

**A Feminist Ethical Analysis of the Democratic Republic of the  
Congo's Mining Policy.**

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of Doctor of Philosophy, in the School of Philosophy and Ethics,  
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## DECLARATION

I Keba Muko Cyril, declare that

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3. This thesis does not contain other persons' data, pictures, graphs or other information, unless specifically acknowledged as being sourced from other persons.
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## **ABSTRACT**

This study ethically analyzes from a feminist perspective the Democratic Republic of the Congo's Mining Policy as outlined in the Mining Code of 2002. Considering its standing as one of the key economic sectors of the DRC, the mining industry required a legal framework able to attract more investors and stimulate economic growth. Besides the mining industry being well-regulated, it was expected to create financial resources for the development of the country and enable employment opportunities for the citizens, including women. In fact, in order to find employment and earn a decent living, women joined the mining industry. In spite of such expectations, the thesis observes that women's status has continued to be compromised due to poverty and abuse.

The study argues that there is a gap in knowledge concerning a feminist ethical approach to issues affecting women in the mines. Furthermore, the study observes that the DRC's Mining Policy of 2002 is silent on legal dispositions regarding issues related to women's interests such that women's vulnerabilities in the mining industry are deepened. They include the lack of gender sensitivity, the lack of a policy facilitating the ownership of mines permits by women, the neglect of human and economic rights of women. To account for these gaps, the thesis points to the cultural and institutional patriarchal systems that keep women away from the decision-making tables that formulate and implement socio-economic policies. As a result, women's economic and human capabilities for a good human life are seriously impeded.

In order to foster an ethical mining practice that is sensitive to gender justice, the study proposes the implementation of an Ethical Mining Workplace. This is a framework based on the virtues of good governance, caring, fair sharing of the mineral resources, and the promotion of basic human rights for miners. Finally, this study contends that when applied in the DRC's mining industry, these virtues can transform the mining workplace so as to foster socio-economic development through the participation of women in mining.

## DEDICATION

To all People of Good Will,  
Standing out for the Poor and the Disadvantaged

To my Dad, Mr. Keba Mutebul Evariste

&

To my Mum, Mrs. Keba Romanie Nitu

To my Siblings,  
for your love and care. May God continue blessing and protecting  
you.

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## ACRONYMS

<b>AM</b>	Artisanal Mining
<b>ANR</b>	Agence Nationale de Renseignement – National Intelligence Service
<b>ASM</b>	Artisanal and Small-Scale Mining
<b>BSR</b>	Business for Social Responsibility
<b>CA</b>	Capability Approach
<b>CASM</b>	Communities and Small-Scale Mining Secretariat
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women
<b>CRC</b>	Convention on the Rights of the Child
<b>DRC</b>	Democratic Republic of the Congo
<b>EDBR</b>	Ease of Doing Business Ranking
<b>EIS</b>	Environmental Impact Study
<b>EMPP</b>	Environmental Management Plan for Projects
<b>EI</b>	Extractive Industries
<b>EITI</b>	Extractive Industries Transparency Initiatives
<b>GDP</b>	Gross Domestic Growth
<b>HIPC</b>	Heavily Indebted Poor Countries
<b>ILO</b>	International Labor Organization
<b>IMF</b>	International Monetary Fund
<b>ISC</b>	Independent State of Congo
<b>IRC</b>	International Rescue Committee
<b>ICGLR</b>	International Conference on the Great Lakes Region
<b>ITUC</b>	International Trade Union Confederation,
<b>KPMG</b>	A global network of professional firms for auditing. Acronym chosen when KMG (Klynveld Main Goerdeler) merged with Peat Marwick
<b>LSM</b>	Large-Scale Mining
<b>MFPW</b>	Mines Funding Program for Women
<b>MNEs</b>	Multi-National Enterprises
<b>MONUC</b>	Mission des Nations Unies en Republique Democratique du Congo - UN Mission in the Democratic Republic of Congo
<b>NRM</b>	Natural Resources Management

<b>OHADA</b>	Organisation pour l'Harmonisation en Afrique du Droit des Affaires (Organization for The Harmonization of Business in Africa)
<b>PRSPs</b>	Poverty Reduction Strategy Papers
<b>SGBV</b>	Sexual and Gender Based Violence
<b>SAPs</b>	Structural Adjustment Programs
<b>UDHR</b>	Universal Declaration of Human Rights
<b>VAW</b>	Violence Against Women

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## **CHAPTER ONE: GENERAL INTRODUCTION TO THE STUDY**

### **1. 0. Introduction**

Women in the mining industry in the DRC face a number of challenges as they take part in mining activities in different capacities. Besides working long hours in hazardous working conditions, they are exposed to sexual exploitation. The challenges of security risk, health risk, and the breakdown of family life, as well as social risks posed to women in the DRC's mining industry are generally severe. Considering the cultural, patriarchal character of the DRC's institutions and public policies, it can be asked whether women's situation is adequately catered for by various pieces of legislation, including the DRC's Family Code, DRC Labor Code, and the DRC's Mining Code of 2002, respectively regulating family life, the labor sector, and the mining industry.

The DRC's Mining Code of 2002, a statutory instrument and legal framework for the mining industry is mute on the participation of women in the mining industry and their contribution to the mining economy. By way of illustration, the mining code has no articles to address specific needs for women in the business of mining sector. In the past few decades, the DRC has made history as a country with massive accounts of gender-based violence, rape and child soldiering recorded in various publications (Smillie, 2010:115-132; Turner, 2013: 120-178; Hayes Karen & Burge Richard, 2003: 33-44). For this reason, a mining code that fails to include regulations that promote the protection of such vulnerable people in communities and the mining workplace can be prone to ethical challenges that necessitate an ethical assessment.

Therefore, the purpose of this study is to analyze the DRC's Mining Policy as outlined in the mining code of 2002. From this perspective, the present study will investigate whether gaps exist within the mining legal framework that have resulted in the abuse of women by hindering the possibilities of socio-economic benefits, and gender justice for women within the mining workplace. This analysis of the mining code will point at various issues affecting women in the DRC's mining industry.

This study will discuss some of the issues affecting women in the mining sector, issues that are relevant for ethical examination. They include: the silence in the mining policy about issues

affecting women, a situation inclined to exacerbate the economic disempowerment of women involved in the mining industry. Additionally, attention will be given to the mining workplace that is unfavorable to equal opportunity of access to economic resources between men and women in the DRC's mining industry. Accordingly, the study will engage in feminist ethical analysis of the mining policy as the basis of assessment of the gaps that obstruct women's participation in the mining industry. Indeed, the feminist ethical analysis will offer a particular way of considering the mining policy by assessing the reality of social constructions of gender discrimination.

Feminist analysis will scrutinize the social and sexual beliefs, and other differentiations that can be the basis of exploitation and oppression among peoples, in particular women in the mining sector. Further, emphasis is made on the Capability Approach (CA) for its insightful contribution to the normative economics. The mining industry being an economic activity directly impacting on people's life, can be guided by such ethical theory that takes into account individuals' abilities, and the socio-political support of public policy affording to peoples (in this case, women) the freedom and means to achieve their capability and wellbeing as explained by Sen Amartya (Gaertner Wulf, 1993: 62).

In the light of the feminist analysis and the insights from the Capability Approach, the study will formulate an Ethical Mining Workplace Framework that can enhance the participation of women in mining and foster poverty reduction and the socio-economic benefits of women within local mining communities.

The chapter proceeds in different stages. Firstly, it describes the background to this study, clarifying the context of economic and human crisis engulfing the DRC women as they strive to earn a living in the mines. Secondly, the chapter highlights the aims of the study. Thirdly, the focus will be placed on clarifying the main question to which this study intends to provide answers. Fourthly, the study formulates a research problem. Further, the chapter will determine the various objectives of this study, focusing on the ethical perspective. Lastly, the chapter explains the theoretical framework and the methodology of enquiry for this study.



## 1. 1. Research Problem

The DRC, a highly mining country is facing with many challenges in the mining sector that is not benefiting miners and local communities. The thesis will focus on female miners who are affected by the present situation in the DRC's mining industry. The cycle of wars and political instability have led to the looting of natural resources by local and external forces (Turner, 2007; Séverine Autesserre, 2001). It is believed that the crisis in the DRC is as a result of the conflicting interests amongst various national and international corporations and groups. They seem to be manipulated by unknown economic and political powers prepared to capture the natural resources such as oil, deposits of gold, diamonds, coltan, cobalt, thus plunging the country in a serious financial crisis, and lack of peace (Turner, 2013: 42). Facing with economic instability, the DRC, with an economy based on the financial resources from minerals has become a weak state, commoditized, whose wealth seem to be owned and controlled by external forces (Nzongola-Ntalaja-Ntalaja, 2002: 227; Turner, 2007; Nest, Grignon and Kisangani, 2006; Trefon, 2011; Scherrer Christian, 2002).

Another serious concern regarding the DRC's natural resources, particularly the mining industry, is that from time immemorial there has been a recurrence of a cycle consisting of a flourishing mining business in contrast with social and political instability, as well as extreme poverty in the country. Indeed, it can be established that the crisis of natural resources has a long history that can be traced back to the regime of King Leopold II, moving through the independence era, and across the Mobutu regime until the present times. Moreover, some international and local investors have enjoyed the wealth of the DRC's natural resources, while the majority of the population, among them women, are faced with abject poverty and a bleak future, being variously exploited, some of them even to the point of losing their lives in mining activities (Haskin, 2005: 180).

By way of contrast, despite the internal crisis, various transnational mining corporations are investing in the available minerals (Nest, Grignon and Kisangani, 2006: 53). They have signed mining contracts with the DRC government (*Appendix 1*). While investment in mining is helpful in creating jobs and potentially boosting economic growth, it has also brought other challenges. For example, the mining industry owned mostly by foreign investments has deprived individuals and mining communities of land and other economic opportunities

(Eichstaedt, 2011: 105-122). The oversight of social responsibilities of government and mining investors in preference to an investor-friendly mining policing (Turner, 2013), is another challenge. To this list is added the exploitation of miners, including women, contrary to national and international legislation on labor, as well as the United Nations' (UN) regulations on the protection of women and children<sup>1</sup>.

It has been noted that women are not deterred by hardships within the mining industry. Following the disastrous outcome of years of war, the collapse of agriculture and other economic ventures, and the increase of poverty and misery, women have resorted to mining activities. However, women participation in this industry is faced with many challenges, given that women fall prey to malpractices at the hands of less credible mining investors and male miners (Hayes and Perks, 2012).

Women are exposed to inhuman working conditions and heavy workloads, sometimes turning them into modern slaves. According to the International Trade Union Confederation (2011: 22),

rape is another common form of sexual violence committed in mining areas. Girls and women of all ages are victims of sexual assault by individuals or groups of men who are usually under the influence of alcohol or drugs. Although mainly perpetrated by owners of mining shafts, diggers, and members of the army, rape is also committed by police officers, the intelligence service (ANR) personnel, and mineral traders. In North Kivu, more than 60 percent of perpetrators are civilians, many of them ex-combatants or young men affected by the violence. Yet, as has been stated, women working in mining sites are frequently denied participation in core activities. The informal character of mining in the eastern DRC is often an impediment to safeguarding existing principles.

From this quote, it can be said that the plight of women and girls in mining is serious; sexually abused, they are forced into activities beyond the tolerance of their physical and mental

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<sup>1</sup> Considering that in the DRC society women are a force to reckon with, and constitute the energy and hope for social growth and the symbol of nurturance, it seemed useful that this study focuses on the contribution that women could make to the mining industry as a structure that can 'nurture' the DRC economy. Thus, it is relevant to assess whether women are particularly enabled to utilise their creative capabilities for the transformation of a mining industry that would serve the economic growth in the DRC for the well-being of all. For this reason, the present study chose to focus on the mining policy that regulates the mining sector and might have a direct impact on the participation of women in the DRC's mining industry.

capacity. The disregard accorded to the future of these women accounts for the lack of legal responsibilities of public institutions to protect vulnerable women. This is evidence that the mining industry, in spite of being a source of developmental opportunities, has become a place of dehumanization.

Yet, in the midst of all these challenges and infringements of basic human rights, there is a Mining Code of 2002 that is supposed to guide and regulate the mining industry in the DRC<sup>2</sup>. The economic importance of the mining sector cannot be overemphasized. In a like manner, the human resources that sustain the mining economy is a vital component. Hence, a mining policy must be ethically adequate, in order to promote and safeguard both economic growth and investment in human capital. However, there is an appalling imbalance between the increase of mining production in the DRC and the decrease of social and living conditions of the miners, including women, and the lack of development in mining communities.

The possible gaps in the mining policy on issues affecting women can explain the plight of women in mining. It is then imperative to examine the mining policy and understand its prime goals, as set by the Mining Code of 2002. In the preamble, this set of mining law (mining policy) pledged to harmonize business climate in the mining sector, to protect the interests of the miners and to promote the country's economic growth at large (Mining Code, 2002: Explanatory Memorandum and Introduction). It is thus crucial to assess whether the mining policy does indeed protect miners, especially women, against forced labor, sexual exploitation, and other challenges in mining, while fairly facilitating economic profit and people's rights. Assessing the mining policy's ethical adequacy might help to foster the understanding and awareness of an ethically sensitive working environment in mining.

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<sup>2</sup>The DRC's Mining Code is a specific document that carries the policy of the country on the mining industry. It is important to indicate that this study uses the term "Mining Policy" to refer to the mining policy contained in the DRC's Mining Code of 2002. Hence, in this study, I will use the terms "mining code" and "mining policy" interchangeably. My reasoning is that the mining policy represents all the legal dispositions outlined by the mining code. In this way, mining code can also mean mining policy. When quoting from the mining code, I will specifically use the term mining code as it refers to the document. In the study, I will use capital letter when referring to the DRC's Mining Code and the DRC's Mining Policy as they become like proper nouns.

Consequently, the ethical analysis of the current DRC's Mining Policy will bring all inadequacies to the surface that are giving rise to abuses by local and foreign investors. Women are exposed to challenges of surviving through armed conflicts, let alone overcoming poverty that is ravaging the country, despite its mineral wealth. The plight of women in the mining sector cannot be overlooked as it threatens their livelihoods and the core of their life and human dignity. Women make up fifty percent of the workforce in the DRC's mining industry, especially in the artisanal and small-scale mining sector (Nichols, Lujala, and Bruch, 2011).

It is important to indicate that the DRC's Mining Policy offers a comprehensive and not so complicated process to acquire mining rights for Artisanal and Small Scale Mining (ASM), as well as industrial mines (Garrett, 2008: 19). The lenience of processes in these types of mining activities attracts more investors, traders and miners, including women. Regardless of the existence of a mining policy that aims at developing the mining sector for economic gain for the country and its citizens, it is noted a stark contrast between the prolific mining sector and the destitution of miners, especially women in mining.

For instance, it was noted that “women in ASM communities are doubly at risk—as residents of rural or semi-urban areas that are emerging from war or suffering from reduced livelihood opportunities, and as informal workers subject to precarious social, economic, and environmental conditions” (Hayes and Perks, 2012: 530). The deprivation of opportunities for an improved livelihood in mining exposes women to extreme poverty that is likely to reduce their ability for a flourishing life.

## **1. 2. Aims of the Study**

This study intends to examine the mining policy in order to uncover the ethical gaps that expose women to various types of vulnerabilities, challenges and exploitation in the mines. The thesis contends that the legal dispositions of the mining code might not be at the advantage of women for the reason that the ethical gaps in the law open ways for the marginalization of women in the mining industry. In order to analyse the mining policy and surface the gaps, the study will proceed from specific questions aimed to discuss some of the issues affecting the DRC's women in mines.

### **1. 3. Research Questions**

In order to articulate the possible questions raised by the application of the DRC's Mining Policy, the study formulates a leading question as follows: *To What Extent a Feminist Analysis of the DRC's Mining Policy Might Inform the Mining Practice to Enhance the Participation of Women in Mining?*

The main question will be expanded into the following sub-questions:

- What is the Impact of the DRC's Mining Policy on The Participation of Women?
- What is the Rationale of the Mining Policy of the DRC?
- What is the Situation of Women in the DRC's mining industry?
- How Can the DRC's Mining Workplace be Ethically Informed and Transformed Towards Gender Sensitivity?

These different questions will help to explore the gaps in the policy, and the ethical inadequacies that obstruct the economic participation of women in mining and cause the various abuses by investors, government and those in the mining sector. In view of the above, the study intends to pursue and fulfill certain specific objectives.

### **1. 4. Research Objectives**

A feminist analysis of the DRC's Mining Policy will lead the study to consider the following objectives:

- To assess the impact the mining policy has on the participation of women in mining.
- To explore the evolution and the rationale of the mining policy.
- To critically assess the ethical gaps that create challenges for women and give rise to their exploitation.
- To bridge the gap in knowledge concerning the feminist ethical perspective on issues affecting women in the DRC's mining industry.
- To formulate an ethical discourse that can enhance the principles of an ethical mining workplace.

As can be noted, these objectives call for a theoretical framework that can provide answers to the research questions, while capturing the various aspects of the objectives.

### **1. 5. Theoretical Framework**

In analyzing the DRC's Mining Policy, the study will use ethical theories that can inform the study on the subordination and abuse faced by women in the DRC's mining industry. It is important to assess issues affecting women in the course of their mining activities, as they participate in this industry to uplift their economic status and improve the quality of their life. For this reason, it is appropriate to rely on the insightful thoughts from ethical feminist theory and the Capability Approach (CA). These two theoretical frameworks can highlight women's experience as applied to the contextual life-situation of the mining sector. For example, feminist ethical theory will help to explore certain cultural practices that subordinate women (Jaggar, 2005).

A feminist ethical analysis of the DRC's Mining Policy will entail the ethical theorization of issues resulting from gender injustice, as pointed out by a number of feminists (Gilligan, 1982; Jaggar, 1992; Robb, 1985; Putnam, 1993). This ethical theory will guide the way the study understands and interprets the experience of women in a life situation, as it unfolds in the mining industry. To state it differently, feminist ethical theory will clarify the nature of injustices and harm done to women in the context of the DRC's mining industry. This places women who are already faced with enormous challenges in a disadvantaged position. Injustices can be detected by ways in which the mining policy may not be fulfilling its objectives to offer business opportunities to all legitimate citizens and foreigners, but instead victimizes women by consciously or otherwise not catering for them within the dispositions of the mining code.

Feminist ethics is important to this study because it will provide an insightful handhold to a frame of reference of various aspects of women's oppression, as opposed to the true frame of valorization of women's experiences, in the conceptualization of moral and life situations. With Alison Jaggar, the feminist theoretical framework will trace some of the central elements in the valorization of women. For example, women's experience as a paradigm for ethical theory, appreciating the values implicit to women ethical practice, feminizing the ethical subject, and rethinking moral rationality.

With these various concepts of valorization of women's moral agency, Jaggar insists on the use of gender as a category of ethical analysis. This has the advantage to expose sexist biases against women, and put forth a more balanced perspective, with a clear indication of gender justice that takes women's moral experience into account (Jaggar, 1992: 350). The feminist ethics approach can motivate this study to restore the essential category of gender justice, and allow the recognition of values in the conceptual and existential traits of women, even in a male-dominated industry of mining.

It is thus also necessary to rely on the CA to assess the state of women's life experience resulting from the implementation of the mining policy. That is, the CA will be used descriptively to examine whether the life that women have achieved through their mining activities can reflect the realization of Nussbaum's basic capabilities. This will specify whether women have been enabled to function at the best of their human capabilities, comparative to the two thresholds, which Nussbaum explains as follows:

a threshold of capability to function beneath which a life will be so impoverished that it will not be human at all; and a somewhat higher threshold, beneath which those characteristic functions are available in such a reduced way that, though we may judge the form of life a human one, we will not think it a good human life. The latter threshold is the one that will eventually concern us when we turn to public policy: for we don't want societies to make their citizens capable of the bare minimum (Nussbaum, 1995: 81).

As can be understood from this quote, a life achieved by women in mining can be assessed in comparison with the above two thresholds. The first one gives a sense of a life that is still below the recognized standard of human life, and the second is indicative of a human life that may not be judged a good human life, for the reason that it is still far below the reasonable standard.

The descriptive insights of the Capability Approach (CA), which enables people to fully embrace their sense of freedom in achieving different functioning will also come handy when the study suggests a way forward to improve the situation of women in the mining sector. The selected basic capabilities from Nussbaum's list of ten basic capabilities will form the basis of assessment on the achievement of women's mining activities in the DRC. This will serve to attest the extent to which, through mining activities, a public policy has or has not enabled women to achieve a valuable life of their choice.

The DRC's Mining Policy is the domain of public policy. Therefore, it pertains to such policy to enable individuals to use their human capabilities so as to be able to fully function and enjoy a life they have reason to value. It is then vital to understand that, as a body of rules and instructions, besides its characteristics of a legal force, the mining policy also imparts a moral demand to government and investors, as they are called, to act according to a set of rules and principles designed to materialize justice and reduce the prospect of injustice, discrimination and subordination of disadvantaged people (Bell, 1993; Walker Margaret Urban, 2007; Held, 1995). It can be said that the feminist ethical theory and the CA are appropriately useful and persuasive when supported by an appropriate methodology in analyzing the DRC's Mining Policy.

## **1.6. Methodology**

The nature and purpose of this study determine the choice for the methodology of inquiry. This study will rely on a variety of methodological approaches including historical approach and feminist methodology within the perspective of a critical analysis. Each of these approaches will contribute to the assessment of the DRC's Mining Policy as it impacts the status of women in the mining industry. The historical approach will capture the evolution of the policy, placing it in context, realizing that "the nature of past social, political and economic relations are there for us to see through acts of historical research which enable us to reflect on contemporary issues" (May, 2001: 177).

Part of the analytical process in this study will be to reflect on the contemporary reality of the mining policy in the DRC by referring to past events that formed the social, economic and political terms of reference, with regard to the mining sector. To argue it differently, it can be said that the historical episodes in the formulation of the DRC's Mining Policy could be associated with social, political and economic occurrences of the country. From the past to present times, the study will describe the different stages of the formulation of the mining policy and tie them to certain social, political and economic moments in the history of the country.

With the historical methodology, the study will draw the pattern and trends regarding past and present social, political and economic relations of mining stakeholders. One thing to note is that a mining policy cannot be without a close link to social, political and economic aspects of



a nation. A historical methodological approach can show how these links have been formed throughout the history of those concerned. This will be the case with the DRC's Mining Policy, documenting it with reference to the past and present social, political and economic realities of the DRC.

The historical methodology will be complemented by a feminist methodological approach with regard to the analysis and interpretation of the mining policy about women's participation in the mines. On the feminist approach, Ramazanoglu Caroline and Holland Janet agree that "feminist approaches to research can be identified largely by their theories of gender and power, their normative frameworks, and their notions of transformation and accountability" (Ramazanoglu, and Holland, 2002: 147). The situation of women in the DRC's mining industry is about gender and power in the economic sector of mining.

There is need for an approach that investigates the different dynamics of economic power imbalance between men and women in the mining sector, in order to forge a transformative working environment, and gender justice in the mines. The feminist methodological approach will guide this study to uncover all aspects of male dominance in mining as a critical issue in the efforts to make sense of injustices, and forge mechanisms to reverse the situation. It is worth stating that feminist approach takes a different stand from standard methodologies of research that prioritize masculine methodological models that assume a certain objectivity and detachment, while, feminist approach assumes recognition of the subjects of the research and their experiences (Goodey Jo, 1998: 137-151).

The analysis of the DRC's Mining Policy may require a methodology that incorporates subjects' experiences, as in the case of the DRC women in the mines. In this study, the feminist methodology will consist of the analysis of social ideas and beliefs about mining in the DRC in relation with norms, discourses, and the interpretation of cultural understanding of gender and power. The marginalization of women in the DRC's mining industry may be linked to the patriarchal characteristics of the mining code in the sense that it may have reinforced situations of gender injustice by enabling structures for women's subordination. For this reason, using the feminist methodology, the study will argue that "gender and power can also be investigated in terms of social structures, relationships, institutions, states and resources" (Ramazanoglu and Holland, 2002: 153).

Through the feminist approach, the study will investigate ways in which social structures that are put in place by the mining code may have negatively affected the participation of women in the mining sector and reinforcing their marginalization. In the same vein, the study will investigate, with regard to state and resources, the extent to which mining institutions can be symptomatic of economic and gender injustice in the DRC's mining industry.

The feminist methodology requires a critical analysis. From this methodological approach, the study will critically explore the content of the policy, the policy process, and the policy output (Brian Hogwood and Lewis Gunn, 1984: 26-29). Regarding the content of the policy, as well as the policy process and output, the study will consider the origin of the policy, its rationale, and its objectives. Concretely, the critical examination of the origin and rationale will consist of explaining the background of the policy and its purpose, elaborating on the need for such a policy. The critical look at the objectives of the policy will consist of describing, interpreting and explaining articles of the mining policy to obtain a critically informed opinion of the subject matter of those articles, and proving the point on issues affecting women. This exercise will lead to assessment of the policy's impact on the mining activities and life of women, and to prescribe remedial approaches for a certain output.

Regarding policy analysis, Guess George and Farnham Paul, argue that "Policy analysis needs to go beyond mere rule- and law-making into the very strengths and weaknesses of public-sector institutions themselves" (2000: 70). In application, the study will look at what constitutes the merit of the DRC's Mining Policy and what counts for its weaknesses regarding women's participation in the mines. As can be noted, the critical analysis approach will enable a reasonable examination of issues under investigation and offer meaningful and demonstrable leads to answer the research question after the of data on issues of women in the mines.

### **1.7. Methods of Data Collection**

Issues affecting women in the DRC's mining industry touch on inequity, discrimination, sexism, abuse, and poverty. Most of these issues are reported in written material. Therefore, the documentary methodological approach will be appropriate for the collection of data directed towards ethical and critical assessment of the mining policy and its impact on women's life and mining activities. Having the kind of information in mind that is needed to ethically

and critically analyses the mining policy, the research under study will resort to the library method.

It can be said that the library method of research as a documentary approach consists of going to the sources, primary sources and secondary sources: manuscripts or published documents, through books, academic journals, official reports, and online material, along with publications on the policy making process, and multivolume works of collective scholarships, essays and articles. Reliance on sources will serve to review and rethink the past with the intent to discover patterns and meanings that are constructive for present realities (Brundage, 2002: 18-20). Thus, library research “involves identifying and locating sources that provide factual information or personal/ expert opinion on a research question” (George Mary, 2008: 6). Identifying sources is an important task, so much so that it accounts for a large part of the research project. Following the above explanation, my study will be interested in any source that provides reliable information on the multi-layered realities of women miners in the DRC. With this in mind, the study will run through the various stages of a library research. On this aspect, George Mary, (2008: 16) notes that:

The library research process per se has nine stages. [...]. To elaborate slightly, they are (1) choosing a general topic, (2) engaging your imagination, (3) highlighting one or more research questions as a result of brainstorming about your topic, (4) developing a research plan or strategy, (5) consulting reference tools and searching databases, (6) identifying and obtaining sources, (7) evaluating sources in the light of your research questions, (8) experiencing insight based on reflection, and (9) crafting a thesis statement based on your insight. Each stage requires mental effort and agility, but the process is no more challenging than other sequential activities you engage in. You will be a proficient researcher when you can move comfortably through all nine stages and can anticipate and surmount difficulties along the way.

The choice of a general topic is important as it helps to focus on the kind of information to be sourced in accordance with the research questions. Additionally, imagination should be engaged in order to figure out every possible aspect of interest in developing the research project. Regarding the topic of feminist analysis of the DRC’s Mining Policy, importance will be given to information on the DRC’s mining industry, relevant to women’s participation. Each informational source will be evaluated according to its relevance to the research questions. Ultimately, the library research method will support the documentary methodological approach of this study.

Nevertheless, it must be noted that a documentary research is “not a clear cut and well-recognized category, like survey research or participant observation. It can hardly be regarded as constituting a method, since to say that one will use documents is to say nothing about how one will use them” (Platt, 1981 cited in May, 2001: 176). Not deterred by this view, the researcher regards documentary research as a reliable method for matters of informational relevance and constancy in social, political and economic events.

Thus, the study recognizes the importance of documents as a first-hand informational link to the witness of events, people and places concerned. For this reason, the study will build on the existing empirical work done by previous researchers on mining issues in the DRC, among which are: Nzongola-Ntalaja, 2002; Turner, 2007; Smillie 2010; Eichstataedt, 2011. Taking their research further, the study will focus on the ethical and critical analyses of the mining policy, which was not their focus. In fact, these methodological approaches will support the ethical analysis from the perspective of Feminist ethical theory and the CA. Ethical analysis is a systematic approach of examining a situation and documents, in order to gain sufficient knowledge of all relevant features, to decide on a course of action in accordance with moral principles (Guy Mary, 1990: 37).

There are different conceivable steps to guide an ethical analysis: - Gather the facts: this consists of articulating special features of the situation that makes it an ethical issue; some of the features include potential or actual harm caused to the people concerned. In my study this will be harm caused to women in the mining industry. - Define the ethical issues involved: this is to determine the level of ethical issues to be dealt with, as they may be individual, corporate or sometimes, systemic ethical issues - List potential solutions and the possible consequences should you act on them: after gathering the facts and clarifying ethical issues, and their level of implication, it is possible to then suggest alternative solutions - Pick the most ethical actions to follow: this is to choose an action that will enhance rights and justice for the people concerned (Hamilton , 2000).

Through the above steps, the study will analyze the DRC’s Mining Policy, in order to answer questions on women’s plight in the mining industry and present a discourse to support an ethical way of doing mining. Such an analysis will, academically, be ahead of all the empirical and social work of NGOs on the issues of women and mining in the DRC. The study will follow

step-by-step available information concerning the practice of a policy analysis (Weimer and Vining, 2011). This aims at finding ethical gaps in the current mining policy in the form of inadequacies of regulations failing to promote gender justice. The outcome is appealing for a mining policy that includes values targeted at minimizing conditions of poverty and maximizing opportunities for a flourishing life for those concerned. In other words, it is important to weigh potential consequences of a policy in comparison to what social values and ethical beliefs can offer (Weimer and Vining 2011: 24). A positive outcome is when negative consequences of a policy do not outweigh social and ethical beliefs. The study will capture aspects of issues of injustice and subjugation of women in the DRC's mining industry. To this aim, the presentation of the study and its findings will be divided into chapters, as blocks of topics focused on a particular aspect of the research question. Chapters will comprise several sections and themes looking in-depth into an aspect of the study.

## **1. 8. Conclusion**

This chapter has elaborated on the specifics of the crisis inherent to the DRC's mining industry. It was explained that the nature of the crisis is symptomatic of a potentially prolific economic industry, contrasted with the increased vulnerabilities and poverty of the DRC women directly involved in the mines. This situation can be associated with the background of the DRC's Mining Policy, within the context of a country recovering from years of civil unrest. With this in mind, the chapter highlighted that a new mining code was necessitated by the urgency of improving economic growth and channeling resources towards economic efforts, in order to rebuild a country destroyed by wars and corruption (Nzongola-Ntalaja-Ntalaja, 2002: 227; Scherrer, 2002: 251).

This chapter covered the background to the topic of study. It noted that the DRC is known worldwide for its large reserves of minerals, while the exploitation of natural resources has also made history through serious violations of people's rights, including the victimization and exploitation of women (International Trade Union Confederation, 2011). The situation of women as an integral part of the mining community and contributors to the economic platform of the DRC requires urgent attention. It appears that the DRC's Mining Code of 2002, a statutory instrument regulating the mining industry, has not paid attention to the reality of women as an integral part of the workforce in the mining sector. This study has opened the

discussion to illustrate the gaps in the mining policy of the DRC, as it affects the participation of women in the mining industry. In this regard, before the assessment of the status of women in the DRC's mining industry, the next chapter introduces the mining policy and explains its background and rationale. This will aid in determining the way in which the mining regulatory framework deals with issues of interest to women in the DRC's mining industry. Therefore, the following chapter places the historical background of the DRC's Mining Policy and its rationale into perspective.

## **CHAPTER TWO: THE EVOLUTION OF THE DRC'S MINING POLICY: HISTORICAL BACKGROUND AND RATIONALE**

### **2.0. Introduction**

The previous chapter dealt with the background for this study, underlining the marginalization of women in the DRC's mining industry. This is an economic sector guided by the policy outlined in the Mining Code of 2002. It is worth noting that the DRC's Mining Code is a result of a combination of the different mining laws adopted at different times by the various political regimes that have formed the political history of the DRC, before and after colonization. The DRC's government has been the major player in the process of enacting a mining code in conformity with the political and socio-economic reality of the time. For this reason, it is worth noting that:

The reform of regulatory and legal frameworks in favor of greater harmonization and stability in the mining sector in Africa have indeed contributed to a more favorable environment for foreign investment. The reform measures have entailed, however, a process of redefining the role of the state that is so profound that it has no historical precedent (Campbell, 2004: 7).

The DRC, as with other states in Africa, saw the need to confirm its political authority and sovereignty by also gaining economic freedom. In this regard, considering the contribution of the mining sector to the economy, the DRC authorities were to determine the kind of economic laws needed for the mining sector. The whole concept of adopting new mining laws could indicate an ideal to improve the management of the mining industry. The reality of improving management of the mining sector by adopting a new policy is a completely different matter to effectively turning the change into reality.

With this in mind, the current chapter is divided into four parts. The first is a brief introduction of the DRC as a country and an elaboration of selected geographical and historical facts worth mentioning in this study. The second part of this chapter deals with the economic context that shaped the evolution of mining policy in the DRC, reflecting on different political episodes and how their political economy determined the mining policy of the time. In the third part, the

chapter elaborates on the development of the mining policy presently in use in the DRC's mining industry. Particular emphasis will be placed on appraisals and weaknesses of the mining policy, especially with regard to issues related to women. Lastly, the fourth part of the chapter presents different motivational narratives calling for the revision of the DRC's Mining Code.

## **2. 1. Brief Presentation of the Democratic Republic of Congo**

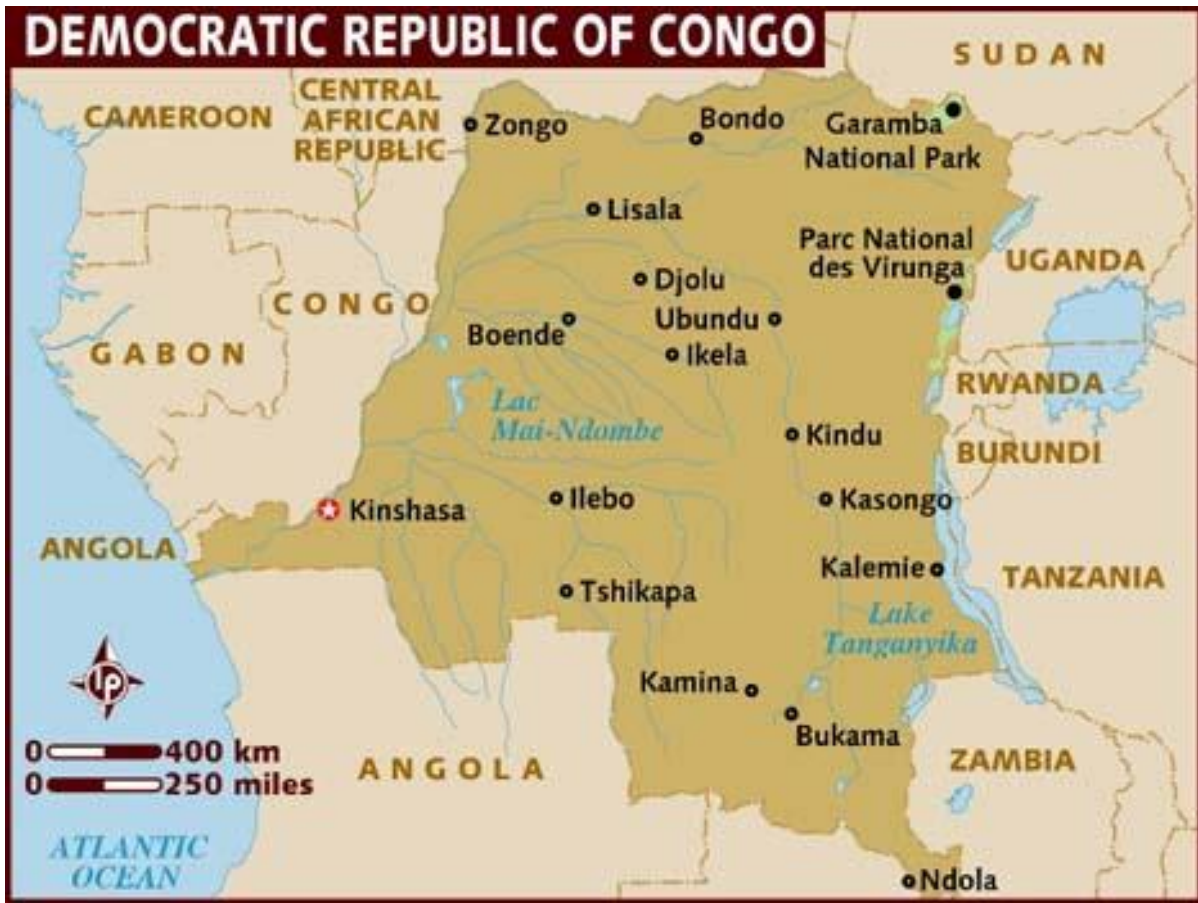
Considering that the study focuses on the mining policy of the DRC, this section deals with some geographical and historical facts about the country. Before tracing the historical evolution of the DRC's Mining Policy, this part of the chapter introduces the country, and explains the type of government and political regime adopted in the country. Since a mining policy is without purpose in the absence of mineral substances, this chapter will also name some of the minerals produced in the country.

### **2. 1. 1. The Democratic Republic of Congo - DRC**

The DRC is a country with a rich political, cultural and economic history. It has an area of 2.345 million square kilometers with access to the Atlantic Ocean on the west coast of the country and a population currently estimated at 79 million inhabitants (Arieff Alexis, 2014). As can be seen on the map bellow, the DRC shares its borders with nine different countries. In the Northern part, the DRC shares its borders with the Central Africa Republic and Sudan. The Southern border is shared with Zambia. In the Western part borders are common with the Republic of Congo and Angola. In the Eastern part, neighboring countries are: Uganda, Rwanda, Burundi and Tanzania.



## Map of the DRC



Source: <http://www.worldatlas.com/webimage/countrys/africa/cd.htm>. [Accessed 10 October 2014].

The Constitution of the Republic stipulates that the DRC is a presidential regime. The President of the Republic is the Head of State and the Head of Government, which is led by a Prime Minister, who is appointed by the President. The President is recognized as the Commander in Chief of the armed forces, and the Protector (Guarantor) of the Constitution. The President is elected in a general election for a five-year term, renewable once. The legislature is comprised of the National Assembly and the Senate (Constitution of the DRC, 2006).

Known as the Congo, in reference to the Kongo Empire, the DRC is a country that was under the rule of the Belgian King from 1885 to 1908. After the exploration initiated by Leopold II, the King of Belgium, and with the discovery of the vast lands of the Congo river's basin, the King exhibited his unreserved interest to occupy the land, and acquired the ownership under

the name Independent State of Congo (ISC) (Ndaywel è Nziem, 1998: 125; Nzongola-Ntalaja-Ntalaja, 2002: 105).

With the creation of the ISC, Congo became the private property of the King. Consequently, natural resources (plants, wood, water, rivers, minerals), as well as human resources, became his property and the king utilised them as he intended. This situation created countless atrocities, which the indigenous people could not easily dismiss. History is sometimes silent on the many atrocities that took place, especially the rubber atrocities of forced labor, torturing people in order to produce as much rubber as wanted by colonial authorities (Nelson, 1994: 222). On this subject, Stanard adds that:

It is true that there was a great deal of forgetting of atrocities that had occurred during Leopoldian rule and that most historical scholarships on Central Africa told a positive story. But this does not mean that there has been no serious investigation into the colonial past; there has been, and continues to be, serious research in Belgium into the Leopoldian and state-rule eras (Stanard, 2012: 267).

The rubber trade in the Congo river's basin is one of the darkest moments of human exploitation by colonial masters. This side of history has mostly remained silent, in comparison to the praises and many benefits the Kingdom of Belgium claimed as a result of their activities in the DRC. By way of contrast, that part of the DRC history "continues to evoke images of horrific violence in the equatorial forest, where the ceaseless greed and despotic rule of European rubber agents caused untold human suffering among an overwhelmed and defenseless African population" (Nelson, 1994: 79). This is evidence that the rubber trade, as with today's mining trade, was a source of oppression for local communities.

According to a Congolese historian, Ndaywel è Nziem, many Congolese died at the hands of Leopold II's army, while defending their freedom and the autonomy of their land or resisting forced Labor. They refused to be treated like property and a commodity (Ndaywel è Nziem, 2011: 160). During the twenty-three years of his rule over the ISC (1885-1908), Leopold II had massacred more than ten million Congolese, cutting off their hands, and sometimes intimate parts, torturing and depriving them of food and water to their last breath.

Women and children were exposed to hard work without pay; moving them from their land, and burning entire villages (Ndaywel è Nziem, 2011: 160; Twain Mark, 1970; Haskin Jeanne, 2005). Leopold II never set foot in the Congo, but his envoys zealously carried out his instructions. Colonial officers worked in collaboration with village leaders, who were sometimes forced to whip others, or wanting to please their masters, would wrongly denounce their perceived opponents, delivering them into the hands of the oppressors (Ndaywel è Nziem, 2011: 160-177).

Though the Congo basin was declared a free-trade-zone, King Leopold II had the sole monopoly on the land and later on, he relinquished his property to the Belgian Kingdom. The land became known as the Belgian Congo, from 1908 to 1960. One major point that deserves attention is that by taking over control of the Congo, Belgium also took over control of the mineral resources (Stanard, 2012: 30). Congo became independent on 30 June 1960, under the national name of the Democratic Republic of the Congo (this name eventually became Zaire in 1971, under president Mobutu; the country was again called the Democratic Republic of Congo in 1997 by president Laurent Desire Kabila). With independence, in principle, the DRC also regained control over its mineral resources.

### **2. 1. 2. Mineral Resources in the DRC**

The DRC is one of the potentially richest countries in the world with vast mineral resources in most provinces of the country. The DRC sub-soil contains a variety of minerals and metals much needed in many industries in the world. Among the most popular mineral substances in the DRC are cobalt, copper and diamonds which are proportionally found in most provinces. Other minerals found in the country are tin, gold, iron, uranium, tantalum, and nickel. A mineral inventory in 2010 shows that:

The country's share of the world's cobalt production amounted to 51%; industrial diamonds, 25%; tantalum, 14%; gem-quality diamonds, 5%; and copper and tin 3% each. The DRC has some of the largest deposits of non-ferrous metals in the world. It has about 3% of the global copper reserves and 45% of global cobalt reserves, about 25% of the global diamond reserves, and reserves of some precious metals such as gold and tantalum. In relative terms, the DRC is the largest cobalt producer globally. It boasts the 10th highest gold reserves globally, and the country has the largest diamond reserves in Africa. The country's vast mineral resources will attract significant international interest. The value of the DRC's mining sector is expected

to increase to \$2.6bn in 2017, mostly driven by copper and gold production (KPMG, 2014: 20).

As can be projected, Such statistics raised the expectations not only of the citizens within the country and abroad but also of the international community to count the DRC among the best economies in Africa and the world. Such expectations are legitimately justifiable owing to the distribution of minerals throughout the regions of the country<sup>3</sup>. While all provinces can boast of a variety of minerals, it is estimated that a few of them are outstanding and can be identified with one or the other predominantly produced mineral substances.

It is important to clarify that when mentioning provinces, the thesis is referring to provinces as they were known before the creation of new ones by ordinance law of 2<sup>nd</sup> March 2015, from 11 provinces to 26 (Kungu, 2015). By way of example, Katanga province is known as the copper-belt, and Kasai is identified as the land of diamonds. The province Orientale, mostly its district of Ituri is the home of gold, while in the Eastern part of the country, with the provinces of South Kivu, Maniema, and North Kivu are proudly distinguished by gold, tin and coltan (Turner, 2013: 157). Reality has shown that most expectations of economic development to be carried by the mining industry proved unfulfilled. Due to several years of mismanagement of the mining sector, major public mining companies went down. For example,

Between 1988 and 1996 copper production fell from 506,000 tons to 38,000 and cobalt from 10,140 tons to 5,300. The technical condition of the production apparatus was a disaster. In Mbuji-Mayi MIBA that was the biggest diamond producer in the country, saw its production capacity declining considerably. It produced between six and nine million carats (valued at between \$55 million and \$90 million (Prunier, 2009: 139).

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<sup>3</sup> As explained above, most provinces have deposits of various minerals. for example, the province of Congo central ( bitumen, limestone); the province of Bandundu (diamond); the province Orientale (diamond, bitumen, geothermal); the Katanga province (cobalt, copper, zinc, silver, germanium, uranium, emerald, sapphire, tourmaline, amethyst, geothermal); the province of Equateur (diamond); the provinces of north Kivu, south Kivu and Maniema (gold, coltan, tin deposits, tungsten, diamond, emerald, tourmaline, amethyst, limestone, bitumen, geothermal); the provinces of Kasai occidental and Kasai oriental (diamond deposits, limestone).

The collapse of the industry was aggravated by different wars that ravaged the DRC for many decades and negatively affected the mining industry. The mineral substances were looted by different war lords and their sponsors, including mining operators motivated by greed (Timerman, 2010). The situation of wars created a sense of lawlessness in the management of the mining industry that was to be stopped by the regime of 2001. For its economic plan, the DRC's new regime of 2001 decided to redress the mining industry, and make it profitable for the country's economy and development, as a contributor into the national GDP.

Not wanting to operate on its own, the DRC government enlisted the collaboration of the private mining operators and companies already in activities, while encouraging many more investments from new companies. In this way, Government signed mining contracts with various companies (*Appendix 1*). Such robust economic ventures required a new mining legal framework adapted to the new political and economic contexts.

