Briefing
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Subnational Revenue Sharing in the DRC after *Découpage*: Four Recommendations for Better Governance

Rebecca Iwerks, Kaisa Toroskainen

As in many resource-rich countries, the Democratic Republic of Congo's (DRC) central government shares a portion of its natural resource revenues with provincial and local governments. In 2015, the Congolese parliament passed a new administrative law that divided the country's 11 existing provinces into 26.[1] This change in provincial borders, known as *découpage*, also altered the dynamics of who benefits from some of the mining revenues.

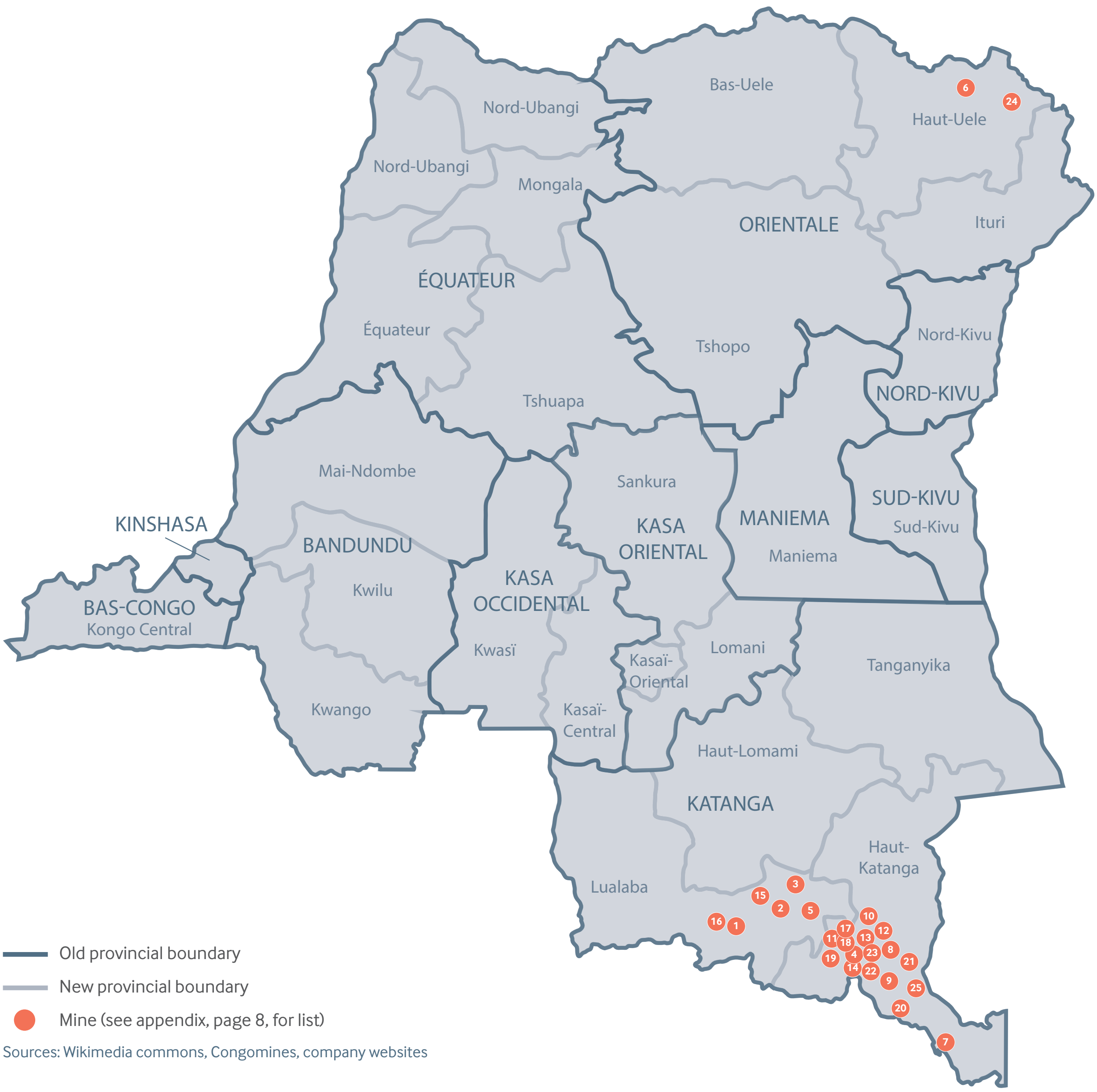
The division of Congo's former provinces into 26 smaller ones—a process known as découpage*—altered the distribution of benefits from mining revenues. With the new borders, the mining revenues are concentrated in three new, smaller provinces.*

