



WOMEN AT THE END

of the supply **chain opportunity**
line for the artisanal and **SMALL-SCALE**
COBALT SECTOR in the Democratic
Republic of the Congo

“Challenges, opportunities and courses of action”

Lubumbashi, October

2022

Executive Summary

The overall objective of this study was to improve the understanding of the risks, challenges and potential opportunities that present themselves to women in the cobalt supply chain, in the special context of the copper and cobalt sector in the Democratic Republic of the Congo.

The report describes a series of considerations, factors and practices that reinforce the marginalizations and inequalities that confront women preventing them from fully and equitably benefitting from the incomes and other opportunities associated with the growing demand for cobalt. The report shows that public policies, segregatory, gendered reforms and traditions are at the root of these inequalities, which result in a limitation of the presence of women along the entire value and supply chain.

The study shows that the various marginalizations have a direct impact on women's income. The women earn 3 to 4 times less than the men and they could in no case bear the costs related to formalization, whether it be payments required to achieve legal compliance or compliance with the standards (certification standards, due diligence). The report highlights major risks that the new standards and institutional framework, resulting from the 2018 mining reforms, could pose to the situation of women in the artisanal and small-scale sector's supply chain. These reforms focus on the formalization of the sector, which includes, on the one hand, operating in the artisanal sector in a legally compliant cooperative and, on the other hand, operating in an artisanal mining zone allocated by the authorities. In addition, artisanal operations must comply with standards developed by EGC and clearly excessive due diligences.

A comparative analysis carried out by **OMGC** indicates that the payments imposed in the DRC by the request for authorization are among the most exorbitant when compared with other countries in Africa, and suggests the drafting of a more rational, effective policy that is adapted to the national context.

In addition, the report underlines the fact that the mining code and the EGC standards impose requirements (very high management and operating standards) on the

cooperatives, a know-how that the women do not necessarily have, and that has to be developed.

Without a progressive application of these requirements or their substantial alleviation and the provision of the necessary facilities, many women will have no option other than to remain in the informal economy. The more the women remain in the informal economy, the less they will appear along the links in the extraction and supply chain, the less will be the incomes and other social and economic benefits they receive.

Therefore, the study argues that the development and application of traceability and due diligence standards along the supply chain, in particular the extraction chain, must be tailored to take into account the situation and specific needs of the women on the mining sites. To achieve this, the necessary reforms should be introduced at the end of a consultation process that guarantees effective participation of the women.

Moreover, the report stresses the need to improve the technical and operational capabilities of cooperatives managed/founded by women. This implies legal support for the creation of cooperatives, technical and operational assistance, such as the provision of equipment, especially the kits needed to meet site safety standards, and help with access to funding. Otherwise, the women will continue to be victims due to their marginalization in the supply chain and the meagre incomes that they earn.

Given the above, the conclusions of this report can inform the initiatives, the reforms to the sector and any actions in which national and international players, including consumers, might engage in order to reinforce women's empowerment and independence within the cobalt supply chain.

Recommendations

To the ministers of Mines and finance of the central and provincial governments

- ▶ Reconsider and draft a formalization policy for the artisanal and small-scale sector that is tailored to the specific context of each sector and to the needs of the women on the mining sites. These reforms should seek to reduce the excessive costs and timescales for the approval of the authorizations required for artisanal and small-scale mining. For this, the DRC government should use Zambia as a model as it carried out a more rational, effective and restrained reform.
- ▶ Have women miners or their leaders actively participate in the design and decision-making processes for the adoption and implementation of such policies/programs.
- ▶ Take administrative measures to remove the administrative, financial and operational barriers that hamper the presence of women in the cobalt extraction chain while awaiting the reform
- ▶ Provide facilities to mining cooperatives founded or managed by women to guarantee them fair and equitable access to the opportunities related to the demand for cobalt. These facilities include the allocation of viable, accessible artisanal mining zones to women.

DRC sponsors and financial partners, and end consumers:

- ▶ Support the argument of civil society organizations for a rational, tailored reform of the artisanal and small-scale sector and for the allocation, by the government, of viable artisanal and small-scale mining areas to mining cooperatives set up by women.
- ▶ Provide facilities to mining cooperatives founded or managed by women to guarantee them fair and equitable access to the opportunities related to the demand for cobalt. These facilities might include access to funding for female cooperatives.
- ▶ Support or implement programs/interventions designed to improve the technical and operational capabilities of cooperatives managed by women.

Part of this support might include technical and operational assistance such as the provision of equipment, like the kits needed to meet site safety standards.

- ▶ Demand guarantees that the development and application of traceability and due diligence standards along the supply chain, in particular the extraction chain, be tailored to take into account of the situation and specific needs of the women on the mining sites. If need be, consider a progressive application of standards be adopted to the specific nature and capabilities of local operators involved in the cobalt supply chain

To international and local civil society organizations:

- ▶ Put the case to the Congolese authorities for the drafting of a rational formalization policy for the artisanal and small-scale sector that is tailored to the specific context of each sector and to the needs of the women on the mining sites.
 - ▶ Support the argument put by women's organizations for the allocation of artisanal and small-scale mining areas to cooperatives founded or managed by women
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« We thanks **Jean Pierre Okenda** for his productive comments et insights »

Maitre 
Executive Director

I. Context and reason for the study

The Democratic Republic of the Congo (DRC) accounts for 63% of the world's production of cobalt on average and is the world's fifth biggest producer of copper. With this production capacity, the country is at the centre of upstream cobalt supply chains. The contribution of the artisanal and small-scale sector is estimated at around 15 to 20%.¹ This share could be maintained or even increased in the wake of the legislative changes introduced in 2018 and with the growing appetite for what some are now calling "blue gold". The revised mining code has actually sanctioned the cohabitation of artisanal and small-scale mining and industrial mining.²

However, the production of cobalt is often said to be associated with human rights violations, due especially to the presence of children in the artisanal sector's extraction and supply chains, conflicts between artisanal and industrial miners, poor working conditions, systemic corruption and environmental impact.

As this reports will demonstrate, the sector though is of crucial importance to local communities. Unlike the industrial sector, the artisanal and small-scale sector is anchored in the local economy to such an extent that it is now the most important source of livelihoods for the local communities.

However, the sector does not provide equitable benefits for the artisanal miners, especially the women, and more widely, for the public finances, due to its highly computerized nature and its opaque governance. Reliable government statistics on the number of miners working in the sector are almost non-existent. Some sources estimate that 150 to 200 thousand miners were working between 2017 and 2018 in the Katanga copper region, thousands of whom were women.³ The complexity and dynamics of the sector are such that foreigners find it hard to understand the individual local supply chains from the cooperatives to the refineries.

¹Entreprise générale de cobalt, lancement officiel des activités de l'entreprise générale du Cobalt en république du congo, see <https://www.egcobalt-rdc.com/fr/lancement-officiel-des-activites-de-entreprise-generale-du-cobalt-en-republique-democratique-du-congo/>, consulted on June 12 2021 (official launch of EGC, in French only)

² Article 40 (a) of the 2018 mining regulation

³ BGR, cartographie de l'exploitation artisanale du cuivre et de cobalt dans les provinces du Haut-Katanga et du Lualaba en République démocratique du Congo, October 2019, p.40 pdf (Map, artisanal copper and cobalt mining in Haut-Katanga and Lualaba, DRC, in French only).