## **2. 2. The Economic Context and the Evolution of the Mining Policy**

To understand the historical background of the DRC's Mining Policy, it is relevant to start from the beginning, because the history of the mining policy is closely associated with the political chronology of the DRC as a nation. For this reason, this section of the chapter traces the economic and historical contexts that shaped the evolution of the mining policy.

### **2. 2. 1. The Mining Policy under the Independent State of Congo (ISC: 1885-1908)**

The structure of the DRC economy started to take shape from the time of the ISC (1885-1908), and thereafter continued under the name the Belgian Congo. The economy was based on extractive products. On 22 August 1885, the King of Belgium issued a decree to regulate the mining sector, as other than rubber and ivory, it was a major source of income. The king's decree was in conformity with the legal dispositions put in place by the Berlin Conference, known as the Berlin Act, signed on 26 February 1885. The Berlin Act acknowledged all rights obtained by the acquisition of the ISC by the king, and the same rights also regulated the management and utilization of the land of the ISC, and all that it contained. All these legal documents were published two years later, in 1887 (Bakandeja, 2009: 62).

The aim of this legislation was to gain control of the land through legal instruments. Though the king had taken control of Congolese land, he acknowledged the right of the local communities to live on the land, to practise agriculture, fishing and hunting. The first legal disposition to protect the land was taken on July 1<sup>st</sup> 1885. It reads:

From the present proclamation, any contract or agreement signed with the indigenous for the occupation of any parts of the land, will not be recognized or protected by the government, unless the contract or the Convention had been authorized by the public official committed by the General Governor and following the rules taken by him in each particular case. No one has the right to occupy vacant land without title, or dispossessing the natives of the land they occupy, all lands must be considered as the property of the State (Bakandeja, 2009: 63).

One positive outcome of this decree was the recognition of the rights of the native people to occupy the land where they live. At the same time, a negative outcome was that natives lost the right to ownership of the riches of the land. This decree regulating the acquisition of land and its management would be the foundation of other regulations regarding Congolese natural resources. The basic principle to note here is that the land is the property of the state. People were allowed to occupy the land for their daily chores and living, but they were only the custodians, it belonged to the state, specifically the natural resources.

Mining activities that, generally, came under land regulation were to be regulated by other specific laws, from the basis of the land statutes. The very first mining law taken on 30 April 1887, was as follows: “No person, without permission given by the General Governor, or civil officer designated by him, is allowed to operate mines on the land whose ownership has not been legally recognized” (Bakandeja, 2009: 65). As can be seen, the state, or rather the authorities of the ISC, had given themselves the right to regulate the mining sector as it was encompassed in the land that belonged to the state. It is therefore understood that the state prevented other unauthorised persons to take possession of mines. Nonetheless, this disposition also limited the ownership of the mines to the state, despite opening the possibility of offering ownership of the land to others following the land regulations.

There was no compromise for the ownership of mines. The authorities specified this aspect in a decree given on 8 June 1888, that said: “the lease of land by the state effected in accordance with the provisions on land regulation, does not confer the purchasers and the tenants of these

lands the right of ownership over wealth contained under-ground of the land. These mineral resources remain the property of the State.” (Bakandeja, 2009: 66). This legislation brought clarity into the business and administration of the land. As other occupants were settling on the land and doing different types of businesses on the land they occupied, legally or otherwise, the state intervened with regulations to control and administer the mining sector.

It was important for the authorities to make it clear that the ownership of the land did not grant ownership of the wealth it contained. It was not a rare to find diamonds opencast in streams or gravel on lands privately owned. In such circumstances, the owners did not have any right over these minerals, the state had all the rights, which it could concede to private companies as its agents and collaborators. Bakandeja explains it in this quote:

The legislature therefore wished, by the decree of June 8, 1888, to prevent that other settlers would become more powerful than the state, because the riches under the ground paid better than those exposed at the surface. The new decree thus testifies to the richness of dispositions which protect the underground wealth belonging to the state and of which the state reserves the monopoly to collect all the proceeds to conduct its policy (2009: 66).

This decree officially and quietly dispossessed local communities of the wealth in their surroundings. They may not have known the nature, the names and the monetary significance of minerals beneath their feet, but it belonged to them before the decree.

### **2. 2. 2. The Mining Policy under the Belgian Regime (1908 – 1959)**

In October 1908, Leopold II decided to relinquish the ISC to the Belgian Empire. This marked the beginning of colonization of the Congo by Belgium. As a result of this political arrangement between Leopold II and the Belgian Kingdom, all natural resources and mines that previously belonged to the king, became the property of the Belgian Government. The mining legal framework of the Independent State of Congo also became mining law in the Belgian colony (Bakandeja, 2009: 71). One of such regulations dated 20 March 1893, defined minerals as:

(1) all mineral substances used for their metal content. This includes the following minerals: gold, silver, platinum, iridium, mercury, copper, lead, zinc, cadmium, iron, manganese, chrome, tin, bismuth, cobalt, nickel, tungsten, antimony, arsenic, molybdenum; (2) the usable substances for their sulfur content including native sulfur, and sulfur not included in the previous group, the phosphate of lime; (3) fossil fuels or bituminous substances which includes the anthracite coal, lignite, graphite,

mineral waxes, the oil, asphalt, rocks, mineral oils, fossil copal; (4) rock salt, the metal salts and salty sources in which are found the alum rocks; barium sulfate, the vitriol ores (iron sulfates, copper); (5) diamond and precious stones (Bakandjea, 2009: 67-68).

This meant that diamonds and precious stones, and all other minerals in the soil of the indigenous population, were as such no longer their property. Besides rubber collection, mining was a source of income for the colonial masters. It was for this reason that colonial authorities did not relent in reinforcing mining legislations, making this sector very prolific. The Congo was the number one producer of industrial diamonds, and mineral products in the Congo were ranked as follows: Copper: 4<sup>th</sup> largest World producer, with close to 300,000 tons per year (close to eight percent of global production); Cobalt: No. 1 World producer, with 5,500 tons per year (close to 75 percent of World production); Gold: 11,500 tons per year; Zinc (No. 6 World producer); Tin (No. 9 World producer); Manganese, columbite-tantalite (“coltan”), coal (420,000 tons) and silver (André-Dumont, 2011: 22). From the above it is clear that the country is known to be very rich in mineral resources.

The main purpose of gaining control of the Congo basin was to control the natural and mineral riches of the Congo for the benefit of the Belgian economy. Belgium had suffered a great deal during World War II and its economy had been destroyed. Accordingly, André-Dumont (2011: 8-9) declares:

During colonization, the Congo did not suffer at all from World War II from an economic point of view. On the contrary, its wealth participated in the rapid reconstruction of Belgium, which had suffered enormously. The first Belgian supermarket was created in Elisabethville, now called Lubumbashi, the capital city of the copper province of Katanga, just after the war. However, the population was forced to contribute to the “war effort”, and suffered greatly from this compulsory contribution.

This perception that ‘Congo did not suffer at all from World War II from an economic point of view’ is a contradiction in words and facts. The suffering of Belgium was transferred to Congo forced to bear the costs. The local contribution to the reconstruction effort of Belgium amounted not only to forced personal contributions, but essentially to the large exploitation of natural resources. With the creation of Union Minière du Katanga in 1906, this mining company excelled in the extraction of diamonds entirely exported to Belgium for its extensive works of reconstruction and modernisation as confirmed by Mommen:



A mining company, the Union Minière du Haut Kanga, is formed in 1906 to exploit the new opportunities. It begins to extract copper in 1911. By 1928 it is producing 7% of the world's total. At the same time diamonds contribute to the status of the Congo as one of Africa's richest regions. First mined in 1907, the Congo's diamond output is twenty years later a close second in the world after South Africa's. As a region depending exclusively on the export of raw materials, the Belgian Congo suffers greatly during the slump of the 1930s. But by the same token World War II is a prosperous period. With Belgium occupied by the Germans, the colony remains loyal to a Belgian government in exile in London. Congo's minerals make a major contribution to the allied war effort. The postwar period sees a continuing increase in prosperity and in immigration from Belgium (1994: 115)

The misappropriation of the Congolese resources for the benefit of other nations has a long history. Without regard to the Congolese people, the Belgian government took advantage of the political arrangement of the time. The Belgium regime had to, literally, “sell the Congo” in order to create a superior business outcome in their favor and survive the aftermath of second World War. (Stanard, 2012: 13). Adding to the reflection, André Mommen (1994: 1) explains:

The First World War meant a rupture with the previous period of classical liberalism. Important changes were the generalization of social legislation, the establishment of employment benefits, and the recognition of the principle of social justice as formulated in part III of the Versailles Treaty concerning universal peace and the organization of labor. Fiscal reform completed postwar reconstruction. Meanwhile the Belgian government was confronted with monetary instability, high public debt, and speculation against the Belgian Franc. All these problems must be considered within the realm of a small open economy producing industrial products which had to find an outlet in the world market. Like the other European countries, Belgium was striving for a rapid normalization and a return to the gold standard and pre-war stability.

The aftermath of the First World War II was a real test to the Belgium economy and political system forced to find solutions, for example, to the issue of monetary instability and all that comes with such a situation. Congo was an immediate solution to the Belgium problems, an outlet of sorts. The social changes effected between World War I and II were unquestionably not intended for the Congolese nationals. They continued to be ignored in their dignity of human beings capable of self-determination. Human as well as natural resources were objects to be used by the powerful masters. In such a context, the Congo's Mining Industry served to cushion Belgium's financial difficulties.

Establishing infrastructure in the Belgian Congo proved beneficial for the Belgian economy. Everything they produced in Belgian industries (steel, machetes, colorings, rolling stock, glass and textiles) was exported from Brussels to Leopoldville at a higher cost of their initial price. On this, Mommen explains that: “The Belgian balance of trade always showed a trade deficit, but this deficit was easily compensated by returns in foreign investment, services and transit trade” (Mommen, 1994: 124). The major foreign investment was the Belgian Congo paying Belgian debt. Without doubt, the contribution of the Congolese mining industry to the Belgian economy has been downplayed; but the contrary was an open book. The Belgian interests in the Congolese mining, through government and private companies is another downplayed factor. “The mining companies constituted a state within the Belgian Congo” (Mommen, 1994: 117).

As a matter of fact, the mining industry under the colonial era was totally the monopoly of the foreign investors under the protection of the colonial masters. This precedence has a lasting effect in the DRC’s mining economic map. Some of the regulations continued to be effective long after the ISC through the Belgian Congo regime and the political administration after independence.

### **2. 2. 3. The Mining Policy during and after Independence (1960 – 1997)**

The first democratically elected government of the Congo at independence was as follows: Joseph Kasa-Vubu as the President of the Republic and Patrice Emery Lumumba as the prime minister. During and after independence, following a disastrous political situation, the mining industry remained a major source of income for the Congo with the economy of the country still relying heavily on mineral resources (Mommen, 1994: 117). Motivated to strengthen its power and sovereignty, the newly formed government by the natives of the Congo, saw the need to revise mining regulations in conformity with their newly acquired political autonomy.

The effort entailed finding ways for the government to reclaim and assume control of mines, even those that were conceded to private companies and subcontracted by colonial authorities. Regaining control of mine concessions proved to be a politically risky initiative, nonetheless intended for the development of the country. For fear of losing their hold on the mining sector,

just before independence, the colonial power hastily enacted laws to protect companies subcontracted by them. On 25 May 1960 and 20 June 1960, a few weeks before the proclamation of independence, several conventions were signed. They were designed to guarantee the rights of colonial companies, in order to keep their shares and interests in mining companies in spite of the inevitable change in legal status, due to independence.

It was necessary to safeguard control of all economic activities, particularly the production units in the mining sector, which were very prolific. To ensure this, colonial authorities made all concerned Belgian companies autonomous and protected them by special law of the Belgian legislation. However, for the authorities of the new independent state, the will to decolonise the law had been so strongly debated with the Belgian government for many months after the proclamation of independence that it became known as the Belgian-Congolese conflict (Bakandeja, 2009: 77).

The legal battle for the Congo to gain full control of its natural resources was not an easy one. After four years (1960-1964) of negotiations between the Belgian authorities and the Congo Government, a bill was finalised on 1 August 1964. The enactment of that law took two more years to be endorsed in the Constitution: called the Bakajika Law, promulgated by presidential decree No. 66/343, on 7 June 1966. This finally sealed the legitimacy of control over its land for the Congo, as a nation, and to use it as intended for national development.

With this new law, the Congo was the sovereign owner of its natural resources. All lands that were leased before the promulgation of the law belonged to their rightful owners, except the natural resources they contained. Belgian companies, and/or those working in partnership with the Congo government had to start the process to acquire mining rights afresh. Companies were given a 30-day deadline to normalise their situation, with national interest at the centre of this new legal disposition by the Congo government (Bakandeja, 2009: 78).

Such a stand risked creating a rift between the former colonial masters and the new government. Apparently, it was very challenging for the government to reinforce the mining law. Bakandeja explains:

The nationalist spirit expressed in the provisions of the ordinance-law of June 7, 1966 was up against resistance of former mine owners and created a diplomatic tension between Congolese national authorities and those of the Kingdom of Belgium. They accounted for the interests of Belgian subjects whose property and rights were not, according to them, protected by the Congolese State who expropriated them without following the procedures. This is why the Belgian authorities demanded for their subjects to be compensated. The tension between the Congolese and Belgian authorities was at the base of the first rebellion in Kivu, driven by a former Belgian officer of the colony, Colonel Jan Schram. However, the willingness of national authorities to ensure total control of mineral wealth was realized by the adoption of a specific legislation on mines: the ordinance law No.67/231 of 3 May 1967 on general legislation for Mines and Petroleum Resources (2009: 79).

This quote translates a deep sense of the opposite motivations of actions between the authorities of the DRC, as an independent nation tasked to protect national interests, and the former colonial masters, who ignored their moral and legal obligations to respect the sovereignty of a country to run its affairs. Instead, Belgian authorities' stance created tensions and dissensions. The wrangle between the DRC and exterior forces for the control of minerals would not end with independence. In their determination and desire for economic independence, national authorities did not relent in reinforcing the law and instituted specific legislation for mines.

The new legislation was promulgated by ordinance-law No. 67/261 of 11 May 11 1967, which put two types of mining regulations in place: the first category of mines falls under the general law on mining; while the second category falls under that of conventional mining.

**(a). Mines under the general law**

Under the general law, the mines are governed by three principles:

- The principle of public ownership: It is the separation of the land from what it contains underground which is the property of the state; while the land may have a different owner.
- The principle of prior authority: No person may engage in the exploration, or the exploitation of minerals if he/she has no permission granted by the state.
- The third principle is about residence. It is formulated as follows:

A physical person can obtain a mining right only if he has elected domicile in the country and whether he/she offers all the guarantees of morality. A corporation can obtain such a right if it is constituted according to Congolese law, and if it is registered and has administrative headquarters in the Republic and, finally, if its

social purpose is limited to exploration, research and exploitation, to mineral processing and related activities in depth. The fulfilment of these conditions allows a person to enjoy the right to have exclusive title of exploitation and operating leasable substances for which the titles were issued (Bakandeja, 2009: 80).

Besides these regulations, a licence for the artisanal mining was introduced for the first time in the history of mining. This permit was issued to physical persons of the DRC citizenship or to artisanal mining cooperatives. There was no need for a licence of exploration as in the case of industrial mining.

**(b). The law for conventional mining**

The law for conventional mining was intended to inject fresh capital into the revenue by allowing foreign investors to engage in mining following the law on investment. The conventional mining regime consisted of giving to applicants one or more territories for exploration and research and for those territories alone to receive licences for exploration and survey. The present authorities in the DRC are in favour of the conventional mining regime, as it supposedly, could bring money for the reconstruction of the country<sup>4</sup>.

As can be noted, there was a firm resolve from the Congolese regime to rationally and efficiently manage the mining industry for the benefit of the country. Moreover, the political authorities set the tone. They did not intend to relax after achieving political freedom. There was urgency to accomplish economic freedom. The newly elected leaders embarked on a mission to ensure control of natural resources by reversing some of the mining legislations, as indicated above. With the assassination of the nationalist Prime Minister, Lumumba, the hidden powers that tried to re-capture the Congolese natural resources for their own benefit, faced a harsh resistance from the leaders. The ordinance law No.67/261 of May 11<sup>th</sup> 1967 sealed a total control by government of mineral resources in the country.

Regarding the mineral resources, opposite forces were at play. On one hand, the DRC government adopted legislation that gave them full power over minerals in the country for the benefit of the national economy, but on the other hand, hostile forces did not relent to create

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<sup>4</sup> By present authorities the study refers to the regime of 2001, led by president Joseph Kabila who embarked on the revision of the mining laws in the DRC. The mining code of 2002 adopted a law for conventional mining which allows foreign and national companies to apply for mining and quarry permits. This study intends to analyse this mining code and investigate the impact it bears on the participation of women in the mining activities.

chaos in the country so as to prevent government from realising its policies on mining. Turner (2013: 147-148) reports that:

Two separate invasions from the present Tanzania led to the establishment of new states in Katanga and Maniema. Msiri, founder of the Gareganze kingdom of Katanga, was a copper trader in Tanzania before he moved along the supply chain to seize mines of Katanga...The days of a state-private partnership bringing food across provincial borders to thousands of workers are long gone, but the legacy of the early days survives, both in the use of mining companies as cash cows for current expenses under Mobutu and the Kabilas, and in preference for state retention of minority ownership of mining companies, old and new.

This is evidence of negative forces disrupting the smooth management of the DRC's natural resources, especially the mining sector that could benefit the national economy. More and more the private sector accelerated the deviation of the intentions of the fathers of independence, drifting from the ideal of an economy benefiting the majority of citizens, towards an economy for the interests of a few powerful individuals.

A historical note indicates that from 1960 to 1965, the country experienced its first major political crisis, which resulted in the coup by the Army Commander in Chief, Joseph Mobutu Desiré. He ruled the country with an iron fist, and renamed the country from the DRC to the Republic of Zaire in 1971. Mobutu then banned Christian names, European suits and ties as symbols of Western imperialism. He nationalized most companies in 1973 (Turner, 2013: 7-10). This situation signaled the downfall of the economy and the ramifications of political instability.

Corruption, embezzlement of public funds, favoritism and a general lack of accountability saw the decline of the national economy. The dictatorship was installed, poverty levels increased, and the inflation rate reached a thousand percent (Turner, 2013). The high level of inflation could also indicate a situation of serious poverty in the country.

Mobutu was ousted in 1997 after a civil war led by Laurent Desire Kabila, with the help of Rwandan and Ugandan armies. In a bid to revamp the economy, the new Republican President, Laurent Kabila, signed various mining economic agreements with different companies for a joint economic venture with the DRC (*Appendix 1*). After the assassination of Laurent Kabila

in 2001 his son, Joseph Kabila, was chosen by the late president's advisors to replace him. The new president embarked on creating new laws to regulate the country's mineral resources.

### **2. 3. The Development of the Mining Policy under the Present Context**

In this section, the 'present context', refers to two realities: politically it refers to the political regime that started in 1997 with Laurent Desiré Kabila, and continued in 2001 (the regime of President Joseph Kabila), and subsequently, in terms of the mining policy, the 'present context' refers to the current mining code regulating the mining industry in the DRC.

#### **2. 3. 1. Mining Policy under Laurent Desiré Kabila's Regime (1997 – 2001)**

It is important to note that the administration of the mining sector has evolved around four political administrations. First, under the political monopoly of the King of Belgium, the Congo being his personal property, with the understanding and support of the rest of the western world that recognised the ISC. Secondly, the Congo as a colony under the Kingdom of Belgium saw natural resources as the property of Belgium, and the mining legislation favoured Belgium and its allies.

The third phase of mining legislation came with the independence of the Congo. Under multiparty arrangement, national authorities prioritised efforts to sustain the economy to ensure the means of its politics. The intention was clearly expressed by the Prime Minister, Patrice Lumumba, when addressing dignitaries on Independence Day: "we are going to ensure that the lands of our fatherland truly profit its children" (Van Lierde Jean, 1972).

The Mobutu Regime continued to operate under the colonial mining policy until 1967, when a new mining regime was put in place, as indicated in the previous section. The fourth phase in the mining regulation started with the change of regime led by Laurent Desiré Kabila from 1997 to 2001, and continued under President Joseph Kabila from 2001 to date. With this change of regime, there were efforts to take the economy in a different direction.

The economic liberalism embarked upon by the Mobutu regime, and accelerated under both Kabila's regimes with the joint-venture contracts, saw mining regulations working to the

disadvantage of the DRC but favouring a few powerful individuals and companies, whose motives distanced them from national economic emancipation. Turner (2013: 152) confirms that:

The privatisation of Congo's mining parastatals began under Mobutu's prime minister Kengo Wa Dondo in 1995. The idea was that to curb the downward spiral of the economy, one had to re-launch the formal mining sector, which, owing to exogenous factors (such as economic recession and price fluctuations on the commodity market) and bad governance, had nearly come to a standstill. Joint-venture agreements were reached with "junior" mining companies, or exploration companies, State-owned Gecamines transferred rights to the Tenke and Fungurume copper-cobalt deposits to a partnership with the Swedish-Canadian Lundin group. Another joint venture brought together Gecamines, Union Miniere of Belgium, and the group headed by Belgian national George Forrest to develop the Kasomba copper-cobalt mine.

The joint-venture type of mining business was meant to accelerate the flow of income for government (*Appendix I*). Entering into agreement with foreign companies to attract financial capital seemed a workable solution to the DRC's economic problems. Nonetheless, numerous questions deserve answers as to the morality of it all. The obligations and duty of the state; the vision for the advancement of development, remained clouded by the prospect of cash flow.

As a result of these unlimited joint-ventures, which at times did not receive serious consideration regarding the interests of the nation, the DRC government lost its grip on the mining sector. All previous legislations seemed ineffective in the eyes of the new owners of mining companies. They negotiated the terms and conditions of contracts with government, in ways favourable to their own interests, sometimes by imposing their preferred terms of reference on government (Turner, 2013: 152).

Mining activities were then regulated on the basis of each particular contract signed with specific investors, and buyers of privatised mining companies in which the state still owned some shares. This experience of joint-venture mining activities between the DRC and foreign companies was not profitable to the DRC mining sector because of financial evasion. According to certain opinions, when the new regime of Laurent Desire Kabila took charge, the mining sector was engulfed in a mafia-type of business:



Laurent Kabila, whose troops marched into Kinshasa on 17 May 1997, had begun his political career as a young, anti-Western Marxist rebel, fighting against Mobutu's army in the early 1960s...The world wanted only a replacement for Mobutu. Kabila's consuming interest was in power and the wealth that might be derived from it. In order to finance his march to Kinshasa, Kabila sold diamond and other mineral concessions left, right and centre, signing contracts with companies as eager for profits as himself. One such arrangement gave America Mineral Fields important cobalt and diamond concessions. A lot of cash and Kabila's use of company plane helped clinch the contract. In power, however, Kabila renounced that deal and many others, as well as all of the mining agreements made by Mobutu in his final scramble for cash (Smillie, 2010: 125).

Most contracts signed without considering the long-term benefit of the country resulted in the misuse of the national resources. The maladministration of the mining industry by unrealistic mining contracts created more problems than resolving the real issues faced by the nation. It became impossible to fulfil the dreams of Lumumba to see the resources of the fatherland benefitting citizens of the DRC. Instead, financial gains from minerals continued to evade national coffers. It is under such context that the World Bank took keen interest in monitoring the DRC mining sector; specifically, to encourage a new approach to the mining policy.

### **2. 3. 2. The Need for a New Mining Policy in the DRC**

For many decades, the mining policy inherited from the colonial regime, and amended under subsequent governments, has been economically, politically and socially and found to be harmful for the country. The DRC Government was facing an economic crisis worsened by the mismanagement of the mining industry, the most prolific sector of the national economy. To respond to this crisis, the 2001 government intended to introduce a mining law that would promote the revival of mining activities by attracting new investments.

It was then necessary to consider the possibility of regulating the mining sector to allow it to efficiently contribute to the national economy. The rationalization of the DRC Mining Industry required government to legalize the allocation of concessions and mining rights, and to formalize the rights of local communities living around mining enterprises. In addition to harmonizing the mine tax regime (Bakandjeja, 2009: 92). The transitional government led by Joseph Kabila embarked on this project of enacting a mining policy, backed by the international community.

### **2. 3. 3. The Intervention of the World Bank**

The World Bank intervened in the DRC after the different years of liberation wars (1996-1997 and 1998-2001), and in the midst of a chaotic political environment. Added to the situation, was the mushrooming of rebellions in the Eastern and Northern parts of the DRC. The business climate was not conducive to attract investors, other than those already on the ground for mining ventures.

After the assassination of Laurent Kabila, his son, Joseph Kabila replaced him as head of state. This change in leadership paved the way for the involvement of international financial institutions in the affairs of the DRC. In this regard,

The World Bank began supervising the government's mining policy in 2001. DRC resumed the privatisation of the mining parastatals begun by Kengo, in return for a resumption of lending. The central assumption was that economic growth should and could be promoted by attracting foreign investors. The Bank's accomplishments included restructuring Gecamines, the promulgation of a new, supposedly more 'investors-friendly' mining code in 2002, and the preparation of a new Mining Registry (Cadastre Minier). The restructuring of Gecamines included the dismissal of 10,000 employees, with insignificant severance pay and little prospects of finding another job (Turner, 2013: 152).

The involvement of the World Bank was not an isolated factor in the meddling of foreign forces in the economic affairs of the DRC. Nonetheless, contrary to other actors, the World Bank was responding to the DRC's priorities in rationalising the mining sector for effective and sustainable economic growth. In order to achieve their social economic projects, the new political authorities in the DRC embarked on attracting new investors by proposing acceptable regulation of their businesses in the mining sector.

The new mining policy in the DRC was termed as 'investor-friendly' (Turner, 2013: 152). It seems that this policy was literally friendly to investors, while ignoring the plight of vulnerable miners (women) and local communities. This will be the object of assessment in other chapters of this study. Suffice to concur with Nussbaum that public policy has a central role to play in enabling citizens for socio-economic progress (2000). Should the DRC Mining Policy have

been seen to be friendly to investors only, while disadvantaging a category of the citizens, it would have been ethically questionable.

One of the collaborations in the joint venture that followed the new mining legislation included an agreement entered into by the DRC government and the Republic of China, in terms of exchange of billions of dollars for various infrastructure projects in the DRC (roads, railways, universities, hospitals, airports, mines, and metallurgy). This was in return for mining concessions affording China the equivalent of minerals for each dollar spent on infrastructure for many years to come. The same method of a joint venture was effected between Gecamines and the 'China Enterprise Group', representing the Chinese government (Smillie, 2010: 153-154).

This transaction seemed a real replica of the traditional form of trade, exchanging goods according to each party's needs. There were concerns from around the world, including the World Bank. The mining sector of the DRC had often been under the scrutiny of the world financial institutions. The World Bank and IMF felt they had been left out of the DRC/China agreement, and in their self-imposed titles of the DRC economy's trustees, they reacted very negatively explaining that:

This deal would greatly increase DRC's international debt, which they had been working to bring under control. Politically, it gave Kinshasa 'room to maneuver' in its dealings with the global economy. After lengthy negotiations, the Congolese government agreed to scale back the amount of the loan, eliminating three billion dollars' worth of infrastructure projects; if the Chinese got access to the same amount of minerals while providing a smaller loan, this was rather a good deal for them (United Nations, Report, 2001).

Accompanying the DRC towards economic recovery, the World Bank and IMF insisted on monitoring the DRC/China mining agreement and obtaining readjustments in the best interest of the country. The monitoring by the World Bank of loans and agreements with foreign corporations assisted the country in re-evaluating their deals with private companies by enacting a new mining code.

### **2. 3. 4. The DRC Mining Code of 2002**

The DRC's Mining Code was enacted in 2002 by ordinance LAW No. 007/2002 of 11 July 2002, to specify the mining policy in the country (Mining Code, 2002). The implementing measures of the mining code are contained in the mining regulations, enacted by the Decree-LAW No. 038/2003, made public on 26 March 2003. The mining code was written by a group of national and international mining experts that included geologists, lawyers, mining administrators, and experts in the mining environment (Muhigirwa, 2011). This law provides a comprehensive set of rules regulating the mining industry in the DRC.

It should be said that the DRC's Mining Code of 2002 was not a novelty in the re-formulation of mining policies in Africa. The first generation of mining code reform took place in Ghana in the 1980s, with the objective of attracting new investments into the mining sector as quickly as possible (Akabzaa, 2004: 25). The second generation of mining regulation reforms took place in the mid-1980s, in Guinea, a country with massive mineral deposits.

The code was to facilitate liberalization of the economy, and active participation of the private sector in mining. The World Bank called for new environmental protection policies, which necessitated a series of mining reforms in Africa (Akabzaa, 2004: 30). The third generation of mining code reforms came in the late 1990s, particularly in Mali. This series of reforms had the objective of redefining the role of the state and the place of the mining industry in the African public institution's efforts to generate revenue (Hatcher, 2004: 39).

The DRC's Mining Code can be placed under this third wave of rewritten mining policies. As already stated, this mining code was designed to attract new investments, and also to maximize the mining contribution towards public revenues, in order to advance the national development agenda. It is sufficient to indicate that this particular mining code of 2002, came within multiple contexts specific to the DRC. The first context being that of a country at the mercy of transnational powers influencing political decisions. The second context concerns a country with a history of a mining industry in the hands of corporations and individuals inclined to amass wealth, with disregard for human dignity or individuals' rights (Smillie, 2010). The third context refers to a country with unprecedented, sexual gender-based violence against women. The fourth context consists of a country assisted by the international community to manage

conflict and post-conflict peace building efforts (James Dobbins et al., 2013: 179). It is within this contextual background that the emergence of the DRC's Mining Code of 2002 can be placed.

Regarding its structure, the mining code of 2002 is divided into titles, chapters, sections and articles. The first part of the code defines and clarifies important terms that constitute legal activities and processes<sup>5</sup>. The code contains seventeen titles, which are the different legal dispositions of the mining policy. The chapters and sections comprise sub-themes that explain and expand each title. Articles found in the code are the specific rules that constitute the law, which forms the mining policy<sup>6</sup>.

By way of illustration, begins with "Generalities", a legal disposition of the mining code that clarifies all general terms found in the mining code. It is an overview of the application of the current mining code. Title I – Generalities - comprises a total number of three chapters that run from Article 1 to Article 22. chapter 1 - Definition of Terms - is an introduction to the policy and provides brief definition of terms in order to familiarise the reader and all interested people to the terms of reference. It determines the scope of application of the mining code and helps understand the code. A total of fifty-six words and terms are briefly defined<sup>7</sup>. These are

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<sup>5</sup> Considering that the mining code is a big volume, it could not be attached in the list of appendixes in this thesis. A link is hereby provided for any reference to the English version of the code used in this study. The DRC's Mining Code of 2002 was published by LAW No. 007/2002 of JULY 11, 2002 relating to the mining code. [http://mines-rdc.cd/fr/documents/codeminier\\_eng.pdf](http://mines-rdc.cd/fr/documents/codeminier_eng.pdf). [Accessed 5 May 2013].

<sup>6</sup> It should be explained that when quoting the mining code, the study will refer to the title as the mining code, then the year of publication as 2002, then the actual articles referred to. As an illustration, to quote Article 1, the in-text referencing will be as follows: (Mining Code, 2002: 1).

<sup>7</sup> Find here the list of different words and terms that are defined in title 1 of the mining code: 1.Purchaser, 2.Mining Activities, 3. Administration of Mines Authority, 4.Lease, 5.Prospecting Certificate, 6.Quarry, 7.Artisanal Exploitation Card, 8.Trader's Card, 9.Registry Survey map, 10.Authorized Trader, 11.Date of Commencement of Effective Exploitation, 12.Diversion of ores, 13.Development and Construction, 14.Mining Rights, 15.Quarry Rights, 16.Processing entity, 17.Transformation Entity, 18.State, 19.Environmental Impact Study (EIS), 20.Exploitation, 21.Artisanal Exploitation, 22.Small-scale Mining Exploitation, 23.Tailings Exploitation, 24.Deposit, 25.Artificial Deposit, 26.Artificial Substances, 27.Geothermal Deposit, 28.Mineral Deposit, 29.Mine, 30.Ore, 31.Mineral, 32.Minister, 33.Trader, 34.Non-resident, 35.Mining Operation, 36.Public Entity in charge of the Valuation, 37.Perimeter,

fundamental terms to familiarize with when dealing with mining issues (Mining Code, 2002: 23-27). These terms and words are spread throughout the mining code. They specify either an activity, a human action, a location, an entity, or even a group of people. It is an important task to give clarity and meaning as intended by the legislator in order to prevent fallacies inherent to the interpretation of language. At the same time, it is noticeable that many other words were not defined and even articles that treat such words and terms are not explicit about their understanding and applicability. The definition of these terms, may also help in analysing the policy with regard the participation of women in the various activities described or not described by the mining legislator. From a feminist perspective, the study will determine the extent to which these words may or may not include women as participants in the mining industry.

Another important legal disposition of the mining code concerns the obligations of the holders of mining or quarry rights (Mining Code, 2002: 196-218). Regarding obligations and duties, it is also essential to consider the entire range of other obligations, including state obligations (*Appendix 3*). Moreover, the Mining Code of 2002 equally regulates the relations between the holders of mining rights or quarry rights among themselves and with the occupants of the land (2002: 277-285). These articles concern on the one hand, the relations between two mining or quarry companies that are close to each other; and on the other hand, the relations between mining or quarry companies with the local communities in the vicinity of mine or quarry.

Articles 277 to 285 determine the nature of relations between the holders of mining rights or quarry rights among themselves and with the occupants of the land. This legal disposition is important, in that it arranges the legal relationship between mining and quarry owners on one side, and on the other side mining and quarry owners with the local communities. Government plays an active role in the administration of the mining industry. It is the responsibility of

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38.Precious Stones, 39.Person, 40.Mitigation and Rehabilitation Plan (MRP), 41.Environmental Management Plan of the Project (EMPP), 42.Products for Sale, 43.Prospecting, 44.Research Exploration, 45.Mining Regulations, 46.Mine Tailings, 47.Affiliated Company, 48.Sub-contractor, 49.Mineral Substance, 50.National Territory, 51.Quarry Permits, 52.Mining Permits, 53.Holder, 54.Processing, 55.Transformation, 56.Artisanal Exploitation Area.(Mining Code, 2002:51-55)

government, through its various institutions to guarantee the correct application of the legal dispositions of the mining code.

### **2. 3. 5. Administrative Institutions in Charge of the Mining Industry in the DRC**

The state plays the central role in the administration of mining activities. It goes from assigning the jurisdictions and competences to public institutions to deal with mining activities of geological survey, exploration of the soil and sub-soil, and promoting the participation of the private sector in developing this industry (Mining Code, 2002: 8). To this purpose, different national institutions share the responsibilities as follows:

#### **2. 3. 5. 1. The President of the Republic**

The President of the Republic represents the quintessence of all other institutions. As Head of the State, the president has the prerogative to enact the mining regulations by a decree or an ordinance-law after approval by parliament. The mining policy cannot be implemented without the authorization of the president who has powers to classify and declassify mineral substances as mine or as quarry products. Through the same powers vested in him by the constitution, the Head of State can declare, classify or declassify an area as a prohibited area for mining activities or quarry works for reasons of national security or public interest (Mining Code, 2002: 9). The President has powers to delegate part of his prerogative in this matter to the minister.

#### **2. 3. 5. 2. The Minister of Mines**

In addition to the Head of state, the next administrative authority dealing with the mines is the Minister of mines. As the first collaborator of the president in the administration of mining affairs, the Minister of Mines acts to implement all decrees signed by the Head of state. In his own capacity, the minister has powers to grant mining and quarry rights for mineral substances, and the power to refuse or reject an application for mining or quarry rights. He has the prerogative to cancel, after due processes, mining rights. The minister can grant to investors the authorization to export unprocessed ores. The minister dispenses his powers by Ministerial Decrees (Mining Code, 2002: 10). Among other prerogatives, the minister has competence for

the cancellation of mining and quarry rights, the withdrawal of a holder's mining or quarry rights, the acknowledgement of the declaration of relinquishment of mining and quarry rights and the certification of the expiration of mining and quarry rights. He can legally decide the appointment of the members of the inter-ministerial committee in charge of selecting the bids for the exploitation of a deposit that has been opened to tender, as well as the members of the inter-ministerial committee in charge of examining the lists of items to be imported for mining activities (Mining Code, 2002: 10). The next important administrative authority is the Governor of the Province.

#### **2. 3. 5. 3. The Governor of the Province and the Provincial Mines Authority**

With the decentralisation of political and administrative powers, the governor of a province has autonomous jurisdiction over politics and economy of the province. It is in this regard that he holds legal authority on behalf of the central powers (Presidency, parliament and senate). Within the mining industry, the Governor of the Province discharges his power in collaboration with the provincial mine's authority.

The mining code recognizes the governor's powers to issue traders' cards for exploitation of artisanal mineral products; and the capability to decide to open quarries for the purposes of carrying out public utility works on a public land. These same prerogatives are recognized by the Head of the Provincial Mine Authority who has ability to issue artisanal miners' cards, and to grant exploration rights for quarry products, and issue a permit and rights for permanent or temporary quarry exploitation (Mining Code, 2002: 11). Both the Governor and the Head of Provincial Mine Authority rule by provincial decrees in collaboration with the mining registry.

#### **2. 3. 5. 4. The Mining Registry**

The Mining Registry is another operational and administrative institution intervening in the running of the mining industry. It has legal status and financial autonomy. This institution is answerable to the President and the Minister of Mines, and Minister of Finance. The Head of State determines by decree the statutes and the organization, and the operation of the Mining Registry.



Part of its prerogative consists of registering and processing the applications for mining or quarry rights – filing documents for mining and quarry rights that have been granted, and documents for applications that were not successful. The registry also deals with cases of withdrawal, cancellation and expiration of mining or quarry rights. It registers documentation concerning the transformation and lease of rights, and it handles sureties on mining assets (Mining Code, 2002: 12). In connection with the Ministry of Finance, the Mining Registry certifies the minimum financial capacity of the applicants for the mineral and quarry exploration rights, and makes subsequent recommendations to the relevant authorities. This is to be done following information gathered by the geology directorate.

#### **2. 3. 5. 5. The Geology Directorate**

This is the scientific body in charge of promoting the mining sector through geological research and survey, and the dissemination of geological information. This body receives all samples collected by mines researchers on the DRC territory. The geological directorate is also a consultative body for the classification and declassification of mineral substances as mines or as quarry products (Mining Code, 2002: 13).

#### **2. 3. 5. 6. The Directorate of Mines**

The Directorate of Mines is an important institution working at the provincial level as a direct representative of government. Amongst its prerogatives, the Directorate of Mines inspects and supervises mining activities with regard to health and safety, work practices, production, transport, and social matters. This institution is in charge of collecting and publishing mining data and statistics on the production and sale of products from mines and quarries (Mining Code, 2002: 14).

#### **2. 3. 5. 7. The Department in Charge of Environmental Protection**

This institution falls under the Ministry of Mines. It is a department within the ministry of mines which is in charge of protecting the environment. It has the responsibility to monitor activities of exploration and exploitation of mines and quarry, as well as of artisanal mining. It

also supervises the environmental protection, making recommendations, and blowing the whistle in case of a violation to the environment.

It has been necessary to mention these institutions in order to help the study to make the relevant inference following the biased gender leadership in existence. In the next chapter the study will demonstrate the patriarchal dimension that blurs the possibility of gender inclusivity in the mining sector. Suffice now to indicate that these different institutions are mandated by law to implement the statutes of the mining code in the territory of the DRC. It is in their mandate to be able to implement the policy in accordance with the rationale of the mining code which is the mining policy of the DRC. In their different legal dispensations, statutes and rules of the mining code highlight the rationale of the present mining policy.

### **2. 3. 6. The Rationale of the DRC's Mining Policy**

As previously highlighted, the DRC's Mining Policy and its implementing measures have taken shape under different political regimes since the ISC until the present. Each of the political regimes enacted a mining policy suitable to the historical, economic and political circumstances of the time. Under the king of Belgium, mining regulations were directed towards accumulation and control of wealth by the King and his family. Under colonisation, mining laws, aimed at increasing the financial capacity of Belgium, were seriously handicapped by the cost of World War I and II (André-Dumont, 2011: 8-9). The efforts of the leaders at the time of independence were to strengthen mining regulations in favour of national social development (Bakandjea, 2009: 74).

Understandably, economy is a tool at the service of politics. To gain control over its politics, the new leadership in the Congo, at independence, accelerated mechanisms to ensure economic freedom. To this aim, the government assigned a nationalist orientation to mining policies through: the accreditation of mining concessions, guarantee of exclusive rights over land and its underground wealth, in addition to regulating survey rights and monitoring mining permits.

The mining policy served to protect the rights of the DRC government and its citizens, as well as the rights of investors over the land acquired legally. The policy would then guarantee the state ownership of the land and mineral products. This was the beginning of the creation of the

land monopoly by the state, by introducing the granting of mining concessions to applicants of artisanal as well as industrial mining.

It is important to note that, at the time of independence, the colonial mining policy was still a reference in the sense that:

The mining legislation was still oriented towards the interests of the former colonial masters as part of the operational policy, especially regarding mineral substances still destined for exportation; and the first five years of independence were marked by the weight of a difficult decolonization which imposed continuity in the implementation of mining policy. Previously adopted laws had only the finality to enhance public control over the lands and its resources (Bakandeja, 2009: 76).

Economic freedom did not automatically follow political liberation. Regarding mining laws, the mark of colonialism was still felt. Mining laws still favoured colonial masters and their interests. The newly elected Congolese government wanted to change this status quo by modifying land regulation. The control over land by the state as a focal point in a mining policy was to discourage those who would be tempted to access land without having followed the due processes of legalisation from the country's authorities. Given the importance of the mining activities for the national economy, there was eagerness to regulate the mining sector. Such was the aim of all ordinances of mining laws decreed by consecutive governments.

It is convincing to accept the state monopoly on lands and the mining sector for protection against malicious people inclined to use land without following legal processes. The mining policy thus serves to prevent such abuses by certain powerful individuals or corporations in the present and in the future. In this sense, a mining policy safeguards and protects all concerned peoples, investors and citizens against abusive leadership that may be tempted to sign agreements without reference to the law. Such an example is that:

Barely more than a year after Kabila's victory, all the grand designs of shifting Congolese mining away from the traditional South African and Belgian predators by using new untried U.S. miners had finally come full circle and the old majors were again in complete control. Of course, their control was over a field of ruins, but for them it did not matter. They had the financial means and the technical wherewithal to sit on temporarily useless concessions and wait for a day when conditions would be ripe for exploitation, something the young mining companies could not afford. The "takeover of the Congolese mining riches" had boiled down to

what it had probably been meant to be from the start: a daring speculation designed to squeeze the old majors into buying back their place in the new system (Prunier, 2009: 167).

Choosing to offer mining concessions without following any regulation proved chaotic in the long run. The economy is a matter of rules that cannot be left to pure speculation without regard to those same rules. A mining policy was necessary for political and economic security. The current DRC's Mining Policy is an important step towards the rationalization of the mining economy in terms of mobilizing resources through the sale of mineral products and incomes from the mining tax system.

One thing though is to have a mining policy, the other is to ensure that the mining policy is truly beneficial to the economy of the country. In this way, a policy that is well formulated and implemented can also bear a positive impact on the daily living of the citizen. A mining policy should take into account the interests of the investors, and much more it must provide adequate protection to the vulnerable people in local communities, among which are women. This will be the focus of other chapters later in this research. However, suffice to indicate that there are growing concerns about the mining code in its current state together with its implementation measures as women and mining local communities appear to be marginalized in the overall opportunities of mining activities.

### **2.3.7. Critique of the DRC Mining Code**

From the time of its enactment, this code has been variously received. Some positive reactions have appreciated the comprehensive rules introduced by the mining code, assuring investors that “foreign natural and legal persons may own unrestricted mining rights as long as they elect domicile with a mining and quarrying agent” (KPMG, 2010: 10).

This openness and flexibility of the mining law contributed to attract more mining investors to the DRC. The African Business Journal noted that “after Gecamines collapse in 1991 and the promulgation of the new mining code in 2002, investors rushed to this modern-day El Dorado, sitting on the largest copper deposits in the world - 10% of global reserves - and so the bulk of copper-cobalt production is by multinational corporations” (African Business Journal, 2014).

The collapsed Gecamines, a state-owned mining company, notably forced government to put mechanisms in place to reinvent the mining sector. To this fact is added the economic crisis after years of civil war, largely motivated by the control of mineral resources in the DRC's rich mining regions.

The new mining policy positively contributed to streamline processes for the acquisition of mining rights. The mining code certainly responded to national and international appeals to improve the business climate within a responsible and accountable governance of the mining sector (Muhigirwa, 2011: 7). With the new mining policy, government managed to attract new private investments. It follows that mining investors commended the provision of the mining code that provided a ten-year tax and mining rights stabilization to all mining contracts, starting from 2003 (André-Dumont, 2013: 69). In this regard, the mining code succeeded in stabilizing the business climate in the country.

In spite of these appraisals, the mining code was perceived as only relating to the government and investors in the mining sector. This might explain why the DRC's Mining Code has remained mostly unknown to the general public (Garrett, 2008), and has not responded to the expectations of creating conditions of possibilities for economic growth, experienced through improved living standards of the citizens, especially women in the mining sector. Most reviews of the DRC's Mining Code focus on its economic impact on mining activities not the lives of people, and has raised considerable concerns. Turner speaks of a mining code that is 'investors friendly' (Turner, 2013). This means that, in responding to its objective of attracting new investors, the mining policy gives assurance of a good deal to investors, thus being perceived as friendly to them.

The notion of this friendliness led the country to sign mining contracts that did not benefit the country, as attested by the loss of USD 1.36bn. The misuse of the sense of friendliness in tax paid to the state and loopholes in custom-systems contributed to embezzlement, conflict of interests in joint-ventures type of contracts, lack of transparency, and armed forces' involvement in mining (Global Witness, 2015).