In the map on the following page, we show where the largest 25 mine revenue producers in the DRC are situated within the new boundaries. In the past, most mines (and therefore the origins of shared revenue) were concentrated in the two large provinces of Katanga and Orientale. With the revised borders, the mining revenues are concentrated in Haut-Uele, Haut-Katanga and Lualaba, three smaller provinces. Other mines (not depicted) are located in Maniema and the Kivus, but they do not contribute as significantly to state revenues.

The new provinces now have the burden and opportunity of transforming natural resource revenues into sustainable development for their constituents. NRGI's experience working with subnational governments throughout the world indicates that optimizing subnational revenue shares requires strong commitments from national and subnational governments to principles of good resource governance. This briefing applies NRGI's institutional knowledge of good subnational revenue sharing practice to the DRC *découpage* context. It explains the system of revenue sharing in the DRC and some of the challenges related to that system. It outlines four recommendations that would improve the opportunity for these new subnational governments to optimize their use of subnational revenues.

1 Loi Organique N° 15/006 Mars 2015 Portant Fixation Des Limites des Provinces et Celles de la ville de Kinshasa available at : http://www.droitcongolais.info/files/1.10.24.-Loi-du-25-mars-2015_Provinces-et-Ville-de-Kinshasa_limites.pdf; Radio Okapi, « Avantages et inconvenients du découpage territorial en RDC, » 12 August 2015, http://www.radiookapi.net/2015/12/08/emissions/point-de-vue-des-jeunes/avantages-et-inconvenients-du-découpage-territorial-en

Figure 1. Geographical distribution of the 25 largest mines in the DRC[2]



Sources: Wikimedia commons, Congomines, company websites

2 25 largest mines by total contribution to government revenues 2014 and location information available

HOW ARE MINING REVENUES SHARED BETWEEN THE NATIONAL AND PROVINCIAL GOVERNMENTS?

There are three ways provincial governments in the DRC currently receive or could receive revenues from extractives:

- **Mining royalties.** After mining royalties are collected by the Ministry of Finance (Direction Générale des Recettes Administratives, Judiciaires, Domaniales et de Participation, or DGRAD), the mining code requires that the ministry share 25 percent of the royalties with the province where the mining takes place and 15 percent are diverted to the town or municipality hosting the mining activity.[3] In practice, according to the 2014 EITI report, USD 12 million was transferred to Katanga province. However, if we apply the sharing formula to the total royalties collected by DGRAD from companies based in what was Katanga, over USD 33 million should have been transferred to Katanga. The national government should have also shared over USD 57 million with all subnational governments (see the table below), but information on actual revenues shared with other provinces is not available. The lack of transparency around subnational transfers makes confidence in these figures hard; it is clear, however, that the DGRAD should be transferring a significant amount of royalties to provinces and that the provinces are not receiving all that they are owed by law.

Mineral royalty sharing (USD)[4]		
Province	**Reported share**	**Entitled share** (40 percent of royalty collected in that province)
Katanga	12,223,746	33,412,151
Orientale	Unknown	2,311,732

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- **Local taxes.** In part because of the low receipt of mining royalties, provincial governments have also imposed their own taxes on mining companies.[5] Though this practice has been the source of some controversy—it's prohibited by the mining code, but allowed in non-mining specific legislation—it has been lucrative, particularly for Katanga.[6] In 2014, the revenue authority of the Katanga province (Direction des Recettes de Katanga, DRKAT), collected USD 162 million directly from mining companies (USD 156 million from those depicted in the map above).