Since 2014, the DRC government has tried without success to formalize the sector in order to regain control of the sector and also to make it economically and socially beneficial and sustainable for the artisanal miners and the local communities. It is in this context that the government had commissioned a scoping study with the aim of integrating the sector in the Extractive Industries Transparency Initiative (EITI) process.⁴ The sector has, however, never been integrated into the EITI process. Recently, the Multipartite Group revived the idea of integrating the sector from 2021.⁵

In parallel, the growing demand for cobalt has impelled the government, along with

producers and consumers of the metal, to show interest in cleaning up the governance of the artisanal and small-scale mining sector. As described above, the government undertook a series of legal and institutional reforms aimed at organizing and formalizing the sector. On their side, the producers and consumers are engaged in a series of initiatives and programs designed to rid the supply chains of human rights abuses, child labor, poor working conditions, and the risks of corruption and environmental pollution.

Most of these policies and initiatives claim to seek to reduce poverty by promoting better distribution of the wealth and access for communities to the opportunities

⁴ PWC, rapport de l'Auditeur indépendant sur l'étude de cadrage de la couverture de l'exploitation minière artisanale à l'Est de la République démocratique du Congo (PWC audit, in French only). The study can be found at <https://drive.google.com/file/d/0B1C1Aj5TqAgvbDFldWRRVTlnZ1E/view?resourcekey=0-QTx1yYd-F7jgcaWnPLlrA>
⁵ See the ITIE RDC work plan for 2021, 2022 and 2023 at https://drive.google.com/file/d/1_q6vGZrja_%20Dq3BtzCdWXS4uVxuG4qSvT/view (in French only)

inherent in the demand for cobalt. Now, due to many factors, the women who contribute to the everyday survival of their homes represent the face of poverty in the artisanal sector. They are particularly victims of socio-cultural marginalizations, exacerbated by exclusive public policies and/or the non-integration of the gender perspective that characterizes the various initiatives supported by producers and consumers.

In fact, only a few studies have looked in-depth at gender-based marginalizations/discriminations in the cobalt sector, or at the related challenges and opportunities.

Without an in-depth understanding, there is an enormous risk that the responses to be applied, be it the formalization of the sector or the program to fight poverty, will increase women's insecurity in the supply chain.

This study is designed to contribute to the debate. It provides government players at every level, producers, buyers and end consumers with vital information that can help in the drafting of inclusive public programs that can promote equitable access for men and women to the opportunities inherent in the demand for cobalt in its supply chain.

2. Study objectives

The overall objective of this study is to improve the understanding of the risks, challenges and potential opportunities concerning the role of women in the cobalt supply chain, in the special context of the copper and cobalt sector in the Democratic Republic of the Congo.

Specifically, the study's conclusions aim to (i) map the challenges and the needs

of women in the artisanal and small-scale sector with the goal of informing initiatives that will empower women, (ii) inform the actions of decision-makers at a national and international level of the supply chain, (ii) serve as the basis for strategic thinking on the programming of projects to reinforce the economic independence and power of women in the copper and cobalt supply chain.



Photo illustrating the women's capabilities booster training at the Kapata mining site.

3. Methodological approach

The study used a variety of methods and techniques which led to the subdivision of the work into three phases: (i) document-based review, (ii) collection of data in the field, and (iii) processing and drafting of the final report. The first stage consisted of a document-based review aimed at identifying the existence of the literature, of initiatives and approaches/mechanisms that promote the inclusion of gender in the design of public policies and the development of programs designed to reduce poverty in artisanal cobalt mining areas.

This stage also included a review of the DRC and OHADA (Organization For The Harmonization Of Business Law In Africa) legal framework for artisanal and small-scale mining.

In other words, it was a question of understanding how DRC's mining policy and legal framework address the issue of gender equality and its application in practice. This information allowed us a view of the theoretical knowledge of systemic and structural inequalities and their impact on the situation of women in the cobalt production chain.

The document-based review was complemented by field research on the three target mining sites in Kolwezi (Kapata, Tshipuki and Biwaya). Data was collected using a questionnaire that served as a guideline for interviews with women, local authorities and Non-Governmental Organizations (NGOs) at the above mining sites and in Kolwezi.

The questionnaire was used with one hundred (100) women working at the three sites. In total, nine (9) focus groups were held with women at the above three sites. It should be noted that the women who participated in the study have had

the benefit of a series of training courses to boost their capabilities. The research, capabilities booster training, and legal assistance with the certification of a mining cooperative were part of three modules of the pilot project run by **OMGC**.

4. Difficulties encountered and limitations

The main difficulty encountered was, and remains, the informal nature of the artisanal and small-scale sector. This means that a whole range of data, especially statistics on the number of women working in the copper and cobalt supply chain, women's wages, etc. is not available. This made it hard to identify the extent of the impacts, risks and challenges faced by women in the artisanal and small-scale sector.

As for limitation, the study wanted to focus

initially on analyzing the discriminations faced by women, deepening understanding of the role of women in the supply chain and their impacts on the incomes and power of women. In this framework, the study analyzes the essence of the mining reforms introduced since 2018 and the potential challenges/barriers that confront women in the cobalt extraction and supply chain.

The study's conclusions suggest areas for research and investigation into specific issues.

5. Presentation of the study's results

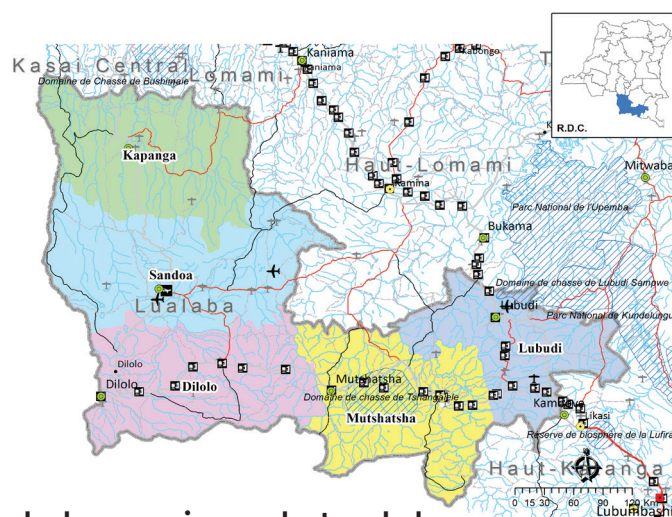
This chapter presents the main conclusions of our analysis and investigation of the marginalizations of women in the cobalt supply chain, the challenges, opportunities and impacts on their incomes. The chapter begins with a section that provides an overview of the impact of the mining industry on women. This chapter presents the main conclusions of our analysis and investigation of the marginalizations of women in the cobalt supply chain, the challenges, opportunities and impacts on their incomes. The chapter begins with a section that provides an overview of the impact of the mining industry on women.

This is followed by the actual presentation of the results. This begins with a section on gender-based marginalizations caused by sexist, exclusive government policies, plus marginalizations based on sexist traditions and their impacts on women's

incomes. In this way, we analyzed the new standards and institutional framework for the artisanal and small-scale sector and its barriers and risks for the women in the supply chain.