On the same topic, André-Dumont emphasizes the flexibility of the DRC's mining legislation towards investors. As an illustration, he remarks that "the DRC mining legislation does not

impose a specific classification system for reporting mineral resources and reserves. Thus, private investors should select the system or the convention that is most appropriate for purposes of their bankable feasibility study or of their financial reporting” (André-Dumont, 2013: 66). This flexibility may therefore, not have worked to the advantage of a government that intended to maximize mining revenues for economic growth. In allowing mining companies the choice of a financial reporting system, the mining regulatory system left one of many openings to investors.

It has also been noted that though the mining code regulates ASM, this statutory law is not efficiently reinforced, to the extent that investors take advantage of a seeming lack of legislation and operate illegally. Consequently, “Illegality translates into liability issues arising for any institutional or private actor proactively working with ASM. Illegality also marginalizes the sector and minimizes its developmental potential, as it facilitates the involvement of predatory actors and makes the miners vulnerable to exploitation and human rights abuses” (Garrett, 2008: 8). This means that, due to illegally operating mining actors, the country is deprived of enormous financial resources, as these actors do not pay taxes and other royalties. In a like manner, when operating illegally, mining actors pay no or less attention to human rights. Abuse of human rights, and other forms of exploitation contribute to dehumanize miners, and particularly women.

Another area of concern not addressed by the mining code in its present form is the seeming lack of any deliberate move by government to instigate mechanisms that will encourage mining companies to fulfil their social responsibilities vis-à-vis the local communities. Articles of the mining code determine the terms of reference for cohabitation between mining companies and local communities:

Title XI: Relations Between the Holders of Mining Rights and/or Quarry Rights themselves and with the Occupants of the land; Article 277: Works between two adjacent mines; Article 278: Rights of way; Chapter II: Holders’ Relations with the Occupants of the Land; Article 280: Actual liability for the occupation of the land; Article 281: Compensation for the occupants of the land; Article 282: Restricted access areas; Article 283: Authorized activities), it appears that local communities are being deprived of their land with no compensation or financial returns, in terms of social and developmental programmes (Mining Code, 2002: 277-283).

Despite the existence of such articles regulating the co-existence between the local communities and mining companies, it appears that local communities are being deprived of their land with no compensation or financial returns, in terms of social and developmental programmes. It should also be said that many other issues affecting local communities are not addressed. For example, the lack of consultation with local communities regarding measures for environmental protection. There is concern about the absence of long-term plans for miners to gain access to opportunities for entrepreneurship in the mining sector (Mavinga, 2012: 12). Neither the mining code nor its implementation measures offer answers to these concerns.

In addition to areas of concern pointed out by different narratives, as mentioned above, the study observes the need to engage the DRC's Mining Policy regarding the following issues of interest to women in the mining industry: relevance of gender consciousness in mining legal dispositions; ownership of mines and quarry rights by women; protection of basic rights of women miners; access to economic resources by women; skills development for women in mining. Despite the DRC's Mining Code dealing with various aspects of mining activities as a set of rules, the above issues remain unanswered by the mining policy. Therefore, such issues will be critically assessed in this research.

In view of the above areas of concern, it can be said that the DRC's Mining Code has many challenges that need to be addressed. As previously indicated, the political situation and socio-economic context necessitated the enactment of the mining code. After a decade of its implementation, various voices have expressed concerns about the application of the present mining code, and suggesting its revision. At the same time, it can be acknowledged that while there might be sufficient motives about the need for the amendment of the present mining code, there are still discordant views about what should be amended. The following section reviews some motivations and propositions for the revision of the mining code of 2002.

#### **2. 4. Calls for the Revision of the DRC's Mining Code of 2002**

The political context and socio-economic circumstances of the DRC and the adherence to international regulations on extractive industries (EI), have created the need to revise the DRC's Mining Code of 2002. Thus, ten years after its promulgation by the head of the DRC

state, different calls are expressed for the revision of the mining code. Concerns have been raised by different Non-Governmental Organizations (NGOs), and faith based groups in the DRC<sup>8</sup>. Negotiations for the revision of the DRC's Mining Code are on-going between all stakeholders (government experts, legal consultants, traditional leaders, mine operators, civil society and Non-Governmental Organizations).

Besides the concerns raised above, these organizations bemoan, for example a de facto legal dualism introduced by the DRC's Mining Code. While the code was enacted in 2002, all mining contracts signed prior to the code were, however, deemed valid and coexisted with those signed after the enactment. The former was all governed by the Law on Conventional Mining (as explained in previous sections of this chapter), whereby the contract itself had the force of law, while the later were governed by the regime of the statutory law promulgated by the Mining Code of 2002. A dualism of this kind in the governance of the mining industry created confusion and was not beneficial to the smooth running of the industry. The need, therefore, was to harmonize the law and abolish this dualism (Bokungu et al., 2014).

Another major contributing factor for the adoption of the new Republican Constitution in 2006. As a legal document, the DRC's Mining Code draws its legitimacy from the national constitution. The statutes of the DRC's Mining Code must be in conformity with the Republican Constitution. It follows that since the DRC's Mining Code was published before the constitution, some of its rules were not in conformity with the constitution, and this created a legal necessity for its amendment. Having signed the EITI, the DRC had reason to amend its mining code and place it in conformity with the terms of this organization.

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<sup>8</sup> To mention a few NGOs and Faith Based Groups: ACIDH: Action Contre L'impunité et les Droits de L'homme - Action Against Impunity and Human Rights; ASADHO: Association Africaine pour la Défense Des Droits de L'homme - African Association for the Defence of Human Rights; BEDEWA: Bureau d'Etudes, d'Observation et de Coordination pour le Développement du Territoire de Walikale – Research Office, for the Observation and Coordination for the Development of Walikale Territory; CENCO: Conférence Épiscopale Nationale du Congo - National Episcopal Conference of the Congo; CERN: Commission Episcopale pour les Ressources Naturelles - Episcopal Commission for Natural Resources; CEPAS: Centre d'Etudes pour l'Action Sociale – Study Centre for Social Actions; FEC: Fédération des Entreprises du Congo - Federation of Congolese Enterprises, etc.



Most suggested modifications aimed at improving economic growth, reducing poverty and initiating a sustainable development. The Ministry of Mines is in favour of revising the DRC's Mining Code a decade after its initial enactment. The Ministry of Mines is hopeful that when it is revised, the DRC's Mining Code will reconcile the interests of nationals, and those of the state partners in the mining industry. It is in this context that various working groups are collaborating in drafting proposals for amendment (Gudule, 2013).

For example, the NGOs and faith-based groups have brought forth the following suggestions, to be included in the revised mining code: The vision – Harmonizing the DRC's Mining Code with the Constitution of the Country – Tax regime –and Environment. The next section discusses these different suggestions in broad terms.

#### **2. 4. 1. The Vision**

Various NGOs and civil society groups agreed on the importance to include a vision statement in the DRC's Mining Code. They suggested a vision statement which reads:

An incentive Mining Code to attracting investments; guaranteeing the permanent sovereignty of the Congolese people over its mining resources and promoting the interests of the State and of the Congolese population; based on transparency, social accountability and participation of local communities; and promoting the welfare of all and sustainable development of the Democratic Republic of Congo (Mavinga, 2012: 15).

This vision statement intends to take the DRC's Mining Code in a new direction. It calls for a participation by the local communities in effort to conceive genuine projects for a sustainable development. The mining industry should translate into reality its large economic potential. The visibility of such a change must be the improved working and living conditions of those directly involved in the mining.

#### **2. 4. 2. Harmonizing the DRC's Mining Code with the Constitution**

A proposition for revision concerns the harmonization of the DRC's Mining Code with the constitution of the country. It was felt that the DRC's Mining Code should have a linkage with

the main law of the land: The Republican Constitution. To effect the linkage, the civil society suggested the following revision. Article 3 of the DRC's Mining Code should now read:

In accordance with Article 9 of the Constitution, the State exercises permanent sovereignty over the sites of mineral substances, including artisanal mining sites, underground water and geothermal sites located on the surface of the site or contained underground or in rivers nationwide. This code determines the modalities of management of mining concession, which is realized in the exclusive interest of local communities without prejudice to the obligation of promoting international economic cooperation based on mutual respect, the equitable exchange and respect for the International legal principles. In case of spoliation, the state has the right to lawful recovery of its property as well as an adequate compensation. Holders of rights of mining or quarry exploitation acquire all rights over marketable products under their right (Mavinga, 2012: 19).

This particular article emphasizes the sovereignty of the state over national wealth. A way to exercise that sovereignty is to make sure that the right of the local communities to benefit from the national wealth is taken into account and guaranteed. It will never be about handouts to the local communities, but about creating conditions of empowerment that enable capable people to exercise their capabilities to make a living.

Many other articles are also cited for revision and others suggested to replace the old ones: for example Article 10, concerning Minister of Mines; Article 21, which regulates on the samples of minerals; Article 27, concerning non eligible people to obtain the right of mine or quarry; Article 33, on mineral and quarry rights submitted to a tender offer; Article 35, concerning application for mining or quarry rights; Article 71, concerning conditions for granting the Exploitation Licence; Article 85, about the sale of mining products; Article 109, on creation of an artisanal mining area; Article 265, about control of transfers in favour of affiliated companies; Article 276, regarding guarantee of stability; Article 316, on applicable rules in case of dispute or an appeal against a judicial decision concerning the matters set forth in the previous article; Article 338, which establishes a commission for validation of mining and quarry rights (Mavinga , 2012: 25).

Other articles were suggested to be discarded by the new dispositions. This was the case of Article 339 in its old version on the transformation of existing mining or quarry rights; and Article 340, regarding mining rights resulting from mining agreements signed before the

enactment of the present mining code. The representative of civil society considered these articles to be obsolete in their content, and not corresponding to the new vision statement, and not in conformity with the constitution which has new insights regarding tax system.

### **2. 4. 3. Tax Regime**

In this section, proposals of amendments are motivated by the aspiration for transparency. It was felt that there is need to reinforce the existing law on taxation, with the disposition of the EITI. This initiative briefed on greater responsibility of tax collection agencies to maximize funds collected from natural resources. With this in mind, civil society put forth a suggestion to amend Article 216 in this formulation:

Holders of mining or quarry titles must keep the registers, prepare and submit the reports of activities, in accordance with the Mining Regulations. They must adhere to the principles of the EITI and declare each year, all the payments made for the benefit of the state. In addition, shareholders of the holders of mining rights must declare each year, the movements of their securities (sales, exchanges, farm-out). Holders of mining or quarry titles must declare each year, any stake and all transfers of securities made (Mavinga, 2012: 216)

This article is meant to account for transparency, equity and compliance with the regulations of EITI. To keep registers and to submit reports becomes mandatory for holders of mining permits. In this way, the state is able to quantify companies' productivity and to apply equitably the approved taxation. The DRC as a country is in dire need of transparency in all mining activities. The adherence of the country to EITI regulations also needed to be reflected in ways in which the mining code deals with issues regarding the environment.

### **2. 4. 4. Environment**

With regard to the environment, civil society representatives were dissatisfied with the dispositions of Article 109 in the present mining code. This article allows government to grant mine and quarry permits for artisanal mining after consultation with the ministry in charge of the environment, the governor of the concerned province where the mining takes place, local authorities and local communities. The new disposition suggests that prior to the issuance of a permit government is to conduct a survey on the impact of mining on the environment.

The new proposal includes aspects of sustainable development without damaging the environment. It also calls for a significant participation of the public in the process of decision making regarding environmental issues in mining areas. The suggestions also include a penalty to be paid by those artisanal mining and quarry permit holders that spoil the environment (Mavinga, 2012: 31). It is important to state that this disposition is not new, as it is already in existence in the present mining code. What is lacking is a way to reinforce this legal practice by serious admonitions and penalties to the defaulting parties.

More so, this proposal suggests that civil society and the local communities are to play an important and consultative role when it comes to awarding artisanal mining permits, and with regard to the environment. However, the study can argue that the suggestion is short of determining concrete mechanisms for the involvement of the local communities in this process.

The Ministry of mines is also collaborating with others in the process of revising the DRC's Mining Code. To this effect, the ministry constituted committees to work on suggestions for the revision of the DRC's Mining Code. The four committees are:

#### **2. 4. 4. 1. The Committee on Administration and Management of Rights and Mining Areas**

This committee reflected on questions of the validity of mining rights, the duration of the mining activity, the area for the quarry products, the proposed scope of quarry rights, the issue of strategic minerals, mining square, the period of instruction for all these applications, the ownership of minerals, the role of the mines administration, the issue of the management of surface rights and the issue of the process for application of mining permits (Gudule, 2013: 32).

#### **2. 4. 4. 2. The Committee on Social and Environmental Responsibility**

Regarding Social and Environmental Responsibility, the committee looked at the question of the prohibition of mining in protected areas, as well as the plan for the projects' contribution to community development in the surrounding mining communities. Another question of interest to this committee was the definition of the local community, especially with the help

of traditional leaders, the specifications on corporate social responsibility (Article 285) and industrial responsibility of the holder (Gudule, 2013).

#### **2. 4. 4. 3. The Committee on Tax System, Customs and Currency Exchange**

The task of this committee was to reflect on the application of the three types of taxes: mining royalty, tax on importation, and tax (VAT) on mining profits. There was also the issue of value added tax. The question was: must government apply VAT or not in the mining sector? For this, the committee had to consider the principle of the application of law. Also under discussion was the registration fee of the mortgage, and the fee for the surface rights per square. Here it has been an issue concerning the tax rate that was increased to 32%. It was recommended to continue applying the current rate. Regarding tax on incomes, the problem arose in terms of the percentage increase, because in the current code the rate is 30% but it was raised to 35% in the proposal.

#### **2. 4. 4. 4. The Committee on Industrial and Commercial Mining**

This committee was tasked to tackle issues relating to definition of transparency and certification, the application of the principles of EITI, etc. The committee agreed that Article 216 needed to be rephrased in order to integrate the aspect of EITI.

Regarding the continuity of mining agreements, the committee adopted the principle of non renewal of mining agreements that currently exist. The committee recommended that a provision should be inserted in the DRC's Mining Code for Congolese nationals to become shareholders in mining companies. Concerning the market prices, the committee suggested the reformulation of Article 265 in its paragraph 3.

The proposals for the amendment of the DRC's Mining Code remain an on-going process. Though the debate is open in parliament and other circles of stakeholders' interests, the DRC government has decided not to revise the mining code as yet. Government is concerned that "revisions would prompt companies to scale back investments" (Wilson, 2016). Government hesitation shows the more relevance for this study to contribute to the academic literature and

narrative to issues related to women in the DRC's mining industry. Numerous ethical issues and gaps in the current mining policy still need to be assessed.

## **2. 5. Conclusion**

Presenting the historical background and the rationale of the DRC's Mining Policy led to exploring the political context of the country as it seemed apparent that politics of the day dictated the dynamics for the mining policy and the economy it generated. From time immemorial, the DRC's economy has evolved around natural resources, namely the mining activities. It was then imperative to understand the historical background and the political economy of the main actors.

This chapter has illustrated the dynamics of an open-ended process of the mining policy formulation and reforms, which navigates into four phases of mining codes. The first phase took place under the Independent State of Congo (ISC) from 1885-1908, which was a private property of Leopold II. The second phase of mining reform transpired under Belgian colonization 1908 – 1959, with Belgian authorities controlling the mining industry for the economic advantage of the kingdom of Belgium. The third phase comprised the different adaptations of the colonial mining code by DRC authorities from independence till the regime change of 1997. The fourth phase consists of the present Mining Code of 2002. This chapter has pointed out the rationale of the current mining policy as a comprehensive legislation for the governance of the mining industry aimed at the socio-economic development of the DRC.

The chapter highlighted that the mining code has been variously received. The protagonists of the appraisal of the mining code commended its success in the harmonization of the mining business. On their part, the critics of the mining code contended that it has not contributed to economic growth as intended. Thus, various areas of concern in the mining code were raised. They include, the 'friendliness' and flexibility of the mining code regarding mining contracts with foreign companies. The flaws created by the friendliness of the mining policy contributed to embezzlement, conflict of interests in joint-venture mining and financial loss. The chapter also indicated the knowledge gap about how the DRC's Mining Code addresses certain issues specifically related to women. These are issues regarding the sense of gender in the mining legal disposition, the ownership of mining and quarry permits and the protection of basic rights

of women. In this perspective, the following chapter discusses in detail the situation of women in the DRC's mining industry.

## **CHAPTER THREE: ON THE STATUS OF WOMEN IN THE DRC'S MINING INDUSTRY**

### **3. 0. Introduction**

The previous chapter dealt with the evolution of the mining policy of the DRC following the different political regimes that have formed the history of the country. The chapter chronologically traced the different phases and generations regarding the formation of the mining policy. It was recognized that despite its positive contribution to the harmonization of the mining business climate in the DRC, the mining policy presented many challenges, barely responding to the economic expectations and the protection of basic rights of the majority of citizens involved in mining, among which are local mining communities and women. Thus, it seems relevant to continue this reflection by discussing the situation of women in the DRC's mining industry, emphasizing the challenges they face and their root causes affecting the participation of women in mining as they strive to earn a living.

To achieve this aim, the chapter will proceed in four sections. The first section will explore the different informational narratives on the issues of women in the DRC's mining industry. This section will help to understand the reality of poverty that characterises the living conditions of women in general, and in particular women in mining, who face abject poverty. Therefore, the reality of poverty will be examined in detail, with specific reference to its impact on women. There will be a description of the causes of poverty and contributing factors to the deterioration of the quality of life.

The second section discusses the participation of women in the mining industry. This serves to assert the interest of women in mining activities. In this section, the study presents the distribution of women in mining per province. In addition, a description is made of the working conditions of women in ASM where they endure hardships. The third section critically investigates the specific situation of gender-based violence in the mining industry. In this section, the chapter explores the many facets of physical and sexual abuse inflicted on women in the course of their mining activities.



In the fourth section, the chapter explores all contributing factors of sexual violence. They include cultural beliefs, in the form of sexist mining myths against women, and armed conflict. A detailed description of existing myths will explain the negative impact of such beliefs on the well-being of women in mining. Regarding armed conflict, the chapter will elaborate on how it affects the physical integrity and well-being of women, through the creation of a political economy of sexual violence (Jacqui True, 2012).

In this regard, it can be noted that “during conflict and even in the years after conflict, black and gray market economies are rife and corruption finds easy places to hide. In other contexts, such gray zones provide for and are useful to women as the informal economy facilitates survival” (Aoláin, Haynes, and Cahn, 2011: 249). The informal economy only sometimes appears to be unregulated, and this aspect opens doors to uncontrolled practices that can lead to corruption and abuses of women. Even though in principle, the mining industry provides women with opportunities for access to economic empowerment, in fact, the ramification of poverty and abuses in mining necessitates an examination of the situation of women in mining as articulated in the existing empirical studies.

### **3. 1. Documented Narratives on the Situation of Women in the Mining Industry**

As indicated in chapter one, regarding the method of research, this study will rely on the historical approach and feminist methodology using library and documentary methods as tools for data collection. This indicates that the present study relies on the existing empirical studies by different scholars. For this reason, in this section, the study accounts for the documented narratives of the situation of women in mining, the political and economic instabilities in the country. The first set of narratives concern the historical and political contexts of the DRC. This will serve to trace the existing crisis and instability. The next set of narratives will focus on the theme of armed conflict that affects the DRC. The following narratives will comprise the theme of poverty in the DRC resulting from years of war and the breakdown of economic and agricultural structures. Further, a set of documents will be on the topic of women in the mining industry and the various challenges they face. This will be followed by narratives on the mining policy.

There are various empirical studies on the general situation in the DRC, the minerals and the conflict. Most are economic, geo-strategic, anthropological and socio-political studies. Informed by the different scientific views from these narratives, the study will analyze the DRC's Mining Policy from a feminist ethical standpoint by examining the ethical gaps and challenges faced by women in the course of their mining activities.

Different scholars are credited with a thorough view on the historical and political perspective of the DRC. Amongst them, Nzongola-Ntalaja Ntalaja in his book, *The Congo From Leopold to Kabila. A people's History* (2002), traces the DRC's history from King Leopold II to Kabila. In this study, Nzongola-Ntalaja mentions the politics of imperialism that characterized the Belgium colonial system, which established a rule that sidelined the people of Congo (now DRC), whose destiny was unpredictable. The effort of decolonization created the first political crisis in the Congo (DRC) in which the involvement of the United Nations would be a prelude to other large scale interventions during the Kabila regime. This interesting study is restricted in only describing the historical and political context. However, it will sustain my research in an effort to scrutinize the historical background to the crisis that gives rise to mining issues in the DRC.

Reflecting on historical and political perspectives of the situation in the DRC, other researchers indicate that the country has become a weak state, in danger of being partitioned and plundered by external powers. In this perspective, Lemarchand René in the book, *The Dynamics of Violence in Central Africa* (2009), argues that political exclusion of some ethnic groups in the DRC created conditions for instability because of the lack of social cohesion and harmony. Instability in the Great Lakes Region is also a fact of geopolitics because of the vast territorial space it covers and the many borders shared among neighboring countries, whereby a problem in one country can easily spill into others. This insightful book offers the basis for an ethical examination to bring out the gaps that give rise to unethical practices against women by investors.

Considering the geopolitical reality that a conflict in one country can spill beyond borders, investors sometimes take advantage of such political instability created by armed conflicts. In this way, they engage in economic activities with no regard for ethical practices, particularly

in the mining economy. This is the scenario in the eastern DRC, where women are caught up in a different kind of economic perspective in times of war, and characterized by abuses.

Nest Grignon and Kisangani in their book, *The Democratic Republic of Congo. Economic Dimensions of War and Peace* (2006) make a direct connection between war in the DRC, and the economic pursuit of wealth by different forces involved. These authors emphasize the economic dimension of the war owing to the abundance of natural resources in the DRC that have become a point of attraction and envy to those who want to accumulate wealth by any means. For these two authors, although the economic gain was not the prime cause of the war in the DRC, the conclusion is that unresolved social and political grievances associated with economic gains gave way to more troubles in the DRC.

Nzongola-Ntalaja also sheds light on the economic aspect of the crisis in the DRC. He argues that the DRC's natural resources were plundered from the time of King Leopold II of Belgium until the present, when neighboring countries joined in plundering the country's riches. Nzongola-Ntalaja points to a war of partition with the "logic of plunder in the new era of globalization, which has to do with the growing tendency of states, Mafia groups, offshore banks and transnational mining companies to enrich themselves from crises" (Nzongola-Ntalaja, 2002: 227). He concludes that the DRC was and still is a playing field for many strategic reasons, notably its natural resources.

It can be noted that the above studies only highlight the economic aspect of the armed conflict as related to the country in general, without unpacking the category of individuals affected by the consequences of the economic loss. This study will extend the analysis of these studies by bringing in an ethical perspective of the human crisis, especially concerning women affected by poverty resulting from the armed conflicts that take away any possibility of economic growth in mining.

Understanding the war economy is important for analysis of the mining policy regulating a business oriented towards economic gains, but instead, in the DRC it is sometimes associated with abuses from postwar behaviors, such as sexual violence. The present study focuses on the ethical examination. of the mining policy.

An interesting study by Turner speaks of a “Resource Curse” (2007: 147). This author examines the historical view of the DRC’s economic encounter with multinational traders. He indicates that the DRC entered the global economy through the Atlantic and the Indian Ocean slave trade, and later on, through encounters with the Portuguese in the fifteenth and sixteenth centuries for trade in minerals. From then onwards, the DRC’s natural resources have been an object of desirability to other nations and corporations.

For Turner, the central question is always to know whether the natural wealth of the DRC will enrich only foreigners or if DRC nationals will also get a fair share, or whether it will only constitute a “resource curse”. (Turner, 2007: 147). It is clear that Turner’s book is insightful to this study, as it asks a very important question that can open an ethical debate on the adequacy of a mining policy, when the sector it regulates is perceived as a ‘resource curse’. This also indicates the need for an ethical analysis of the DRC’s Mining Policy, in as much as it can play the role of an instrument of enablement of people’s ability for enrichment in the mining sector, or on the contrary, as a tool of obstruction of such ability.

Smillie speaks of greed and corruption affecting the diamond and most minerals’ trade in the DRC (Smillie, 2010). In his view, this situation is likely to prolong the reign of chaos and looting, revealing the true motives of the war as that of an economic war, with a negative influence on human livelihoods, aggravating the impact of poverty. Smillie’s book has focused on the sociological and economic perspectives, offering an insight into the social ramifications of a trade that destroys the social fabric of a nation. The ethical assessment of the mining policy will scrutinize the impact of such trade and highlight definite inadequacies that can negatively impact on women in the mining industry.

In this context, it can be noted that one of the realities facing women in the mining industry of the DRC is that of poverty. To ethically and critically assess women’s situation in mining may require looking into social problems surrounding the daily life of women. The narrative on the reality of poverty may help to uncover the different sides of what may be understood as economic subordination and disempowerment of women in the DRC. It is then preferable to investigate the context of poverty in the DRC and illustrate the possible contributing factors.

A series of studies by international organisations highlight this reality of poverty in the DRC. By way of example, a study by the International Monetary Fund, 'Democratic Republic of Congo: Poverty Reduction Paper. The IMF Country Report' (IMF, 2007), attests that as a country, the DRC is still striving to achieve economic growth and social development. Consequently, the majority of the DRC's people live under the poverty line, and the DRC accumulates the highest level of poverty amongst other countries in Central Africa, at a rate of 71.34 percent of its population.

The International Monetary Fund's (IMF) study also indicates that poverty is more prevalent in rural than in urban areas. Furthermore, the IMF establishes a link between years of civil unrest in the DRC, political instability and corruption. So much so that the country has seen the collapse of formal economic activities, though mining has continued to attract investors and offer possibilities of making a living. People in mining areas have consequently resorted to mining for a living. Thus, faced with poverty, women and girls have also turned to mining for an opportunity to be employed, and the possibility of earning money. In the process, women and girls are exposed to abuses and exploitation in mining.

According to a report by KPMG, 'Democratic Republic of Congo Country mining guide' (KPMG, 2014: 30-31), most mining companies are located in rural areas and they are the only form of economic structure available to local communities, and the country at large. The report indicates that despite the success of mining activities, poverty has not been reduced in either the country or in mining areas, as people continue to live below the poverty line, despite working more than 13 hours/day and six days a week. Corroborating the view of the above-mentioned report, in a study, '*The Poverty of the DRC's Gold Miners*' (Guy Oliver, 2013), the author demonstrates that by earning below \$1 a day, miners are kept in a life of perpetual poverty. These studies are useful for the present research, in that they provide primary information on the reality of poverty in the country, and demonstrate how it affects the well-being of citizens, including women. However, these studies do not explore the ethical perspective of these issues that affect women in particular.

The following studies on the topic of women and poverty in the DRC have highlighted the main contributing factors to poverty. It is necessary to also approach the question of poverty in its ethical aspect. In this perspective, it can be explained that poverty may also affects people's

freedom and rights (Vizard Polly, 2005: 24). It is therefore to assess the contributing factors to the reality of poverty. Among those factors are: poor governance, decades of war, breakdown of the economic structure and neglect of agriculture, as well as disruption of bilateral partnerships with international financial institutions.

Regarding poor governance, in her book, *The Tragic State of the Congo: From Decolonization to Dictatorship* (2005), Haskin Jeanne traced the political governance of the country from independence in 1960 to the present time. She demonstrated that the DRC has passed through multiple phases of political and social slump characterized by poor governance. This author contends that “if the rule of Mobutu is best known for his patron-client networks and the degree to which he bilked the country in order to support his regime, it is also well known for the outright rule of terror that he imposed on the Zairian people” (Haskin, 2005: 55).

The harshness of the Mobutu regime shook the DRC people to the core, destroying the economy through corruption and favoritism, thus accelerating poverty. In the same way, the different political regimes in place after Mobutu have also played a part in the aggravation of the social insecurity and vulnerability of the people in the DRC. The IMF attributes poverty in the DRC in the most part to poor governance, in the sense that:

It creates inefficiencies in the sectors and therefore a loss in productivity. It discourages the creation of enterprises and therefore jobs, drains the resources of poor households, encourages capital flight and loss of government revenue resulting in reduced public investment, etc. At the macroeconomic level, poor governance brings about the loss of several points of growth (IMF, 2013: 39).

Failure by the government to transform the natural resources into financial benefits for the majority of the population has contributed to the escalation of poverty. To argue it differently, poor governance can be comprehended as failure by the government to fulfill its constitutional obligations regarding the political and social life of the people. It follows that not facilitating the creation of new enterprises that could generate new jobs is a hurdle in the way of economic growth. An article by Edward Conway, ‘Prospecting for better governance in the DRC. Mining Exploitation versus good governance’ (2012), tagged the DRC as dangerous and the riskiest place for business in the world. He argues that the rampage of corruption and the continued

political instability can be seen as signs of poor governance that takes form in all areas of life in the DRC, especially in the mining industry.

Most of the crises and instability could thus be attributed to poor governance of the country and its natural resources. On the one hand, DRC leadership at different levels and times could bear responsibility for the deterioration of the national economy and citizens' livelihoods. On the other hand, it can be acknowledged that transnational forces have gradually contributed to aggravate the crisis through armed conflicts.

A research on the phenomenon of armed conflict attests that: "the Congo wars are not primarily civil wars, but external aggression passed off as civil war...and of course Rwandans, Ugandans and others pillaged the DRC" (Turner, 2013: 154). Foreign forces have added to the fragility of the DRC's social and economic growth. It must be noted that besides poor governance, the DRC has gone through decades of war that has destroyed the fabric of cultural and social organizations, and the economic system has in most parts been affected by the unrest of wars. It has been generally explained that war in the DRC was geo-strategically and economically motivated, for the control of vast territories containing various mineral resources<sup>9</sup>, a war for the destruction of socio-economic infrastructure and the plunder of national wealth (Naidoo, 2003; Ndikumana and Kisangani, 2005: 63; Smilie, 2010: 123-125). Throughout the years of war, the DRC has lost human and material resources, and the country has experienced many more devastating consequences for the livelihoods of the population with acceleration of famine and the recurrence of diseases (Turner, 2013: 2-3). The political instability created by these wars has placed the DRC's economy in a vulnerable state, resulting in the breakdown of its fundamentals.

The basic structure of the DRC economy comprises agriculture and the exploitation of natural resources - forests and rivers (agriculture, fishing and livestock). The extractive industry is another fundamental contributor and perceived as the backbone of the DRC's economic structure and is still in expansion and development. Businesses in the informal and private

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<sup>9</sup> A documentary produced by an organization named 'The Friends of the Congo' explains the truth about the crisis in the DRC, attributing it to a deliberate choice by western powers, supported by certain African leaders, and DRC leadership to continue looting natural resources in the DRC, while killing the DRC people, abusing women and children without impunity <https://www.youtube.com/watch?v=vLV9szEu9Ag>. [Accessed 10 October 2016].

sectors have an important place in the DRC economic structure. In a country with few industries, agriculture has for years been at the foundation of the subsistence economy for the majority of families. So much so that, “as a result, in a country where agriculture had never been a problem, sixty-four percent of the population was now underfed and probably more than thirty-three percent were malnourished” (Prunier, 2009: 278).

The instability and insecurity created by years of war has a negative impact on agriculture as it has gradually become difficult to cultivate land and transport agricultural products. It may be said that agriculture and farming are generally a time-consuming chore requiring months of hard work before harvest. The lack of a coordinated commercialization of agricultural products combined with insecurity has discouraged efforts in farming (Otchia, 2014). Further, in times of war, people have no time for agriculture, and they resort to alternative economic activities for quick cash.

Mining activities offer such alternatives, and most people in mining areas who used to be farmers have lost interest in their traditional way of life and have joined mining. This explains the expansion of the extractive industry at the expense of the agricultural sector, fisheries and livestock. In this regard, it is explained by the World Bank that: “after two decades of civil war and ongoing conflicts, vulnerable populations throughout the DRC have continually been pushed off their traditional agricultural land and forced to seek out their livelihood through other means such as artisanal mining” (World Bank, 2015a). ASM plays an important role in the DRC economy but revenues from the ASM may not cover what used to be provided by agriculture and farming.

As a result, the absence of peace, the volatile political situation, and the state’s weakness have provided incentives to the acceleration of poverty. For instance, in times of war, people are displaced and they are not able to pursue their regular way of living, resulting in the loss of income, reduced life expectancy, accelerated mortality, and acute poverty (Haskin, 2005: 200). The lack of peace can be added to many other realities that augment poverty: injustice, impunity, exclusion. Turner (2013: 42) indicates that to date the country remains vulnerably weak with an economy that needs redress. For example, financial irregularities in the various public administrations, theft by officials, and the plunder of the national treasury interfere with economic growth.



According to a World Bank document, 'Doing Business in Congo Dem. Rep' (2013), on economic and corporate governance, the DRC continues to feature among the lowest rated countries and ranks 184<sup>th</sup> out of 185. Despite this fact, government posted an economic growth rate of eight percent as a sign of improvement of economic governance since joining the Organization for the Harmonization of Business in Africa (OHADA) on 13 July 2012. (US. Department of State, 2013). Nevertheless, continuous poor economic and political governance affects the majority of the population.

Many other studies indicate that the DRC has not improved on the Human Development Index, still ranking among the very last, 186 out of 187 countries in the World (World Bank, 2013). The political instability that followed years of war and the breakdown of economic structure, in addition to the lack of efficient economic management by the DRC's government, resulted in the disruption of the relationship between the DRC and its international partners. A destabilized DRC state, with a weakened economy, failed to honor its contractual obligations to international financial institutions (World Bank, IMF) as corruption went on a rampage (Moyo, 2009: 22-23). Throughout the years of political instability and economic crisis, the DRC has relied on the support from international institutions for foreign credit, internal monetary auditing, and for assistance in efforts to generate industrial development projects. Nonetheless, the collaboration between the DRC and its international economic partners has sometimes been tumultuous.

A number of reasons could explain the difficult relationship between the DRC and financial partners: lack of accountability in the mining sector that received much funding from the same international institutions; unpredictable economic policies and legal framework; the unquantifiable cost of doing business; and the political insecurity (Kaplan, 2008: 82). The World Bank suspended its partnership with the DRC from 1990 and reinstated the partnership in 2001, at the occasion of a new political regime in place in the DRC.

It was a gradual process of re-establishing the partnership: the first phase from 2001 to mid-2002, consisted of preliminary consultations and talks to evaluate the government's plan to revamp the mining sector. The second phase was initiated after 2002, following efforts made by the DRC government to adopt the Poverty Reduction Growth Strategy (PRGS) policy, and to pay part of its external debts. This included efforts made for peace and reconciliation, and

real commitment towards economic reforms (World Bank, 2013). All the above studies are useful to the present research because they highlight causes of poverty and instability in the DRC. Nevertheless, there is still silence on the feminist ethical approach to these issues.

A 2010 IMF document, 'Report on Implementation of the Growth and Poverty Reduction Strategy' indicates that the DRC, a heavily indebted country (HIC), from the nineties through 2001, suffered the withdrawal of international financial support, resulting in the decline in socio-development programs (IMF, 2010). This situation aggravated the level of poverty of most citizens.

A study by Moumami Ahmed from the African Development Bank Group, 'Analysis of poverty in the Democratic Republic of Congo' (2010) indicates that 71,3 percent of households are affected by poverty at national level, while in the rural areas the rate of poverty reaches 75,7 percent for all households, against a rate of 61,5 percent for urban areas. This illustrates a high level of poverty in the country. Another finding in this same study by the African Development Bank Group, is that all socio-professional categories are affected by poverty. This results in the impossibility of an affordable food supply for the popular masses, poor or inexistent health services in some rural areas, with a high mortality rate among children in rural areas due to malnutrition, as well as nonexistent running water in rural areas.

Consequently, "the Congo is now cited among the poorest and most desperate nations in the world", with the majority of its population living below the poverty line (Tshilemalema, 2002: 32). This is in contrast with the economic potential of a country that holds substantial mineral resources. Equally manifest is the inaccessibility of education, resulting in high illiteracy. The marks of poverty are also visible in the lack of proper housing, poor road networks throughout the country, and the subsequent high cost of transportation, which affects small farmers' access to markets (IMF, 2013).

The overall picture of the situation is that of unconcealed and appalling poverty in which the majority of the populace find themselves (Haskin, 2005: 51). There is a reduced quality of life because the level of poverty diminishes chances of quality of life, along with human and social development, as women force their way through hardships, even in times of war.

As explained, the situation of the DRC has deteriorated following years of war and instability. Women have not been spared by the aftermath of the hazardous environment, which has contributed to the deterioration of the quality of life and expansion of the level of poverty amongst women. In a study by D'Souza Stan, 'Poverty among Widows of Kinshasa, Congo' (2000: 80), it appears that women are in many ways the most affected by poverty, as it increases their vulnerability. Women are further affected by monetary poverty following difficulties to afford a regular income. For instance, the income of the employed and the self-employed sometimes does not allow them to meet the basic needs of their households.

Moreover, women are also challenged by poverty that affects their living conditions in the sense that they do not have access to basic services especially in rural areas (Moumami, 2010: 9). Accordingly, this plunges women into social and economic vulnerability differently experienced in families. According to the United Nations Development Program (UNDP), seven out of ten families in DRC live below the level of poverty, and the country is ranked by the UN among countries with low human development (UNDP, 2014). Even though these studies are directly concerned about women and poverty, they did not focus on feminist ethical perspective in investigating the reality affecting women. The present study is relevant as it will cover that gap in the literature.

In a study, 'Gender Inequality and Social Institutions in the D.R. Congo', Matundu Mbambi and Marie-Claire Faray-Kele (2010) demonstrate the existing gender imbalance in DRC institutions and they acknowledge that more women are poor. The authors' statistical findings attest that: "61.2% of Congolese women live underneath the poverty threshold against 51.3% of men, while 44% of women cannot attain economical timeliness" (Matundu and Faray-Kele, 2010). Since, as stated above, the majority of women are faced with poverty, it can be said that the majority of the country is in a state of poverty, with women being the prime care givers and managers of families' economic baskets.

To try to curb their situation of poverty, women in mining areas are attracted to the booming economy of the extractive industry as a source of possible income, which also exposes them to a string of abuses. This vicious cycle does not help to achieve their aim of reducing poverty. In spite of being a feminist approach, this study by the two authors was undertaken in the field of sociology which might need to be further studied in the field of ethics. Thus, my study is in the

field of ethics, and will certainly use this information with a feminist ethical perspective for the analysis of the DRC's Mining Policy, to show how its application on the ground affects the participation of women in mining.

Regarding women in mining, a study by Hayes Karen, 'Women in Artisanal Mining in the Democratic Republic of Congo' (2012) indicates that women are mostly found in the lower chain of mining activities. This study by Hayes resonates with a book by Jacqui True, *The Political Economy of Violence against Women* (2012). Hayes shows that women in the DRC's mining industry occupy the lowest ranks in mining jobs, which can be an indication that they are poorly paid and live in poverty. It can be admitted that "poverty prevents women from participating in public decision making and thus constrains their contributions to good governance and long-term recovery" (Jacqui True, 2012: 152).

Poverty should also be acknowledged as real violence to women in many ways. It is a cause of violence and also leads to violence done to women. This idea is raised in an article by Hayes and Perks, 'Women in the artisanal and small-scale mining sector of the Democratic Republic of the Congo' (2012). For them, discriminatory employment opportunities in mining are an economic deprivation and another face of violence suffered by women. They affirm that "despite similar working hours and levels of effort, women are often paid only a fraction of what men receive" (Hayes and Perks, 2012: 534).

Women work hard to earn a living in mining. Therefore, any form of discrimination against them by depriving them of a rightful wage is a violation of their labor rights that needs to be addressed. This form of violence against women does not help to improve their overall living conditions and cannot contribute to reduce poverty from women's lives.

Consequently, there is a reduced quality of life because the level of poverty diminishes the chance of a quality life in the absence of human and social development, while women force their way through hardships. The extent of such poverty among women is also visible in the struggle for access to social services towards a healthy life or towards education. This situation limits women to function within the reach of their human capabilities. A document by the UNDP, 'Human Development Report' (1996), gives three indicators of the current situation of poverty among women in the DRC:

Living a healthy, well-nourished life, having the capability of safe and healthy reproduction and being literate and knowledgeable. The three corresponding indicators are the percentage of children under five who are underweight, the percentage of births unattended by trained health personnel and the percentage of women aged 15 years and above who are illiterate (UNDP, 1996: 109).

Illiteracy is the most accurate indicator of poverty among women and children in the mining sector. This is because either they were not given an opportunity to explore their capability for schooling as young people because the priority was to make a living in the streets, and by doing any kind of available work or many other factors mentioned above that contributed to the situation. Violence against women in mining comes in many other forms, of which sexual violence is the worst type to endure. The above studies are relevant for the present study. They offer primary information to enrich the feminist ethical analysis of the DRC's mining industry and the manner in which it affects women's participation in mining.

Various other studies focus on the exploitation of women in the DRC's mining industry and can be useful to the present research. Côté Gisèle in a study titled, 'Women in the Artisanal Gold Mining Sector in the Democratic Republic of Congo' (2014), highlights issues concerning women and girls in mining. She studies the impact of informal mining on the lives of women in the DRC. Placing the mining work of women in a war-influenced-context, she emphasises the vulnerabilities of women subjected to sexual exploitation, besides long working hours, and hazardous mining work. Côté insists that the reform of the mining policy should consider the interests and needs of women.

Such views are also echoed by Hayes and Perks (2012), as already mentioned, when elucidating the reality of poverty. These two authors are mentioned in this present section with regard to the exploitation of women in mining. Writing on 'Women in The Artisanal and Small-Scale Mining Sector of the Democratic Republic of the Congo' (2012), they point out dangerous practices of ASM that have destructive social and environmental impacts on women. Among challenges faced by women in this sector, Hayes and Perks name sexual and gender based violence, early marriages, and forced prostitution. At the same time, the authors acknowledge the importance of ASM as an economic tool for the country. As a way forward within this contrast, they suggest the transformation of this sector, following the Mining Code of 2002,

from informal and unregulated to a formal economy in which women can play important economic roles.

These two studies' findings are informative to the present study; as empirical research, they offer accurate information necessary to the analysis. It is important to indicate that, though very detailed, neither of these two studies is concerned with the feminist ethical analysis of the mining policy. My study is an ethical analysis of the same issues, through critically examining the mining policy to uncover possible gaps that might provide ways to exploit women in mining, and perpetuating their life of poverty.

Thus, it is necessary to examine the context and content of the DRC's Mining Policy, regulated by the DRC's Mining Code of 2002, made public under Law No. 007/2002, dated 11 July 2002. The mining code was also endorsed by the Constitution of the DRC on 18 February 2006, and amended on 20 January 2011, with the Mining Regulations published by Decree No. 038/2003 on 23 March 2003. These documents validate and formalize the mining sector, giving direction for all processes regarding mining activities. For this study, the focus will be placed on the DRC's Mining Code, as the main document of interest. The articles of the DRC's Mining Code define mining policy in the DRC. They determine all that pertains to any activity related to mining, such as carrying out exploration and/or exploitation of minerals by local and international investors.

While the mining code has brought clarity to the mining business by harmonising processes of acquiring mines and quarry permits, it has not regulated the essential rights of women miners and the local communities surrounding mining areas. For instance, the mining code guarantees all rights of the state, as institutions, and all rights of investors; however, very few articles deal directly with the interests of the local communities by prescribing rights over land for public use (Mining Code, 2002: 279-281).

The right to ownership of land might be guaranteed by the mining code, however it seems important to assess other aspects of human and economic rights of women and local communities. This also calls for consideration of the mining policy, with regards to correctness of mining workplace practices and a range of moral and social responsibilities of investors towards the miners and local communities. There is no court case that has challenged the

implementation of the current mining policy concerning the abuse of mine workers or the abuse of women and girls in mining. That does not mean the various violations of human rights, such as forced relocation of communities, loss of means of livelihood, and obstructing access to water, are non-existent (Amnesty International, 2013). This is even more reason to ethically analyse this policy, in order to promote an ethically sound discourse on the DRC's mining industry and its practices.

Various other narratives plead for the revision of the Mining Code of 2002. Investors are arguing for a "relaxation" of the tax regime, while government's argument comprises a non-negotiable increase of state participation in mining ventures to thirty-five percent from twenty-five percent, a hike in corporate taxes to thirty-five percent from thirty percent, levy royalties of six percent on nonferrous and precious metals and a reduction in the term of exploration permits to six years from fifteen (Muhigirwa, 2011; Mathews Charlotte, 2014). These arguments for the revision of the mining policy only indicate concerns for adjustment of the economic aspect of the mining policy. The approach of this study is different. It consists of a feminist ethical analysis of the mining policy to assess issues related to women, who have to face enormous hurdles in the course of their mining activities when interacting with male miners, investors and the government.

In this regard, a study by Business for Social Responsibility, 'How Can Business Contribute to the Ethical Mining of Conflict Minerals?' (BSR, 2014), gives insights on the ethical issues of labor in conflict areas of the DRC. This analysis is very important to the study of ethics in mineral conflicts. Even though this reflection conveys awareness on ethical issues in the DRC's mining industry, it does not focus on ethical issues directly in connection with the DRC's Mining Policy, which in the researcher's opinion on the topic of study, is the first place that needs to be critically examined for any effort to deal with issues of interest to women in mining.

Therefore, this study is relevant and will contribute to the existing academic body of knowledge in ethics, especially feminist ethics, workplace ethics and some aspects of developmental ethics, specifically to the ethical question of poverty reduction. The analysis of the mining policy will culminate in a discourse that proposes an ethical way of mining practice that is sensitive to gender issues and enhances women's participation. Such a mining outlook will emphasize ethical principles in the mining workplace (Siegel, 2013). This will serve to

interconnect ethical workplace and mining practices aimed at obtaining a sustainable and responsible mining sector, which can contribute to poverty reduction and the improvement of the quality of life of women miners and their local communities.