- **National taxes.** The DRC's constitution mandates that the national government distribute 40 percent of certain tax revenues collected centrally—including some imposed on extraction companies—to the provinces and municipalities as a general transfer.[7] National law 11/011 defines the amount transferred to each province differs based on the type of revenue. The national government designates some revenues as "category A" based on the type of revenues and their relationship to the province. For category A revenues, the national government shares 40 percent of what is collected with the specific province where the taxable event occurred. Other taxes, such as oil production

3 Law No. 007/2002 Du 11 juillet 2002 Portant Code Minier, Article 242, available at: http://www.droit-afrique.com/upload/doc/rdc/RDC-Code-2002-minier.pdf
4 Government of the DRC, DRC EITI report 2014, https://eiti.org/document/2014-democraticrepublic-of-congo-eiti-report and DRC EITI secretariat, 2014
5 Government of the DRC, DRC EITI report 2014, https://eiti.org/document/2014-democraticrepublic-of-congo-eiti-report and DRC EITI secretariat, 2014
6 "Les taxes illegals sont extirpees des produits minier marchards," *Le Soft International*, 26 May 2015, http://www.lesoftonline.net/articles/les-taxes-ill%C3%A9gales-sont-extirp%C3%A9es-des-produits-miniers-marchands. Minister of mines Martin Kabwelulu has defended the local right to collect taxes.
7 Constitution of the Democratic Republic of the Congo, Article 172; Art. 54 of Law on Provinces

revenues and customs taxes, are designated by the national government as "category B." Forty percent of category B revenues are shared between all provinces based on a formula that considers production capacity, demographics, and other factors of each province.[8] Oil production revenues are treated slightly differently in that though they are classified as category B, 10 percent is to be returned to the province of origin to compensate for environmental impact. In addition, the provinces are supposed to benefit from a fund created with another 10 percent of category B revenues with the goal of supporting equal development across provinces. In practice, the division between categories A and B, the formula for category B, and the amount transferred has not been clear or consistent. For example, the 2014 budget shows that general transfers have only partially been made, and some estimate transfers to be as low as 6 percent of expected revenues.[9]

National tax sharing rules per Loi N° 11/011 Articles 219-221

	Types of taxes involved	How they are shared
Category A	Administrative, judicial and state revenues collected in the province; tax receipts collected at their place of fulfillment	40% shared with the province where they were collected
Category B	Administrative, judicial and state revenues collected in the province in relation to central government;, custom fees; tax revenue from large corporations; petroleum taxes	40% shared across all provinces based on formula (oil generating provinces receive extra 10% of oil production revenues)

OPPORTUNITY FOR CLARITY AND CONSISTENCY

There are challenges in identifying and specifying even the most fundamental elements of mineral revenue sharing in the DRC. NRGI's research on subnational revenue sharing has found countries have the most success when the rules and objectives are clear and consistently applied, and there is transparency about what is shared. For the new provinces created after the *découpage* to have an opportunity to optimize their revenues, national and subnational government officials should consider the following recommendations.