The section in particular analyzes the government's formalization policy for the sector and its impacts on women. Specific stress is laid on the description of the administrative, operational and financial barriers/constraints arising from the recent reforms. Lastly, the chapter informs stakeholders about the perspectives and courses of action for reinforcing the economic power of women in the supply chain.

It should be noted that cobalt extraction activities are concentrated in the Mutshatsha area. Below is a map of the province of Lualaba.



Carte de la province de Lualaba

5.1 Overview of the impact of the mining industry on women in the Katanga copper region

The general trend is for women to be on the front line of the negative impacts associated with the growth in industrial and artisanal and small-scale mining activities. Paradoxically though, they are at the back of the queue when it comes to taking the few related financial and economic opportunities.

Before the growth of mining activities, agriculture was the main source of income for many women in the mining areas. However, the freeing up of the mining sector to private capitals and the inrush of industrial companies to the region has not only led to the alienation of lands but has also offered fewer opportunities to communities. In addition to enclosures, the revival of the mining industry has resulted in environmental degradation, including the pollution of waterways courses and the land.⁶

In spite of its impact on the environment and community life, the industrial sector offers employment opportunities for local

communities. However, lack of the qualifications required for job vacancies has limited the communities' access to skilled jobs. Unskilled, especially manual jobs are more or less the only ones offered to members of the communities.

The heavy nature of the jobs and working hours are however incompatible with the traditional role that women play in the society. For example, the industrial companies were offering jobs such as materials handling and site security. Women's traditional role is to prepare food for the family and care for the children. However, the jobs offered required staff to be present both day and night. This meant that the vacancies weren't available to the women. This situation was particularly evident for widows and divorcées.

A study carried out by Cordaid has shown that most women who lost their land in the mining areas have not found alternative employment with the mining companies, and that the alienation of agricultural

⁶ Professors Celestin Banza Lubaba Nkulu and Benoit Nemery, Conference on mines, environment and health: research and perspective, Bukavu December 16-17 2019, at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6110556/>, consulted on November 5 2021 (in French only).



Photo taken at the Biwaya site illustrating the marginalized place in the extraction chain.

land has had a direct impact on their incomes.⁷ The same source indicates that the development of industrial projects has rather reinforced men's economic power to the detriment of the economic independence of women in the household.⁸ In this way, women's economic dependence on men has destabilized households, affecting in particular the environment for the children, whose social situation was closely linked to the mothers' incomes. In rural areas, most men whose incomes have risen have taken more wives, which has led to the instability of households and more children.

Alongside the mining industry, artisanal and small-scale mining was also developing. According to the government, the revival of artisanal and small-scale min-

ing would promote the emergence of a Congolese middle class which included millions of people without employment. Unlike agriculture, with its cycles of seasonal earnings, artisanal and small-scale mining offers immediate and regular incomes. Affected by the loss of land and the pull of incomes, local communities including many women see it as the only promising alternative.

Yet even in this sector, women only play a secondary role. Despite their presence in the extraction chain, women don't do the same work as the men. Activities specifically reserved for women can be summarized as *droumage*, especially sorting, washing, waste handling,⁹ or ancillary activities such as catering. Very few women are in properly in the cobalt production

⁷ Cordaid, exploitation minière au cœur des zones rurales : quel développement pour les communautés locales, décembre 2015, pages 7 et 23. ⁸ *Idem* ⁹ Women's international league for peace and freedom, Annie Matundu Mbambi and Léonnie Kandolo, à l'autre bout de la chaîne, les femmes dans les mines artisanales en RDC, August 2016, page 11 (women and ASM, in French only)

A study carried out by Women's International League for Peace and Freedom WILPF DRC also found segregation at work along gender lines, as very few women are owners of artisanal mining zones or are traders, especially as these activities require a large start-up capital.¹⁰

Sexist segregation and marginalizations deny women equitable access to the opportunities and profits associated with mining. For example, none of the 100 women who participated in the study had an artisanal miner's license or belonged to a functioning cooperative.

However, the miner's licence is a compulsory official document that gives one the right to work legally on a mining site. In addition, as we shall see later, possession of an artisanal license is one of the prior legal requirements for forming a mining cooperative.

The segregationist practices explain women's isolation in the supply chain. Different factors have given rise to these practices. OMGC's study has highlighted (i) marginalizations engendered by sexist, exclusive government policies and (ii) marginalizations based on gender-biased cultures and traditions.

5.2 Marginalization based on gender-biased exclusive public policies

Apriori, the regulatory framework seems not to marginalize women. The mining code protects against and penalizes the violation of women's rights in artisanal mining zones.¹¹ The mining code prohibits the presence of pregnant women in artisanal mining zones.¹²

Prohibiting the presence of pregnant women aligns with the government's goal to rid the artisanally produced cobalt supply chain of abuses of children's and women's rights but women experience unintended consequences due to this policy. The prohibition of pregnant women becomes

¹⁰ Women's International League for Peace and Freedom, Committee on the Elimination of Discrimination against Women, rapport alternatif sur l'impact de l'exploitation minière sur les droits des femmes en République démocratique du Congo, presented by Franciscans International, Submitted June 7 2019, page 8 (women and ASM, in French only). ¹¹ Article 299 (a) of the mining code states that "The mining of and trade in mining products from a site where a contravention of the laws on the protection of human rights, the rights of the child or women's rights has been recorded by a competent authority is illegal ...".

¹² Article 5 of the mining code, amended in 2018, states that "Any adult of Congolese nationality, except pregnant women, wishing to undertake the artisanal mining of mineral substances anywhere on the national territory, in compliance with to the provisions of the present Code, may do so only as part of an approved mining cooperative, membership of which requires the possession of an artisanal miner's license".

one of the underlying causes of segregation, due to the regulations adapted to in an environment traditionally hostile to the presence of women on artisanal mining sites. It sanctions the exclusion of women from mining sites, whatever the stage of pregnancy. A pregnant woman is literally deprived of the right to work, even though mining is the only source of income.

This regulatory measure is keenly contested by the women. On this issue, the chair of the Coopérative Minière Maendeleo, the sole cooperative led by women, declared that *“Everyone in Lualaba is a miner or depends in one way or another on artisanal mining, including women. The indiscriminate application of this ban puts many women in a situation of vulnerability and poverty, and without alternatives. You will agree with me that the measure banning pregnant women from the site is not only a backward step but it heralds anarchy and discrimination against women who, let’s not forget, have been made pregnant by a man ...”*¹³

This perception is widely shared by women throughout the country. A study carried out in the East of the country has shown that women oppose the generalized, indiscriminate application of this measure.¹⁴

Many women interviewed by OMGC have a discouraging view of the hassles they experience at the hands of local officials on the mining sites, though some are forced to bribe these same local officials.

Another discrimination facing women arises from the way the government conceives the formalization of the artisanal sector. It is well-known that women earn less than the men as they are marginalized in the value chain and suffer discrimination of every kind. Yet the public formalization policies impose equality requirements that ignore the situation specific to women. As the following sections show, these requirements reinforce women’s exclusion from the formal cobalt supply chain. Since 2010, only artisanal miners who belong to a cooperative are authorized to carry out artisanal mining.¹⁴

The 2018 mining reform reinforced this measure.¹⁶ At the same time, the government has accelerated the regulation of cobalt, classified as one of the strategic mineral substances. The mining code states that access to, the search for and exploitation and commercialization of strategic minerals including cobalt shall be governed by a specific standards and insti-

¹³Interview with Agnes and Alphonsine, Kolwezi August 18 2021.