All the above documented narratives have mostly focused on the economic, social and political aspects of the crisis in the DRC and the mining sector. Their terms of reference on the plight of women within the mining resources crisis have all been economically, socially and politically oriented. They approach the issues around women and mining in terms of economic gain and loss. Research that investigated the impact of the extractive resources crisis on women, mostly studied it either from sociological or political sciences' perspectives.

Where the sociological perspective is concerned, authors reflect in terms of demography of mining communities, how their life is being affected by the new phenomenon of multi-ethnicity implying various social behaviors around marriage and family life, influenced by the social reality of mining communities. With regard to the political perspective, most authors point at instability and wars having fueled the crisis in mining. Regarding the women's plight, it is presented in relation to the aftermath of armed conflict behavior and political instability.

In view of the above, there is need to engage in an ethical perspective of the challenges faced by women in mining and its impact on their well-being. To argue it differently, the present research intends to fill the gap in literature on the feminist ethical approach concerning issues affecting women in the DRC's mining industry. To achieve this aim, the above authors' views should be broadened by adding the missing ethical perspective for a complete understanding of the gendered human crisis and the economic struggle linked to DRC mining resources.

The present study will then extend this economic perspective, and the sociological approach of women's mining rights, towards an ethical analysis of the DRC's Mining Policy. It should be said that the mining policy is a legal framework that organizes the mining sector. It could offer informational insights concerning the DRC mining contrast<sup>10</sup>. On the one hand, there are the challenges faced by the many women in mining. On the other hand, there is enormous potential

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<sup>10</sup> By "mining contrast" is understood the reality of a rich-mineral country, successful mining companies, but poor mining communities, poor working and living conditions of miners and their families.



mineral wealth not in their reach. In order to highlight the broader picture of women in the DRC's mining industry, the following section will elaborate on specific issues affecting women in mining.

### **3. 2. Women in the DRC Artisanal and Small Scale Mining (ASM)**

From the critical look at literature presented above, a number of issues have emerged that affect women in the DRC's mining industry. Among them, the reality of poverty, and sexual abuse, along with gender and economic discrimination. In the following section, the study discusses the situation of women in the ASM, while highlighting some of the challenges they face in detail.

#### **3. 2. 1. The Distribution of Women in Mining per Province**

The DRC is one of the richest mining countries in the world. The country boasts vast deposits of copper, cobalt, gold, diamonds, cassiterite and coltan (Omeje and Hepner, 2013). With such variety of minerals, the economic potential is also very high. Contrastingly, the reality on the ground is of extreme poverty among the population and those working and living in mining areas. Women are especially affected by this situation of poverty.

The DRC government, with the help of the World Bank and the British Department for International Development, put in place a project named 'Promines'. Its main objective was to create conditions for good governance of the mining sector and the maximization of the contribution of this sector to economic growth. Promines equally envisions to facilitate sustainable development through mining at national, provincial and local levels (Renafem, 2015). This project made it possible for women in the mining business to come together and create an organization called RENAFEM: Réseau National Des Femmes dans les Mines (National Network of Women in Mining) (Renafem, 2015). After interviews with some women in mining areas, Renafem projected the population of women working in mining.

Renafem categorizes women per province, per profession, per daily income and per age (Renafem, 2015). It is important to note that it is not a comprehensive statistical study, but essentially a representative sample collected spontaneously in a selection of mining areas, after interviewing women and the local population. The aim was to prove that women are interested in mining activities, unlike the misconception that there are only men in the mines.

**Table 3.2.1a.** Distribution of Women in Mining per Province<sup>11</sup>

Provinces	District/Towns	Mining Sites	No of Women
North Kivu	Lubero	MangeruJipa	34
	Beni	Viski	36
		Mabalaku	21
		Katini	30
	Masisi	Rubaya	15
South Kivu	Mwenga	Kamituga	58
	Fizi	Misisi	45
Maniema	Kailo	Kailo	41
	Pangi	Kampene	27
Province Orientale	Irumu	Bakolo	36
	Djugu	Iga Barriere	34
Kasai Occidental	Tshilenge	Tshimanga	25
		Benemadiatu	44
		Nkumbu Masanka	23
		Tshilamba	31
Kasai Oriental	Demba	Bakwampika	52
		Benambala	34
Katanga	Kolwezi	Menuiserie & Kasulu	40
	Kipushi	Katapula	22
TOTAL			648

<sup>11</sup> The present statistics of women in mining per province does not represent the totality of women working in the DRC's ASM. It is a handful representation of the reality of women being present in the mining industry. To my knowledge there is no inventory of the total number of all women working in the DRC's Mining Industry.

Source: Adapted from Renafem (<http://www.prominesrdc.cd/renafem/accueil.php>. [Accessed 12 April 2016].

A first glance at this table can attest to the interest of women in mining activities. It shows that contrary to the general perception that mining is reserved for men, there is a clear testimony that women are participating in this industry. In the same way women are active in other national economic sectors, informal and formal, as the main providers of their families. They also participate in mining with the same energy, excitement and determination to make a living. It is believed that twenty to fifty percent of women make up the workforce in the DRC's ASM (Hayes and Perks, 2012: 229). This implies a considerable economic contribution of women to the national revenue and also indicates that women are a force to reckon with in the mining economic structure of the country.

There is evidence that women of various marital status participate in mining activities as can be seen on the table below:

**Table 3.2.1b.** Distribution of women in mining per province according to marital status

Provinces	Married	Single	Divorced	Widow
Kasai Occidental	71.1%	11.6%	2.3%	7.0%
Kasai Oriental	73.8%	15.6%	3.3%	7.4%
Katanga	59.7%	8.1%	9.7%	22.6%
North Kivu	48.1%	24.4%	8.1%	19.3%
South Kivu	49.5%	18.8%	13.9%	17.8%
Maniema	39.4%	21.2%	9.1%	30.3%
Province Orientale	58.0%	26.1%	5.8%	10.1%

Source- Adapted from: <http://www.prominesrdc.cd/renafem/parametre.php>. [Accessed 12 April 2016].

From this table, it can be said that:

- Women of various marital status are interested in mining
- Women have capabilities beyond reproductive roles
- The majority of women active in mining economic ventures are married
- Women can combine motherliness and productive activities
- Women have the potentiality in mining activities
- If empowered, women can do well in mining
- Women show economic creativity.

This table demonstrates the creativity and productivity of women beyond mothering and reproductive roles. For instance, the evidence of high participation of married women in mining activities in the province of Kasai should stir up efforts for more engagement with the patriarchal system in order to combat all signs and spaces of gender discrimination.

As previously mentioned, various reasons explain women's choice for mining. Women are determined to work hard and alleviate poverty. In the popular imagination of the DRC people, those in the mining sector, despite the hardships of their work, are able to make a living and reduce their poverty. Such expectation motivates women to be a part of the industry. Nevertheless, women experience the prospect of reduced livelihood because of the marginalisation they suffer, the disintegration of social and family protection, numerous vulnerabilities and health risks (Côté, 2014: 11-16). The difficulties of access to mining revenues prevent women from progressing above poverty level. Despite the appraisal of the role of women in the economy, it appears that their role in the mining economy remains minimum and marginal, judging by the activities women are generally involved in, and without ignoring the reality of their working conditions.

### **3. 2. 2. Women and the Working Environment in ASM**

A considerable workforce in ASM is made up of women, as already stated. Poverty, situations of natural disasters, wars, and the proximity of mines have led families into seeking jobs in ASM. Their contribution in the workforce is tremendous. It is believed that women's participation in ASM varies from between five to fifty percent of women throughout Africa. By way of example, in countries such as Gabon and the RSA, women represent ten percent of

the ASM workforce; in Malawi, the figure is at twenty-six percent; Tanzania's ASM is comprised of thirty percent women, while Zambia and Mozambique each have thirty-five percent, Guinea reaches forty-five percent, with Ghana, Burkina Faso, Mali, Zimbabwe, Zambia, and the DRC's workforce in mining reflects fifty percent of women (D'Souza, 2002: 50). It is clear that the DRC has a large number of women involved in mining.

In recent years, the high demand for phones and computers has created economic opportunities in the extraction of coltan in the DRC. Women, among others, have flocked to find this rare product. The coltan market is a contributing and aggravating factor in the security crisis in the DRC. It is described as the rule for coltan, and the economy of coltan because "it is estimated that 80% of the world's coltan reserves are in Africa, with 80% of that in the DRC's highlands. As can be noted, the revolution of modern information technologies has imposed on the DRC an imaginable demand of coltan. Such demands have consistently overpowered the mode of political governance and management of natural resources. Many of the inter-tribal and economically driven micro-conflicts plaguing the DRC are aggravated by the patterns of coltan extraction and transport" (Grespin, 2010). This quote corroborates that where such a mineral could have been a source of economic growth for the miners involved in its extraction, their economic struggles are, to the contrary, far from decreasing.

The DRC's mining industry continues to carry out business in an atmosphere of non-care for the working conditions of miners that expose them to severe health risks, especially concerning women as explained above. In this regard, the International Trade Union Confederation observes that: "there are only limited employment alternatives, so that men, women, and children continue to flock to mining areas to make a living despite the poor conditions" (2011: 19). Working in poor conditions that are a result of negligence and lack of care for others, women undergo all sorts of abuse that decrease their chances of social progress.

It can be said that the lack of attention to conducive working conditions proves challenging for the human agency of women. This situation further exposes women to serious health risks in that, "working in mines, also exposes workers to severe health risks, including silicosis, conjunctivitis, bronchitis, tuberculosis, asthma, diarrhea, and skin lesions. They furthermore deal with malnutrition, exhaustion, physical traumas, and the risk of getting infected with sexually transmitted diseases, which are widespread in mining settlements. Under these severe

conditions, alcohol and drug abuse are common phenomena” (International Trade Union Confederation, 2011: 20).

Traders and owners of coltan mines may not be moved by the human crisis, or by the destruction of national parks, wildlife or innocent humans in their endeavours to find coltan. It requires a large number of people to handle the heavy work of scraping away dirt from the surface of streambeds, and reaching underground to unearth coltan, still covered in dirt, then rinsing the coltan in water, removing other unnecessary objects. The chain of people on this task, most of them women and children, is forced to work for long hours without food, and they only receive a disgraceful daily wage (Grespin, 2010).

In developing countries stricken by poverty and social crisis, women are more likely to participate in nonstandard work in an informal economy (Chen et al., 2004). In the case of the DRC, it is in ASM where women participate in nonstandard employment as well as in vending, and prostitution, in cleaning, in food supply, etc. They receive no substantial employment-based benefits that can enable them to improve their livelihoods.

It is believed that thirty percent of women work as mineral diggers, while sixty percent are employed to process and wash materials, a further ten percent are employed to transport minerals containing gold ore and offer other services (Hayes and Perks, 2012). Their working environment is precarious, without any guarantee for safety, no assurance of equal economic opportunity that their male counterparts are entitled to.

Women participate in different types of work in mining, either as employees of the mine owners or simply as hired labor for daily payment. According to the World Bank Report, sixteen to twenty percent of the population of the DRC rely on ASM as a source of income and it is an essential economic force in the country’s effort of reconstruction after decades of civil war (World Bank, 2015b). ASM offers opportunities to unemployed men and women, allowing them to work independently in mines owned by individuals and investors, on condition of paying agreeable fees to the owners. Some are employed by the owners and receive a salary. Working conditions are mostly not favorable, as described by Hayes and Perks:

ASM is characterized by basic manual mining techniques. It is largely unregulated, and miners are exposed to a wide range of physical hazards. It is also associated with a number of social and economic problems, including diversion of livelihoods from more sustainable activities; as well as squalid camp conditions, where substance abuse and sexual promiscuity create health risks (2012: 532).

Women face severe working conditions, sexual violence and inhuman treatment in the ASM sector. Rudimentary techniques used in ASM require a maximum of human force at labor, and with limited tools and no specific skills, women are obliged to endure the hazardous conditions of working in the ASM sector to make a living. This type of living and working environment exposes women to numerous risks that contribute to the long-term deceleration of a quality human life.

Faced with poverty on one side, and non-conducive working conditions on the other, women in mining find themselves ensnared in a dilemma to abandon such difficult work, and live in perpetual poverty, or to find alternative sources of income, or simply continue their struggle in mining. Determined to make a living in mining and reduce their level of poverty, women are not deterred by sacrificing themselves, perceiving ASM as an available alternative for a way out of poverty and a life of crime. Therefore, many families, including women who live in the vicinity of the ASM's concessions, serve as a reliable, cheap workforce, situationally compelled to endure the appalling working conditions.

### **3. 3. Gender-based Violence in the DRC Mining Sector**

Women working in the mining sector are exposed to many challenges and threats. Among these are physical abuse, unhealthy working conditions, and sexual abuse. Of these three, sexual violence is one of the most prevalent challenge. Reports suggest that women are abused, manipulated and exploited by those responsible for mines, by security personnel, and by other miners in the ASM industry (Hayes and Perks, 2012). The mining code defines artisanal mining as an activity to extract and concentrate mineral substances by using artisanal tools, methods and processes (Mining Code, 2002: 109). The DRC government has opened several sites for artisanal and small-scale mining for individuals and corporations with valid permits. However, some women artisanal miners work in a self-employed capacity in mining concessions owned by private investors, in which case they pay taxes to the owners of the ASM concessions.

### 3.3.1. Physical Abuse

Global Witness has testified to the pressing demand for minerals and metals by international companies. They place extraordinary pressure on suppliers who, in turn, increase the workload on miners, who are forced to work beyond normal standards, in order to meet the demands. As with many other international and locally-based organizations, Global Witness has established a verifiable link between the extraction of minerals and human rights violations in the DRC (Global Witness, 2010; Amnesty International, 2013: 9-13). The abuses include forced labor and hazardous environments polluted by chemicals. Forced labor consists of imposing long working hours on women, without respect for their dignity and without consideration of human need for a break within working hours, thus causing harm to their physical integrity.

Sometimes women participate in mining as diggers, which entails the use of tools such as dredges, high powered hoses or medium and large-sized backhoes to remove topsoil or layers of sand and clay, in order to uncover the ore (Villegas, Weinber, Levin, and Hund, 2012). More often, women use basic tools in the extraction of gold, which aggravates their vulnerability even more, as mentioned by Côté Gisèle: “The tools that the women use to extract gold are rudimentary and require a good deal of physical effort” (2014: 16). These kinds of tasks appear excruciating, especially on a hot, sunny day without a protective shelter, sometimes without protective and safety equipment.

Other women work as transporters. In this case, they transport heavy loads of minerals from mine shafts, on their heads or backs, to the point of trade or to railways, where minerals are loaded into trains or other transportation, for export outside the country. These are extremely difficult and physically intensive tasks, as one researcher testifies about women, “they carry heavy loads long distances for very little money. Life is really difficult for them” (Grown, 2015). In the face of such working conditions with little monetary returns, women experience a downgrading of their human dignity.

Working under extremely difficult conditions for little pay seems to be a form of abuse to women, where there is no concern for health and safety. At times the tasks are not more difficult, such as panning and processing ore, grinding, sieving and washing minerals. Nevertheless, the simplicity of these tasks may be hardened by the duration of the work. Some



women are forced to perform these tasks for long hours without time out for meals or relaxation. Other tasks are extremely dangerous, for example those consisting of handling flammable chemicals and fuel used in digging machines in gold extraction (Côté, 2014: 16). Being unable to have some respite from labor and the opportunity to rest is another form of violation of women's rights, for example in the case of women with pregnancies, or women who may need to attend to babies and infants. Such privation might be a step away from the possibility of a good human life, as the study will explain in the next chapter.

The efforts of women, and the hours they work, do not always match the revenues and salary being paid for a working day. In most mines, women earn between 0.5\$ to 2\$ a day. This income is not enough for basic needs, not even for a simple, daily meal. In Walikale for example, it takes the savings of more than 14 working days to afford a chicken that costs 12\$ to 15\$ (Garrett, 2008: 42; International Trade Union Confederation, 2011). No quality of life can be expected from such earnings, resulting in miners being forced to contract debts from mine owners, who disparately abuse them with a pitiful salary, plunging them into the slavery of debt, and a heavy workload. The physical abuse of women though, is sometimes directly sexual.

### **3. 3. 2. Sexual Abuse**

It is worth noting that the DRC's Mining Code offers a comprehensive and liberal process to acquire mining rights for ASM though one has to put up with bureaucracy and the delaying tactics of corruption. In concrete terms, Article 109 of the mining code determines conditions for the creation of an artisanal mining area: while Article 111 specifies the authorization for artisanal mining. Investors are able to follow the stipulated steps for application for permits to become owners of an ASM operation. The lenience of processes in this type of mining activity attracts more investors, traders and miners, both men and women. In terms of productivity, most work is done by hand with cheap labor.

Women make up a considerable percentage of the workforce in ASM, where they face different challenges. According to the International Trade Union Confederation,

Women in artisanal mining areas are also at high risk of sexual and gender-based violence. Mining camps are dominated by young men far from home, family, and community, and by a rapid cash turnover and high consumption of alcohol and marijuana—a combination that diminishes moral responsibility and increases violent tendencies. In mining settlements where high concentrations of ex-combatants reside, sexual and gender-based violence is especially widespread (ITUC, 2011, 21).

ASM presents a real opportunity for economic gain for the country and all those involved in such mining activities if it were formalized and regulated with inclusion of women's interests. There is the possibility of extracting minerals with rudimentary tools and in return the available market and demands of minerals guarantee a profitable margin to the investors. Unfortunately, ASM is also a fertile ground for all sorts of abuse on women. Mining business is at the expense of laborers, specifically at the expense of women who are exploited in the ASM environment. Sometimes, individual investors impose their own rules, taking advantage of flaws in the mining code. Likewise, men with a wrong perception of masculinity or absorbed in retrogressive sociocultural beliefs take advantage of the vulnerable women, extorting them and sexually molesting others. Despite this state of affairs, the undeniable fact rests on the high contribution that women make to the ASM industry.

It is therefore vital to recognize the role of women in the ASM sector, and more importantly, to be aware of their struggles to overcome their situation of poverty. Employment opportunities for women in ASM is contrasted with the amount of abuse they encounter in making their economic contribution to families, communities and the nation. ASM employment comes with a chain of problems with regard to women's dignity and advancement through socio and economic development.

Statistics show that: “one in four women in mining towns self-identified as sex workers, and 4 in 10 reported having to trade sex simply to gain access to work or basic goods. Rape was described as common, mainly by civilians working in traditional, local and state power structures” (Grown, 2015). Women in the DRC mining sector have been victims of sexual violence in the process of seeking mining employment, or trying to gain access to a mine

concession in order to offer other services. Such statistics of abuse against women are alarming and a motivating factor to dig deeper into the reality of women in mining, despite the existence of a mining policy regulating the industry. Since violence entails the use of force, which is one trait of masculinity, it can be said that men are at the forefront of sexual violence against women in ASM because of the self-revered masculinity.

An illustrative case, “in the diamond mines of Kasai Oriental Province, for instance, women are required to surrender any high-value stones to the male mine owners or diggers and are permitted to keep only low-grade stones” (Hayes and Perks, 2012: 534). There is no law that authorises such discriminatory practices. It is a manipulative and exploitative misinterpretation of masculinity. Such practices may even increase in times of armed conflict.

Women continue to face hardships in the mining industry, which is marred with illegal practices favored by the void created by years of war. In the post-conflict time, “the structures and norms that once guided social practice have lost some of their potency. In ASM communities in particular, the traditional leadership has often been replaced, corrupted, or coerced by the new hierarchy of mine control” (Hayes and Perks, 2012). The traditional leadership or social norms that once regulated life in the communities where ASM is now operational, have since been replaced by uncontrollable acts of selfish characters that exploit the economic and human vulnerabilities of women seeking a living in mining.

It has been observed that in various mining areas an increase in rape cases, forced marriages, the sex trade, and the abandonment of pregnant women, by male miners. The sexual abuse also includes harassment, as well as body searches by men before entering mine concessions and after work, thus violating women’s privacy in public (Côté, 2014). One can only imagine the psychological impact these different abuses have on women. In many instances, women are being used simply as a means of productivity by the powerful hierarchy: mine owners, investors who finance mining activities, the traders who purchase the mineral products, security forces hired by mine owners, officially armed forces, with sometimes, militias and rebel groups. They control mining activities and impose their own rules, while leaving women with little if any prospect for economic emancipation by perpetrating abuses against them. These are ethical issues this study stands to examine through the critical analysis of the DRC’s Mining Policy.

Gender Based Violence (GBV), and especially violence against women (VAW) in the ASM industry is also a weapon used to subdue women, to the extent that they become fearful and lose control of themselves by totally submitting their fate to those in charge. Rape, forced marriages, prostitution, and sex slavery are tools of domination and control mechanisms in the hands of influential individuals in mining (Turner, 2013: 120-128). The Extractive Industries Transparency Initiative (EITI) confirms the use of GBV by militia groups in the DRC, as a means to control the supply of coltan, tungsten, tantalum and other minerals (EITI, 2011).

There is a global criminality that generally affects people in areas with economic opportunities. For instance, “The DRC is enormously rich in terms of minerals, and the illegal exploitation of some of those ‘conflict minerals’ (especially the so-called ‘3Ts’, i.e. tantalum, tin, and tungsten, plus gold) has been cited as a factor both financing the fighting and, at the same time, giving armed groups a reason to fight” (Turner, 2013: 13). This global criminality finds settlement in zones of economic attraction, and quick money. The population, and women in those communities have no choice. Their fate rests in the hands of such organizations. As a matter of fact, most of the minerals in the DRC are located in troubled territories.

ASM, contrary to industrial mining, requires practically no proper education, no particular skills, and it needs more labor, hence, ASM provides women with easy employment opportunities in the hands of people who could exploit them. Thus, violation of human rights takes place on a daily basis. The reality of a gender consideration in ASM is limited to activities that would directly affect women, such as the sex trade. Women in ASM are abused in a variety of manners, for instance forced prostitution and other atrocities on women. Thus, it can be said that:

Violence against women is not limited to wartime or conflict zones; it is highly prevalent in peaceful settings as well. This violence is endemic in locations of apparent economic prosperity and political empowerment such as free trade or special economic areas and new democracies, as well as in conditions of impoverishment and political repression (Jacqui True, 2012: 3).

Though peace has returned in most parts of the eastern DRC, order and tranquility are once again a reality, despite the persistent pockets of armed groups still operating, looting and killing innocent people (D’Odorico Giulia, and Nathalie Holvoet, 2009). Conversely, one cannot fail

to notice that violence against women has not stopped with the different wars in that part of the country. Even in times of peace, women have continued to bear the burden of sexual violence.

ASM is a legal activity recognized by the DRC's government in offering licenses for exploration and exploitation to investors. Nonetheless, the lack of a proper regulatory framework based on human rights can sometimes justify the high prevalence of abuse suffered by women in ASM.

Contrastingly, “women and their families rely on the income from mining, yet they are paid less and are vulnerable to physical abuse and sexual exploitation at the hands of employers and militia who run the operations” (Jacqui True, 2012: 89). In ASM women can be directly involved in mining and trading, and they also work in the subsidiary businesses in mining camps such as bars, hotels, and restaurants. These are other places where they are exposed to sexual abuse. In such places, women face sexual harassment, intimidation, psychological harm, economic discrimination, and all sorts of negativity that impacts their human integrity. Lack of opportunities create a poverty trap that entangles women in vulnerable situations in the form of sexual violence, which seems fueled by different factors.

### **3. 4. Contributing Factors to Sexual Violence in the DRC's Mining Sector**

There are different factors that contribute to the recurrence of gender based violence in the mining sector of the DRC. This section elaborates on some of the various contributing factors.

#### **3. 4. 1. Cultural Beliefs**

The DRC's socio-cultural norms are organized around family values, with a high predominance of patriarchal customs. For instance, a man is to receive preferential treatment ahead of a woman in public and at home. As a result, it can be said that “in [the] DRC, policy and sociocultural customs continue to discriminate against women, effectively preventing their economic advancement and independence” (Bartels et al., 2010). The assignment of particular roles to men and women is an important trans-generational cultural identity in the DRC (Tshilemalema, 2002: 117). Oftentimes, the distribution of roles following cultural paradigms

are discriminatory to women. One stage of such discrimination is the mining sector, an economic haven of opportunities for all, but sometimes cultural beliefs tend to discriminate against women in mining.

The cultural beliefs intensify the reality of gender stereotypes recognized as one of the contributing factors to the kind of treatment inflicted on women in general, and particularly on women in mining. The misunderstanding of men and masculinity may play a negative role in the treatment of women by men. Positive masculinity exists in communities and is appreciated within its acceptable expressions. Here men are perceived as breadwinners, protectors of their homes and families, responsible with gentlemanly behavior, non-violent towards women, honest, hardworking and capable of resolving ordinary life issues (Lwambo Desirée, 2013).

However, negative masculinity is associated with force and dominance. In this sense, masculinity is mostly viewed in reference to gender traits of self-reflected power that makes men want to be in charge and dominate, while women are perceived to be followers, submissive and compelled to obey and receive orders. In the same vein, Andrew Spivak concludes that “evolutionary theorists, evolved inclinations in men’s subconscious minds drive them to commit rape” (2011: 91). Most of these inclinations are sexist and oriented towards dominance over women expressed through the sexually violent act of rape.

Negative masculine hegemonic ideals result in men developing a wrong sense of self-gratified rights over women. This might be expressed in limitations imposed by men on what women can or cannot do, according to the male standard of approval. Therefore, men tend to also control the economic undertakings of women, as an economically outstanding woman is perceived to be a threat to men by disregarding the masculine privileges of being breadwinners and household heads (Lwambo Desirée, 2013). In the same vein, the misinterpreted gendered traits forecast women’s inferiority, confining women to traditional gendered responsibilities, thereby affirming the gender inequality and masculine dominance fueled by sexist myths against women in mining.

### **3. 4. 1. 1. The Belief that Women make Minerals Disappear**

In some parts of the DRC, there is a strong belief that women are associated with negativity and bad luck, and they should not be allowed in places where luck is required for success. It is said that mining is a risky task and requires a lot of luck. For this reason, most miners carry amulets and ‘muti’ (spiritual medicine) for protection and luck. The presence of women in mines produces a counter effect against these charms and brings bad luck that can make minerals disappear. Reflecting on this belief a researcher on mines writes, “mining camps may be run by women - even in cases where they are not actually permitted into the mines on the basis of superstition that the presence of women will cause the ore to disappear” (Hayes, 2012). This is a difficult issue to discuss due to being in the realm of beliefs not scientifically debatable. Nevertheless, it concerns ethical debate by reason of victimization and the subordination it brings to disadvantaged groups.

Women who find themselves in mines where men have these beliefs are made to endure emotional abuse, as well as physical and sexual violence as reprisal for the misfortune they would bring to the male miners. Other forms of violence may include the extortion by men of any mineral of high value found by women, and the payment of illegal fees to have access to the mines, or to be allowed to trade or provide other services in mining camps (Hayes, 2012). The presence of women in mining is commonly thought by men to have a negative impact on the productivity and safety of men.

### **3. 4. 1. 2. The Belief that Women Bewitch Male Miners**

The DRC’s mining industry is governed by the Mining Code of 2002, which guarantees everyone the opportunity to be involved in mining activities. On this aspect, the mining code stipulates that: “Any person is permitted to engage in non-artisanal exploration or exploitation of mineral substances in the National Territory provided that the person in question is the holder of a valid mining or quarry right granted by the relevant government entity in accordance with the provisions of the present Code” (Mining Code, 2002: 5a). This article opens the mining industry to any person who fulfils all these requirements.

This legal disposition concerns Large-Scale Mining (LSM), and goes on ASM as well. The guarantees are similarly offered to eligible individuals who qualify for mining activities in ASM, as indicated by the mining code: “Any person of Congolese nationality is authorised to engage in artisanal exploitation of mineral substances in the National Territory, provided that he is the holder of an artisanal miner’s card, issued or granted by the relevant government entity in accordance with the provisions of the present Code” (Mining Code, 2002: 5b).

In virtue of these articles of the mining code, women who consider themselves fit for mining activities, do not hesitate to participate in mining in different capacities, as stated above. Unfortunately, in some parts of the DRC, traditional authorities have chosen to ignore the mining code, while reinforcing traditional beliefs and rules. For example, in several ethnic groups in North and South Kivu, mining is considered a male activity and women are banned from participating in mining and cannot be present in mining sites and camps (International Trade Union Confederation, 2011: 20). The presence of women in mining is considered a violation of traditional norms, and consequently, men associated and working with these women are at risk of being bewitched by them.

Women miners are said to have a magical power of ‘female mining spirit’ that puts the lives of male miners at risk (Cuvelier, 2011: 190-192). Traditional authorities of territories with ethnic groups that carry such beliefs continuously reinforce the ban of women in the mines. Men take advantage of such situations to perpetrate violence against women who, despite the ban, force their way into mining. The discrimination against and exploitation of women’s vulnerabilities sometimes expand into an economy of sexual violence. As can be noted, these are ethical issues that are highly relevant to this study, as it relies on feminist ethical analysis covering such issues.

### **3. 4. 1. 3. The Virgin Myth**

Among other sociocultural myths that prompt sexual abuse of women, is the belief that sleeping with a virgin could augment a miner’s luck in extracting a mineral of a high value. This becomes a motivating factor for rape and sexual violence against women and girls in mining camps and mining communities. Hayes Karen and Perks Rachel affirm that “though a woman’s presence may be blamed if a mine ‘goes bust’ taking a girl’s virginity is believed to increase a



male miner's chances of striking it rich. Taboo and myth are thus finely manipulated to support both discrimination against and violation of women in artisanal communities" (2012, 534). Though virginity is presumably and socially associated with girls, it is not excluded to find virginity in grown up women of marital age (Tshilemalema, 2002: 125). In this sense, the virgin myth may not be limited only to girls, but targets women of a certain age found in mining.

Traditional beliefs constitute part of a cultural heritage difficult to remove from people's mentality. No matter the progress in modern mentality and culture, some people prefer not to depart from retrogressive beliefs. Some of those in mining areas with such beliefs continue to abuse women (Lwambo, 2013). This myth is also interpreted as proving a point on the dominance of men over women, in the sense that a violent and abusive man who has his way is also thought to be feared by peers and women, so that nobody opposes his present and future actions.

It appears that most mining men imbued with the 'virgin myth' have a misconstrued sense of masculinity that reinforces in them a self-given right over women and girls, even the right to violate their intimacy and force them into non-consensual sexual acts. The generalized impunity of such behavior further marginalizes the victims and increases their socio-economic vulnerability. Thus, the prospect of poverty reduction among women and social development of mining communities tends to decrease enormously, leaving women in a continuous state of vulnerability. It is up to the stakeholders, based on the legal dispositions of the mining policy, to address some of the issues regarding women in the mining sector, especially in areas still affected by armed conflict.

### **3. 4. 2. Armed Conflicts**

The situation of war, as described above, combined with other factors has seen the increase of poverty and insecurity in the DRC. Women and children are the victims of armed conflict in the hands of militia, rebel groups and official government armed forces. There are no clear statistics of women raped during years of war. Nonetheless, it is alleged that several thousands of women and girls have been sexually assaulted in the recent armed conflicts in the DRC (Autesserre, 2001; Coleman, 2014; Van Rooyen and Kelly, 2010; Bartels et al., 2010). The

scale of sexual violence in times of armed conflict reflects a high percentage of incidences when compared to times of relative peace and tranquility.

This is to prove a certain militarization of sexual violence as part of the strategy to bring desolation and destruction to a country, by destroying the emblem of motherhood, reproduction and rejuvenation of the population. Some researchers agree that “rape is so widespread that it has become a defining characteristic of the war in DRC” (Bartels et al., 2010). The stigma associated with these crimes leaves lasting emotional scars on women whose lives may no longer be the same, as they experience psychosocial consequences, and the disruption of a normal family life, with a great sense of abandonment. Force and dominance against women “are familiar myths about male heterosexuality, masculinity, soldiering and violence reproduced in the military context” (Eriksson, 2010: 32). Sometimes men in the military or armed groups exhibit their sense of control and power by imposing themselves on women in sexual assault. In such instances, it is believed that:

During the conflicts, women and girls (and sometimes babies) were raped almost everywhere; their own homes and public spaces provided no security... Women and girls were raped in front of their families, and mothers were forced to have sexual intercourse with their sons. Young girls were frequently raped before being abducted and conscripted by rebels or armed groups. Rapists used different objects, including rifles, sticks, bananas, bottles, and pepper-covered pestles. These acts resulted in permanent injuries, fistulas, HIV infections, unwanted pregnancies, and the destruction of reproductive organs (LeBreton, 2010).

In times of conflict in the DRC, women find themselves in a very insecure position and exposed to violence inflicted by those with weapons. Taking advantage of the lack of ordinary governance and the rule of law, men in uniforms show their masculinity and sense of power by sexually assaulting women, humiliating them and making them submissive. It also happens that in ASM operations the military or security forces hired by mine owners to guard their mining concessions behave in a way that increases women’s vulnerability. The impact of violence in times of war also affects the overall well-being of women. The insecurity and fears of being targeted and falling prey to armed groups limit women’s economic initiatives. In the long-term, women resort to begging and asking for donations as they cannot look after themselves. A report by the UNDP suggests that armed conflicts in the DRC have robbed

women of everything, including their human dignity; they have been impoverished and made destitute beyond measure (UNDP DRC, 2006).

Those in a position of force and power abusively take advantage of the situation of women's poverty and vulnerability to impose more pain and suffering on them. Unfortunately, such cases are never uncommon nor isolated; they take place on a large scale. Even in places where women find themselves trying to trade in mining camps, they continue facing such threats to their human integrity. It is not exaggerated to claim that "the Congo war is notorious for the systematic use of sexual violence as a weapon of war, second only to the Rwandan genocide in postcolonial history. It is estimated that over 200,000 women and girls have been raped by rebels and combatants since the start of the Congo war" (Omeje and Hepner, 2013: 44).

Though there are no uncontested statistics of war and rape in the DRC, every available statistic attests to the gravity of women's situation. When women and girls are being raped on such a big scale, it creates a social phenomenon that negatively impacts on the self-esteem and defence mechanism of women.

It is important to add that, as already stated in the section on literature review, there is a link between armed conflicts and the exploitation of natural resources in the DRC: "While the most influential armed groups in Eastern DRC have been created for historically rooted and politically motivated reasons, their motives have changed over time. The profits that can be made in the exploitation of natural resources in the region have increased the economic stake in the conflict" (International Trade Union Confederation, 2011). It is generally accepted that the continued instability in most parts of the Eastern DRC is economically motivated. Troublemakers create insecurity in an effort to continue looting the natural resources and abusing innocent women. Besides wars that have impoverished women, cultural beliefs and myths equally play a negative role on the general socio-development and progress of DRC's women.

### **3. 4. 3. The Economy of Sexual Violence in the DRC's Mining Sector**

The economy of sexual violence entails an ethical question on the type of economic dealings that can be associated with the exploitation of women through sexual violence. In other words, it is about pointing at the ethical challenges regarding the correctness of directly or indirectly making economic gain out of discrimination against women and sexual violence. The reflection that follows intends to explore the scope of the issue of sexual violence linked to economic gain.

Sexual violence, as stated above, is a reality in the DRC mining sector, at times used for monetary profit within the industry. In the context of economic gain of sexual violence, mining jobs and all other related services offered to women are obtained through sexual coercion in different patriarchal dominance framework of sexuality. In this regard, a World Bank study confirms that: “In eastern DRC, 4 in 10 women in artisanal mining face sexual abuse to gain access to work or basic goods” (World Bank, 2015b). People take advantage of women in various forms and exploit women's needs to make any unjustifiable gain.

It can be said that the victimization of women has not ceased to escalate, even in post-conflict times. It is certain that “although a treaty was signed in 2003 ending the Congolese conflict, militia groups continue to wage war over mining areas in the DRC. As a result, militia groups continue to victimize thousands of women in an effort to gain control of the mines” (Wright, 2012). Besides militia groups, male miners also take advantage of women in mining. In mining, women are sometimes raped in a punitive and vindictive fashion, as a way for the perpetrators to demonstrate their power over women, and thereafter impose their desires on them.

Statistically it is estimated that two million people are active in the ASM sector, of which fifty percent is comprised of women who live and work among men in mining camps, and the men impose their rules and worldviews on women (Hayes and Perks, 2012: 529). Women who find themselves in such places are disadvantaged in many ways. They are economically weak, security wise they are vulnerable, and psychologically they are traumatised by other fearful events. They have no voice for their grievances, and they are considered to be intruders in a “world of men”, and in some ways, they are made to pay for their intrusion. Women therefore become an asset for quick money, and as sexual slaves and forced workers (Côté, 2014: 8-9).

In this way, sexual violence done to women responds to a scheme to increase the monetary gain for the men involved.

It can be affirmed that the existence of factors that create conditions of possibilities of GBV are associated with monetary gain in artisanal mining camps. They include: a high concentration of hyperactive men, including ex-combatants and abusers of drugs, high consumption of alcohol (imported and locally brewed), and a high rate of unemployment (Hayes and Perks, 2012). Due to economic vulnerabilities, women and girls are exposed to sexual violence, being easy prey for the sex trade and exploitation at the hands of their employers or other men around them.

Within economic vulnerability and uncertainty of a decent life, women and girls are being lured into prostitution, which in many instances exposes them to rape, even by those from whom they ought to seek protection. For example: “In the DRC, girls as young as 13 were raped by members of the UN Mission in the Democratic Republic of Congo (MONUC) peacekeepers. Other girls as young as 11 engaged in what was referred to as ‘survival sex’” (Aoláin, Haynes, and Cahn, 2011: 117). Exposing their lives for money to survive is a form of abuse that affects the integrity of women and girls in the mining sector.

As indicated above, some traditional and superstitious beliefs have also exposed women and girls to varying abuses. The virgin myth and bad luck brought by a woman’s presence in mining (Hayes and Perks, 2012: 535) are examples of such a retrogressive sociocultural burden on women. People with such beliefs do not relent in imposing themselves on innocent and vulnerable girls.

In ASM, women are often reduced to a commodity, and abusers take advantage of them to make economic gain. The trend of life is such that annihilation is always in sight. Working conditions and living environments are hazardous, to the extent that women live in constant fear of death. It is in such environments that others make their money and do business by exploiting the vulnerable, not only in times of war and conflict but equally in “conditions of impoverishment and political repression” (Jacqui True, 2012: 3). Such violence and exploitation of women can only contribute to their disempowerment.

### **3. 4. 4. Economic Disempowerment of Women in the DRC Mining**

The concept of disempowerment can be explained differently. In Cheater's understanding, this concept means "the sense of the withdrawal of publicly defined authority, the hushing down of women's public voices and the reinforcement of the cultural obstacles women have to face when using their formal civil rights" (Cheater, 1999: 54). This entails all that slows down or impedes women's capabilities for self-determination in economic and social life.

Cultural values in popular imagination are more convincing than any other conceptualization of modern, front-line issues. The cutting-edge issue of gender, or even that of human rights, can hardly overtake the popular imagination of a conception or misconception of the culturally defined roles of men and women in society. Though the relevance of balance of gender roles is understood today, the cultural boundaries between men and women are enormously wide in many aspects. The division of work, the proportionality of salary, the political distribution of public mandate, the main-streaming of information and economy, everything seems to be under the strict evaluation of cultural landmarks of masculinity. Thus, the importance of this study focusing on an area where this negative masculinity is at play, such as the area of the mining economy.

For example, an abusive husband may find sympathizers on the simple grounds that his fellow men are culturally molded to accept male dominance. When it comes to coexistence and social relationships that encourage social harmonization, an effort to live together in accordance with a human rights and universality framework may always be secondary to a sociocultural framework of male dominance. This justifies the existence of permanent tension between culture and rights because "the inevitable conflict between culture and human rights is premised on a particular set of images of culture opposed to rights, even though human rights are a cultural phenomenon" (Levitt and Merry, 2011: 83).

In many instances, people are inclined to approve cultural acts that may directly conflict with the rights of some individuals in society. For example, men and even women easily tolerate a man physically abusing his wife. Nonetheless, it is also not to affirm that culture antagonizes human rights in all aspects; there are instances of harmonization between culture and human rights.

When it comes to gender issues, particularly to women concerns, it seems that culture breaks away from human rights in the majority of cases. Cultural organization of roles in the labor force is sometimes a form of gender discrimination that constitutes a breakdown in the connectivity of culture and human rights. Some cultures assign women to static roles in the labor force. The mining labor market is one such example. It is relevant to briefly consider a comparative overview of the economic contribution of women across Africa.

Women throughout Africa face enormous impediments to realize their progress towards economic participation. Most impediments are culturally mounted. Central and West African women excel in petty trade of all sorts, while southern African women are not less active in trade enterprises. Despite these steps of economic initiatives by women, women's freedom for more economic initiatives continues to suffer. For example, in Zimbabwe, some impediments are reinforced by sociopolitical constraints that do not help women's initiatives to eradicate economic vulnerability in providing food security even if in part of the country, as women are culturally assigned the responsibility to provide food to their families, as is the case for Shona women (Horn Nancy, 1995: 142).

The same impediments are common among women in other countries of Southern Africa. In this part of the world women are sometimes excluded from growth-oriented strategies, given the culturally formed view that women enterprises are insignificantly attractive compared to the macro-economically proven mainstream economic ventures. Thus, mainstream economic strategies tend to ignore on a large scale the contribution of women's individual incomes to the global welfare of families and the economy at large (Downing, 1995: 178).

There is a bit of difference with the Yoruba and Igbo women of Nigeria. Their influence in the economic structure is noticeable through control of market places, controlling a de facto setting of financial transactions, exchange of information, and intercultural social exchange between people. Nevertheless, such power does not necessarily translate into real political and financial power of decision-making to determinate the orientation of Nigerian economic faces.

Cultural influence still marginalizes women and in the words of Falola Toy: "In the more formalized power structure, women are marginalized and tend to operate within a clientele framework -serving as clients and agents to a male power elite -to tap opportunities" (1995:

24). This corresponds to the framework of patriarchal dominance; always in need to be in control, and imposing a submissive position on women.

On the part of women in Eastern Africa, their contribution to political and economic development is relevant and valuable. They receive recognition internationally, as in the case of the late Wangari Maathai. East African women have historically trailed their men folk in market trade as commented by House-Midamba, “Kenyan trade is yet another area in which women have been 'out-gendered by men.’” (1995: 82). With the imposition by the World Bank and the IMF of the Structural Adjustment Programs (SAPs), coupled with the hardships in recent years of political and social instability, more Kenyan women have taken prime roles in wholesale enterprises and small scale trade (Horn Nancy, 1995: 141).

In general terms, the role of women in market trade is known, though not many studies are done with the specification of an accurate data collection. Such oversight turns women's massive socio-economic contribution into an unimportant economic activity that does not deserve to be mentioned or even counted in African statistics. This constitutes another form of disempowerment and is due to the general cultural imagination of people who tend to marginalize and minimize women’s efforts in the global arena of economic development, confining them to other, less male dominated activities.

In this respect, Cheater states that “when globalization behaves in a vicious spiral and brings about the reinforcement of traditional gender values, women’s disempowerment in the public sphere may become more than a possibility” (Cheater, 1999: 55). Women’s economic disempowerment in Africa is a reality with various socio-anthropological implications. As part of the global community of women, the DRC’s contingent participates in the same reality of marginalization and submission of women.

### **3. 5. Conclusion**

The prospect of working to gain money in ASM drives women to engage in mining activities as miners or providers of services, in order to survive and overcome a situation of poverty. A review of the existing empirical studies on women in the DRC’s mining sector reveals that though issues affecting women in mining have been discussed in many other academic fields,



such as sociology and anthropology, there is need for a feminist ethical perspective to those issues affecting women in the DRC's mining industry. Thus, the chapter reflected on the situation of women in the DRC's mining industry, by highlighting the situation of poverty that is general to the DRC, despite enormous, potential mining wealth. Trapped in a web of poverty and conflict, and sustained by the desire for survival, women have paved their way in the economy of ASM.

Despite their full participation in ASM, women appear to be side-lined and disadvantaged, sometimes forced to work outside any acceptable standard, and violated in their basic social and economic rights. In ASM and in the DRC's mining sector in general, the disempowerment of women "include women's increased dependence, reduced access to resources and decision-making, worsening quality of life, and compliance with policies and practices that circumscribe women's rights" (Datta and Kornberg, 2002: 3). It has been explained in this chapter that socio-cultural beliefs and myths have negatively impacted the interaction of men and women in mining, placing the former in a misconceived position of dominance based on a misreading of masculinity, while the later are being victimised through sexual violence and economic disempowerment.

The level of poverty affecting women has not decreased, as evidenced by the reality of poverty affecting the majority of the DRC population's access to health services, education and socio-economic development. Women and girls are the most disadvantaged in the control and distribution of wealth and resources generated by their hard mining work. In view of the fact that women continue to be disadvantaged in the mining sector, there is a need for an ethical analysis of the various aspects of the DRC's Mining Policy. To achieve this aim, the next chapter focuses on the feminist analysis of the DRC's Mining Policy based on the theoretical framework of feminist ethics and the Capability Approach, CA.

## **CHAPTER FOUR: FEMINIST ETHICAL ANALYSIS OF THE DRC'S MINING POLICY**

### **4. 0. Introduction**

The previous chapter presented the situation of women in the DRC's mining industry, describing the contrasting reality of a potentially mineral rich country with striking poverty that entangles the lives of the majority of women, despite their economic initiatives in the mines. The chapter detailed that in the Central and West African nations, women are active in trade. The DRC's women like their central African counterparts are active in different economic ventures, and they have proved to be imaginative in sustaining their families in an informal economy. Contrastingly, in the mining sector, women have continued to stall in low paying jobs, not fully benefiting from the available mining economic resources, and marginalised despite the existence of a mining legal framework regulating that sector.

Such a contrast around human capital resource necessitated an in-depth analysis, in order to determine the wrong doings and predict the ethically correct actions, regarding the participation of women in the mining economic structure. To achieve this aim, an ethical theory is required. Accordingly, this chapter applies a theoretical framework able to orientate this study. It discusses the theory of feminist ethics and the CA in detail, and applies these two ethical theories guiding the assessment of the DRC's Mining Policy. The feminist ethical theory and the CA are reliable tools for the analysis of the DRC's Mining Policy and its impact on the life of women in mining. The two theories will offer insights on the plight of women in mining.