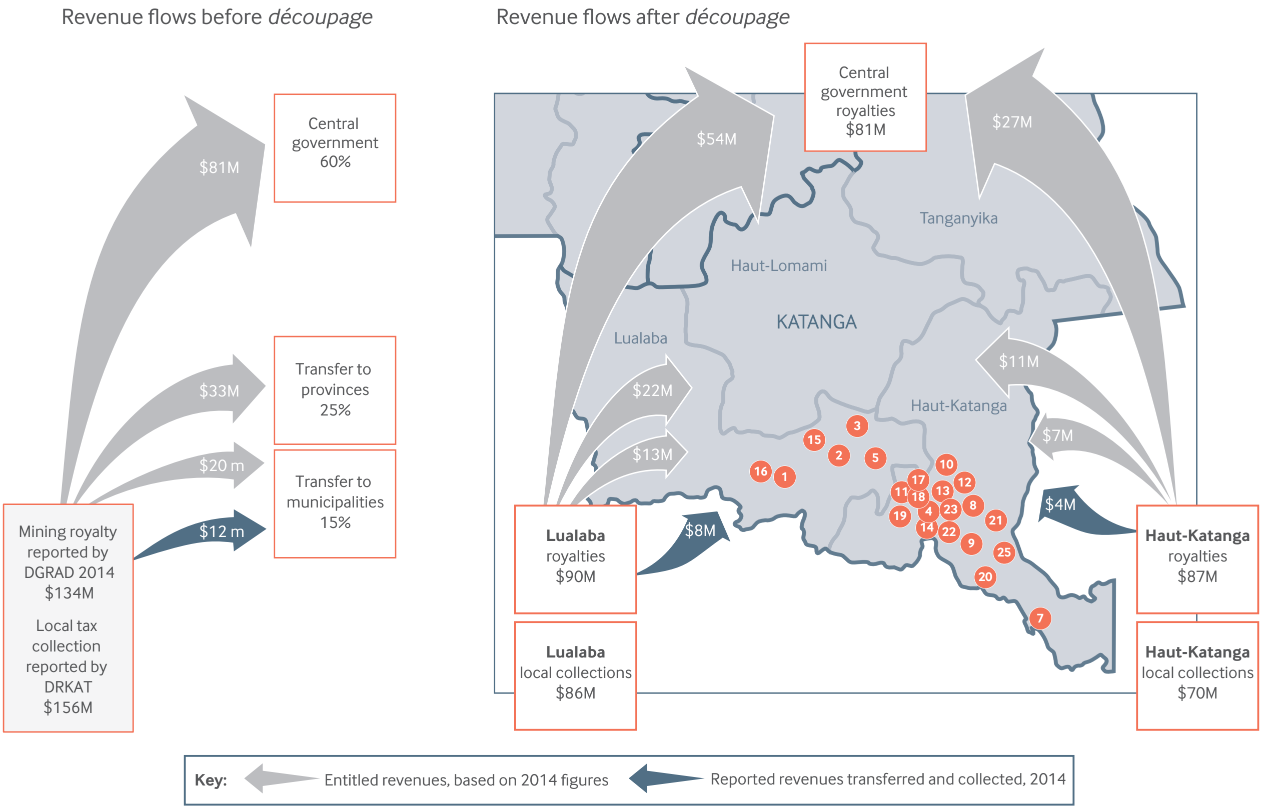
1. **The national government should clarify the rules and objectives for sharing revenues.** National and subnational governments share power to collect and manage revenues from extractive industries for numerous reasons, including compensating local communities for their increased burden, mitigating conflict and promoting local economic development. Just before *découpage* in December 2015, Prime Minister Augustin Matata said the purpose of the provincial break-up was to facilitate development. He argued that with smaller provinces, governors would be closer to their people and the scale of service delivery would result in better services within each province.[10] The DRC's objectives for sharing revenues with provinces, particularly as they are now drawn, are not as clear.

   Though the rules for sharing royalties are clear, the rules related to the

8 Loi N° 11/011, 13 July 2011 *Relative aux Finances Publiques*, Articles 219-224, available at : http://www.leganet.cd/Legislation/Droit%20Public/compta/Loi.11.011.13.07.2011.htm

9 Government of the DRC, *Loi de finances pour l'exercise 2015*, 35, http://www.droit-afrique.com/upload/doc/rdc/RDC-LF-2015.pdf; Tresor Kibangula, "RDC: Moise Katumbi, le dernier gouverneur" *Jeune Afrique*, 30 June 2015, http://www.jeuneafrique.com/mag/241318/politique/moise-katumbi-le-dernier-gouverneur/

10 Paraphrased English translation of the legal statutes



Source: DRC EITI report and EITI secretariat, 2014

Figure 2. Changes to revenue flows from 25 largest mines resulting from *découpage*

distribution of other national taxes could benefit from increased clarity. As discussed above, the national government could be more articulate about which revenues fall into categories A or B and the formula for sharing between provinces for category B revenues. The challenge is so great that Katanga's provincial government claims that the lack of clarity is part of why it started collecting local taxes to support its budget.