¹⁴ Réseau d’Innovation Organisationnelle and the Catholic University of Bukavu, Action et Réalisation pour le Développement and the University of Kisangani, Women in Artisanal and Small-Scale Mining in Democratic Republic of the Congo, at <http://impacttransform.org/wp-content/uploads/2017/11/Women-in-Artisanal-and-Small-Scale-Mining-DRC-recommendations-FR.pdf>

¹⁵Decree 0706/CAB.MIN/MINES/01/2010.

¹⁶Article 26 of the mining code states that “Without prejudice to the provisions of article 27 below, only adults of Congolese nationality holding an artisanal miner’s license and affiliated to approved mining or quarry products cooperatives are eligible for artisanal mining.”

tutional framework.¹⁷ This framework has materialized as follows:

- ▶ Publication in 2018 of the Prime Minister's decree declaring cobalt to be a strategic mineral.¹⁸
- ▶ Publication in 2019 of the decree protecting activities involving the artisanal mining of strategic mineral substances.¹⁹
- ▶ Creation of ARECOMS (strategic mineral substances regulatory and inspection body).²⁰ Its mission is to regulate and clean up the markets in strategic mineral substances and improve the business climate and the economic and industrial attractiveness of this sector.
- ▶ Creation of Entreprise Générale de Cobalt to regain control of the cobalt produced by artisanal and small-scale mining.²¹
- ▶ Creation of the government body responsible for maintaining the register of cooperative companies in the Democratic Republic of the Congo.²²

The in-depth analysis of the standards and institutional framework above indicates

that these reforms risk isolating the women in the supply chain, even compromising the chances of formalizing the entire artisanal and small-scale mining sector. In fact, as well as adding compulsory membership of a cooperative and adherence of the latter to the rules of the OHADA regulatory framework²³, a whole range of specific rules for the sale of artisanal production were introduced.

To make formalization a reality, the government created the Entreprise générale du cobalt (EGC) in November 2019 to manage the purchase and commercialization of artisanal cobalt produced in the DRC.

On paper, the EGC is designed to clean up the artisanal sector and promote profitable, sustainable mining to benefit the artisanal miners. In practice though, the imposition of the monopoly could have a considerable impact on the means of subsistence of thousands of miners and communities that depend on the artisanal and small-scale sector, as this report shows later.

¹⁷ Article 7 of the revised mining code

¹⁸ Decree available at https://congominer.org/system/attachments/assets/000/001/533/original/Strategic_Substances_Decree.pdf?1543917928

¹⁹ Decree <https://www.leganet.cd/Legislation/Droit%20economique/Code%20Minier/decret.19.15..PDF>

²⁰ Decree available at <https://www.droit-afrique.com/uploads/RDC-Decret-2019-16-autorite-regulation-substances-minerales.pdf>

²¹ <https://www.egcobalt-rdc.com/fr/>

²² Decree creating the Service National des Coopératives et Organisations Paysannes, available at https://www.droitcongolais.info/files/911.03.20-Decret-du-9-mars-2020_Societes-cooperatives_autorite-administrative.pdf

²³ Article 236, section 3 of the mining regulations states that "the mining and/or quarry products cooperative is constituted in accordance with OHADA rules principles for cooperative companies.

5.3 Marginalization based on sexist norms and traditions

Marginalizations based on cultures and traditions have restricted women's access to excavation, the most lucrative part of the value and supply chain. This is the result of a stereotypical belief that the presence of women makes the minerals disappear or reduces the mineral content; in other words, the presence of women is a curse.

A pregnant or menstruating woman is the 'real' curse, but as it is hard to tell if a woman is menstruating or 3 months pregnant, the ban extends to all women. This is a widely held belief in the copper and cobalt sector that spills over into countries bordering the DRC, such as Uganda and Rwanda.²⁴

In Kolwezi, a women's leader told the OMGC team that "... We had male supervisors who banned women from going underground on the mining sites, claiming

*that the quantity of minerals would drop or even disappear if women were present. But we always asked them why a female engineer employed by an industrial company could go underground, but a woman working in artisanal mining couldn't. As we have female engineers in the industrial mines, how is it that the mineral doesn't disappear, nor does the quantity drop when these women appear in the industrial mines? Given the role that we play in the sector and in our homes, we have been able to convince the traditional chiefs to organize a blessing ceremony for women. Since then, we've been going in and the minerals are there ..."*²⁵

Resorting to traditional chiefs and superstitious ceremonies is common practice in the Katanga region and throughout the DRC, even for the roll-out of industrial mines. During our research, women activists who fight for women's

²⁴ De Doris Buss, Blair Rutherford, Jennifer Hinton and Jennifer Stewart (Carleton University); Joanne Lebert and Gisèle Eva Côté (Partnership Africa Canada); Abby Sebina-Zziwa, Richard Kibombo and Frederick Kisekka (Development Research and Policy Analysis Center), *le genre et l'exploitation minière artisanale et à petite échelle en Afrique Centrale et de l'Est ; bénéfices et barrières*, February 2017, p.34-35 (on gender and ASM in Africa, in French only)

²⁵ Interview with Agnes and Alphonsine, op.cit

right to access the artisanal sites have managed to get traditional chiefs to organize a blessing ceremony authorizing women to access mining sites.

The chair of the Fédération des femmes entrepreneures told the **OMGC** team: *"... we put the argument and managed to convince the traditional chiefs of the value of authorizing women to access the artisanal mining sites. The prohibition is choking women, especially divorcées and widows who are raising children on their own. The chiefs understood the logic of our struggle - there are no economic alternatives to artisanal work in the region. They organized the ceremony giving us access to the mining sites ... of course, some men are still unsure*

but this is a great victory and we will continue to fight ...".²⁶

This perception is joined by another, that excavation work is too hard, and therefore very difficult due to the women's very nature. Consequently, norms and representations of gender reinforce certain forms of behavior and expectations vis-a-vis femininity and masculinity.²⁷ It is therefore and above all a question of women respecting the cultures and social traditions.

All of these marginalizations violate women's rights and exacerbate the imbalances of power between the sexes.

²⁶ Idem

²⁷ Idem, p.32

6. Gendered norms and traditions: isolation of women in the extraction and supply chain in the artisanal and small-scale cobalt sector

There are no precise figures for the number of women working in the artisanal and small-scale cobalt sector. A 2012 study of gold mining in the east estimated the number of women working in the artisanal chain at over 50%²⁸.