This chapter is divided in two parts. The first part consists of a detailed approach on feminist ethics and the CA elaborated in readiness for the ethical analysis of the mining policy. In this part, an effort is made to consider the relevance of the feminist ethics and the CA in assessing the situation of women in the DRC's mining industry, to establish whether women have been enabled to achieve a life of their choice (Crocker, 1995: 185). This chapter will firstly present the aspect of feminist ethical theory that can interest the study, along with a critique of the theory, as well as present the advantages of feminist ethical theory. Secondly, the CA will be explained and detailed and critiqued. The chapter will explore the ten human capabilities listed

by Nussbaum. Following this, the chapter will apply these theories to assess the existence of ethical gaps in the mining policy.

The second part of this chapter entails the feminist ethical analysis of the mining policy. The analysis in this chapter will be a two-step process. The first step consists of engaging the mining policy with the lenses of feminist ethics. The analytical task in this step will be to study the DRC's Mining Policy, reading it in reference to the principles of feminist ethics. For the purpose will be to bring to the surface every aspect of the policy that goes against the interests of women in mining. This will be described in conceptual terms of ethical gaps, constituting the economic and human subordination and discrimination against women. It will be argued that these gaps negatively affect women's experience of mining activities, by creating challenges that prevent women to fully participate in the mining industry on equal terms with their male counterparts.

The second step will use the insights of Nussbaum's CA, which is closely associated with the assessment of public policy (Alkire, 2002: 4). In this step, the chapter focuses on the critical task of investigating the states of women comparatively, with selected basic capabilities. Concretely, the study will describe women's status in terms of realization or rather the lack of achievement of those capabilities, as a result of the application of the DRC's Mining Policy. To put it differently, this chapter sets out to critically assess the assumption that the ethical gaps in the DRC's Mining Policy are challenges that negatively affect the accomplishment of the basic capabilities of women to function to the best of their human opportunities.

#### **4. 1. Feminist Ethical Framework**

Preparing for the analysis of the mining policy in the second part of this chapter by using feminist ethics, it is important to explain the understanding of this theory in detail, as elaborated on by some of its protagonists. A deliberate choice was made to focus on Alison Jaggar perspective of feminist ethics, for the reason that it may accurately support an analysis contextualised within women's experience in mining. In my opinion, the western feminist perspective is not out of touch with the African realities it intends to inform in this study. On the contrary, the choice for a feminist perspective that focuses on the valorisation of women's experience, is relevant to this study, regardless of it being western. The study did not engage

the contribution of African feminist ethics to issues of African women. Not that I could not benefit from such intellectual engagement, but for the I chose to rely on a more elaborated theoretical framework that could guide the study. To my opinion, Jaggar's feminist ethics can inform the analysis of the DRC's Mining Policy from the perspective of care- and power-focused ethics.

#### **4. 1. 1. Defining Feminist Ethics**

Feminist ethics is not as new as it seems to be. The 18th Century philosopher Wollstonecraft Mary debated the sense of women's morality (Bell Linda, 1993). The debate focused on the possibility to link morality with gender traits, or simply to ignore gender traits in matters of morality. This debate contributed to the development of a feminist approach to ethics, focusing on the similarities and differences between masculine and feminine moral theorization. Gilligan enriched the debate with her view on how women brought a different sound to the moral theorization by adding a "different voice" (Gilligan, 1982: 7).

In a 'different voice', Gilligan argues that women and girls do not have the same understanding of moral issues as men. Instead, women perceive their moral responsibilities in terms of affiliation with others through relationships. In this way, Gilligan focuses on the moral aspect of care, and presents feminist ethics in terms of women's trait of being the carers. Gilligan's view was an intellectual revolution in the sense that she made it possible to question the reliance on abstract rules of mainstreaming theorization, by adopting a more interpersonal approach of moral theorization based on relationships.

Accordingly, the process of feminist theorization is to highlight particular ways in which people experience the world, because it is particular, and specific, and so women's experience in ethical matters has since been considered in its particularity. Sustaining this epistemological debate, feminists argue that: "there is a 'woman's voice' or a fund of 'women's experience' that is ignored or distorted in mainstream theorizing, and that can serve as a touchstone of corrective or reconstructive feminist theorizing" (Walker Margaret Urban, 2007: 63). In matters of moral reasoning, feminists contend that the woman's voice is ignored or distorted in the mainstream ethics that fails to account for women's experience.

Feminist ethics is an ethical theory that focuses on feminism as a line of thought that analyses social issues by opposing the cultural devaluation of women, which is central to traditional ethical theories. This is rooted in the contemporary movement of feminism, which intended to define a new way to see and analyse social situations from a feminist perspective, contrary to the much-dominated, patriarchal perspective (Farley, 1996: 5).

Though a contested term, feminism is a movement that sometimes borders the ideological concept of activism in political, cultural, and socio-economic situations that contest the domination framework, which establishes gender discrimination (Walker Margaret Urban, 2007). In its analysis, ethical feminism unpacks the artificial, social constructions of gender, race, class, age, sexual beliefs, and other particular differentiations that can be the basis of discrimination and oppression among peoples.

The moral language, the perception of world's problems, the moral inquiry by women, or a moral experience of women, are noted as different areas of ethics considered neglected by traditional ethical theories and dominated by the sound of the mainstream's voice, while the women's voice was marginalised. According to Walker Margaret, "The questions raised by feminist ethics are only some of those that might be raised about the habitability and worth of our moral forms of life. Moral and epistemic authority matter particularly to feminism because of the historic denial of them to women" (2007: 82).

Mainstream theorization associates the ability for moral life and the capacity of knowledge to the gender authority, which is unjustifiably recognized as men and denied to women. Thus, being a sort of an epistemic revolutionary movement, feminism insisted in raising their voice on issues that matter to women and are neglected by mainstream theorizing. In fact, not to limit feminist ethics in a definition, it is important to suggest its scope of activity by what it is concerned with:

A feminist ethics is concerned with what is as well as with what ought to be. While every ethics recognizes a gap between what is and what ought to be, most ethics do not recognize, as feminist ethics must, the way this gap makes even ethical theorizing itself problematic. This is so partly because any ethics can be co-opted and used by those in control to maintain the status quo. Thus, a feminist ethics, given its central opposition to oppression, must begin and proceed with a constantly watchful eye on the way things are, lest the ensuing theorizing exacerbate current

problems and undermine the emancipatory force of its analyses and ideals (Bell, 1993: 20).

Concerning itself with ‘what is’, means that feminist ethics needs to establish the status of affairs regarding the oppression of women and marginalized groups whose voices are subdued. The ‘what ought’ to be, can only be established in connection with the real ‘what is’. Otherwise, the entire process of moral theorizing is problematic allowing use in some ways by the dominant people to maintain the status of oppression. This justifies the relevance of feminist ethics, to approach issues from a different perspective, with women’s traits and experience, valuing moral reasoning based on relationships, particularity and connectedness. It all culminates in the effort to dismantle the culturally constructed structures of domination and epistemological oppression.

Contributing to the understanding of feminist ethics, Jaggar suggests that to “qualify as feminist, an approach to ethics (whether care focused or power focused) must first critique the gender-biased character of most non-feminist (traditional) approaches to ethics” (Jaggar, 1992: 263). The reason for this is that non-feminist ethics seem to have trivialized and ignored women’s moral interests, issues and experiences. Feminist perspectives are important in the analysis of the DRC’s Mining Policy, as they may highlight the aspect of care focused ethics, as well as power focused ethics, and offer alternatives on other ways of theorizing moral issues.

#### **4. 1. 2. The Feminist Ethical Framework**

Feminist ethics approaches to moral issues vary in their perspectives of analysis; depending on the inclination of either a care focused or power focused perspective. For example, Carol Robb suggests that the point of departure for moral analysis should be ‘real women’s real experience’ (Robb, 1981: 48-68). Alternative perspectives claim that a starting point of moral reflection should be the “nature of”- Statements: nature of God, nature of masculine, nature of feminine, which Harrison and Robb judges to be very abstract (1985: 1). The study will use a feminist ethics framework from the perspective of Jaggar (1992), who proposed four principles to guide a moral reflection from feminist perspectives. In my opinion, the following four principles are relevant for the theorization of an ethical feminist ethics discourse on the DRC’s Mining Policy.

1. Women's experience as a paradigm for ethical theory
2. Appreciating the values implicit to female ethical practice
3. Feminizing the ethical subject
4. Rethinking moral rationality

A feminist ethical reflection is to consider the principles that help in challenging and eliminating the biased masculine views of ethical reasoning. These principles denote the explicit commitment to correct male biases that prompted the feminist movement. It is important to unpack each of these principles and theorize their possible link to this study. With this in mind, it is argued that each of these principles supports an ethical perspective of the mining industry by pointing out the various subjections of women in the industry and presenting a corrective perspective for the participation of women in the mining sector.

#### **4. 1. 2. 1. Women's Experience as a Paradigm for Ethical Theory**

Personal human experience is valuable in discerning situations, such as when a decision for a conduct has to be made that will be deemed rightful. Traditional ethical reasoning considers masculine experience to be normative, while ignoring feminine experience. Feminists respond by valuing women's experience of life that demonstrates a characteristic of nurturing and caring for others. It is a much-needed experience in an ethical approach to reality. It can be said that women's experience also establishes a direct connection to social, political and economic, as well as cultural and religious systems. Women can offer the aspect of the experience of caring to these systems. On this aspect, Jaggar (1992: 348) affirms that:

Since feminist ethical theory is often identified with the ethics of care, it is worth emphasizing that neither the ethics of care or the project of basing ethical theory exclusively or primarily on women's experience should be taken as feminist orthodoxy. I have nevertheless chosen to devote considerable space to care ethics because it offers the best known, and many believe, most radical challenge made by feminists to modern ethical theory. It contends that attention to women's moral experience advances values that are ethically superior to those characteristics of modernity and fosters more adequate conceptions of moral subjectivity and moral rationality.

Care ethics thus stands as a relevant perspective in the field of moral reasoning. In support of women's experience, Jaggar points out the specificity of care as a trait of women's experience

that denotes a different way of considering ethical theories. By emphasizing this particular trait, Jaggar does not argue in favor of moral relativism, but simply accords importance to aspects of subjectivity in morality. She makes it clear that there are moral tenets particular to women, otherwise, even care ethics itself cannot be sustained in the presence of a moral relativism. The human experience, in this case women's experience, is a part of subjectivity based on facts about social, political, cultural and religious systems. The views of women, individuals and groups, as subjects of the experience should count in the process of moral deliberations.

In analyzing the DRC's Mining Policy in relation to the situation of women in mining, it is vital to value women's experiences. It constitutes grounds for ethical theorization from the perspective that these experiences speak directly to the ways women live and perceive their interaction with others in the same mining sector. The present study supports Jaggar's statement that: "one reason for public policy's frequent bias against women is that equality of consideration is often assumed to require treating men and women indistinguishably" (Jaggar, 1992: 350).

In a situation of oppression of one group by another, as is the case of women in the DRC's mining industry, treating men and women without considering their various particular needs, may seem another form of discrimination<sup>12</sup>. To avoid this bias, it is important to resort to women's moral experience that can illustrate the values advanced by women's experience.

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<sup>12</sup> Jaggar A. highlights the mistake by public policy to treat men and women indistinguishably in all matters, thinking that it represents equality of consideration (Jaggar, 1992). For Jaggar, to consider men and women equally is to consider women's issues and interests as equally important to that of men. For example, where economic policies are concerned, the needs of men and women should be given the same consideration. Nevertheless, the way to treat those issues may not be the same as the gender difference needed to treat each group according to the specific needs and interests related to them. In this sense, impartiality will mean to treat those issues with justice and fairness. It follows that fairness may be required to give preferential treatment to women's issues because they need it the most. In this sense, moderate partiality becomes 'fairness'.



#### **4. 1. 2. 2. The Values Implicit to Women Ethical Practice**

Part of the bias reproach done to the mainstream ethical theory against women, is the neglect of women's interests and women's issues (Walker Margaret Urban, 2007). This neglect also expands into ignoring the way women approach moral issues. The way women perceive things, in relation to their interests, and the way women go about issues are as important as the values guiding the process of ethical decision-making. Among those values are women's characteristics of nurturing and caring (Noddings, 2003: 25). These values encompass humanitarian sensitivity and responsiveness to the needs of others, intimacy, connection, interdependence and responsibility.

Such values are not without a place in the ethical decision-making process. This explains the reasoning by Jaggar, who contends that:

modern ethical theory has always feared that justice would be subverted if too much weight were accorded to these values, but it has accepted them in what it has seen as their proper place, namely, within the limited domain of intimate personal relations; on the epistemological level, it has accorded them a similar minor role as possible motivators to right action (Jaggar, 1992: 359).

Women's values are considered a part of the private realm of relationships; thus, the traditional ethical theories may argue that basing moral reasoning on such values has the risk of weakening the robust domain of justice for example with traits related to emotions. Contrary to this view, the present study, in support of feminist ethics, argues that the value of care can not only humanize the judicial system but also strengthen the system by the proper care that can be rendered to those facing justice, during and after the judicial process, by showing them real concern and handling their cases with humanity. Regarding the moral theorization based on values that support relationships, Held argues that:

When we focus on women's experience of moral problems, however, we find that they are often especially concerned with actual relationships between embodied persons and with what these relationships seem to require. Women are often inclined to attend to rather than to dismiss the particularities of the context in which a moral problem arises. And many of us pay attention to feelings of empathy and caring to help us decide what to do rather than relying as fully as possible on abstract rules of reason (Held, 1998: 99).

From this quote, it is understood that paying particular attention to women's experience of moral theorization can open the mind to the realities of moral responsibilities that come with the sense of connectedness. Every moral problem involves individuals with particularities.

The feminist approach is therefore indicative of the necessity to consider feelings and empathy, not only the dictate of abstract reasoning. It is hence the ambition of feminist ethics to move what is seen as a minor role onto a central stage because the appreciation of feminine values must also touch the culturally constructed values, by presenting in a new light feminine value of community, connection, interdependence, and sharing, along with absence of hierarchy, nature, and care, and so on. (Held, 1995). When analyzing the DRC's Mining Policy with regard to women, it will be important to consider the contribution of such values to the betterment of the mining workplace and the overall improvement of women's status. This indicates that women deserve recognition in virtue of their moral agency.

#### **4. 1. 2. 3. Feminizing the Ethical Subject**

Feminists' criticism of modern ethical theory mention, among other grievances, the denial of women's moral agency. The denial does not only imply the exclusion of women from moral debate but also rejection of their humanity. Thus, obstructing women's contribution to moral debate on the alleged presumption that women do not have moral reason, thus sustaining a debate on the humanity of women. Marilyn French in an article titled, "Are Women Human?", declares that:

Major human rights organizations have recently accepted the proposition that women's rights are human rights. This acceptance is a matter for celebration for those of us who care about human rights and those who suffer their infringement. The reason women have had to fight so long for this recognition is that the matter of rights is grounded in a more profound question: whether women are human (1999: 71).

Denying women's moral agency has led to doubting their humanity, which resulted in all sorts of discrimination and oppression against women. It is therefore necessary to move away from the type of neo-cartesian concept of the moral subject, disembodied (mind only), asocial, unified, rational, essentially as separated from others. These traits characterize the male ethical subject. Thus, it is necessary for moral subjects to be feminized, in order to include women as

moral agents, and as Mann Jill explains “feminized is not to be equated with ‘effeminate’” (2002: 130). Feminization signifies an ethical point of view established from a perspective of feminine traits.

Carol Gilligan constructs a different ethical subject in which women see themselves as connected to others, and reject isolation and abandonment, contrary to men who tend to fear connection and intimacy. She finds a different voice in women (Gilligan, 1982). With such a view of an ethical subject as relational, women have different moral preoccupations that enable them to consider dilemmas as conflicts of responsibilities, rather than conflicts of human rights. In this way, women have dynamic and pragmatic ways of resolving those dilemmas by prioritizing efforts to strengthen and amend relationships through the practice of caretaking, and not through recourse to male dominated principles of justice, equality, right and respect (Jaggar, 1992, 359).

Relating this point to the analysis of mining policy entails that the ethical subject should not be indistinguishably considered. As far as women are concerned, the analysis should be informed by the feminized ethical subject, which entails another approach to moral rationality. This means that, in all matters of mining activities, the rightness and wrongness should no longer be defined only by one voice, but necessarily also by a different perspective that prioritizes women’s interests and moral rationality.

#### **4. 1. 2. 4. Rethinking Moral Rationality**

It has been said that mainstream ethical theories assume that women do not possess moral reason, as they are associated with the affective dimension, rather than with cognitive dimension seen in masculine traits. From this perspective, moral rationality implies consistency, impartiality, and the formula of universal law. The prospect of care ethics, for instance, is to reverse the culturally constructed idea of moral rationality. To argue it differently, Jaggar declares that:

The ‘style’ of moral reasoning associated with care ethics is often contrasted with that characteristic of justice ethics. Whereas justice thinking focuses primarily on the structure of an ethical situation, deliberately disregarding the specific identities

of the individuals involved, care thinking is characterized by a distinctive ethical orientation towards particular persons. This orientation has both affective and cognitive dimensions: caring individuals are both concerned about the other's welfare and perceive insightfully how it is with the other. Contrary to justice thinking which is portrayed as appealing to universalizable moral principles that guides impartial calculation of who is entitled to what (1992: 360).

The logical argument of this quote deconstructs the negative view of mainstream rationality against care ethics only being perceived in its affective dimension. A different voice in moral rationality is to associate care ethics with cognitive reality. According to this thesis, it is verifiable that moral rationality based on care is highly cognitive in its process. There is a level of reasoning, a process of weighing options and alternatives in actions of care that do not come abruptly, without planning and rationality.

Presenting moral rationality in its affective dimension, which is not dissociated with the cognitive aspect, implies an enrichment of ethical thinking in a way that specifies each particular situation and context as meaningful. Furthermore, considering care ethics in a given situation has the advantage to take all angles of the problem and individuals involved into account globally. In processing the situation, one is inevitably led, for example, to appreciate the interests, the benefit, the good, and the well-being of the individuals concerned. Such a view of moral reasoning associated with a mining policy will probably succeed in reaching a satisfactory outcome in favor of the disadvantaged people.

#### **4. 1. 3. Positive Critique of the Theory of Feminist Ethics**

Feminist ethical theory has been positively and negatively critiqued. In this section, the study presents a positive critique in the form of the advantages of the theory of feminist ethics.

##### **4. 1. 3. 1. The Use of Gender as a Category of Ethical Analysis**

Feminist ethics has broadened the scope of ethical analysis by opening the vision to a more private sphere of relationships. Not basing its reasoning on abstract concepts common to modern ethical theory, feminist ethics embraces a more direct link to people in terms of shared characteristics, by the use of gender as a category of ethical analysis. On this idea, Putnam Tong (1997: 37) argues that “to a greater or lesser degree, all feminist approaches to ethics are

filtered through the lens of gender. The fact that feminists disagree about the ways in which and the degree to which culturally constructed concepts of 'femininity' and 'masculinity' contribute to women's subordination explains why we must speak of feminist ethics in the plural". The notion of gender as moral categorization has demonstrated the possibility of variation in feminist ethics, as long as the focus is on care or on power. This is an advantage to the ethical approach in that, with care focus, culturally conceived feminine values (empathy, compassion, nurturance, sympathy, kindness, and so on) have become part of moral theorization.

Regarding power focus, feminist approaches to ethics have contributed to the awareness about the need to dismantle any power system, or social norms and structures that contribute to the oppression and subjugation of women (Putnam, 1997). Feminist ethics has the advantage of changing this perception, by emphasizing a moral theorization based on women's traits.

Here, the advantage is that many policies and practices that appeared gender-neutral and gender-blind, are now seen in their true face of a gender-biased policy that needs to be corrected. The same gendered ethical analysis, when applied from a power-focused perspective, has permitted exposure of the imbalance of power between men and women, and the oppression of any disadvantaged group (Walker Margaret, 2007: 23). This is critical in the process of reversing oppression of women and other disadvantaged groups.

Owing to feminism as a movement, in general, insisting on the equality of women and men in social, political and economic domains, many gender injustices have been redressed, or are in the process of significantly being dealt with. One of the major advantages of feminist ethics is the presentation of gender as a moral category.

#### **4. 1. 3. 2. Consideration of the Individual's Context in Ethical Decision-Making**

Feminist ethics does not rely on universalizable moral principles as such because the non-feminist moral reasoning "obscures the particularity of moral actors and relations by emphasizing universality, sameness, and repeatability, excluding or regimenting emotional experience. Ignoring or slighting continuing relationships of intimacy and care, these views

feature abstract problem solving to the neglect of responsive attention to actual others” (Walker Margaret, 2007: 58). It is important to explore the particularity of moral actors and the singularity of a problem, despite all other universalizable circumstances of the case.

The advantage of such a perspective is to avoid treating people indistinguishably. Each person is unique and each moral problem is singular. Hence, the universal law and moral principles should be applied within the singularity of the moral actor and the moral act, along with the context. Thus, feminist ethics prefers the individual approach to each case, according to identifiable people involved.

Taking this view, for example, from the perspective of feminist ethics of care reasoning, it can suggest that the emphasis be put on relationships and not only on abstract principles of justice. This allows for the realities of emotion and intuition to factor in deliberations towards ethical decisions. A person or group’s experience matters most in the analysis. In spite of the above-mentioned advantages, feminist ethical theories also present some weaknesses.

#### **4. 1. 4. Weaknesses of the Theory of Feminist Ethics**

Besides the appraisal of feminist ethical approaches, there are views that argue the weakness of this theory. The study presents some of these opposing views, selected in accordance to the research problem.

##### **4. 1. 4. 1. Feminist Ethics is not One and Coherent Theory**

Feminist writers have developed a wide range of ethical thinking that tackles issues of women’s subordination and oppression of any disadvantaged group of people. Different approaches examine issues according to their own perspectives. Though there is agreement concerning the basic conditions of adequacy for feminist ethics, the split views on which the variety of perspectives are based, make it difficult to form one coherent theory to be acknowledged as feminist ethics (Munson, 2004).

Sometimes it appears difficult to have a common ground among the various schools of feminist’s thoughts. There are liberal feminists, as well as radical ones; Marxist feminists on

one hand, and radical socialists on the other hand. In addition, there are also multicultural, global, and ecological feminists, as well as existentialist, psychoanalytic, cultural, and postmodern feminists. According to Putnam (1998: 2), these different perspectives,

signal to the broader public that feminism is not a monolithic ideology, that all feminists do not think alike, and that, like all other time-honored modes of thinking, feminist thought has a past as well as a present and a future. Feminist thought's old labels also serve as useful teaching tools. They help mark the range of different approaches, perspectives, and frameworks a variety of feminists have used to shape both their explanations for women's oppression and their proposed solutions for its elimination.

This quote explains that feminist ethics, being so diverse in its formulation, its mode of reasoning, and method of solving problems, is not one theory. This reality constitutes an epistemological problem when considering using this framework, which is mostly presented in uniformity when, at the same time, its protagonists acknowledge its plurality. Faced with these two opposing views, the research study contends that despite the existence of epistemological plurality within the feminist theory, there is coherence of thoughts and mode of reasoning for decision-making.

Each group of feminists has offered approaches to issues of oppression of people and subordination of women. Some feminist ethicists have their focus on ethical biases associated with women's traits and behaviors; other feminist ethicists reflect on the political, legal, economic, and ideological subjection of women (Jaggar, 1999). The study concludes that these fragmented views presented by feminist ethicists do not disqualify feminist ethics to be one coherent theory that can resolve the disputed subordination of women.

#### **4. 1. 4. 2. Feminist Ethics Disempowers Women**

The foundation of feminist ethics is an attempt to rethink and reformulate the assumptions of modern ethical theory based on masculine traits, and the concomitant neglect of women's moral experience (Held, 1995). In the process, it appears that instead of reversing and rethinking those assumptions, feminist ethicists have replaced men's interests and rights with women's (Bartky Sandra Lee, 1990). Additionally, feminist ethicists have emphasized the realm of private sphere, where women's activities are more pronounced.

Furthermore, feminist ethicists have prioritized “cultural feminine ways” of ethical reasoning that emphasize relationships, particularity, and partiality. According to Bartky, this process disempowers women by trying to turn their experience into building in women a replica of men’s ego and binding men’s wounds (1990: 120-141). There is ultimately the sense of loss of self on the part of feminist ethicists.

Gilligan dismisses such criticisms based on misconstrued opinions of feminist ethics. It is not about putting women’s interests first; it does not exclusively focus on women’s issues; it does not supplant men, with women making the latter authoritative in matters of morality. Feminist ethic has succeeded in implementing women’s moral reasoning in appealing to care and responsibility, with emphasis on human relationships, instead of always relying on justice-based reasoning. It appears logically convincing to agree with the views of Gilligan on the originality of feminist ethics, in that it is a different voice to moral reasoning (1982).

Implementing feminist ethics in analyzing the DRC’s Mining Policy has the advantage of relying on women’s experience and their situational factors, which need a different approach to resolve biases from culturally influenced policies that reinforce oppression and subordination of women. The identification of feminist ethics of care-focused and power-focused approaches can be relevant to the analysis of the DRC’s Mining Policy.

#### **4. 1. 5. The Need for a Feminist Ethical Analysis of the DRC’s Mining Policy**

As explained above, feminist ethics has its roots in the efforts of academics and activists inclined to value new moral perspectives to conceptualize issues of oppression. They departed from the authoritative masculinity of traditional moral theories characterized by gender biases. They focused on feminist approaches that valued women’s moral traits (Walker Margaret, 2007: 57).

This innovative perspective of moral theorization stresses, in all social, political and other life contexts, the values of equality, autonomy, equity with regards to women’s involvement in public or private spheres. The DRC’s mining industry is one such public-private sphere displaying the authoritative and dominative hand of masculinity in the management and actual participation in mining activities.



Different empirical studies of the mining industry in the DRC mention biases and malpractices against women and girls (Hayes Karen & Burke Richards, 2003; Turner, 2007; Renafem, 2015; Pact, 2010; Garret, 2008). That being the case, a feminist ethical approach of the policy regulating the mining sector is highly relevant. Firstly, a feminist ethical analysis can offer a basis to expose all biases suffered by women in the course of their mining activities. Secondly, it puts to question the wrongly perceived idea of equality of consideration as sameness of treatment between men and women.

Most often public policy exhibits biases against women by trying to treat them indistinguishably to men. With Alison Jaggar, the feminist theory is used to denounce this conception of sameness of treatment, by calling attention to the need to recognize the distinction of gender, and all that pertains to it. She explains that “Feminist research has revealed that superficially sex-neutral issues in fact affect men and women differently and feminists insist that these differences must be addressed by any public policy that is ethically adequate” (Jaggar, 1992: 350).

Various articles of the DRC’s Mining Policy seem to adopt this view of treating men and women indistinctly in the course of mining activities. Is this perspective beneficial to DRC’s women? The feminist analysis of the mining policy will help clarify this issue. Another theory that will guide the study in analyzing the mining policy regarding the participation of women in the mining workplace is the CA which will be discussed in the next section of the chapter.

#### **4. 2. Nussbaum’s Capability Approach**

In this section, the study explains the CA as initially formulated by Amartya Sen, and completed by Nussbaum. In addition, the section will elaborate on the list of basic capabilities. It is my opinion that the selected capabilities can be descriptively referred to, in order to assess the impact of the policy on women’s capabilities to make a living in the mining industry.

#### 4. 2. 1. Understanding the Capability Approach

The CA is a theoretical framework that claims the moral importance of individual's freedom to achieve well-being, and freedom is to be understood as opportunities that people have to pursue something that they value (Sen Amartya, 1999: 75). Concerning the CA, Nussbaum started from the same assumptions with Amartya Sen, who looked at the real situation of people on the ground to determine the quality of their life, which could reveal the materiality of justice or injustice. In this way, "a capability is a potential functioning" (Walker Melanie, 2006: 28).

A capability is concretely expressed in the individuals' freedom to do or to be what they can achieve, when placed in conducive contexts (Sen, 1999). For this reason, the list of functioning is open as much as people's freedom enables them to do or to be what they value.

Sen takes a different approach to for example to Rawls by assessing justice because the quality of life is not measured by people's material resources but by the level of peoples' capabilities or their ability to attend to their well-being. In Sen's view, well-being is the potential for individuals to be agents for their own freedom, which in return enables them to be who they intend to be, as long as they have valuable reasons for such a choice (Korsgaard Christine, 1993: 54). Sen used this theory of capability to assess the materiality of justice, by determining whether people are being accorded the freedom to achieve the life of their choice. It is the duty of society to provide a conducive environment for the people, so that they may bring their capabilities to fruition.

Nussbaum constructed her CA theory in the same manner as Sen, based on the same assumptions. On the one hand is the moral importance of freedom to choose a valuable life. On the other hand is that people should be enabled to use their human capabilities in order to achieve well-being. However, contrary to Sen, who proposed an open-ended list of capabilities, Nussbaum also focuses more on women's capabilities and she elaborates a list of ten basic capabilities as a tool to assess people's well-being:

- (1)- Human Life (being able to live a full life till the natural end of life, not a premature death or having a reduced life potential),
- (2)-Good Health (this refers to

having a healthy life which includes healthy nourishment, normal sexual life, and a shelter for protection); (3)- Mobility, no unnecessary and non-beneficial pain (being able as much as possible to avoid pain that has no added value to the quality of life); (4)-Senses (being trained to freely reason, to use one's thoughtfulness, one's imagination); (5)-Emotions (attachment to things and others, to be in love, to care for others); (6)- Practical Reason (to be informed and cultured, educated, capable of forming a critical opinion); (7)- Affiliation (concern for other human beings); (8)- Environment (Being able to live with concern for and in relation to animals, plants, and the world of nature); (9)- Play (to be able to explore one's pleasurable emotions, being at freedom to avoid inconveniencing pain that will not profit the qualitative life) (10)-Selfhood and Freedom (the ability to live one's own life and nobody else's with possibility of personal choices) (Nussbaum Martha, 1995: 83-85).

With this list, it is possible to determine if a person attains the two thresholds of capability, meaning the two levels of being or doing that constitute a basic point of reference towards well-being.

#### **4. 2. 2. The Two Thresholds**

Nussbaum defines two different levels of functionality in individuals that determine “a threshold of capability to function beneath which a life will be so impoverished that it will not be human at all; and a somewhat higher threshold, beneath which those characteristic functions are available in such a reduced way that, though we may judge the form of life a human one, we will not think it a “good” human life” (Nussbaum, 1995: 81). There is a sense of establishing a cross-line between the bare minimum, and the minimum. That this, below minimum life may still hold some essential human characteristics, that might be impossible to account for when the ability to function goes below the bare minimum, in which case life is said to not be human life.

The first threshold or the lower level represents the bare minimum, while the second or higher level can be illustrated by the minimum capability to function. To argue it differently, a human life can still be identified, even when a person can only afford a minimum of the capability to function (higher level), in this case it will not be a good human life. Nevertheless, life will not even be a human life when the capability to function drops below the bare minimum (lower

level)<sup>13</sup>. Nussbaum insists that public policy should be aware of the two thresholds because “we don't want societies to make their citizens capable of the bare minimum” (Nussbaum, 1995: 81). In a sense, providing the bare minimum is a start that should not end just there.

Although public policy has a hand on the two thresholds, at times, the capability to function may be naturally impeded by birth defects, aging, disease or disasters resulting in the loss of consciousness and sensation. In this case, the capability to function would have irreversibly deteriorated to the point of losing the essentials of human life. However, there is still a moral obligation towards individuals in that situation.

Besides this naturally impeded human functionality that may not all be attributed to political implications of public policy, it is necessary also to recognize those that are directly or indirectly linked to a failure in social arrangements. For example, the lack of service delivery by public or private institutions or the man-made environmental challenges affecting the lives of new born infants and adults (Nussbaum, 1995: 82). It pertains to public policies to afford individuals with the minimum threshold from which they can build up and upgrade to a higher quality of life.

Considering the above, it can be said that the Capability Approach is suitable for the analysis of the DRC's Mining Policy as it offers some points of reference in the assessment of the life women have achieved in mining. This will be elaborated in detail after presenting and explaining the list of the basic capabilities. Suffice now to indicate that the mining policy will be used to explicate the different elements of the basic capabilities. Based on the role of public policy on the CA, Nussbaum explains the three categories of enablement which this thesis names the CA Enablement Indicators:

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<sup>13</sup> This idea will be disputed in chapter five of this study. My contention is that at no point can a human life cease to be human at all. A human life is self-worth and will remain as such, no matter the level of impoverishment or any other situation that may diminish the sense of a human life. It is worth indicating that it is not the argument of this study that a human life only becomes ‘dignified’ or ‘worth’ if it is accorded certain conditions. The view of this thesis is that in the absence of these conditions, the life may lack human dignity but is still a life of a human being.

First, there are basic capabilities: the innate equipment of individuals that is the necessary basis for developing the more advanced capability. Most infants have from birth the basic capability for practical reason and imagination, though they cannot exercise such functions without a lot more development and education. Second, there are internal capabilities: states of the person herself that are, as far as the person herself is concerned, sufficient conditions for the exercise of the requisite functions [...]. Finally, there are combined capabilities, which we define as internal capabilities combined with suitable external conditions for the exercise of the function (Nussbaum, 2000: 44).

This quote illustrates that there are different categories of capabilities. Some level of capability to function is acquired from birth. Such capabilities develop gradually. Education plays an important role in this process. Besides natural capabilities, there are also personal dispositions to acquire more capabilities. Another category concerns the conditions to be provided by relevant institutions, so as to make it possible for individuals to develop their capabilities. From this quote, it can be said that there are three possible categories of capabilities. These are the CA Enablement Indicators of individuals' functionality that can place them on the path to a good human life or can even constitute an impediment to proper functionality, should the indicators be defective or not provided.

The initial category or the first CA Enablement Indicator is to be associated with the inner receptiveness of individuals as enabled by nature, with sufficient brain development capable of imagination and reason. The second category or the second CA Enablement Indicator concerns people's own dispositions to develop their capabilities. In this category, can be included the physical and mental ability of individuals. According to their mental conditions, some people cannot advance to a certain degree of functionality. It is the same with physical conditions that can determine the point at which some people may function.

Ultimately, despite mental and physical conditions, personal disposition matters most. The third category of the CA Enablement Indicator is a combination of the previous two, to which is added a different enablement indicator, namely the enabling context facilitated by public institutions that should create conditions of possibilities for citizens to develop their talents. In view of the conceptualization of these different CA enablement indicators, it can be said that the CA is appropriate for the analysis of the DRC's Mining Policy. For one, by analyzing the DRC's Mining Policy with the CA, the research will allow the use of the CA Enablement

Indicators to assess the states of women's enablement in the mining industry, according to Nussbaum's list of basic capabilities.

### **4. 2. 3. The Basic Capabilities**

Each of the following human capabilities serves “as a focus both for comparative quality-of-life measurement and for the formulation of basic political principles of the sort that can play a role in fundamental constitutional guarantees” (Nussbaum, 2003). That is, with each capability listed below, the study will not only comparatively assess the quality of life achieved by women, but also imply the part of public policy either way, positively if it has enhanced women's capabilities, or negatively in case it constitutes an obstacle to women's freedom.

#### **4. 2. 3. 1. Human Life**

Each basic capability is understood as a moral entitlement of the individual. In this way, every human person should live a normal length of a human life. To this effect, people should be afforded opportunities to benefit from their potential in improving conditions of living, to the point they are able to protect life and avoid any possibility of shortening it. Anything humanly possible to delay the eventuality of death is to be achieved, in order to deter the probability of dying prematurely. Human life is such that it would no longer be human in the absence of the eventuality of death (Nussbaum, 1995: 76). Nevertheless, it is a moral obligation to avoid premature death.

The DRC's Mining Policy and its effect on women can be comparatively assessed on the basis of this reality, of women being enabled to avoid premature death. By way of illustration, it can be assessed whether public policy has enabled women in mining with conditions that can allow them to avert premature death.

#### **4. 2. 3. 2. Good Health**

To live a normal length of a human life implies being able to enjoy good health. Consequently, good health is attained through a combination of different factors, which amount to taking care of the body by means of a decent dietary habit. This can mean ensuring proper nutrition,

suitable shelter, possibilities for sexual satisfaction, and freedom of choice in reproducing life (Nussbaum, 1995: 76).

Enabling social, economic and political structures should be put in place in order to facilitate the attainment of good health. It may be assumed that the realization of this part of the capability will be extended to many other areas of life. Thus, being well nourished and sheltered can have a positive impact on the sexual and other aspects of human life. Measuring DRC mining women's quality of life will involve assessing the CA Enablement Indicator of good health.

#### **4. 2. 3. 3. Being Able to Have Mobility and Avoid Unnecessary Pain**

Good health can also be experimented in a way that people are enabled to acquire sufficient mobility, allowing them to experience the sense of movement and mobility in their body by physically going places (Nussbaum, 2000: 41). Other skills are also needed in order to achieve the function of mobility. Therefore, there is need for enabling factors to be in place so that individuals may achieve their mobility. Individuals should be enabled to move from place to place assured of their body integrity, without the possibility of being physically assaulted. Such capability presents itself as a prevention to any sexual violence, rape and battering.

People enabled with this capability will greatly improve the quality of their life. This will allow individuals to avoid unnecessary and non-beneficial pain. Human life is not without pain. Nonetheless, the reality of the matter is that unnecessary and non-beneficial pain should be avoided as they destroy good health (Nussbaum, 1995: 77). Unnecessary and non-beneficial pain could stem from deprivation of enjoyable experiences in an environment controlled by anti-social structures, and non-democratic political dispensation, as well as a religious and cultural manifesto that suppresses freedom of expression and choice.

#### **4. 2 .3. 4. The Use of Senses**

The use of the senses is significant in the way human life is organized. Imagination, thinking and reasoning are essential mental and intellectual activities of a human being. The perceptive

aptitude to imagine, to think, and to reason can be passed on through education for an understanding of human life (1995: 77). Thus, well-being cannot be possible in the absence of the capability to use human reason. It is also through education and training that individuals can develop their internal faculties of conceptualization and reasoning.

Creativity is an essential part of human life, which allows a sense of self determination and control over the surroundings. It is through imagination and the use of senses that individuals may properly function. The three CA Enablement Indicators will guide the assessment of the DRC's Mining Policy to find out whether women have been enabled to use their human senses.

#### **4. 2. 3. 5. Emotions**

Human life is essentially about interconnectedness. Therefore, a life is meaningless without the experience of connectedness to other beings (1995: 78). This capability enables people to have feelings for others, and to be able to explore their emotions in a positive manner. For example, to be able to experience love and to care for others is an expression of such capability for connectedness. It is an essential part of life to be able to grieve with others and rejoice with them as well. The sense of connections and emotional attachments to other beings is a human need that should be afforded to every individual.

#### **4. 2. 3. 6. Practical Reason**

Life is such a complex mechanism that it requires constant planning around choices and alternatives, which cannot be achieved without a certain level of critical thinking. It therefore entails the use of practical reason in the organization of one's life. Choices in life call for a free mind and that will follow the inclination of one's consciousness (Nussbaum, 2000). It is in the realm of critical reasoning that people are able to consider alternatives to means of achieving well-being. This entails an assessment process only possible by means of clearly weighing the advantages and disadvantages.



#### **4. 2. 3. 7. Affiliation**

Individuals who are able to use their senses, imagination and thought, may equally be able to have attachment with others and recognize a sense of a natural link between human beings (Nussbaum, 2000: 38). There is no human life without experience of connectedness and affiliation with other human beings. The realization of one's differences and similarities with others leads to the discovery of the innermost desire for completeness that is possible only in a concerted effort to be associated with others. The ability for affiliation can also translate to the freedom to enjoy one's own life. As with the previous capabilities, these three CA Enablement Indicators will serve to ascertain whether the DRC's Mining Policy enables women to freely exercise their human ability of affiliation with others.

#### **4. 2. 3. 8. Environment**

A human being should be able to interact with other species that form the ecosystem. Nussbaum stresses that there is no life without environmental interaction (1995: 78). The world of nature plays such an important role in human life that it cannot be disturbed without negatively impacting on human life. With human life essentially about interconnectedness, it is then important for individuals to be able to have attachments to other beings outside themselves. Therefore, it can be said that a life is meaningless without the experience of connectedness to other beings. There is no life without environmental interaction.

#### **4. 2. 3. 9. Play**

To seek pleasure is one of the expressions of humanness and Nussbaum advocates that recreational activities for decent entertainment should be integrated in any life plan (1995: 77). Moreover, it can be said that the capability to laugh, to play, and to enjoy can contribute to good health. It is within each one's own life that individuals are able to have pleasurable experiences. A life without recreational activities of some sort will not sustain a person's good health and well-being. This capability may not be prioritized in life, but it certainly should be part of life. It will be assessed whether the DRC's Mining Policy is an enabler of recreational opportunities to women in mining.

#### **4. 2. 3. 10. Selfhood and Freedom**

Each individual is unique, and this capability guarantees the integrity of one's life in terms of freedom of choices for a suitable way of life (1995: 79). To each human life is associated a particularity of a context, a history, some environment and surroundings. This capability works in favor of protecting individual's uniqueness allowing individuals to have pleasurable experiences in their own life.

This capability entails a sense of political and economic freedom (Nussbaum, 2000: 42). Regarding political freedom, this capability enables individuals to exercise their freedom to organize their life in a legally suitable way, with the possibility of freedom to pursue political and social activities. The implication of this capability can also be understood in the protection against unlawful search or confiscation of one's property. Conversely, this capability guarantees a freedom for individuals to gain access to material possessions. It means that individuals must be able to participate in economic activities of their choice. By implication, individuals should be enabled to acquire property, and seek employment without being discriminated against based on prejudices.

#### **4. 2. 4. The Appraisal of the Capability Approach**

The CA has contributed enormously to the social sciences in the areas of development programmes, with a realistic and reasonable tool for the assessment of well-being. Development planners and evaluators have, with the CA, been presented with a view detached from a utility-based approach, as the latter approach fails to account for a realistic representation of equality or inequality (Nussbaum, 1995).

A dimension of a focus to the social sciences has been introduced by the CA, not only to the outcome, but both the outcome and the process towards being and doing what the person has reason to value. Many researchers have found the CA beneficial. Among them, Nussbaum (1995), Alkire (2002), and Dean Hartley (2009). The prominence of this approach is owed to the concepts of value judgment in the sense that,

functionings are things people value. In other words, an activity or situation 'counts' as a functioning for that person only if that person values it. This encourages the participation and engagement of those people whose lives are at stake, in order to ascertain whether they will value changes that might ensue. Second, functionings are things people 'have reason to value'. The capability approach introduces value judgments explicitly (Alkire and Séverine, 2009: 32).

The importance of considering value judgment in social policy lies in the fact that it accounts for the interests of the people concerned, engaging them in the things they value and have reason to pursue within the law. As a result, their participation is not in any way by false pretense or outside their social choices, rather it is the exercise of their freedom to do something that matters to them in an effort to attain their well-being.

A democratic regime has within its mandate the obligation to enable people pursue the things they value in education, health, employment, work, relationships, culture and economy. The CA allows the assessment of social policy, with regard to these dimensions of a life valued by the people concerned. Nonetheless, this positive account of the CA is not without weakness.

#### **4. 2. 5. The Weakness of the Capability Approach**

Despite its strengths, the CA has been criticized for its neglect of historical and cultural differences, and the neglect of people's autonomy. According to Stephen Marglin, presenting a list of universal values and fundamental properties, in terms of functions of all human beings, appears to be a neglect of the historical and cultural heritage of people, who view humanness in fundamental diversified ways. A universalized list may only favor the views of the dominant groups or even the minority group for that matter.

The protagonist of the critique on the neglect of autonomy argues that "by determining in advance what elements of human life have most importance, the universalist project fails to respect the right of people to choose a plan of life according to their own rights, determining what is central and what is not" (Marglin, 1990 quoted in Nussbaum, 1995: 72). As can be seen, this quote stresses the seeming absence of autonomy in a process that is contrastingly based on the presupposition of freedom of choice. For this critique, there is no freedom of choice when people are all categorized within a universal list.

The same views are shared by Robeyns Ingrid. Critiquing the CA, she points out a concern about the selection of the capabilities. She wonders whether the selection is to be done from a well-defined list of capabilities, or if the selection should depend on a certain procedural approach, in which case, there is a possibility of biases in the course of the selection, and lastly, when there is no pre-determined list on the basis of which selection should be done (2003: 35). Robeyns disagrees with a pre-determined list as in Nussbaum's CA.

In rejecting a universalizable list that takes away people's autonomy, Robeyns supports Sen's orientation of limitless capabilities, as this should be conceived in a democratic political arrangement where the community or the group concerned has to be engaged in selecting the relevant capabilities that matter to them. Sen's assumption for a no-list is justifiable, in the sense that he insists on the agency of the people concerned, who should be heard and engaged for their participation in the process of making their own list of relevant capabilities.

In contrast, Nussbaum's contention for a pre-selected list is equally valid. For her, a list is just "a ground-floor or minimal conception of the good" (Nussbaum, 1995: 80). Items on Nussbaum's list are a parameter of evaluation. If one of those items is missing from the life of people concerned, it means there is something serious lacking in that life, and that should concern public policy. Nussbaum's CA is thus more appropriate for this study as its list offers a solid basement of concepts to be the reference concepts when analyzing the situation of women in the mining sector.

This study disagrees with these criticisms on the basis that the CA does not take away individuals' autonomy for choosing the means to attain well-being, and in some way the CA imposes a measure of what this well-being amounts to. Rather, the CA emphasizes freedom of choice. Accordingly, "Sen has argued very strongly that freedom is important, and includes information on who chooses" (Alkire, 2002: 102). Nonetheless, freedom of choice is no less a prerequisite in Nussbaum's theorization of the CA (Nussbaum, 2000: 70).

