

2021 Resource Governance Index

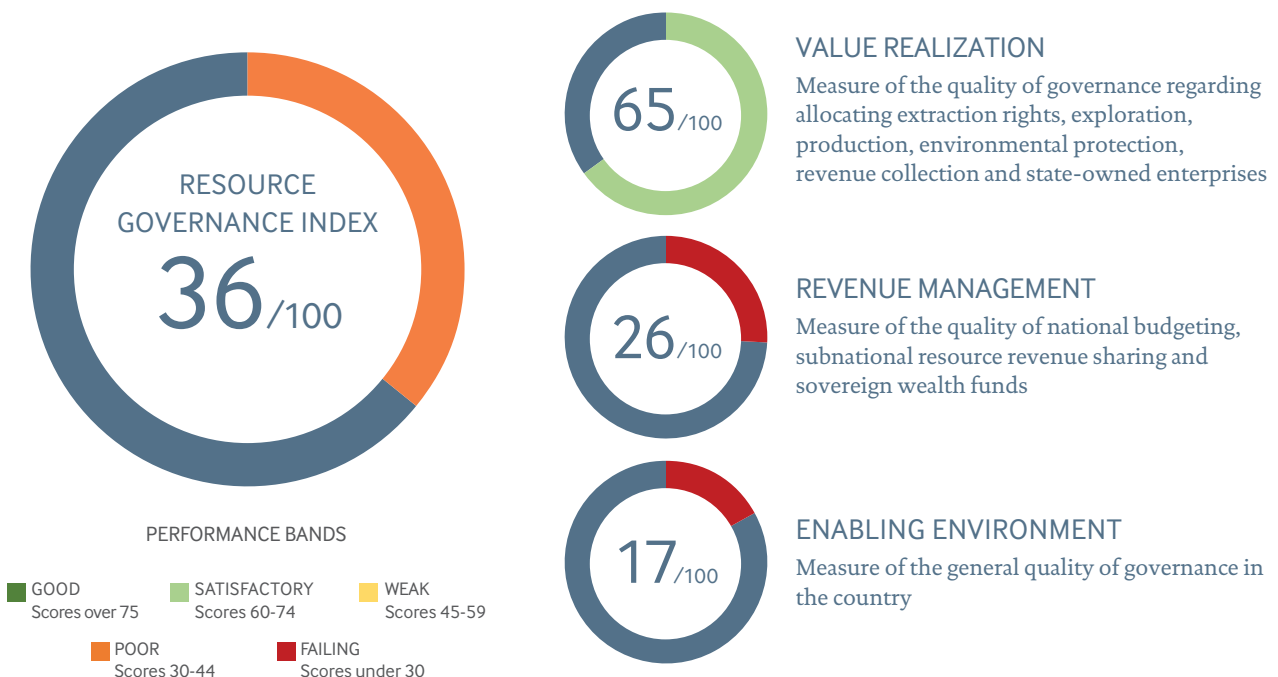
Democratic Republic of Congo



Governance of the mining sector in the Democratic Republic of Congo (DRC) scored 36 points in the 2021 Resource Governance Index (RGI). There had been greater progress between the 2017 RGI and the 2020 Interim Evaluation mainly due to the revision of the Mining Code and Mining Regulations in 2018. The 2021 RGI has revealed that:

- The mining sector in the DRC is characterized by insufficient implementation of mining rules and laws.
- Despite satisfactory improvements in the country’s ability to realize value from the sector, DRC authorities should implement certain rules relating to licensing and publication of the financial interests of public officials.
- Mining revenue management is deficient in the DRC, because the country lacks a consolidated publicly available portal containing information on reserves, production and exports, lacks a numerical fiscal rule and does not implement rules governing the mining fund (FOMIN).
- The enabling environment—the country’s broader governance context—is “failing” and unlikely to support the extractive sector as one that serves the best interests of the state and citizens.
- The hydrocarbons sector is better governed than the mining sector; it is stronger in terms of revenue management and features a smaller “implementation gap.”