Post-*découpage*, there is also less clarity about which provinces are allowed to collect local taxes. The Chamber of Mines of the Congo, an industry association, has voiced concerns about overlapping road and related taxes by the former Katanga province and the new Lualaba province. The duplication of the road tax in the two new provinces is a direct result of the new delineation of borders.[11] The miners expect governors of the new provinces to lead consultations to rectify discrepancies and apply tax credits before continuing their payments.

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Opaque rules make it difficult for national and subnational governments to implement a revenue sharing system and plan for potential revenues. *Découpage* has created many new provincial-level official posts, meaning the relatively small corps of well-equipped Congolese public servants is spread even more thinly. The change in revenue distribution could also create new political or economic risks, possibly leading to political tensions between some of the provinces or overall tax increases as officials in new provinces try to collect from the mines in their borders.

11 Chambre des Mines, *DRC Mining Industry, 1st quarter 2016*, May 2016 http://chambredesminesrdc.com/wp-content/uploads/2016/06/2016-0706-CdM-RT-1-EN.pdf

The national government should clarify why it shares revenues with subnational governments and precisely outline rules for when revenues are shared and how they are collected. The objectives for subnational revenue sharing can be outlined in a national policy, while the rules related to local revenue collection should be clarified in the process of revising the mining code.

2 **The national government should share revenues consistently, according to existing formulas.** If local government officials are to efficiently and effectively put their share of revenues to good use, the national government must apply rules in a consistent and timely fashion. The rule for sharing mining royalties is clear, but the amount Katanga received from royalty transfers in 2014 differs drastically from what the formula predicts it should have received from the federal government. No one in the national government has clarified the reason for this discrepancy, despite President Joseph Kabila's call to comply with the revenue sharing rule of the mining code.[12] In the Philippines, when local governments were not receiving mining revenues on a consistent or timely basis, they reported problems implementing planning and budgets. In response, local governments used the national Extractive Industries Transparency Initiative (EITI) process to compare what they were receiving with what they were entitled to receive and the timing of the transfers, which became more predictable.[13] The national EITI in the DRC has commissioned a report about subnational transfers that might similarly serve as a path forward.

3 **Governments at all levels must be transparent and accountable.** Natural resource revenues can fuel sustainable development, but it is hard to track whether this is happening without information about how much is being used by whom. NRGI has found that local governments can improve their natural resource wealth management by coupling national and local transparency.[14] For example, the DRC's 2014 EITI report only included information about revenues shared with Katanga. In order to comply with the new EITI Standard, the DRC government should include information about subnational transfers to all provinces.[15] A report by NRGI partner ACIDH (Action Contre l'Impunité pour les Droits Humains) tracking revenues in the former Katanga region showed that royalty revenues the DGRAD collected from Mutanda Mining in 2013 should have contributed over USD 3 million to the town of Mutshatsha alone. However, there are no schools, hospitals or other public services there.[16] Neither the town nor provincial governments publish their budgets consistently. Going forward, ACIDH calls for the new resource-rich provinces of Haut-Katanga and Lualaba, as well as the Ministry of Finance, to publish their budgets and detail what they receive from extractive revenues.

Going forward, the new resource-rich provinces of Haut-Katanga and Lualaba, as well as the Ministry of Finance, should publish their budgets and detail what they receive from extractive revenues.

12 Gustave Beya Siku, letter from the director of the president of the DRC's cabinet to prime minister, 19 May 2014, http://www.congomines.org/system/attachments/assets/000/000/631/original/Lettre-Cabinet-du-President-de-la-R_C3_A9publique-_C3_A0-SEM-le-Premier-Ministre.pdf?1430929442 [

13 Rebecca Iwerks and Varsha Venugopal, *It Takes a Village: Routes to Local-Level Extractives Transparency* (NRGI 2016), http://resourcegovernance.org/analysis-tools/publications/it-takes-village-routes-local-level-extractives-transparency

14 Iwerks and Venugopal, *It Takes a Village: Routes to Local-Level Extractives Transparency*

15 EITI Standard 2016, Section 5.2, https://eiti.org/document/standard

16 ACIDH report p. 37

4 **The national government and donors should equip local governments with resource administration skills.** Managing natural resource revenues well is not easy. Volatile commodity prices and exhaustibility can destabilize even mature economies. With exposure to natural resource revenue management best practices and support implementing good tools, local government officials are capable of turning their natural resource wealth into long-term development.[17] Relevant authorities such as the Ministry of Finance and the Ministry of Mines can mobilize a cadre of local government officials in newly established resource-rich provinces, and train and support them for successful management of the resource wealth.