As can be seen, both theorists emphasize freedom of choice. With such emphasis on the importance of freedom and the role of the chooser, it can be acknowledged that autonomy is a benchmark of the process of constructing capabilities to function. For this reason, the CA is appropriate for the analysis of the DRC's Mining Policy. This study will benefit from a

theoretical framework that ascertains how public policy enables individuals' freedom and opportunities of choosing to do and to be what they have reason to value, within the confines of what is legally acceptable.

#### **4. 2. 6. The Need for the Analysis of the DRC's Mining Policy with the CA**

The idea of threshold discussed by Nussbaum (1995: 81) can serve as a helpful measure to mining policymakers for regulating working conditions, mining wages, and social and environmental conditions in the mining industry. In addition, functional human capabilities touch on different areas of human life. Therefore, their pursuit amounts to significant importance in the achievement of well-being and functionality that preoccupies every human being. The CA is appropriately "a framework for informational analysis, critical scrutiny and reflected judgments" (Alkire, 2002: 154). This can apply to the DRC's mining industry.

Concretely, reading the mining policy in the light of the conceptualization of the CA Enablement Indicators, and adding the documented information on women's status in mining, the ethical and critical analysis will ascertain whether women in mining have been afforded by nature, by themselves and by society and public institutions, the three Enablement Indicators: (1)- The basic capabilities -innermost ability to learn the art of mining, (2)- Internal capability - the physical and mental stamina to engage in mining, even in key activities, (3)-The combined capabilities- whether they have the physical and mental capacities, and if the government and its partners, namely investors, have created conducive conditions for the advancement of women in the DRC's mining industry.

As a matter of fact, any mining work should be assessed on how it contributes to the overall well-being or in which manner it impedes the capability to function. It then follows that with the CA, it is possible to comparatively assess the reality of enablement or the lack of it by the DRC's Mining Policy. A positive outcome in this context will be to establish whether the mining policy has made it possible for all those involved in the mines, particularly in the context of this study, women. The CA will guide the discussion to assess if the mining policy has made it possible for women to maximize their capabilities and potential to achieve a valuable life.

Stressing the moral importance of her list of capabilities, Nussbaum insists that, “my claim is that a life that lacks any one of these capabilities, no matter what else it has, will fall short of being a good human life” (Nussbaum, 1995: 85). Therefore, these different capabilities can offer a point of reference in assessing the life of women dealing with mines, as regulated by the DRC’s Mining Policy. The assumption is that the life of women in mining can directly depend on the application of the DRC’s Mining Policy. This is a structural and legal framework that influences the way in which women among others are enabled or obstructed to develop their human capabilities. The mining policy can be considered as one of the ‘conversion factors’ of functioning.

It is important to add that the CA Enablement Indicators can be comprehended as the unpacked version of Robeyns’ ‘conversion factors’ that intervene into the realization of the functioning: (1)-The personal conversion factors are personal to the individual, in terms of physical and intellectual abilities. By way of example, personal human conditions, gender and acquired skills. (2)-The social factors concern the societal organization and public policies that arrange socio-economic living in a society. (3)-Lastly, the environmental factors constituted of the living environment of the individual (Robeyns, 2005).

Public policy plays an important role in facilitating and harmonizing the second and third CA Enablement Indicators. In this sense, the policy organizing the DRC’s mining industry is at the intersection of the different ‘conversion factors’. On their part, miners have to exhibit personal physical conditions, as well as being afforded social conditions that are not obstructive, and they equally need to be enabled within a conducive living environment. With these CA Enablement Indicators in place, miners can be said to have been given the freedom to work in a way to excel in the mining activities, as means for a life of their choice.

In its role of social conversion enabler, the mining policy is crucial in the realization of any possible functioning concerning the ‘being’ or ‘doing’ of those in mining because it influences how women can transform their capabilities and potentialities in mining into concrete functioning (Robeyns, 2005: 99). This explains the relevance of such a theoretical framework in the analysis of the DRC’s Mining Policy. The analysis will consist of assessing women’s life status in comparison to selected capabilities, in order to determine the achievement of

valuable functions. In other words, the study will dialogically engage the different basic capabilities to ascertain whether women have been enabled to achieve a life of their choice.

This first stage of the analysis will be a descriptive interpretation of the articles of the mining code, in reference to some of the listed, basic capabilities, with the aim of creating a comprehensive narrative of the situation of women in the DRC's mining industry, as they might have been enabled or obstructed to improve the quality of their life. Such an analysis will ultimately assist in situating women with regard to Nussbaum's two thresholds, as explained above. It can be said that on their own standing, different capabilities are a point of indication about the quality of life. In the absence of certain capabilities, life is below human standard and people in such categories are living a life deprived of its worthiness and the dignity of a good human life. This will be the basis of assessment for the life of women in the DRC's mining industry.

### **4. 3. The DRC's Mining Policy in the Light of Feminist Ethics**

As explained in chapter three of this thesis, feminist ethics in general recaptures women's moral experience that has been under-tabled in the mainstream moral theorizing. It then consists of putting forth women's narratives reversing all that is undermining the contribution and participation of women in key areas of life. Drawing from the principles of ethical feminist ethics, the exercise in this part of the chapter is to critically study articles of the mining policy. In this analysis, attention is accorded to how those articles affect women's interests in mining, and pointing at ways in which those articles may have impeded women's life experiences. The findings are categorized as ethical gaps.

#### **4. 3. 1. Lack of Gender Sensitivity by Ignoring Women's Experience**

A feminist ethical analysis of the mining policy of the DRC intends to facilitate a better understanding of the experiences of women in the mines, from a point of view that seeks to draw attention to situations of subordination and harm faced by a disadvantaged group. It is therefore important to consider women's life and experience in its own right, and not in the misrepresentation of the patriarchal dominance framework of traditional ethical theories

denounced by most feminists (Jaggar, 1991; Robb, 1985; Putnam, 1993). Arguing in favor of women's experience, Held Virginia (1987: 111) contends that:

At a minimum, feminist moral theory calls for an approach to ethics in which women's experience must be taken as seriously as men's, and the morality of care given significant standing. This may lead to ethical pluralism. Or it might be found that a morality drawn from women's experience is superior to traditional moral theory, not only in domains traditionally occupied by women, but also in domains previously dominated by men.

Taking seriously women's experience in matters of morality can also lead to taking seriously women's human agency that determines actions of significance for their well-being and that of others. In this way, motivated by the sense of care and determination to act for the betterment of the lives of people they care about, women can become agents of economic change in the DRC and Africa provided that their experience is not neglected.

Women participate actively in the DRC's economy, characterized by the informal sector, alongside the still weak mainstream economy. Therefore, the mining policy can largely benefit from the insights of human knowledge and decision-making, guided by norms of femininity based on women's life and experience. It has been highlighted in chapter three of this study that women face many challenges in the DRC's mining industry. Some of these are: the reality of poverty, gendered violence fueled by cultural beliefs and myths in the mines, unsafe working conditions, and participation mostly in lower chains of mining activities associated with lower wages due to a lack of education and skills.

Sexism notably plays a role in escalating women's plight in the DRC's mining industry. Thus, it can be confirmed that a validation of a human activity that is aligned to a sexist paradigm remains questionable as an instance of women's subordination (Manning, 1992: 4). These challenges come as a result of the sexist character of a mining policy that appears to be gender-balanced in principles, but masculine oriented in the way articles are written and being applied in mining workplaces. For example, the language of the DRC's Mining Policy suggests in a few articles an incline towards gender equality and justice by allocating the mining rights to whoever is eligible. Terms such as 'Purchaser' (Mining Code, 2002: 1), 'Trader' (Mining Code, 2002: 1); 'Holder of mining and quarry rights' (Mining Code, 2002: 1); 'Eligible person to obtain mining and quarry rights' (Mining Code, 2002: 23); these all appear to be inclusive.



At first glance there is no issue with this, but when exclusive masculine language is used to give details of these articles, in practical terms, it becomes problematic to foresee the participation of women in those important mining activities. There is a need to question this language of the DRC's Mining Policy. By way of illustration, regarding 'the preparation/drafting, submission and admissibility of the application for an Exploration License' (Mining Code, 2002: 54) – this article is expressed in masculine terms: 'The applicant must draft *his* application for an Exploration License and submit it to the Mining Registry for processing in accordance with the provisions of Articles 35 to 42 of the present Code'. Other masculine language is evident in this part of Article 50: "The holder of the Mineral Exploration License is authorized to take samples of the mineral substances within the perimeter indicated on *his* Mineral Exploration License" (Mining Code, 2002: 50). Concerning transportation and storage of products from mining exploitation, Article 84 declares:

The holder of an Exploitation License has the right to transport, or to have transported by the transport company of *his* choice, the mining products which originate from *his* exploitation perimeter. *He* also has the right to store *his* mining products on closed sites for this purpose located in the vicinity of the places where they are loaded, provided *he* complies with the regulations on safety of the site and the control of industrial pollution.

This quote determines important activities in the mining sector. It gives rights to mine owners to carry out certain activities deemed important for the potential of their economic returns. However, it appears that such activities are clearly marked according to gender. In the view of the mining legislator, it seems males are supposedly the concerned actors addressed in this quote. It is then possible to conclude that women are particularly excluded from these mining activities or simply that women were not thought of as participants. It might be argued that such masculine language is not an expression of a predominance selection of men as prime or sole actors in these mining activities, but simply a way of conveying a message without any practical discriminatory intention.

If that is the reasoning, it can be said that such good intentions are of no good to women who, in most cases, have to fight hard to gain recognition. The DRC's Mining Code of 2002 was written in the context of a country with a massive history of gender-based violence, rape and child soldiers (Smillie, 2010; Prunier, 2009; Turner, 2013; Hayes Karen and Burge Richard,

2003; André-Dumont, 2013). In these contexts, there was a need for regulation that made mining stakeholders legally and ethically accountable when dealing with women. Consequently, not mentioning women in such important articles is evidence of sexism and subordination of women as a disadvantaged group.

Observably, the DRC's Mining Policy as expressed in the Mining Code of 2002, fails to mention women in every possible way. As stated above, the mining code refers to individuals and institutions eligible or ineligible to acquire mining and quarry exploration and exploitation permits (Mining Code, 2002: 23-27). The communicative expressions of these articles can indicate the participation of women in mining activities. At the same time, no specific mention of women can indicate to women that they are not the concern of the mining policy, and that the mining industry has no place for them. In actual fact, women are present in mining activities as illustrated in *Table 3.2.1a* (Distribution of women in mining per Province) shows that women are active in the mining industry.

Previous studies have demonstrated that women make up fifty percent of the workforce in the DRC's mining industry (Hayes and Perk, 2012). It follows that although women have been part of mining activities, failing to mention them in the legal framework indicates their unstated exclusion and the neglect of their interests in the mining sector. As a consequence, there is no way that the sexual violence and abuses of women, and the many health issues in the mines can be petitioned in their right proportion and context.

Based on this lack of gender sensitivity, it can be said that the mining policy has failed women by not addressing issues regarding women as participants in key mining activities. The mining policy only refers to male's mining activities; it is mute on women's mining experience. Thus, it appears that for the mining policy all that is said of men should also be understood as applied to women.

Therefore, while presuming a certain equality of participation and opportunities between men and women in the mining industry, the policy presents no legal disposition able to materialize the demands of equality and gender justice in the DRC's mining industry. This can be attributed to the fact that the mining legislators created an impression that articles that referred to men were assumed to also address women. Basing everything on what suits men and taking it as the

measure of all, correctness and wrongness, theorization and practice, then also making it applicable to women is, in the view of this study, a gap in the policy.

A question can be asked on the ethical adequacy of such a legal framework that has constructed a mining legal framework specifically on what applies to men and ignoring women's mining experience and what is relevant to them. Following the reasoning above, it can be said that the application of this legal framework has led to a double standard in the policing of economic empowerment in mining.

Men interested in mining activities can receive attention through structural and institutional arrangements of the mining code while women, not mentioned in the mining code, fend for themselves, and push their way through structural and institutional barriers. Though the mining code has not specifically stated that women have to have this struggle, the present study contends that the lack of gender sensitivity towards women's issues in mining has reinforced the marginalisation of women. This illustrates a failure of the code, or of the mining practices by creating mechanisms of impoverishment and the subordination of women, while also having negatively affected possibilities of development and poverty reduction among women from poor households.

It should be stated that gender sensitivity is not meant to reinforce the split between men and women in the mining workplace. Gender sensitivity is not about excessive privileges to women by the mining policy. On the contrary, the awareness of gender sensitivity reinforces approaches to balance biological differences, cultural and social biases, religious gender alteration and social reclassification of gender roles. It was argued in chapter three of this thesis) that cultural beliefs on the self-gratified male dominance continue to aggravate women's subordination in mining activities based on views perpetrated by sexist myths.

It is very true that "sex segregation in most occupations has been resistant to change" (Cleveland, Stockdale, and Murphy, 2000: 25). This is all the more reason for a mining policy to be sensitive to gender issues, as well as being proactive. In this way, gender sensitivity can be understood as a treatment of preference for the elimination of unnecessary discrimination against women (Williams, 2000: 205-210). It is an appeal, in the context of the DRC, to recognize social, political and economic realities that need transformation for the upliftment of

social and economic rights of women, within major economic structures that continue to block possibilities of business ownership by women.

#### **4. 3. 2. Lack of Ownership Permits for Women**

The ownership of mining permits in the DRC is regulated by the mining code, which determines conditions of eligibility to hold an Exploration or Exploitation Permit or to be a trader in the mining sector. This is to allow individuals to legally operate within the sector that is the monopoly of the state. Investors are reminded that mineral substances are the exclusive property of the state (Mining Code, 2002: 3).

There are different ways to participate in the mining economic venture, either as traders, miners or mine owners. It was explained in chapter three that without proper skills and no education, most women living in the mining areas are left to take any available mining jobs, mostly low paying work that hardly uplifts their living conditions. In this way, women find themselves in a vicious circle of poverty, with no hope of improvement. This situation can be attributed to the mining policy that did not include dispositions that facilitate equal competitive access to mining economic resources through ownership of mine permits to women.

With the application of the current mining code, women have less chance of equal participation in mining economic resources. As shown above, the lack of gender sensitivity in the mining policy has a direct implication on the ownership of mines and quarry rights by women. This is also attributed to the application of the family code that requires married women to obtain the approval of their husband for any legal matter regarding property ownership (Family code, 2003: 215). This article implies that a married woman cannot legally own property without the permission of her husband. Thus, this legal disposition can prevent women to compete for mine or quarry ownership permits. Though this is not an article of the mining code, it has a bearing when it comes to ownership of properties. Therefore, the mining code could have introduced articles to specifically address women's ownership of mines.

Considering the general perception of the masculinity of mining activities, this legal disposition creates another hurdle for women who have to first endeavor to convince their husbands to rethink the idea of mining activities being reserved only to men, let alone give women

permission to own mining rights. Therefore, the disposition of the mining code regarding the eligibility for ownership of mine permits is not helpful to women, without a clause that overpowers the disposition of the Family code that is biased against women. For instance, the mining code attributes the eligibility to ownership of mine and quarry rights to “any individual of age who is a Congolese national, as well as any legal entity incorporated pursuant to Congolese law and which has its registered administrative office in the National Territory and whose corporate purpose is mining activities” (Mining Code, 2002: 23).

The problem with this legal disposition comes from the fact that it is cancelled by the Family code regarding legal matters and married women. This does not leave an open field to single women either, because no unmarried women have legal status and are considered children under the care of their parents or male guardians, who have the responsibility in legal matters (Family Code, 2003: 444). This is an ethical gap in the sense that this legal disposition clearly works against a disadvantaged group, by reinforcing the point of injustice to women. Thus, the mining code failed women by not overruling this type of legal disposition.

Apart from gender injustice, there is also economic injustice, which can be said is a form of violence preventable by foresight governance through proper mechanisms of protection of women. Participation in mining economic activities appears to be very competitive and selective, by criteria not always understandably unequivocal. This puts extra strain on women already marginalised by forceful patriarchal mining business structures. On this line of thought, Jaqui True (2012: 5) declares that:

Nowhere in the world do women share equal social and economic rights with men or have the same access as men to productive resources; i.e. Economic globalization and development are creating new challenges for women’s rights, as well as some new opportunities for advancing women’s economic independence and gender equality.

There is a possibility of conflicting arguments over the complexity of this statement. The above quotation means to foreground that challenges to women’s rights do not yet constitute a won battle. Even in the era of globalization, economic and development projects give precedence to male interests. Should this statement be correct, the problem is then urgent and needs to be tackled with all possible instruments, especially ethical instruments.

The disadvantage of women is sometimes perpetuated by economic policies within a patriarchal dominance framework. As already alluded to, the DRC's Mining Policy bears features of a patriarchal dominance framework, with a strong sense of masculine orientation to the policy. This is confirmed by the extensive use of gender-exclusive concepts in the present mining code (Article 1; Article 8-13; Article 23-27; Article 43; Article 46; Article 50).

Participants in mining activities described in these articles are unequivocally men, which may suggest the exclusion of women. The same sense of economic exclusion of women is observed in the following articles of the mining code, Article 112 – the obligations of the holder of an artisanal miner's card, Article 117- holders of a trader's card in artisanal mining, Article 118 – the obligations of holders of trader's cards, Article 147 - scope of the authorization for temporary quarry exploitation, Article 196- 200, Article 280-281- actual liability of the holder or lessee of the mining and/or quarry rights obligations of the holders of mining or quarry rights.

There is need to repeat and insist that such masculine language in the various articles of the mining code may as well simply be a question of language that need not be so specific as to include feminine words. In this sense, the idea of inclusiveness is to be assumed. Therefore, what is expressed in the masculine is to be understood as inclusive of women as well. Nevertheless, the assumption of the inclusion of women is hard to obtain.

As far as there is no specific clarification to indicate the right interpretation of masculine words in the mining code to include women, it can be said that in the context of the present mining policy all masculine terminologies refer only to men. They appear to be the only participants in the DRC's mining industry regarding ownership of mining and quarry permits. The correct expression of policy inclusiveness should be felt and verified throughout the mining policy, even within mining legislation terminology. Otherwise, the culturally-molded mentality assumes the obviously self-explained language that excludes women in the mining and the EI, as attested to by the following observation:

In many communities, formal EI jobs go primarily to men. Worldwide it is extremely rare to find any EI companies with higher than 10% female employment, with many being less than 5%. In some countries, this is because men have better access to education and therefore possess more necessary skills, because mining jobs

may require a certain level of physical strength, or because of potential pregnancies (in terms of time this would take out of work, or the risks of exposure to chemicals) (Eftimie, Adriana, Katherine Heller, and John Strongman, 2009).

The EI requires people with specific skills, energy and mental character. No scientific experiments exclude women from such qualifications. Any exclusion can only be explained by non-objective motives. Some patriarchal cultural beliefs and myths abusive to women and girls find justification in the sense of exclusion of women in the language of the mining code.

It is significant to note that the question of language is an integral part of activism among feminists. More and more it is becoming very reasonable to engrave in the popular imaginary language which portrays inclusiveness. Initiatives towards inclusivity should begin with the learned, who have the potential to understand social concepts and realities.

A case at hand is the lack of inclusiveness in the language of the DRC's Mining Policy, of which it can be noted that out of the three hundred forty-three articles of the present mining code, key articles are expressed in the masculine. The word, "buyer", is expressed in French by "Acheteur- Article 1". This means a "male buyer". There is no effort whatsoever, even in the definition of this word, to express the idea of the inclusion of the feminine counterpart. The word is expressed in a way that infers only males are to be considered as "buyers". This might not have been the intention of the legislator, but nobody should have to guess the intention. In actual fact, the intention of exclusion becomes noticeable, with most buyers of mineral products in the DRC being male and most important mining activities, including ownership of mines, seem to be reserved for males.

This can be attested to by a finding by Partnership Africa Canada that, "very few women are 'bosses', or 'CEOs', that is to say owners of gold pits. Those that are, are represented by a man who serves as a manager of the pit" (Côté, 2014: 16). This is an illustration of the exclusion of women in important mining activities, based on gender prejudices. Failure by the DRC's Mining Policy to apply the policy of gender equality recognized by the DRC Constitution has been detrimental to possibilities of ownership of mine permits by women.

The DRC's Mining Policy lacks inclusiveness in the economic participation of women, and generally speaking, this legislation manifests quite an aggression against women. This seems to be a trend, not only in the DRC, but also in other parts of African continent where it is observed that "State systems tend to be used for regulatory purposes in ways that are contrary to women's needs and interests. [for example] Legislation regarding access to land has imposed a variety of constraints on women. Attempts to regulate trading activities and small-scale manufacturing have placed additional obstacles in the path of women's economic advancement" (Kramarae and Spender, 2000: 1620). This quote makes it clear that state policies in many instances work against women's interests be it in the mining sector or any other economic ventures, women face enormous obstacles. This can be verified, and is being verified in the case of the DRC's Mining Policy, thus proving the quote to be true. The lack of mechanisms within the mining policy, to facilitate the ownership of mine and quarry rights by women, can prove detrimental to women's economic advancement. This might have a direct implication on women's human rights.

#### **4. 3. 3. Neglect of Basic Human Rights of Women**

As previously stated in this chapter, women face many challenges in the course of their mining activities in the DRC. Most of these challenges hover around human rights. When talking of human rights, it is relevant to refer to the Universal Declaration of Human Rights (UDHR) by the United Nations (UN, 1948). The human rights of women in mining are seriously affected. By way of illustration, the right to equality, the right to freedom from discrimination, the right to own property, the right to social security, right to education, and so on.

There is a sense that the mining policy did not pay attention to these various human rights. The absence of consideration for women's issues in the formulation of the mining code is reflected in the way the policy renders it difficult to refer to any of these rights, as it has been asserted that men are the center of reference of the mining policy. Anything regarding women can only be assumed by derivation from what is said of men, since the mining legal framework seems to cater only for men's mining activities. It is therefore hard to conceive a possibility of equality of rights in various mining activities.



It can be said that the lack of specific attention to women's issues is a clear-cut case of discrimination that also illustrates the neglect of women's human rights. Regarding individuals' rights, Manning argues that "exercising rights may sometimes require the cooperation of others and not merely their non-interference. If this is so, then respecting persons as autonomous individuals requires that we actively cooperate in helping them to secure at least some of their rights" (Manning, 1992: 159). This quote reveals that cooperation and non-interference are to be in play simultaneously to make it possible for persons to acquire and exercise their rights. A true accomplishment of human rights demands that every other person collaborates and refrains from interfering in the path of the rights in question.

In the case of women in the DRC's mining industry, it can be said that the mining policy did not put a legal framework in place to obtain others' cooperation for the human and economic rights of women and non-interference against their rights to equality and freedom against discrimination. Being nonspecific towards women's participation in mining at equal principles with men, and not displaying rules that could prevent interference, the mining policy, not only failed to consider women as autonomous individuals, but equally failed to help women secure some of their rights.

However, it can be argued that some of these rights find resonance in other legal frameworks, specifying particular regulations on various rights recognized for women (such as the DRC Labor law, the DRC Family Code, and the DRC Constitution). This type of argument falls apart because the DRC's Mining Policy does not refer investors or stakeholders to these other codes.

As a matter of fact, the mining policy stands as a solo instrument in the DRC economic field which, in my opinion, may leave investors and stakeholders to venture into an open field, taking advantage of the void. Some of these rights mentioned above might be emphasized in the other codes that regulate the life and work of women in the country. The mining code should have made reference to these codes in default of formulating specific clauses that uphold respect for recognized human rights.

Regarding equality, it can be said that the principle of equality has not been supported by the mining policy. A clear illustration of this void is the fact that the policy has zero referencing to, for example, the DRC Labor law, an instrument which guides the relationship between

employers and employees in the country. Lacking such linkage can open ways to self-governance by mine owners in the face of a work force that is not benefiting from the protection of the Labor law.

The employers' contractual obligations are not just towards the state in paying taxes and other fees related to their mining activities, but also towards mining employees, as stipulated in the Labor Law, regarding the obligations of employers to their employees: for example, the right to an employment contract (Labor law, 2002: 46-65); obligations towards salaries (Labor law, 2002: 90-103); and obligations in times of illnesses of the worker (Labor law, 2002: 105-106).

In any country, a Labor law is an elaborate system of regulations that specifies everything to do with Labor, productivity, remuneration, working conditions, and termination of employment, and so forth. (De La Cruz, Von Potobsky, and Swepston, 1996). So much so that a mining policy may not repeat the same regulation, but it can refer the policy to other existing laws that regulate the employment and work sector. The principle of complementarity between legal systems could be an advantage and for this reason, there is a benefit in considering a legal system that clarifies the distribution and protection of socio-economic rights (Heyns and Villoen, 2004: 132).

Reference to the existing laws is vital in reinforcing applicability of a policy, especially in an economic and political context, where women are fragile and abuses predominant. It is agreeable that every effort should be made to avoid Labor malpractices in mining through a linkage between the mining policy and the DRC Labor Law. One of the advantages of an accurate linkage is that certain internationally approved standards would not be obfuscated by a flawed policy because:

An international consensus is emerging on certain basic fair labor standards. Forced labor, for example, is nearly universally condemned, and seems to be practiced in only a dwindling number of states. Other practices, although widely condemned, are still common in many developing countries, among them prohibitions on freedom of association, exposure of workers to hazardous working conditions without risk disclosure, and the employment of children for long work hours simply because they are cheaper to hire than adults (Gadbaw and Medwig, 1996: 144).

It has been documented in this thesis that women and children in the DRC are sometimes subject to forced labor, and exposed to a dangerous working environment following the void in the policy. Internationally approved working standards can remain a dead wish in places where the law is flawed and not reinforced. It is imperative that any economic sector dealing with employment be oriented and guided by policies that actually bear the desires of all stakeholders, especially those with least power and exposed to abuses. Engaging the mining policy with other codes (Labor law, for instance) will ensure the awareness of the demands to avoid objectionable working conditions in a democratic system that guarantees the rights of all to the best conditions of employment. Lack of reference to such specified codes can easily lead to the infringement of women's economic rights in the workplace.

#### **4. 3. 4. Neglect of Women's Economic Rights**

The socio-economic rights of women in mining are also seriously affected. For instance, it was established that in the DRC's mining industry most women are abused, manipulated and economically sidelined (Jacqui True, 2012: 89). The formulation of some articles of the mining code prove a sense of economic discrimination against women. Such is the case in the following articles: purchaser – (Mining Code, 2002: 1), the conditions of eligibility to obtain mining rights (Mining Code, 2002: 23), the scope of a mineral exploitation license (Mining Code, 2002: 64), sale of mineral products (Mining Code, 2002: 85).

Economic activities described in these articles are extremely important in the mining sector. Unfortunately, as already mentioned in the previous sections of this chapter, such articles are formulated in a way that can limit the participation of women because they are described in a way to be understood as activities done by men. This means that since the mining code only refers to men, any woman who tries to compete for such activities may just be excluded, not by lack of competence, but only by being a woman. This gender-insensitive regulation deprives women of their economic rights. One other aspect of the neglect of women's economic rights is the loss of land by mining communities.

It is important to clarify the understanding of the term 'mining communities'. There can be two meanings to this term. The first one refers to local communities residing in the surroundings of mining or quarry concessions. People in the vicinity of mining companies constitute local

communities, and they are a part of a mining community. Different villages can form a grouping of mining communities (Mining Code, 2002: 279). In the second understanding, 'mining communities' refer to those individuals or groups who are directly involved in mining activities either as miners, doing various mining jobs, as mining traders or even as mine owners.

The DRC's Mining Code, 2002 in its Title XI, on "Relations between the holders of mining rights and/or quarry rights themselves and with the occupants of the land" refers to the mining community as 'Occupants of the land' (Mining Code, 2002: 279). It is not said whether women are also included in this category. Nevertheless, considering the social organisation, it is certain that women are a part of the occupants of the land. It is one thing to assume the presence of women as occupants of the land, and another to remain aware of the masculine characteristic of the DRC's Mining Policy. It is then logical to conclude that the mining policy did not consider particular issues related to a specific category of the occupants of the land that happens to be women.

Generally, within African communities, women face more challenges that need to be dealt with in a specific way, separately from those of men. According to Jaggar Alison, "men and women are differently situated in all known societies; they are subjected to systematically different norms and expectations that govern virtually every aspect of their lives" (1992: 350). Depending on the political and cultural maturity of a society, such difference of treatment between men and women can be an occasion of discrimination against one category or an opportunity to build a gendered mutually appraised collaboration.

Recognition of the difference, as Jaggar asserted, can also reinforce the difference in treatment so as to deal with each category according to their particular issues and needs. To this effect, it seems certain that the DRC society, especially in the mining workplace, is far from reaching a gendered collaboration.

The ideal of gendered integrated mining activities is not in sight in the DRC mining workplace, owing to the mining policy. For example, Title XI mentioned above, contains articles that specify the kind of relationships and interaction between local communities (the occupants of the land), and the holders of mining and quarry rights. On this aspect, the mining code regulates some of the restrictions imposed on the occupants of the land. They are accountable when

found violating stipulated restrictions (Mining Code, 2002: 281). On their side, mine permit holders have the obligation to compensate occupants of the land for the loss of access to their agricultural land (Mining Code, 2002: 282). The mining code also reserves certain areas as permanently forbidden to mining activities (Mining Code, 2002: 283).

A major legal disposition in these articles is the restriction on permit holders to access restricted land, in addition to restrictions on the rights of the occupants of the land (local communities) to use part of their land reserved for mining activities. The local communities are forbidden to venture onto land leased to holders of mine or quarry permits. With this Act, communities lose part of their land previously used for income generating activities (farming, fishing, hunting, and mining). In this way, the mining policy is less caring of local communities that have seen their lands “confiscated” by the state on behalf of investors.

Nonetheless, there is provision for compensation to the occupants of the land, should the mining activities deprive them of their rightful usage of land (Mining Code, 2002: 281), however, the mining policy does not specify the applicability of this law. It then becomes a battle of villagers against powerful mines owners, a battle in which the former are always losers to the latter. This is even more unbearable in the case of female occupants of the land and a serious infringement of the economic rights of women, who as part of local mining communities are left to fend for themselves.

In the current formulation of the mining policy, as already stated, women are non-existent. There is no provision of the law calling on responsibility of mines and quarry permit holders to pay attention to issues of women, such as their economic rights. So far, a one-sided advantage accorded to men by the mining policy, as characterized by the neglect of women’s economic rights, can also be traced to a patriarchal system that perpetrates subordination of women.

#### **4.3.5. Patriarchy and the DRC’s Mining Policy**

Patriarchal dominance entails language and action towards and against women (Kramarae and Spender, 2000: 1242). The way women are being spoken about in a society can determine the manner in which that society treats and considers women. In most cultures, women are

perceived as weak creatures in need of protection. It is proved that such linguistic patterns positively converge into actions of protection of women, and negatively into actions of dominance because the weak are always under domination of the strong (Kimmel and Aronson, 2004). In the DRC, the patriarchal dominance system can be viewed in the way males perform their perceived social roles in the category of hierarchy of power as culturally expected. It's not just power, it is supremacy over female roles (Tshilemalema, 2002).

Generally, in the DRC culture, women are wrongly perceived inferior to men based on biological characteristics. Furthermore, women are seen as the property of men in general where single women are concerned, and property of a husband and the clan, with regard to married women (Matundu and Faray-Kele, 2010). This cultural construct determines the social, political and economic integration of women in the DRC, which reveals misconstrued gendered realities.

As such, there is a sense that the DRC's legal system, as with that of other countries in southern Africa, is "about the patriarchal 'nature' of the state which subverted and suppressed women's interests" (Geisler, 2004: 17). It is therefore relevant to raise concerns about the patriarchal character of the DRC's Mining Policy, as well as the Family Code and Labor law. There are some serious concerns on the mainstreaming of gender, especially with regard to equal participation in leadership and decision-making processes.

As noted in chapter four, the legislators of the mining code were male experts in highly masculine academic fields, such as geology, law, mining administration, and experts in the mining environment. Filled with patriarchal dominance ideals, these experts reproduced a mining legal framework disconnected from some aspects of the interests of women in family matters, labor, social and economic emancipation.

The DRC's women as part of the global community, continue to bear the burden of gender discrimination common to African women. On this topic, Mikell (1997: 1) affirms that,

Contemporary African women sometimes think of themselves as walking a political/gender tightrope. On one hand, they are concerned about the sea of economic and political troubles facing their communities and their national 'ships of

state.' On the other hand, they are grappling with how to affirm their own identities while transforming societal notions of gender and familial roles.

From this quote, it can be argued that together with other African women, their counterparts in the DRC are concerned about the economic and political difficulties that impede their efforts to alleviate poverty. This situation can be explained by the influence of patriarchy on state machineries that fail to apply the laws that affirm women's economic and human identities. It is therefore important to recognize that most laws organizing the life of the Republic are infused with paternalism, to the detriment of women. Can this reality be attributed to the circumstances of the gender of the legislators? Possibly so, considering the processes of the enactment of most laws.

To illustrate, laws are formulated in different ways in the DRC: the government prepares projects of laws that it submits to parliament for adoption. Or parliament makes a proposal for a law and it is discussed and adopted in both chambers of parliament (Masidi, 2014; Munyengayi, 2006). It is the prerogative of the President of the Republic to publish any law that will be made official by ordinance law. Thus, it is clear that parliament plays an important role in the elaboration of laws.

In light of the above, it appears that gender might be an influential factor in the outcome of laws enacted by public institutions in the DRC. "There are 43 elected women out of 500 elected members of the DRC national assembly<sup>14</sup>. Of the 45 members of the Government, there are only 5 women of which 4 are ministers and 1 is the deputy minister. There is no woman Governor or Vice Governor of the 11 current Provinces of the Republic" (Matundu and Faray-Kele, 2010).

As can be seen, women represent nine percent of the legislators in the DRC. These are people who reflect, sometimes formulate, and adopt laws, as well as monitor their enforcement by other competent institutions. It has been demonstrated that patriarchal dominance has its ramifications in the social, cultural, economic and political arrangements of the DRC.

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<sup>14</sup> It should be clarified that these statistics reflect the 2006 elections, from which parliament was formed and government ministers were chosen. One fact is that statistics have not significantly changed since the 2011 election.

Evidently, women face a wall of obstacles to their political, cultural and sociopolitical empowerment, despite the existence of a law on gender equality enacted in the constitution of 2006.

It took more than six years for the Law on Gender Equality to finally be made official by a presidential ordinance on 1 August 2015 (Law No. 15/013 of 1 August 2015 on conditions for the application of the provisions on the rights of women and gender equality). This inequality exists in all government ministries, where men are predominantly in charge of key responsibilities, as illustrated in *Appendix 2*, regarding male dominance in public institutions.

A certain pattern of the patriarchal dominance system is visible in public institutions of the DRC. The majority of key positions are under the responsibility of men, while women occupy positions directly under the supervision of men. From this point of view, one cannot hesitate to notice a failure by government institutions to materialize the gender equality principle. Such failure is a negative signal to private institutions and businesses that mostly follow the same trend as public institutions.

The low tenure of women in key positions has sometimes been attributed to a deficit of competence, on account of their lack of education. While this might be so, it must be acknowledged that despite the lack of education for girls in primary and secondary schools, those that make it at this level do not relent to further their education in colleges and universities. A study by the World Bank (World Bank, 2005: 35) certifies that

Currently, in comparison with other African countries, the DRC has a level of schooling rather low in the primary and in secondary schools, and rather much higher at the level of graduate studies. The trend in enrollment is close to that observed in Burundi, except that in this country, the level of education in secondary school is much lower than in the DRC. It appears that many children receive no basic education, but that those who benefit from pursuing secondary education, excel in graduate studies in a greater extent than in other African countries.

While the question of education for a girl-child compared to a boy-child remains unresolved, competence can be found among the many women in the DRC who are qualified in different academic subjects, other than mine sciences. Though there is a small number of women parliamentarians, technocrats are not lacking among women to be appointed heads of



government institutions in ministries where most laws are crafted before being sent to parliament for discussion and adoption. The patriarchal dominance framework has affected the mining policy in that it sidelines women in key mining economic activities. Consequently, much is left to be desired in terms of gender balance for access to decision-making tables.

#### **4. 3. 6. Limited Access of Women to Decision Making Tables**

The economic disempowerment of women and the lack of gender sensitivity in the mining policy affect the core of the mining industry in the DRC, with regard to women's participation. Women in the DRC mines are contextually subdued under the rule of men and it affects the participation of women, who carry the burden of having to prove themselves against a political patriarchal system that disturbs their socio-economic progress. The obstruction takes various forms that can include limited access to decision-making tables where socio-economic policies are determined.

As noted from the composition of public institutions that make and implement the laws of the country (*Appendix 2*), and the expertise of those who wrote the mining code, women are disproportionately represented. The patriarchal dominance framework of the DRC society affects decision-making processes by leaving women mostly far from the center of the processes. The forty-five women in the DRC parliament, for example, have to compete with four hundred fifty-five men in debating the adoption of laws.

This is evidence that the political system is highly patriarchal giving first choice to men in key economic and political positions in the DRC. In this way, the patriarchal dominance framework continues to pose challenges to women from finding their place in policy making tables. Though a lot has been pledged through constitutional dispositions on matters of gender equality and parity between men and women in all spheres of the national life, it appears that the patriarchal society and its political system still consider women in reproductive roles. In this regard, Gurr Barbara's argument is that:

As a political structure and through state-endorsed social practices, patriarchy seeks to control women's bodies and opportunities around sexuality, parenting, and even labor based on presumptions about the female reproductive body. Many scholars assert that the State is essentially patriarchal, producing structures of inequality that

rely on binary, essentialist, and hierarchical constructions of sex and gender (2015: 27).

Though Barbara's context of reflection differs geographically, culturally and otherwise from that of the DRC, the description of a patriarchal state finds resemblance with the DRC's state whose political structure, as demonstrated in this thesis endorses social practices that control women's possibilities of equal participation to key activities of the national life such as the mining industry. Women continue to be sidelined in decision making tables that define and apply most of the economic policies. This study offers the argument that women have less chance to influence decisions in the face of such inequality in numbers within a patriarchal dominance system. The question of equality in numbers remains a concern throughout the world, and some researchers concede that "there is still no country in the world today in which women are equal to men" (Dharmapuri, 2012). Despite this reality, mechanisms of balanced tables of decision-making processes should be fostered. Equality of men and women in the decision-making processes in the DRC is relevantly crucial.

Women are shown in chapter five to represent fifty percent of the population in mining extraction sites (Côté, 2014: 5). It is absurd to conceive peaceful and successful mining activities, when fifty percent of those concerned are excluded from decision-making-processes regarding the mining industry, with all that pertains to it. As long as women do not participate sufficiently in decisions concerning the policies of the mining industry in the DRC, the economic benefits of women will continue to be overlooked.

However, this is not to dispute that women can better be served only when they are in charge and in control. Rather, it is important to recognize that as long as women are not among the policy-makers, their interests and those of the majority will remain dissatisfied. Women appear to be more balanced when it comes to mainstreaming gender issues and they need to be consulted and their opinions should be heard. It is a matter of ethical principles to take the views and informed opinions of people concerned by matters of importance to their well-being into consideration. Especially when it comes to efforts for the reduction of poverty.

Corroborating this view, Chen Martha Alter and others focus on policy that needs to tackle specific economic issues affecting women. They insist that policy makers should facilitate

equal opportunities for economic empowerment of women by protecting the rights and the voice of women workers in informal economic sectors. It is therefore vital to include women in all processes to formulate such economic policies (Chen, Vanek, and Carr, 2004: 177).

By not including women in most regulatory systems, especially the mining code, men responsible for articulating this policy failed to link economy and gender justice. The economy is organized in an environment of exchange of services and work. In this sense, women as an integral part of the workforce must have a say. For example, the DRC's Mining Code of 2002 determines institutions competent to administer the mining sector at national, regional and local levels. Most of these institutions are politically selected. They include: The President of the Republic (Mining Code, 2002: 8), the Minister of Mines (Mining Code, 2002: 10), the Governor of the Province and the Head of the Provincial Authority of Mines (Mining Code, 2002: 11).

One fact about these institutions is that from independence, they have been headed only by men. For instance, there has not been a female president in the DRC since independence. The Minister of Mines has never been a woman. All governors currently in mining provinces are not women (Katanga, Western Kasai, Eastern Kasai, North Kivu, South Kivu, Maniema, Oriental Province). This is an indication of the limited access of women to decision-making forums regarding the administration of the mining industry in the DRC. Faced with this reality, it can be said that the patriarchal dominance system continues to influence policies in the mining sector, in a way that may not allow women to explore their human capabilities, as explicated in Nussbaum's CA.

#### **4. 4. The Capability Approach and Women in DRC Mining**

Nussbaum's CA is handy at this stage as a descriptive tool of analysis, in depicting the life experience of women in the DRC's mining industry, as a result of the application of the mining policy. Nussbaum sustains that "the aim of public policy is the production of *combined capabilities*. This means promoting the state of the person by providing the necessary education and care; it also means preparing the environment so that it is favorable for the exercise of practical reason and the other major functions" (2000: 44). Referring to the list of selected basic capabilities discussed in chapter two, and based on the reality of women's situation as

explained in the previous chapter, this section assesses whether the public policy of mining has promoted women's status. This will be done by examining the CA Enablement Indicators to ascertain the extent to which women's abilities to improve their quality of life are enabled or obstructed<sup>15</sup>.

#### **4.4.1. Women's Opportunities for Good Human Life Compromised**

To each person should be accorded opportunities to benefit from their potential in improving conditions of living, to the point where they are able to protect life and avoid any possibility of shortening it (Nussbaum, 1995: 76). As previously discussed in this chapter, the DRC's Mining Code of 2002 has not taken various issues pertaining to women into account. Arend and Ajinkya affirm that, "In 2002, the World Bank helped the DRC to revise its mining code in order to attract foreign private investment but ignored gender-based violence endemic among mining communities" (Arend and Ajinkya, 2011 cited in Jacqui True, 2012: 89).

The focus of the mining code was economic gain for investors and the government as an institution. Little effort was made to translate economic gains of mineral products to the purpose of improving the quality of life of women in mining. Instead, the mining policy failed to regulate issues of working conditions, minimum wage in mining, as well as health and safety. The policy has zero article regulating issues of violence against women. This is a proof that a part of the CA Enablement Indicators or 'combined capabilities' have not been provided by public policy. It has been explained in chapter two that in order to attend the 'two thresholds' or the minimum from which individuals can start building a life they value; people have to have in place the three CA Enablement Indicators.

The first CA Enablement Indicator concerns the natural given functionality of a brain well-developed for reasoning and imagination, thus forming the personal disposition of the individual to work towards achieving something valuable. With this in place, the individual is in the position to utilize the second CA Enablement Indicator, the social and cultural arrangements, institutional practice of public policy, positive influential power dynamics, and

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<sup>15</sup> This study contends that the concept of CA Enablement Indicators, which can be likened to Royben Ingrid's concept of conversion factors (personal, social and environmental characteristics- Royben, 2003: 12-16), -is simple to understand and more expressive of the reality it represents. Nussbaum's list of basic capabilities can be categorised as a list of indicators pointing towards the achievement of a good human life.

gender role distribution. With this checked, the third CA Enablement Indicator, the conducive environment, along with reliable social and public institutions, should be put in place by public policy to allow individuals using their brain, their physical and mental possibilities, to build a life of their choice (Nussbaum, 2000; Royben, 2005). Should one or the other CA Enablement Indicator not be empowering enough, the freedom capability to be and to do something valuable is impeded. Women, as proved in chapter five, are sidelined and disadvantaged in the pursuit of possibilities to improve the quality of their life, through earning a dignified living in the mining industry. Without improving the quality of their life within the economic activity of their choice, women in mining risk facing the eventuality of dying prematurely. Among the CA Enablement Indicators not provided, can be cited the kind of wages (public goods) women receive in the DRC’s mining industry.

The mining pay scale varies according to the category of mining jobs, and the ranking of the employment; but in any case, the regular wage in the DRC’s mining industry is less than \$3. Describing the miners’ wage in the DRC, Nick Fagge affirms: “despite the importance of the mineral to the global multi-billion-pound mobile phone industry, the miners - who toil away under the hot sun day after day - earn \$5 a day for a 12-hour day for this back-breaking work, the minimum wage is \$3 a day” (2015). The daily wage set at 3 USD can be an indicator of a cycle of poverty because such a salary cannot allow an improvement in the quality of life. Considering the patriarchal dominance reality that generally treats women unequally to men, it can be assumed that women’s daily wage is estimated less than that of men, and it differs from mine sites and from province, and also per mining activity, as illustrated in the table below:

**Table 4.4.1.** Distribution of women in the DRC mining according to the daily wage

Provinces	0 USD to 3USD	3USD to 5USD	6USDto 10USD	10USD +
Maniema	17.5	63.2	5.8	-
Nord Kivu	43.3	55.8	1.4	-
Sud Kivu	59.2	33.9	4.8	-
Province Orientale	28.5	18.5	-	-
Kasai Oriental	87.3	13	1.6	1.6

Kasai Occidental	74.4	19.7	2.3	3.4
Katanga	9.32	4.8	4.8	-

**Source:** Adapted from: Renafem (<http://www.prominesrdc.cd/renafem/accueil.php>). [Accessed 12 April 2016]

From the perspective of the findings presented (*Table 4.4.1*), it can be said that the majority of the DRC’s women working in the mining sector (ASM, and in some industrial mining companies) receive a daily income of less than 3USD. By way of illustration, the table shows that in the Kasai Oriental Province, 87.3 percent of women are paid between 0 USD and 3USD. In the Kasai Occidental, women receive up to 3USD. The table also indicates that only a small percentage of women in all provinces earned more than 3USD, making it apparent that the threshold of daily pay for women is 3USD. For the sake of argument, assuming that all women earn 3USD daily, it is nevertheless thought that they may not receive the full amount of 3USD.

Taking the level of corruption and malpractice against women in mining workplaces into account, as described in chapter five of this study, it is possible to think of many other subtractions by employers and guards in terms of tips, favors and general extortion of women. It will therefore be realistically reasonable to assume that women receive less than 3USD. Confirming this guess, Hayes Karen admits: “whilst income varies according to the location of the mine and market, the mineral involved, and the task carried out, the average income for women in and around the mines ranges from 2-4 USD per day” (Hayes, 2012).