DRC mining: 2021 Resource Governance Index and component scores



RESOURCE GOVERNANCE INDEX RESULTS SUMMARY

Governance of the DRC's mining sector is improving, but requires effective enforcement of rules and laws

The resource evaluated for the 2021 RGI is copper, of which the DRC is the leading African producer and the fifth globally. Considered a “[metal of the future](#)” due to its importance in the energy transition, the DRC's copper attracts foreign investors—mainly from China, the world's dominant refiner, which produced 9.4 million tonnes of refined copper, or 39 percent of the world total, in [2018](#). In 2019, copper production reached 1.42 million tonnes, according to Extractive Industries Transparency Initiative ([EITI-DRC](#)) data. The state-owned enterprise assessed in the 2021 RGI is the [Générale des Carrières et des Mines](#) (Gécamines), the most important state-owned enterprise extracting copper and cobalt in the DRC.

In a context marked by problems of accountability and [government effectiveness in controlling corruption](#), the 2017 RGI, the 2020 Interim Evaluation and the 2021 RGI show that DRC has overall gaps of 16, 19 and 20 points respectively for application of laws relating to the mining sector. Joining the EITI in 2005 showed the political will of the state to improve the transparency of the management of natural resources through, among other things, the disclosure of data on mining operations in accordance with the [2019 EITI standard](#).

Despite a one-point drop between the 2020 Interim Evaluation and the 2021 RGI score, the overall score of 36 points for governance of the mining sector remains in the “poor” performance band. The value realization component scored 65 points and therefore remains in the “satisfactory” band. The revenue management component continues to experience a decline, with the score falling from 35 in the 2017 RGI to 30 in the 2020 Interim Evaluation and, finally in the 2021 RGI, to 26 points (“failing,” the lowest performance band). The enabling environment score remains in the failing band with a score of 17 in 2021, despite the five points gained since the 2017 RGI.

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DRC mining sector scores in the 2017 RGI, 2020 Interim Evaluation and 2021 RGI

	2017 RGI score	2020 Interim Evaluation score	2021 RGI score	Trend (2017-2021)
RGI COMPOSITE SCORE	33	37	36	3
VALUE REALIZATION	52	69	65	13
Licensing	64	67	68	4
Taxation	67	76	69	2
Local impact	42	78	67	25
State-owned enterprises	35	54	55	20
REVENUE MANAGEMENT	35	30	26	-9
National budgeting	33	35	35	2
Subnational resource revenue sharing	36	.	.	.
Sovereign wealth funds	.	25	17	.
ENABLING ENVIRONMENT	12	12	17	5
Voice and accountability	22	13	24	2
Government effectiveness	5	9	7	2
Regulatory quality	12	12	11	-1
Rule of law	6	6	5	-1
Control of corruption	17	6	6	-11
Political stability and absence of violence	7	9	10	3
Open data	16	29	53	37
LAW	59	71	68	9
PRACTICE	43	52	48	5
GAP (PRACTICE LESS LAWS)	-16	-19	-20	-4

VALUE REALIZATION

Satisfactory progress in value realization, but DRC authorities must implement rules on licensing and the publication of officials' financial interests

The index's value realization component assesses information on the licensing, taxation and local impact of extractive activities and selected state-owned enterprises in the sector.

Compared to the 2020 Interim Evaluation, the value realization score fell by four points from 69 to 65, albeit remaining in the "satisfactory" performance band. This decline is mainly due to deteriorations in scores for the taxation (-7) and local impact (-11) subcomponents.

The entry into force of the 2018 Mining Code seems to promise a more solid basis for transparency with regard to assessments of the local impact of mining. Indeed the DRC's [Mining Code](#) and [Framework Law on the Environment](#) subject the allocation and monitoring of mining titles to a number of conditions, including the validation and approval of environmental and social impact studies; management and feasibility plans by the authorities; the publication of summaries of reports on company websites; and compensation to indigenous peoples in the event of displacement or resettlement. Despite this progress at the legal level, a gap remains between the rules in place and their application: the allocation of mining licenses and contracts is not yet done openly; contracts and of environmental and social impact studies and their mitigation and rehabilitation plans are not yet disclosed consistently. Enterprises in the

portfolio of the state are not always obliged to publish their annual reports. This implementation gap undermines the government's legal efforts to eliminate the opacity that surrounds several state-owned enterprise operations.