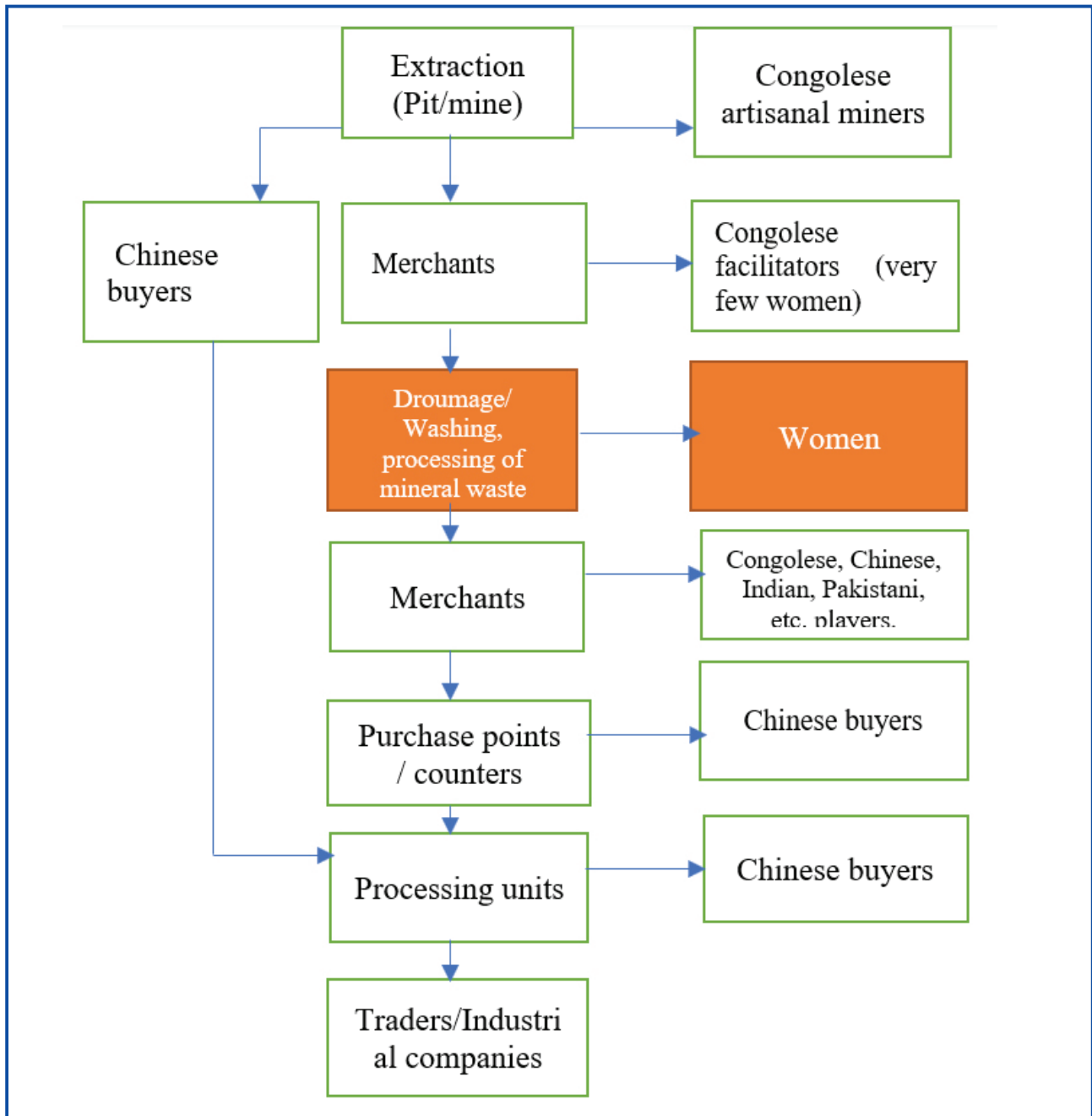
There could be an equivalent proportion in the artisanal and small-scale cobalt sector, if the women working in ancillary activities along the supply chain are included.

Despite their numbers, women are isolated to specific roles in the cobalt extraction and supply, as the illustration below shows. The illustration demonstrates the marginalized role of women and the predominance of the other players.

It should be noted that the illustration reflects OMGC's understanding of the configuration of the extraction and supply chain in the artisanal and small-scale cobalt sector.

²⁸ Karen Hayes and Rachel Perks, Women in the artisanal and small-scale mining sector of the Democratic Republic of the Congo, June 2012, at https://edge.edx.org/assets/courseware/v1/f1ccf0cc879e1ed693df71796f619038/asset-v1:SDGAcademyx+NR001_p+3T2019+type@asset+block/Women_in_the_artisanal_and_small-scale_mining_sector_of_the_Democratic_Republic_of_the_Congo.pdf

Figure 2. Extraction chain and women’s marginalized role in the supply chain²⁹



“Meanwhile, a BGR survey of 240 male artisanal miners found that 40 percent earn less than \$4.2, while more than two-thirds earn less than \$10 a day - two to three times what women earn.”

²⁹ The parallel arrow to the left going from the extraction to the Chinese buyers represents a contract between the cooperatives and the Chinese companies. With no access to financing to carry out stripping work and buy equipment, the cooperatives conclude contracts with Chinese companies/players. The latter pre-finance the work in exchange for exclusive rights to buy up the production.



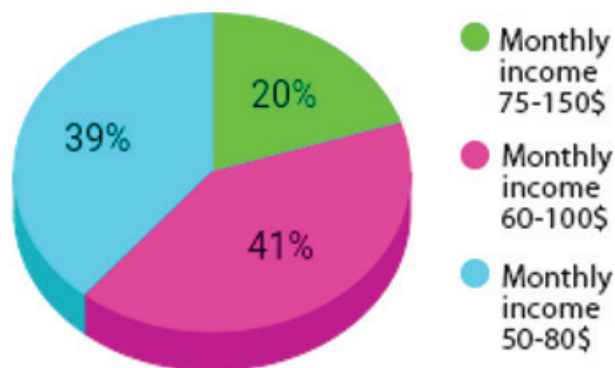
Photo taken in Biwaya illustrating the role of women in the cobalt extraction chain.

The marginalizations of women directly impact their income and may at the same time explain the imbalance of power, insecurity and poverty that women experience.

OMGC's study of 100 women working in the cobalt extraction chain on the Biwaya, Kapata and Tshipuki sites shows that 20% of these women earn \$75-150 monthly, 41% earn between \$60 and \$100, while 39%

earn between \$50 and \$80. In parallel, a survey carried out by BGR on 240 artisanal miners found that 40% declared that they earn less than the minimum wage of USD 4.2 and a little over two-thirds earn less than USD 10 a day.³⁰

Two thirds of the women interviewed by **OMGC** earn between USD 1.6 and 3.3 per day, while just one third earn between USD 2.5 and 5 per day day.



³⁰ BRG, map of the artisanal mining of copper and cobalt in the provinces of Haut-Katanga and Lualaba in the Democratic Republic of the Congo, October 2019, p.40 pdf.

These results corroborate the conclusions of a WILPF study that put daily income in the range of 5 centimes and 9 euros.³¹

Moreover, the changes made by the 2018 mining reform increase the risk of women's marginalization. In addition

to segregationist practices regarding pregnant women, the changes from the 2018 mining reform raise barriers that are likely to further marginalize women, thus accentuating the already enormous imbalance between the power of women and men in this sector.

7. 2018 mining reform: What are the constraints and risks for the women in the supply chain?

The 2018 standards and institutional framework sanctions the formalization of the artisanal and small-scale sector. This includes the transformation of cooperatives into companies as defined by the OHADA legal framework.

Once created, the cooperative must operate in compliance with the responsible supply standards developed by Entreprise Générale du Cobalt (EGC) which are aligned with DRC law and the standards defined by ARECOMS, SAEMAPE (Service d'Assistance et d'Encadrement du Small

Scale Mining) and CEEC (Centre d'Expertise, d'Evaluation et de Certification des substances minérales précieuses et semi-précieuses).³²

For the cooperatives operating in the artisanal areas, standards consist of governance, organization and management requirements including compliance with the legal framework. Additionally, these standards address requirements on traceability, responsible supply, and site management standards for environmental, health and safety risk management.