The wages for DRC women in the mines, a prolific economic sector, is symptomatic of a hindrance to possibilities of a qualitative life. This violation of human capabilities and rights of women compromises their chances to maximize their functioning (Valdés, 1993: 301). As in many other unjust wage systems all over the world, “this workforce is often exploited, with low wages, few benefits, and exposure to chemicals that are either untested or present in quantities that can have negative effects on health” (Kramarae and Spender, 2000: 1142). Despite the health risks around their work, women receive a wage that far from contributes to alleviate the conditions of poverty that brought them into the mining sector in the first place.

As elaborated in the mining policy, it appears that the legislators mostly considered economic benefits for investors and financial returns in taxes and other fees into government coffers. Less attention was accorded to other stakeholders, such as miners. It is unethical to base economic decisions discriminately on terms that only benefit investors and public institutions, while ignoring the consequences of such economic measures on the lives of the people concerned (Alkire, 2002: 25).

A well-balanced wage might be an incentive for good human capital investment motivating individuals to work hard and sustain the company (Lazear and Shaw, 2008: 1). Investment into women's human capital can imply paying attention to their good health.

Having good health is one of Nussbaum's indicators of a good human life. Good health can allow the individual to pursue other functions to the best of their capabilities (1995: 76). It can be asked whether women in the DRC mining industry have been enabled to achieve good health? The mining code addresses this question only in passing, stating that: "The holder of an artisanal miner's card must comply with the regulations regarding safety, health, use of water and the protection of the environment which apply to his mining activity, in accordance with the regulations in force" (Mining Code, 2002: 112). This general instruction to comply with regulations is vague and does not indicate in clear terms the sense of seeking good health for the mining employees.

The mining code further refers to special regulations, thus the DRC's Mining Code declares, "Mineral Exploitation is subject to the measures for safety, health and protection enacted by special regulations" (Mining Code, 2002: 207). To my knowledge, the DRC Mining Regulations do not specify those safety measures. Suffice it to appreciate the mention of compliance to safety and health, more has to be done in terms of clarity and definition of conditions of mining employment that guarantees protection of good health. As indicated in chapter five, accidents happen on a regular basis in most of the DRC mines. Unlike accidents, violence done to women mostly goes unpunished (International Trade Union Confederation, 2011: 21-22). Such recurrent realities compromise the chances of a life well-lived.

Nonetheless, the application of the mining policy disadvantages women by overlooking health issues specific to women. In this perspective, it can be said that the DRC's Mining Policy

should have reinforced labor regulations on the work of women. By not referring the mining working environment to the regulations of the Labor law with regard to health issues, the DRC's Mining Policy continues to expose women to unnecessary pain that compromises their quality of life that might, in the long run, precipitate their death. In order to improve women's chances to take up mining jobs with better wages capable of improving their quality of life, women have to be afforded education and training for proper skills. This appears to be another area of concern for the well-being of women in mining.

#### **4. 4. 2. Deficit of Women with Adequate and Specialized Education**

Nussbaum lists practical reason as one of the basic human functional capabilities (1995: 78). The complexity of life calls for a critical mind in order to assess situations and events, as well as circumstances and opportunities that lead to choices in alternatives and decisions of life. Education plays an important role in forming and training the mind in the use of the senses. The DRC's Mining Code indicates the obligation of investors to employ nationals with proper skills. The mining code prescribes:

Subject to compliance with the mining laws and regulations of the Democratic Republic of the Congo, the State will guarantee the holders of mining and quarry rights [...] the freedom to recruit, provided that priority shall be given to employing Congolese personnel with equal qualification in terms of education and experience, to carry out mining operations, and subject to the conditions of dismissal pursuant to the laws and regulations in force (Mining Code, 2002: 273).

Education is mentioned in this article, as a guarantee to be offered a mining job corresponding to the training received. The fact is that most women seeking mining employment have no or little education. According to Hayes and Perks: "Artisanal mining has become an important source of livelihood for women in the DRC because of its relative ease of entry in comparison to other sectors: it requires virtually no formal education or skills" (2012: 534).

Though ASM may be open to recruit those with no education or skill, this certainly does not play to the advantage of women. That is to argue that with no education and skills, women cannot hope for a better mining job, implying that mining employers can only exploit women within low paid jobs. The lack of educational skills in women is a serious disadvantage, alongside gender discrimination.



Despite the importance of the mining regulation on education, which is one of the CA Enablement Indicators, the policy fails to resonate with the concrete situation of the majority of women in mining. Lack of achievement of this indicator has ramifications on many other capabilities. Thus, this article of the mining policy stands as another discrimination against uneducated women.

The government does not mention any obligation by investors to put mechanisms in place that provide training to mining employment seekers or to the already employed, in order to improve their skills. This lack of foresight is a miscarriage of certain basic human functional capabilities and this goes against Nussbaum's idea that public policy has the mandate to promote 'combined capabilities' (Nussbaum, 2000).

The CA of practical reason can also be associated with the use of the senses. For Nussbaum, the use of the senses is significant in the way human life is organized. For instance, imagination, thinking and reasoning are essential mental and intellectual activities of a human being. For Nussbaum, the perceptive aptitude to imagine, to think, and to reason can be passed on through education for the understanding of human life (1995: 77).

Women in mining may be able to use their senses, but they might still be limping in ways to explore their senses to full capacity. Consciously or unconsciously, a mechanism of regression is put in place that will not allow women to develop their senses to the utmost possible horizon of their opportunities. As demonstrated in chapter three, a number of cultural realities contribute to the lack of sufficient intellectual and economic development of women in mining. With no proper training and adequate skills, miners may not access mining jobs that require certain qualifications from specific training. This can explain the kind of mining jobs in which women find themselves.

In the DRC's mining industry, women seem to be confined to low paid activities such as: washers, transporters, stone crushers, and diggers, as previously discussed (Pact, 2010: 48). The intellectual limitations of women in mining is prejudicial to the freedom of choices they can make to pursue a life of their own and to excel in mining activities, with the possibility to enhance their capabilities for socio-economic development. Due to a lack of skills, women are "excluded from key aspects of economic governance" (Hayes and Perks, 2012: 534). It is also

important to stress that most mines are located in rural areas where girl-child education is backward, resulting in uneducated women being found in mining. Though women's education in the rural areas still needs attention, there is a sense of progress in urban places in terms of women's access to education.

Thus, it can be said that the DRC does not lack competent female intellectuals in social and political fields that can compete with men in all sectors of life for leadership roles and managerial positions. Even should the lack of skills of women in mining have been proven beyond doubt, training is the way to improve on the situation. Unfortunately, stakeholders care less about this aspect of mining management. Consequently, with no appropriate acquired skills, women's access to competitiveness is reduced. This seriously hampers women's capabilities for attainable functioning, and it may not work to their advantage for advancement onto the ladder of mining employment; as indicated by Côté in chapter five, not many women are found in managerial positions as CEOs or bosses (2014: 15).

A gender-integrated organization of the mining industry in the DRC requires a robust contribution and participation of women as mining economic specialists, leaders and policy makers. This requirement can be unremittingly hindered by the shortage of women with skills as makers of general or special policies in economic and social matters directly associated with mining. This results from the patriarchal oriented mindset that continues to underrate women's capabilities for economic and social leadership.

Additionally, a presumed reduced number of women with specialized skills creates further gaps between men and women responsible for the economic and social policing of the mining industry. Being an economic sector still under the weight of a patriarchal dominance system as proved here, even the prospect of studying the sciences of mining would notably be discouraged where women are concerned.

In a patriarchal dominance mindset, certain sciences are considered appropriate for men and weird for women, insofar that women might be discouraged to consider learning the sciences of mining (Côté, 2014: 16). As a result, with less or no knowledge in the sciences of mining, women are easily sidelined into key positions and the policy making tables. Everything seems a deliberate move to prevent women from attaining certain specialized skills, to later use that

hindrance to their disadvantage, while women lose their assertiveness and freedom of affiliation.

#### **4. 4. 3. Limited Opportunities for Affiliation and Freedom of Choice**

Nussbaum sustains the idea of living one's own life in a place of their choice, and being able to live one's own life and nobody else's (1995: 85). Freedom matters in the pursuit of any basic capability. For this reason, living one's own life is a sign of well-being that denotes a realization of freedom of choice to pursue a life with reason to value. This might not always be the case with women in mining. The surrounding context of their life may not be a matter of their own choice, as expected. Women in mining may not have chosen to live a life they now live, in mining camps. Conflicts and a situation of poverty led them to specific locations to try to rebuild their life and make a living (Omeje and Hepner, 2013: 2; Jacqui True, 2013: 132).

The presence in mining communities of some women is circumstantial, as stated above. For others, mining communities are their place of birth. In both cases, women have the right to live in a place that has become a place of choice, circumstantially or otherwise. Nevertheless, the capability to live one's life in one's own surrounding and context, as projected by Nussbaum, is in many cases hampered by the contractual rights obtained by mine owners.

The DRC's Mining Code restricts life and activities around mine concessions, and people lose their basic capability to live as normal in a place of their choice. Some are forced to surrender their land and space of life to the mine owners, as can be attested to by many displacements of communities that had to give way to investors to source minerals:

Amnesty International visited Luisha in October 2011 and interviewed families who had been forcibly evicted two months previously, in August. When Amnesty International met them they were living in appalling conditions in make-shift tents, with no certainty about the future. According to those interviewed some 300 households were forcibly evicted when a Chinese company, Congo International Mining Corporation (CIMCO) was given the rights to the site in the center of Luisha, where they had been living since 2007. CIMCO had been given the site to build a processing plant (Amnesty International, 2013: 22).

Mining communities, as previously explained, are circumstantial. Others are constituted following the opening of mine concessions, with several families coming together and forming villages, with the prospect of benefiting from mining activities for job-related opportunities. Other mining communities are villages that existed prior to mining concessions. In both cases, people have the right to live where they can legally settle.

In the case of Luisha in the eastern DRC, nothing indicates the illegality of the settlement of the inhabitants, as the land was not a reserved or protected area. Therefore, people who settled in that location had not broken any law. It was their right to live their own life and work in that place of their choice. Any displacement from that location should have been subject to compensation, according to the terms of the mining policy (Mining Code, 2002: 281).

Contrary to this disposition, people of Luisha have not been granted the possibility to fulfill the capability of living their own life and nobody else's. This is prejudice of their human and economic rights that may also have affected other capabilities, for example of determining mining work of their choice.

Concerning choice, it appears that women in mining are far from the functionality of free choice of even the mining job they find themselves doing. As already alluded to in this chapter, it is symptomatic that women only find themselves at the bottom chain of mining activities as washers, transporters, stone crushers, and diggers (Pact, 2010: 48). With a capability being the possibility of a choice to do and to become something the person has reason to value, it can be deduced that women in the DRC's mining sector are far from achieving valuable functioning. In most cases, women and children have not selected by strict choice the mining activity they are now in. It would be absurd that women would only choose to be in low paid mining activities and not becoming involved in mine trading and ownership, as illustrated in the table below.

**Table 4.4.3.** Distribution of women per mining activity

Provinces	Stones Cushers	Transporters	Sorting Waste	Pounders	Diggers	Sievers	Washers	Small Business	Mines Owners	Suckers	Buyers
<b>Maniema</b>	-	20. 5	5.8	-	27.9	20.5	-	33.8	4	-	5.8
<b>Nord Kivu</b>	7.3	16. 1	5.1	13. 2	-	1.4	-	58.9	-	-	-
<b>Sud Kivu</b>	28. 1	37. 8	14. 5	1.9	-	1.9	-	19.4	7.7	-	-
<b>Province Orientale</b>	-	41. 4	1.4	1.4	8.5	47.4	-	41.4	-	-	-
<b>Kasai Oriental</b>	42. 2	26. 8	-	-	-	-	-	21.1	1.6	-	-
<b>Kasai Occidental</b>	88. 3	9.3	-	-	-	-	-	2.3	-	-	-
<b>Katanga</b>	-	-	-	-	-	-	9.68	8.6	-	75.8	6.45

**Source:** Adapted from: Renafem. <http://www.prominesrdc.cd/renafem/accueil.php>. [Accessed 12 April 2016].

Most women in mining are shown to be performing work at the bottom of the mining chain of activities (*Table 4.4.3*). For example, in the provinces of Kasai Occidental and Kasai Oriental, the land of diamonds, most women trade their services by crushing stones related to diamond extraction. In the province of Katanga that abounds with copper, cobalt, and other minerals, most women perform the work of sucking water in the mining wells (probably using rudimentary methods).

In the Maniema and Kivu provinces, the land of gold and coltan, most women earn money by personally and physically transporting mineral products, sand and stones from the mining site to the site where other women or men tend to the task of crushing them, while other women

wash the sand to extract gold. For their part the “bizalu”, or women with long and small arms, recoup the discarded sand that is then re-washed, so that the gold can be extracted (Côté, 2015).

There is an exception, with some women in the Maniema province who are brave enough to be diggers (27.9 %). In mining, digging is mostly to be a masculine job, and the most energy-consuming and life threatening. Nonetheless, some women take part in this very masculine activity. They work in open areas, and sometimes down a pit or a tunnel. Besides the risk of collapse and land sliding, working conditions and basic equipment have disastrous effects on the health of most diggers. Exhaustion, inhaling of dust, exposure to radioactive substances, back pain, eye diseases, diseases from dirty drinking water, drug and alcohol used to deflect their fears, the suffocating heat in narrow tunnels, and so on (Côté, 2015). These are the kind of struggles women go through. A very small portion of women are also shown to be involved in the management of mineral resources as mine owners or as buyers (*Table 4.4.3*).

The question can be asked as to why women are only performing tasks that are at the bottom of the mining chain of activities: Is it by choice or are there other possible reasons for this? A tentative answer is to be found in the CA Enablement Indicators or what Robeyns calls conversion factors, which include: personal characteristics (for example metabolism, physical condition, sex, reading skills, intelligence), social characteristics (for instance public policies, social norms, discriminating practices, gender roles, societal hierarchies, power relations), and environmental characteristics (such as climate, infrastructure, institutions, public goods) (Robeyns, 2005). The combination of these three conversion factors can explain the position of the DRC’s women in mining.

Concerning personal characteristics, for instance, it has been observed that “the overall portrait suggests that women and girls in mining areas are undereducated, with access to education being extremely limited and not encouraged” (Côté, 2010: 16). Once this one CA Enablement Indicator is not in place, other indicators may also not be fulfilled. Women seem to be left with no choice but to be content with any available opportunity for a mining job, leaving them no prospect of enjoyable and recreational activities.

#### **4. 4. 4. Lack of Recreational Opportunities**

It has been shown in this study that where the working conditions of women in mines are concerned, they spend long working hours in extremely difficult and hazardous conditions, especially relating to artisanal mines and in small scale mining, where women are exposed to non-praiseworthy working conditions (Hayes and Perks, 2012). It is obvious that women subjected to precarious working environments may not have the leisure of recreational opportunities.

Hayes and Perks concede that “Women assume a variety of roles in ASM; they may be directly involved in mining and trading or may work in the subsidiary businesses (such as bars, hotels, and restaurants) that support mining communities. Women and young girls may also be part of the sex trade” (2012: 334). As noted in this quote, women in mining communities are subjected to a life that is out of the ordinary and not subjected to normal trends, affecting their functional capabilities for play and recreational activities in various ways.

It can be said that the working conditions described above place women in a survival mode, where everything is done only to maintain oneself in life within barely affordable means. It is evident that this situation stands in disagreement with Nussbaum’s idea of a threshold, in the sense that a minimum of opportunity must be provided to each individual as a basis from which a human life can flourish (Wolf, 1995: 105). The kind of life that can result from working conditions described in chapter five cannot allow individuals, for example, to experience the basic capability of “being able to laugh, to play, to enjoy recreational activities” (Nussbaum, 1995: 84).

It is worth noting that from the CA perspective, what matters is not what the person has ended up achieving, but the freedom that is afforded to the individual to achieve that which they can capably achieve (Sen, 2009). Women in the DRC’s mining industry may not have such freedom, even for recreational functioning.

The DRC’s Mining Code and the mining regulations do not specifically stipulate working conditions capable of providing mining employees with the above human capabilities. The closest the mining code came to this, is the following article: “Mineral Exploitation is subject

to the measures for safety, health and protection enacted by special regulations” (Mining Code, 2002: 207). The importance of this article consists of the concern for safety, health and protection, however, it seems not to deal with safety, health and protection of mining workers within their working environments, but instead with the public at large.

The following article that extends the previous article, shows this by stipulating that: “the holders of the mining and or quarry rights must comply with the measures which are decreed by the mines administration with a view to preventing or removing the causes of the dangers which the work inflicts on the public safety and health, the preservation of the deposits, springs and public roads” (Mining Code, 2002: 208).

This concern for the safety and health of the general public is commendable, as mineral exploitation should take into account the lives of the general public and the environment. Nevertheless, this article falls short of a concern for those who are directly involved in mineral exploitation. The mining policy should have been concerned about the many women whose life might be at risk without safety measures and to propose working conditions that guarantee the possibility of a flourishing human life that includes recreational activities.

The consideration of these different capabilities in reference to the DRC’s Mining Policy, as applied to the life experience of women, has served the purpose of assessing the impact of the application of the mining policy on the well-being of the people concerned. The descriptive analysis of the different capabilities has exposed the many facets of subordination and harm caused to women, implicitly or directly, by the applicability of the DRC’s Mining Policy.

A realistic and across the board statement is that most capabilities seem to have not been reached or under achieved. The need therefore exists for more efforts to address all the challenges in the pursuit of essential capability of good health, mobility, avoidance of unnecessary pain, the prospect of pleasurable life experience, and the possibility to live one’s own life (Nussbaum, 2000).



## 4. 5. Conclusion

This chapter presented the theories of feminist ethics and the CA which guided the analysis in this study. The feminist ethical theory and the CA claim relevance for the analysis of the DRC's Mining Policy. The first being specific in exposing the subservience of women, while the second offered assessment tools for evaluating the quality of life of the DRC women engaged in mining activities.

Following the detailed account of the two theoretical frameworks, the chapter embarked on a feminist analysis of the DRC's Mining Policy with the aim to assess ethical gaps in the policy. Through the lenses of feminist ethics and the CA, the chapter has observed a number of ethical gaps in the policy, resulting in challenges faced by women in the DRC's mining industry. The feminist ethical analysis, for example, was insightful and exposed the lack of gender sensitivity in the mining policy, owing to the masculine characteristic of the language and patriarchal implementation of the policy.

The chapter argued that the clearly patriarchal regulations did not facilitate the inclusivity of women in the economic sector of mining, thus crippling the socio-economic empowerment of women. In addition, from the insights of the descriptive inference to Nussbaum's CA the chapter detailed the non-achievement of the basic capabilities of life, good health, freedom of association and affiliation, as well as avoidance of unnecessary pain, the use of the senses and practical reason (Nussbaum, 1995: 83-85).

It was demonstrated that most basic capabilities of a life well lived have been compromised due to failure by the mining policy to provide a conducive socio-economic environment enhancing women's human capabilities. The CA Enablement Indicators attest to a willingness by women, with physical and capable mental dispositions for mining activities, yet being let down by the fact that the social factors were not provided by the mining policy. For this reason, in the next chapter, the study will reflect on ways to improve the CA Enablement Indicators in women miners.

For an innovative way forward, the next chapter will present a framework of the Ethical Mining Workplace. This will be an attempt to put in place a paradigm for a sustainable and responsible

mining industry that can associate mining and the pursuit of basic rights of miners and local communities. The study will, for this reason, rely on the prescriptive insight of the CA since, as already stated, “the aim of public policy is the production of combined capabilities” (Nussbaum, 2000: 44). Any public policy should be able to create a working environment where people can develop their capabilities. As a way of contributing to the body of ethical knowledge, the next chapter will elaborate on the concept of the Ethical Mining Workplace, a framework that highlights a discourse on the mining workplace that can foster the implementation of the CA enablement virtues in mining practice.

## **CHAPTER FIVE: TOWARDS ETHICAL MINING WORKPLACE PRINCIPLES BASED ON THE CAPABILITY APPROACH**

### **5. 0. Introduction**

The feminist ethical framework and the CA informed the analysis of the DRC's Mining Policy. The analysis in the previous chapter uncovered a strong propensity for patriarchal dominance of the DRC's Mining Policy. The critical analysis exposed a sense of gender inattentiveness in the policy and this has affected the participation of women in mining economic activities, which is a viable source of income. The CA revealed non-achievement of most basic capabilities, which compromises women's freedom to pursue and fulfill the many aspects of their well-being.

Consequently, women have suffered gender prejudices and abuses at the hands of investors, government bodies and male miners. It was highlighted in chapters three and four that the state of women miners in the DRC fits the description by Nussbaum of other disadvantaged groups. On this topic, she declares that "[...] women's lives reflect a striving after many different elements of well-being, including health, education, mobility, political participation, and others" (Nussbaum, 2003). These are essential ethical indicators of a good human life that have been seriously impeded in the life of women in the DRC mines. Such ethical gaps need to be bridged within the DRC's Mining Workplace.

The present chapter intends to put forth principles that can inform the situation in the DRC's mining industry, by presenting the mining workplace with virtues that can enhance ethical practice in the mining industry. To this purpose, the chapter will firstly elaborate on the need for an Ethical Mining Workplace based on the CA.

In this stage, the chapter will articulate the different virtues that form the substance of the Ethical Mining Workplace. Secondly, the chapter will apply the virtues of the Ethical Mining Workplace to the DRC's mining industry by articulating specific areas that can be transformed, allowing that when the mentioned framework is diligently applied it will show how that will increase women's CA Enablement Indicators.

Considering that the CA emphasizes rights, this part of the chapter will highlight various elements that can enable the achievement of those rights, and affording women with enabling conditions to pursue a good human life of their choice. Thirdly, the reflection suggests some aspects of the DRC's Mining Policy that can be reconstructed in conformity with the framework of the Ethical Mining Workplace.

## **5. 1. The Ethical Mining Workplace**

It has been noted that the DRC's Mining Policy does not include dispositions regarding the participation of women in mining activities. Therefore, drawing on the CA as a prescriptive principle that can inform public policy, the study suggests a framework of an Ethical Mining Workplace focusing on virtues and basic rights that can address the ethical gaps obstructing the development of women's well-being.

### **5. 1. 1. The Need for the Ethical Mining Workplace**

The DRC's mining industry, similar to that of other African countries, accounts for the better part of the national economy through its contributions to the GDP, the many direct and indirect employment opportunities, and the revenue of mining exports (KPMG. 2012: 3). Despite this appraisal, the mining industry is in a state of crisis of legitimacy, legality, and meaning in the midst of a growing disappointment by women miners, and mining communities, as has been noted in the preceding chapters. These women mostly feel left out of a haven of economic possibilities, and sometimes deprived of their rights (Garrett, 2008: 10).

As noted, the plight of women in the DRC's mining industry includes a lack of regard for human and labor rights, issues of poor working conditions, wages of misery, and a lack of ownership of mining permits. To this list can be added the lack of revenue returns towards economic development in local communities, in addition to insufficient social participation of mining companies in efforts for poverty reduction in rural mining areas. These and many other concerns indicate the urgency to transform the DRC's mining industry into sustainable and responsible mining that corporately responds to issues of lack of equity, justice, and neglect of basics rights (human rights, labor rights, rights to a sustainable development, rights to a healthy environment).

There is an imperative need of principles that can aid in redressing the mining industry. For this purpose, the study proposes a framework of the Ethical Mining Workplace that can inform the industry. Evidently, the above-mentioned issues can be resolved in a context of implementation of a theory that fosters virtues with the ability to bridge the gaps of a “missing ethics of mining” (Siegel, 2013). For its part, a framework such as that of the Ethical Mining Workplace can also encompass the area of ethics of mining.

The Ethical Mining Workplace is a framework of standard principles of responsible and sustainable mining that promote human rights, Labor rights, and rights to development. Such principles can humanize, and harmonize the mining workplace by challenging mining companies with the obligation to uphold these rights, especially with regard to women employees who happen to be the most economically sidelined, and who are emotionally and physically exploited.

To uphold the basic rights mentioned above, mining companies in the DRC are obligated to facilitate the achievement of basic human capabilities. It pertains to the mining policy to propose conditions of possibilities for employees to improve the quality of their lives and achieve well-being. The proposed virtues of the Ethical Mining Workplace Framework should serve as reference to policy makers to see to the well-being of the employees in the mining workplace.

### **5. 1. 2. Virtues in the CA to Enhance the Ethical Mining Workplace**

Virtues substantiating the Ethical Mining Workplace Framework come from the CA, and are also named the CA enablement virtues. As noted previously, the DRC’s mining industry has not profited the majority of participative groups, such as women and local communities. For example, the economic segregation of women in key mining activities has resulted in the non-achievement of basic capabilities and functioning, which translates into deterioration of a good human life. This situation indicates the need for the industry to introduce some transformative principles, in order to be transformed into a responsible mining workplace. Using the CA as prescriptive principle, the following virtues emerged: good governance, caring and fair sharing of mineral resources, basic rights of miners, including human rights, Labor rights, and rights to development. The next sections elaborate on these virtues.

### **5. 1. 2. 1. Good Governance**

Drawing from Amartya Sen, Nussbaum associates the CA to the normative question of ethics and public policy, in that it is the ethical responsibility of public policy to ensure that people are enabled to develop their human functioning and attain the various aspects of a good human life. Sen argues that “A person's ability to achieve various valuable functionings may be greatly enhanced by public action and policy” (Sen, 1993: 44).

This view is shared by Nussbaum declaring that: “The aim of public policy is the production of combined capabilities” (Nussbaum, 2000: 44). Both authors refer to the role of public policy in providing the necessary environments and services, allowing individuals to function to the best of their possibilities. This is about good governance, by enabling citizens through various actions and policies. Political decisions of good governance should aim at policies that guarantee citizens the use of their freedom to embrace opportunities to build a good human life.

This study demonstrated in chapter three that poor governance of mining in the DRC has contributed to the reality of poverty among women miners. An Ethical Mining Workplace calls for a normative action of good governance of the mining industry, by putting policies in place that award benefits to individuals and groups according to their needs, for enhancement to reach the acceptable level of capability. The study, in chapter four, established that the DRC's Mining Policy has no dispositions regarding the enablement of women's ability to achieve valuable functioning.

The Ethical Mining Workplace concept of good governance implies principles of impartiality and moderate partiality. According to Metz Thaddeus, “the impartial position on which citizens' government officials in sub-Saharan Africa should help is that they act only for the sake of the general public” (2009: 338). Impartiality should mean that government decisions and actions justly benefit the general public. Acting impartially in the case of a mining industry, can mean the adoption of policies that justly award benefits to the concerned public (the miners and mining communities).

Opposing strong partialism that portrays nepotism and injustice, Thaddeus encourages moderate partiality, which he explains as a preferential act in favour of deserving individuals. He argues that it is permissible in African moral theory for government to act in favour of the general public, and to act in moderate partiality, except in favour of individuals close to the state by their past sacrifices to the state, for example in the case of veterans of liberation wars and freedom fighters, and in favour of individuals historically disadvantaged and wronged (Metz, 2009: 344).

Impartiality is indisputably a strong case of good governance; conversely, moderate partiality may be controversial because it borders on favouritism<sup>16</sup>. Regarding the participation of women in the DRC's mining industry, moderate partiality (treating individuals who were previously wronged in a special way) can be adopted and it will mean preferential policies in favour of women's participation in mining, in order to balance the disadvantages suffered by women for many decades in being economically side-lined. In this case, good governance implies being inclusive of all interested individuals previously excluded by reason of gender. Good governance implies caring for others.

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<sup>16</sup>Impartiality is coupled with justice, while partiality (partialism) can indicate injustice and prejudice. However, Metz indicates that at times, impartiality may not be adequate when dealing with people who were wronged in the past, or people who made sacrifices for the sake of the state. Therefore, he supports moderate partiality, which he sees as a treatment of preference that can serve to correct past injustices by treating a category of people in a way that may seem as favoring them, but a way that serves justice. He says, "it also does not require state officials to award resources on an utterly impartial basis; on some occasions, they may favor individuals with certain relationships with the state, specially, veterans and victims of state injustice, even when it would cost the public. The first reason is that the proper valuation of friendship requires displaying gratitude, expressing remorse and trying to reconcile with those who have been wronged, all of which the state would achieve by preferential hiring. The second is that, in many cases, a moderately partial state of this sort would not promote substantial discord in society" (353-354). The study draws on this idea of preferential treatment, in the case of women in the DRC mining industry, who have been wronged by abuse and injustices. Moderate partiality can mean government adopting a policy that puts women first in key mining activities.

### **5. 1. 2. 2. Caring**

The ethical value of caring can be the basis of a working relation between different stakeholders in a workplace. I argue that shared work and duties creates connectedness which, in turn, compels to care for others. It is with diligence that Metz highly prizes the sense of relations, in that a “harmonious relationship consists, beyond identifying with others, in exhibiting solidarity towards them. This is a matter of demonstrating goodwill or being positively oriented towards others’ interests. Such behavior includes helping others and, furthermore, doing so for their sake” (Metz, 2009: 341). Caring for others in a workplace solidifies working relations, which is beneficial to the company. It can be said that the success of a workplace’s goals and expectations can stem from the level of interaction and collaboration of stakeholders.

The moral concept of caring determines the sense of being a community, not only of material interests but a deeply bonding community of shared humanity that is to be preserved and protected. In this way, protection calls for a look-out for others. Caring for others in a workplace is a mark of morality that makes a person feel for others and being empathetic towards them. The ethical concept of caring is not abstract or phenomenological. It is a reality manifested in concrete actions of support to one another in a movement of solidarity, consideration, cooperation, and care by becoming involved to ensure the well-being of others (Onazi, 2013: 161).

There is a grandeur in the predisposition to take care of others and to seek their well-being in a workspace that should be viewed as a form of a community that needs the collaboration of everybody concerned towards the well-being of all. The workplace as a communal space of a variety of duties cannot less emphasize the care for others.

A caring workplace can mean that “individuals are enjoined to treat each other as ends in themselves and not just as means. To value communal relationships is to share a way of life that prioritizes care for the quality of life of others” (Onazi, 2013: 63). To argue it differently, a workplace that displays the ethical concept of caring for others is a workspace that values the participation and collaboration of others, while recognizing them as ends. The ideal is that from the top leadership to the lower employee, there exists a shared sentiment of a certain relatedness



and interdependence in the way people are treated with respect, dignity and equity by the hierarchy and among peers.

A caring workplace can also be captured in the way workers are being supported by all means to carry out their duties and feeling fulfilled in their aspiration for a better quality of life. This also entails communal participation towards productivity. Working side by side and hand-in-hand in dealing with daily tasks to achieve a certain productivity creates a bond of connectedness. Even in individualistic societies, the workspace offers possibilities of associational life that differs from any other space gatherings such as social networks, or entertainment places.

The connectedness of the workspace is insightfully life-giving, creating an identity that reinforces the sense of belonging (Estlund, 2003: 2). A caring workspace can ensure a certain level of productivity. Caring happens through safety, healthy working conditions, a healthy environment, and the contribution towards communal work.

The ethical principle of caring presented above (Onazi, 2013), can also inform the attitude and response towards mining work practices that can value women's human agency. It is relevant for the mining workplace to be grounded on the basis of the conception of work in African context. It should be said that the understanding of the concept of work in the African mindset coincides with the understanding of the African person. Mafunisa John Mtyuwafhethu (2008) explains that two important aspects of the African understanding of work system are values and attitudes. As an illustration, the values of solidarity and communality confer to the work system its African humanness. To work in solidarity and communality is an important feature of the African person. These values determine the African attitude towards work inculcating a sense that work is a vital component of African communal life. The value attributed to work and the attitude of Africans towards work convey a sense of a strong organizational dynamic of work based on the values of solidarity and communality that build team efforts for the benefit of performance and production of goods intended for each member participant in the work efforts (Mafunisa, 2008: 116).

In reference with the above African conceptualization of work, it can be said that the African communal value of work has less resonance in the DRC's mining industry which continues to

experience downward movement of highly appraised values of solidarity, communality and caring for others in the workplace. As highlighted in chapters three and four, the DRC's mining workplace pays less attention and concern for aspects that build and create a community of interests. There are various factors that distort the essence of a communal mining work that can reinforce the ties of communality around value system and well-being. Those factors include, the working conditions, the wage of poverty paid to miners, the absence of general prospect for safety and security. In addition, it should be said that time management of working hours is a nightmare for mining workforce including women who work long hours without daily or weekly rest (Amnesty International, 2013).

The DRC's Mining Policy and the mining regulations paid little or no attention to the legal management of working hours for the benefit of miners and productivity. Many other aspects of the DRC's mining work and workplace do not portray the inspirational African values of solidarity and communality. In this regard, women are the most affected in the mining workplace where they risk everything: their safety, health and life (Garrett, N. 2008). In its present context, the DRC's Mining workplace needs to foster the value of sharing. This means sharing the mineral resources through just salaries.

### **5. 1. 2. 3. Fair Sharing of Mineral Resources**

Another mark of an Ethical Mining Workplace can also imply the expectation of sharing the resources of the collaborative efforts of all stakeholders. This study argues that it is imperative for organizations and companies to create mechanisms for economic solidarity, in the sense that each individual receives their fair share of the revenues in the form of wages or other means. The idea of gainful participation in the benefits of combined efforts towards productivity is beneficial to workplace attitudes.

Corroborating this idea, Estlund sustains that the "ability to advance workers' interests depends on workers' sharing common aims; their interests are served by seeking terms of employment that quell divisions, minimize competition, and expand common ground and mutual interdependence among the workforce" (2003: 26). The common aim can be understood as participation in the benefits and sharing the products of workers' hard work.

Caring is working together towards a common goal to achieve desired benefits. On caring and sharing, Okyere Manu supports the idea of “mutual sharing of resources in the economy” (Okyere, 2011: 175). The sharing of economic resources reinforces trust and cooperation in the workplace and sustains productivity. In an organization characterized by strict egoistic capitalism in the form of advantages that border on extremes in scales of have-more and have-less from top to bottom, and which is based on hierarchical structure, workers are likely to be demotivated and productivity will suffer.

It is against this background that various African scholars have suggested the integration of Ubuntu ethics in the practice of economics and business (Boon, 1995; Mazrui, 1999). Along the same line of thought, Murove argues that “to succeed, African business practices should embrace Ubuntu” (Murove, 2009: 233). These scholars argue that African values of communal living, connectedness and group solidarity should be portrayed in the spirit of sharing, which is contrary to the self-serving egoistic mentality of business detached from African values. When much is shared, the workplace dynamic is vitalized and the organization’s growth is sustained.

The concept of sharing is one of the foundations of African ethics as it illustrates correctness, while attitudes of greed attest to wrongness. It is believed that in African ethics, “sharing is a state of mind, an attitude, a practice, an institution and an element of culture. It implies giving when one has anything to give, and distributing goods among the original owner and his or her peers without any preliminary agreement being formalized” (Bwakasa, 1987: 386). Though in this quote, ‘sharing’ may not require a prior agreement, it is important that in the context of a mining workplace, an institutional process of sharing be guided by a working contract, stipulating terms and conditions of the sharing that can be understood as the salaries and other forms of gratuities to women.

In this context, the principle of sharing can also begin with mining legislation, ensuring the principle of minimum wage, because “if the objective of the minimum wage is to guarantee that all workers, regardless of productivity level, receive a living wage, a good benchmark for the “fairness” of the minimum is its level relative to the poverty line, that is, the minimum income necessary to purchase basic goods and services” (Cunningham, 2007: 52). The minimum wage should only be the beginning of fairness in sharing resources from mining

products brought to the surface by the hard work of miners. Sharing is an equitable distribution of mining revenues in the form of wages, enforced by the Labor laws of various countries.

These various virtues, when applied in the mining workplace, can improve the overall presence of CA Enablement Indicators. It is reasonable that good governance, and the practice of caring and sharing mineral revenues become regular practice in the DRC's mining industry. It has been demonstrated that though women in the mining industry have exhibited 'internal capabilities', and proved mentally and physically capable of mining activities, the workplace hardly followed suit to provide the 'combined capabilities' (Nussbaum, 2000: 44). Not afforded with the opportunities and the conducive working environment, women can barely function in mining. The Ethical Mining Workplace Framework can help improve this ethical hurdle, by informing the DRC's mining industry and transforming the mining practice by promoting miners' basic rights.

### **5. 1. 3. Basic Rights**

Following Nussbaum's list of basic capabilities in chapter four, this study contends that the CA offers a better framework to illustrate the level at which women in the DRC's mining industry have or have not attained a good form of human life. It was argued in chapter four of this study that most basic capabilities are under-achieved. The hazardous working conditions and lack of an approved minimum wage has led to abuse and neglect of most basic rights of miners.

Accordingly, it must be noted that the proposed Ethical Mining Workplace Framework can shape the industry in a way that guarantees, in theory and practice, the standards of basic rights. In this way, employees and employers may have an understanding of the standard of behaviors and activities that foster the following rights, especially those most needed in the current mining workplaces.

### **5. 1. 3. 1. Right to a Healthy Mining Workplace Environment**

As noted in the previous chapters, the mining industry of the DRC is marred by unhealthy conditions. Work is often exercised in unsanitary conditions and a security risky environment, to the peril of the lives of miners. The mining code instructs that security measures be made public to prevent accidents (Mining Code, 2002: 210). However, it has been observed that in the context of artisanal, small scale and industrial mines, the owners do not take health, security and safety conditions into account (International Trade Union Confederation, 2011). Women in mining spend most of their time in workplaces that totally ignore the basic capability of a well-lived life that cannot be promoted in unhealthy conditions surrounding their workspace.

Accordingly, in conformity with the Ethical Mining Workplace Framework, non-governmental organisations, civil society associations, mining cooperatives, and unions should relay efforts to demand and monitor the strict observance of safety and health measures at all levels in mines. This will keep the focus on the right to work in healthy environments. These organisations must lobby the help of international partners in order to bring mining companies to collaborate and improve on working conditions.

The DRC government for its part must be encouraged to impose sanctions against investors and owners of mines that fail their obligations in relation to safety in the mining workplace. A healthy mining work environment must be the priority for the government that should play its role in this matter.

In fact, most African mining industries suffer from the irregularity of the global economy, dominated by excess profit, to the disadvantage of workers' rights, including the right to a healthy workplace. It is believed that most features of the global economy "have undermined working conditions, economic standards, and collective rights of workers" (Montgomery, 1996: 13).

These are important aspects to be reinforced by the proposed Ethical Mining Workplace Framework. In particular, working conditions in mining should respond to acceptable and reasonable standards associated with workers' various rights. The private and independent

associations of mine workers may constitute a valuable structure to champion the interests of women in mining.

### **5. 1. 3. 2. Right to Independent Associations within the Mining Workplace**

The Constitution of the DRC recognizes the workers' right to form associations and cooperatives to protect their human and corporate interests (Constitution of the DRC, 2006: 37). The analysis of the mining policy in chapter four demonstrated that women in mining do not have independent associations. Instead, there are associations affiliated to government institutions such as the ministry of mines (Renafem, 2015). As can be noted, though the constitution of the DRC guarantees to workers the right and freedom to form independent workers' associations, it is not yet effective with regards to women mining workers. This category of workers relies on structures that are somehow under government influence. Corroborating this view, the International Trade Union Confederation, declares: "The right of workers to associate and organise themselves is not guaranteed in practice despite the 2006 Constitution that ensures the right to form and join trade unions without prior authorisation (2011, 23).

The many challenges women face in the DRC's mining industry require concerted efforts to address these problems in a common front of interests. The voice of a single person is important but weak, as one voice is insufficient to be heard in the discordance of obstructive voices against women. In conformity with the virtue of caring inherent to the Ethical Mining Workplace, women's associations in the mining workplace will carry along the interests of others.

It must be noted that there is a link between ethical workplace and economic profit in a company. Investment is done for the sake of profit that should go hand in hand with basic rights of workers. The right for association for example, is one of the basic capabilities highly important in the mining industry as an organization that looks after the wellbeing and interests of miners. Without such a right, workers in the mining industry are left on their own, and may not receive a corporate response to their demands on various issues aimed at improving the quality of life. Therefore, a concerted relationship of all stakeholders can entail a participatory decision making process.

For example, miners could participate in decision making through a representation of their association (De La Cruz, Potobsky, and Swepston, 1996: 189). It has been demonstrated in this thesis that women have no say in the mining industry which is regulated by a patriarchal legal framework. The proposed Ethical Mining Workplace can contribute to reverse the decried situation when instigating in the mining practice the respect for all basic human rights, including the right of association described in Nussbaum's list of capabilities (Nussbaum, 1995). Represented within their association, women in mining will have a voice and a force of decision and means for actions within the mining workplaces that will exhibit the sense of caring.

Rightly so, women in the DRC's mining industry are grouped in an association called the Association of Women in Mining (Renafem). This is an organization that lobbies for the socio-economic interests of the DRC's women in mining. However, it should be said that Renafem is an initiative of the DRC's government, under the ministry of mines. This fact in itself places this association under the strict censorship of state machinery. In these circumstances, and knowing the extent of the political patriarchal dominance system in the DRC, it is possible to question the freedom of expression of women in this association, and if it really fosters the interests of women in mining. Another important reality is an observation by the International Trade Union Confederation stating that:

While the 2006 Constitution guarantees the right to form and join trade unions, authorities apply the principle of divide and rule by purposely encouraging the proliferation of hundreds of trade unions. There are reported to be around 500 officially recognised trade unions in the DRC today. The functioning of these unions appears to be severely thwarted by self-interest and corruption and has not effectively helped to protect the rights of workers (2011: 19).

The right to form associations can be closely linked with the freedom of choice central to the Capability Approach (Nussbaum, 2000). Forming unions with the intention of weakening organizations and dividing the mining workplace solidarity is contrary to the proposed Ethical Mining Workplace. Subsequently, it is appropriate to encourage real private and independent associations of women in mining. Private and independent associations have the advantage to work in freedom persuading policy-makers to enable women in the exercise of their human capability of affiliation in a concerted effort to promote their socio-economic interests. Thus,

the mining workplace can guarantee to women opportunities of access to economic resources through what this thesis has named the Mines Funding Program for Women (MFPW).

### **5. 1. 3. 3. Right of Access to Economic Resources**

The Ethical Mining Workplace Framework promotes the sharing of mineral resources in the form of equitable wages, and other financial benefits. To increase possibilities for women's access to economic resources, women associations in mining may demand that the DRC Government and the mining companies create mechanisms to facilitate women's equal access to economic resources in workplaces. For example, through a transparent selection process, competent women can apply for funding from the state, from specialised financial institutions, and from mining companies where they work.

This type of financial project will serve the purpose of economic mining entrepreneurship for women. The government should engage mining companies in efforts to create a Mines Funding Program for Women (MFPW). Such a programme will be allocated to women who show interest in mining and present fundable mining projects.

The economic empowerment of women necessarily involves self-entrepreneurship. For this reason, there is need to seriously consider advocacy voices that claim the adoption of policies in favour of more economic initiatives to incorporate the employment of women in order to improve their lives (Mikell, 1997). Women are very organised, and the state must encourage all initiatives that empower women towards their economic participation, involving them in financial entrepreneurship in the mining sector of the DRC. When women are financially stable, they will know how to manage their finances, and they can create more jobs for other women, thus reducing poverty for many. For instance, as explained in chapter three of this study, most women are the financial managers of their households. Accordingly, should women be helped to become entrepreneurs in the mining sector, and were they to be CEOs or even owners of a mining company, they will contribute to better economic development of the country.

The economic vulnerability of women in the DRC's mining industry has been highlighted in chapter three of this study. Subsequently, chapter four explained the non-achievement of most



human capabilities due to various reasons in detail. Women find themselves in life conditions deprived of ‘combined capabilities’ (Nussbaum, 2000). This cannot allow them to develop their capabilities and pursue a life of their choice.

Poverty of this kind is more than material and should not be viewed only in terms of resources; it fundamentally threatens the very sense of human life and should be viewed in terms of ethical issues. When poverty prevents women to reach the ‘two thresholds’ (Nussbaum, 1995: 81), it makes women lose substantial characteristics of a good human life. For one thing, such a situation also exposes women to abuses fueled by sexist myths, from which they need to be protected.

#### **5. 1. 3. 4. Right of Protection Against Sexist Mining Myths**

The patriarchal dominance supported by cultural beliefs against the participation of women in the mining industry can be attributed to the existence of sexist mining myths against women and girls, as elaborated on in chapter three of this study. The situation of women in the mining sector should be seen in the general context of women in the DRC who face “a lack of policies and government mechanisms to advance their situation, while bearing the brunt of discriminatory practices and customs that weigh heavily against them” (Côté, 2013: 5). Recognition by mining workplaces of the reality of the cultural practices against women can be the beginning of the solution for sexist myths that disrupt women’s participation in mining.

As noted above, one of the ideals of the Ethical Mining Workplace Framework is to advance good governance. Discriminatory practices against women can stem from a lack of proper governance of the sector, which leaves a free terrain for cultural hierarchical manipulation. It must be understood that cultural manipulation is an expression of the patriarchal dominance framework in the DRC that operates within traditions, cultures and societal arrangements, having women occupy subordinate roles to men.

As observed in chapter three, men have always been perceived to be ahead in all aspects of life, doing big things, while women engage in small tasks and are always taking the blame for anything that goes wrong (Tshilemalema, 2002: 127). It is in this context that the protagonists of the mining myths against women find support for their claims. Women are blamed when

men fail to find minerals of high quality or even when they fail to expose any minerals after a day of hard work, as explained in chapter three. They attribute such bad luck to the presence of women in the mines, and consequently women are punished in various abusive forms.

To counteract such practices, a thorough sensitisation of the mining workplace is necessary regarding the fallaciousness of such beliefs. Through education and advocacy, miners and mining communities should be helped to differentiate between progressive and backward cultural expressions. In the DRC, as in most parts of the African continent, cultural construction of gender perception prioritizes the male dimension and the embodiment of these various elements (Bruni and Gherardi, 2002: 21).