Gécamines, the state-owned mining company assessed under the 2021 RGI, achieved a score of 55, one point higher than in the 2020 Interim Evaluation but remaining in the “weak” performance band. The efforts made by Gécamines on the disclosure of information on production and revenue transfers to the state are behind the slight improvement. Even so, the progress made with the introduction of new transparency rules for Gécamines is not reflected in practice. First, Gécamines made no disclosures of its financial reports during the period covered by the study. (The [2020 financial statements](#) were published during 2021.) In addition, Gécamines made no disclosures of information about its sales (which fell by 25 points in comparison with the 2020 Interim Evaluation) or its code of conduct. Moreover, although an independent body audited the annual financial reports for 2017-2018, these documents remain unpublished. Gécamines is becoming increasingly active in [non-mining activities](#) but has not published any reports regarding these. And last, the DRC's mining laws do not specify what share of production goes to the enterprise as opposed to the treasury.

The score for mining licensing procedures, at 68, has not changed much since the 2020 Interim Evaluation. Nonetheless, the [mining cadastre](#) has been uploaded online; it now provides important information on the types of mining titles, name of licensee, duration, and the date/year of application and allocation.

Article 7 of the [Mining Code](#) requires the disclosure of the identities of the beneficial owners of enterprises as recommended by the [EITI Standard](#) (requirement 2.5). The way in which this information is disclosed can be improved, however. Data should be more complete, and the practice must be made the norm for all enterprises and politically exposed persons. To date, the [EITI Report](#) has mentioned but one government official who is a politically exposed beneficial owner. The EITI-DRC Executive Committee has commissioned a study to assess the disclosure of beneficial owners of the extractive industries in the DRC.

The website of the [Agence National pour la Promotion des Investissements](#) (National Agency for the Promotion of Investments) does provide information on reserves of some minerals, but these data are from 2018 and their presentation does not meet [EITI requirements](#). In comparison, Senegal has collated all the essential data for the mining sector on a [single website](#). As with licensing procedures, taxation too has changed little since the 2017 RGI. It gains two points with a score of 69 and remains in the “satisfactory” performance band, due mainly to the disclosure of production and export data. The new Mining Code obliges companies to publish information on production, exports and payments made.

Companies' production, exports and payments information are scattered over several websites. The [EITI-DRC](#) website, for example, contains companies' financial data for the year 2019, while export data up to the first half of 2020 were published on the [Ministry of Mines](#) website on 5 November 2020. An update of these complete data for the [year 2020](#) was made on 7 May 2021, but it was not taken into account for this study, which ended on 31 December 2020. Last, the EITI-DRC National Committee should regularly publish country EITI reports.

REVENUE MANAGEMENT

National budgeting and the mining fund lack transparency, making revenue management “failing”

The index’s revenue management component measures the governance of national budgeting, subnational revenue sharing and sovereign wealth funds.

In the 2020 Interim Evaluation, the revenue management score for the mining sector fell by five points compared to the 2017 RGI, from 35 to 30 points. This decline continued in the 2021 RGI, with a fall of a further four points compared to the 2020 Interim Evaluation, to a score of 26. This component consequently moved from the “poor” to the “failing” performance band in the 2021 RGI. This drop in performance is due to two main reasons.

First, the new rules creating the Mining Fund for Future Generations (FOMIN) are not effectively implemented. [Decree No. 19/17](#) of 25 November 2019 establishing the status, organization and operation of the Mining Fund for Future Generations places this public institution under the Ministry of Mines. It provides that its general management must, no later than 15 May of the year, make available to the statutory auditors the balance sheet, management accounts and a report. These same documents, as well as the statutory auditors’ report, are to be sent to the supervising authority no later than 30 May of the same year, according to article 33 of the decree. FOMIN, like all other state-controlled entities, is not under the control of the National Assembly. In addition, management practices of the mining fund are opaque because there are no transparent numerical or practical rules for the deposits and withdrawals of this sovereign wealth fund; the investment rules do not prohibit FOMIN from investing without the prior approval of the budgetary authority.