Applying lessons from other resource-rich subnational provinces will make it easier for local governments to help populations closest to mining sites benefit from resource revenues. This briefing focuses on provincial transfers, but the national government also shares similar revenues types of revenue with other subnational entities, such as municipalities where extraction takes place. The amount due to municipalities is similarly obscure, inconsistent and unpredictable. After *découpage*, the national and subnational Congolese authorities can improve chances of successfully transforming subnational extractive revenues into sustainable development by providing clarity in the rules and objectives of revenue transfers; predictability in the amounts and timing of transfers; transparency in national and subnational revenues and transfers; and natural resource revenue management skills to local government staff.

17 Andrew Bauer et al, *Subnational Governance of Extractives: Fostering National Prosperity by Addressing Local Challenges* (NRGI 2016), http://resourcegovernance.org/analysis-tools/publications/subnational-governance-extractives-fostering-national-prosperity

APPENDIX. 25 LARGEST MINES' CONTRIBUTIONS TO MINING ROYALTIES AND LOCALLY COLLECTED TAXES, 2014 (USD)

	Name	Mining royalty	Locally collected tax (Katanga)	Old province	New province
1	Kamoto Copper Company	19,631,369	15,000,000	Katanga	Lualaba
2	Mutanda Mining	28,345,233	30,271,545	Katanga	Lualaba
3	Tenke Fungurume Mining	31,654,109	17,970,702	Katanga	Lualaba
4	Société d'Exploitation de Kipoi	2,253,325	4,614,042	Katanga	Haut-Katanga
5	Boss Mining	7,668,873	19,098,590	Katanga	Lualaba
6	Kibali Gold Mines	15,411,547	-	Orientale	Haut-Uele
7	Frontier	8,626,955	33,001,400	Katanga	Haut-Katanga
8	Ruashi Mining	7,296,586	3,576,523	Katanga	Haut-Katanga
9	MMG Kinsevere Sarl (Ex. Amck Mining Sprl)	8,579,372	2,770,286	Katanga	Haut-Katanga
10	Congo Dongfang	5,972,498	10,984,246	Katanga	Haut-Katanga
11	Shituru Mining Corporation Sprl	3,388,754	1,699,279	Katanga	Haut-Katanga
12	Chemaf	2,878,116	1,521,312	Katanga	Haut-Katanga
13	Anvil Mining Congo Sarl	0	1,229,971	Katanga	Haut-Katanga
14	Groupement pour le Traitement du Terril de Lubumbashi	0	21,448	Katanga	Haut-Katanga
15	La Minière De Kalubwe Myunga	2,150,784	1,220,601	Katanga	Lualaba
16	Générale Des Carrières et des Mines	0	2,519,853	Katanga	Lualaba
17	Compagnie Minière de Luisha	1,053,250	597,605	Katanga	Haut-Katanga
18	Groupe Bazano Sprl	99,937	10,130	Katanga	Haut-Katanga
19	Société Minière Du Katanga	2,048,647	1,590,494	Katanga	Haut-Katanga
20	Kinsenda Copper Company Sarl (Ex Miniere De Musoshi and Kinsenda)	0	1,261	Katanga	Haut-Katanga
21	Congo Cobalt Corporation	0	158	Katanga	Haut-Katanga
22	Compagnie Minière Du Sud Katanga	308,714	4,317,455	Katanga	Haut-Katanga
23	Luna Mining	403,027	-	Katanga	Haut-Katanga
24	Ashanti Goldfieds Kilo	0	-	Orientale	Haut-Uele
25	CNMC Huachin Mabende Mining Sprl	1,289,054	3,711,542	Katanga	Haut-Katanga
	TOTAL	149,060,150	155,728,443		

Source: DRC EITI report and EITI secretariat, 2014

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