For example, male sexuality takes ascendance over women's, as well as male desires, powers, bodies, and so forth. Obtaining an understanding of the cultural dimension of gender difference can also open ways to eradicate the social biases of sexism, and offer an understanding of otherness that avoids the traps of patriarchal dominance that victimizes women as scapegoats. Thus, a new perception of women as partners to men can enhance human capabilities with equity and equal opportunity in the distribution of roles and the arrangement of personal and social conversion factors (Robeyns, 2005), specifically in the mining workplace. It is therefore imperative to dismantle the cultural construction of gender differences based on body, sexuality, power and politics of gender domination.

The mining workplace being challenged should create conditions of possibilities for the respect of workers' labor rights: rights for association, for protection against forced labor, and for safe and healthy work. It is the responsibility of all stakeholders to ensure the fulfilment of these various rights (De La Cruz, Potobsky, and Swepston, 1996: 152-154). With regard to women, it is vital that the mining workplace be informed by the principles elaborated in the first section of this chapter. The implementation of those virtues has the advantage to instill an improved mark for the DRC's mining industry, as shown in the following section.

## **5. 2. The DRC's Mining Industry Informed by the Ethical Mining Workplace**

There may not have been a fully formulated framework of the Ethical Mining Workplace Framework conceptualized above. However, the suggestive materials presented in this chapter are worth a foundation for a framework focusing on virtues that substantiate the Ethical Mining Workplace Framework in the following ways:

### **5. 2. 1. A Mining Workplace Sensitive to Gender Parity**

This study has sufficiently evidenced the economic and cultural exploitation of women through a patriarchal and discriminatory legal framework. To change this reality, in accordance with the principles of the Ethical Mining Workplace Framework, it is imperative that the mining workplace becomes more aware of the legal and ethical necessity of sexual equality in all aspects of mining activities. Such a change might coerce the mining workplace to implement a gender parity mandate. Women's exploitation takes place in households, market places, and workplaces, especially in the mining workspace.

The social and work arrangements that disadvantage women portray a misconception of biological differences between men and women, wrongly quoted by many chauvinists (Kimmel, 2000: 22). They take advantage of the biological differences, which generally see women in their femininity as physically weaker than men, and then transfers it to all other areas of life, determining what women can or cannot do. Luckily, the DRC's Constitution, aware of this sexist view, has tried to prevent it by stipulating that: "Government shall ensure the elimination of all forms of discrimination against women and ensure the protection and promotion of their rights.

In all fields, particularly in the areas of civil, political, economic, social and cultural fields, government should take all appropriate measures to ensure the full development and full participation of women in national development" (Constitution of the DRC, 2006: 14). The activities of women in the civil society, economic and political scenes suffer mostly from discrimination based on gender differences, which at the most are aggravated by the patriarchal hierarchy responsible for the socio-economic policies. It is therefore an ethical obligation that policy makers not only measure the reality of sexual inequality but also make value judgments

on the inadequacy and negative impact of all discriminatory policies that keep women in poverty and compromise their well-being.

For its part, the mining workplace, regulated by the DRC's Mining Policy, should abide by the national constitution, which guarantees sexual equality as mentioned above. It is important noting that workplace discrimination encompasses various aspects including, discrimination against pregnant women, women with children, uneducated women, and younger women entering work for the first time.

In all their variations, gender discrimination acts culminate in abuses against women in the workplace, as noted in chapters three and four. It is therefore necessary that the legal mining framework carries legislation preventing the possibility of these acts, by promoting gender parity in the mining workplace. This suggests that women and men be assigned mining jobs according to their merit and competence.

Not directly discussing women in the DRC, but in a general way, a reflection by Estlund argues that: "There is not much spatial segregation on the basis of gender outside the workplace. But role segregation - the assignment of positions and tasks on the basis of gender remains prevalent, and largely unassailable through law, in many of the spheres outside of the workplace within which men and women interact closely" (Estlund, 2003: 84).

Indeed, it can be attested that generally viewed, gender segregation is less displayed in terms of space occupation, as for instance, men and women are unsegregated in the same shopping malls, restaurants, theaters, Christian churches, stadiums, hospitals, and so forth. There is no shopping mall where women cannot buy the same groceries as men, for example. On this view, the study agrees with Estlund that in other circles outside the workplace, gender segregation between men and women is mostly less pronounced.

By way of contrast, gender segregation is evident in the workplace. Unlike any other segregation, gender segregation in the workplace originates from patriarchal dominance and a lack of recognition of women on merit only. Since merit can be tested and proven, it provides an objective basis for gender parity in the mining workplace that is informed by the principles

of the Ethical Mining Workplace Framework. A success in maintaining gender parity can also lead to a strong stand against sexual offenders in the mines.

### **5. 2. 2. Reinforcing Dispositions against Sexual Offenders in the Mines**

A mining workplace that is in conformity with the virtues of the Ethical Mining Workplace Framework should stand against sexual abuse. Chapters three and four of this study sufficiently highlighted the sexual abuse of women and girls in mines. It is critical that, as a counteractive measure, the DRC's Mining Policy specifically includes legal dispositions specifying mechanisms to deal with reports on sexual abuse of women, children and others in the mines. Important also, is to be reminded that a key component in issues of abuse, is the general sense of impunity regarding perpetrators of such crimes.

The International Trade Union Confederation observes that “the lack of independence of justice, however, has rendered most cases to go uninvestigated, unprosecuted, or un-convicted” (2011: 27). Without a proper legal system, there would be no investigation of allegations, and sexual crimes cannot be solved, with victims left in their vulnerability, while perpetrators continue with their life.

The proposed Ethical Mining Workplace Framework champions women's rights, and needs to be observed and supported by the mining policy. In this way, it is imperative that the mining policy deals with such an ethical void on the well-being of women, by providing legal leadership on matters of abuse, observed or suspected. In order to actualize the virtues of the Ethical Mining Workplace Framework, a dissuasive mechanism should be put in place in all mining workplaces. For instance, prosecution and jail term for the convicted offenders, after following all legal processes, and banning anybody from the mines who attempts to engage in acts of an abusive nature and anybody who re-commits the same crime after a jail term.

As can be noted, the principles of the proposed Ethical Mining Workplace Framework can instill a new dynamic of mining governance, conveying in mining workplaces an understanding of ethical responsibility in mining. It follows that stakeholders in the mining workplace shall be compelled to care for miners in various aspects of safety and healthy working conditions and environments. Consequently, the profitability of the mining companies is maximized and,

in turn, they shall be obligated to a fair sharing of the mineral resources obtained by the collaborative efforts of all.

Ultimately it can be said that the principles of the proposed Ethical Mining Workplace Framework foster a great sense of the necessity of protecting the basic human rights of miners because they are a valuable asset to mining companies. As elaborated on in the first section of this chapter, the selected rights discussed constitute the basics that seem less applied in the DRC's mining industry. It is the contention of this study that when the above virtues and rights are translated into the DRC mining workplace, this is what it will look like. The next section will show how the gaps in the policy could be bridged.

### **5. 3. Bridging the Gaps in the DRC's Mining Policy**

If applied, the virtues of the proposed Ethical Mining Workplace can effectively transform the mining workplace in the DRC by fostering the reality of basic capabilities. The same virtues when applied diligently can enhance women's interests, as they enter the mining economy to improve the quality of their life. In this regard, some aspects of the mining policy can be reformulated<sup>17</sup>.

#### **5. 3. 1. A Mining Policy Enabling Women's Ownership of Mining Permits**

Concerning mines ownership permits, the DRC's Mining Policy should clearly determine an equal percentage of mines to be owned by women. It is imperative to include clauses that specify ownership of mines by women, and not treating men and women indistinguishably. This will be a way to create a sense of balance between the majority of male ownership and the minority of female contenders. As already mentioned in chapter four, women's issues and

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<sup>17</sup> As noted along the first and second sections of this chapter, the proposed Ethical Mining Workplace can inform the DRC mining industry in order to improve mining practices. However, certain dispositions of the legal framework by their patriarchal characteristics may obstruct the implementation of the Ethical Mining Workplace, especially with regards to women miners. For this reason, it is important to bring to the attention of the general public and policy makers areas of the mining policy that can be reformulated to conform to the principles of the proposed Ethical Mining Workplace. In any case, none of the objectives of this thesis is to request that the DRC Mining Policy be rewritten. Nonetheless, the thesis has pointed out the ethical gaps that need to be bridged. Consequently, some aspects of the policy can be reviewed by policy makers.

concerns find no reference in the DRC's Mining Policy. A key issue in this regard is the ownership of mines by women.

Despite the fifty percent of women participating in mining, only a small percentage are involved in important mining activities at the highest level as traders, purchasers, or Holders of Mines or Quarry Rights (Renafem, 2013). For instance a purchaser or a trader is 'any employee of a trading house which purchases gold, diamond or other mineral substances extracted by artisanal mining methods, who carries out his activities in the office of an authorized trader in accordance with the provisions of the present Code'(Mining Code, 2002: 1), and a holder is 'any person in whose name a mining or quarry right is granted and a mining title or a quarry title is issued in accordance with the provisions of the present code, and who carries out, directly or through third parties, the operations authorized pursuant to his mining or quarry title' (Mining Code, 2002: 1).

On a matter of statistics, in the eleven provinces of the DRC, only two provinces have a few women in those key mining activities: The Province of Maniema can boast of 5.8 percent of women who are Purchasers, and the Province of Katanga with 6.45 percent of women purchasing minerals. Three provinces have very few women as mine owners: The province of Maniema with 4 percent of women owning mine; the Province of Sud Kivu with 7.7 percent of women who own mine. The province of Kasai Oriental with 1.7 percent of women as owners of mines (Renafem, 2013). When they have acquired mines and quarry rights, individuals and companies (nationals or foreigners) become legal owners of mineral substances.

The DRC's Mining Code of 2002 provides a certain level of economic liberalism in matters of mining and quarry ownership by the sales of mining and quarry permits. Any individual or legal corporate fulfilling all requirements provided by the DRC laws can be eligible to assume important mining activities as traders or mine owners, thus enjoying all rights and obligations stipulated by the law. Therefore, in theory, the DRC's women who fulfil conditions of eligibility, are legitimately entitled to enjoy the benefits that the law grants them, after following all proper procedures to become purchasers or owners of the mineral and quarry rights. The reality, however, is the opposite of this logical principle, because women are last in the chain of mining activities. This is contrary to the outlook of Ethical Mining Workplace.

In this thesis, *Table 4.4.3* (the distribution of women per mining activities), showed that most women are involved in the bottom line and poorly paid mining activities. A question can be posed: Is this an indication that the majority of DRC women in mining do not qualify for work and positions in those highly placed mining roles? This thesis argues that besides the educational hindrance, no convincing argumentative discourse can explain this status quo apart from cultural prejudices, economic injustice, and ethical inadequacy of the mining policy towards women. Thus, in conformity with the virtues of the Ethical Mining Workplace, the DRC's Mining Policy needs to clearly express the independence of women regarding ownership of mines regardless of marital status<sup>18</sup>. Nothing shall prevent skilful and well prepared women to excel in the mining industry as owners of mines or as purchasers and traders of minerals.

The DRC's Mining Policy in its current form does not facilitate women's economic initiatives. If anything, the unfriendliness approach to women's economic advancement by the mining policy subtly excludes them from any competitiveness. As an example, concerning the application for an Exploration and Exploitation License, the mining code demands among other conditions, that the applicant provides proof of a minimum financial capacity (Mining Code, 2002: 56). Further, the mining code explains that:

In accordance with Article 56 of the present Code, the minimum financial capacity required is equal to ten times the total amount of the annual surface rights fees payable for the last year of the first period of validity of the exploration license applied for. The applicant is required to prove that he has his own funds, borrowed funds or a bank guarantee which could cover the perimeters of both his former and new Exploration Licenses applied for, in order to carry out his mineral exploration work programme (Mining Code, 2002: 58).

The proof of funds is crucial to the process. The state wants assurance that the person they deal with has the financial means to undertake the mining activities. However, a critical assessment of this legal disposition attests that it is lethal to the majority of women who may not come

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<sup>18</sup> Articles 448 and 450 of the DRC Family Code discriminate against married women. Article 448 stipulates that a married woman requires authorization of the husband for any legal matter. This means that if a husband is against his wife's seeking employment, he can refuse authorization and stop the wife to do anything. This might impede women from owning mines. It is therefore necessary that the mining policy which is independent in a sense, may overrule such rules by introducing special clauses allowing women to own mines, regardless of marital status.



near fulfilment of the long list of financial requirements, including proof of funds. This clause should be interrogated, and if possible be reformulated with procedural regulations on Mines Funding Program for Women (MFPW). This can level the ground of competitiveness and allow more women access to mining entrepreneurship that can assist in reducing poverty.

### **5. 3. 2. A Mining Workplace Facilitating Poverty Reduction**

The Ethical Mining Workplace Framework facilitates the achievement of human capabilities that can put a miner on the path to human and socio-economic upliftment. It lies within the mining policy to create conditions of possibility for a mining workplace to facilitate poverty reduction. Nevertheless, this study has sufficiently highlighted the reality of poverty among women in the DRC, and in particular women in the mining industry. It was demonstrated in chapter four that women miners are paid less than a dollar per day. With such a salary, there is less potential for the reduction of poverty. With regard to poverty, it is important to be aware that:

Many policy-makers start to 'lose the plot' when they think about poverty by assuming that 'poverty' is an empirical issue requiring only precise definition and/or measurement. Treating poverty as an empirical research concept ignores the fundamental problem that, whatever 'poverty' is, we need to make certain value judgments about the 'adequacy' of the resources available to lead a desirable or worthy life before we can determine that someone is—or is not—'in poverty'. In this way, poverty is fundamentally an ethical issue (Bessant, Watts, Dalton, and Smyth, 2006: 176).

As discussed above, a critical assessment of poverty should include an ethical approach in order to analyze the reality of poverty not only in terms of deprivation of material resources, but equally in terms of value that it takes away from the human person. Stricken by poverty people are deprived of the minimum capability to function, and therefore their life fails to reach the standard of a good human life (Nussbaum, 1995: 81). A life that is not a good human life, may as well degrade, in Nussbaum views, from a human life.

While this study agrees with Nussbaum's theory of two thresholds, it nevertheless disagrees with the conclusion of Nussbaum on the lower threshold as "a threshold of capability to function beneath which a life will be so impoverished that it will not be human at all" (1995:

81). Nussbaum concedes that when a human life is not a good human life, it is so disadvantaged that it degrades from a human life, meaning that it loses the characteristics of human life.

It is my critical opinion that Nussbaum is wrong in concluding that a human life that is so disadvantaged loses its humanness<sup>19</sup>. Through this affirmation, Nussbaum disproves her own enterprise of moving away from assessing well-being from a perspective of material possessions of the person. There is no doubt that a situation of extreme poverty deprives people from attaining the standard of a good human life, further, it exposes them to the depreciation of the human standard of life. However, there is no point at which a human life can cease to be human, despite its degree of disadvantages.

For instance, people, who instead of having proper shelter, may live in conditions that are non-human, see the value and dignity recognized to humans threatened by their living conditions, but these values will not be wiped away by the gravity of their impoverishment. This is to affirm that: “human life is not only an *instrumental* good, a necessary precondition of thinking or doing, but a *basic* good, a fundamental basis of human flourishing. It is, in other words, not merely good as a means to an end but is, like other integral aspects of a flourishing human life, such as friendship and knowledge, something worthwhile in itself” (Keown, 20002: 41). Human life is self-worth, and will not be a means to an end. In this sense, no amount of poverty can take away the intrinsic humanness of life.

For this reason, an empirical approach to the reality of poverty should be subsequent to the ethical approach. Otherwise, the strong tendency of a materialistic approach that associates the worth of human life to the degree of possession can reach a point to remove the worth and declare that life a non-human life. Only then can it be understood that a wage of less than a dollar per day is clearly a wage of misery, placing the person in a situation of living a life that is below the human standard, therefore threatening the value of that life. Hence, the ethical necessity for the DRC Government, through its Mining Regulations, in consultation with all stakeholders and miners’ associations, to specify a Minimum Wage System (MWS) that shall

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<sup>19</sup> In reference to the explanation on the two thresholds, Nussbaum argued that a human life is no longer human when it drops below the bare minimum of capability to function. Furthering the contention raised on footnote 13, in this part the study presents its arguments against Nussbaum’s views on the two thresholds by arguing that a human life cannot lose its humanness.

contribute to reduce poverty in the mining sector. Consequently, to allow women and girls access to decent mining jobs, they must be educated and trained to acquire mining skills.

### **5.3.3. Encouraging Women's Skills Development for Mining Careers**

As noted in chapters two and three, mining activities are concentrated in rural areas where the majority of women experience excessive poverty, and widespread illiteracy, due to the cultural disadvantage of the girl child. It has been proved that when it comes to depriving a child of school, in order to help with household chores, the girl is choice number one (Alsop, Frost, and Holland, 2006: 138). Women are hard hit by the absence of adequate health services, and a lack of policies and political will to advance their situation. These different factors weigh heavily on women and girls, hence their challenges to maximise their capabilities towards desirable functioning.

The opportunity of a choice is a rare commodity not at the disposal of women. The social arrangement is such that women are disadvantaged from acquiring skills through education that could enable them to make a choice of what they may want to do in life. This is a deprivation of the opportunity aspect of freedom (Sen, 2009). Though there might have been schools available, for decades most mineral provinces have been in war torn areas. As the first targets of violence, once again women were deprived of pursuing training and education.

It then follows that, without training and education, women's freedom of choice is severely affected, as they cannot do what they would have wanted. Combined with the patriarchal trend of discouraging girls from pursuing alternative means, such as further education, in favour of the natural vocational orientation of a housewife, women are left with few choices.

With a lack of available alternatives, the uneducated DRC women in mining become something they did not choose (washers, diggers, transporters of mineral products, and so on). Should these women have been found in another conducive social context, it might have been possible for them to explore their internal capabilities in order to access the combined capabilities oriented towards opportunities of well-being (Nussbaum, 1995: 162).

Consequently, government should facilitate training and education of women in mining, which must at the same time enable access to funding for educational purposes. The government could also provide incentives to mining companies, encouraging them to enable initiatives for ‘on the job training’. This will enable women and girls to acquire the necessary skills, allowing them to embrace opportunities to excel in any of the mining economic activities of their choice.

By way of example, the government and policy-makers must make policies that empower women and girls with opportunities for mining skills development. For one thing, government should aid mining companies in motivating fulfilment of their corporate social responsibilities.

#### **5. 3. 4. Social Responsibilities of Mining Companies Must Be Fulfilled**

It has been explained in chapter two that the DRC government adopted a mining policy formulated to attract investments, instigate financial resources and to engage in economic upliftment of the population. More than a decade after the enactment of the mining code of 2002, the economic upliftment is yet to be fulfilled. However, the government is still to explore various possibilities to obtain the participation of mining companies in an attempt to economically uplift local mining communities. By way of example, the DRC government can take advantage of existing international instruments, such as “OECD Guidelines” for multinational enterprises (Gordon, 2001). Based on such instruments, the DRC policy makers may work in collaboration with mining companies for an understanding of their corporate and social responsibilities.

In fact, government can make it mandatory for mining companies to reinvest part of the mining financial interests and revenues in infrastructure and institutions of vocational training and learning in mining areas. Hayes Karen is of the view that mining camps may be run by women because well-trained women will have a good financial management capability and influence, and as a result, camps run by women will be clean, well-organised, and economically vibrant (Hayes, 2012). An investment in the training of women and girls in mining will have lasting effects and a strong impact on the affirmation of women’s dignity, elimination of gender injustice, success in poverty reduction, and visibility of development.

Besides education and health areas, where mining companies can actively contribute by means of social responsibilities, other areas should be made mandatory. For instance, mining companies have the obligation to protect the environment. On this subject, the DRC's Mining Code of 2002 stipulates that "Any applicant for an Exploitation Licence, an Exploitation Licence for Tailings, a Small-scale Mining Exploitation Licence, or an Authorization for Quarry Exploitation must submit an environmental impact study together with an environmental management plan for the project, and obtain the approval of his EIS and EMPP, as well as implement the EMPP" (2002: 204).

This means that the applicant has the obligation to conduct research intended to determine the impact of their activities on the environment. In addition, they should present an environmental project plan. Under those circumstances, a company cannot engage in mining without the understanding of the impact of their activities on the ecosystem. They should be made aware of the ecosystem of the terrain before, during and after exploration and exploitation, so that any environmental damages incurred may be diligently repaired.

As noted above, this shall not constitute a matter of negotiation with mining companies. As a matter of obligation, government should reinforce such regulations that corroborate the principles of the proposed Ethical Mining Workplace Framework. Good governance of the mining industry also implies a watchful eye on environmental issues, in order to maintain safety and good health in the workplace. To this aim, mining and developmental projects should be assessed on their impact of the environment and equally on ways in which they contribute to enhance women's capabilities, thus refraining from gender biases and sexism that characterize most developmental projects.

On this topic, Nzegwu Nkiru declares that: "One place where this sexism is most evident in postcolonial Africa is in the field of development where projects are targeted at men and a wide disparity exists in the income-earning pattern of men over women" (1995: 452). Any mining or developmental projects that negatively affect the environment and obstruct the economic upliftment of women, should not be promoted. It is against this background that the study suggests applying the principles of the Ethical Mining Workplace Framework, a progressive framework that can contribute to improve the mining workplace by enhancing miners' capabilities and rights.

## 5. 4. Conclusion

This chapter was based on Nussbaum's assumptions that when an individuals' inner ability to act is supported by healthy mental and physical conditions, and combined with conducive environments provided by public policy, people are well placed to function and attain a good human life of their choice (Nussbaum, 1988, cited in David Crocker, 1995: 163-166). It was established in chapter four of this study that most basic capabilities have hardly been achieved. Consequently, the present chapter initiated a way to contribute to improving the situation in the DRC mining workplace. It is with this background, that the chapter formulated a framework of an Ethical Mining Workplace that can inform and transform the practice in current mining workplaces.

The chapter demonstrated that the proposed framework is compatible with the pursuit of human rights in the form of universal claims recognized by all human beings, labor rights, and rights for development. It has been proven that fulfilling these rights is not detrimental to the expectation of economic success by mining companies. Therefore, it pertains to mine stakeholders to create possibilities for sustainable and responsible mining guided by virtues of good governance, caring, sharing and basic rights. With regard to women, the framework of an Ethical Mining Workplace can contribute to resolve issues of exclusion, gender and economic discrimination, sexual abuse and violence found in mining workplaces.

As a matter of fact, the chapter contends that a workplace without caring for others and without sharing mineral resources can result in abuses and the deprivation of good human life. Likewise, the chapter confirmed that sharing does not mean free distribution of mining resources, but a fair distribution by means of wages and other forms of gratuities. It is evident that without investing in building capacity among women, and enabling their human capabilities, the country will continue to stall, and poverty will increase, and their humanness will continue to be threatened.

It is against this background that the chapter highlighted ways in which the DRC's Mining Policy can be reinforced with the framework of the Ethical Mining Workplace. This is in the form of bridging the gaps to improve the mining policy on account of gender sensitivity and actions to enhance the economic and human capabilities of women in mining.

This chapter has marked the end of this research study that set to assess the extent to which the DRC's Mining Policy affects the participation of women in mining, as they experience a life of extreme poverty amidst multiple forms of abuses. This question was checked along all the chapters of the present study, while each contributed to ethically unpack the issues, draw the connections, and eventually suggest the ethical dimension of mining practice in the framework of an Ethical Mining Workplace. The next chapter will conclude this research by articulating the major steps of analysis of the DRC's Mining Policy.

## CHAPTER SIX: GENERAL CONCLUSION

This study has explored the various aspects of the research question, and covered all the objectives the study set to pursue. This particular chapter gives a general overview of what transpired and traces in broad terms the analytic process of providing answers to the research question and sub-questions. It should be said that each chapter of this study contributed to explore a particular angle of the main question.

In the general introduction of this study the precarious social and living conditions of women was noted amidst poverty, abuses and marginalization of women from the mining sector in the DRC, a potentially rich country with enormous mineral resources. This state of affairs motivated this study. It appeared crucial to understand the nature and scope of challenges faced by the mining workforce, specifically women not finding their ground in mining. For one, the DRC's women are not without economic resourcefulness, given that most have become the providers of their families, in the absence of formal paid jobs (Hinton, Veiga, and Beinhoff, 2003).

On the other hand, it was disconcerting that women in the mining sector were economically sidelined and continued to live below the poverty level. In recent years of political instability and economic turmoil, women have taken key roles in informal economy. When it comes to the mining sector, a potentially economic haven for all, yet women seem to struggle to find their rightful place in this sector. In these years where issues affecting women can no longer be ignored, it was fitting for this study to focus on a policy that regulates the mining sector in the DRC. The study has investigated the mining policy as legislated in the DRC's Mining Code of 2002, a legal framework that regulates the mining sector, aiming to transform it into an engine of socio-economic development for all. In my view, the mining policy was the first place to identify problems as formulated in the research question. This explained the need to assess the ethical challenges that prevent women from excelling in building a flourishing life in the mining industry.

With this background in place, the rationale of the mining policy was discussed in order to put in perspective the scope of application of the mining policy as outlined in the Mining Code of 2002. This was necessary in order to investigate the situation of women in the mining industry.



To achieve this aim, a documented account of the situation of women was conducted from the existing empirical studies (Nzongola-Ntalaja-Ntalaja, 2002; Turner, 2007; Smillie, 2010; Côté, 2014;). Through examination of various informational sources, the study encountered a number of factors contributing to the economic and human crisis affecting women in the DRC's mining industry. These include a patriarchal framework that exacerbates women's subordination, numerous wars aimed at the control of natural resources, the lack of a proper mining legal framework, and political instability resulting in poor governance that affects national, social and economic institutions.

The findings from the engagement with other scholars showed a noticeable focus on the economic aspect of the mining sector, which does not benefit the DRC and its people. Regarding women, a focus was placed on the general reality of exploitation and sexual abuse within the mining industry and the society at large, owing to post-conflict male behaviors.

Furthermore, the study observed a gap in the aforementioned empirical studies concerning the ethical feminist approach to issues affecting women in the DRC's mining industry, in addition to a gap in knowledge regarding an ethical approach to the situation of poverty and challenges faced by women in mining. Moreover, it appears problematic that the majority of women active in the prolific sector of the mining industry continue to regress in poverty and only work in poorly ranked mining jobs.

To unpack these apprehensions, the study asked the following question: *To what extent a Feminist Analysis of the DRC Mining Policy might inform the Mining Practice to enhance the Participation of Women in Mining?* In response to this question, the study presented the general situation of the DRC's mining industry, a potentially profitable economic structure that could boost the country's GDP, offer employment and contribute to the socio-economic development of the country (Nzongola-Ntalaja-Ntalaja, 2002).

Ethical analysis was established as the best approach in examining the reality of poverty and harm done to women in the course of their involvement in the prolific mining industry. The appeal of the ethical approach is that it allows the researcher to dig deeper, beyond economic factors, and engages in value judgement into a reality likely to distort the sense of dignity and

value of human life threatened by poverty and abuses inflicted on women in the course of their mining activities.

Constructing on this reasoning, and considering the epistemic nature of the research question and the informational perspective of the ethical analysis, the study employed a combination of methodological approaches that included historical research, feminist approach and critical analysis. The library and documentary methods were also used as tools for data collection. Different aspects of these approaches were used in the analysis of the DRC's Mining Policy (2002) and its influence on the practice of mining by women. The methodological approaches allowed the analysis of the mining policy, by critically exploring important articles of the mining code, interpreting their legal definition, and investigating their various implications on the life of women. The next phase was to assess how the gaps in those same articles may have influenced the detailed, documented reality of women's mining practice and the resultant life experiences, as elaborated on by different authors consulted.

This exercise was supported by feminist ethical theory and the CA, which are relevant theoretical frameworks for this kind of study. This step took care of the objectives, consisting of exploring the evolution and the rationale of the mining policy, with the aim to critically assess the ethical gaps that create challenges for women and give rise to their exploitation.

The ethical feminist approach consisted of critically assessing the mining policy through the lenses of a feminist style of moral reasoning such as: placing emphasis on the interests and rights of women; focusing on women's experience; considering the inclination to feminization as an epistemic recourse to women's moral traits; presenting alternative moral theorization and actions to reverse women's subjection (Gilligan, 1982; Jaggar, 1992; Putnam, 1998). For example, with the emphasis on women's interests and rights, the analysis consisted of studying articles of the mining policy and critically reasoning in which manner they carried women's interests forward or obstructed them.

The ethical and critical analyses contributed to illustrate issues of sexual discrimination against women in the DRC's mining industry which blocks possibilities for women to build a life of their choice in the mining industry. As can be seen, this perspective of the analysis covered the

research objective which aimed to assess the impact of the mining policy on the participation of women in mining.

By way of example, the study discovered in chapter four that the DRC mining legal system was far from being an enabling legal framework that supports women's personal characteristics, and enhances factors that create conducive, participative and inclusive working environments. Key findings in this area were the hindrance on women's freedom of choice in terms of mining occupation and the possibility of climbing the mining ladder from lower mining jobs to higher positions in the mining workplace.

Conversely, various articles of the DRC's Mining Policy appeared to reinforce a patriarchal dominance in key mining activities. By way of example, to mention a few: Article 1: Definition of Terms. Most terms dealing with the major mining activities are expressed in a way which specifically refer to men. This impression was verified in chapter three, four and five. It has been argued in those chapters that, indeed, very few women participate in the major mining activities. Another gender bias was found in Article 8: The role of the state and its institutions: Discussing public institutions involved in the administration of the mining industry, this study demonstrated that everybody at the head of each of these different institutions is not a woman. Other major mining activities with biased legal dispositions are: Article 50: Scope of the Mineral Exploration Licence: This article uses masculine terminologies. This can mean that women are excluded from these activities. Article 56: Conditions for granting Exploration Licences. Among other conditions, this article demands a proof for financial capacity to engage in mining activities. It was demonstrated in chapter five that without access to financial resources, women cannot participate in mining activities as owners of mines quarry permits. To overcome this hurdle, the study suggested the creation of Mines Funding Program for Women (MFPW). Many other gender biased articles include: Article 84; Article 196-200, and so on.).

This study has highlighted the various possible causes of the silence of the DRC's Mining Policy on the participation of women in mining. For example, a sense of the gender dominance of the policy was evident in the extensive use of masculine terminologies in the important articles of the mining code which, in theory, excluded women from those key mining activities. The assumption of women's marginalization laid out in chapter three, was verified and

confirmed in chapters four and five, through critical scrutiny of activities related to those articles of the mining code, in comparison to the status of women in mining as described in various informational sources. From the critical point of view of the analysis, the study evidenced the reality of a policy materialized in mining practices that negatively affect the participation of women in mining. To illustrate, it was established that the majority of women were present only in peripheral mining jobs, with fewer women in managerial positions and a miniscule number of women that owns mine permits (Bartels Susan et al., 2010; D'Odorico and Holvoet, 2009; Amnesty International, 2013).

Through an ethical analysis, the study highlighted in chapter four the lack of gender sensitivity of the mining policy, in addition to the lack of the CA Enablement Indicators. This was characterized by a profound gender discrimination based on the misconception of impartiality by treating men and women indistinctly, instead of giving a treatment of preference to women in an industry highly patriarchal in its mining practices (this was explained in the footnote 10). Informed by the feminist ethical lenses, the study singled out various ethical challenges faced by women, as a consequence of the patriarchal character of the mining policy. These include: lack of gender justice and sensitivity in the mining policy by ignoring women's experience; neglect of basic human rights of women.

Among other ethical gaps found, was the neglect of women's economic rights characterised by the lack of a policy for women's ownership of mines and quarry permits. Moreover, a biased patriarchal legal framework was uncovered that impedes women's participation in mining on equal terms with men. Lastly, the study identified an ethical gap of limited access by women to decision-making tables.

Concerning these ethical gaps, the study moved to critically assess how they impact women's life situation. This response addresses the objective aiming to critically assess the impact of the mining policy on the practice of mining by women. At this level, the study relied on the CA perspective in analyzing women's status as described by the different authors consulted. The study further examined the account of women's status in the light of the descriptive narratives from the basic capabilities listed by Nussbaum.

The analysis uncovered non-achievement of most basic capabilities, which contributes to the challenges compromising the rights and well-being of women in mining. The DRC's mining practice, as regulated by the mining policy, produces a scenario contrary to Nussbaum's observation that "responsible institutions promote the formation, exercise, maintenance, strengthening, and restoration of certain good human powers" (Nussbaum, 1995: 162). Thus, the research question was answered, covering all the objectives of this study.

As noted in chapters four and five, instead of motivating and stimulating economic creativity and capability powers in women, the institutional mining governance, influenced by the patriarchal dominance system through its mining legal framework, has installed a practice of mining that does not promote the formation and exercise of human capabilities, and fails to maintain, neither by strengthening nor by restoring, certain good human powers in women.

The average woman in the DRC's mining industry, as highlighted in this study, has seen her human powers regressed as the rights to equitable participation in mining are not totally supported by public policy. In addition, it was discovered that women's freedom to choose a mining activity of their desire, is not promoted. By way of example, the study established the reality of unhealthy and unsafe working conditions amidst sexual violence, with insignificant mining resources at the disposal of women.

Consequently, most of women's capabilities for a flourishing life have been compromised, through an incomplete approach of their situation of poverty. The study continued to argue that the approach to the reality of poverty that focused on assessing the economic resources of the DRC's women is incomplete, and needs to be expanded with an ethical approach to women's poverty.

In as much as poverty is a question of human rights (Vizard, 2005: 246), it should necessarily touch on ethical aspects, so much so that the study approached poverty from a more ethical perspective. The contention is that an ethical perspective exposes the situation of women in the DRC's mining sector in the best way possible, as women in the mining industry are at risk of not reaching the minimum threshold of human functionality. By way of contrast, the study findings disagree with Nussbaum's contention that when the capability to function goes below a certain threshold, it is no longer a human life (Nussbaum, 1995: 81). In chapter five the study

argued that human life is self-worth and cannot lose humanness in spite of the degree of the hindrances to function.

Building on the above contention, the study created solid grounds to capture the objective, by formulating an ethical discourse that can enhance the principles of the Ethical Mining Workplace Framework. To this effect, the study elaborated an innovative ethical framework. Thus, based on the CA, the way has been paved for a foundational principle of the Ethical Mining Workplace Framework. This is a framework for sustainable and responsible mining practice based on the following virtues: good governance, caring, fair sharing of mining resources, and basic rights of miners.

Admittedly, these virtues represent the most urgent human rights in the DRC's mining industry, to which can be added the right of access to economic resources, the right of independent associations of miners, and the right of women to be protected against sexist myths in workplaces. These virtues and rights can be a good indicator of how mining practice either fosters or obstructs, strengthens or weakens the ability of mine workers and local communities to function in ways that overcome the pangs of poverty and achieve economic development.

Finally, the study suggested some aspects of the DRC's Mining Policy that ought to be reconstructed, in the light of the virtues of the proposed Ethical Mining Workplace Framework. It was highlighted that the basis for this reconstruction should be the sensitivity to gender issues, the promotion of gender justice and parity in all aspects of mining activities. Thus, focusing on the ethical perspective of poverty, the study findings contend that it is the responsibility and legal obligation of public institutions and all mining stakeholders to collaborate in the steering of an ethical mining practice. Provided that the DRC's mining industry implements the principles of the Ethical Mining Workplace Framework, trained and skillful women, (or those willing to be and that should be trained), who are entitled to fair participation in the mining industry, will be enabled in their economic and human capabilities, allowing them to contribute to poverty reduction and socio-economic development, in order to pursue and attain a flourishing life of their choice.

The formulation of an ethical mining workplace is to be complemented by the ethics of mining which can call governments and mining companies to a realistic corporate social responsibility

in the area of mining business. To achieve this, further studies should be conducted in order to conceptualize the ethics of mining around principles of transparency and corporate social responsibility. This will be an effort to elaborate a discourse on how mining activities can be accomplished in a sustainable manner fostering ethical values that enable capability of life in both, investors and miners, and with great respect for the eco-system.

Therefore, scholars could invest time, energy and resources in the study and formulation of an ethics of mining that can serve as standard practice in the African continent where the mining activities are less beneficial to the miners and their communities, and in general not gainful to countries' economy. It should be assumed that a full fledged mining ethics will evidently encompass the field of sustainable development, with enormous consideration for the environmental sciences.

There is a fact that no international law that governs mining projects,

Instead, there are more than a dozen codes, covenants, and standards, all voluntary and self-enforced. These include the International Cyanide Management Code, the Equator Principles, the International Finance Corporation's Performance Standards, the Global Reporting Initiative, the Extractive Industries Transparency Initiative, the Natural Resource Charter, and the United Nations' "Ruggie Principles," to name just a few. Every new framework attempts to trump the preceding ones by defining the essential principles of corporate engagement in mining projects. But these different frameworks also reflect an underlying competition among development agencies, scholars, and practitioners. Many of these organizations and individuals are competing for funding from the same small group of donors, and often aim to fund their specific initiatives through membership fees from the companies they are attempting to influence. Across these initiatives, the guiding principle is to promote economic development that benefits everyone involved --foreign companies, host governments, as well as local communities--not to question the underlying economic and ecological value of specific mines. The expansion of mining is accepted as inevitable (Siegel Shefa, 2013).

As can be deduced from this quotation, the existence of these different arrangements that are above all not mandatory, leaves more space to unprincipled mining projects to continue exploiting African mining resources without inclination to ethical principles. For this reason, there might be a necessity for African scholars of law to formulate an African Charter of Law on Mining which will be adopted by African countries to safeguard and protect the mining

industry. Those mining companies that do not adhere to this law will simply be banned from the industry in all the participative African countries.

On the basis of the DRC law on mining, scholars of ethics, could research on ways and means to achieve a sustainable mining. The DRC scholars of ethics will collaborate to conceptualize the ethics of mining which will include, the feminist ethics of mining. It is worth noted that there is no sector of employment opportunities that should be unavailable to qualified women. Therefore, in these times where issues of the empowerment of women and protection against all sorts of exploitation can no longer be delayed, African feminists, including DRC feminists, have the responsibility and task to formulate an African feminist ethics of mining, an area where African women in general, and particularly DRC women continue to face exploitation and abuses.



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## Appendix 1: Mining Companies on Joint Ventures Contracts with the DRC

Name of Mining Company	Date of Contract	Joint Venture
Anvil Mining N.L. (From Australia)	31 January 1998	Anvil Mining Congo (AMC)
Banro Resources Corporation	13 February 1997	Societe Miniere du Congo - SOMICO
Cluff Mining Limited	16 August 1997	Cluff Mining Congo CLUMINCO
La Miniere de Senga Senga- SENGAMINES	8 November 1999	MIBA and SENGAMINES
ORAMA Properties Limited (OPL)	3 November 2006	Entreprise Miniere de Kisange Manganese and OPL
Sntinelle International Group Limited	26 October 2006	Kisange Manganese and Sentinelle International Group Limited
Elemental Minerals Ltd	December 2006	BCM Congo Exploration
De BEERS Centenary A.G.	9 November 2005	Miba-De Beers
MIBA & NIJNE- LENSKOYE and I&L Canada	2 December 2005	Miniere du Kasai (MIKAS) Sprl
MIBA & DGI MINING Ltd.	17 October 2006	Societe Miniere de Lulua Sprl
MIBA & BHP BILLION WORLD EXPLORATION INC -Canada	8 December 2006	MIBA & BHP BILLION WORLD EXPLORATION INC -Congo
MIBA & INDO AFRIQUE MINING China	5 May 2006	Societe de Diamant de Sankuru, SMDS Sprl
ANGLOGOLD KILO (AGK)	4 November 1998	ANGLOGOLD AHSANTI
MWANA AFRICA Sprl	9 June 2004	OKIMO & MWANA AFRICA Sprl
TANGOLD	2003	OKIMO & TANGOLD

KIBALI GOLD Sprl	11 July 2005	OKIMO & KIBALI GOLD Sprl
BORGAKIM MINING Sprl	12 August 2001	OKIMO & BORGAKIM MINING Sprl
BLUE ROSE	11 July 2002	OKIMO & BLUE ROSE
GORUMBWA MINING Sprl	11 July 2005	OKIMO & GORUMBWA MINING Sprl
LA GENERALE DES MINES AU CONGO (GEMICO)	14 July 2006	SAKIMA & LA GENERALE DES MINES AU CONGO (GEMICO)
LE GROUPE MINIER BANGANDULA	17 March 2006	SAKIMA & LE GROUPE MINIER BANGANDULA
CENTRAL AFRICAN RESOURCES Sprl	1 <sup>st</sup> March 2006	SAKIMA & CENTRAL AFRICAN RESOURCES Sprl
SUMMERVALE OVERSEAS Ltd (S.O.L.)	1 <sup>st</sup> March 2006	SAKIMA & SUMMERVALE OVERSEAS Ltd
LA SOCIETE D.F.S.A. MINING CONGO	14 September 2006	SAKIMA 7 LA SOCIETE D.F.S.A. MINING CONGO
MINIERE MUSHOSHI 7 KINSEDA (MMK)	4 December 2002	SODIMICO & MINIERE MUSHOSHI 7 KINSEDA (MMK)
KGHM CONGO Sprl	18 January 2003	SODIMICO & KGHM CONGO Sprl
MUYAFA CONGO Sprl	29 January 2005	SODIMICO & MUYAFA CONGO Sprl
WESTERN MINING Sprl	16 June 2006	SODIMICO & WESTERN MINING Sprl
LONG FETL MINING Sprl	18 February 2006	SODIMICO & LONG FETL MINING Sprl
SOCOMIE/PGM	25 February 2004	SODIMICO & SOCOMIE/PGM
ETC.		

Source. République Démocratique du Congo. 2009. Ministère des Mines. Commission de Revisitation des Contrats Miniers. Rapport des Travaux. Volumes 1. Conventions Minières et Partenariats. Kinshasa, Cepas.

**Appendix 2: Men and Women in the DRC Public Institutions from 2006-2011.**

Institutions	Responsibility	Total	No. of Men	No. of Women
Presidency	President	1	1	0
Government	the Prime Minister	1	1	0
	Deputy Prime Minister	3	3	0
	Minister of State	2	2	0
	Ministers	32	29	3
	Deputy Ministers	10	6	4
Ministry of Foreign Affairs	Minister	1	1	0
	Deputy Minister	1	1	0
	Director of Staff	1	1	0
	Chief of Staff	1	1	0
	Private Secretary to the Minister	1	0	1
	Secretaries of the Cabinet Minister	2	0	2
	Private Secretary of the Director of Cabinet	1	0	1
	Political advisors	2	2	0
	Advisors	7	4	3
	In Charge of Research	5	2	3
	Head of Department of Communication	1	1	0
	Head of Department for Media	1	1	0

	Chief of Protocol	1	1	0
	Assignments Officers	4	4	0
	Ambassadors without Portfolio	15	12	3
Parliament	MPs	500	455	45
TOTAL		592	529	65
Percentage			89.3%	10.7%

Source: Own source. Information gathered from different official sites of these Institutions.  
(Presidency: <http://www.presidentrdc.cd/>; Prime Minister: <https://www.primature.cd/>;  
Parliament: <http://www.assemblee-nationale.cd/v2/>).

### Appendix 3: The Distribution of Duties and Obligations between State and Mining Companies

<b>Obligations of Mining Companies to the State</b>	<b>Obligations of the State to Mining Companies</b>
<ul style="list-style-type: none"> <li>-obligations regarding the rehabilitation of the environment - Art. 186</li> <li>- obligations relating to the validity of the mining or quarry rights -Art. 196</li> <li>- obligation to commence the exploration work within a period of six months from the date of the issuance of the permit – Art.196;</li> <li>- Obligation to commence the work of construction on mining sites-Art.198</li> <li>- Obligation to pay the annual surface area fees per quadrangle -Art.200</li> <li>-</li> <li>- obligation to appear before the local authorities</li> <li>- Article 215</li> <li>- Holders of mining or quarry titles must keep the registers - Article 216</li> <li>- The Holder is subject to the tax and customs legal regime - Article 219</li> </ul>	<p>State guarantees the holders of mining and quarry rights: - Article 273:</p> <ul style="list-style-type: none"> <li>- compliance with the law and agreements or conventions executed with partners;</li> <li>- The right to freely dispose of their assets and to organize their businesses as they deem fit</li> <li>- The freedom to recruit</li> <li>- Free access to raw materials within the limits of the mining or quarry rights;</li> <li>- Free circulation within the National Territory for their personnel and their products</li> <li>- The freedom to import goods and services as well as the funds necessary for their activities</li> <li>- The freedom to dispose of the products in the internal markets, to export and dispose of the products on the external market</li> <li>- Peaceful enjoyment of the Perimeters relating to their mining and/or quarry rights;</li> <li>- To facilitate the issuance of all the documents required for their foreign personnel to access the places of exploration or exploitation</li> <li>- Compensation for expropriation- Article 275</li> <li>- Assuring List of assets benefiting from the preferential tax regime - Article 225:</li> </ul>
<b>Obligations of Investors to Local Communities &amp; Miners</b>	<b>Obligations of the State to Local Communities &amp; Miners</b>



<ul style="list-style-type: none"> <li>-Obligation to comply to Special regulations on Safety &amp; Health- Article 207</li> <li>- Publication of the safety instruction- Article 210</li> <li>-Obligation to notify of accidents in a mine or in a quarry – Article 209.</li> <li>- The roads built outside and inside the Perimeter may be opened to the public- Article 213</li> <li>-</li> <li>-Compensation for Actual liability for the occupation of the land - Article 280</li> <li>-</li> </ul>	<ul style="list-style-type: none"> <li>-obligation to assure that Congolese personnel with equal qualification in terms of education and experience as expatriates are also employed to carry out mining operations, and subject to the conditions of dismissal pursuant to the laws and regulations in force - Article 273c</li> <li>-</li> </ul>
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