Furthermore, since the 2017 RGI, the score for the index’s national budgeting subcomponent, which includes indicators such as an updated web portal showing reserves, production and exports and the fiscal rules and disclosure of the national budget and debt, continues to remain in the “poor” performance band. Having gained two points since the 2020 Interim Evaluation, its score is now 35. This slight increase is due to the disclosure of debt information. But the absence of a unified publicly available online portal presenting in one place all the information on mining sector reserves, production and exports, and of budgetary rules for balancing the budget and the level of indebtedness since the 2017 RGI prevent national budgeting from moving into higher performance bands.

Unlike previous assessments, the 2021 RGI did not cover subnational transfers, because the revenue-sharing mechanism changed with the revised Mining Code of 2018. Before, the central government collected all mining royalties and then redistributed parts to subnational entities. Currently, mining royalties are paid directly by the mining concession-holder to the subnational entities’ bank accounts in the proportions laid down by article 242 of the code—that is, 25 percent for the province and 15 percent for the decentralized territorial entity where the resource was extracted.

ENABLING ENVIRONMENT

A failing enabling environment precludes good management of the extractive sector

NRGI does not itself produce indicators on the enabling environment; in other words, the country’s overall governance environment. The RGI uses external, public sources including the [Worldwide Governance Indicators](#) and the [Open Data Inventory](#). This component assesses the background context governing activities in all sectors, based on indicators such as freedom of expression and accountability, government effectiveness, regulatory quality, rule of law, control of corruption, political stability and absence of violence, and open data. The enabling environment component progressed by five points, from a score of 12 in the 2017 RGI and 2020 Interim Evaluation to 17 points in the 2021 assessment. Despite this slight progress, however, this component remains in the “failing” performance band.

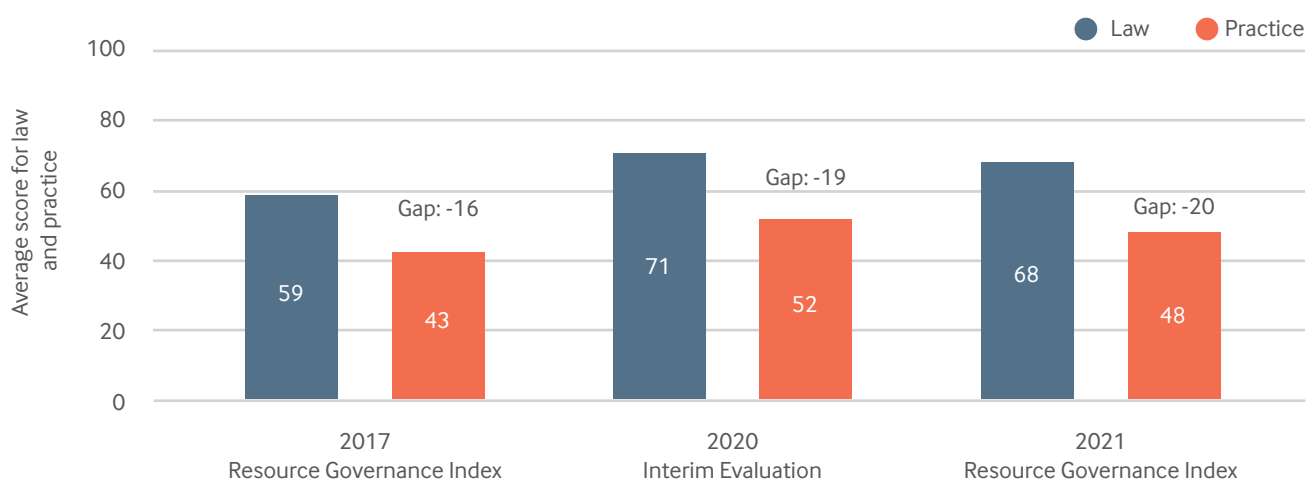
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LAW AND PRACTICE SCORES

The mining sector in the DRC is characterized by a failure to implement mining rules and laws.