³¹ Women's international league for peace and freedom, Annie Matundu Mbambi and Léonnie Kandolo, op.cit. p.11

³² The version of the EGC standards was published in March 2021. For the French version see <https://www.egcobalt-rdc.com/app/uploads/2021/03/20210326-EGC-Responsible-Sourcing-Standards-French.pdf>, for the English version see <https://www.egcobalt-rdc.com/app/uploads/2021/03/20210326-EGC-Responsible-Sourcing-Standards-English.pdf>

In practice, the new legal and institutional framework imposes enormous constraints (administrative, operational, technical and

financial barriers) on artisanal miners in general, and on the women in particular.

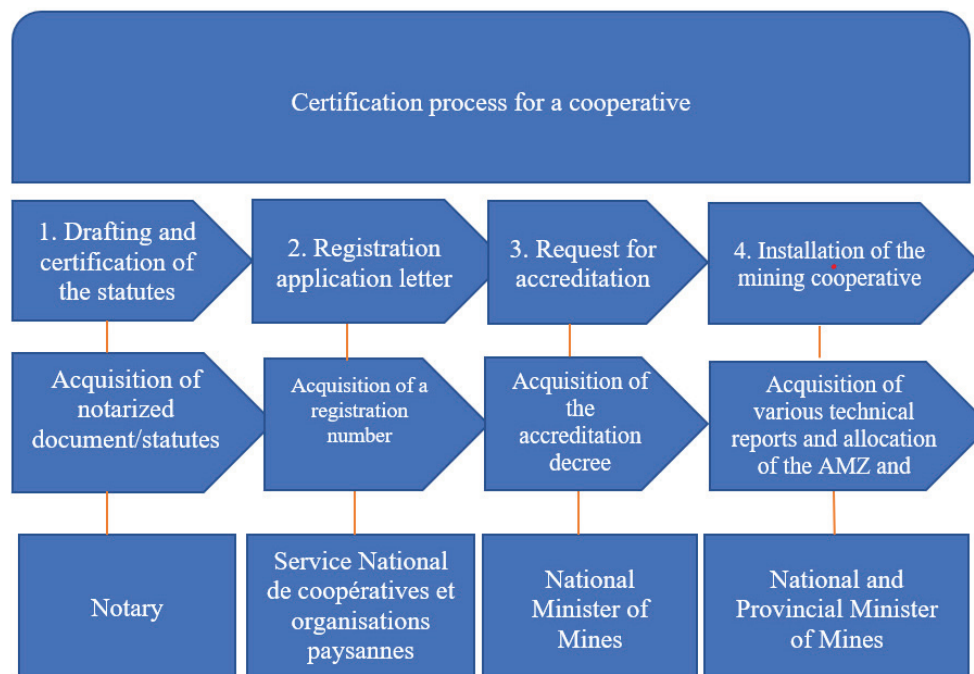
7.1 Administrative barriers

At an administrative level, accreditation requests from cooperatives are registered and approved by SCOOP (Service National des Coopératives et Organisations Paysannes)³³ then by the Minister for Mines, both based in the capital Kinshasa, over 2,000 kilometers from the mining areas.

This inevitably results in huge delays in the

processing of the requests by a highly bureaucratic DRC administration.

The illustration below summarizes OMGC's understanding of the key stages in the certification process for a cooperative in accordance with the amended 2018 mining code, which refers to the OHADA framework included in the EGC standards applicable to mining cooperatives.



To Note: The first link in this illustration shows the four key stages, the second the official documents to be obtained, whilst the lowest stage shows the institutions and public services that play a role in the cooperative certification process, and from whom compliance documents are obtained.

³³ Decree dated March 9 2020 designating the government body responsible for maintaining the register of cooperative companies in Democratic Republic of the Congo; see https://www.droitcongolais.info/files/911.03.20-Decret-du-9-mars-2020_Societes-cooperatives_autorite-administrative.pdf

This illustrates not only the complexity but also the bureaucracy that characterizes the certification process for a mining cooperative. It should be noted that each of the four (4) stages includes a panoply of administrative procedures, official documents unknown to the artisanal miners and back and forth that leaves miners, particularly women, incapable of setting up a legal cooperative.

Applications for an accreditation decree can, of course, be submitted locally, in other words in the provincial capital. However, bureaucracy introduces an enormous risk of delays in the cooperative accreditation process.

Our research has shown that the process for a cooperative to achieve legal compliance usually takes over a year for ordinary citizens. As for women, OMGC has found that only one cooperative initiated by women (COMEMA) has achieved legal compliance and that this process took two (2) years between the submission of the registration application and the allocation of an artisanal mining zone.

It is undeniable that artisanal miners (peasants unaffiliated to the networks of politicians and elites) cannot satisfy the necessary legal and administrative requirements.

7.2 Financial barriers

Complexity and bureaucracy lead to excessive financial costs. It should be noted that the many official documents required across the four (4) key stages result in payments both formal and informal.

OMGC counted at least 6 official documents requiring payments for the purchase of artisanal licenses for the cooperative's 20 founder members.³⁴ We estimate the minimum cost of the formal fees for all of

these official documents to be USD 7,000 including 5,000 to acquire the mining cooperative accreditation decree.

Moreover, the drafting of the statutes and internal rules of the cooperative requires expertise that the miners do not possess. This means resorting to lawyers for legal assistance that costs up to USD 4,000 in fees. If we exclude informal payments (bribes), the certification process

³⁴This relates to the purchase of artisanal licenses, the drafting and certification of statutes, registration of the cooperative with SCOOP, mining cooperative accreditation decree, technical advice from local services and site demarcation.

(acquisition of legal compliance) can cost a cooperative over USD 10,000. These costs do not include fees for environmental permits, surveyors' fees, etc.

As artisanal miners earn very little money, they may be unable to afford the costs for registering a mining cooperative. As described in the section six (6) above, women earn less than the men as there are fewer of them in the extraction chain.

The artisanal miners, in particular the women who earn lower incomes, are

unable to become registered miners. If these costs remain at current levels, it seems clear that the process intends to maintain today's elitist, individual cooperatives, to the detriment of the artisanal miners. These payments are among the most exorbitant when compared with other countries in Africa. Our comparative analysis of payments for requests for artisanal mining permits shows that the costs are very excessive in the DRC, and suggests the drafting of a more rational, effective policy that suits the context.

