors' • Proposed national standards on people displaced by mines has caused uncertainty (Peyton, 2019).
Nigeria	• Strong capabilities in oil and gas, but mining sector is relatively underdeveloped. • Key infrastructure such as access to roads, dedicated rail lines, power etc. remain a challenge (Azobu & Jaiyeola, 2019). • Ranked 146th out of 180 countries in the Transparency Index Corruption Perception Index (Transparency International, n.d.) • Access to mineral rich Northern region have now been stopped by the terrorist group – Boko Haram. • A number of communal and religious conflicts occur intermittently in the mid-belt region of Nigeria, which is known to be rich in minerals and metals (KPMG, 2017).
Ghana	• Ranked 24th out of 89 countries in the Resource Governance Index (Natural Resource Governance Institute, n.d.) with relatively high scores for licensing, taxation, government effectiveness, regulatory quality and control of corruption. • Supply base is relatively developed compared to region, with somewhat industrialised economy and supply base and business development services
Côte d'Ivoire	• Social conflicts around mining operations have been widespread, with allegations of conflict minerals, child labour and environmental damage (EITI, 2021a). • The ban over Côte d'Ivoire diamonds was lifted in 2014. • Business operating environment can be difficult: Ranked 141st out of 190 countries in getting electricity and 163 in trading across border. • Political risk and uncertainty have impacted on investment environment.
Mali	• Ranked 50th out of 83 countries in Frasers' Investment Attractiveness Index and 63rd in the Policy Perception Index • Limited infrastructure has hampered exploration and exploitation (EITI, 2021).
Canada	• Favourable tax regime and business operating environment. • Most provinces score highly in Fraser's Investment Attraction Index (e.g., Saskatchewan and Quebec are ranked 3rd and 4th), but some constraints in Alberta and Nova Scotia (Stedman & Green, 2019). • Historically over half of the world's public mining companies are listed on the Toronto Stock Exchange (Olley, 2020).
Kazakhstan	• The state of the mining industry in Kazakhstan can be characterised as a privatised version of previously state-owned enterprises from the Soviet era (Koryakovtseva & Novak, 2015). • On the services and equipment supply side, Kazakhstan is attracting new companies like Kazgiprotsvetmet, Iskander, Gornoe Buro and Antal

Legend

Underdeveloped

Moderately developed

Well developed

TABLE 12: LEVEL OF REMOTENESS OF MINES FROM ECONOMIC HUBS	
Country	**Level of remoteness of mines from economic hubs**
DRC	• Mining hubs remote from main economic hubs, although some supplier development around Lubumbashi
Guinea	• Mines are in relatively remote areas, worsened by lack of infrastructure development. • However, Boké town has developed around mining and has some supplier base.
Nigeria	
Ghana	• Various clusters of mining production across the country suppliers tend to be clustered in Accra/Tema, as well as Takoradi and Kumasi, which are closer to the major gold mining activity (Esteves, 2012).
Côte d'Ivoire	• Most of the gold is extracted from 4 sites: Ity, Angovia, Bonikro and Tongon • Many mines are close to the Malian border and are very remote from main Ivorian cities / clusters of business activity.
Mali	• Mineral deposits are primarily located in western and southern Mali. • Relatively remote from main cities such as Bamako, but city of Kayes has some supplier base. • Recent conflict has particularly impacted areas outside of Bamako and created logistical challenges
Canada	• Mines in the northern areas can face a lack of infrastructure including transportation, energy, and connectivity as well as skilled labour (Rhéaume & Caron-Vuotari, 2013).
Kazakhstan	• Large country with remote mines

Legend
- Remote
- Moderate distance
- Nearby

TABLE 13: MINING AND MINERAL PROFILE AND SCALE

Country	Mining and mineral profile and scale
DRC	• Large scale of existing mining and resources
Guinea	• Long history of industrial mining: - 3rd largest bauxite producer (65 million t) - Gold production (27t) - Mining approximately 13 % of GDP (Brightmore, 2019). • ASM is not formally measured, but estimated diamonds production of $36m in 2013 and gold of $300m (AMDC, 2016)
Nigeria	• Minerals: Gold, columbite, wolframite, tantalite, bitumen, iron ore and uranium. Only contribute 0.5 % to GDP (Peter, 2019) • Oil and gas • Informal ASM is prevalent (Peter, 2019). Majority of gold mining in the country is carried out by ASM (Goldman et al, 2014). • Artisanal and Small-Scale Mining Department is focused on supporting and formalising ASM
Ghana	• 8th largest producer of gold (130t) • 10th largest producer of manganese (390,000t)
Côte d'Ivoire	• Relatively low contribution to GDP (less than 3 % in 2012) • Produced 40t of gold in 2018 (23rd)
Mali	• Contributes 61 % of exports, 8 % to GDP and 16 % to government revenue (EITI, 2021). • 17th largest gold producer (61t) • Mali has rich deposits of gold, bauxite, manganese, iron ore, limestone, phosphates and uranium
Canada	• Largest producer of zinc and potash • 4th largest diamond producer (11m carats) • 7th largest gold producer (100t) • 7th largest copper producer (577,700Mt) • 9th largest producer of iron ore (39m MT) • Also mine substantial amount of coal, and oil and gas • No informal ASM. Smaller mining companies have access to deep markets to raise funding
Kazakhstan	• Estimated to contain 30 % of the world's reserves of chrome, 25 % of manganese, 10 % of iron ore, 10 % of copper and 13 % of lead and zinc. • Kazakhstan is also the largest producer of uranium (Koryakovtseva & Novak, 2015)

Legend

Small

Medium

Large