The DRC's mining sector has an overall gap of 20 points between the quality of legal frameworks and their actual implementation. The results of this study show that the rules and laws relating to local impact are not put into practice; there is no disclosure of environmental reports or management plans; and the same is true for implementation of rules governing the mining fund (FOMIN). Gécamines has a 33-point implementation gap, because of the non-publication of financial reports and sales data for the period covered by the study.

Evolution of the gap between law and practice in DRC's mining sector



GOVERNANCE OF LOCAL CONTENT AND CRITICAL MINERALS

The DRC's [laws and regulations](#) regulate and encourage “local content” (the use of Congolese firms and service providers) in the mining sector. The government in the DRC envisages the benefits of local content at all levels of the country's economic life: at the national level with respect to economic growth and at the company level ensuring both regulatory and ethical compliance, as well as at the level of subcontracting in the local community. Apart from the employment statistics provided on the EITI-DRC website, there are no factual data to confirm application of the law with regard to training and transfer of skills; Congolese participation in the share capital of mining companies or business or trading units; or processing activities.

In 2018, DRC Prime Ministerial Decree No. [18/042](#) declared cobalt a [strategic mineral](#); this increases the royalty rate from 3.5 percent to 10 percent. The DRC is the leading producer of cobalt and holds more than 50 percent of global reserves. In [2019](#), cobalt production was estimated at 77,964 tonnes and accounted for 28 percent of the DRC's exports for that year, a decline due to the [fall in global cobalt prices and the coronavirus pandemic](#). To take control of the cobalt sector, Gécamines has recently established a new subsidiary called [Entreprise générale du cobalt](#) (ECG, General Cobalt Enterprise) with the objective of purchasing, processing and marketing cobalt mined artisanally in the DRC.