Figure 2. A comparative sample of payments for requests for artisanal and small-scale mining permits in the DRC and other countries

Country	Description	Cost of ASM operator's license in USD
Sierra	Small-scale operator's permit	1 000
	Annual royalty per hectare.	800
Zambia ³⁵	2-year artisanal mining permit (renewable)	50
	10-year small-scale mining permit	250
Ghana ³⁶	All documents required to acquire legal compliance	4 000
RDC	Purchase of artisanal licenses for 20 members	700
	Certification fees for statutes	500-1500
	Mining cooperative accreditation duty ³⁷	5000
	SCOOP registration fee	Not specified
	Other administrative fees (demarcation, miscellaneous technical advice, etc.)	Not specified

³⁵ <http://www.businesslicenses.gov.zm/license/id/313>

³⁶ The official sources consulted, including the artisanal guide, do not give the figure. However, sources agree on a total figure of 4,000. Elsevier, Resource policy, G. Hilson, The "Zambian Model": A blueprint for formalizing artisanal and small-scale mining in sub-Saharan Africa? p.2, at https://www.sciencedirect.com/science/article/abs/pii/S0301420720303949?dgcid=rss_sd_all&utm_campaign=RESR_MRKT_Researcher_inbound&utm_medium=referral&utm_source=researcher_app. See also Ghana needs to rethink its small-scale mining strategy, at <https://theconversation.com/ghana-needs-to-rethink-its-small-scale-mining-strategy-heres-how-158458> ³⁷ INTERMINISTERIAL DECREE 0001/CAB/MIN/MINES/01/2019 and CAB/MIN/FINANCES/2019/009 on the fixing of rates of duties, taxes and royalties payable at the initiative of the Ministry for Mines, see <https://www.droitcongolais.info/files/647.02.19-Arrete-du-22-fevrier-2019-Taxes-du-ministere-des-Mines.2.pdf>

7.3 Technical and operational barriers

Acquisition of legal compliance for the cooperative is not the end of the process. The requirements for the formalization and management of a cooperative necessitate technical and operational capabilities (or know-how).

At an operational level, the cooperative is responsible for stripping the artisanal mining zone allocated to it. According to the Fédération des femmes entrepreneures, stripping to a depth of 22 to 25 meters costs up to 1.5 million US dollars for one mining plot^{38,39}. The cooperative is also responsible for providing its members with safety equipment such as overalls.

Moreover, the management of a cooperative requires the know-how to ensure that the mining cooperative complies with DRC legal requirements, including the EGC standards and OECD requirements on due diligence. This know-how presumes the existence of

technical knowledge and training that the miners, especially the women, do not have. So mastery of these requirements is as essential as accreditations for a cooperative.

All of the above constraints pose an enormous risk for artisanal miners in general, and for the women in particular. The greatest risk is that the artisanal sector could become more elitist than it was before the 2018 reform, with most artisanal miners forced to carry on working in the informal sector, unless the timeline is adjusted appropriately.

At present, our data suggests that no existing cooperative (including individual cooperatives) has registered in accordance with the new legal requirements. But what is legal compliance worth unless viable artisanal mining zones are available for the artisanal miners?

³⁸ A mining plot has a surface area of 84.95 hectares.

³⁹ Interview with Agnes, Chair of the MaMEMA Mining Cooperative, Kolwezi August 18 2021.

7.4 Availability of viable artisanal mining zones: a challenge for the formalization of the artisanal and small-scale cobalt sector

The availability and viability of artisanal mining zones (AMZ) is a key pre-requisite for the success of any policy to formalize and clean up the cobalt supply chain. This is where earlier reforms failed. In the past, the government created some ten artisanal mining zones, but they were unviable as their minerals were too deep to allow artisanal mining. The availability of AMZs therefore remains a challenge if the current government reforms and global initiatives are to succeed.

The formalization concept requires artisanal miners to be members of a cooperative and the latter to have been allocated an artisanal mining zone by the accredited body. For now though, there are no arti-

sanal mining zones. Among other things, it is the lack of these zones that is delaying the deployment of EGC activities about one year after its launch. EGC has proposed just one artisanal mining site in Kasulu as a pilot experiment, although it is yet to start.

The government should begin by guaranteeing the existence of viable AMZs. The DRC legal framework, namely the mining code, contains alternative levers. The forfeiture of mining rights and negotiations with the industrial companies are areas that should be explored. To date, the Minister for Mines has withdrawn mining rights from 302 holders for non-payment of annual royalties.⁴⁰ Some confiscated

⁴⁰ <https://www.tsieleka.com/index.php/2021/12/06/rdc-la-ministre-des-mines-a-signe-302-arretes-de-decheance-des-titulaires-de-droits-miniers/>

mining plots can be set up as artisanal mining zones (AMZ). Similarly, the 2018 mining code authorizes the superimposition of AMZs on industrial concessions.⁴¹

The use of legal levers is still a reasonable option for a non-adversarial, sustainable artisanal and small-scale sector free from human and women's rights abuses.

8. Formalization of the artisanal and small-scale sector: challenges and perspectives for women in the supply chain.

Like the men, the artisanal sector is the main source of income for women in the mining areas. In theory, rising prices for cobalt could generate high earnings and benefits for artisanal miners, including women. However, as shown above, women cannot fully and equitably benefit from these opportunities. On the contrary, they risk increasing the imbalances between men's and women's economic power.

The government has reformed its standards and institutional framework with the short-term objective of formalizing the artisanal and small-scale sector. The ultimate ambition of these reforms should be to promote a profitable, sustainable and

responsible cobalt supply chain. Unfortunately, these reforms contrast starkly with government ambitions to increase the benefits of the sector for artisanal miners and are onerous for artisanal miners.

As a reminder, formalization rests on three pillars: (i) acquisition of the status of legal compliance with the OHADA framework, (ii) allocation of an artisanal mining zone and (iii) compliance with EGC and/or due diligence standards.

OMGC's study indicates that women could be first to be negatively impacted as a result of their increased marginalization in the supply chain and their meagre earnings. Although the standards framework of

⁴¹ Article 30 of the mining code states that: "the perimeter of an artisanal mining zone may be superimposed on the perimeter of a mining or quarrying right with the holder's express, written authorization. In all cases, the holder is required at the same time to submit a waiver request for the area encroached upon by the artisanal mining zone."

the registration of cooperatives has been simplified, only one cooperative set up by women is currently operating. COMEMA (Coopérative Minière Maendeleo), is the only cooperative set up by women to have been granted the status of legal compliance and a mining plot in Mutshatsha. Since the end of 2021, COMEMA has not been included in the list of 27 operational cooperatives in the Lualaba Provincial Division of Mines.

Even though they have obtained a mining plot, the women directors of COMEMA have not obtained the necessary financial and/or logistics facilities, nor have they managed to negotiate commercial agreements with Chinese companies in order to begin stripping work. As a result, the site is still not operational.

Due to the sector's informal character and the perception of being high-risk, the cooperatives have no access to formal financing and are funded by Chinese lenders via commercial agreements in which exclusive access to the cobalt extracted is the *quid pro quo*. This funding supports the stripping work, the acquisition of equipment for the artisanal miners and the costs of keeping sites secure against potential usurpers. This explains Chinese domination of the artisanal and small-

scale sector. One of the key players in the artisanal mining of cobalt told the **OMGC** team that "... the Chinese are the artisanal sector's financiers. Without them, there wouldn't be an artisanal small-scale sector. They provide the answers that the authorities can't. Also, it's the authorities who go chasing after the Chinese and who bring them to us. Each authority has its own Chinese person and it's a real battle to get one ...".⁴²

The Fédération des femmes entrepreneures in Lualaba and the women working in the artisanal supply chain share this perception. In Biwaya, one of this study's target sites, the women have denounced the Chinese monopoly and the restrictions of selling their production to points of sale in Kolwezi. At least five cooperatives, all controlled and connected to a network of authorities and local elites, operate on the site.⁴³ The latter have signed commercial agreements with the Chinese companies to obtain funding in exchange for access to the production. As a result, all miners, whether or not they are members of cooperatives, are forced to sell production on the site at below value to the Chinese companies and their intermediaries.