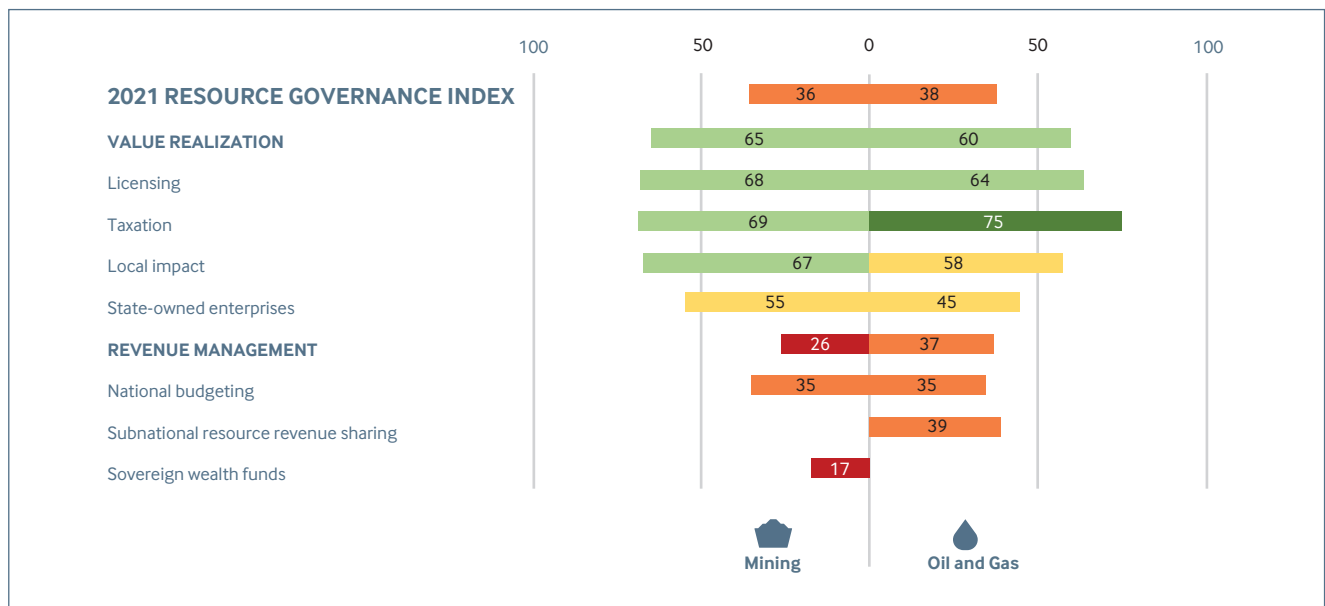
COMPARISON OF THE MINING AND OIL AND GAS SECTORS

The oil and gas sector performs better than mining, but both suffer from a gap in the enforcement of transparency rules

In addition to the mining sector, NRGi has also assessed DRC’s oil and gas industry (presented in a separate profile). Governance of both the mining and hydrocarbons sectors is “poor.” For both sectors, value realization is “satisfactory” with scores of 65 for mining and 60 for hydrocarbons. Hydrocarbon governance is better in terms of revenue management, although it remains in the “poor” performance band with a score of 37, while mining’s score of 26 places it in the “failing” band. With respect to state-owned enterprises operating in the extractive sector, the governance of Gécamines appears to be stronger than that of SONAHYDROC, at least in terms of laws and regulations. Both state-owned enterprises fail to disclose their financial reports, which needs to be tackled by the government in order to improve transparency and accountability in the sector.

The two sectors also share some of the same governance problems, such as the non-disclosure of environmental and social impact studies and environmental and social management plans, the accountability of state-owned enterprises and the fight against conflicts of interest.

Comparison between DRC’s mining and oil and gas sectors in the 2021 Resource Governance Index



RECOMMENDATIONS



NRGI recommends the following courses of action to improve mining sector governance in the DRC:

To the Prime Minister

- Create mechanisms and policies to control corruption in the mining sector and its overall environment.
- Require the regular publication of financial reports of state-owned enterprises.
- Require audits and the publication of audit reports.
- Authorize the National Assembly to monitor the activities of state-owned mining enterprises.
- Introduce a tax rule for the scrutiny of the country's budgetary operations—expenditure and debt—as is done in Senegal and the Economic \Community of West African States (ECOWAS) area in general.

To the Ministry of Mines

- Require extractive companies to publish environmental studies and environmental impact management plans.
- Enforce the sanctions provided for in law in the event that the aforementioned reports are not published on time.
- Publish quarterly disaggregated statements of payments received by government entities from the various mining companies, preferably by project and region.
- Clarify the rules relating to the financial transactions of the mining fund.
- Disclose on the ministry's website updated mining statistics, disaggregated by mining project and type of payment flow.
- Require the disclosure of FOMIN's financial reports.
- Publish data on the extractive sector's reserves, production, exports and revenues on one single online portal.

To Gécamines

- Publish audited annual reports.
- Publish project-by-project production and sales data.
- Publish the Gécamines code of conduct.
- Disclose the environmental and social impact studies and the environmental and social management plans for the projects in which Gécamines is involved.
- Regularly publish contracts entered into by Gécamines.

To DRC EITI

- Require the publication of contracts and their updates on the EITI and Ministry of Mines websites.

What is the Resource Governance Index?

The 2021 RGI assesses how 18 resource-rich countries govern their oil, gas and mineral wealth. The index composite score is made up of three components. Two measure key characteristics of the extractives sector – value realization and revenue management – and a third captures the broader context of governance — the enabling environment. These three overarching dimensions of governance consist of 14 subcomponents, which comprise 51 indicators, which are calculated by aggregating 136 questions.

Independent researchers, overseen by NRGI, in each of the 18 countries completed a questionnaire to gather primary data on value realization and revenue management. For the third component, the RGI draws on external data from over 20 international organizations. The assessment covers the period 2019-2020. For more information on the index and how it was constructed, review the RGI Method Paper.