When asked by the **OMGC** team about the impact of these agreements on their in-

⁴² Interview with a key player in the artisanal and small-scale sector who wishes to remain anonymous, Kolwezi August 20 2021.

⁴³ The cooperatives concerned: COOPEMIAK, COMIKO, COMIALU, RUKAT and CDMRK

comes, a group of women said that “We don’t have free and equitable access to the business centers to sell our production at fair prices because lots of barriers have been erected by a cooperative managed by Messrs KAJIKO and MALESH. De-

spite not belonging to a cooperative, we’re forced to sell our production to Chinese and Indian buyers ... We sell a kilo of copper for CDF 2,200 (\$1.1) but the same kilo sells for CDF 4,300 (\$2,2) in the points of sale in Musompo, it’s almost double ...”.⁴⁴



Focus group session with women in Biwaya.

⁴⁴ Interview with women miners’ focus group, Biwaya July 13 2021

Frequently, the terms of these agreements are not only unfavourable to the artisanal miners, they also encourage illegal financial operations, corrupt practices and environmental damage. Hence the importance of considering the introduction of formal financing mechanisms, be they private or public. Unfortunately, access to financing appears to be absent from the core of the current reforms and from many initiatives (formalization programs and traceability).

Returning to formalization, stringent standards and institutional framework risks pushing thousands of miners, particularly women, even further into dire poverty. The risks of increased marginalization of women are very great. The requirements on due diligence, traceability and commercialization of artisanally mined products will require skills and installations for which the women have no training.

Furthermore, women are facing stiff competition from mining cooperatives that, for the most part, are sponsored by networks of politicians and/or local authori-

ties. All these challenges put women in a precarious environment and hamper their access to the opportunities related to the demand for cobalt.

Without a progressive application or substantial alleviation of these legal requirements and certification standards and the provision of the necessary facilities, many women will have no option other than to remain in the informal economy. The more the women remain in the informal economy, the lower will be their earnings. In other words, the more the women remain in the informal economy, the less they will appear along the links in the extraction and supply chain, the less will they receive any form of incomes or other social and economic benefits.

To avoid aggravating the marginalization of women, to encourage equitable access to the opportunities inherent in rising cobalt prices and to increase the power of women, a series of actions in their favor must be taken.

Women's role in the cobalt supply chain: Perspectives and course of action

The perspectives for women include the formulation and implementation of inclusive public policies and reforms that include the gender perspective. This applies to all programs and initiatives designed to support the formalization and cleansing of the artisanal and small-scale cobalt sector. The government should begin by reviewing and designing a formalization policy for the artisanal and small-scale sector that is adapted to the specific context of each sector. Such policies and related initiatives must be designed to guarantee the participation of women miners or their leaders in the decision-making processes.

Furthermore, it is important for the development and application of traceability and due diligence standards along the supply chain, in particular the extraction chain, to be tailored to take account of the situation and specific needs of the women on the mining sites, as referred to above.

While taking action against exclusive and/or segregationist policies and interventions, it is essential to improve the technical and operational capabilities and know-how of cooperatives managed by women. This implies legal support for the creation of cooperatives, technical and operational

assistance, such as the provision of equipment, especially the kits needed to meet site safety standards, and help with access to funding.

In addition, the new standards framework (including the EGC standards) imposes management and operating requirements on cooperatives that demand a know-how that the women do not necessarily have, and that has to be developed. It is imperative then for the reinforcement of women's capabilities to be tied to any legal, operational or financial support that may be given.

The reinforcement of capabilities goes beyond mere training. It must be designed and delivered in such a way as to allow the women to apply the acquired skills and knowledge effectively. In the pilot project, OMGC has documented major gaps in the knowledge of legal requirements and of various standards. An understanding of the legal and regulatory requirements and standards is fundamental to the emergence of prosperous, truly social cooperatives that benefit their members. The reinforcement of capabilities must extend to notions such as women's financial education, savings, entrepreneurship and leadership.

⁴³ Il s'agit des coopératives : COOPEMIAK, COMIKO, COMIALU, RUKAT et CDMRK

⁴⁴ Interview—focus groupe avec les femmes exploitantes, Biwaya 13 juillet 2021

9. Conclusion

The report documents a series of considerations, factors and practices that reinforce the marginalizations and inequalities that confront women preventing them from benefitting fully and equitably from the incomes and other opportunities associated with the growing demand for cobalt. Public policies and segregatory and gendered reforms, as well as traditions are at the root of these inequalities, which result in a restricted presence of women along the entire value and supply chain.

The study highlights the major risks posed by the new standards and institutional framework resulting from the 2018 mining reforms to the situation of women in the artisanal and small-scale sector's supply chain. These reforms highlight the burden of formalization of the sector, which includes, on the one hand, operating in the artisanal sector in a legally compliant cooperative and, on the other hand, operating in an artisanal mining zone allocated by the authorities

Without policy rationalization, many women will have no option other than to remain in the informal economy. The more

the women remain in the informal economy, the less they will appear along the links in the extraction and supply chain, the less will be the incomes and economic benefits they receive.

To prevent this situation, the report sets out a series of recommendations for stakeholders. The government should begin by reviewing and implementing a formalization policy for the artisanal and small-scale sector that is adapted to the specific context of each sector. The design and decision-making processes of such policies and programs must guarantee the effective participation of rural women and their leaders.

Therefore, the development and application of traceability and due diligence standards along the supply chain, in particular the extraction chain, must be tailored to take account of the situation and specific needs of the women on the mining sites. To achieve this, the consultation processes must guarantee effective participation for women.

Moreover, the report stresses the need to improve the technical and operational

capabilities of cooperatives managed by women. This implies legal support for the creation of cooperatives, technical and operational assistance, such as the provision of equipment, especially the kits needed to meet site safety standards, and help with access to funding. Otherwise, the women may suffer from poverty and inequities—due to their marginalization in the supply chain and the meager incomes they earn.



ABOUT THE OIL AND MINES GOVERNANCE CENTER (OMGC)

OMGC was founded by three previous beneficiaries of the U.S. Department of State's International Visitor Leadership Program "Sustainability and the extractive industry" project.

OMGC's mission is to develop and advance policies and practices that create a way of exploiting natural resources that complies with, rather than compromises, environmental and ecological standards, human rights and women's rights.

OMGC's approach is to act as an intersection for the school, university and professional milieu, civil society, government and the private sector around the above mission and its objectives.

OMGC fulfils this mission via training, ap-

plied research, technical support, support for women and advocacy with particular accent on women's rights and climate change.

Since the beginning of 2021, OMGC has been running a pilot project that targets the women in the cobalt supply chains in Katanga,. The project consists of three modules (i) reinforcement of capabilities, (ii) support for the formalization of a women's cooperative, and (iii) research into the opportunities and risks of marginalization for the women in the value and supply chains of the artisanal and small-scale cobalt sector.

For more information about the Oil and Mines Governance Center, see <https://omgc-drc.org/>





+243 814858821



info@omgc-drc.org
www.omgc-drc.org/



10B, Avenue Luvua com-
mune de Lubumbashi, ville de
Lubumbashi, Haut katanga